

# The changing legal framework

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## ***Introductory notes***

At present (autumn 2009) there are three major pieces of equality legislation affecting schools in Britain, concerned respectively with disability, ethnicity and gender.

On 27 April 2009 the government published proposals for simplifying and streamlining the duties which schools and other public bodies must fulfil. It is expected that these will be incorporated into the Equality Act 2010.

This paper summarises the duties currently in force. The requirements in them distinguish between a) 'the general duty' and b) 'specific duties'. A further distinction is drawn between a) specific duties concerned with policy development and service delivery and b) specific duties concerned with employment.

The three frameworks are described below. In addition, towards the end of the chapter, there is brief information about several other pieces of legislation.

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## **Disability equality**

### ***The general duty***

The Disability Discrimination Act 1995, as amended by the Disability Discrimination Act 2005, places a general duty on public authorities to promote disability equality. The duty came into force on 4 December 2006 and requires public authorities to:

- promote equality of opportunity between disabled persons and other persons
- eliminate unlawful discrimination
- eliminate harassment of disabled persons that is related to their disabilities
- promote positive attitudes towards disabled persons
- encourage participation by disabled persons in public life
- take steps to take account of disabled persons' disabilities, even where that involves treating disabled people more favourably.

### ***Specific duties***

The specific duties relating to policy development and service delivery require public authorities to:

- produce and publish a disability equality scheme (DES) demonstrating how they intend to fulfil their general and specific duties
- involve disabled people in the development of the scheme
- produce an action plan setting out the key actions an authority will take to promote disability equality

- explain the methods they use for assessing the impact of their policies and practices, or the likely impact of their proposed policies and practices, on equality for disabled persons
- assess and consult on the likely impact of proposed policies on the promotion of disability equality
- monitor policies for any adverse impact on the promotion of disability equality
- publish the results of these assessments, consultation and monitoring
- report annually on the progress of the action plan
- review the scheme every three years.

The specific duty covering an authority's role as an employer is to monitor the effect of its policies and practices on disabled persons, and in particular the effect on the recruitment, development and retention of disabled employees.

## **Ethnicity equality**

In 2001, the Race Relations Act 1976 was amended to give public authorities a new statutory duty to promote race equality.

### ***The general duty***

The general duty requires public authorities to have due regard to the need to:

- eliminate unlawful racial discrimination
- promote equality of opportunity
- promote good relations between persons of different racial groups.

### ***Specific duties***

The specific duties relating to policy development and service delivery are to do with the content of a race equality scheme (RES). Schemes should set out an authority's functions and policies, or proposed policies, that are assessed as relevant to the general duty to promote ethnicity equality and should set out an authority's arrangements for:

- assessing and consulting on the likely impact of its proposed policies on the promotion of race equality
- monitoring its policies for any adverse impact on the promotion of race equality
- publishing the results of such assessments and consultation
- ensuring public access to information about the services that it provides
- training staff in connection with the general and specific duties
- reviewing the scheme every three years.

The specific duties covering an authority's role as an employer are to:

- monitor by ethnicity the numbers of staff in post and the applicants for employment, training and promotion.

- monitor by ethnicity the numbers of staff who receive training; benefit or suffer detriment as a result of performance assessment procedures; are involved in grievance procedures; are the subject of disciplinary procedures; cease employment
- report and publish annually the results of staff monitoring, and actions taken towards achievement of overall ethnicity equality objectives.

It should be noted that the specific duties for educational establishments are slightly different in their phrasing from those affecting other public bodies.

## **Gender equality**

### ***The general duty***

The Equality Act 2006 amended the Sex Discrimination Act 1975 to place a statutory duty on all public authorities, when carrying out their functions, to have due regard to the need to:

- eliminate unlawful discrimination and harassment
- promote equality of opportunity between men and women.

### ***Specific duties***

The specific duties relating to policy development and service delivery require public authorities to:

- produce and publish a gender equality scheme (GES) showing how they will meet the general and specific duties and setting out their gender equality objectives
- gather and use information on how their policies and practices affect gender equality
- assess the impact of their policies and practices, or the likely impact of their proposed policies and practices, on equality between women and men
- consult stakeholders in the development of the scheme
- assess functions and policies, or proposed policies, which are relevant to gender equality
- implement the actions set out in the scheme within three years
- report annually on the progress of the action plan
- review the scheme every three years.

The specific duties covering an authority's role as an employer are to:

- consider the need to have objectives that address the causes of any differences between the pay of men and women that are related to their sex
- gather and use information on how its policies and functions affect gender equality in the workforce.

The gender duty is intended to shift the burden from the individual having to make a complaint about unequal treatment to the public body having to demonstrate that it is taking active steps to promote equality. The duty is also important as it highlights issues of multiple discrimination: women, men and transgender people may suffer

discrimination and unequal treatment not only on the basis of their gender, but also on the basis of their age, disability, ethnicity, sexual identity and religion or belief.

## **Other legislation**

At present (autumn 2009) requirements relating to other equality and diversity strands are not as detailed as for disability, ethnicity and gender. The relevant laws and regulations are summarised briefly below.

### ***Employment Equality (religion or belief) Regulations 2003***

These regulations, which came into force in December 2003, apply to vocational training and all facets of employment, including recruitment, terms and conditions, promotions, transfers, dismissals and training. They make it unlawful on the grounds of religion or belief to discriminate directly or indirectly against anyone, subject someone to harassment, victimise someone because they have made or intend to make a complaint or allegation or intend to give evidence to a complaint of discrimination on the above grounds or to discriminate or harass someone in certain circumstances after the working relationship has ended.

### ***Part 2 of the Equality Act 2006***

Part 2 of the Equality Act 2006 makes it unlawful for providers of goods, facilities or services to discriminate on grounds of religion or belief. It came into force in April 2007.

### ***Employment Equality (sexual orientation) Regulations 2003***

These regulations, which came into force in December 2003, apply to vocational training and all facets of employment, including recruitment, terms and conditions, promotions, transfers, dismissals and training. They make it unlawful on the grounds of sexual identity to discriminate directly or indirectly against anyone; subject someone to harassment, victimise someone because they have made or intend to make a complaint or allegation or intend to give evidence to a complaint of discrimination on the above grounds; or to discriminate against or harass someone in certain circumstances after the working relationship has ended.

### ***Human Rights Act 1998 and Article 14 of the European Convention on Human Rights***

Article 14 refers to the prohibition of discrimination and states that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

### ***Gender Recognition Act 2004***

The Gender Recognition Act 2004 provides for the legal recognition of a transsexual person in their acquired gender and their opportunity to acquire a new birth certificate for their new gender, known as a gender recognition certificate (GRC), which replaces the original birth certificate in all official documentation. The holder of a GRC is not obliged to inform their employer that they have one, but if they choose to do so this information on their gender history must be clearly established as protected information. Trans people are protected by the Sex Discrimination Act 1975, as amended by the Sex Discrimination (Gender Reassignment) Regulations 1999 and the Sex Discrimination (Amendment of Legislation) Regulations 2008.

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### ***Employment Equality (Age) Regulations 2006***

From 1 October 2006, the Employment Equality (Age) Regulations make it unlawful to discriminate against workers, employees, job seekers and trainees because of their age. The regulations cover recruitment, terms and conditions, promotions, transfers, dismissals and training.

### ***The Equality Act (Sexual Orientation) Regulations 2007***

The Equality Act (Sexual Orientation) Regulations 2007, made under section 81 of the Equality Act 2006, make it unlawful for providers of goods, facilities or services to discriminate on grounds of sexual identity. They came into force in April 2007.

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