

The Equality Act 2010: What it means for colleges

The Equality Act 2010, which became law in October 2010, represents the culmination of years of debate about how to improve British equality law. It offers individuals stronger protection against discrimination. It gives employers and businesses greater clarity about their responsibilities. In addition, it sets a new expectation that public services must treat everyone with dignity and respect. The Equality Act 2010 has consolidated and streamlined previous anti-discrimination legislation and introduced measures that have direct implications for higher education institutions.

The Act covers discrimination because of:

- Age,
- Disability,
- Gender reassignment,
- Marriage and civil partnership,
- Pregnancy and maternity,
- Race,
- Religion or belief,
- Sex
- Sexual orientation.

These categories are known in the Act as 'protected characteristics'. As with previous disability equality legislation, it is permissible to treat a disabled person more favorably than a non-disabled person. It remains lawful to make reasonable adjustments in relation to employment, education and services to ensure equality of opportunity for disabled people.

An important purpose of the Act is to unify the legislation outlawing discrimination against people with different protected characteristics where this is appropriate.

As well as consolidating existing law, the Act makes discrimination unlawful in circumstances not covered previously. Discrimination in most areas of activity is now unlawful subject to certain exceptions. These areas of activity include, for example, employment and other areas of work, education, housing, the provision of services, the exercise of public functions and membership of associations.

The Equality Act places duties on education providers in relation to employment but also provision of education and access to benefits, facilities or services. These cover all of the services, facilities and benefits, both educational and non-educational that an education provider provides or offers to provide for students.

Protected characteristics and the issues that they are covered by in the Equality Act 2010

Protected characteristic									
Issue covered by the Equality Act	Age	Disability ¹	Gender reassignment	Marriage and civil partnership ²	Pregnancy and maternity ³	Race	Religion or belief	Sex	Sexual orientation
Discrimination in employment	yes	yes	yes	yes	yes	yes	yes	yes	yes
Discrimination in provision of services	yes ⁴	yes	yes	no	yes	yes	yes ⁵	yes	yes ⁵
Discrimination in the delivery of further and higher education	yes	yes	yes	no	yes	yes	yes	yes	yes
The general statutory duty to promote equality	yes	yes	yes	no	yes	yes	yes	yes	yes
The work of general qualifications bodies	yes	yes	yes	no	yes	yes	yes	yes	yes

Positive action provisions of the act	yes	yes	yes	yes	yes	yes	yes	yes	yes
Dual discrimination	yes	yes	yes	no	no	yes	yes	yes	yes
Discrimination or harassment linked to perceived characteristic	yes	yes	yes	no	no	yes	yes	yes	yes
Discrimination or harassment by association	yes	yes	yes	no	no	yes	yes	yes	yes
Duty to make adjustments for disabled people	n/a	yes	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Unlawful conduct under the Act

- Direct discrimination(including discrimination based on perception & association)
- Indirect discrimination
- Discrimination arising from disability
- Pregnancy and maternity discrimination
- Failure to provide a reasonable adjustment
- Harassment
- Victimisation

Direct discrimination

Generally, 'discrimination' means treating someone with a protected characteristic worse than someone who does not have that characteristic would be treated in the same situation. The worse treatment must be because of that characteristic.

Direct discrimination may occur if, for example:

- the students' union or association decides not to interview a Muslim applicant for a job because it assumes, on the basis of their religion or belief, that he or she will not be prepared to work in a bar

- the college refuses to let a student go on a residential trip because they are a wheelchair-user
- the college does not offer a training opportunity to an older member of staff because they assume that they would not be interested, and the opportunity is given to a younger worker

Regarding age, different treatment can be justified if it is a proportionate means of meeting a legitimate aim. However, this can be a difficult test to meet. For example, it is unlikely that the college would be able to justify rejecting a candidate for a frontline student services role on the basis that they are 'too old to identify with students'. The college would have to use objective evidence to justify that the role could only be undertaken by someone of a particular age group, and that this is proportionate to achieving the aim of providing services to students.

Perception and association

A person can experience direct discrimination because of a protected characteristic, even if the person does not have the characteristic himself or herself.

