

What does it mean for the
Further education and skills sector?
Updated July 2011 to explain
changes to the specific duties
regulations.



LSIS LEARNING
AND SKILLS
IMPROVEMENT
SERVICE



the new equality act 2010

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Brief Guide:
Equality Act 2010
By Dr Christine Rose,
E&D Consultant and LSIS
Associate

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Introduction and purpose of this briefing

The Equality Bill received royal assent in April 2010, becoming the Equality Act 2010 (referred to in this briefing as 'the Act'). Many of the provisions of the Act came into force in October 2010. This briefing sets out for providers some of the key changes the Act will bring. These include a new extended Public Sector Equality Duty, revisions to definitions of discrimination and a widening of the scope of positive action. This briefing will be of interest to senior managers, equality and diversity managers, HR managers, quality managers and all staff with an interest in equality and diversity. It will be relevant for practitioners who work in colleges, or provide adult and community learning or work based learning.

This briefing, prepared by Dr Christine Rose, E&D consultant and LSIS associate, outlines the key changes that the Act brings for the learning and skills sector. It should be read in conjunction with statutory and non-statutory guidance issued by the Equality and Human Rights Commission (www.EHRC.com).

Why do we need new equality legislation?

Over the last 40 years, more than 20 pieces of equality legislation have been introduced, with over 2,500 pages of guidance. This legislation has developed incrementally, leading to gaps, complexity and inconsistency. Yet despite this plethora of legislation, persistent inequalities remain. For example, disabled people are twice as likely to be unemployed, and at the current rate it will take 100 years for people from black and minority ethnic backgrounds to have the same job prospects as white people. Children eligible for free school meals, a proxy indicator of poverty or social disadvantage, do significantly less well than other children at school at every stage; only 14% of these young people progress to higher education, for example, compared with 33% of their peers.

The Act will streamline, harmonise and strengthen the law.

The Equality Act 2010 has three main aims:

- **to simplify, streamline and harmonise the law**
- **to strengthen the law**
- **to support progress in promoting equality and achieving year on year improved outcomes.**

What are the key changes?

There are a number of changes for the learning and skills sector and this briefing considers six of them. The Act:

- **identifies nine 'protected characteristics'**
- **changes the definitions of discrimination**
- **places a new extended Public Sector Equality Duty on public bodies, with two new specific duties**
- **harmonises and extends the role of positive action**
- **restricts the use of health and disability-related questions during recruitment and selection**
- **strengthens the powers of employment tribunals.**



