

CAMBRIDGE CITY COUNCIL

DRAFT

REPORT OF: Alison Kemp, Performance Manager

TO: Equality Panel

22/11/2010

WARDS: All

EQUALITY ACT 2010 - FIRST PHASE IMPLEMENTATION 1 OCTOBER 2010

1 INTRODUCTION

1.1 The Equality Act 2010 is being implemented in a number of phases the first of which came into force on 1st October 2010. This particular phase does not significantly change the City Council's responsibilities as a public sector organisation. It is mostly a tidying up exercise to bring the legislation across all the equalities strands into line. Details of the changes that have implications for the City Council and the ways in which will be addressed are set out in the body of the report.

2. RECOMMENDATIONS

2.1 That the Equality Panel:

2.1.1 Notes those provisions under the implementation of the first phase of the Equality Act 2010 which have implications for the City Council; and

2.1.2 Endorses the ways in which the City Council proposes to address these.

3. BACKGROUND

3.1 The Equality Act 2010 received Royal Assent on 8 April 2010. The Act brings together all the existing strands of equality and discrimination legislation, with the aim of clarifying existing law and extending it to cover some anomalies in existing discrimination law, and creating a stronger set of obligations on public bodies to promote equality. The Act is being implemented in phases, the first of which came into force on 1st October 2010.

3.2 The provisions that came into force on 1st October 2010:

- set out the basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations, and transport.
- changed the definition of gender reassignment, by removing the requirement for medical supervision
- levelled up protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic¹, so providing new protection for people like carers
- gave clearer protection for breast-feeding mothers
- apply the European definition of indirect discrimination to all protected characteristics
- extend protection from indirect discrimination to disability
- introduce a new concept of “ discrimination arising from disability”, to replace protection under previous legislation lost as a result of a legal judgment
- apply the detriment model to victimisation protection (this aligns the approach with that taken in employment law)
- harmonise the thresholds for the duty to make reasonable adjustments for disabled people
- extend protection from 3rd party harassment (e.g. of staff by a customer) to all protected characteristics
- make it more difficult for disabled people to be unfairly screened out when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability and health
- allow claims for direct gender pay discrimination where there is no actual comparator
- make pay secrecy clauses unenforceable
- extend protection in private clubs to sex, religion or belief, pregnancy and maternity, and gender reassignment
- introduce new powers for employment tribunals to make recommendations which benefit the wider workforce
- harmonise provisions allowing voluntary positive action.

City Council managers have had general briefings on the Equality Act and specifically on the changes arising from the implementation of the first phase.

¹ Protected characteristics: Part 2 Chapter 1 section 4

“The following characteristics are protected characteristics –

age;	pregnancy and maternity;	sexual orientation
race;	religion or belief;	
sex;	gender reassignment;	
disability;	marriage and civil partnership.	

4. WHAT HAS CHANGED?

4.1. Who is protected by the Act

Disability – To qualify for protection from discrimination, a disabled person no longer has to show that their impairment affects a particular ‘capacity’, such as mobility or speech, hearing or eyesight.

Gender reassignment – To qualify from protection from discrimination a transsexual person no longer has to show that they are under medical supervision.

4.2 What the law prohibits

Direct discrimination – Direct discrimination has been extended to cover disability.

Direct discrimination includes discrimination because a person is wrongly thought to have a particular protected characteristic or is treated as if they do. Previously protection extending wider than the person’s own protected characteristic – such as protection from discrimination because of association and perception - applied only to race, religion or belief, and sexual orientation. Now it applies to sex, disability and gender reassignment as well.

Indirect discrimination – Indirect discrimination now applies to disability and gender reassignment as well as the other protected characteristics. Note: Pregnancy and maternity is not covered but policies and practices that would put pregnant women and new mothers at a disadvantage could constitute unlawful indirect sex discrimination.

Victimisation – There is now no need for a victim to show that they have been less favourably treated than someone who has not made or supported a complaint under the Equality Act. They need only show that they have been treated badly.