Discrimination because of **perception** takes place where the college behaves as if the person has the characteristic and treats them worse than others as a result. This applies whether the perception is true or not, even if the college knows that the person does not have the protected characteristic. For example:-

- A woman with a medical condition that makes her appear 'masculine' is perceived to be undergoing gender re-assignment is refused access to the female changing rooms in the sports centre.

Discrimination because of **association** takes place when a person is treated worse than another person is because they associate with a person with a protected characteristic. It is not necessary for the association to be a long-term or continuing one. For example:-

- The sister of a man who is having a civil partnership ceremony is refused time off college to attend this event. Another subsequent request for annual leave to attend a friend's wedding is granted. The first student may have a claim for discrimination because of sexual orientation.
- The father of a disabled child who is a student occasionally misses lectures to be with his child at appointments related to the child's disability. His course leader gets increasingly impatient with him and tells him he will not pass the course if he does

not 'buck his ideas up and stop spending so much time with his disabled child'. He may have a claim for direct disability discrimination by association.

Indirect discrimination

People's experience and opportunities in education can be affected by the college's rules or the way of doing things.

Indirect discrimination takes place when the same rule or way of doing things is applied to everyone. The rule or way of doing things itself may not appear to have a different or worse impact on people with a particular protected characteristic but does so in reality.

Indirect discrimination applies to all the protected grounds other than pregnancy and maternity, although something that has a worse impact on women who are pregnant or new mothers may be indirect sex discrimination.

To avoid having what was done declared indirect discrimination, the college must be able to prove that the rule or way of doing things was a balanced way of achieving something for a good reason like the core purpose of the service in question.

The financial cost of using a less discriminatory approach cannot, by itself, provide a justification, although cost can be taken into account as part of the college's justification, if there are other good reasons for adopting the chosen practice.

If the college cannot justify the rule they are applying or the way they are doing things, they will need to make changes to avoid the different and worse impact. For example:-

- If a course prospectus says that students must attend lectures on a Saturday then this may stop practising Jews from applying. This would be indirect discrimination if it stopped an individual with this religion from applying and the college could not justify it.

If the reason for this requirement were that Saturday is the only day that the lecturer is available (and no other lecturer could replace him) then clearly the requirement would be justified. However, if the same lecture was also held at a different time in the week and students could attend that lecture instead then it would not be necessary for a student to attend on a Saturday.

It does not matter that the college did not intend the rule or way of doing things to disadvantage people with a particular characteristic. What does matter is whether it does or would disadvantage them compared with people who do not share that characteristic.

Discrimination arising from a disability

Colleges must make sure that disabled people are not treated less favourably than other people for a reason relating to their disability. This type of discrimination is known as 'discrimination arising from disability' and only applies to disabled people.

Discrimination arising from disability takes place if:

- the college treats the disabled person unfavourably,
- this treatment is because of something which has come about as a result of the disabled person's disability ('something arising in consequence of the person's disability'), and the education provider cannot show that this treatment is justified as a balanced way of achieving something for a good reason (in legal language 'a proportionate means of achieving a legitimate aim').

Discrimination arising from disability is different from direct discrimination. Direct discrimination occurs **because of** the protected characteristic of disability. For discrimination arising from disability, the reason for the treatment does not matter. For example:-

- A lecturer decides to rearrange her classroom so the students are in small groups sitting around tables. This is to encourage group work, which she thinks will be particularly useful for the next piece of work. Unfortunately, the rearrangement results in a hearing impaired student sitting sideways on to the front of the classroom and so he is unable to easily lip-read when the lecturer is speaking. Unlike direct discrimination, the student does not have to show that the reason for her treatment is her disability. To show discrimination arising from disability she must instead show that the rearrangement of the classroom location decision results in unfavourable treatment because of something arising in consequence of her hearing impairment. The legal analysis then moves on to consider whether the decision to move her can be justified and whether the college has made reasonable adjustments.

Discrimination arising from disability is also different from indirect discrimination. There is no need to show that other people have been affected alongside the individual disabled person or for the disabled person to compare himself or herself with anyone else.

