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The Equality Act 2010: the Public Sector Equality Duty

About this Factsheet

The Equality Act 2010 that became law on 1 October 2010 combines almost all the UK's previous anti-discrimination laws in one single law.

One of its most important aims is to consolidate and update the Public Sector Equality Duty – a duty for public bodies to consider and apply fairness and equality, especially in making decisions or policies. It has also expanded the scope of the Public Sector Equality Duty from Disability, Race and Sex to cover the following categories: Disability, Race, Sex, Religion, Sexual Orientation, Marriage and Civil Partnership, Pregnancy and Maternity, Age and Gender Reassignment (or Transgender).

The information in this factsheet applies to the whole UK and is valid between August 2011 and December 2011.

Section 12 has details of how to order other Age UK factsheets and information materials and the telephone number for Age UK Advice.

If you need more detailed advice or representation, it is often best to find a local service. This is sometimes suggested in the text. Age UK Advice can give you contact details for a local Age UK, or you could contact one of the independent organisations listed in section 11.

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1 Introduction

The Equality Act 2010 that became law on 1 October 2010 combines almost all the UK's anti-discrimination laws in one single law, expanding the coverage and content of some of those laws.

One of the most important aims of the Act is to consolidate and update what is known as the Public Sector Equality Duty – a duty for public bodies to consider and apply fairness and equality in carrying out their functions, especially in making decisions or policies.

The Duty is also designed to reduce the bureaucracy and red tape involved in public bodies exercising their functions, and the Government believes this will help them meet the first objective of promoting fairness and equality in the exercise of their functions.

Note: Equality is used here to describe the treatment of people in certain categories, who may have or be seen to face a disadvantage not faced by the rest of the population. Those categories are described in the Equality Act as 'the protected categories' because the Equality Act (and anti-discrimination laws before it) seeks to protect people seen to be at a disadvantage from discrimination.

Discrimination here refers to treatment of a person within a category which is less favourable than the treatment of others in another category or the rest of the population in general. Anti-discrimination laws are laws meant to make discrimination unlawful against people in protected categories and indeed to define what those protected categories are.

Before the Equality Act, there were three separate public sector duties covering disability, race and sex. The protected categories now listed in the Equality Act 2010 are: Disability, Race, Sex, Religion, Sexual Orientation, Marriage and Civil Partnership, Pregnancy and Maternity, Age and Gender Reassignment (or Transgender).

2 What is the Public Sector Equality Duty?

As mentioned above, the Equality Act has expanded the scope of the Public Sector Equality Duty, which had as its main aim a duty on public bodies to apply fairness and equality in their policies and decision-making. Section 149(1) of the Act defines what the Public Sector Equality Duty means in specific terms of general and specific duties, which are explained below:

2.1 General duties

These are defined in the Act as being to:

- Act against discrimination, harassment, victimisation
- Advance equality of opportunity between protected persons and those without protected characteristics and
- Foster good relations between protected persons and those without protected characteristics.

The aim of the general equality duties is to encourage public bodies to consider how they could positively contribute to the advancement of equality and good relations. They require equality considerations to be reflected in the design of policies and the delivery of services, including internal policies and review of those policies.

In its guidelines the Government Equalities Office (a Government department responsible for implementing equality laws and promoting the Government's equality agenda) has also listed some further considerations for public bodies exercising the duty. These are:

- Knowledge: Persons in public bodies responsible for making up policies or making decisions should be familiar with the requirements of the Public Sector Equality Duty.
- Timeliness: A public body when making a decision or policy must consider the Equality Duty before making the decision or policy and not afterwards.
- Real consideration: A public body must properly and genuinely consider equality when making decisions or policy.

2.2 Specific duties

These are contained in a regulation called the Equality Act 2010 (Specific Duties) Regulations 2011, which came into effect on 10th September 2011 and gives public bodies responsibilities to:

- Prepare and publish objectives, which they believe necessary to achieve the general duties, in a format easily understandable to the public.
- Publish their compliance with the general duties. The publication deadline for these bodies is in two phases/categories and fixed as 31 January 2012 for bodies listed in Schedule 1 and 6 April 2012 for bodies listed in Schedule 2.
- Publish evidence and analysis of the impact of its compliance measures on protected persons (including its employees), as well as evidence of engagement with persons with an interest in promoting this duty. This requirement does not apply to public authorities with fewer than 150 employees.
- Publish the information on compliance with the general duties, at regular intervals of, at most, 12 months from the previous.

