

GMB Briefing

Equality Act 2010

Main purpose of the Act:

- To **harmonise** the existing discrimination law to create a single approach (consolidating 9 pieces of legislation) and;
- To **strengthen** the law to support progress on equality

Key Concepts

The Act provides protection from “**prohibited conduct**” which includes:

- direct discrimination (including combination discrimination)
- indirect discrimination;
- harassment and;
- victimisation

Because of a characteristic which is protected.

The ‘**protected characteristics**’ covered by the Act are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

N:B The extent of protection available under the Act is not uniform but depends upon the nature of the ‘prohibited conduct’ and the relevant protected characteristic, e.g. there is no protection from harassment which may arise out of the provision of services (or in the exercise of public functions) because of religion or belief and sexual orientation.

How does the Act strengthen the law?

The Act ‘levels up’ by removing some unjustified anomalies in the existing law, for example by:

- extending protection from discrimination to people who: **associate** with others who have a protected characteristic are **perceived** to have a protected characteristic
- permitting a discrimination claim to be pursued **because of a combination of two** protected characteristics (s14)
- extending protection from discrimination ‘**arising from disability**’ (s15)
- extending **indirect discrimination** to disability and gender reassignment
- **retaining specific provisions** in some areas where different approach considered justified e.g. duty to make reasonable adjustments

How does the Act affect Employment?

- Allows employers, service providers or organisations to take **positive action** as a means of overcoming or minimising disadvantage arising from a protected characteristic (s158)
- As part of recruitment or promotion an employer may appoint someone because they have a protected characteristic if they are 'as qualified as' rival candidate (s159)
- However, employers may not operate a general policy of treating persons with particular protected characteristics more favourably
- Includes powers to require private sector employers, from 2013, to **report on the gender pay gap** (s78) whilst rendering pay '**gagging**' clauses in employees' contracts, unenforceable (s77)
- Restricts an employer's ability to ask pre-employment disability and health questions of job applicants (s60)

How does the Act affect Public bodies?

Confers a 'general duty' on public bodies when exercising public functions, to have due regard to the need to: (s149)

- **Eliminate** conduct which is prohibited under the Act;
- **Advance equality of opportunity** between people who share a protected characteristic and those who do not;
- **Foster good relations** between people who share a protected characteristic and those who do not
- **Extends** the existing **race, gender and disability duties** to cover all main protected characteristics (s.149(7)) N:B not marriage and civil partnership
- Creates a **new duty** for public bodies to consider **socio-economic disadvantage** when taking strategic decisions about how to exercise its functions (s.1)
- Includes enabling powers to introduce **specific equality duties** including duties relating to public sector **procurement** (s.155)

What else does the Act do?

- Prohibits pregnancy/maternity discrimination in schools (pupils)
- Makes terms in contracts, collective agreements or rules unenforceable or void if they result in discrimination

- Includes provision for Ministers to add ‘caste’ as an aspect of race S.9(5) and (6)
- Extends permission for political parties to use women-only shortlists for election candidates to 2030
- Requires political parties to publish information on diversity of candidates
- Removes the prohibition on registering civil partnerships in religious premises
- Removes the discriminatory provisions from family property law

Not in the Act

- In the main, the Act **replicates** the provisions of the **Equal Pay Act 1970** – a very complex, time consuming and costly regime for dealing with men’s and women’s pay inequality. The TUC is disappointed that the Government did not seize the opportunity, when drafting the Act, to overhaul the Equal Pay Act 1970.
- Gender pay - the Act does not oblige employers to carry out **mandatory equal pay audits** (Conservative Party, in its Manifesto proposes to, ‘...force equal pay audits on any company found to be discriminating on the basis of gender’)
- Gender pay – there is no provision as would allow a woman to rely upon **hypothetical comparators** when pursuing an equal pay claim. A woman must be able to point to an actual comparator notwithstanding that the type of work she is employed to do attracts mainly women.
- No **statutory rights** for TU Equality Reps (although some support from Peers)
- No provision for Unions to pursue **representative actions** on behalf of categories of workers
- GEO proposals for what should be included in the **specific duties Regulations** are regressive

When will the Act be fully implemented?

Proposed timetable:

October 2010	:	Main provisions of the Act, including Part 5 – Work.
April 2011	:	PSED and specific duties Regulations
	:	Combined discrimination provisions
	:	Socio-economic duty
2012	:	Extension of age discrimination to services and public functions, education, associations
2013	:	Private sector gender pay reporting (at the earliest)

Note - The Coalition Government, having reviewed the implementation timetable set by the previous Government has recently confirmed that implementation 'of the majority of the Equality Act' will commence from that date, as originally planned.

However it is unclear whether April 2011 remain the implementation dates for

- the public sector duties;
- the combined discrimination provisions
- and the socio-economic duty

Similarly, provisions extending age discrimination to services and public functions, education and associations will remain unchanged.

Further, the Coalition Government's commitment to implementing the private sector gender pay reporting provisions is uncertain.

Statutory Codes of Practice

The Equality and Human Rights Commission are drafting Statutory Codes of Practice which will accompany the Act.

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