

Equality Act 2010

Implications for higher education institutions

The equality bill received royal assent on 8 April 2010, becoming the Equality Act 2010. The Act consolidates and streamlines current anti-discrimination legislation. It also introduces new measures that will have direct implications for higher education institutions (HEIs). This briefing summarises key issues contained in the Act that HEIs should be aware of.

Superseding previous briefings on the Equality Act, this briefing focuses on the main provisions of the Act that were brought into force in October 2010, and highlights further areas that HEIs should work towards for later commencement dates.

This briefing should be read in accompaniment with the Equality Act 2010. A link to the Act is available on ECU's Equality Act 2010 webpage.

www.ecu.ac.uk/subjects/equality-act-2010

Details of specific implications for students' unions are outlined in the ECU and NUS briefing *Equality bill: implications for students' unions*.

www.ecu.ac.uk/publications/equality-bill-students-unions

Key actions for the October provisions are outlined in the ECU and HEEON briefing *Equality Act 2010: key actions for the October provisions*.

www.ecu.ac.uk/publications/equality-act-2010-key-actions-for-the-october-provisions

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Aim of the Equality Act 2010

The stated aim of the Act is to reform and harmonise discrimination law, and to strengthen the law to support progress on equality. As the Act is brought into force, it will replace all existing equality legislation, including the Equal Pay Act (1970).

Timeline

The timeline for the different parts of the Act to be brought into force is currently proposed as follows (www.equalities.gov.uk):

- = **October 2010**: the main sections of the Act relating to employment, equal pay and services, public functions and associations, education (further and higher education) came into effect, replacing relevant sections of current anti-discrimination legislation covering these areas.
- = **April 2011**: the public sector equality duty will be brought into force, replacing the current public sector duties in the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006.
- = **2012**: the ban on age discrimination in the provision of goods, facilities, services and public functions will come into effect.

This timetable is subject to commencement orders by government and secondary legislation. Therefore, HEIs will need to refer to current legislation until the relevant part of the Act is brought into force. For example, as of October 2010 HEIs need to refer to the Act in relation to employment and education, but consult the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006 in relation to the public sector duties.

An up-to-date list of sections of the Act that have been implemented can be found at www.equalities.gov.uk/equality_bill.aspx.

Territorial coverage

The Act covers England and Wales, and Scotland with the exception of **section 190** and **part 15**.

The Act does not apply in Northern Ireland, with the exception of **section 82, subsections 105(3) and (4)** and **section 199**.



Any specific duties imposed by a minister of the crown, Scottish minister or Welsh minister to enable better performance in relation to the public sector equality duty will apply to England, Scotland and Wales individually.

General implications

Public sector duty regarding socio-economic inequalities

The Act had previously proposed a new public sector duty regarding socio-economic inequalities, by which an authority would have 'due regard to the desirability of exercising its functions in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage'.

This would not have applied to HEIs or the funding councils but to the Department for Business, Innovation and Skills in England, the Department for Children, Education, Lifelong Learning and Skills in Wales and the Scottish Parliament, which all have a brief for higher education.

The government has announced that it will not be implementing this part of the Act.

Introduction of protected characteristics

Protected characteristics are the grounds upon which discrimination is unlawful. The protected characteristics (**section 4**) under the Act are:

- = age
- = disability
- = gender reassignment
- = marriage and civil partnership
- = pregnancy and maternity
- = race
- = religion or belief (including lack of belief)
- = sex
- = sexual orientation

As in current disability equality legislation, it is permissible to treat a disabled person more favourably than a non-disabled person. It remains lawful to make reasonable adjustments in relation to employment, education and services to ensure that there is true equality of opportunity for disabled people. For further information see the [Disability](#) section.



The [table](#) at the end of this briefing shows which parts of the Act apply to the different protected characteristics.

Prohibited conduct

Direct discrimination

The Act gives a new definition of direct discrimination (**section 13**); direct discrimination occurs when a person treats one person less favourably than they would another because of a protected characteristic.

