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Against Discrimination: Equality Act 2010 (UK)

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Abstract

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This article offers an overview of the Equality Act 2010, which simplified and systematised previous Acts and Regulations related to anti-discrimination issues in Great Britain (applies to the public sector). In particular, the Equality Act 2010 replaced Sex Discrimination Act 1975, Race Relations Act 1976 and Disability Discrimination Act 1995. (However, if someone was subjected to unlawful treatment such as discrimination before 1 October 2010 and wishes to make a complaint, they will be covered by the legislation that was in force at the time, as the Equality Act does not apply.) The Equality Act 2010 has also strengthened the law that protects various categories of vulnerable people at work and in other settings, e.g. by expanding the notion of disability, clarifying the issue of gender reassignment and creating provision for positive action. The authors explain the essence and structure of this Act of Parliament of the United Kingdom, as well as clarifying specific terminology used by legislators such as protected characteristics, positive action, gender reassignment, reasonable adjustment etc. The Equality Act 2010 is regularly updated and updates are published in open access resources.

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1. Introduction

‘The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society.’ (Equality Act 2010, Guidance) The Equality Act 2010 appeared as a renewed effort to counteract discrimination in a wide range of social settings, although it could be argued that it is particularly relevant to discrimination suffered by people in employment. If one suffered from unlawful treatment before 2010 then the Act does not apply and Sex Discrimination Act 1975, Race Relations



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Act 1976 and Disability Discrimination Act 1995 apply instead. The Act applies to situations which arose after it was implemented in October 2010. The act is also updated on a regular basis.

2. The structure of Equality Act 2010

The act begins with the introductory passage stating its key function of ‘reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics’ (Equality Act 2010, Introduction).

The Introduction is followed by Part 1 outlining public sector duty in regard to socio-economic inequalities. Part 2 deals with key concepts relating to equality issues and introduces the concept of protected characteristics in Chapter 1. Chapter 2 of Part 1 contains detailed explanations of what constitutes discrimination in various situations and outlines duties to make adjustments for disabled persons. Part 3 describes services and explains their public functions. Part 4 deals with the issue of premises and explains how the principles of the Act apply to this issue. Part 5 deals with employment, contracts and other matters relevant to work, such as qualifications and recruitment, equality at work, contractual pay, maternity and offshore work. Part 6 deals with education: schools in Chapter 1, further and higher education in Chapter 2, awarding qualification in Chapter 3. Part 7 concerns various associations such as political parties membership, Part 8 is a general overview of prohibited conduct, and Part 9 explains issues concerning enforcement in various situations such as immigration cases, education cases, employment tribunals including armed forces cases. Part 10 is about contracts and other agreements and Part 11 expands on equality issues focussing on public sector equality duty in Chapter 1, followed by considerations of positive action in Chapter 2. Part 12 is about the use of transport by disabled persons and covers taxis, public service vehicles and rail vehicles. Part 13 continues the theme of reasonable adjustments required for disabled persons and Part 14 covers general exceptions. Part 15 on family property is followed by Part 16 that covers civil partnerships and various other issues. This content is followed by 28 schedules (Equality Act 2010, Contents).

3. Protected characteristics

‘The Equality Act 2010 makes it unlawful to discriminate against people with a ‘protected characteristic’ (Coalition for Racial Equality & Rights. Protected Characteristics). There are nine protected characteristics (Citizens advice Equality Act 2010 - discrimination and your rights):

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex

- Sexual orientation

To clarify the age characteristic, it is illegal to discriminate someone on the basis of them being too old or too young.

It is illegal to discriminate against someone who has a disability, understood as a condition that has a considerable and lasting negative effect on their daily lives. This could be a mental or physical condition, including cancer and HIV.

It is illegal to discriminate against people who have decided to change their gender from male to female and vice versa.

In regard to the pregnancy and maternity protected characteristic, including breastfeeding mothers, a pregnant woman's position is protected at work, including the period of maternity. New mothers have the right to breastfeed their babies in public places and it is unlawful to ask them to stop doing so.

