

## CAMBRIDGE CITY COUNCIL

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REPORT OF: Alison Kemp, Performance Manager

TO: Equality Panel

14/6/2010

WARDS: All

### **THE EQUALITY ACT 2010**

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#### **1 INTRODUCTION**

- 1.1 The Equality Act received Royal Assent on 8 April 2010. The main parts of the Act are due to come into force in October 2010, with full implementation by April 2012.
- 1.2 The Act brings together all the existing strands of equality and discrimination legislation, with the aim of clarifying existing law, extending it to cover some anomalies in existing discrimination law, and creating a stronger set of obligations on public bodies to promote equality.

#### **2. RECOMMENDATIONS**

- 2.1 That the Equality Panel notes the provisions under the Act and in particular those that will impact on or require action by the City Council and its partner organisations.

#### **3. BACKGROUND**

- 3.1 The Equality Act 2010 was passed in the last days of the old Labour Government. The Act received the support of all parties and the new Coalition government has pledged to implement it, though not necessarily to exactly the same timetable. It is also unclear whether all the provisions will be implemented.
- 3.2 The Act is underpinned by some basic concepts:

Protected characteristics

There are nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Act sets out the principles that need to be applied in considering whether one or more of the 'protected characteristics' apply to an individual or group.

### Prohibited conduct

The Act confirms the existing definitions of: direct discrimination (including that arising from a combination of two relevant protected characteristics – 'dual discrimination'); discrimination arising from disability; indirect discrimination; and harassment and victimisation.

These concepts do not, however, apply uniformly to all provisions of the Act. For example, the requirement that public service providers do not discriminate against an individual requiring the service does not apply to under-18s, age discrimination is not a factor in schools, and marriage and civil partnership status is not relevant in certain contexts.

## **4. THE PROVISIONS OF THE ACT**

### **4.1 Provision of Services and Public Functions**

4.1.1 It is unlawful for a service provider to discriminate against, harass or victimise a person when providing a service (which includes the provision of goods or facilities) or when exercising a public function. The person is protected both when requesting the service and while receiving the service. Public functions that involve the provision of a service include medical treatment on the NHS, or services like housing or planning or benefits payment in the City Council.

4.1.2 It is also unlawful to discriminate against, harass or victimise a person when exercising a public function that does not involve the provision of a service. For example, law enforcement or revenue raising and collection (e.g. Council Tax).

4.1.3 These provisions will replace the existing law and extend protection so that it is generally the same across all nine protected characteristics. As under existing law though there is no protection for harassment related to religion or belief or sexual orientation in either the provision of services or in the exercise of public functions.

### **4.2 Equalities at Work**

4.2.1 It is unlawful to discriminate against, harass or victimise a person at work or in employment services, including recruitment. Other provisions in the Act relate to:

- equal pay between men and women
- pregnancy and maternity pay
- provisions making it unlawful for an employment contract to prevent an employee disclosing his or her pay to a colleague
- a power to require larger private sector employers to publish gender pay gap information between men and women.

#### 4.2.2 *Enquires about disability and health*

Except in specified situations an employer must not ask about a job applicant's health until that person has been either offered a job (on a conditional or unconditional basis) or been included in a pool of unsuccessful candidates to be offered a job when a suitable position arises (e.g. redeployment pool). The Act allows a range of reasonable and practical questions to be asked – the new provision is intended to deter employers from directly discriminating on the grounds of disability but recognises that disability can be a relevant and limiting factor in the recruitment process.

#### 4.2.3 *Local Authority Members*

Elected members are protected from discrimination, harassment or victimisation in the way they access training or other support services.

### 4.3 Contracts

Terms in contracts, collective agreements or the rules of undertakings will be unenforceable or void if they result in unlawful discrimination, harassment or victimisation.

### 4.4 Public Sector Equality Duty

4.4.1 The existing duties to eliminate discrimination and advance equality of opportunity and foster good relations between different groups in the fields of race, disability and gender will be replaced by a single duty that is extended to cover eight of the protected characteristics, marriage and civil partnerships being the exception.

4.4.2 The Equality Duty will require public authorities like the City Council, to consider the way their employment practices, spending decisions and service delivery affect different disadvantaged groups in the community. The duty will lie behind policies promoting social cohesion and public participation, and will require authorities to take

account of the need to tackle prejudice and promote understanding in their communities.