Direct discrimination may occur if, for example:

- = an HEI or students' union decides not to interview a Muslim applicant for a job because it assumes, on the basis of their religion or belief, that he or she will not be prepared to work in a bar
- = an HEI only shortlists male job applicants for an interview because they assume women will not fit in
- = an HEI refuses to let a student go on a residential trip because they are a wheelchair-user
- = an HEI does not offer a training opportunity to an older member of staff because they assume that they would not be interested, and the opportunity is given to a younger worker

Regarding **age**, different treatment can be justified if it is a proportionate means of meeting a legitimate aim. However, this can be a difficult test to meet. For example, it is unlikely that an HEI would be able to justify rejecting a candidate for a frontline student services role on the basis that they are 'too old to identify with students'. The HEI would have to use objective evidence to justify that the role could only be undertaken by someone of a particular age group, and that this is proportionate to achieving the aim of providing services to students. This justification is likely to be difficult to meet in most scenarios in higher education.

The new definition of direct discrimination extends protection based on association and perception, already applicable to **race**, **sexual orientation** and **religion or belief**, to include **age**, **disability**, **gender reassignment**, and **sex**.



Discrimination based on **association** can occur if, for example:

- = a student, whose child has attention deficit hyperactivity disorder, is refused access to a graduation ceremony because of fears about the child's behaviour
- = an employee is overlooked for promotion because their partner has undergone gender reassignment

Discrimination based on **perception** can occur if, for example:

- = a mental health and wellbeing officer refuses to work with a student because they believe the student to be gay irrespective of whether the student is gay or not

Combined discrimination: dual characteristics

Currently, people may only bring separate discrimination claims relating to one protected characteristic.

The new combined discrimination section (**section 14**) protects people who experience direct discrimination because of a combination of two protected characteristics (**marriage and civil partnership**, and **pregnancy and maternity** are not included in these provisions).

This provision will mean, for example, that a black female member of staff who is discriminated against because she is a black woman – as opposed to a black man or a white woman – could bring a single claim for combined **race** and **sex** discrimination. However, if she feels she is being discriminated against because she is black or because she is a woman, she could also bring a claim for **race** or **sex** discrimination on its own.

At the time of writing, the government was still considering this provision of the Act.

Indirect discrimination

Section 19 applies the European definition of indirect discrimination, replacing pre-existing domestic definitions to ensure uniformity of protection across all the protected characteristics (except for **pregnancy and maternity**). In substance, the Act reproduces existing provisions and also for the first time explicitly extends the concept of indirect discrimination to **disability**.



Indirect discrimination occurs when a provision, criterion or practice is neutral on the face of it, but its impact particularly disadvantages people with a protected characteristic, unless the person applying the provision can justify it as a proportionate means of achieving a legitimate aim. Ultimately, if tested, it will be for a court of law or tribunal to determine what is justifiable.

Indirect discrimination may occur if, for example, an employer who requires staff to commit to working from 8pm to 11pm every evening indirectly discriminates against women, who are more likely to be primary carers of children, unless this can be objectively justified as above.

Harassment

The Act outlines three types of harassment (**section 26**):

- = unwanted conduct that has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant, or violating the complainant's dignity (this applies to all the protected characteristics apart from **pregnancy and maternity**, and **marriage and civil partnership**)
- = unwanted conduct of a sexual nature (sexual harassment)
- = treating a person less favourably than another person because they have either submitted to, or did not submit to, sexual harassment or harassment related to **sex** or **gender reassignment**

People are protected from harassment if they are perceived to have, or associate with someone with, a protected characteristic.

Harassment may occur if, for example, a member of staff makes comments on a student's sexuality in a way that makes the student feel uncomfortable.

The perceptions of the recipient of the harassment are very important and harassment can have been deemed to have occurred even if the intention was not present, but the recipient felt they were being harassed.

Courts and tribunals will continue to be required to balance competing rights on the facts of a particular case. This includes consideration of the value of freedom of expression (as set out in article 10 of the European Convention on Human Rights). *Promoting good campus relations: an institutional imperative* (www.ecu.ac.uk/publications/promoting-good-campus-relations-update) provides guidelines and case studies on how institutions can manage these competing rights.



