

# Equality Act 2010

## (Duties for schools)

Colleagues will be aware that a substantial portion of the Equality Act 2010 came into force in last October. Further elements of the Act which will include the revised and extended Public Sector Equality Duty are due to come into force in April 2011. The final details of precisely what this duty will entail for schools will not be published until early in 2011. Regarding the existing equality duties, schools that are already complying with the law should not find major differences in what they need to do although there are some changes to the legislation with which school leaders should be familiar.

The new Equality Act provides a single, consolidated source of discrimination law, covering all the types of discrimination that are unlawful. It is designed to simplify the existing law by removing anomalies and inconsistencies, and it extends the protection from discrimination to some new areas. The types of discrimination recognised have also been extended as have the categories of people who are legally protected from it.

The types of discrimination now include: *direct discrimination, associative discrimination, discrimination by perception, indirect discrimination, harassment, harassment by a third party and victimisation.*

The law as it stood prohibited unlawful discrimination against pupils because of their sex, race, disability, religion or belief and sexual orientation. Protection is now extended to pupils who are *pregnant* or undergoing *gender reassignment*. However, protection from *harassment* is limited to the grounds of *disability, race or sex*. *Third-party harassment* does not apply to pupils.

There are additional *victimisation* provisions for schools which extend the protection to pupils who are victimised because their parent or sibling has made a complaint; they have helped someone else make a complaint; they have made an allegation or have done anything else in connection with the Act.

The *protected characteristics*, as they are now called, include: *age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage & civil partnership and pregnancy and maternity*. All of these apply to staff and other adults in the school community. All except *age* and *marriage and civil partnership* apply to pupils, prospective pupils and (in certain limited circumstances) former pupils.

The exceptions to the discrimination provisions for schools that existed under previous legislation – such as the content of the curriculum, collective worship and admissions to single sex schools and schools of a religious character are all replicated in the new act.

There are new provisions allowing schools more scope to take *positive action* which makes it easier for schools to target provision and resources at pupils who are from a particular disadvantaged group.

### Summary of changes to anti-discrimination law enshrined in the Equality Act

- The *protected characteristics* include: *age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage & civil partnership and pregnancy and maternity*. All except *age* and *marriage and civil partnership* apply to pupils

- The types of discrimination employees must be lawfully protected from now include: *direct discrimination, associative discrimination, discrimination by perception, indirect discrimination, harassment, harassment by a third party and victimisation*.
- Pupils must be protected from: *direct discrimination, associative discrimination, discrimination by perception, indirect discrimination, harassment* (related to disability, race or sex) and *victimisation*.
- It is now unlawful to discriminate against a transsexual pupil.
- It is now unlawful to discriminate against a pupil who is pregnant or has recently had a baby.
- New *positive action* provisions allow schools to target measures that are designed to alleviate disadvantages experienced by pupils with protected characteristics or to meet their particular needs.
- It is now unlawful for employers to ask *health-related questions* of applicants before a job offer, unless the questions are specifically related to an intrinsic function of the work.

### **Provisions to be implemented beginning in April 2011**

The existing *Public Sector Equality Duty* which presently covers race, disability and gender will be combined into a single, less bureaucratic and more outcome-focused duty extending to all of the protected characteristics. However, this change will not come into effect until April 2011 at the earliest. The existing equality duties remain in place until then.

### **Further provisions included in the Act but still under consideration by the government**

- Extending the *reasonable adjustment duty* to require schools to provide auxiliary aids and services to disabled pupils. This duty, if implemented, is not likely to come into effect until September 2011 at the earliest.
- The government is also considering certain provisions included in the Act that have not yet become law. The elements that relate to schools are recognising *dual discrimination* as a significant new feature in discrimination law extending the opportunity to use *positive action* in relation to *recruitment* and promotion in order to address underrepresentation in the workforce.

If you require any further information please do contact [david.silvera@dudley.gov.uk](mailto:david.silvera@dudley.gov.uk)

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