

Purpose of the act:

The Equality Act 2010 was created to simplify the previous plethora of legislation, replacing the existing anti-discriminatory laws with a single act, which is easy to access and understand. It aims to remove inconsistencies and harmonise definitions across the protected characteristics, to create common approaches. The act provides clear and consistent protection through the elimination of unlawful discrimination, harassment and victimisation; the advancement of equality of opportunity and fostering good relations between people from different groups. The act extends the scope of legislation to include the use of positive action.

Key Facts

- Most sections of the act came into force on 1 October 2010. It replaces previous legislation, such as the Race Relations Act 1976, as amended in 2000, and the Disability Discrimination Act 1995, with one single consistent act.
- It includes the '**Public Sector Duty**' which has a general duty and specific duties outlined in regulations. The new general Equality Duty came into force on 5th April 2011. For the period until the new specific duties are in place, schools will still need to comply with the general duty.
- It broadens the groups protected by equality legislation to age, disability, gender reassignment, race, religion or belief, sex (gender), sexual orientation, marriage and civil partnership, and pregnancy and maternity. These are now called '**Protected Characteristics**'.

1. What does the Equality Act mean for schools?

The Equality Act contains a number of prohibited activities. These include:

Direct Discrimination: This can occur when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (see discrimination by perception below), or because they associate with someone who has a protected characteristic (see discrimination by association below). Direct discrimination has been extended to cover disability.

Discrimination by Association: Treating people less favourably because they associate with another person who possesses a protected characteristic is unlawful. Previously the protections applied to race, religion or belief and sexual orientation, but have been extended to cover age, disability, gender reassignment and sex.

Discrimination based on Perception: Treating people less favourably because they are perceived to possess a particular protected characteristic is unlawful. The protection applies even if the person does not actually possess that characteristic. Previously the protections applied to: age, race, religion or belief, sexual orientation, but have been extended to cover disability, gender reassignment and sex.

Indirect Discrimination: This can occur when you have a condition, rule, policy or practice that applies to everyone, but particularly disadvantages people who have a protected characteristic. Indirect discrimination can be justified if you can show that you acted reasonably, i.e. that it is a proportionate means of achieving a legitimate aim. Previously the protections applied to: age, race, religion or belief, sex, sexual orientation and marriage and civil partnership but has been extended to cover disability and gender reassignment.

Harassment: Harassment is unwanted conduct relating to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading or offensive environment for that individual. Pupils, parents, or members of staff can now complain of behaviour that they find offensive, even if it is not directed at them and the complainant need not possess the relevant characteristic themselves. Pupils, parents and members of staff are also protected from harassment because of perception and association. Harassment applies to all protected characteristics, except for pregnancy and maternity and marriage and civil partnerships.

Harassment by a Third Party: Already applies to sex, but has now been extended to cover age, disability, gender, reassignment, race, religion or belief and sexual orientation. The employer (council or school) can be held responsible for (a) harassment by pupils, parents, or members of staff (e.g. towards other pupils or staff) or (b) for harassment of them by people (third parties) who are not members of the council or school, such as customers or clients where:

- the council or school are aware of the harassment;
- it has taken place on at least two previous occasions;
- no reasonable steps have been taken to prevent it happening again.

Victimisation: Victimisation occurs when someone, including a pupils, parent, or member of staff, is treated badly because they have made a complaint or raised a grievance which is covered by the Equality Act 2010; or because they are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint. There is no longer a need to compare treatment of a complainant with that of a person who has not made or supported a complaint under the act.

Disability Discrimination changes: The act has made it easier for a person to show that they are disabled and protected from disability discrimination. Under the act, a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities, which could include things like using a telephone, reading a book or using public transport. As before, the act requires the council or school to make reasonable adjustments.

The act includes a new protection from discrimination arising from a disability, i.e. it is now discriminatory to treat a disabled person unfavourably because of something connected with their disability, such as a tendency to make spelling mistakes arising from dyslexia. This type of discrimination is unlawful where it is known or could reasonably be expected to be known that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is a proportionate means of achieving a legitimate aim.

Pre-employment health questionnaires: The act limits the circumstances when you can ask health-related questions before you have offered the individual a job.

Equal Pay Claims: When making an Equal Pay Claim, the act allows employees to make a claim of direct pay discrimination, even if no real comparator can be found.

Pay Secrecy: It is unlawful to prevent or restrict employees from having discussions to establish if differences in pay exist that are related to protected characteristics. Action taken against employees for being involved in such discussions will be unlawful victimisation.

2. What is the Public Sector Equality Duty (Equality Duty)?

The Equality Duty is a duty on all public bodies including schools. The aim of the Equality Duty is to embed equality considerations into the day to day work of schools, so that they tackle discrimination and inequality, and contribute to making society fairer.

The Equality Duty supports good management practice. It encourages schools to engage with the pupils, families and communities affected by their activities, so that policies and services are appropriate and accessible to all and meet different people's needs. By understanding the effect of their activities on different groups, inclusive schools can support and open up people's opportunities. They will be better placed to deliver policies and services that are efficient and effective. The Equality Duty, therefore, helps schools to deliver their overall objectives in ensuring children and young people reach their full potential in educational attainment, and have secured their safeguarding and wellbeing.