3 Who does this duty apply to?

The duty applies to public bodies, i.e. local or national Government bodies and others carrying out a public function, as well as private bodies carrying out public functions.

3.1 Public bodies

Public bodies are national and local Government bodies carrying out functions for the public. A list of bodies covered by the general duties is contained in Schedule 19 of the Equality Act. They include:

- Ministers of the Crown and government departments
- the Armed Forces
- broadcasting corporations, such as the BBC (including its subsidiaries), Welsh authority and Channel 4 TV for most of its services)
- civil liberties organisations, such as the Equality and Human Rights Commission (EHRC) and the Information Commissioner's Office

- court services and legal services, such as the courts and the Legal Services Commission
- criminal justice, such as the Crown Prosecution Service, the Prison Service, and the National Probation Service for England and Wales
- environment, housing and development organisations, including the Environment Agency and the Homes and Communities Agency
- health, social care and social security organisations, such as the NHS and its organisations and the Care Quality Commission
- industry, business, finance organisations, such as ACAS, the Bank of England (for its public functions), the Financial Services Authority (FSA) and the National Audit Office
- local government organisations, such as county, district or parish councils in England, London boroughs, the City of London and the London Fire and Emergency Planning Authority
- educational bodies such as higher and further education institutions in England and Wales receiving public funding
- Parliamentary and devolved bodies, such as the National Assembly for Wales Commission and the Scottish Parliamentary Corporate Body
- police, for example the Metropolitan Police, British Transport Police and various police force authorities in England and Wales and the UK Border Agency
- regulators.

The list of bodies above is not exhaustive – the complete list can be found in Schedule 19 and there is also provision there for additional bodies specific to Wales (Part 2) and Scotland (Part 3).

The public bodies that the specific duties apply to are contained in Schedules 1 and 2 of the Equality Act 2010 (Specific Duties) Regulations 2011, with the Schedule 1 bodies being Government agencies in general and Schedule 2 being non-higher/further education institutions.

The difference between the bodies in the two schedules will be the time limits set for reporting on their compliance with the duties and these will be provided when the Government's response to the Consultation is published. As said above, the Schedule 1 bodies have to publish their compliance with the duties by 31 January 2012 and the Schedule 2 bodies have to publish their compliance by 6 April 2012.

3.2 Private bodies carrying out public functions

A private organisation is considered to carry out a public function if the service it provides is either partially or fully funded by the Government, for example if a private bus company transports prisoners. In this instance the transportation of prisoners is a public function so a private company contracted to carry out this function would be regarded as carrying out a public function in the same way as a public body and would thus be subject to the Public Sector Equality Duty.

The tests for finding out if a private body is exercising a public function are if it is:

- publicly funded, e.g. a GP's surgery under the NHS
- carrying out duties that the law says should be carried out by a public body (e.g. public utilities)
- carrying out duties in place of the Government and/or working closely with the Government in carrying out its duties (e.g. a private security company overseeing a detention centre).

4 When will it come into effect?

Section 149(1) of the Equality Act 2010 describes the Public Sector Equality Duty and the general duties came into effect on 6 April 2011, but the specific duties vary. As said above there are regulations detailing how they will be applied in the Equality Act 2010 (Specific Duties) Regulations 2011. The regulations are the result of consultations in the autumn of 2010 with interested organisations and individuals. Separate consultations were held in England, Scotland and Wales.

The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 came into force on the 6th of April 2011

In Scotland, the proposals for the specific duties are being re-considered by the Scottish Government.

5 The Public Sector Equality Duty and older people

Before the Equality Act 2010, public bodies were only compelled to consider the disabled, race and sex categories in making policies or decisions but the Equality Act extended the categories to include age. See the note on protected categories in section 1.

5.1 How the duty applies to older people

Equality protection was extended to include age and in particular the duty of public bodies to consider persons in the age category. Older people thus now have the full protection previously accorded to other categories.

It is important to make it clear that the Public Sector Equality Duty as it relates to older people is in addition to rights that they have under the other parts of the Equality Act, such as equality in employment, goods and services, etc.

What this means to you is that you will now be able to:

- require public bodies to have due consideration to age equality in making policies and decisions
- challenge a decision or policy of a public body, where it has failed to consider the impact of the decision on older persons (either by not carrying out an equality impact assessment or not considering the results of the equality impact assessment, where it has carried out one).

In summary, the new Public Sector Equality Duty has given older persons (the age category) the right to have their interest considered by a public body when decisions are being made, using all the facilities available under the Equality Act and its supporting regulations, as well as other existing judicial and legal means.

