

The Equality Act 2010

Issues for the Voluntary and Community Sector

In October 2010 most of the new Equality Act will come into force, with the full Act being phased in over the next three years.

This article gives a broad overview of the parts of the Act which have particular relevance for the Voluntary and Community sector.

The new Act spells out the specific grounds on which the law will protect individuals against discrimination – these grounds are called **protected characteristics**. These **protected characteristics** are: age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

In general, it becomes unlawful to discriminate, directly or indirectly, against individuals on any of these grounds, although there are still some variations and exceptions. Protection is being extended to cases where people are thought to have a protected characteristic (such as being gay) even if they do not.

The Act broadly applies equally to all recognised equalities groupings, although there are a few exceptions, such as in regard to religion. Some aspects of

the Act will be gradually phased in, such as the outlawing of discrimination against adults on the grounds of age from 2012.

Issues for charities

In the past, the Sex Discrimination Act allowed for charities to be set up and run for and by women, for example.

Part 14 (subsections 193-194) set out how some charities can continue to benefit only those people who share a certain **protected characteristic**. This **must be** in line with the charity's governing documents.

An example would be that a charity wanting to restrict benefits to disabled people only would have to demonstrate that:

- i. it could be justified because it is a means towards achieving an aim that is, in itself, generally lawful

and/or

- ii. that the intention is to compensate for, or prevent, disadvantage affecting disabled people.

Under the Charities Act 2006, an organisation has to prove there is a general public benefit as a result of its work even if this is with one protected group, for example

people sharing a particular impairment.

In this example, the charity's beneficiaries can only be limited to disabled people where the purpose is to meet a charitable **need** of disabled people.

What this means is that a charity's 'special focus' on a particular grouping can only continue to be justified and lawful:

- where this special focus is provided for in the charity's Objects
- where the people in the group of beneficiaries continue to suffer material disadvantages due to continuing discrimination in society
- where there continues to be a charitable need and a public benefit in continuing with the 'special focus' work

There are some special rules in relation to religion and belief.

A Need for Further Guidance

There is already some concern that the Act may eventually lead to a loss of diversity within the sector.

The requirement for charities to **justify** why their activities are restricted to a particular group of people (as explained in the

criteria above) may cause some charities to worry about whether their Objects remain lawful or whether their activities meet the new requirements for exemption. **New guidance** on this should be published by the **Charity Commission** and the **Equalities and Human Rights Commission** this autumn.

Clubs and Associations

Part 7 of the new Act widens anti-discrimination law to cover Associations (bodies with formal rules of membership), whether or not they are incorporated, that have 25 or more members. Discrimination against members, and potential members, guests on all **protected** grounds is outlawed – except that of marriage/civil partnership status. Protection from harassment within associations is also widened, but does not include religion or belief, or sexual orientation.

Importantly, Schedule 16 of the Act states the circumstances where it remains lawful to limit membership of an association to people who share a **protected characteristic**, but this cannot include being a particular ‘colour’, and there are special rules regarding pregnant women.

General Changes in Lawful Practice

Anti-discrimination law covering service provision becomes harmonised; this generally applies to any charity providing

goods, services, premises and facilities. There are some exceptions, for example, for religious organisations in relation to religion/belief and sexual orientation.

A new **General Equality Duty** on public bodies applies to Voluntary and Community Sector (VCS) organisations delivering public functions and services under contract. The new duty means public authorities must proactively consider the full range of equalities criteria when awarding contracts – this may create some new opportunities for VCS organisations.

In the employment field, a requirement for a person to have a **protected characteristic** will only be legal if it is crucial to the post and is towards achieving a legitimate aim. Protection for employees and job applicants against harassment is widened. Only in special cases and for particular reasons will it be lawful to ask questions about any candidate’s health before a job offer.

It is essential that organisations review their **equality and diversity policies** to ensure they comply with the new Act. Look out for training opportunities and specialist briefings. In particular it is important to get detailed information or advice relating to special provisions and specialist areas regarding religion/ belief, education and disability law.

Summary

The general effect of the new Equality Act is to simplify and strengthen the law of discrimination and harassment. In some ways VCS organisations may feel an increasing tension between “diversity” policies that seek to differentiate between groupings of people to ensure their needs can be met, and the new Equality Act that makes it clear that direct or indirect discrimination **against** certain groupings of people is unlawful.



Still confused?

Training session:

The Equality Act 2010 – what it means for the VCSE

Wednesday 17 November, Bristol.

See page 17 for details or visit:

www.voscur.org/training



Visit: www.voscur.org/equalityact2010 for further information on the Equality Act.



Visit: www.acas.org and follow the links to the Equality Act for employer guidance.

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