For discrimination arising from disability to occur, a disabled person must have been treated 'unfavourably'. This means that he or she must be put at a disadvantage. If the disadvantage is obvious, it will be clear that the treatment has been unfavourable; for example, a person may have been refused a place on a course, denied an opportunity or excluded. Even if a

college thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably.

The consequences of a disability include anything that is the result, effect or outcome of a disabled person's disability. The consequences will be varied, and will depend on the individual effect upon a disabled person of their disability.

Some consequences may be obvious, such as an inability to walk unaided. Others may not be obvious, such as:

- The need for regular rest breaks or toilet breaks,
- A restricted diet,
- Slower writing speeds,
- Regular hospital appointments,
- Need for specialist computer equipment,
- Need for instructions to be repeated,
- Need for a quiet working environment or access to a quiet room.

The unfavourable treatment must be because of something that arises in consequence of the disability. For example:-

- A course timetable changes to include late night lectures. A student is unable to attend them because of her disability (which is kidney failure, for which she has nightly dialysis).
- A student is disciplined for losing her temper with another student and shouting at them. This behaviour was out of character and was a consequence of severe pain that that she was experiencing due to her disability (which is arthritis). This disciplinary action is unfavourable treatment because of something that has arisen in consequence of her disability.

So long as the unfavourable treatment arises as a consequence of the disability, it will be unlawful unless it can be justified.

Unfavourable treatment will not amount to discrimination arising from disability if the college can show that the treatment is justified as a balanced way of achieving something for a good reason or a 'proportionate means of achieving a legitimate aim'.

For discrimination arising from disability, if the college can show that they did not know that the disabled person had the disability in question, and could not reasonably have been expected to know that the disabled person had the disability then the unfavourable treatment does not amount to unlawful discrimination.

Education providers therefore need to ensure that where information about disabled people may come through different channels, there is a means – suitably confidential - for bringing that information together to make it easier for the education provider to fulfil their legal duties.

Pregnancy and maternity discrimination

The Act protects female students from discrimination because of their pregnancy or maternity from a period of 26 weeks after giving birth. Treating a female student less favourably because she is breastfeeding a baby who is more than 26 weeks old amounts to direct sex discrimination.

The application of the section to the education sector means that colleges are unable to refuse an applicant entry to a course because she is pregnant or ask that she leave a course because she becomes pregnant. The college will also need to consider arrangements for students to ensure that a woman is not treated less favourably because she is breastfeeding.

Absence related to pregnancy and maternity must be taken into account by the college. Colleges should not penalise students who miss examinations or course work deadlines because of pregnancy and maternity including pregnancy-related illness or appointments.

Failure to make reasonable adjustments

Colleges have a 'duty to make reasonable adjustments' for disabled people which may involve treating disabled people 'more favourably' than non-disabled people.

The duty contains three requirements that apply in situations where a disabled person would otherwise be placed at a substantial disadvantage compared with people who are not disabled.

1. The first requirement covers changing your provisions, criteria or practices. For example, if there is a parking policy that only allows staff to park in spaces that are near to college buildings, it may need to be changed to allow disabled students who might have difficulty walking to use them.
2. The second covers making changes to overcome barriers created by the physical features of its premises. For example, installing extra handrails on stairs for students who have limited mobility.
3. The third covers providing auxiliary aids and services. For example, providing special computer software or providing a support worker.

The duty to make reasonable adjustments aims to tackle obstacles that can prevent a disabled person from participating in education on a level playing field. When the duty arises, colleges are under a positive and pro-active duty to take steps to remove or prevent these obstacles. You should not use the need to make adjustments as a reason to refuse to admit a person or as a reason to exclude them.

Harassment

Harassment in the Equality Act 2010 means:

- Unwanted behaviour which has the purpose or effect of:
- Violating the dignity of another person; or
- Creating for that person an intimidating, hostile, degrading, humiliating or offensive environment.

Unwanted behaviour can include any kind of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.