The following sections examine how the workings of the new Public Sector Equality Duty will apply to an older person in more detail.

6 Compliance with the duty

There are two main bodies responsible for monitoring and ensuring compliance with the duty: the EHRC and, to a lesser extent, the Public Sector Transparency Board.

6.1 The Equality and Human Rights Commission

EHRC is the main organisation with responsibility for enforcing the provisions of the Equality Act as a whole, on behalf of any person subject to the protected categories of age, disability, gender, religion, race, sexual orientation, marriage/civil partnership pregnancy/maternity and gender reassignment.

In particular, the Equality Act gives the Commission power to monitor compliance with and to enforce the Public Sector Equality Duty on behalf of Individuals or organisations. (Enforcement is dealt with below.)

The EHRC carries out its compliance function by:

- gathering intelligence on the duties (i.e. assessing information, research, collation of best practice and compiling evidence of progress on compliance)
- advice, information, promotion (i.e. producing information and advising the public and public bodies on the details and effect of the duty)
- assisting and supporting partners (i.e. working with public bodies, unions, voluntary organisations and others in ensuring compliance with the duty).

The EHRC is in the process of preparing a statutory code for publication later in 2011. It will detail how public bodies will comply with the duty.

6.2 The Public Sector Transparency Board.

The Government is committed to ensuring that all Government departments meet new deadlines for publishing important public data and reflecting public demand for transparency by public bodies. A new body called the Public Sector Transparency Board, which is part of the Government's Cabinet Office, and comprises both public and private sector data experts, has been set up to drive this agenda. It will monitor compliance by Government bodies with publishing data in a simple and clear format, easily accessible and understandable by the general public.

Note: monitoring here does not mean enforcement of the duty – that is dealt with below.

7 Equality impact assessments

Before the Equality Act 2010, public bodies had a responsibility under the law to comply with the Disability, Race and Gender Equality duties in making policies or carrying out functions by carrying out what is known as an equality impact assessment (EIA).

An EIA simply means assessing how the policies and decisions of a public body are likely to affect or have affected people in a protected category, e.g. older or disabled people; looking for ways to promote equality; and removing any negative aspects that may be discriminatory.

It is done by gathering information on the impact of the policy or function, consultation with relevant individuals or organisations and analysis of its effect. An EIA has to be far-reaching and comprehensive, analysing the potential of the policy to give rise to discrimination.

Under the Equality Act 2010, public bodies no longer have a legal duty to carry out an EIA, but most have continued to do so and this is likely to continue to be seen as good practice in compliance with the Public Sector Equality Duty.

Also, although public bodies no longer have a legal duty to carry out an EIA, an individual or organisation that believes a Government body has not carried out an EIA before making a policy or decision, may still apply for judicial review of the policy or decision if it is likely to result in discrimination.

8 Human rights impact assessments

Human rights impact assessments (HRIAs), like EIAs, analyse how a policy affects people's human rights. The main difference is that EIAs focus on categories of people (the protected categories), while HRIAs focus on how policies affect people generally, but with reference to their specific rights.

An HRIA is a review of the impact of a public policy or decision on the human rights of all categories of people, whereas an EIA measures the impact of a policy or decision on a specific category of people.

Note: Human rights procedures are not part of the Public Sector Equality Duty, and are detailed here mainly as a guide. The Public Sector Equality Duty does not specifically require compliance with human rights, because human rights are already guaranteed – they are the basic rights that people in a country are entitled to (often listed in a specific law). Equality, on the other hand, ensures that all categories or people are treated equally and given the same rights: thus these two terms go together.

Human rights affect equality and it will always be good practice for a public body to have an HRIA policy alongside an EIA.

8.1 Human rights in the UK

Human rights in the UK are listed in the Human Rights Act 1998, which is based on the European Convention of Human Rights. The human rights listed in the Act are:

- the right to life
- the right not to be subjected to torture, inhuman or degrading treatment
- the right not be held in slavery
- the right to liberty
- the right to a fair trial
- the right not to be charged for a retrospective offence (i.e. not to be charged for an act which was not against the law when it was done)
- the right to privacy and family life
- the right of expression (i.e. to say and write what you think lawfully)
- the right to freedom of conscience (i.e. the right to have a religion or belief or indeed the right not to have any religion)
- freedom of assembly (i.e. the right to gather and meet with others including union, club or association membership as long as it's lawful)
- the right to marriage and family
- the right to freedom from discrimination.