In terms of the protected characteristic of marriage and civil partnership, here the Act protects married employees or those living in a civil partnership.

Protection against racial discrimination covers colour, ethnic origin and nationality.

Protecting people on the grounds of religion or belief, the Act safeguards people who may be discriminated against on the grounds of them belonging to a particular religion or adhering to non-religious e.g. philosophical beliefs or atheistic beliefs.

Protection of people against sex discrimination applies to both males and females.

In terms of sexual orientation, the Act covers the entire range of possible sexual orientations and includes heterosexual, homosexual and bi-sexual people.

4. Situations where discrimination can take place

The Act protects people from discrimination by, for example, employers, banks, shops, hospitals, care homes, housing associations, estate agents, schools, colleges, universities, buses, trains, taxis, government departments and local authorities.

If someone is discriminated against because he or she is associated with someone who has a protected characteristic, the term for this is discrimination by association, and the Act applies to these situations as well. For example, this applies to a situation where someone is discriminated against because their daughter is a lesbian (Citizens Advice, Equality Act 2010, Discrimination and your rights).

5. Protecting people with protected characteristics: examples

Under the Equality Act, lasting depression can be seen as a disability if it prevents you from carrying out regular activities. For example, you may find it hard to get out of bed in the morning, forget about things and not to be able to plan your day ahead. If you suffer from this continuously or intermittently for many months or years then this condition has a long-term effect on you and is considered disability under the Act. If you take time off work because of your disability, your employer must not treat you unfavourably. If he or she does, this would constitute discrimination.

If your disabled sister and you as her carer enter a nightclub and the nightclub manager stops you from entering because, according to them, disabled guests are bad for their image, this situation constitutes disability discrimination against your sister, but also against you because here you have been discriminated as someone associated with a disabled person.

If you are a member of a club that allows members to bring husbands and wives to social events, and your partner is refused entry because he or she is a transsexual, this is illegal under the Act. Having said that, the Act supports the formation of groups and clubs for people who share a protected characteristic. For example, men-only clubs, women-only gyms and social Turkish people clubs are not illegal (Equality act 2010: What do I need to know? A summary guide to your rights).

6. Positive action

‘Positive action’ is when something is done specifically to help someone who has a protected characteristic.’ (Equality act 2010: What do I need to know? A summary guide to your rights). The new law does not make it obligatory for organizations to take positive action but encourages employers and public services to take positive action.

If people with a particular protected characteristic are underrepresented in certain jobs then the employer could take positive action by offering training courses or open days targeting people with that characteristic.

Government Equality Office in *Equality Act 2010: What Do I Need to Know? A Quick Start Guide to Using Positive Action in Recruitment and Promotion 2011* offers the following examples of positive action distinguishing it from discrimination (*Equality Act 2010: What Do I Need to Know?*).

- Example 1. In a company’s senior management team there are very few women. If the employer organises a personal development program open only to women to help them compete for management positions, this is not sex discrimination against men. The employer here uses positive action provisions targeting people with a protected characteristic.
- Example 2. All senior positions at a bank are occupied by men. When a vacancy for one of these jobs opens, and two applicants, a man and a woman, are found to be equally strong candidates, the bank takes positive action and hires a woman. However, if the man were a stronger candidate, this would be discrimination against the man.
- Example 3. An organisation, located in an area, where a large proportion of population are Muslims, offers counselling for young people. However, it has no Muslim employees. When a job in this company is advertised, two people, of equal merit, a Muslim and a non-Muslim, have been selected for the final stage of the selection procedure. The employer must decide whom it should appoint and, under the positive action provision of the Act, it may appoint the Muslim candidate. In this situation the non-Muslim candidate cannot argue that he or she has been discriminated against.

7. Reasonable adjustment

‘Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured, the removal of physical barriers and/or providing extra support for a disabled worker or job applicant. This is the duty to make reasonable adjustments’ (Equality and Human Rights Commission Work Place Adjustments).