#### 4.4.3 *Commissioning and procurement*

The duty applies to much more than just the provision of services. Public authorities will have to ensure that contractors can show that they can contribute to the delivery of the Equality Duty both as part of the tender process and throughout the contract period.

#### 4.4.4 *Public bodies*

The public bodies affected by the duty are the same as for the Human Rights Act. This is to make sure that the main public sector partners involved in Local Strategic Partnerships (LSPs) and Local Area Agreements (LAA's) are all bound by the duty.

### 4.5 Socio-Economic Duty

4.5.1 The Act places a new duty on certain public bodies to consider socio-economic disadvantage when making strategic decisions about how to exercise their functions and provide services. Disadvantage could include inequalities in areas such as education, health, housing, crime rates, employment or other matters where poverty or social class may result in disadvantage. Along with councils, government ministers and departments, primary care trusts and police authorities will also be included within this duty.

4.5.2 The new duty doesn't create any rights for private individuals and it will not be possible for an individual to claim damages. It will though, be possible for an individual to challenge a local authority through judicial review on the basis that socio-economic disadvantage has not been taken into account when making a strategic decision.

### 4.6 Positive Action

4.6.1 This provision allows the use of positive action measures to:

- lessen or remove disadvantage experienced by groups who share a protected characteristic,
- reduce their under-representation in relation to particular activities e.g. in particular types or levels of employment; and
- meet their needs e.g. access to specific health services.

This provision applies both to the private and public sector and the action taken must be proportionate to the extent of the disadvantage.

#### 4.6.2 *Recruitment and promotion*

The provision for positive action measures allows an employer to take any one of the nine protected characteristics into account when deciding who to recruit or promote where people who have the protected characteristic are at a disadvantage or are under-represented in their workforce. However, this can only be done where in all other respects the candidates are equally qualified. Each case has to be considered on its merits, an employer cannot have a policy of automatically treating people with a protected characteristic more favourably than those who do not have it.

#### 4.7 Other Provisions

##### 4.7.1 *Association and Perception*

The Act strengthens the law by protecting people from discrimination when they are associated with someone who has a protected characteristic e.g. as their partner or carer. It will also protect from discrimination people who are wrongly perceived to have a particular protected characteristic e.g. to belong to a particular religion or belief or to have a particular sexual orientation.

##### 4.7.2 *Transport for Disabled People*

The Act allows for a regulatory system to be developed that covers taxis, public service vehicles and rail to ensure that transport systems are accessible to disabled people, including those with wheel chairs.

4.8 There are other provisions in the Act relating to education and further education and also the selection of candidates for political parties, but the provisions outlined above are likely to have the greatest relevance to the City Council and the Equality Panel.

## 5. **TIMETABLE FOR INTRODUCTION**

5.1 The current timetable for the introduction of the provisions in the Act, and publication of the practical guidance and legal codes of practice is as follows:

*Employment, equal pay and services, public functions and associations*

- ◆ Comes into force: October 2010
- ◆ Guidance published: July 2010
- ◆ Draft code of practice laid before Parliament: June 2010

*Public sector equality duty*

- ◆ Comes into force: April 2011
- ◆ Guidance published: December 2010
- ◆ Draft code of practice laid before Parliament: January 2011

*Age protection outside the workplace*

- ◆ Comes into force: expected April 2010
- ◆ Guidance published: December 2011
- ◆ Draft code of practice laid before Parliament: January 2012

Non-statutory guidance is to help employers, service providers and others abide by the law. Codes of Practice set out the statutory provisions of the Act to ensure that the law is applied consistently by lower courts and tribunals.

Previous legislation remains in force until the provisions of the new Act are implemented.

## 6. CONCLUSION

- 6.1 The Equality Act 2010 represents a considerable tidying up of equalities legislation and should make it both easier to understand and implement. However, until the non-statutory guidance is published it will not be wholly clear what the practical implications are for the City Council or what resources will be required to implement the new provisions.

**BACKGROUND PAPERS:** The following are the background papers that were used in the preparation of this report:

LGIU Policy Briefing: Equality Act 2010 - 23<sup>rd</sup> April 2010

To inspect these documents contact Alison Kemp, Performance Manager on extension 7043.

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