Victimisation

Victimisation (**section 27**) takes place where one person treats another less favourably because he or she has asserted their legal rights in line with the Act or helped someone else to do so.

Victimisation may occur if, for example:

- = a student alleges that they have encountered racism from a tutor, and as a result they are ignored by other staff members
- = a senior member of staff starts to behave in a hostile manner to another member of staff who previously supported a colleague in submitting a formal complaint against the senior manager for sexist behaviour
- = an employer brands an employee as a 'troublemaker' because they raised a lack of job-share opportunities as being potentially discriminatory

Admission and treatment of students

Section 91 of the Act prohibits the governing body of a HEI from discriminating against a person/student in the following ways:

- = in the arrangements it makes for deciding who is offered admission as a student
- = in the terms on which it offers to admit the person as a student
- = by not admitting the person as a student
- = in the way it provides education for the student
- = in the way it affords the student access to a benefit, facility or service
- = by not providing education for the student
- = by not affording the student access to a benefit, facility or service
- = by excluding the student
- = by subjecting the student to any other detriment

This largely reflects current law. The Act also makes it unlawful for HEIs to victimise or harass students or prospective students.



Subsection 91(3), which applies only in regards to disability discrimination, requires the governing bodies of HEIs to ensure that they do not discriminate against disabled students through either:

- = the arrangements it makes for deciding upon whom to confer a qualification
- = the terms on which it is prepared to confer a qualification on the person
- = by not conferring a qualification on the person
- = by withdrawing a qualification from the person or varying the terms on which the person holds it

Similarly, HEIs must ensure that they do not victimise disabled students in any of the ways described above.

Through **subsection 91(9)** the Act imposes the duty to make reasonable adjustments on the governing bodies of HEIs (as set out in **section 19**) in respect of disabled students and applicants. **Schedule 13, paragraph 4(2)** exempts competence standards from this duty.

For example, the HEI may need to consider offering alternative formats through which a disabled student can apply for a course; it does not need to lower the level of prior attainment required to study the programme.

Section 92 applies similar protection in terms of enrolments on particular higher education courses.

Sections 91 and 92 do not protect **marriage or civil partnership**.

There is no specific exemption related to the concept of academic freedom in the Act, but there is reference to the curriculum in **subsection 94(2)**.

The purpose of this subsection is to ensure that the Act does not inhibit HEIs from including a full range of issues, ideas and materials from multiple perspectives in their curriculum.

In **subsection 91(2)(a)**, the Act covers the way in which an HEI provides education for students. Teaching methods, delivery and related issues such as assessment all need to comply with the main provisions of the Act, including those relating to direct and indirect discrimination, harassment and the duty to make reasonable adjustments for disabled students.



Employment

The Act's employment provisions largely reflect the current law and cover all workers. As with current legislation the scope of the Act is broad enough so that protection from discrimination may extend to people who are not necessarily employees. This could include contract workers and, in some circumstances, volunteers.

The Act makes it unlawful for an employer to discriminate against or victimise employees or people seeking work (**section 39**). The provisions for direct and indirect discrimination and victimisation apply where the employer is making arrangements to fill a job, and in respect of anything done in the course of a person's employment, for example:

- = terms of offer
- = access to opportunities for promotion
- = transfer or training
- = receiving benefits
- = facility or service
- = dismissal
- = subjecting employees to detriment

For example, if a HEI in a predominantly white area does not allow a black member of staff to transfer to a widening participation outreach role because they are black this would be direct discrimination.

The Act also imposes the reasonable adjustments duty in respect of disabled employees and applicants set out in **section 20** on employers. Employers will need to ensure that their recruitment and employment policies and practices do not discriminate against existing or prospective staff members on grounds of **disability**. They will also need to ensure that adjustments are made to the workplace to ensure that disabled members of staff are not put at a substantial disadvantage in comparison to colleagues who are not disabled.

For example, if an applicant for a job needs extra time for an assessment task because they have repetitive strain injury and find it difficult to use a computer without special equipment, an employer may be discriminating if they refuse to grant the extra time.



