

The Equality Act 2010

The information below is for guidance; for details on our policies and procedures see the E&D section of the website.

The new Equality Act came into force on 1 October 2010. The Equality Act brings together over 116 separate pieces of legislation into one single Act. Combined, they make up a new Act that will provide a legal framework to protect the rights of individuals and advance equality of opportunity for all.

In addition to prohibiting direct and indirect discrimination, the Equality Act has extended scope to:

- inclusion of discrimination by association or based on perception;
- indirect discrimination extended to disability and gender reassignment;
- hypothetical comparators now allowed in some gender pay claims;
- restrictions on health questionnaires in recruitment;
- wider tribunal powers to make recommendations

The Act's employment provisions largely reflect the current law and cover all workers. As with current legislation the scope of the Act is broad enough so that protection from discrimination may extend to people who are not necessarily staff. This could include contract workers and, in some circumstances, volunteers.

A member of staff or agent (someone who works for you on your behalf) of NCVS are personally held accountable for acts of discrimination, harassment or victimisation. At the corporate level, the management of NVCS are ultimately responsible for any breaches of the Equality Act, unless it can show that it took 'all reasonable steps' to prevent the discrimination, harassment or victimisation from taking place.

A summary overview of the Act can be found below, with further guidance available on the Equality and Human Rights Commission (EHRC) website, and the full version of the Act on the Government website:

- [EHRC Guidance](http://www.equalityhumanrights.com/publications/guidance)
<http://www.equalityhumanrights.com/publications/guidance>

- Equality Act 2010

http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

The Protected Characteristics

Protected characteristics are the grounds upon which discrimination in employment, education and provision of goods and services is unlawful. This covers our staff and our service users. The protected characteristics under Section 4 of the Equality Act 2010 are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief (including lack of belief)
- Sex
- Sexual orientation

General Duties

All protected characteristics (with the exception of marriage and civil partnership) are subject to general public sector equality duty from April 2011 which require us to have due regard to:

- Eliminate discrimination
- Advance equality of opportunity by:
 - Removing/minimising disadvantage
 - Meeting different needs of protected groups
 - Encouraging participation in public life where low
- Foster good relations by:
 - Tackling prejudice (where tensions arise, address those tensions)
 - Promoting understanding

Key Changes

Direct Discrimination based on association and perception

The new definition of direct discrimination extends protection based on association and perception to include:

- Age

- Disability
- Gender reassignment
- Sex
- Pregnancy and maternity

This is already applicable to race, sexual orientation and religion or belief.

This change means that those providing care for someone due to a protected characteristic would be protected because of their association.

Extended protection for disabled people

Protection for disabled people has been extended:

- Indirect discrimination will be 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 or use a service

Abolition of Default Retirement Age

The default retirement age (that was set at 65) was abolished from 6 April 2011. It will be no longer possible to subject staff to compulsory retirement, unless the retirement can be justified in the particular circumstances. We are no longer able to reject job applications from external candidates who are over 65; such applicants should be treated in the usual way. Age-related factors must not be used as a criteria for non-selection.

Breastfeeding now explicitly protected

A woman who is breastfeeding is now explicitly protected from unfavourable treatment in the workplace and provision of services. This covers 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.

New limitations on asking health related questions during staff recruitment and selection

The new provisions made it unlawful for an employer to ask about the health of a job applicant:

- Before offering work to an applicant
- Before including an applicant in a pool of shortlisted candidates from which the employer intends to select a person to offer work to

Removal of secrecy clause in discussing pay

The Equality Act 2010 introduces protection for 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. Employers will not be able to enforce any terms of employment or appointment that prevent or restrict discussions relating to pay.

Key Principles of Equality Law

Direct Discrimination

Direct discrimination is the legal term that applies if a person treats someone less favorably than they would another because of a protected characteristic they have or are thought to have or because they associate with someone who has a protected characteristic (see discrimination by association and perception below).

It is not possible to justify direct discrimination, so it is always unlawful (except in cases of single sex institutions that only admit applicants of one gender and in certain limited cases relating to religion or belief, e.g. where there is a genuine occupation requirement for a job).

The Equality Act 2010 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.

- **Associative Discrimination** – whereby a person is treated less favourably because of his/her *association* with someone who has a protected characteristic. For example, a member of staff is overlooked for promotion because their partner has undergone gender reassignment
- **Perceptive discrimination** – whereby a person is treated less favourably because he/she is mistakenly *believed* to have one of the protected characteristics. For example, an employer decides not to promote a female member of staff because senior staff believe her to be pregnant irrespective of whether she is pregnant or not

Indirect discrimination

This occurs when an organisation (for example, NCVS, or a member of staff at NCVS) makes a decision, or puts in place a particular policy or practice, which, on the face of it appears to treat everyone equally, but which actually, in practice, leads

to people from a protected group being treated less favourably than other people. This is unless the person applying the provision can justify it as a proportionate means of achieving a legitimate aim.

All the protected characteristics except for pregnancy and maternity are covered.

Indirect discrimination may occur if, for example, an employer who requires staff to commit to working from 8pm to 11pm every evening indirectly discriminates against women, who are more likely to be primary carers of children, unless this can be objectively justified as above.

Harassment and Victimisation

Harassment on the basis of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation is unlawful. It does not apply to pregnancy and maternity and marriage and civil partnership.

Complaints of harassment can be made regardless of whether or not the harassment was intentional.

Victimisation

Victimisation (defined in Section 27 of the Equality Act 2010) takes place where one person treats another less favourably because he or she has asserted their legal rights in line with the Act or helped someone else to do so.

In order to protect and support staff from harassment, we have a Dignity Policy. This policy provides guidance on behaviour which may constitute harassment, information and advice for victims of harassment and informal/formal dispute resolution.

Positive Action

Positive action is a range of measures allowed under the Equality Act 2010 which can be lawfully taken to encourage and train people from under-represented groups to help them overcome disadvantages in competing with other applicants.

Positive action must not be confused with positive discrimination which is unlawful, e.g. the setting of quotas (as opposed to targets, which are lawful) or any form of preferential treatment. Where positive action has been taken to encourage applicants from disadvantaged groups to apply, every applicant must be considered on individual merit and selection for interview and appointment must be based strictly on the agreed selection criteria.

The Equality Act 2010 does permit reasonable adjustments which may give preferential treatment to an individual with a disability.

The Government Equality Office has produced guidance on positive action.

Protected Characteristics

The protected characteristic definitions are taken from the Equality and Human Resources Commission.

Age

Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds).

Disability

A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

Gender reassignment

The process of transitioning from one gender to another.

Marriage and same sex marriage

Marriage and same sex marriage are protected.

Pregnancy and maternity

Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Race

It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

Religion and belief

Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

Sex

A man or a woman.

Sexual orientation

Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

Policy Name	The Equality Act 2010
Version	1
Date of Issue	July 2014
Next Review	July 2017
Owner	Saema Mohammad