For the unwanted behaviour to be against the Equality Act, it must fall into one of these three categories:

1. It is related to age, disability, race, sex, gender reassignment, religion or belief or sexual orientation.

'Related to' a protected characteristic means that even if the person who is on the receiving end of the unwanted behaviour does not have the protected characteristic himself or herself, the behaviour could still be harassment if there is any connection with a protected characteristic. Nor does the unwanted behaviour have to be specifically aimed at the person who finds it violates their dignity or creates for them an intimidating, hostile, degrading, humiliating or offensive environment.

Protection is also provided where someone is subjected to harassment related to a protected characteristic even where it is known that they do not have that characteristic. Whether unwanted behaviour amounts to harassment will be a matter of degree.

2. It is sexual harassment.

Sexual harassment occurs when a person does something of a sexual nature (whether verbal, non-verbal or physical) which has the purpose or effect of:

- Violating a person's dignity; or

- Creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

'Of a sexual nature' can include unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings or sending emails with material of a sexual nature..

3. It is less favourable treatment of a student because he or she either submits to or rejects sexual harassment or harassment related to his or her sex or gender reassignment.

- For example, a lecturer propositions one of his students, she rejects his advances and then is failed on her next assignment which she believes she would have passed if she had accepted her lecturer's advances. The student would have a claim of harassment.

Victimisation

If the college treats a person badly because they have taken particular action related to the Equality Act 2010 (or because they suspect the person has taken or will be taking such action), this will be victimisation, and is against the law.

This protection covers anyone, whether or not they have a protected characteristic, if they do something in relation to making a complaint of discrimination and you then treat them badly.

Examples of the action someone might take in relation to making a complaint of discrimination:

- Making a complaint or claim that they have been discrimination against
- Helping someone else to make a complaint or claim
- Giving evidence or information in a discrimination case
- Alleging that the college has breached the Equality Act.

If you do treat someone badly because they have taken such action then this will be unlawful victimisation. There must be a link between what the person did and your treatment of them.

- For example, a student makes a complaint of sex discrimination against the college. As a result, she is refused a place on a further course. This refusal would amount to victimisation if she can show it was because of her complaint.

Some exceptions apply to all protected characteristics and to all education providers.

Positive action

'Positive action' means the steps that a college is allowed (but not required) to take to encourage people with a protected characteristic from groups with different needs or with a past track record of disadvantage or low participation to access education.

- For example a college might do this is if they find that the makeup of their student body is different from the makeup of their local population, so they decide to encourage people who share a particular under-represented protected characteristic to apply for courses, for example, by advertising on a website aimed at people with that characteristic as well as in the local paper.

Taking positive action is voluntary. There is no legal requirement for an education provider to take positive action, although taking positive action may help you meet your duty to promote equality.

Statutory provisions

There is a very limited exception for things which on the face of it are discrimination but which have to be done to meet the requirements of another law, whether that law existed when the Equality Act 2010 was passed or whether it came later. This only applies where there is no other choice but to discriminate or break the other law.

National security

There is a general authorisation in the law that allows anything to be done which is proportionate in order to safeguard national security, even if it would otherwise be discrimination because of a protected characteristic

Admission and treatment of students

The Act prohibits the college from discriminating against a person or student in the following ways:

- In the arrangements it makes for deciding who is offered admission as a student
- In the terms on which it offers to admit the person as a student
- By not admitting the person as a student
- In the way it provides education for the student
- In the way it affords the student access to a benefit, facility or service
- By not providing education for the student

- By not affording the student access to a benefit, facility or service
- By excluding the student
- By subjecting the student to any other detriment.

Although the Act imposes the duty to make reasonable adjustments in respect of disabled students and applicants, the legislation exempts competence standards from this duty.

There is no specific exemption related to the concept of academic freedom in the Act, but there is reference to the curriculum. The purpose of this subsection is to ensure that the Act does not inhibit colleges from including a full range of issues, ideas and materials from multiple perspectives in their curriculum.

The Act also covers the way in which the college provides education for students. Teaching methods, delivery and related issues such as assessment all need to comply with the main provisions of the Act, including those relating to direct and indirect discrimination, harassment and the duty to make reasonable adjustments for disabled students.