Section 40 makes it unlawful for an employer to harass employees and people applying for employment. It also makes the employer liable in the case of harassment of its employees by third parties, such as maintenance contractors over whom the employer does not have direct control, unless the employer has taken reasonable steps to prevent the third party from doing so. This only applies if the employer knows that the employee has been harassed on at least two previous occasions.

For example, if the HEI fails to take action when staff complain about constant comments and unwanted jokes made by maintenance contractors on the basis of their **sex**, the employer would be liable unless they have taken reasonable steps to prevent the contractors from doing so.

Provision of services including goods and facilities

As HEIs and students' unions provide a wide range of services to staff and students, they are considered as service providers under the Act. Services provided may include careers and employment services, childcare services, health services, libraries, and conference and events services.

The Act prohibits discrimination, harassment (except because of **religion or belief** and **sexual orientation**) and victimisation by people who supply services (**section 29**). Customers are protected both when requesting a service and during the course of being provided with a service.

The service provider must not discriminate against a person:

- = as to the terms in providing the service
- = by terminating the provision of the service
- = by subjecting the service user to any other detriment

Subsection 29(7) of the Act imposes a duty to make reasonable adjustments (**section 20**) in relation to the provision of services and in the exercising of public functions even if this favours disabled people (see the **Disability** section for further details on reasonable adjustments).

Most of these new provisions will reflect the current law. The ban on age discrimination in the provision of goods, facilities and services will not come into effect until 2012.



Premises

Section 36 imposes a duty to make reasonable adjustments in relation to leasehold and commonhold premises and (in an extension to the law that currently applies) to common parts. Those responsible for managing HEI estates and accommodation will need to ensure that they show due regard to adjustments to ensure they can provide an inclusive living and studying environment for disabled students. Equally, HEIs should ensure that any private landlords with whom they have a contractual relationship are aware of the Act and are committed to providing accessible accommodation.

This is still under consideration in Scotland.

Recreational or training facilities

Under **section 93**, HEIs must not discriminate or victimise in the way it provides recreational or training facilities, such as sports services or clubs. Discrimination against or victimisation of a person should be avoided in:

- = the arrangements it makes for deciding who is provided with the facilities
- = the terms on which it offers to provide the facilities to the person
- = not accepting the person's application for provision of the facilities

Similarly, HEIs should not cause harassment against a person who is seeking to access or accessing facilities.

The duty to make reasonable adjustments also applies, ensuring that recreational or training facilities are created and provided in an inclusive way.

Public sector equality duty

Section 149 introduces a new public sector equality duty which is expected to come into force in April 2011. The new duty covers all of the protected characteristics apart from **marriage and civil partnership**. The duty will require HEIs to have due regard to the need to:

- = eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- = advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it
- = foster good relations between people who share a relevant protected characteristic and people who do not share it



To advance equality of opportunity, HEIs will need to have due regard, in particular, to the need to:

- = remove or minimise disadvantages suffered by people who share a relevant protected characteristic that are connected to that characteristic
- = take steps to meet the needs of people who share a relevant protected characteristic that are different from the needs of people who do not share it
- = encourage people who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such people is disproportionately low

In fostering good relations, HEIs should look, in particular, to the need to tackle prejudice, and promote understanding.

The public sector equality duty will be underpinned with specific duties.

Section 153 gives power to a minister of the crown, Welsh minister or Scottish minister to impose specific duties on an HEI to enable better performance in relation to the public sector equality duty.

The specific duties are currently under consultation across England, Scotland and Wales. The Government Equalities Office, Scottish government and Welsh Assembly consultation documents, including the ECU responses, can be found at www.ecu.ac.uk/news/consultation.

Please note that, at the time of writing, ECU was still seeking feedback from the sector to the Welsh Assembly consultation.

Until this new public sector equality duty comes into force in April 2011, current duties will remain. Details of HEIs' legislative requirements to meet the current public sector duties are explained in *Legislative requirements checklist for single equality schemes*. www.ecu.ac.uk/publications/legislative-requirements-checklist-for-single-equality-schemes

Positive action

Currently, the law only allows for limited positive action measures in relation to employment. The Act extends the law and now also includes positive action for students. It provides scope for HEIs to adopt voluntary positive action measures to alleviate disadvantage experienced by people who share a protected characteristic, reduce underrepresentation in relation to particular activities, and meet particular needs (**section 158**).



