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The Equality Act 2010 consolidated and streamlined previous anti-discrimination legislation. It introduced measures that have direct implications for colleges and higher education institutions (HEIs).

This briefing summarises key issues contained in the Act that HEIs, colleges and 'designated institutions' should be aware of. It should be read alongside the Equality Act 2010 and specific duties regulations as they separately apply in England, Scotland and Wales, links to which are available on ECU's website.

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

Equality Challenge Unit (ECU) has produced separate briefings on how to meet the specific duties. Further information on these can be found on page 16.

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Aim of the Equality Act 2010

The Act reformed and harmonised discrimination law, and strengthened the law to support progress on equality. The majority of the Act has now been brought into force.

In May 2012 the government announced consultations on the removal of certain provisions of the Act relating to:

- = employer liability for the harassment of an employee by a third party (eg a customer)
- = the power of tribunals to make wider recommendations in a successful discrimination case
- = the questionnaire procedure (the statutory mechanism by which individuals can obtain information where they think an employer, or service provider, has acted unlawfully towards them)

The government also announced that it would:

- = proceed with the repeal of the socioeconomic duty (section 1) – this duty was never enacted
- = delay commencement of the dual discrimination provision in the Equality Act 2010, until at least 2015
- = delay commencement of ‘common parts’ reasonable adjustments duty on landlords in England and Wales and review what happens in Scotland when they implement this duty in October 2012
- = bring forward the planned review of the public sector equality duty (PSED) specific duties and extend it to include both the general duty and specific duties

At the time of writing, the terms of reference for the PSED review were due to be published shortly. The intention is to complete the review by April 2013.



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.

Section 153 of the Act allows ministers of the crown and Scottish and Welsh ministers to impose specific duties on public bodies (listed in parts 1, 2 and 3 of schedule 19) to enable them to carry out the PSED more effectively.

The respective countries' ministers have introduced specific duties since the Act was passed.

Page 16 provides more details on the specific duties for England, Scotland and Wales.

General implications

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 with previous 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 equality of opportunity for disabled people. For further information see the disability section on page 19.

The table on page 27 shows which parts of the Act apply to the different protected characteristics.



Prohibited conduct

Direct discrimination

Section 13 of the Act defines direct discrimination to be 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 institution's students' union or association 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 institution only shortlists male job applicants for an interview because they assume women will not fit in
- = an institution refuses to let a student go on a residential trip because they are a wheelchair-user
- = an institution 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 institution 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 organisation 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 across England, Wales and Scotland and in further education in Scotland.

The definition of direct discrimination extends protection based on association and perception, previously 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 discrimination claims relating to one protected characteristic. At the time of writing, the government announced that commencement of the dual discrimination provision would be delayed until at least 2015.

If it commences, the combined discrimination section (section 14) will protect 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.



Indirect discrimination

Section 19 applies the European definition of indirect discrimination and replaced previous domestic definitions to ensure uniformity of protection across all the protected characteristics (except for pregnancy and maternity). In substance, the Act reproduces previous 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.

Indirect discrimination can also occur when a policy would put a person at a disadvantage if it were applied. This provision means, for example, that where a person is deterred from doing something, such as applying for a job at an institution, because a policy which would be applied would result in their disadvantage, this may also be indirect discrimination.

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 where this has the same purpose or effect as the first type of harassment (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 also 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 in determining the effect of the unwanted conduct. This could include balancing the rights of freedom of expression (as set out in Article 10 of the European Convention on Human Rights) and academic freedom against the right not to be offended in deciding whether a person has been harassed.

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, has helped someone else to do so, or is suspected of doing so or intending 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 an HEI, the board of management of a further education college or a designated institution in Scotland from discriminating against a person or 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 institutions 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 and the boards of management of further education colleges and designated institutions in Scotland to ensure that an institution does 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, institutions 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 institutions (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 institution 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 and further education courses (secured by an education authority in Scotland).

Sections 91 and 92 do not apply to 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 institutions 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 institution 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 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, it would be direct discrimination if an institution in a predominantly Protestant area does not allow a Catholic member of staff to transfer to a widening participation outreach role, because of fears that tensions may be created.

The Act also imposes the reasonable adjustments duty in respect of disabled employees and applicants set out in section 20. 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 institution fails to take action when staff complain about 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.

The UK government has consulted on the removal of provisions relating to employer liability for the harassment of an employee by a third party. The consultation closed in August 2012 and the government will publish a summary of the results of the consultation within three months of the closing date. Subject to the outcome of the consultation, the government may proceed to repeal section 40(2)–(4) of the Act through primary legislation.



Provision of services including goods and facilities

Within colleges and HEIs, student associations and unions provide a wide range of services to staff and students. They are therefore 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 (which includes goods and facilities) (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).