Employment

The scope of the Act is broad enough so that protection from discrimination may extend to people who are not necessarily employees. This could include contract workers and, in some circumstances, volunteers.

The Act makes it unlawful for an employer to discriminate against or victimise employees or people seeking work. The provisions for direct and indirect discrimination and victimisation apply where the employer is making arrangements to fill a job, and in respect of anything done in the course of a person's employment, for example:

- Terms of offer
- Access to opportunities for promotion
- Transfer or training
- Receiving benefits
- Facility or service
- Dismissal
- Subjecting employees to detriment.

The Act also imposes the reasonable adjustments duty in respect of disabled employees and applicants. Employers will need to ensure that their recruitment and employment

policies and practices do not discriminate against existing or prospective staff members on grounds of disability. They will also need to ensure that adjustments are made to the workplace to ensure that disabled members of staff are not put at a substantial disadvantage in comparison to colleagues who are not disabled.

- For example, if an applicant for a job needs extra time for an assessment task because they have repetitive strain injury and find it difficult to use a computer without special equipment, an employer may be discriminating if they refuse to grant the extra time.
- Under the Equality Act 2010, an employer can be liable for harassment by a third party (such as a customer or contractor) if (a) that third party had harassed an employee on at least two previous occasions; and (b) the employer had failed to take reasonably practicable steps to stop the harassment.
- This has now been repealed from 1 October 2013, under the newly made *The Enterprise and Regulatory Reform Act 2013 (Commencement No.3, Transitional Provisions and Savings) order 2013*.
- The Government has said that the removal of the third party harassment provisions will not leave employees unprotected in this area.
- Employers are required to provide a safe working environment under the Health and Safety at Work Act 1974. Part of the requirement is to undertake risk assessments for employees, which could extend to third-party harassment. Employees can bring negligence claims based on an employer's breach of its common law duty to take reasonable steps to protect them from injury caused by third party harassment.
- The Protection from Harassment Act 1997 provides that a person must not pursue a course of conduct, which amounts to harassment of another and which he knows or ought to know amount to harassment of the other. However, an employee would need to bring a claim against the third party direct and this ignores the fact that the harassment occurred during employment.
- The Government has suggested that employees who suffer harassment from a third party can bring a constructive dismissal claim against their employer, arguing that harassment amounts to a fundamental breach of their employment contract entitling them to resign. Resignation, may not, however, be the route that an employee wishes to take.
- This leaves employees with the general harassment provisions under the Equality Act. These provide that '*A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of either (a) violating B's dignity; or (b) creating an intimidating, hostile, degrading,*

humiliating or offensive environment for B'. The Government believes that it would be possible for employees to bring a third party harassment claim under these provisions.

- In two recent cases, the Tribunals have upheld employees' claims for harassment carried out by fellow employees. In the first case, a 65-year-old male employee successfully argued that banter in the workplace relating to his age was discriminatory. The banter included staff changing his car number plate to read 'OAP' instead of 'OAB', referring to him as the '104 year old' and telling him that he resembled Yoda.
- In the second case, a sales representative was awarded compensation of £43,755 for loss of earnings and injury to feelings as a result of harassment. Staff repeatedly accused him of being gay because he was not a football fan and because of his interest in the arts. He was also subjected to inappropriate homophobic and religious remarks.

Enquiries about disability and health

The Act introduced new provisions that make it unlawful for an employer to ask about the health or any disability of a job applicant either before offering work to an applicant, or before including an applicant in a pool of shortlisted candidates from which the employer intends to select a person to whom to offer work. This includes asking such a question as part of the application process or during an interview. Questions relating to previous sickness absence count as questions that relate to health or disability.

The employer does not contravene the Act merely by asking about the applicant's health, although the way in which the employer uses any disclosed information could be a contravention of a relevant disability provision.

Colleges will continue to be able to, and should, ask all applicants whether they require any reasonable adjustments or support during the recruitment and interview process. Colleges will also continue to be able to ask monitoring questions establishing whether there are disabled applicants applying for job positions.