Such measures would need to be a proportionate way of achieving the relevant aim.

This could, for example, cover taking any kind of action to increase participation from underrepresented students of a particular ethnicity.

If an HEI believes that a certain group of students needs particular support or additional tuition, the institution will now be able to lawfully target that support in a proportionate way if that enables them to overcome a disadvantage that people in the protected group share.

At this stage there is no statutory guidance on the extent to which the positive action provisions will permit HEIs to provide bursaries restricted to groups defined by protected characteristics. It is to be noted that **sections 193 and 194** (which exempt charities from breaches of the Act provided certain conditions are met) may operate to permit bursaries that are restricted on grounds other than **race**. As the revisions to the law become clearer and more certain, ECU's guidance on bursaries will be revised.

www.ecu.ac.uk/publications/admissions-bursaries-lawful-positive-action

Section 158 applies to all protected characteristics.

At the time of writing, the government was considering extending positive action to the recruitment and promotion of employees. **Section 159** permits an employer to take a protected characteristic into consideration when deciding whom to recruit or promote, where people with the protected characteristic are at a disadvantage or are underrepresented. This can be done only where the candidates are equally qualified, and it does not allow employers to have a policy of automatically treating people who have a protected characteristic more favourably than those who do not. The EHRC explains 'equally qualified' to mean the situation in which there are 'two or more applicants for a job who would be able to do it equally well – although they may do it differently depending on their skills and qualities'. Positive action in recruitment does not apply to the recruitment of students.

If introduced, **sections 158 and 159** will apply to all protected characteristics.

The EHRC will publish guidance on the new positive action measures to illustrate the range of actions which employers will be able to take.



Specific issues relating to individual protected characteristics

The next sections refer to specific implications and detail for the protected characteristics. These should be considered in conjunction with the general implications outlined in the previous section.

Age

Compulsory retirement age

A compulsory retirement age is a form of direct age discrimination. However, the Act continues the approach taken in current legislation by allowing an extension in relation to compulsory retirement age (**schedule 9, paragraph 9**). The government has set a default retirement age of 65, which is allowed under article 6(1) of the Council Directive 2000/78/EC as being justified by reference to a legitimate aim of social policy. However following commentary in the Heyday case which questioned whether the age of 65 is set too low (www.ecu.ac.uk/inclusive-practice/heyday-challenge-to-compulsory-retirement-age), the government has committed to review the default retirement age in 2010. This review and any subsequent changes are taking place independently of changes associated with the Act.

The current ECU/UCEA briefing on retirement therefore remains relevant, pending the outcome of this review (www.ecu.ac.uk/publications/age-discrimination-retirement).

Benefits based on length of service

This provision (**schedule 9, paragraph 10**) is designed to ensure that employers do not have to justify differences in pay and benefits that have arisen from service of up to five years. An employer can make awards on the basis of five years or more service, if it reasonably believes this fulfils a business need (for example, by encouraging loyalty or motivation, or rewarding the experience, of staff.)



Disability

The definition of **disability** (**schedule 1, part 1**) is similar to that in the Disability Discrimination Act 1995 (as amended), though no longer lists the impairment categories of the DDA. **Section 6** also provides for ministers to issue statutory guidance to help those who need to decide whether a person has a disability for the purposes of the Act.

Discrimination arising from disability

The provision for **disability** in the Act creates a new type of discrimination – discrimination arising from disability. This replaces disability-related discrimination as currently found in the DDA. This is in addition to direct and indirect discrimination, harassment and victimisation provisions relating to disability.

Section 15 states that it is discrimination to treat a disabled person in a particular way that, because of their disability, amounts to treating them unfavourably when the treatment cannot be shown to be justified. For this type of discrimination to occur, the employer, or other person, must know, or could reasonably be expected to know, that the person has a disability.

