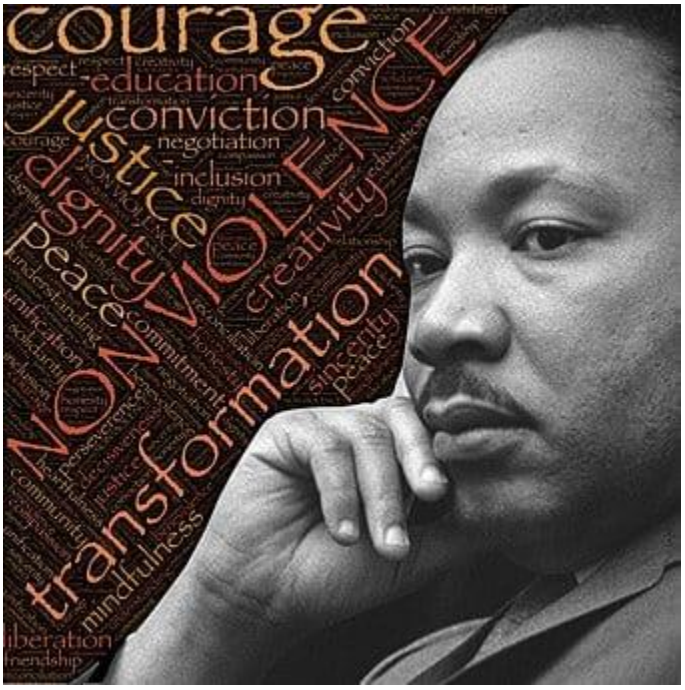
# The Equalities Story, 1965-2010

## Summary of the first five stages

Forty-five years of lobbying and clarifying; key acts of parliament; the key concept of due regard; the international context.




### Universal Declaration of Human Rights

Equalities legislation in its current form was developed in the UK in the period between 1965 and 2010, and culminated in the Equality Act 2010. There were comparable acts of parliament and official guidance documents in many other countries.

Internationally, the principal dimensions and strands of inequality addressed by legal instruments include — though with different emphases in different jurisdictions and at different times and sometimes with different terminology — age, belief, colour, conscience, culture, disability, ethnicity, ethno-religious heritage, family and caring responsibilities, gender, HIV/AIDS, language, marital status, pregnancy, race, religion, sexual identity, social origin and transgender.

### 'Protected characteristics'

In Britain, nine of these dimensions were explicitly named in the Equality Act 2010 as protected characteristics requiring special attention — age, disability, gender, marriage, pregnancy, race, religion and belief, sexual orientation, and transgender. In other jurisdictions, for example in post-apartheid South Africa, the preferred terminology referred not to 'protected characteristics' but to 'prohibited grounds for discrimination'. If this or similar terminology had been adopted in the UK much confusion and misunderstanding might well have been avoided, and events and trends after 2010 might well have been less toxic and disappointing.

## THE EQUALITY STORY PRIOR TO 2010

### Stage One: towards formal equality

The Race Relations Act 1965 was a response to campaigns by, among others, the Movement for Colonial Freedom (MCF) and the Campaign Against Racial Discrimination (CARD). Its purpose was to deal with the then widespread overt discrimination against recent immigrants from the Caribbean and South Asia, but was seen by critics as a kind of compensation or sweetener for the Commonwealth Immigrants Act 1962, which had made it more difficult for Black and Asian migrants to come to the UK. It covered direct discrimination but only in places of public resort, for example pubs and hotels. It also established the Race Relations Board to investigate complaints through conciliation committees.

### Stage Two: towards extension of formal equality

The Race Relations Act 1968 was similarly concerned with formal equality. It was limited to direct discrimination but extended coverage to employment, housing, goods and services. Enforcement was still through local conciliation committees, and voluntary bodies in 40 industries, but if conciliation failed the Race Relations Board could itself bring proceedings in a designated county court. Campaign groups mobilised political pressure for this new Act by commissioning two reports, one on the extent of racial discrimination and the other on anti-discrimination legislation in the USA and Canada. The Home Secretary, Roy Jenkins, whose special adviser was Anthony Lester (later Lord Lester of Herne Hill QC and co-founder of the Runnymede Trust), steered the measure through Parliament, but once again there was an accompanying negative element, in this instance the restrictive Commonwealth Immigrants Act 1968 whose purpose was to halt the influx of refugees from East Africa.

### Stage Three: towards substantive equality

The third generation of equalities legislation started with the Equal Pay Act 1970 and the Sex Discrimination Act (SDA) 1975. Both were concerned with discrimination on grounds of gender and features of the SDA included the concept of indirect discrimination borrowed from the USA, and provisions permitting positive action. Also there was an individual right to claim compensation for unlawful discrimination in tribunals and courts. The Equal Opportunities Commission (EOC) was created to assist individuals and to undertake strategic enforcement.

The SDA model was adopted by the Race Relations Act 1976, deliberately introduced later than the SDA since the rights of women were deemed by the government to be more popular, or anyway less unpopular, than those of ethnic and 'racial' minorities. The Commission for Racial Equality (CRE) replaced the Race Relations Board and Community Relations Commission (CRC).