Retirement

On the 6 April 2011, there was a change to the law relating to retirement. The effect of this change is that in most cases workers can now retire when they are ready, rather than when their employer decides. It is direct age discrimination to require or persuade a worker to retire because of their age unless you can objectively justify doing so.

In most circumstances, it will not be objectively justifiable for a college to set their own retirement age. To objectively justify doing so, the college would need to be able to produce convincing evidence to show, in relation to the particular job:

- that they are trying to achieve a legitimate aim
- that the policy of setting a retirement age is a proportionate way of achieving that aim, and the actual age chosen for retirement is also proportionate

Proving that a retirement decision is a proportionate means of achieving a legitimate aim will be difficult to demonstrate in many situations, and it is unlikely that a retirement age would be objectively justifiable in the higher education sector.

Benefits based on length of service

This provision is designed to ensure that employers do not have to justify differences in pay and benefits that have arisen from service of up to five years. An employer can make awards on the basis of five years or more service, if it reasonably believes this fulfils a business need (for example, by encouraging loyalty or motivation, or rewarding the experience of staff).

Provision of services including goods and facilities

Within colleges, student associations and unions provide a wide range of services to staff and students. They are therefore considered as service providers under the Act. Services provided may include careers and employment services, childcare services, health services, libraries, and conference and events services.

The Act prohibits discrimination, harassment (except because of religion or belief and sexual orientation) and victimisation by people who supply services (which includes goods and facilities). Customers are protected both when requesting a service and during the course of being provided with a service.

The service provider must not discriminate against a person:

- as to the terms in providing the service
- by terminating the provision of the service
- by subjecting the service user to any other detriment

The Act imposes a duty to make reasonable adjustments in relation to the provision of services and in the exercising of public functions even if this favours disabled people.

The ban on age discrimination in the provision of goods, facilities and services and relevant exceptions came into effect on 1 October 2012. The exceptions under the age provisions will cover general exceptions already allowed by the Equality Act, positive action measures and the ability to justify age discrimination – ‘objective justification’.

Premises

The Act imposes a duty to make reasonable adjustments in relation to premises and accommodation. Those responsible for managing college estates and accommodation will need to ensure that they show due regard to adjustments to ensure they can provide an inclusive living and studying environment for disabled students. Equally, colleges should ensure that any private landlords with whom they have a contractual relationship are aware of the Act and are committed to providing accessible accommodation.

Recreational or training facilities

Colleges must not discriminate or victimise in the way they provide recreational or training facilities, such as sports services or clubs. Discrimination against, or victimisation of, a person should be avoided in:

- The arrangements it makes for deciding who is provided with the facilities
- The terms on which it offers to provide the facilities to the person
- Not accepting the person’s application for provision of the facilities

Similarly, colleges should not harass a person who is seeking to access, or is accessing, facilities.

The duty to make reasonable adjustments also applies, ensuring that recreational or training facilities are created and provided in an inclusive way.

Specific issues relating to individual protected characteristics

Gender reassignment

People do not have to be under medical supervision to be protected by the law. Gender reassignment is defined as ‘where a person has proposed, started or completed a process to change his or her sex’. A transsexual person has the protected characteristic of gender reassignment.

In addition to direct and indirect discrimination, and victimisation, protection remains for people undergoing gender reassignment from discrimination due to absence from work. Where a transsexual person is absent from work because they propose to undergo, are

undergoing or have undergone gender reassignment, the Act provides that they should be treated no less favourably than if the absence was due to sickness or injury or another reason (e.g. caring for a relative).

Religion or belief

The definition of religion or belief means:-

- any religion and a reference to religion includes a reference to a lack of religion.
- any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

Religion or belief should therefore be taken to mean the full diversity of religious and belief affiliations within the UK, including non-religious and philosophical beliefs such as atheism, agnosticism and humanism.

Sex

The Act introduces new provisions to ensure pay equality that enable a person who has less favourable contractual pay conditions because of their sex to bring an equal pay claim against their employer. They would not require a comparator to bring a claim but would need to show evidence of direct sex discrimination.

