



Key Changes under the Equality Act

The Government has confirmed that the Equality Act 2010 will come into force on 1 October 2010; the legislation consolidates nine separate pieces of law (mainly relating to discrimination) into one single Act. It is still unclear whether parts of the Act will come into force at all, but the main changes are outlined below.

The concept of associative discrimination will now be applied across all protected characteristics. Associative discrimination occurs where a person, 'A', discriminates against another, 'B', on the grounds that B is associated with an individual who holds a protected characteristic. This provision follows a case in 2009 where the mother of a disabled child succeeded in arguing she had been discriminated against on the basis of her son's disability.

Perceptive discrimination is also to be applied across protected characteristics. This occurs where a person, 'A', is discriminated against on the basis that it is perceived that he holds a protected characteristic. For example, a heterosexual man who is taunted about being homosexual will now be protected under the Equality Act.

There was significant criticism about the state of disability discrimination provisions prior to the Equality Act, most prominently relating to disability-related discrimination. Therefore, 'indirect discrimination' will now be applied across all protected characteristics, defined below:

"A person (A) discriminates against another (B) if A applies B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

Furthermore, claimant's seeking to succeed with a claim in disability discrimination will have a less burdensome hurdle to overcome to prove they are 'disabled' under the Act. Previously, an individual had to show that their disability adversely affected a particular 'capacity' from a list given in the legislation (such as mobility or manual dexterity); this no longer applies.

A number of other changes are brought in by the Act, including:

- The removal of the requirement for a comparator to be used in victimisation cases
- The definition of harassment now also covers associative and perceptive cases and employers can be liable for harassment from third parties in the workplace across all protected characteristics.
- A specific provision is made for claims of combined discrimination based on a combination of no more than two protected characteristics.
- The concept of positive action is extended to allow employers to recruit or promote someone from an under-represented group providing that they have a choice between two or more equally suitable candidates.
- Pre employment health enquiries will be outlawed unless they are made for prescribed reasons.
- There will be a power to require large employers to report on their gender pay gap (although it is unclear when this will come into force and for what size of employer).

One proposal which will not be adopted under the new legislation is for any further protected characteristics to be added. It remains to be seen whether characteristics such as obesity will fall to be protected in the future; the topical nature of this condition means the campaign for such protection continues to gather pace.