



Equality Act 2010

Key actions for the October provisions

The Equality Act 2010 introduces new equality legislation covering employment, facilities, goods and services and education, including the admission and treatment of students.


On 1 October 2010 some provisions relating to employment, service delivery and admission and treatment of students will be brought into force. The government is currently consulting on the specific duties for England of the general public sector duty due to commence in April 2011.

This document, developed by Equality Challenge Unit (ECU) and the Higher Education Equal Opportunities Network (HEEON), outlines key changes in the legislation with related actions that practitioners working in the sector could make. It also includes general actions for practitioners as a result of the new Act. This document focuses on the provisions that are due to commence in October. ECU and HEEON will work to support the sector in meeting new requirements and the specific duties as and when these are brought into force. These apply in England, Scotland and Wales, but do not apply in Northern Ireland. For information specific to Northern Ireland, see ECU's recent briefing, www.ecu.ac.uk/publications/anti-discrimination-law-in-northern-ireland.

Key changes

Change in definition of direct discrimination

- = The new definition of direct discrimination extends protection based on **association** and **perception**, already applicable to **race**, **sexual orientation** and **religion or belief**, to include **age**, **disability**, **gender reassignment**, **sex** and **pregnancy and maternity**. (There are exceptions around direct discrimination and age, see ECU's briefing *Equality Act 2010: implications for higher education institutions*)



www.ecu.ac.uk/publications/equality-act-2010 for further details). This means that those providing care for someone due to a protected characteristic would be protected because of their association.

Specific actions:

- = Ensure carers understand that they may be protected from discrimination due to association.
- = Ensure that the protection for carers is reflected in current policies and procedures.
- = When gathering evidence around staff and students' experiences of discrimination, for example as part of satisfaction surveys, use the new definition of discrimination or outline the full extent of what is covered.

Change in definition of specific protected characteristics

- = The definition of **disability** will be extended to cover people who have had a disability in the past.
- = The definition of **gender reassignment** has been extended to cover people who have proposed, started or completed a process to change their sex but are not under medical supervision.

Note:

- = For further information on supporting trans staff and students in higher education see ECU's revised 2010 guidance www.ecu.ac.uk/publications/trans-staff-and-students-in-he-revised

Extended protection for disabled people

- = Indirect discrimination protection is extended to disability.
- = A new protection for discrimination arising from disability will be introduced.
- = The duty to make reasonable adjustments for disabled people has been extended to when a disabled person experiences a 'substantial disadvantage'. The previous duty applied when it was 'impossible or unreasonably difficult for a disabled person to work, study or use a service'.



Specific actions:

- = Ensure that the extended protection is reflected in policies and procedures particularly those that are applied mandatorily across the HEI. For example, a blanket policy on the venue for graduation ceremonies (which are sometimes held in more historic, but sometimes less accessible, buildings on the campus) could impact on students, or their guests, with mobility impairments.

Breastfeeding now explicitly protected

- = In providing services, and in education, a woman who is breastfeeding is now explicitly protected from unfavourable treatment within a period of 26 weeks from when she has given birth. Outside of this 26-week period, a breastfeeding woman may be protected by the sex discrimination provisions.

Protection on grounds of pregnancy and maternity extended to students

- = A student who is pregnant, or has given birth within the last 26 weeks, is now explicitly protected from unfavourable treatment.

Specific actions:

- = Develop policies and procedures to ensure consistent support for students during pregnancy and maternity.
- = Consider the breastfeeding facilities, whether ad hoc or permanent, available for students' use.

Note:

- = ECU is currently developing guidance on supporting students during pregnancy and maternity, which is due to be published in late October 2010.



New limitations on the use of health related questions during staff recruitment and selection exercises.

- = The Act introduces new provisions which make it unlawful for an employer to ask about the health of a job applicant either before offering work to an applicant, or before including an applicant in a pool of shortlisted candidates from whom the employer intends to select a person to whom to offer work.

Specific actions:

- = Ensure existing pre-employment health questionnaires and other forms used during the recruitment process are reviewed.
- = Questions relating to health should be removed or revised as appropriate so there is no risk of them forming part of the selection process.
- = Ensure that applicants are still able to request adjustments during the application and selection process, and continue collecting and using data to monitor equality in recruitment and selection.

