Equality

Introduction

People can experience discrimination as a result of certain personal characteristics. Equality legislation is designed to protect people from this discrimination and to prevent it happening in the first place. Legislation for the purpose of equal opportunities is reserved to the UK Government.

In the past, different laws covered different characteristics. For example, race discrimination was covered by the Race Relations Act 1976, sex discrimination by the Sex Discrimination Act 1975 and disability discrimination by the Disability Discrimination Act 1995. All of these acts have now been repealed.

Equality Act 2010

The UK Government’s Equality Act 2010 brought equality legislation into one Act. It restated, simplified and, where appropriate, harmonised earlier equality legislation. The bulk of the Act came into force in October 2010.

The characteristics covered by the Equality Act 2010 are: age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex and sexual orientation. People are protected from discrimination on the basis of these characteristics in areas such as employment, education, access to goods and services and the exercise of public functions, and membership of clubs and associations.

Equality legislation defines the particular characteristics covered and also defines what is meant by discrimination. The definition of discrimination includes direct discrimination, indirect discrimination, harassment and victimisation. There is also a duty to make reasonable adjustments for disabled people. The legislation sets out enforcement procedures to help people to assert their rights. Definitions can be found at www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/glossary-of-terms/

The Equality Act talks about discrimination ‘because of’ protected characteristics. This means that people do not themselves need to have the characteristic in order to be protected from discrimination. For example, people are protected from discrimination because of their ‘association with’
someone who has a protected characteristic, say in the case of the carer of a disabled person. And people are protected from discrimination because they are ‘perceived to’ have a protected characteristic.

The degree of protection across different characteristics is not entirely consistent, with exceptions for some characteristics in relation to specific areas. For example, marriage and civil partnership is a protected characteristic only in the area of employment. Other exceptions permit discrimination in certain prescribed circumstances.

Public sector equality duty

In addition to individual rights, equality legislation has introduced a public sector equality duty in order to ensure public authorities are proactive in tackling discrimination. The duty places an obligation on public authorities to take action to eradicate discrimination, to proactively promote equality of opportunity, and to foster good relations across relevant protected characteristics. The intention is to prevent discrimination happening in the first place by changing the culture of public authorities so that they think about, and take action on, equality as part of their mainstream business.

The duty has a two-tier structure – a general duty set out in the Equality Act 2010, and specific duties set out in regulations made by Scottish Ministers. The purpose of the specific duties is to set a framework for the better performance of the general duty. The new public sector equality duty in the Equality Act 2010 came into force in April 2011. Scottish Ministers have to consider further the imposition of specific duties on public authorities in Scotland.

Historically, there were three separate duties, introduced over the last 10 years – race in 2002, disability in 2006 and gender in 2007. The Equality Act 2010 replaced these with a new single equality duty. This new duty covers age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The general duty

The general duty in the Equality Act 2010 has three main elements. It requires public authorities to have ‘due regard’ to the need to:

(a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

(b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; in particular, by:

• removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
• taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
• encouraging persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it; in particular by:

• tackling prejudice
• promoting understanding.

Specific duties

In addition to the general duties there are specific duties. These are set out in Regulations made by Scottish Ministers and apply to some public authorities, including local authorities, the NHS, further and higher education institutions, the police and fire services, licensing authorities, government departments and agencies, and many NDPBs (non-departmental public bodies).

The specific duties set an administrative framework to enable the better performance of the general duty. Scottish specific duties for the new single equality duty have not yet been made. A consultation on revised Regulations for the specific duties will end in November 2011 and it is expected that these will be made later in the year.

The consultation on the revised Regulations for the specific duties can be found on the Scottish Government’s website: www.scotland.gov.uk/Publications/2011/09/09134605/0

Impact assessment

Using impact assessments to systematically consider equality issues is one of the key ways in which public authorities can ensure that they meet the public sector equality duty in the development and delivery of their policies, practices and services. The revised specific duties out for consultation currently require public authorities (covered by the Regulations) to assess the impact of proposed policies and practices, including changes to and revisions of its existing policies and practices. There is a proposed requirement to publish the results of impact assessment and the importance of evidence received from equality groups has been made more explicit.

