

CABINET

10 NOVEMBER 2010

JOINT REPORT OF OVERVIEW AND SCRUTINY MANAGER AND HEAD OF HUMAN RESOURCES AND CUSTOMER SERVICES

A.13 EQUALITY ACT 2010

(Report prepared by Amanda Osborne and Anastasia Simpson)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To present to Cabinet the recent and forthcoming changes in Equality legislation and the steps that are being taken to ensure that the Council is compliant with the Equality Act 2010.

EXECUTIVE SUMMARY

The Equality Act 2010 brings together, harmonises and, in some respects, extends the current equality law. Its aim is to provide a more consistent and clearer approach to equality, making it easier to follow in order to ensure a fairer society. As a public sector organisation our responsibilities remain largely the same but there are certain differences that we need to be aware of. The Act came into force on 1 October 2010 with an immediate impact on a number of areas of employment and these have been incorporated into the Council's Human Resources Policies. There is also a requirement to produce a Single Equality Scheme (SES) by 1 April 2011, which will replace the current suite of equality policies that all organisations including this Council are required to have in place, and this piece of work is currently underway.

RECOMMENDATION(S)

That Cabinet:

- (a) Notes the changes in Equality legislation and its impact on the Council.
- (b) Supports the production of a Single Equality Scheme.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The SES will support the Council's corporate priorities by improving support for vulnerable people and building stronger communities by demonstrating our services are fair, equitable and accessible and where possible enhance and adapt our services to cater for people with special needs such as a disability.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The impact of the Equality Act 2010 can be met from existing budgets.

Risk

Should the Council not comply with the legislation it would run the risk of being challenged and this could result in a financial claim against the Council.

LEGAL

In relation to Race, Disability and Gender equality the Council is legally required to publish an equality scheme. Regulations set out certain matters which must be included in such a scheme. The Equality Act 2010 introduces a new Single Public Equality Duty incorporating the existing diversity strands (Race, Disability and Gender) but extending this to include Age, Transgender, Religion or Belief, Sexual Orientation and Socio Economic inequality. Failure to publish such a scheme can lead to enforcement action by the Equality and Human Rights Commission.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

Equality and Diversity

An Equality Impact Assessment has been initiated for the SES and will form part of the Cabinet report for 9 March 2011 when Cabinet will be requested to adopt the final SES for implementation on 1 April 2011.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Council has a duty to:

- Eliminate unlawful discrimination and harassment.
- Promote equality of opportunity.
- Promote good relations between persons of different backgrounds.
- Encourage participation in public life for people of different backgrounds.

However, regardless of its legal obligations the Council believes that it is right that it should:

- Treat people fairly, justly and with respect in both employment and service provision,
- Find ways to support those who are disadvantaged or excluded, and
- Promote inclusion and celebrate diversity.

The Council has a statutory obligation under equality legislation to eliminate unlawful discrimination, both direct and indirect, against everyone regardless of individual circumstances.

The statutory requirements include the duty to publish how it is going to fulfil its duties and demonstrate its commitment to equality and diversity in its community leadership role.

The Equality Bill - On 20 April 2009, the Government published an Equality Bill which

made changes to the way equalities are governed by setting up the Commission of Equality and Human Rights and dissolving the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission. The Equality Bill set out to strengthen protection, advance equality and simplify the law. The main provisions of interest to local government are:

- The introduction of new strategic socio-economic duty to reduce socio-economic inequalities
- A new public equality duty that will extend the public duties to age, sexual orientation, religion or belief, gender reassignment, also including pregnancy and maternity – consultation will follow shortly on the specific duties
- Clarification that procurement can be used to drive equality – this will be included in the consultation of specific duties
- Banning age discrimination for those over 18 in the provision of services, subject to further consultation on the details.

The Equality Act 2010 became law from 1 October 2010 and the legislation replaces nine laws and more than 100 other measures with one single Act.

CURRENT POSITION

The New Equality Act 2010

The single Act replaces the existing anti discrimination laws, including;

- The Equal Pay Act 1970,
- The Sex Discrimination Act 1975
- The Race Relations Act 1976
- The Disability Discrimination Act 1995

It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with. It also strengthens the law in important ways to help tackle discrimination and inequality.