4.3 Other changes

Breast-feeding mothers – the Act has specifically clarified that it is unlawful to discriminate against a woman because she is breast-feeding, therefore a woman to whom the Council is providing goods, facilities and services must be allowed to breast-feed if she so wishes.

Positive action – some people with protected characteristics are disadvantaged or under-represented in some areas of life, or have particular needs linked to their characteristics. They may need extra

help or encouragement if they are to have the same chances as everyone else. The new positive action provisions enable public sector organisations to take proportionate steps to help people to overcome their disadvantages or to meet their needs. Note: a) There is no requirement to take positive action; and b) There is no restriction on treating disabled people more favourably than non-disabled people. It is also permitted to take steps to meet the needs of people with a particular disability e.g. to provide Braille transcription on all direction signs around a building to encourage greater use of the building by people with sight impairments or to provide hearing induction loops in public meeting rooms to encourage more people with hearing deficiencies to attend public meetings.

4.4 **Our obligations as an employer**

There are two provisions of the Equality Act that particularly affect on obligations as an employer.

Restrictions on employers asking job applicants questions

about health – It is no longer permissible to ask questions about an applicant’s health before making an offer of employment or including them in a pool of applicants to be offered work when it becomes available, except in the following circumstances:

- to find out whether an applicant is able to take part in an assessment to test their suitability for the job
- to establish whether there is a duty to make reasonable adjustments to enable an applicant to take part in a recruitment process
- monitoring the diversity of applicants
- to take positive action in supporting employment of disabled people (e.g. “double ticks” scheme)
- to establish that a person has a disability where this is an occupational requirement.

We can continue to carry out pre-employment checks on attendance levels through obtaining references and occupational health assessments but only once the successful applicant has been offered a conditional offer of employment.

To comply with this requirement the Council has removed a question about previous sickness absence from both our paper and on-line forms. Managers have been advised that they should not ask interview questions about an applicant’s health or disability unless this is in relation to how the applicant can carry out the specific

requirements of the job and any reasonable adjustments that can be made.

Third-party harassment – This is where, for example, a customer or service user harasses a member of staff because of their particular protected characteristic e.g. race or disability. This provision has now been extended to all protected characteristics (except pregnancy and maternity and marriage and civil partnership). It has also been widened to cover harassment based on perception that the person being harassed has a protected characteristic, or that results through the harassed individual's association with someone with a protected characteristic e.g. the mother of a disabled child.

The City Council is reviewing its Dignity at Work policy to ensure that all protected characteristics are covered and that it includes 3rd-party harassment. Managers have been advised that if they receive complaints about 3rd party harassment, it is important that reasonable, practical steps are taken to prevent it and that accurate records of incidents are kept.

- 4.5 Draft Codes of Practice on employment, services, public functions and associations and equal pay were laid before Parliament on 12th October. Assuming that there is no challenge to the drafts these will come into force through a Government Order on 22nd November 2010.
- 4.6 The next phase of implementation comes into effect from 2 April 2011. The Government is currently consulting on a new public sector Equality Duty but is still considering whether and/or how a number of aspects of the Act will be implemented, including:
- the socio-economic duty on public authorities
 - dual discrimination i.e. where based on a combination of two characteristics
 - employers to provide gender pay gap information
 - provisions relating to auxiliary aids in schools
 - diversity reporting by political parties
 - positive action in recruitment and promotion
 - prohibition on age discrimination in services and public functions
 - civil partnerships on religious premises.

5. Conclusion

- 5.1 The implementation of the first phase of the Act has relatively few practical implications for the City Council as it is largely concerned with tidying up anomalies created in the raft of previous legislation. Where there are practical implications for the Council both as an employer and a service provider action has been taken to address these.

The author and contact officer for queries on the report is Alison Kemp on extension 7043.

Report file: N:\Strategy & Partnerships\Equalities\Equalities\Equalities Panel\Equality Panel Nov 2010\Equality Act Phase 1 Report Oct 2010.doc

Date originated: 12 November 2010

Date of last revision: 12 November 2010