Discrimination arising from disability can occur if, for example, a student with diabetes, carrying medication related to their condition, is refused entry by the HEI to an event with a no drugs policy – the HEI may be discriminating against the student unless the treatment can be justified.

Failure to make reasonable adjustments

The Act will continue the existing duty upon HEIs to make reasonable adjustments in relation to staff, students and services. These adjustments apply where a disabled person is placed at a substantial disadvantage in comparison to non-disabled people. These provisions do not apply to the other equality strands, and are unique to **disability**.

Section 20 defines what is meant by the duty to make reasonable adjustments. The three requirements of the duty are in relation to:

- = provision, criteria or practice
- = physical features
- = auxiliary aids



The first requirement obliges HEIs to consider the way in which they do things. For example, showing due regard to changing a practice of providing lecture hand-outs only in paper format. The HEI would need to consider an adjustment to this practice, and provide the hand-outs in alternative formats.

The second requirement relates to the making of changes to the built environment, such as providing inclusive access to lecture theatres.

The third requirement requires HEIs to show due regard to the provision of auxiliary aids and services, for example providing computer screen-reading software for students with a visual impairment.

The extent of the duty to make adjustments will differ slightly depending on the context. Most significantly, there is no anticipatory duty in the employment field (as exists in relation to education). In the provision of goods and services the duty will normally extend to staff, students and disabled people in general.

As observed earlier, the duty to make reasonable adjustments does not apply to competence standards, the definition of which has not changed.

Enquiries about disability and health

HEIs should note that **section 60** of the Act introduces new provisions which make it unlawful for an employer to ask about the health of a job applicant either before offering work to an applicant, or before including an applicant in a pool of shortlisted candidates from whom the employer intends to select a person to whom to offer work.

The employer does not contravene the Act merely by asking about the applicant's health, though the way in which the employer uses any disclosed information could be a contravention of a relevant **disability** provision.

HEIs will continue to be able to, and should, ask all applicants whether they require any reasonable adjustments or support during the recruitment and interview process. HEIs will also continue to be able to ask monitoring questions establishing whether there are disabled applicants applying for job positions.



Gender reassignment

The definition of **gender reassignment** has been amended so that people no longer have to be under medical supervision to be protected by the law. **Section 7** defines the protected characteristic of **gender reassignment** as 'where a person has proposed, started or completed a process to change his or her sex'. A transsexual person has the protected characteristic of **gender reassignment**.

In addition to direct and indirect discrimination, protection remains for people undergoing gender reassignment from discrimination due to absence from work (**section 15**). Where a transsexual person is absent from work because of **gender reassignment**, the Act provides that they should be treated no less favourably than if the absence was due to sickness or injury or another reason, eg caring for a relative.

ECU has updated its guidance on trans staff and students (www.ecu.ac.uk/publications/trans-staff-and-students-in-he-revised).

Marriage and civil partnership

Section 8, which recognises **marriage and civil partnership** as a protected characteristic, replaces similar provisions in the Sex Discrimination Act 1975. It does not protect people who are not married or in a civil partnership.

Section 202 removes the prohibition on civil partnerships taking place in religious premises in England and Wales. This section of the Act is under consideration.

Pregnancy and maternity

Provisions under **section 18** that relate to the workplace replicate similar provisions in the Sex Discrimination Act 1975. However, **section 17** expands protection to women outside of the workplace from discrimination that arises as a result of **pregnancy and maternity** to higher education.

The application of the section to the education sector is likely to mean that education providers are unable to refuse an applicant entry to a course because they are pregnant or ask that they leave a course because they become pregnant. They will also need to consider arrangements for students to ensure that a woman is not treated less favourably because she is breastfeeding. Absence related to **pregnancy and maternity** must be taken into account by an HEI. HEIs should not penalise students who



miss examinations or coursework deadlines because of **pregnancy and maternity** including pregnancy related illness or appointments.

Race

Subject to the removal of minor anomalies, **section 9** reflects the existing law, although it now allows for a minister of the crown to amend the Act so that caste is protected in specified circumstances.