The Act also protects 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.

Scottish Public Sector Equality Duties

The purpose of the public sector equality duty is to ensure that public authorities (these include colleges) and those carrying out a public function consider how they can positively contribute to a more equal society through advancing equality and good relations in their day-to-day business, to:

- Take effective action on equality
- Make the right decisions, first time around
- Develop better policies and practices, based on evidence
- Be more transparent, accessible and accountable

- Deliver improved outcomes for all.

The public sector equality duty requires equality to be considered in all the functions of public authorities, including decision-making, in the design of internal and external policies and in the delivery of services, and for these issues to be kept under review.

The public sector equality duty covers the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. The public sector equality duty also covers marriage and civil partnerships, only with regard to eliminating unlawful discrimination in employment.

The general duty

The public sector equality duty as set out in the Equality Act 2010 is called the 'general equality duty'.

The general equality duty requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

To comply with the general equality duty, a public authority must have due regard to all three of its needs.

The Equality Act explains that the second need (advancing equality of opportunity) involves, in particular, having due regard to the need to:

- Remove or minimise disadvantage suffered by people due to their protected characteristics
- Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

The Act also sets out that:

- meeting different needs includes (among other things) taking steps to take account of disabled people's disabilities
- fostering good relations means tackling prejudice and promoting understanding between people from different groups
- meeting the general equality duty may involve treating some people more favourably than others.

Implementing the general duty

In order to meet the general duty, a public authority must ensure:

- **Knowledge:** those who exercise its functions (its staff and leadership) are aware of the general equality duty requirements. Meeting the general equality duty involves 'a conscious approach and state of mind'. Decision-makers should therefore be aware of the implications of the general equality duty when making decisions about their policies and practices.
- **Timeliness:** the general equality duty arises before and at the time that a particular policy is under consideration and a decision is taken. A public authority cannot satisfy the general equality duty by justifying a decision after it has been taken.
- **Meaningful consideration:** consideration of the three needs of the general equality duty must form an integral part of the decision-making process. This is not a 'tick box' exercise – it must be carried out with rigour and with an open mind in such a way that influences the final decision.
- **Sufficient information:** the decision-maker must consider what information she has as well as what further information might be needed to give proper consideration to the general equality duty.
- **Review:** public bodies must have regard to the needs of the general equality duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed. The general equality duty is a continuing duty.
- **Non-delegation:** anyone exercising public functions on behalf of a public body is required to meet the general equality duty. This is because the general equality duty rests with the public authority even if it has delegated any functions to another organisation.

Who needs to be aware of the General Equality Duty and Specific Duties?

It is important for people throughout public bodies to be aware of the general equality duty so that it is considered in their work where relevant. Examples may include:

- **Board members** – in how they set strategic direction, review performance and ensure good governance of the organisation
- **Senior managers** – in how they oversee the design, delivery, quality and effectiveness of the organisation's functions
- **Equality and diversity staff** – in how they raise awareness and build capacity about the general equality duty and specific duties within the organisation and how they support staff to deliver on their responsibilities
- **Human resources staff** – in how they build equality considerations into employment policies and procedures
- **Policy makers** – in how they build equality considerations into all stages of the policy making process including review and evaluation
- **Communications staff** – in how they ensure relevant equality information is available and accessible
- **Analysts** – in how they support the organisation to understand the effect of its policies and practices on people from equality groups
- **Frontline staff** – in how they meet the needs of people from equality groups
- **Procurement and commissioning staff** – in how they build equality considerations into the organisation's relationships with suppliers

The Specific Duties

These specific duties came into force on 27 May 2012 with the aim of helping those authorities listed in the Regulations in their performance of the general equality duty.

The Specific Duties in summary

Each listed authority is required to:

- report on mainstreaming the equality duty
- publish equality outcomes and report progress
- assess and review policies and practices
- gather and use employee information
- publish gender pay gap information
- publish statements on equal pay
- consider award criteria and conditions in relation to public procurement
- publish in a manner that is accessible.