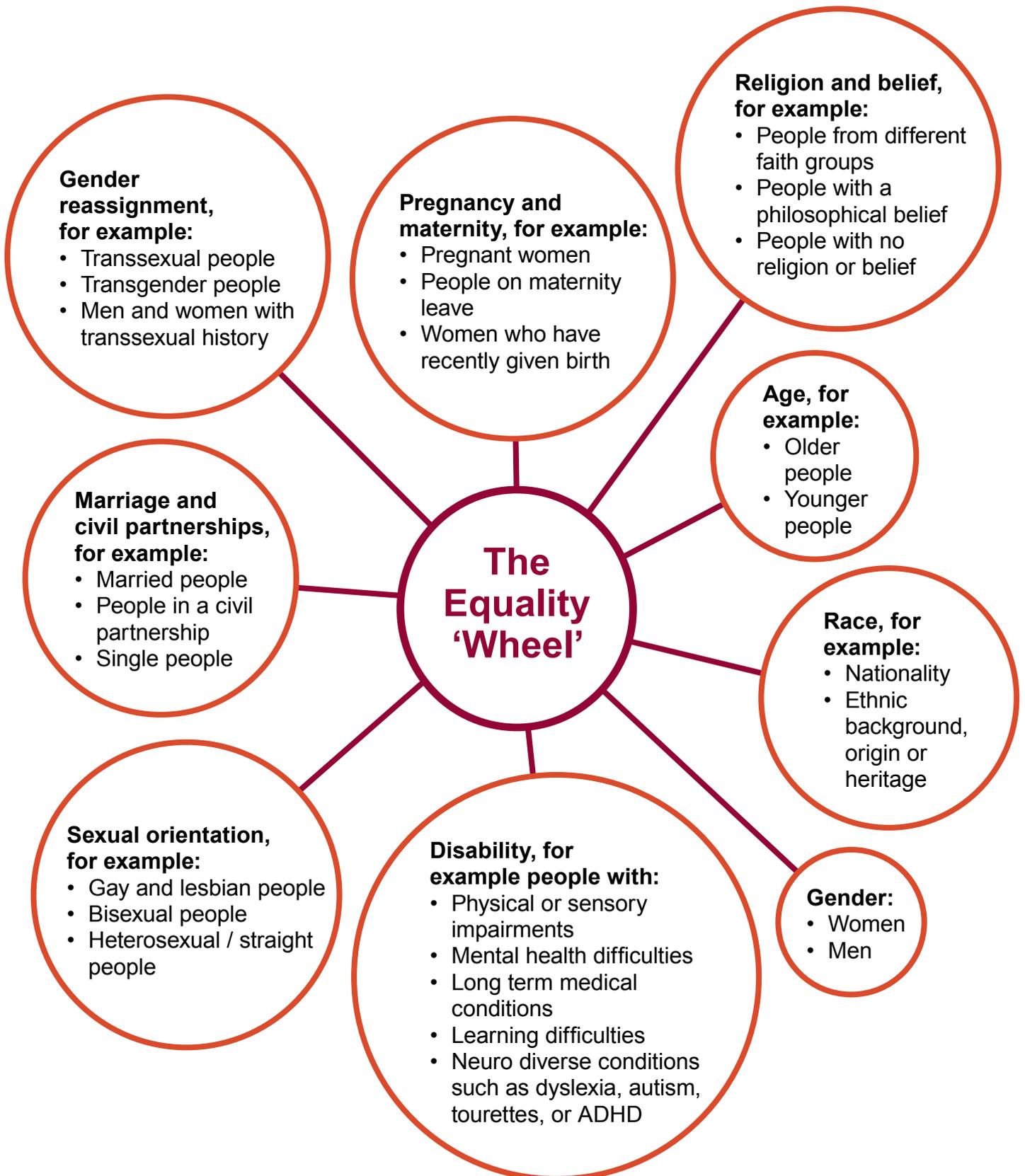
1. Protected characteristics

The Act introduces the term 'protected characteristic' to refer to aspects of a person's identity explicitly protected from discrimination. Nine are identified:

All nine protected characteristics are covered in the employment duties of the Act. The protected characteristic of marriage and civil partnerships is not included in the education duties of the Act.

- **Race**
- **Disability**
- **Gender**
- **Age**
- **Sexual orientation**
- **Religion and belief**
- **Gender reassignment**
- **Pregnancy and maternity**
- **Marriage and civil partnerships.**





2. Definitions of discrimination

The Act recognises the following types of discrimination:

- **direct discrimination, including association and perception discrimination**
- **indirect discrimination**
- **harassment**
- **victimisation**
- **discrimination arising from a disability**
- **failure to make reasonable adjustments.**

Direct discrimination occurs when someone is treated unfairly, or less favourably than another person, because they have a protected characteristic. This often arises because of assumptions, stereotyping or prejudice. Direct discrimination also covers **association discrimination or perception discrimination**. This is direct discrimination against someone because they associate with a person who has the protected characteristic or because they are perceived to have a protected characteristic.

What's changed? The definition of direct discrimination has been harmonised across the protected characteristics. For example, previously, disabled people were only protected from direct discrimination in relation to work; the law protected disabled customers but in a different way. Also, direct discrimination because of association or perception now covers all protected characteristics except marriage and civil partnerships.

Indirect discrimination occurs when a provision, criterion or practice is applied that appears to affect everyone equally but which in fact puts people who share a protected characteristic at a disadvantage.

What's changed? The Act harmonises the definition of indirect discrimination across protected characteristics (with the exception of pregnancy and maternity). For the first time, for example, indirect discrimination applies to disability.

Although pregnancy and maternity are not covered by indirect discrimination, policy and practice that disadvantages pregnant women and new mothers could constitute indirect gender discrimination.

Harassment occurs when someone behaves in such a way that their conduct has the purpose or effect of creating an environment that is offensive, hostile, degrading, humiliating or intimidating for a person, where:

- **this is related to a protected characteristic (except pregnancy and maternity or marriage and civil partnerships)**
- **this is of a sexual nature (sexual harassment)**
- **a person is treated less favourably because they have either submitted to or rejected sexual harassment, or harassment related to sex or gender reassignment (this is known as 'consequential harassment').**

What's changed? The Act changes the definition of harassment from unwanted conduct 'on the grounds of' to unwanted conduct 'related to'. This subtle change has two benefits. First, it will protect people who are offended by conduct even if it is not specifically directed at them. Explanatory notes to the Act provide the following examples:

- **A white worker sees a person from a black and minority ethnic background being subjected to racially abusive language, and complains that this has caused her environment to be offensive, even though she is white and not the subject of the abuse**
- **An employer displays a topless calendar in the workplace. A male worker complains as he finds this offensive.**

Second, the definition protects in relation to association or perception. For example, it provides protection for someone who experiences harassment because their partner or their son is a disabled person, or because they are perceived to be gay.

The Act does not specifically cover harassment on the grounds of pregnancy and maternity, or marriage and civil partnerships. However, direct discrimination prohibits treatment such as bullying or harassment that results in a person being treated less favourably than others.

