



Equality Bill

Briefing from our Health, Risk and Regulatory team - March 2010

Equality Bill: Impact on the Public Sector

The Equality Bill that is currently before Parliament is intended to harmonise discrimination law, and to strengthen the law to support progress on equality. It will have particular significance for the public sector.

The Bill will bring together and re-state all the following legislation:

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Race Relations Act 1976
- The Disability Discrimination Act 1995
- The Employment Equality (Religion or Belief) Regulations 2003
- The Employment Equality (Sexual Orientation) Regulations 2003
- The Employment Equality (Age) Regulations 2006
- The Equality Act 2006 (part 2)
- The Equality Act (Sexual Orientation) Regulations 2007

Most of the above legislation will no longer exist once the Equality Bill comes into force.

The Equality Bill will generally extend the circumstances in which a person is protected against discrimination, harassment or victimisation because of a protected characteristic.

Protected characteristics are (and the Equality Bill maintains them):

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

New single equality duty

Public bodies are currently under three equality duties – race, disability and gender.

Public bodies will have a new single “equality” duty covering all strands of discrimination. This is wider than the current existing duty imposed upon them and others carrying out public functions. Public bodies will need to have due regard when carrying out their functions to:

- the need to eliminate conduct which the Bill prohibits
- the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not
- the need to foster good relations between people who share a relevant protected characteristic and people who do not

This general duty will mean that public bodies will need to review new or existing policies, programmes and services in the light of the Equality Bill and consider the impact of their decisions on people with the protected characteristics of age, disability, race, sex, pregnancy and maternity, sexual orientation, religion or belief or gender reassignment. It requires public bodies to consult, to prepare action plans and set out processes for assessing the equality impact of new policies, programmes, and services, in respect of a much wider group of people.



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The Equality and Human Rights Commission believe that the new public sector single equality duty will help public bodies deliver fair public services more efficiently.

Socio-economic disadvantage

The Bill also introduces a new duty on certain public bodies such as local authorities and NHS bodies to consider socio-economic disadvantage when making strategic decisions about how to exercise their functions. The intention behind this duty is that deep-rooted discrimination can be addressed. The Welsh Ministers will have a power to amend the list of public bodies subject to this duty and to limit or extend the functions of a listed body to which the duty applies.

Provision of services (including medical treatment)

The new legislation will make it unlawful to discriminate against, harass or victimise a person when providing a service (which includes the provision of goods or services, and the provision of medical treatment on the NHS) or when exercising a public function. The person is protected both when requesting a service and during the course of being provided with a service. The Equality Bill also imposes the duty to make reasonable adjustments in relation to the provision of services and exercising public functions. The prohibition on harassment when providing services or exercising public functions does not cover sexual orientation or religion or belief, which mirrors existing law. The practical effect is to extend current protection so that it is generally uniform in respect of the protected characteristics.

Age discrimination ban

The new legislation will ban age discrimination against adults (people aged 18 or over) in the provision of services and the exercise of public functions. There will be a power to make exceptions to the age prohibition and public bodies will need to be able to justify differential treatment based on age so that their action is lawful. The ban on age discrimination and the need to advance age equality will have particular importance to issues such as breast cancer screening, age bands in the cervical screening programme etc.

The recent report to the Secretary of State for Health by Sir Ian Carruthers OBE and Jan Ormondroyd hope that the Equality Bill can eliminate age discrimination so

that care will be personal and meet the needs of each individual and their carers, “regardless of age”. The report suggested that training and professional standards within the health and social care sector will need to be improved so that attitudes and assumptions about age, particularly about older people, do not lead to age discrimination. It recommends that all professional regulatory organisations will need to review their standards, codes of conduct and education programmes with the aim of age discrimination being a failure in professional standards. Further, those responsible for the distribution of resources within the public sector will need to ensure that they comply with the new requirements in the Equality Bill so that, generally, needs are more fairly addressed. The report did not recommend that any area within health and social care should be excluded from the age discrimination ban. Therefore, in light of the report, this duty will apply to the provision of healthcare.

Equality Impact Assessments

Public bodies will be expected to use Equality Impact Assessments to ensure compliance with the age discrimination ban and the public sector equality duty in all new policies, and existing policies. Performance measures will also be necessary to advance the ban on age discrimination and the public sector equality duty.

Positive action

The Equality Bill also contains provisions which enable a service provider to take positive action to overcome or minimise a disadvantage arising from people possessing particular protected characteristics.

Direct discrimination

The definition of direct discrimination becomes wider in the new legislation. The definition is wide enough to provide protection to people who “associate” with people with protected characteristics (except marriage and civil partnership or pregnancy and maternity), and protection of people who are wrongly perceived to possess these characteristics. This protection was previously available only in respect of the protected characteristics of race, religion or belief and sexual orientation. Generally, there will now be extended protection based on association and perception to the protected characteristics across all fields of the Bill.



Procurement

There is a specific measure on procurement in the Equality Bill to enable public authorities to use their procurement activities to further equality aims. There will be provision to enable equality duties to be imposed upon public procurement functions. Ministers will be given a regulation making power to impose specific duties on relation to public procurement functions, and the power to modify or remove any duties on procurement that have been imposed. Public bodies will therefore have to ensure that equality factors are considered as part of their public procurement activities, consider the use of equality-related award criteria and incorporating equality-related contract conditions.

The duty of decision makers in public authorities

The recent case of R (Boyejo and others) v Barnet London Borough Council and R (Smith) v Portsmouth City Council [2009] EWHC 3261 referred to the duty of decision makers in public authorities to take account of the disabilities of disabled persons. This case involved local authorities and the issue of replacing residential staff employed in sheltered accommodation with non-residential staff. It was decided that the local authorities should ensure that decision-makers have regard to the general duty imposed upon local authorities under section 49A (1) Disability Discrimination Act 1995 to have due regard to the need to take steps to take account of disabled persons' disabilities when discharging their functions. This case is important because it shows how public bodies will be judged if there is a failure to carry out their duties, which could amount to a breach of statutory duty. Public authorities will need to explain clearly and convincingly the reason for the lapse.

When will the new duties come into force?

It is expected that the new equality duty will come into force by April 2011 while it is aimed to bring the majority of the Equality Bill, which deals with existing law) into force by October 2010. It is expected that the ban on age discrimination in services and public functions will come into force in all sectors in 2012, although possibly not within the health and social care sector. Sir Ian Carruthers OBE and Jan Ormondroyd recommend, however, that the health and social care system should implement the ban in the Equality Bill on age discrimination at the same time as others sectors will be forced to so that the health and social care

system is at the forefront of promoting age equality. Financial issues aside, their report believes that this is achievable, provided there is effective planning.

More information



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