What the Specific Duties require

Duty to report on mainstreaming the equality duty

The college is required to publish a report on the progress it has made to make the general equality duty integral to the exercise of its functions, to better perform that duty.

The first report had to be published not later than 30 April 2013 and subsequently at intervals of not more than two years.

The report must include (if not published previously): an annual breakdown of the information the college has gathered under its duty to gather and use employee information and details of the progress that it has made in using that information to enable the college to better perform the general equality duty.

Duty to publish equality outcomes and report progress

The college is required to publish a set of equality outcomes which it considers will enable it to better perform the general equality duty, by no later than 30 April 2013.

In preparing a set of equality outcomes, the college must take reasonable steps to involve people who share a relevant protected characteristic and anyone who appears to the college to represent the interests of those people.

The college must also consider relevant evidence relating to people who share a relevant protected characteristic.

If the college's set of outcomes does not further the needs of the general equality duty in relation to every relevant protected characteristic, it must publish the reasons for this.

The college must publish a fresh set of equality outcomes within four years of publishing its previous set. By no later than 30 April 2015 and every two years thereafter, the college must publish a report on the progress made to achieve the equality outcomes it has set.

Duty to assess and review policies and practices

The college is required to assess the impact of applying a proposed new or revised policy or practice, against the needs of the general equality duty, in so far as is needed to meet the general equality duty. In making the assessment, the college must consider relevant evidence relating to people who share a protected characteristic (including any evidence received from those people). In developing a policy or practice, the college must take account of the results of their assessment of that policy or practice. If the college decides to apply the policy or practice in question, it must publish the results of the assessment, within a reasonable time, and arrange to review and, where necessary, revise any existing policies or practices.

Duty to gather and use employee information

The college is required to take steps to gather information on the composition of its employees (if any); as well as annual information on the recruitment, development and retention of employees with respect to the number and relevant protected characteristics of employees. Importantly, the college must use this information to better perform the general equality duty.

The college's mainstreaming report (see above) must include an annual breakdown of the information gathered. It must also include details of the progress that the college has made in gathering and using the information to enable it to better perform the general equality duty.

As noted above, the first report on mainstreaming the general equality duty must be published not later than 30 April 2013 and subsequently at intervals of not more than two years.

Duty to publish gender pay gap information

The college is required to publish information on the percentage difference, among its employees, between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime), no later than 30 April 2013, and every two years thereafter.

The information published must be based on the most recent data available for a date when the college had at least 150 employees.

Duty to publish statements on equal pay, etc.

The college is required to publish a statement on equal pay, no later than 30 April 2013, and every four years thereafter.

An equal pay statement must contain the college's policy on equal pay, as well as information on occupational segregation (the concentration of groups in particular grades and in particular occupations).

The first such report needs to contain information relating to women and men. However, from the second report (due within four years of the first) the college is also required to publish its equal pay information, in relation to people who are disabled and people, who are not, and people who are members of a minority racial group and people who are not.

The same 150-employee threshold applies to this duty as to the duty to publish gender pay gap information.

Duty to consider award criteria and conditions in relation to public procurement

Where a college is carrying out a public procurement exercise, it must have due regard to whether its award criteria should include equality considerations that will help it to better perform the equality duty.

Where it proposes to stipulate performance conditions in its procurement agreement, it must have due regard to whether the conditions should include equality considerations that will help it to better perform the equality duty.

Duty to publish in a manner that is accessible, etc.

If it has existing public performance reporting systems the college is required to use these, as far as practicable, to publish its:

- Report on mainstreaming the equality duty
- Set of equality outcomes and report on progress made to achieve these outcomes
- Gender pay gap information
- Statement on equal pay and occupational segregation.

The reports must also be accessible to the public.

Further information and guidance

The following organisations have information on the Equality Act 2010 and the general and specific duties.

Equality and Human Rights Commission (Scotland)

<http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/>

Equality Challenge Unit

<http://www.ecu.ac.uk/law/equality-act>

ACAS

<http://www.acas.org.uk/index.aspx?articleid=3017>

Compiled from information supplied by EHRC and ECU.