A further step towards substantive equality occurred with the Disability Discrimination Act 1995 (DDA). Growing political activism by disability organisations had been seeking rights not charity, and it was under a Conservative government that the 1995 Act established individual rights for disabled people to claim equal treatment. Further, it was recognised that measures to achieve substantive equality needed to be underpinned by a duty to make reasonable adjustments. In 2000, the Disability Rights Commission (DRC) was established.

### Stage Four: towards comprehensive equality

The fourth stage resulted from Article 13 of the Treaty of Amsterdam (1997) and the implementation of directives on age, religion or belief, and sexual orientation. At the same time there were growing pressures within Britain for an extension of anti-discrimination legislation in employment from campaigners for LGBT equality; for an end to age discrimination; and against forms of racism and intolerance such as Islamophobia. Without the Treaty of Amsterdam directives it is unlikely that extensions of domestic legislation towards comprehensive equality would have been made at that time.

### Stage Five: towards transformive equality

The fifth generation of equalities law was built on the foundations laid during the fourth stage and was crystallised by the Equality Act 2010. It was sparked in part by pressures from the US and from civil rights activists in Northern Ireland, as articulated by the Fair Employment and Treatment (Northern Ireland) Order (FETO) in 1998 and the Northern Ireland Act 1998, implementing the Belfast/Good Friday Agreement. Positive duties were imposed on public bodies in Northern Ireland to have due regard for the need to mainstream equality into the exercise of all their functions, and to do this not only between Protestant and Catholic communities but also in respect of age, disability, gender, marital status, race and sexual orientation.

The approaches developed in Northern Ireland crossed the sea to Great Britain and had a profound influence on the requirements set out in the Race Relations Amendment Act 2000. The emphasis on mainstreaming was also greatly reinforced by the findings of the Stephen Lawrence Inquiry, which included an analysis of the concept of institutional racism. Similar public sector positive duties of public bodies, both general and specific, were introduced with regard to disability in 2005 and gender in 2007.

The Equality Act 2010, to summarise, was the culmination of 45 years of legislative activity and reflected initiatives and insights developed not only in Great Britain but also in Europe, Northern Ireland, the United Nations and the United States. It introduced a decade of action and inaction around the interpretation and implementation of specific duties intended to focus and support the general duty which it imposed on public bodies to have due regard for the Act's aims.

## The concept of due regard

'Without scheming to do wrong', observed the central character in Jane Austen's novel Pride and Prejudice, 'or to make others unhappy, there may be error, and there may be misery. Thoughtlessness, want of attention to others' feelings, and want of resolution, will do the business.' The legal term for the opposite of thoughtlessness and lack of resolution, and for the corresponding presence of balancing all and bringing all to mind, is 'due regard'. It appeared at, for example, section 76A of the Sex Discrimination Act 1975, section 71 of the Race Relations Act 1976 and section 49A of the Disability Discrimination Act 1995, and then, in due course, section 149 of the Equality Act 2001.

But as the parliamentary bill that would become the Equality Act 2010 was being finalised in early 2010, there was still fundamental debate and disagreement in Parliament about whether the concept of due regard would be sufficient to – quoting Jane Austen's phrase again – 'do the business'. In a speech in the House of Lords in March 2010, Lord Ouseley passionately argued that the concept of due regard would fail to diminish inequalities of outcome throughout British society. Speaking on behalf of a wide range of equality organisations, which between them had access to substantial legal expertise, and in the light of his own distinguished career in local government and as chair of the Commission for Racial Equality, Lord Ouseley maintained that the due-regard approach in existing race, gender and disability duties 'has got us to where we are now, but the proposed duty … takes us no further'. He continued:

> What we have now are volumes of equality strategies, schemes and policies, but not a great many desired and required outcomes that add up to recorded equality results. Yes, there are statements of intent, declarations, aspirations, commitments, warm words, policy reviews and mountains of reports, all in order to satisfy the requirement to have 'due regard' … but that standard of due regard is, in my view, woefully inadequate.

Replying to Lord Ouseley's worry that the concept of due regard was woefully inadequate, the government spokesperson, Baroness Thornton, promised that his concerns would be met by forthcoming proposals for specific duties. The general duty of due regard, she said, would be underpinned, clarified and focused by specific duties designed to assist better performance of it:

In the light of this reassurance, Lord Ouseley withdrew his proposal to amend the bill under consideration. His concerns would be met, he agreed, if the proposed specific duties were to be as Baroness Thornton outlined, namely to develop and publish measurable objectives, to report progress and to focus on equality outcomes. A few weeks later, the bill received royal assent as the Equality Act 2010.

SOURCES

This is one of three brief summaries of equalities legislation in Britain between 1965 and 2024 which are published in March 2023 at www.insted.co.uk. All three draw on material in two lengthy academic articles, as follows:

Richardson, R. (2022) 'Education and equalities in Britain, 2010–2022: due regard and disregard in a time of pandemic'. *London Review of Education*, 20 (1), 21.

Richardson, R. (2023) 'Racial Justice and Equalities Law: progress. pandemic, and potential' in COVID-19 and Racism: counter-stories of colliding pandemics, edited by Vini Lander, Kavyta Kay and Tiffany R. Holloman, Bristol University Press, May 2023.

Both of these contain extensive bibliographies and academic references.

The five introductory stages of legislation outlined above are described at much greater length by the distinguished legal scholar Sir Bob Hepple QC (1934—2015) in *Equality: the legal framework*, Bloomsbury Publishing, 2014.