Note:

- = Further information can be found on the ECU Equality Act webpage www.ecu.ac.uk/your-questions/pre-employment-health-questionnaires

New protection from third party harassment

- = The Act 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. Students may also be considered a third party.
- = This only applies if the employer knows that the employee has been harassed on at least two previous occasions. The employee does not need to have been harassed by the same person on each occasion.



Specific actions:

- = Ensure third parties are aware of the HEI's duty to tackle this form of harassment through:
 - revising student codes of conduct, student induction and programme handbooks so that they are aware of their rights and responsibilities to not harass others, including staff
 - revising terms and conditions of contractors so that they make their employees aware that harassment of HEI staff will not be tolerated
 - revising information and signage for visitors and for events outlining unacceptable behaviour
- = When gathering evidence around staff experiences of harassment, for example through satisfaction surveys, include details of third-party harassment in any statements concerning harassment.

Note:

- = Further information can be found on the ECU Equality Act webpage www.ecu.ac.uk/your-questions/what-could-higher-education-institutions-heis-do-to-take-reasonable-steps-to-protect-employees-from-third-party-harassment

Removal of secrecy clause in discussing pay

- = The Act introduces protection to 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.

Specific actions:

- = Ensure that employees' terms of employment or appointment do not restrict discussions relating to pay



General actions:

- = Ensure that the key changes are reflected in current policies and procedures:
 - Update references to previous legislation in current policies such as references to DDA/SENDA/SDA/RRAA/Equality Act 2006, but noting that some parts of previous legislation will still be force. Page 234 of the Equality Act 2010 highlights which areas of previous legislation have been repealed.
 - If referring to external guidance that has not been updated, provide a note that the legislation has changed.
- = Review present arrangements for informing staff, students and visitors of their equality rights and responsibilities in light of the key changes.
- = Revise relevant text and web-based university documentation to ensure that it covers the changes in the new legislation outlined.
- = Assess which training needs to be reviewed and updated in line with the key changes.
- = Produce a plan for identifying and meeting the information needs of governors, committees, managers, staff and students, trade unions and students' unions in line with the key changes.
- = Revise any statements of the HEI's commitment to tackle all forms of discrimination to include all protected characteristics and prohibited conduct.

Further guidance and support

Further information on the Act, including questions from the sector and the latest developments can be found on the ECU Equality Act webpages.

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

Additional guidance on some of the areas listed includes:

- = Acas (2010) The Equality Act – what's new for employers?
www.acas.org.uk/index.aspx?articleid=3017
- = ECU (2010) *Equality Act 2010: implications for higher education institutions*.
www.ecu.ac.uk/publications/equality-act-2010
- = ECU (2009) *Developing staff disclosure*.
www.ecu.ac.uk/publications/developing-staff-disclosure



- = EHRC core guidance (online resource)
www.equalityhumanrights.com/advice-and-guidance/guidance-equality-act-2010
- = GEO and EDF (2010) *Equality Act 2010: what do I need to know? Disability quick start guide.*
www.equalities.gov.uk/equality_act_2010/equality_act_2010_what_do_i_n.aspx

About us

Equality Challenge Unit

Equality Challenge Unit is the higher education equality body, promoting equality and diversity in higher education. ECU is funded by Universities UK, GuildHE, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales, the Scottish Funding Council and the Department for Employment and Learning in Northern Ireland.

www.ecu.ac.uk

HEEON

The Higher Education Equal Opportunities Network is the only independent network of equality and diversity practitioners, and those interested in equal opportunities in higher education. We work with the sector and ECU to represent the voice of practitioners. www.heeon.ac.uk



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Equality Challenge Unit

7th floor, Queen's House
55/56 Lincoln's Inn Fields
London, WC2A 3LJ

T 020 7438 1010 **F** 020 7438 1011
E info@ecu.ac.uk www.ecu.ac.uk

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Alternative formats are available: **E** pubs@ecu.ac.uk **T** 020 7438 1010