

SOLIHULL METROPOLITAN BOROUGH COUNCIL

EQUALITY ACT 2010 SUMMARY

Background

The new Equality Act 2010 brings together and re-states all previous anti-discrimination and harassment legislation (this includes the Race Relation Amendment Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006), together with equal pay law, harmonising previous provisions to give a single approach where appropriate, but also introducing some changes and additions to previous law. Some changes are still under consideration and will not come into force until a later date.

- The Act has two main purposes: -
 - to simplify and harmonise existing discrimination and equalities law
 - to strengthen the law to further advance equality
- Provides basic legal framework for protection against discrimination, harassment and victimisation in services, public functions, premises, work, education, associations and transport
- Brings together and restates all previous anti-discrimination, harassment and equal pay law
- Introduces a number of changes/additions to previous legislation
- Gained Royal Assent on 8 April 2010

Protected characteristics

- Introduces concept of protected characteristics, rather than “equality strands”, these are: -
 - age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - pregnancy and maternity
 - race
 - religion and belief
 - sex
 - sexual orientation
- Note – not all of the provisions of the Act apply for each of the protected characteristics

Key changes

- **Single equality duty:** replaces existing race, sex and disability duties. Duty to advance equality of opportunity, foster good relations and eliminate discrimination, harassment and victimisation

- **New terminology:** brings together all of the grounds/strands previously protected by anti-discrimination legislation – now referred to as ‘protected characteristics’ (see above)
- **Positive action:** public sector organisations able to take proportionate steps to help people/groups of people with a particular protected characteristic to overcome their disadvantage or to meet their needs
- **Positive action:** in recruitment and selection, able to treat a person from an under-represented protected characteristic favourably in recruitment if candidates are equally qualified
- **Discrimination:** widens scope of when discrimination is unlawful
- **Discrimination by perception or association:** clarifies that protection from discrimination by perception and by association is prohibited for most of the protected characteristics
- **Dual discrimination:** a person can now be treated less favourably because of a combination of two relevant characteristics
- **Indirect discrimination:** extended to include disability and gender reassignment
- **Harassment:** now provides protection against behaviour even if it is not directed at the complainant, and the complainant need not possess the relevant characteristic themselves
- **Harassment by a third party:** extends provision from sex to other protected characteristics – employers are now potentially liable to harassment of their employees by people they don’t employ – such as visitors, suppliers, customers etc
- **Victimisation:** unlawful to treat someone badly because they have made or supported a complaint about discrimination or harassment – no longer have to show treated less favourably than someone who has not made a complaint (only that treated badly)
- **Tribunals:** recommendations to eliminate discrimination no longer restricted to just the claimant, can apply to wider workforce (even if claimant has left organisation)
- **Equal pay:** allows for pay discrimination claims to be made based on hypothetical comparators if no real person can be found
- **Pay secrecy:** companies no longer able to stop employees discussing pay with colleagues
- **Disability:** changes the previous definition of disability by no longer requiring a disabled person to show that their impairment affects a particular capacity (e.g. mobility, speech, sight etc). A person has a disability for the purposes of the Act if he or she has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities
- **Disability:** unlawful to ask job applicants disability and health related questions before short-listing and job offers, except in prescribed circumstances
- **Disability:** strengthens protection from direct discrimination – where a person receives worse treatment than someone who does not have a disability, because of their disability – prohibited in goods and services, as well as employment
- **Disability:** new provision of ‘discrimination arising from disability’ – a person is treated less favourably because of something connected to their disability
- **Reasonable adjustments:** in addition to adjusting the way things are done or the physical environment, requirement to provide auxiliary aids – to prevent disabled people experiencing a ‘substantial disadvantage’

- **Gender reassignment:** changes to the previous definition of gender reassignment to no longer require a person to be under medical supervision
- **Breastfeeding mothers:** Act has clarified that unlawful to discriminate against a woman because she is breastfeeding (non-work) – must not stop a woman who is breastfeeding

Timescales

- The majority of the provisions came into force on 1 October 2010, others came into force on 5 April 2011, but some are still being considered by government, these include:
 - Dual discrimination
 - Prohibition of age discrimination in service delivery
 - Provision of auxiliary aids in schools
 - Allowing civil partnership registrations to take place on religious premises
 - Expansion of race to include caste
 - Default retirement age still allowed until 2011

Further information

- Further guidance and information can be found at
 - Legislation
<http://www.legislation.gov.uk/ukpga/2010/15/contents>
 - Government Equalities Office
http://www.equalities.gov.uk/equality_bill.aspx
 - Equality & Human Rights Commission
<http://www.equalityhumanrights.com/home/advice-and-guidance/new-equality-act-guidance/>
 - Acas (particularly employment)
<http://www.acas.org.uk/index.aspx?articleid=3017>
- If you require support understanding what the legislation means for your area of work please contact a member of The Equality & Diversity Team on 0121 704 6442 or email equalities@solihull.gov.uk