Further information on the Equality Act (2010) including the Codes of Practice on employment; services, public functions and associations; and equal pay can be found on the Equality and Human Rights Commission website: www.equalityhumanrights.com/legal-and-policy/equality-act/
Human rights

Introduction

Human rights are the basic rights and freedoms that everyone is entitled to. We are all entitled to human rights in order to live with dignity.

Human rights demand recognition and respect for the inherent dignity and value of every human being, and provide the shared values as well as the legal basis to ensure that everyone is protected against abuses that undermine their dignity, and give the opportunities they need to realise their full potential, free from discrimination.

Human rights belong to everyone, everywhere, regardless of nationality, sexuality, gender, race, religion or age. The foundation of modern human rights is the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948.

The European Convention on Human Rights

The European Convention on Human Rights (ECHR) was drafted by the nations of the Council of Europe (including the UK) in the aftermath of World War II. The Council of Europe was founded to defend human rights, democracy and the Rule of Law. The Convention allows people who feel their rights have been violated by a state party (a national government) and who cannot get a remedy at the national level to take their case to the European Court of Human Rights.

The Human Rights Act

The UK has incorporated into UK law most of the rights in the European Convention through the Human Rights Act 1998, which came into force in October 2000. The Act gives people in Scotland the opportunity to have their human rights legal case heard in a Scottish court. It is also intended to bring about a human rights culture – placing respect, protection and fulfilment of human rights at the heart of public service.

There are three main ways in which the Human Rights Act should impact on practice of public authorities:

- All public authorities must act compatibly with the rights contained in the Human Rights Act in everything that they do.

- Anyone who is a ‘victim’ under the Human Rights Act can bring a claim against a public authority in the ordinary Scottish courts. To be a victim, a person must be directly affected by the act or omission, which is the subject of the complaint. Anyone in the UK can be a victim – the Act is not limited to UK citizens. Wherever possible, existing laws that health bodies as public authorities deal with on a day-to-day basis must be
interpreted and applied in a way that fits with the human rights in the Human Rights Act.

- The Human Rights Act contains 15 rights, six of which are particularly relevant to health (in bold and included in a table of examples in Appendix 6). The rights contained within the Human Rights Act are:

  o **Article 2**: the right to life
  o **Article 3**: the right not to be tortured or treated in an inhuman or degrading way
  o Article 4: the right to be free from slavery or forced labour
  o **Article 5**: the right to liberty and security
  o **Article 6**: the right to a fair trial
  o Article 7: the right to no punishment without law
  o **Article 8**: the right to respect for private and family life, home and correspondence
  o **Article 9**: the right to freedom of thought, conscience and religion
  o Article 10: the right to freedom of expression
  o Article 11: the right to freedom of assembly and association
  o Article 12: the right to marry and found a family
  o Article 14: the right not be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention
  o Protocol 1, Article 1: the right to peaceful enjoyment of possessions
  o Protocol 1, Article 2: the right to education
  o Protocol 1, Article 3: the right to free elections

Each of the rights in the Human Rights Act is either: absolute, limited or qualified.

**Absolute** rights cannot be interfered with under any circumstances, i.e. they cannot be balanced against any public interest. These include articles 2 and 3.

**Limited** rights are subject to predetermined exceptions. These include articles 5 and 6.

**Qualified** rights can be interfered with where there is legal basis for the interference, where it is in pursuit of a legitimate aim and where the interference is necessary (a proportionate means of achieving the legitimate aim). These include articles 8 and 9.

Any interference with or limitation on a Convention right must have a legal basis. Even if the interference or limitation is according to the law, it must also be proportionate.
Further information and guidance can be found at the Scottish Human Rights Commission [www.scottishhumanrights.com](http://www.scottishhumanrights.com) and Human Rights Commission [www.equalityhumanrights.com](http://www.equalityhumanrights.com)