The employer must make reasonable adjustments (at their own cost) in order to ensure that a disabled employee has access to everything that his or her able-bodied colleagues have access to whilst doing their job. The duty to deal with the obstacles that a disabled employee (or a job applicant) faces arises when an employer becomes aware that he or she has a disability.

‘A failure to make reasonable adjustments counts as unlawful discrimination’ (Equality and Human Rights Commission Work Place Adjustments) and the Employment Tribunal may order the disabled person’s employer to pay compensation as well as making reasonable adjustment if a claim is brought against the employer who should have identified and if possible, removed the barriers which the disabled worker faces, but did nothing.

Table 1. Reasonable adjustments in a work place relating to particular impairments (Equality and Human Rights Commission. Reasonable adjustments in practice).

Reasonable adjustment	Impairment	Concrete solution
Making adjustments to premises	Wheelchair user	Widening a doorway; providing a ramp; moving furniture
	Difficulty in reaching	Relocating light switches, door handles and shelves
	Visual impairment	Providing appropriate contrast in decor
Allocating some duties to another person.	Vertigo	If the job involves working on the open roof, asking someone else to do it.
Internal transfer	A person who has become disabled	Retraining; acquiring equipment for a new post; promotion
Altering working hours	Fatigue, difficulty to travel in the rush hour	Allowing flexible hours; allowing extra breaks; a phased return to work
Assigning the person to a different place of work	Wheelchair user	Relocating the work station to the ground floor or to a different building
Allowing absence during working hours for rehabilitation, assessment, treatment	A disabled person who needs rehabilitation or treatment	Allowing more time off work than would be allowed to non-disabled employees
	Restricted hand or arm movements	Longer or different training relating to the use of equipment
Arranging training for the disabled person and/or other workers	Visual impairment	Training in additional software using a computer with speech output
	Deafness	Training staff on conducting meetings in a way that allows a deaf person to take an active part
	Loss of confidence due to a stroke	Hiring a work mentor and allowing the worker time off to see the mentor
	Arthritis	An adapted keyboard
Acquiring or modifying equipment	Visual impairment	A large screen
	Hearing impairment	An adapted telephone
Modifying instructions or	Visual impairment	Texts being produced in Braille or on audio CD

reference manuals	Learning disabilities	Conveying instructions in Easy Read or orally with individual demonstration
	Restricted manual dexterity	Replace a written test by an oral test
Providing a reader or interpreter	Visual impairment	Arranging another worker to read hard copy post at particular times; hiring a reader
Providing supervision or other support	Lack of confidence due to a disability	Providing a support worker or arranging help from a colleague
Allowing a disabled worker to take a period of disability leave	Cancer	Allowing a disability leave to undergo treatment and rehabilitation
Participating in supported employment schemes, such as Work step	Recovering from depression	Allowing the employee to call their support worker
Employing a support worker to assist a disabled worker	Visual impairment	Employing a support worker to accompany a disabled advisor during home visits to clients.
Modifying disciplinary or grievance procedures	Learning disability	Allowing a worker to bring a friend to a meeting with the employer about a grievance.
Adjusting redundancy selection criteria	Autoimmune disease	Taking absences into account whilst selecting people for redundancy, periods of disability-related absence must be disregarded.
Modifying performance-related pay arrangements	Unspecified disability	If an employer pays a worker on their output, they must pay additional hourly rate for the breaks that the employee may need to take during the day.
A combination of steps	Visual impairment	Arranging facilities for the assistance dog; providing instructions in Braille; providing disability equality training to all staff

8. Conclusion

The authors agree that the emergence of the act is a necessary and effective step towards transforming the roles that disadvantaged people play in society. Things may not change overnight, say, for people with disabilities and those who are under-represented in many walks of life but, rather than being passive recipients of social security benefits, they are now more than at any other time encouraged to become active players in society, be employed, be accepted, be financially independent. Changing the definition of disability; expanding protection of disabled persons; disallowing health-related questions at job interviews – are all examples of essential steps towards the better social inclusion of traditionally disadvantaged people. As the legislation on discrimination improves, people also become aware of what exactly constitutes discrimination; people's perception of society and their own role in it changes, and this is a change for the better.

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