These rights are taken for granted, but are extremely important and affect everyone, including older people, in their daily life. The law allows you – if you believe your human rights have been breached – to apply to court for judicial review of the decision, policy or action complained of.

9 Enforcement

The Equality Act gives the EHRC the power to enforce compliance with the Public Sector Equality Duty and it does this in several ways.

9.1 Enforcing the duty without going to court

Although the final resort in challenging a breach of the Public Sector Equality Duty is court proceedings, the law directs that where an individual or organisation (other than the EHRC) believes a public body is in breach of the duty, there must be a formal complaint/correspondence, using the public bodies complaints or reporting procedure, where it exists, and that all avenues to resolving the matter must be exhausted before court proceedings can be filed.

This is because the courts have a duty to ensure that all peaceful means of resolving problems are exhausted before litigation. It is also because court proceedings involve considerable legal expense and, in many instances, complex legal processes, and an unsuccessful party is liable to pay the costs of the winning party.

Thus it is always important that you pursue all means of resolving a claim to try to avoid the need to resort to litigation.

9.2 How to do this yourself

If a public body has made a policy or decision that has a negative effect on older persons (or indeed any other category you may belong to), you should follow these steps.

- Write to the public body, either using their complaints or contact procedure or by direct correspondence, asking if they had given due consideration to the impact of the decision on older people.

- When you receive a response, consider it and determine if there has been proper consideration of the impact of the decision on older people. It would be sensible to get professional advice on the effectiveness of the response from the CAB or a solicitor.
- If you are unhappy with the response or there has been no response from the public body, refer all the correspondence, with a covering letter, to the EHRC.

Note: You have a right to compel the public body to comply with the duty as long as it is seen to have failed to consider the interest of whatever protected category you belong to.

9.3 What the EHRC can do

As the body with legal responsibility to enforce compliance with the duty, the EHRC will assess the complaint and, if it is seen to be substantial, it will take up the complaint under its own procedure in the following ways.

- Compliance notices: It will assess the public body's compliance with both the general and specific duties and issue what is known as a compliance notice, where there has been a breach of either or both of the general and specific duties. In addition, where it suspects the duty has been breached it may enter into an agreement with the body requiring it to take certain steps to comply with the duty, for which it would agree not to issue a compliance notice.
- Judicial review: A person whose rights have been affected by a breach of duty is able to make an application for judicial review to the High Court. Judicial review is the application an individual or organisation can make to the Court, challenging an action by a public body, where it is believed the action has been unlawful.

An application for judicial review has to meet certain requirements as follows:

- the application must be made within three months from the date of the action complained of
- the person or organisation making the complaint must be directly affected by the action challenged or act for someone whose rights have been affected, e.g. the holder of a Lasting Power of Attorney
- the action challenged must be an exercise of a public duty.

If an application for judicial review is successful, the Court can make one or more of the following orders, depending on the nature of the application:

- reverse an action taken by the public body
- prevent the public body from taking or compel it to take the action, in breach of the public duty.

The Equality Act makes very clear that any proceedings for enforcement of the Public Sector Equality Duty must be in public law. This means it has to be done through judicial review, in the High Court. An individual cannot bring an action against a public body for breach of an individual contract, e.g. you cannot use the Public Sector Equality Duty to sue your council for failing to pay you for gardening services rendered. For this you would have to go to the normal courts. The EHRC can institute judicial review proceedings where it believes that there has been a breach of the provisions of the Equality Act in general by a public body. It also has a specific power to make an application for judicial review where a public body has breached the general and/or specific duties of the Public Sector Equality Duty.

The EHRC also has a power to intervene in judicial review claims filed by individuals and organisations to help in clarifying the law. In this context its role is neutral (i.e it does not support one side or the other).

It is possible for private individuals and organisations to institute judicial review proceedings on their own without legal representation. However, these proceedings are often quite complex and intensive, and a party without the necessary knowledge of the laws and relevant cases, may find themselves at a considerable disadvantage if the other side is legally represented.

Note: Given all this, consider the nature of your claim very carefully and get advice on its potential for success. It is also absolutely necessary to consider appropriate and available sources of funding (please see Age UK's factsheet 43, *Getting legal advice*).

10 How the Public Sector duty has been applied

There are very few (if any) examples of the application of the new Public Sector Equality Duty created by the Equality Act 2010, but the old public sector duty was applied in many instances and a few examples are listed below. They illustrate the way the new duty should be and probably will be applied.