Provisions coming into force on 1 October 2010

The first wave of implementation took place on 1 October 2010. On this date the vast majority of the Act's provisions come into force, as follows:

- The basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations, and transport.
- Changing the definition of gender reassignment, by removing the requirement for medical supervision.
- Levelling up protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic, so providing new protection for people such as carers.
- Clearer protection for breastfeeding mothers;
- Applying the European definition of indirect discrimination to all protected characteristics.

- Extending protection from indirect discrimination to disability.
- Introducing a new concept of “discrimination arising from disability”, to replace protection under previous legislation lost as a result of a legal judgment.
- Applying the detriment model to victimisation protection (aligning with the approach in employment law).
- Harmonising the thresholds for the duty to make reasonable adjustments for disabled people.
- Extending protection from 3rd party harassment to all protected characteristics.
- Making it more difficult for disabled people to be unfairly screened out when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability or health.
- Allowing hypothetical comparators for direct gender pay discrimination.
- Making pay secrecy clauses unenforceable.
- Extending protection in private clubs to sex, religion or belief, pregnancy and maternity, and gender reassignment.
- Introducing new powers for employment tribunals to make recommendations which benefit the wider workforce.
- Harmonising provisions allowing voluntary positive action

Who the law protects

- Whether at work as an employee or in using a service, the message (or purpose) of the Equality Act is that everyone has the right to be treated fairly at work or when using services.
- It protects people from discrimination on the basis of certain characteristics. These are known as protected characteristics and they vary slightly according to whether a person is at work or using a service.

Protected Characteristics

There are nine protected characteristics your employees might have. These are:

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

There are eight protected characteristics of people who use services. These are:

- Disability
- Sex (gender)
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sexual orientation
- Age (over 18s only*)

*discrimination on grounds of age (over 18s) is unlawful, but the provisions are not coming into force until 2012

Disability (New Definition)

The protected characteristic of disability applies to a person who has a physical or mental impairment that has a substantial and long term adverse effect on their ability to carry out normal day to day activities.

To qualify for protection from discrimination a disabled person no longer has to show that their impairment affects a particular 'capacity' such as mobility or speech, hearing or eyesight.

Gender Reassignment (New Definition)

The protected characteristic of gender reassignment will apply to a person who is proposing to undergo, is undergoing or has undergone a process to change their sex.

To qualify for protection from discrimination a transsexual person no longer has to show that they are under medical supervision.

What The Law Prohibits

Direct Discrimination

Direct discrimination in services and public functions happens when someone is treated less favourably than another person because of a protected characteristic. Direct discrimination has now been extended to cover disability.

Previously protection extending wider than the person's own protected characteristic such as protection from discrimination because of association and perception applied only to race, religion or belief and sexual orientation. Now it applies to sex, disability and gender reassignment as well.

Indirect Discrimination

Indirect discrimination has now been extended to include disability and gender reassignment.

Victimisation

There is now no need to a victim to show that they have been treated less favourably than someone who has not made or supported a complaint under the Act. They need only show that they have been treated badly.

The Council's Response

The Council's Human Resources policies have been reviewed and revised where appropriate e.g., policies on Recruitment, Harassment, Grievance, Equality and Diversity etc., and a new policy on gender reassignment will need to be introduced.

A single Equality Policy is currently being worked upon, to replace the individual policies on gender, disability, race etc., to be in place by the required date of 1 April 2011.

Summary of What's new and what's changed at a glance

Key

Characteristic covered in existing legislation – no changes	No change	
Characteristic covered in existing legislation – but some changes	Changes	
Characteristic not covered in existing legislation – now covered	New	
Characteristic not covered in existing legislation – still not covered	No protection	

	Disability	Gender reassignment	Pregnancy and maternity	Race	Religion or belief	Sex	Sexual orientation
Direct discrimination	Changes	No change	No change	No change	No change	No change	No change
Discrimination by association	New	New	No change	No change	No change	New	No change
Discrimination by perception	New	New	No change	No change	No change	New	No change
Indirect discrimination	New	New	No change	No change	No change	No change	No change
Harassment	Changes	Changes	No protection*	Changes	No protection*	Changes	No protection*
Victimisation	Changes	Changes	Changes	Changes	Changes	Changes	Changes
Positive action	Changes	Changes	Changes	Changes	Changes	Changes	Changes

* Where there is no specific harassment protection, direct discrimination protection prohibits treatment such as bullying and harassment which results in a person being treated less favourably.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

None