Changes to the Sex Discrimination Act in 2008 meant that employers could be liable for sexual harassment of employees by third parties, for example customers, parents or contractors, providing the employer is aware this has occurred on at least two earlier occasions and has failed to take reasonable steps to stop it. The Act broadens out areas where an employer can be held liable for harassment of employees by a third party.

What's changed? The Act has the potential to extend third party harassment to cover all protected characteristics except pregnancy and maternity, and marriage and civil partnerships. At the time of writing this update, the government announced that it is re-considering this aspect of the Act to determine if it should be abolished. However, employment tribunal cases imply that even if the legislation is repealed, claims for third party harassment may still succeed. For example, in the case between Sheffield City Council v Norouzi, the Employment Appeal Tribunal ruled that the Council was liable for acts of racial harassment against one of its employees because it knew harassment was occurring but failed to intervene. Cases such as this one provide a legal basis for an employer to be liable if the employer failed to protect the employee from repetitive harassment by a third party.

Victimisation occurs when a person experiences disadvantage because they have supported someone in making a complaint or an allegation of discrimination, or because they personally have made an allegation of discrimination.

What's changed? There is no need for a person to show they have been treated less favourably than someone who has not made or supported a complaint under the Act. They only need to show they have been treated badly.

Previous equality legislation recognised disability-related discrimination. The Act replaces this with two new causes of action in relation to disability – indirect discrimination (see above) and **discrimination arising from a disability**.

What's changed? Discrimination arising from a disability is a new form of discrimination recognised in law. It occurs when a disabled person is treated less favourably than others because of something connected to their impairment.

Failure to make reasonable adjustments occurs when an organisation fails to make reasonable adjustments for a disabled person, to avoid the disabled person being placed at a substantial disadvantage when compared with a non-disabled person. See the section 'frequently asked questions' for further information.

Direct discrimination (with the exception of age), harassment, victimisation and failure to make reasonable adjustments can never be justified. Indirect discrimination and discrimination arising from a disability may be permissible if an organisation can 'objectively justify' that their actions are a proportionate means of achieving a legitimate aim.

Equality legislation before the Act permitted a '**genuine occupational requirement**' defence on the basis of race, religion or belief, age and sexual orientation. This enabled an employer to stipulate that, because of the nature of a particular job, only people with a particular characteristic were eligible. There was a similar defence relating to 'genuine occupational qualifications' in relation to sex, gender reassignment and nationality.

What's changed? The Act harmonises the law by introducing an 'occupational requirement' defence across all protected characteristics. The requirement must be crucial to the post and this defence will only be relevant in very limited areas of employment.

3. A new extended Public Sector Equality Duty

Public sector duties to promote race, disability and gender equality are replaced and extended in the Act by a new Public Sector Equality Duty.

What's changed? The Act introduces a new Public Sector Equality Duty, which will require organisations to give due regard to:

- **eliminate discrimination, harassment and victimisation**
- **advance equality of opportunity**
- **foster good relations.**

The new duty covers eight of the nine protected characteristics of the Act, namely race, disability, gender, age, sexual orientation, religion and belief, gender reassignment, and pregnancy and maternity. Only the first 'aim' of the new duty, to eliminate discrimination, harassment and victimisation, will apply to the ninth protected characteristic of marriage and civil partnerships.

'Advance' replaces previous requirements to 'promote' equality, to help organisations recognise that their actions must result in improved outcomes. Advance includes the need for providers to have due regard to:

- **remove or minimise disadvantage experienced by persons who share a protected characteristic**
- **take steps to meet the needs of people who share a protected characteristic**

that are different from the needs of people who do not share the protected characteristic

- **encourage persons with a protected characteristic to participate in public life or any other activities where participation is disproportionately low.**

The House of Lords introduced a key amendment to the Act to make clear that the duty to 'advance' also means that organisations must consider, among other things, that meeting the needs of disabled people may involve taking steps to take account of people's impairments, even where that involves treating disabled people more favourably than other people.

'Foster' can include tackling prejudice and promoting understanding between different groups.



4. Specific duties regulations

As with previous public sector duties, the general duty is underpinned by specific duties to assist organisations to meet the general duty more effectively.

What's changed?

There are two new specific duties:

- **to publish information**
- **to set and publish equality objectives.**

Draft specific duties regulations were proposed in the autumn 2010, following a period of extensive consultation, and laid before parliament in January 2011. However, on the 17th March 2011 the government announced their decision to revise the regulations.

Draft revised specific duties regulations were laid before parliament on 27th June 2011, and debated in the House of Commons on the 11th July 2011. They will come into force following parliamentary approval.

The table on the next pages outlines the key differences between the original January 2011 and the revised June 2011 specific duty regulations.