Religion or belief

Section 10 outlines definitions of **religion or belief**, replicating the effect of similar provisions in the Employment Equality (Religion or Belief) Regulations 2003.

(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.

(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

Religion or belief should therefore be taken to mean the full diversity of religious and belief affiliations within the UK, including non-religious and philosophical beliefs such as atheism, agnosticism and humanism.

For further information on what constitutes a religion or belief and the latest developments on case law in this area, see www.ecu.ac.uk/subjects/religion-and-belief.

Sex

Section 11 recognises **sex** as a protected characteristic that protects men (being a man) and women (being a woman).

Gender pay gap

Public sector organisations, including HEIs, are currently required to take actions to redress the gender pay gap under the gender equality duty. The government's proposals for the specific duties of the equality duty include a requirement for public sector organisations of 150 or more employees to publish information on their gender pay gap and consider the implications of that data, including whether they need to set an equality objective to close any gender gaps that are identified (**section 78**).

The Act also introduces other new provisions to ensure pay equality:



Section 71 introduces provisions that enable a person who has less favourable contractual pay conditions because of their **sex** to bring an equal pay claim against their employer. They would not require a comparator to bring a claim but would need to show evidence of direct sex discrimination.

Section 77 protects people from victimisation by their employer if they discuss their pay with colleagues with a view to establishing differences in pay that may exist because of a protected characteristic. It also makes terms of employment or appointment that prevent or restrict discussions relating to pay unenforceable.

Sexual orientation

Section 12 defines the protected characteristic of **sexual orientation** as being a person's sexual orientation towards people of the same sex as him or her, people of the opposite sex from him or her, and people of both. This relates to a person's feelings rather than their actions.

These definitions are designed to replicate the effect of similar provisions in the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2006.



Moving forward

The EHRC is producing guidance and statutory codes of practice to accompany the Act. Further information can be found at www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance.

ECU will continue to work with the higher education sector on the implications of the Act. More information can be found in our dedicated Equality Act 2010 section. www.ecu.ac.uk/subjects/equality-act-2010

Notes to table

- ¹ The Act only prohibits discrimination **against** disabled people. Therefore, it is not unlawful to discriminate in favour of a disabled person.
- ² The Act covers direct and indirect discrimination on grounds of **marriage and civil partnership**, but not harassment, see **subsection 26(5)**. It is also important to note that the Act only protects those who are married or in a civil partnership from discrimination, see **subsection 13(4)**.
- ³ **Sections 17 and 18** of the Act protect women from discrimination arising as a result of **pregnancy and maternity**, but not indirect discrimination or harassment, see **subsections 19(3) and 26(5)**. There is no protection because of association or perception.
- ⁴ On grounds of **sexual orientation** and **religion or belief**, the Act prohibits direct and indirect discrimination in the provision of services, but it does not prohibit harassment, see **subsection 29(8)**.
- ⁵ For people over 18.



Protected characteristic Issue covered by the Equality Act	Age	Disability ¹	Gender reassignment	Marriage and civil partnership ²	Pregnancy and maternity ³	Race	Religion or belief	Sex	Sexual orientation
Discrimination in employment	yes	yes	yes	yes	yes	yes	yes ⁴	yes	yes
Discrimination in provision of services	yes ⁵	yes	yes	no	yes	yes	yes	yes	yes
Discrimination in the delivery of higher education	yes	yes	yes	no	yes	yes	yes	yes	yes
The general statutory duty to promote equality	yes	yes	yes	no	yes	yes	yes	yes	yes
The work of general qualifications bodies	yes	yes	yes	no	yes	yes	yes	yes	yes
Positive action provisions of the act	yes	yes	yes	yes	yes	yes	yes	yes	yes
Dual discrimination	yes	yes	yes	no	no	yes	yes	yes	yes
Discrimination and harassment linked to perceived characteristic	yes	yes	yes	no	no	yes	yes	yes	yes
Discrimination and harassment by association	yes	yes	yes	no	no	yes	yes	yes	yes
Duty to make adjustments for disabled people	n/a	yes	n/a	n/a	n/a	n/a	n/a	n/a	n/a



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