The Equality Duty consists of a **general duty**, with three main aims (set out in section 149 of the Equality Act 2010) and **specific duties** (set out in secondary legislation to accompany the Equality Act 2010). The specific duties are designed to help public bodies meet the general duty.

The General Duty

The new general duty (as stated in Section 149) replaces the three existing public sector equality duties for disability, race, and gender. It covers all protected characteristics. It has three aims requiring public bodies to have *due regard* to the need to:

- eliminate discrimination, harassment, victimisation and other conduct that is prohibited by or under the Equality Act 2010
- advance equality of opportunity between persons who share a protected characteristic and persons who do not share it
- foster good relations between persons who share a protected characteristic and persons who do not share it.

Having *due regard* means consciously thinking about the three aims of the general duty as part of the process of decision-making. This means that consideration of equality issues must influence the decisions reached by schools in how: they act as employers; develop, evaluate and review policy; design, deliver and evaluate services; and how they commission and procure from others.

Having *due regard* to the need to advance equality of opportunity involves considering the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics
- meet the needs of people with protected characteristics
- encourage people with protected characteristics to participate in public life or in other activities where their participation is low.

Fostering good relations involves tackling prejudice and promoting understanding between people from different groups. "Guidelines for dealing with and reporting prejudice based incidents" are being developed which accompanies this information guidance.

Complying with the general duty may involve taking positive actions such as:

- making provision specific for the advancement of opportunity for certain under-represented, under-achieving children and young people or for those facing difficulties
- recognising that disabled people's needs are different from those of non-disabled people. In considering the need to meet the needs of disabled people, including children, young people and parents, schools should take account of disabled people's specific disabilities. This might mean making reasonable adjustments to remove barriers for them.
- building good community relations through awareness of minority or majority cultures.

The Specific Duties

The general duty is underpinned by a number of specific duties which provide a framework to help schools meet the general duty. The specific duties require schools to:

- 1. Publish information about their performance on equality, so that the public can hold them to account.** The information listed below must be published by **6th April 2012** and be reviewed and published at least annually. This means that:
 - Schools must publish information to show that they have considered the three aims of the general duty across their functions.
 - The information published must include information on the effect that the school's policies and practices have on equality for service users, and (for those with 150 or more staff) on equality for their employees. Schools with 150 or more staff will be expected to publish information on significant and long-standing inequalities, such as the gender pay gap and the proportion and distribution of disabled employees and staff from minority ethnic communities.
 - To comply with the general duty, schools need to understand how their policies and practices will influence outcomes and affect equality for different groups. This will involve looking at evidence and include engaging with staff, pupils and parents. It will mean considering the effect of what the school does on the whole community.
 - Schools have to publish this information in a manner that is accessible to the public. This means it should be available not just to pupils and parents, but also to other interested parties and stakeholders.
- 2. Set one or more specific, measurable equality objectives.** This means:
 - Publishing equality objectives that will help the school to further the aims of the general duty, based upon equality evidence and analysis. Objectives must be specific and measurable. Schools must publish their equality objectives and how they will measure progress by **6 April 2012**. Subsequent objectives and accompanying information must be prepared and published at least every four years.

These objectives will enable the school to meet the general duty outlined in Section 149 of the Equality Act, for instance by improvements in the following areas:

- Dealing with and eliminating prejudiced based incidents;
- Closing the gap in attainment for all children;
- Engagement with local communities;
- Policies and practices that promote equality and address inequities.

Responsibilities

Compliance with this Equality Duty is the responsibility of the governing body or proprietor of the school and covers all types of state school (including community schools, voluntary aided and voluntary controlled schools, foundation schools, academies and city technology colleges. The general duty provides the basis for reviewing schools' equality, anti-harassment and anti-bullying policies and ensuring it makes a large contribution to the school ethos. The school should also expect to be held to account by the public for their performance on equality.

These changes require schools to take more responsibility for how they go about responding to their obligations, rather than just following government specific duties. In order that schools can meet their responsibilities under the act it is important for all staff and governors to know about and understand the general and specific duties. Complying with these duties requires active consideration of equality across the school. Thus, staff and governors may need to access training, information and tools to help them embed consideration of equality into their work.

Children and Young People's Services will be publishing a range of guidance to support schools on key aspects of the objectives required to meet the general duty. For instance, the current 'Guidelines for dealing with and reporting racist incidents in school' will be updated to broaden the guidance to cover all prejudice based incidents, in order to reflect the general duty to eliminate discrimination, harassment and victimisation that is prohibited under the Equality Act 2010.

Further advice regarding the Equality Act 2010 is available from:

- **Corporate Equality and Diversity Officer on 01908 254628**
- **Children and Young People's Services Policy and Projects Officer on 01908 253257**
- **Ethnic Minority Achievement Support Service on 01908 270409**
- **Milton Keynes Equality Council on 01908 606224**