Table One – Key differences between the January 2011 and June 2011 revised specific duties regulations

| | January 2011 regulations | June 2011 regulations |
|---|--|--|
| Date of release of proposals and regulations | Draft regulations for the specific duties proposed in Autumn 2011 and published and laid before Parliament in January 2011. | Revised draft regulations for the specific duties proposed in March 2011, and published and laid before Parliament in July 2011. |
| Specific duty requirement to publish information | Providers covered by the specific duties must publish sufficient information to demonstrate its compliance with the general public sector equality duty across all of its functions. | As January 2011 regulations, but the word 'sufficient' has been removed. |
| | <p>Published information must include, in particular:</p> <ul style="list-style-type: none"> • information on the effect its policies and practices have had on persons who share a relevant protected characteristic (this will include information on staff, providing organisation has at least 150 staff, and students) • evidence of analysis it undertook to establish whether its policies and practices would further, or had furthered the aims of the general duty, including details of information considered (this would include outcomes of Equality Impact Assessments and the evidence base used to inform discussion) • details of engagement activities. | <p>Published information must include, in particular:</p> <p>(a) information relating to persons who share a relevant protected characteristic who are its employees (providing organisation has at least 150 staff) and other persons affected by policies and practices (for example students).</p> |

Table One (continued) – Key differences between the January 2011 and June 2011 revised specific duties regulations

| | January 2011 regulations | June 2011 regulations |
|---|--|---|
| | Information must be published by 31st July 2011 , and subsequently at yearly intervals. | Information must be published by 31st January 2012 , and subsequently at yearly intervals. |
| Specific duty requirement to publish equality objectives | Providers covered by the specific duties must publish sufficient information to demonstrate its compliance with the general public sector equality duty across all of its functions. | As January 2011 regulations, but the word 'sufficient' has been removed. |
| | <p>Providers covered by the specific duties must prepare and publish equality objectives which it thinks it should achieve in order to further one or more of the aims set out in the general duty;</p> <p>And publish details of the engagement it undertook when developing its objectives with persons whom it considered to have an interest in furthering the aims set out in the general duty.</p> <p>A public authority must:</p> <ul style="list-style-type: none"> • ensure that the objectives it sets are specific and measurable; and • set out how progress towards these objectives should be measured. <p>When developing its objectives, a public authority must consider the information it published (see above).</p> | <p>Providers covered by the specific duties must prepare and publish one or more equality objectives it thinks it should achieve to meet the general duty.</p> <p>Objectives must be specific and measurable.</p> |
| | Objectives must be published before 6th April 2012 and subsequently at least at intervals of not greater than four years beginning with the date of last publication. | Objectives must be published not later than 6th April 2012 and subsequently at least at intervals of not greater than four years beginning with the date of last publication. |

Both sets of regulations require that information be published in a manner that is accessible to the public. This is not defined but in practice this means that the information published by 31st January 2012, and the equality objectives published by 6th April 2012 are:

- **easy to understand for people who do not work at the organisation**
- **made available on websites and in alternative formats on request.**

The Equality and Human Rights Commission, which is responsible for enforcing the equality duties imposed by the government, expressed serious concern with the revised proposals. In their view, the new proposals:

- **‘are likely to increase bureaucratic burdens on public bodies due to the even greater ambiguity of the legal requirements compared to the previous proposals**
- **will not help drive better equality outcomes as the practical steps that support the delivery of this change have been weakened further**
- **will reduce transparency and accountability to citizens, the primary drivers of change and intended beneficiaries**

- **introduces a significant risk that the lack of clarity will leave public bodies at risk of increased challenge, including through judicial review.’**

The Equality and Diversity Forum is a network of national non-governmental organisations working on equality and human rights. These include, for example, Age UK, Refugee Council, Fawcett Society, MIND, Race On The Agenda, Press for Change, RNIB, RNID, Scope, Stonewall, Runnymede Trust, TUC and Unison. The Forum submitted a formal response to the government making clear that they also opposed the changes. They said that ‘legislating to reduce the specific duties to a nominal level will have a perverse effect. It will simply not provide the necessary and sufficient clarity for public authorities as to how they should meet their general duty; the result will be confusion at the local level and inevitably litigation’.

Rather than ensuring minimum compliance, providers might consider it prudent to err on the side of caution and continue to use the January 2011 rather than the revised June 2011 regulations as a framework for helping them to meet the general duty. This ‘best practice’ approach will help ensure they meet the general duty and provide the public transparency on progress in equality and diversity that the specific duties are designed to achieve.