The ban on age discrimination in the provision of goods, facilities and services and relevant exceptions will come into effect on 1 October 2012. The exceptions under the age provisions will cover general exceptions already allowed by the Equality Act, positive action measures and the ability to justify age discrimination – ‘objective justification’. The age discrimination ban will be evaluated by 2015, as part of the overall evaluation of the Act.

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 and college 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, institutions 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.

At the time of writing, the 'common parts' reasonable adjustments duty on landlords in England and Wales had not commenced. The government will review what happens in Scotland when it implements this duty in October 2012.

Recreational or training facilities

Under section 93, institutions must not discriminate or victimise in the way they provide 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, institutions should not harass a person who is seeking to access, or is 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 (PSED) which came into force in April 2011. The duty requires institutions 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

The first aim of the new duty covers all of the protected characteristics, the second and third aims cover all of the protected characteristics apart from marriage and civil partnership.

To advance equality of opportunity, institutions 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, institutions should look, in particular, to the need to tackle prejudice, and promote understanding.

The PSED is underpinned by specific duties. These commenced in April 2011 in Wales, in September 2011 in England and in May 2012 in Scotland.

ECU's briefings on the specific duties for each country provide detail of the equality duty and the specific duties for HEIs, and also for colleges in the Scottish briefing. The briefings highlight issues for institutions to consider when developing their approaches to meet the requirements:

= England

www.ecu.ac.uk/publications/public-sector-equality-duty-specific-duties-for-england

= Scotland

www.ecu.ac.uk/publications/public-sector-equality-duty-specific-duties-for-scotland

= Wales

www.ecu.ac.uk/publications/the-public-sector-equality-duty-specific-duties-for-wales

In May 2011, the UK government announced a planned review of the public sector equality general duty and specific duties. At the time of writing, the terms of reference for the review were due to be published shortly with a view to completing the review by April 2013.

Positive action

The Act allows for positive action measures to be taken to help overcome disadvantage. Positive action can be taken in relation to employment as well as for students. Adopting positive action is voluntary and can help alleviate disadvantage experienced by people who share a protected characteristic, reduce underrepresentation in relation to particular activities, and meet particular needs (section 158). This applies to all protected characteristics. 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 institution believes that a certain group of students needs particular support or additional tuition, the institution is 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.

Bursaries, scholarships and prizes may be considered as positive action measures. As with all measures, they need to be a proportionate way of achieving a legitimate aim, and will require careful consideration.

ECU (2012) *Equality Act 2010: positive action through bursaries, scholarships and prizes.*

www.ecu.ac.uk/publications/equality-act-2010-positive-action-through-bursaries-scholarships-and-prizes

Section 159 permits an employer to take a protected characteristic into consideration when deciding who to recruit or promote, where people with the protected characteristic are at a disadvantage or 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 with a protected characteristic more favourably than those without.

'Equally qualified' is not a matter of only academic qualifications, but rather a judgment on the criteria the employer uses to establish who is best for the job which could include matters such as suitability, skills, competence and professional performance. The Equality and Human Rights Commission (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.

EHRC's guidance for employers on recruitment includes the new positive action measures and the range of actions which employers can take to recruit a wider range of people.

www.equalityhumanrights.com/uploaded_files/EqualityAct/employers_recruitment.doc

Specific issues relating to individual protected characteristics

There are specific implications and details for each protected characteristic, which should be considered in conjunction with the general implications outlined in the previous section.

Age

Retirement

On the 6 April 2011 there was a change to the law relating to retirement. The effect of this change is that in most cases workers can now retire when they are ready, rather than when their employer decides. It is direct age discrimination to require or persuade a worker to retire because of their age unless you can objectively justify doing so.

In most circumstances, it will not be objectively justifiable for an institution to set their own retirement age. To objectively justify doing so, the institution would need to be able to produce convincing evidence to show, in relation to the particular job:

- = that they are trying to achieve a legitimate aim
- = that the policy of setting a retirement age is a proportionate way of achieving that aim, and the actual age chosen for retirement is also proportionate

Proving that a retirement decision is a proportionate means of achieving a legitimate aim will be difficult to demonstrate in many situations, and it is unlikely that a retirement age would be objectively justifiable in the higher education sector or Scotland's further education sector.