Case 1

R v Secretary of State for Education (2011) EWHC 217 – Admin (The Building Schools for the Future Judicial Review)

Six local councils (Luton Borough Council, Nottingham City Council, the London Borough of Waltham Forest, the London Borough of Newham, Kent County Council and Sandwell Metropolitan Borough Council) applied for judicial review of the Government's decision to scrap the building of schools in their areas. Their application for judicial review was successful in that the Court decided the Government had failed to consult the councils before making the decision and failed to consider the equality impact of this decision.

Case 2

R (Rahman) v Birmingham City Council (2011) EWHC 944 (Admin)

Birmingham City Council decided to restrict care provision to those with critical needs. Some local users challenged this on the ground that the Council had failed to consider the Race and Disability equality impact. The Court accepted this and decided that the decision was unlawful.

Case 3

R (Chavda) v London Borough of Harrow (2008) 100 BMLR 27 The London Borough of Harrow decided to make cuts to its social care services, restricting them to people with critical needs. The Council had carried out an equality impact assessment, which had shown that it would affect disabled persons particularly but this was not brought to the attention of the councillors making the decision. An application for judicial review was filed by some users of the care services in the Borough. The Court decided that as the Council had not considered the disability equality duty, its decision was unlawful.

11 Useful organisations

British Institute of Human Rights (BIHR)

In conjunction with Age UK BIHR has produced a guide called *Older People and Human rights – a guide for older people*, which can be downloaded from their website.

Development House, 56-64 Leonard Street, London, EC2A 4LT

Tel: 020 7549 0550

Email: info@bihr.org.uk

Website: www.bihr.org.uk

British and Irish Ombudsman Association (BIOA)

Ombudsmen deal with complaints from the public about certain public bodies and private services. Their services are free of charge.

Tel: 020 8894 9272

Email: secretary@bioa.org.uk

Website: www.bioa.org.uk for details of independent ombudsman schemes.

Citizens Advice Bureau

National network of free advice centres. Depending on available resources may offer benefits check and help filling forms.

Tel: 020 7833 2181 (for local contact details only – not telephone advice)

Website: www.adviceguide.org.uk

Equality and Human Rights Commission (EHRC)

The EHRC Disability Helpline provides information and advice about all aspects of the Disability Discrimination Act.

Tel: 0845 604 6610 (England)

Textphone: 0845 604 6620 (England)

Website: www.equalityhumanrights.com

Government Equalities Office (GEO)

GEO is responsible for the Government's overall strategy on equality issues and has a public enquiry line providing information on Equality and Human Rights issues.

Tel: 0207 035 4848

Website: www.homeoffice.gov.uk/equalities/equality-government/

Liberty

A non profit-making organisation protecting and promoting civil liberties and human rights.

Tel: 0845 123 2307

Website: www.yourrights.org.uk

Local Government Improvement Office

Local Government (LG) Improvement and Development supports improvement and innovation in local government through networks, online resources and support from councillors and officer peers.

Tel: 020 7296 6880

Fax: 020 7296 6666

Email: ihelp@local.gov.uk

Website: www.idea.gov.uk

12 Further information from Age UK

Age UK Information Materials

Age UK publishes a large number of free Information Guides and Factsheets on a range of subjects including money and benefits, health, social care, consumer issues, end of life, legal, issues employment and equality issues.

Whether you need information for yourself, a relative or a client our information guides will help you find the answers you are looking for and useful organisations who may be able to help. You can order as many copies of guides as you need and organisations can place bulk orders.

Our factsheets provide detailed information if you are an adviser or you have a specific problem.

Age UK Advice

Visit the Age UK website, www.ageuk.org.uk, or call Age UK Advice free on 0800 169 65 65 if you would like:

- further information about our full range of information products
- to order copies of any of our information materials
- to request information in large print and audio
- expert advice if you cannot find the information you need in this factsheet
- contact details for your nearest local Age UK/Age Concern

Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65

Website: www.ageuk.org.uk

In Wales, contact:

Age Cymru: 0800 169 65 65

Website: www.agecymru.org.uk

In Scotland, contact:

Age Scotland: 0845 125 9732

Website: www.agescotland.org.uk

In Northern Ireland, contact:

Age NI: 0808 808 7575

Website: www.ageni.org.uk

Support our work

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and through calls to Age UK Advice on 0800 169 65 65.

If you would like to support our work by making a donation please call Supporter Services on 0800 169 80 80 (8.30 am–5.30 pm) or visit www.ageuk.org.uk/donate

Legal statement

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