A best practice approach to meeting the specific duty to publish information

A published report on equality information could contain the following sections:

- an introductory paragraph or two from the Principal / Chief Executive / Governors / Trustees. This helps confirm the status of the report as a strategic, whole organisational document endorsed by senior leadership
- information on the effect of policies and practices on employees, who share a protected characteristic. Consider, for example, recruitment, retention, promotion, staff development, grievance, complaints, and incidences and outcomes of harassment / discrimination allegations.
- information on the effect of policies and practices on students who share a protected characteristic. Consider, for example, admissions, attendance, punctuality, retention, achievement, success, participation in enrichment activities, trips and visits, complaints, and incidences and outcomes of harassment / discrimination allegations.
- information on the effect of policies and practices on others who share a protected characteristic
- outcomes from equality impact assessments (now known as equality analysis), including details of information considered when these were carried out. This section could contain, for example, a one or two page summary of the impact assessments carried out during the year, together with the key outcomes from those assessments
- details of engagement activities carried out with staff, learners and others who share a protected characteristic.
- (and from 31 Jan 2013, this report will also need to include progress on achieving equality objectives).

You will want to provide sufficient information to enable an interested person, such as a parent or a representative from the Equality and Human Rights Commission, to make a robust assessment of your organisation's performance on equality, and whether you are meeting the Equality Duty requirements. The purpose of this duty is to bring **greater transparency on progress** in equality and diversity, and the outcomes a provider is working towards, so others can hold the organisation to account.

‘Equality analysis’ is action related to carrying out equality impact assessments. The terminology has altered to reflect a change in emphasis; the intention is for providers to focus more attention on properly analysing the effects of equality and diversity on existing or new policy and practice, and less attention on completing a document, which can be an end in itself.

| | | |
|---|--|---|
| ‘Functions’ includes all a provider does, for example: | | |
| • Marketing, staff recruitment and student admissions | • Self assessment and other quality improvement activities | • Budget decisions, and allocation of resources |
| • Employment practice | • Enrichment, trips and visits | • Information, advice and guidance |
| • Additional learning support | • Procurement, and contracted out services | • Teaching and learning |
| • Estates management | • Partnerships | • Student services. |

Top tips

- **Collecting and publishing information is not an end in itself; information should be analysed and used to eliminate discrimination, advance equality and foster good relations.**
- **Recognise that information is essential to objective setting.**
- **Although not an explicit requirement in the regulations, some narrative within the document will help explain the context of the information published.**
- **Concentrate on collecting and analysing information that matters, not what is easily available.**
- **Try and find a balance on the amount of information you publish. You will not**

want to publish so much information that the reader has difficulty in making sense on your progress on equality. Neither will you want to publish information that only provides a superficial sense of progress

- **Consider ‘cross cutting’ information, for example on race and gender, or age and religion.**
- **Remember you must meet the requirements of the Data Protection Act 1998 and the Gender Recognition Act 2004 when publishing information.**
- **You may find it helpful to publish the action you intend to take to address information gaps, such as the profile and distribution of staff in relation to disability, sexual orientation or religion and belief.**

A best practice approach to publishing equality objectives

You should consider:

- all 'aims of the general duty
- all protected characteristics
- all functions and activities, including employment functions, service delivery, and contracted out functions. Some functions will be relevant to all protected characteristics, such as staff recruitment. Other functions might be only relevant to one 'aim of the duty or to some but not all protected characteristics
- equality information (see above)
- equality analysis, including details of information considered when carrying out analysis
- engagement activities. (Engagement' is a broad term to cover all consultation and involvement activities in the context of equality)

Objectives should be **appropriate**, focusing on the most pressing equality gaps. Providers should also set out how progress will be measured, so it will be important to think about what progress looks like for each equality objective, and how this will be measured and reported.

You can publish information as an individual document or as part of another document, such as an equality strategy or single equality scheme.

Research conducted by Dr Christine Rose, on behalf of the Equality and Human Rights Commission¹ explored practice in the public sector in setting equality objectives. These were some of the key messages:

- **Develop a sound evidence base before identifying, devising and prioritising equality objectives. This ensures an organisation focuses on genuine issues within its own context.**
- **Ensure evidence includes qualitative and quantitative information, for workforce and service delivery.**
- **Provide transparency and clarity about the outcomes of information gathering activities, to demonstrate publicly the reasons for choosing objectives.**
- **Consider how to capture the voice of people whose opinions are rarely identified, for example people with mental health difficulties, gypsies and travellers, and people with learning difficulties, caring responsibilities or on a low income.**
- **Avoid equality objectives that are little more than overarching aims, top-level commitments, or maintenance of current practice. Instead, devise specific objectives that clearly demonstrate how successful implementation might lead to tangible and measurable improvements in equality.**
- **Prioritise objectives to focus on the most significant issues for the organisation's remit. Ensure people who have participated in consultation activities have an opportunity to refine equality objectives.**
- **Recognise that successful engagement is transparent and influential; this means making clear to all involved who participated in engagement activities how people's views influenced the choice of objectives, and how people have been involved in early and final decisions on setting and prioritising equality objectives.**
- **Cross-reference each equality objective with the 'aim' or "aims" of the Equality Duty that the objective is attempting to meet. This ensures that all aspects of the duty have been considered.**
- **Evidence the link between the equality objective and the organisation's strategic or corporate objectives.**

1. Final report to the Equality and Human Rights Commission.

Dr Christine Rose, December 2009

5. Positive action

Will we still need to produce a single equality scheme?