EHRC guidance for employers on dismissal and redundancy includes further details about what constitutes a legitimate aim in relation to retirement and how to consider it proportionately. www.equalityhumanrights.com/uploaded_files/EqualityAct/employers_disredret1.doc



ACAS' guidance for employers, *Working without the default retirement age*, discusses issues surrounding planning ahead and performance management of older workers:

www.acas.org.uk/CHttpHandler.ashx?id=2976

ECU and Oxford Brookes University (2011) *Managing flexible retirement and extended working lives*

www.ecu.ac.uk/publications/managing-flexible-retirement-and-extended-working-lives

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(1)) is similar to that in the Disability Discrimination Act 1995 (as amended) (DDA), although it 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 was 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, wishing to take food into an exam hall in case of low blood sugar is not allowed to do so as it is against policy allowing food into exam halls – the institution may be discriminating against the student unless the treatment can be justified.

Failure to make reasonable adjustments

The Act continues the previous duty upon institutions 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 protected characteristics, 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 institutions to consider the way in which they do things. For example, showing due regard to changing a practice of providing lecture handouts only in paper format. The institution would need to consider an adjustment to this practice, and provide the handouts 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 institutions 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

Section 60 of the Act introduced new provisions that make it unlawful for an employer to ask about the health or any disability of a job applicant either before offering work to an applicant, or before including an applicant in a pool of shortlisted candidates from which the employer intends to select a person to whom to offer work. This includes asking such a question as part of the application process or during an interview. Questions relating to previous sickness absence count as questions that relate to health or disability.

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

ECU has an FAQ on asking about health and disability.
www.ecu.ac.uk/your-questions/pre-employment-health-questionnaires

Institutions 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. Institutions will also continue to be able to ask monitoring questions establishing whether there are disabled applicants applying for job positions.

Gender reassignment

People do not 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, and victimisation, protection remains for people undergoing gender reassignment from discrimination due to absence from work (section 16). Where a transsexual person is absent from work because they propose to undergo, are undergoing or have undergone 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 (2010) *Trans staff and students in higher education*
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 means that religious organisations can voluntarily apply to have their religious premises approved to host civil partnership registrations. This section of the Act was implemented in December 2011.

At the time of writing both the UK and Scottish governments were considering responses to equal civil marriage consultations. Responses to both are expected by the end of 2012.



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 the workplace from discrimination that arises as a result of pregnancy and maternity to higher education in England, Scotland and Wales and further education in Scotland.

The application of the section to the education sector means that education providers are unable to refuse an applicant entry to a course because she is pregnant or ask that she leaves a course because she becomes pregnant. Institutions 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 institution. Institutions should not penalise students who miss examinations or course work deadlines because of pregnancy and maternity including pregnancy-related illness or appointments.

ECU (2010) *Student pregnancy and maternity: implications for higher education institutions*.

www.ecu.ac.uk/publications/student-pregnancy-and-maternity

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

The Act contains provisions that allow regulations to be introduced requiring 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).

At the time of writing the government does not intend to bring this provision into force which would have covered English HEIs. Instead, the government will work with businesses to develop a voluntary scheme for gender pay reporting in the private and voluntary sectors while encouraging public bodies to provide gender pay gap information in line with their wider equality duties.



The specific duties for Scotland and Wales contain provisions relating to the collection and reporting of pay gap data including gender pay gap data for institutions in those countries. See the respective briefings for Scotland and Wales listed above in the PSED section for further details.

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.

Protected characteristics and the issues that they are covered by in the Equality Act 2010

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	yes	yes
Discrimination in provision of services	yes ⁴	yes	yes	no	yes	yes	yes ⁵	yes	yes ⁵
Discrimination in the delivery of further and 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 or harassment linked to perceived characteristic	yes	yes	yes	no	no	yes	yes	yes	yes
Discrimination or 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



Moving forward

The EHRC intended to produce further statutory codes of practice on the PSED and codes for the further and higher education sectors and schools. It has announced that it is no longer able to proceed with these plans as government considers that further statutory guidance places too much of a burden on public bodies. EHRC intends to issue the existing draft codes as non-statutory codes.

At the time of writing the non-statutory code on higher education was due to be published shortly. The draft PSED non-statutory codes were also due to be published shortly for consultation.

EHRC guidance and codes of practice are online www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance

ECU will continue to work with the higher education sector and colleges in Scotland 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 the 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 For people aged 18 and above.
- 5 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).

Equality Challenge Unit works to further and support equality and diversity for staff and students in higher education across all four nations of the UK, and in colleges in Scotland.

ECU works closely with colleges and universities to seek to ensure that staff and students are not unfairly excluded, marginalised or disadvantaged because of age, disability, gender identity, marital or civil partnership status, pregnancy or maternity status, race, religion or belief, sex, sexual orientation, or through any combination of these characteristics or other unfair treatment.

Providing a central source of expertise, research, advice and leadership, we support institutions in building a culture that provides equality of both opportunity and outcome, promotes good relations, values the benefits of diversity and provides a model of equality for the wider UK society.

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