

## **EQUALITY ACT 2010 – Briefing on the legislation**

### **1. Principles of the Act**

The Equality Act received royal assent in April 2010 and came into force in October 2010

While this is partly a consolidating piece of legislation, which integrates more than thirty years of equalities and anti-discrimination laws, the new Act also

- extends the scope of equalities into new areas
- Sets out three new public sector duties to positively promote equality
- Clarifies positive action policy
- Requires a gender pay audit from NHS Trusts

#### **1.1. Goals of the Act**

The Three Goals:

- Simplifying and harmonising the law: The Act consolidates into one piece of legislation a large volume of equality legislation and seeks to harmonise upwards the levels of protection
- Making the law more effective: The Act creates enhanced mechanisms to overcome systematic discrimination by improved public sector duties and positive action measures
- Modernising the law: The Act introduces a range of new measures to modernise equality law and make it fit for the 21<sup>st</sup> century

### **2. Extending the scope of equalities: Protected Characteristics**

Under existing legislation (such as Race Relations Amendment Act (2000), Disability Discrimination Act (2005), Equality Act 2006 etc) protection from discrimination has been defined under six 'strands' of equality. These are age, disability, gender, race, religion/belief and sexual orientation. The new Act defines discrimination in terms of nine "protected characteristics" which have added three new areas

- gender reassignment
- marriage and civil partnership
- pregnancy and maternity

No-one should be disadvantaged or discriminated on any of these grounds as an employee, patient or service user.

### **3. Public sector Equality Duty**

Existing legislation has required organizations to positively promote equality in the areas of race, gender and disability. The Equality Act simply extends this principle (defined as the new public sector equality duty) to include each of the nine protected characteristics.

All public bodies such as NHS Trusts will need to be positive and proactive in tackling discrimination for these protected characteristics.

#### **4. Public sector Socio-economic Duty**

The Act creates a new public sector duty on public bodies, when making decisions of a strategic nature to “*have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.*” For Primary Care Trusts this is likely to have most impact when designing and commissioning services.

Guidance from Department of Health stresses that discharging the new duty should focus on the Trust’s partnership working. The existing target on health inequalities sets out the relationships between health and wider wellbeing. Partnership working with other local bodies is clearly critical to progressing the new duty. It is important to stress that this does not mean that individuals can challenge or contest decisions about treatment on the basis of their socio-economic position, nor does it mean that this is a new protected characteristic (or ‘strand’) of equalities.

#### **5. Age Discrimination**

The provisions to tackle age discrimination in the provision of public services are all contained in the Equality Act. The Carruthers Report Age Discrimination and Health established the existence of widespread discrimination on the basis of age within the health and social care system in 2009. (This was the subject of a separate detailed report to the Board in February 2010). In summary the Act requires the Trust to positively promote age equality (the third new public duty) and (from 2012) to eliminate age discrimination in services and in the exercise of public functions. The timetable for implementation is set out below.

October 2010
Consolidation of existing equalities legislation covering race, disability, gender, sexual orientation, faith and belief
April 2011
Implementation of new public sector duty to promote age equality
2012
Implementation of the ban on age discrimination in the provision of services and public functions

#### **6. Positive Action**

Employers, where they feel it is appropriate, will be able to take under-representation into account when selecting for appointment or promotion between two equally qualified candidates. (For example to address a verified lack of disabled employees it will be possible to favour a candidate with a disability who is as equally qualified as a second, non-disabled person). However, it is important to stress that making decisions irrespective of merit (i.e. quotas) or having an automatic policy of favouring those from under-represented groups remains unlawful.

#### **7. Gender pay reports**

Despite the existence of the Equal Pay Act since 1970 there is widespread evidence that a significant gender pay gap still exists. The requirements for gender pay publishing set out in the Act are;

- In public sector bodies with 150 or more staff to publish their gender pay gap.
- In the private sector and voluntary sector employers with at least 250 employees to publish details of their gender pay gap. The government will only do this from 2013 if insufficient voluntary progress has been made.

- Ban pay secrecy clauses, which conceal inequality.

The Equality and Human Rights Commission has been asked to develop a “set of metrics for gender pay reports”. Hypothetical comparators are now to be permitted where there is no colleague doing equal work. At the time of writing confirmation of the date for issuing this important detail is still awaited.

### **8. Public body procurement**

The Act makes it clear that public bodies should use procurement to drive equality. The government is to set out how public bodies should go about doing so through a National Equality Standard. Poor equality performers should not benefit from public sector procurement and this message should be made clear by public authorities when considering who to invite to bid for contracts and to potential suppliers when considering bidding.

### **9. Protecting carers**

Carers will be protected from direct discrimination because of their association with people who are protected from discrimination themselves i.e. now extended to cover all protected characteristics.

### **10. Strengthening protection for disabled people**

The Act (i) makes it unlawful for employers to ask job applicants questions about disability or health before making a job offer, except in specified circumstances; (ii) the word ‘substantial’ has been redefined as meaning ‘more than minor or trivial’; an impairment must have a “substantial” adverse effect on a person’s ability to carry out normal day-to-day activities, then the duty of reasonable adjustment is triggered; (iii) the term ‘long-term with regards to impairment has been omitted; (iv) those to whom the act applies must take reasonable steps to provide information in an accessible format where disabled people would otherwise be at a substantial disadvantage in the way that information is being provided.

### **11. Prohibited Conduct**

The Act reaffirms the definitions of direct discrimination (including arising from a combination of the two relevant protected characteristics), discrimination arising from disability, indirect discrimination, harassment and victimisation.

### **12. The nine main pieces of legislation that have merged are:**

- 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

### **13. Timescales**

October 2010: main provisions

April 2011: integrated Public Sector Equality Duty, the Socio-economic Duty and dual discrimination protection

2012: The prohibition on age discrimination in provision of goods, facilities, services and public functions.