Research shows that developing a single equality scheme can be a bureaucratic process that becomes an end in itself. The Act requires organisations to 'advance' equality – to actually achieve improved outcomes. For this reason, the Act has removed the legal requirement to have an equality scheme in place. However, organisations will now need to develop and publish their equality objectives at least every four years, alongside evidence of engagement activities. Organisations will therefore need to go through a similar process to developing a single equality scheme. For further information, see the section entitled 'frequently asked questions'.

In the past, equality legislation has permitted positive action: policy or practice to increase diversity in the workforce and prevent or tackle occupational segregation.

What's changed? Positive action was generally restricted to recruitment, training or promotion but has now been extended to include **any activity** that helps:

- **address disadvantage experienced by people who share a protected characteristic**
- **meet the needs of people who share a protected characteristic, when these needs are different from those who don't share a protected characteristic**
- **address disproportionately low participation.**

Providers can take positive action in relation to their staff, students or customers using their goods, services or facilities, providing they have some evidence to demonstrate that their actions are proportionate. Evidence does not need to include detailed statistics; for example, evidence could include

outcomes from national research or local consultation.

Positive action is voluntary but providers should bear in mind three key points:

- **Positive action may be a way of showing how a provider is meeting the Public Sector Equality Duty to advance equality.**
- **Ofsted will look at positive action strategies that a provider has taken, and their success, under the inspection of equal opportunities.**
- **Positive action may be a way of avoiding unlawful discrimination, for example providing support for someone undergoing gender reassignment.**

The Act also widens the scope of positive action so that when employers are in a situation where two candidates are equally qualified, the employer can choose to recruit the person from the under-represented

group. The change was one of the more controversial elements of the Act, and sparked a significant (and often hostile) media debate. For example, these are headlines that appeared in two national newspapers:

- **‘White men face jobs ban.’**
(Daily Express)
- **‘No employer in their right mind turns away the best candidate for the job just because of their gender or race.’**
(Daily Telegraph)

The above quotes show how much misunderstanding there is over positive action. The Equality and Human Rights Commission has said:

The candidates in question would have to have been judged to be equal after that [proper selection] process according to an objective and rigorous assessment of their abilities, skills, experience and personal circumstances. In other words, each candidate’s skills, qualifications and aptitude would continue, rightly, to be the most important factors in deciding who to employ.

(Positive Action Briefing. July 2009).

Employers must still, therefore, select on the basis of merit, and must not select a less qualified candidate who is from an under-represented group.

The decision to appoint a person from an under-represented group when faced with

two candidates of exactly the same merit is entirely voluntary. However, the reality is that we often choose people who are ‘like us’ or from groups we have become accustomed to. Widening the scope of positive action in the Act has the potential to break this habit and consequently to help diversify the workforce.

Misunderstandings about positive action can create problems. For example, instead of encouraging staff to see the benefits of a diverse workforce, positive action risks increasing suspicion of tokenism, positive discrimination or ‘political correctness’. Providers should therefore ensure that staff:

- **clearly understand what is meant by positive action and are not misinformed by inaccurate (and sometimes frenzied) media reporting**
- **understand why positive action initiatives are taking place**
- **don’t feel disadvantaged if they are not members of a target under-represented group.**



6. Health and disability-related questions in recruitment and selection

Section 60 of the Equality Act restricts the use of health and disability-related questions during recruitment and selection. Some organisations have used such questions in the past to discriminate against disabled people and this new requirement will help ensure that discrimination – inadvertent or otherwise – does not happen during the recruitment process.

What's changed? The restrictions, for example, will prevent organisations asking about sickness absence on application forms or asking applicants to complete health and disability-related questionnaires before offering a job. Employers can still ask people to complete occupational health questionnaires, providing they are completed after a job has been offered to a candidate.

Are there any situations when you can ask questions about health or disability?

There are some occasions when it is permissible to ask questions about health or disability during recruitment and selection, for example if:

- you are asking questions to find out if an applicant requires reasonable adjustments for the recruitment process, for example for an interview
- you are asking questions for the sole purpose of monitoring, and any

answers are kept completely separate from the recruitment process

- you want to provide an opportunity for applicants to benefit from actions taken to improve disabled people's employment rates, for example if you are a 'two ticks positive about disabled people employer' and therefore guarantee to interview all disabled people who meet the minimum requirements of the job specification
- having a specific impairment is an occupational requirement for a particular job.



7. Employment tribunals

The Act will strengthen the powers of employment tribunals, for example by allowing them to make wider recommendations in discrimination cases that extend the benefits beyond individuals to the rest of the workforce. Seventy per cent of claimants have left the workforce by the time their case goes before an employment tribunal. Extending these powers can help prevent similar types of discrimination from happening again. Employment tribunals may, for example, instruct employers to change policies or to undertake staff training.

Failure to comply could be used as evidence to support subsequent claims made by other individuals.



'Frequently asked questions'

What about the duty to tackle socio-economic disadvantage?

Socio-economic disadvantage is one of the many complex structural and persistent causes of discrimination and inequality in the UK. A person's socio-economic background, status or class, for example, can impact on their ability to get a job, get promoted, or access education, housing or health. The interplay of the above factors can limit people's chances to achieve their full potential and aspirations.

Socio-economic disadvantage can reinforce inequalities associated with a particular protected characteristic. For example 70 per cent of people from black and minority ethnic backgrounds live in the most deprived wards of the country. Disabled people are twice as likely as non-disabled people to live in a low-income household.

The Equality Act had the potential to introduce a new public sector duty to tackle socio-economic inequality, where organisations such as colleges, schools and local authorities would need to work in partnership to consider how they can better target policies and resources strategically to help those who are most disadvantaged. The government announced that it will not be implementing this aspect of the Act.

However, providers can still tackle equality gaps linked to socio-economic inequality. They can also use positive action where these gaps are linked to a protected characteristic. For example, you may be able to use positive action in relation to gender and/or ethnicity to help tackle lower success

rates for white working class young men.

I am worried that we are not going to be able to provide additional support for our disabled learners, as my budget has just been significantly reduced. What should I do?

The Act makes it unlawful for a provider to discriminate against a disabled person:

- **in the arrangements it makes for deciding who is enrolled on a course or provided with the facilities;**
- **the terms on which it offers to enrol a person on the course or to provide the facilities to the person;**
- **by not accepting a person's application for enrolment or for the provision of the facilities;**
- **in the services it provides or offers to provide in relation to the course or facilities.**

(Draft Code of Practice 3.13)

The Act carries across from the Disability Discrimination Act 1995 Part 4 the anticipatory duty to provide reasonable adjustments. This duty is one that goes beyond simply avoiding discrimination. It requires education providers to anticipate the needs of potential students and to take positive steps to ensure disabled students can fully participate in all activities and achieve their aspirations and ambitions with the same degree of dignity and choice as their peers.

This means that providers must:

- **plan ahead, to anticipate the likely adjustments required by disabled learners, considering a full range of impairment types**
- **take a strategic approach to dismantle barriers before they have an impact on individuals**
- **ensure that disability equality is viewed as the shared responsibility of *all* staff**
- **monitor practice to continually improve performance. The duty is an *evolving* one, which means that providers should keep the ways they are meeting the duty under regular review. What was originally considered a reasonable step to take may no longer be sufficient, and further adjustments might then need to be considered.**

Providers cannot justify a failure to make reasonable adjustments. However, they may be able to show that it is not reasonable for them to make adjustments required or requested by a learner. If cost were a factor in decision-making, alongside other relevant factors such as effectiveness and practicability, the organisation would need to show that their **total** resources had been taken into account.

In addition, providers must carry out an equality analysis of the impact of strategic decision-making, including budget plans, to ensure these decisions do not have a

disproportionate impact on people who share a particular protected characteristic.

We have just found out that a student is joining us next term who is in the process of gender reassignment. How do we best support her?

There is a wealth of advice on the LSIS excellence gateway at:

www.excellencegateway.org.uk/edresource

Alternatively, log into the LSIS virtual learning environment, to see 'The 7th strand- **promoting trans equality**'. This is a training and development resource aimed at supporting providers in the learning and skills sector to extend their equality practices to include trans gender equality.

www.leadershiplearning.org.uk

We don't ask staff or learners about their sexual orientation or religion and belief during recruitment. Does the Act mean that we need to do this now?

You should be proactive in either monitoring these areas, or taking steps to engender a culture where this information can be collected. Collecting information on people with a protected characteristic allows you to assess performance and identify potential discrimination or areas of inequality.

However, for many providers these are new areas to collect, and you should seek the advice, in the first instance, from gay and

lesbian staff and learners, and staff and learners of different faiths. This will help you to identify the action you need to take to address this information gap, including action to ensure your culture becomes one where people are happy to disclose information of this nature about themselves. It will be helpful for you to publish the action you intend to take in response to the specific duty requirement to publish information. For further information, see the Equality and Human Rights Commission guidance 'Equality information and the equality duty: a guide for public authorities'. Jan 2011.

The Race Equality Duty required us to carry out staff training. Are there similar requirements for the new Equality Duty?

Apart from the two specific duties to publish information and set and publish equality objectives, it is up to each provider to decide how best to meet the requirements of the general duty. However, case law before the Equality Act 2010 will still be relevant. Case law has established that public authorities must ensure their staff are aware of their equality obligations. So you must make sure that staff, including managers and governors, are aware of these legal duties.

Am I right in thinking that we don't have to worry about carrying out equality impact assessments any more?

You still need to carry out equality impact assessments, although legislation has changed terminology to call this activity 'equality analysis'. The change is to encourage

providers to focus **more** attention on properly analysing the effects of equality and diversity on existing or new policy and practice, and **less** attention on completing a document, which can be an end in itself. Although there is no longer a specific duty to carry out equality impact assessments, the requirement to publish outcomes of such assessments will help ensure that this activity still features as part of everyday decision-making. It is also important to bear in mind that case law before the Equality Act 2010 will still be relevant.

Case law has established that:

- **impact assessments are an important way that providers can ensure they meet their legal equality duties**
- **outcomes from such an analysis of impact should be clearly documented as an accurate and detailed record of analysis**
- **equality analysis should be carried out at the beginning of a review or development, so that any negative impact can be addressed before decision-making takes place.**

For further information, see the Equality and Human Rights Commission guidance 'Equality analysis and the equality duty: a guide for public authorities.' Jan 2011.

We have spent ages developing a single equality scheme and action plan. In the light of the new duties, was this just a waste of time?

Our single equality scheme has become a very large and unwieldy document and I don't think that many staff are aware of its existence. Shall we just start again and discard the current document?

Many providers have developed and are implementing a single equality scheme and action plan. It was never the intention of the equality duties to encourage providers to develop bureaucratic and unwieldy documents that don't deliver much in the way of improvements. The very best schemes are powerful strategic documents for driving forward change, providing useful evidence to Ofsted of strategic planning and action on equality and diversity. You should therefore think carefully about abandoning your equality scheme completely; instead take full advantage of the freedom to streamline your scheme to focus on driving forward improvement, and achieving genuinely meaningful outcomes for your organisation. You can use your scheme to publish your equality objectives plus evidence of engagement. You can stay with the title of a single equality scheme or choose another name for this document, for example you can call it an equality strategy.

Will we still have to meet the race, disability and gender equality duties when the new Public Sector Equality Duty comes into force?

No, the new Public Sector Equality Duty replaces the existing race, disability and gender equality duties. However, many of the requirements of the original duties are incorporated into the new duty,

such as the need to eliminate discrimination and harassment.

When will the Act come into force?

The main parts of the Act came into force in October 2010, and the Public Sector Equality Duty will come into force from April 2011.

Clear leadership from senior management is crucial to ensuring that you meet the duty. This involves taking responsibility for compliance with the duty, taking account of equality analysis when making decisions, taking the duty into account in strategic planning, building it into partnership working, informing and reminding staff about the duty, and designating clear staff roles for implementation. It can involve allocating resources for advancing equality, including equality targets in staff appraisals, requiring updates on action taken and outcomes from the duty, and promoting the benefits of the duty in public communication. It is good practice to give operational responsibility for coordinating work on the equality duty to staff at a senior level.

The duty involves generating a culture change across your organisation where equality issues are viewed as a matter for everyone.

The essential guide to the public sector equality duty. Equality and Human Rights Commission Jan 2011

Where can we get further support?

LSIS will continue to work with the sector to support the implementation of the Act. Bespoke support can be provided for this and other areas of equality and diversity. For example, our experienced LSIS associates can visit your organisation, discuss and provide solutions to issues, and tailor training and support to address challenges that you face.

We provide training programmes for senior managers, governors, human resource managers, equality and diversity managers and practitioners on a range of topics such as:

- **equality, diversity and governance**
- **inspection of equal opportunities**
- **carrying out equality impact assessments**
- **embedding equality and diversity in curriculum planning and teaching and learning delivery**
- **specific areas of equality, for example race, transgender, disability or sexual orientation equality.**

We also deliver ‘train the trainer’ modules, enabling you to deliver high quality training in your organisation.

Make the most of our expertise. To find out more about the support we can provide, visit our website at www.lsis.org.uk or contact the Equality and Diversity Coordinator on 024 7662 7738 or email enquiries@lsis.org.uk.

Disability equality policy

LSIS is committed to promoting equality for disabled people and we strive to ensure that all our communication and learning materials are available in various formats including large font, audio and braille. Please contact us at enquiries@lsis.org.uk or 024 7662 7953 to request an alternative format.

Friars House, Manor House Drive
Coventry CV1 2TE
t 024 7662 7900
e enquiries@lsis.org.uk
www.lsis.org.uk

Friars House, Manor House Drive
Coventry CV1 2TE
t 024 7662 7900
e enquiries@lisis.org.uk
www.lisis.org.uk

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