

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Employment in Hampshire County Council Committee
Date:	18 January 2010
Title:	Equality Act 2010 and implications for the County Council
Reference:	2505
Report From:	Chief Executive

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1. Executive Summary

- 1.1. The purpose of this paper is to highlight key aspects of the new Equality Act 2010 and its implications for the Council. The main parts of the Act came into force on 1 October 2010; full implementation is to be achieved by April 2012.
- 1.2. The Equality Act brings together, and at the same time replaces, the full range of previous anti-discrimination legislation (such as the Sex Discrimination Act 1975, the Race Relations Act 1976, etc). The main aims of the Act are to harmonise and strengthen the law to promote progress on equalities. The Act introduces a number of technical changes which relate to employment, as well as others relating to the way in which the Council delivers public services, including the introduction of a new set of public sector duties.
- 1.3. This paper seeks to inform Committee of the work to date and currently underway in response to the Act, and to outline the future timetable for implementation.

2. Contextual Information

- 2.1. The Equality Act was passed in the final months of the previous Labour Government although in the main, it received cross-party support on its progression through parliament. The coalition Government has therefore implemented the main provisions of the Act although some provisions are still being considered (see 6.1 below). The Government has stated that it

is considering, “how to implement these remaining provisions in the best way for business and for others with rights and responsibilities under the Act”.

3. Core Elements of the Act

- 3.1. A core aspect of the new Act is the introduction of “protected characteristics”. These describe the personal attributes (e.g. age, sex, race, etc) which are given protection under the new law; the range of these attributes has been extended and some definitions have been revised. The Act has also extended the way in which different types of discrimination (e.g. direct and indirect discrimination, harassment, victimisation, etc) apply to the protected characteristics. A schematic summary showing how the different types of discrimination can relate to the protected characteristics is shown at Appendix 1 attached.
- 3.2. Provisions which have come into force in October 2010 include the basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations; and transport. This framework of protection applies not only to those who come within the definition of having a protected characteristic but also now, those who are *perceived to have* or who are *associated with* someone who has a protected characteristic. With effect from April 2011 the Act also introduces a new type of discrimination which is *combined discrimination*. This arises where a person suffers unfavourable treatment as a result of a combination of two protected characteristics.

4. Other Key Employment-specific Elements of the Act

- 4.1. Other employment-specific changes in the Act include the following:
- (a) Pre-employment enquiries about health – other than in certain specific circumstances, the Act prevents employers from asking applicants about their health (including any disability) before offering them work or including them in a short-listed pool of candidates. Amongst other affects this will restrict an employer’s ability to seek information about any recent absence of candidates.
 - (b) Positive action measures – the Act contains positive action provisions aimed at allowing proportionate action to be taken to address disadvantage or disproportionately low representation experienced by groups who share a protected characteristic.
 - (c) Employment data and measures to address the gender pay gap – public sector employers with more than 150 employees will be required to publish annually, data on equality in the workforce. The requirements relating to this are due to come into force from April 2011.

- (d) Employment Tribunal Powers - are extended by the Act. With effect from 1 October 2010 an Employment Tribunal, on finding that an employer has discriminated, will have power to make recommendations that will impact on the wider workforce.

5. Other Major Provisions of the Act

5.1. Other major changes introduced by the Act include:

- (a) Socio-economic duty – subject to commencement of the provisions, the Act places a new duty on certain public sector bodies, including the Council, to consider socio-economic disadvantage when taking strategic decisions about how to exercise their functions.
- (b) Single equality duty – the existing public sector duties (i.e. to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between different groups) are now expanded to cover all protected characteristics, with the exception of marriage and civil partnerships, and are incorporated into a single duty.
- (c) Contracts, commissioning and procurement – terms in contracts, collective agreements or the rules of undertakings will be void if they result in unlawful discrimination, harassment or victimisation. Public authorities will also have to ensure that contractors can show they can contribute to the delivery of the Equality Duty both as part of the tender process and throughout the contract period.
- (d) Age discrimination - will be prohibited in the supply of goods and services although this will not apply to people under the age of 18.

6. Provisions Subject To Further Consideration

6.1. As indicated in 2.1 & 5.1 above, the following aspects of the Act remain subject to further consideration by the Government:

- (a) The socio-economic duty on public authorities
- (b) Combined discrimination
- (c) Positive action in recruitment and promotion

7. Issues/Financial Implications

7.1. The Equality and Diversity Action Group (EDAG) has been guiding the authority through the transition and the Single Equality Scheme will be reviewed as soon as the statutory guidance on the public sector duty is agreed.

7.2. An equalities/employment project group has been engaged in reviewing and revising relevant HR policies and practices to reflect the new changes

in the law. As these revisions take place they will be communicated to managers and staff via Hantsnet and through appropriate briefing, training and induction events. HR policies will also be subject to further review and revision as related statutory Codes of Practice are published and adopted by Parliament.

- 7.3. In light of the magnitude of this legislation and the extended powers of Employment tribunals, lawyers are predicting that some increase in employment litigation is inevitable.
- 7.4. The 'public sector equality duty' will come into force in April 2011. Statutory codes will be required to enact this part and these are currently published for consultation. Work is underway to consider the Council's response but it is already clear that Equality Impact Assessment will continue to be a statutory requirement. There have been recent high profile challenges to Government requesting the Equality Impact Assessments of the recent budget decisions. The Council will need to be even more vigilant in ensuring that these are undertaken effectively and published, especially on key decisions and plans.
- 7.5. The draft statutory public sector regulations indicate a move away from centrally dictated processes towards locally determined measures. A key part will be the need for the Council to set Equality Objectives and to agree success measures with local citizens.
- 7.6. The prohibition of age discrimination in the supply of goods and services will be introduced from April 2012, thus giving time for the implications to be fully assessed and understood. This change will potentially have implications for Adult services and other services that have age restrictions.
- 7.7. Further regulations will be set out to describe how public bodies should use public procurement to drive equality. This will impact on businesses applying for public sector contracts. The Council's current approach does consider equality issues and the Corporate Procurement group has begun to review this in order to check for compliance and to ensure a proportionate and consistent approach.
- 7.8. Equality impact assessment is key to supporting the Council's drive to achieve efficiencies; it is essential that key decisions adequately address inequalities. The statutory duty to show how public bodies are assessing the impact on different groups is attracting an increasing number of legal challenges. A complaint to the Ombudsman found that Eastleigh Borough Council had failed in their duty to adequately assess the impact of changes to their concessionary fares scheme.
- 7.9. The Executive lead Member for Equality has asked that a briefing on the new Act and current Council's approach be provided for Cabinet. This has currently been scheduled for November.

8. Timelines/next steps

8.1. Statutory Timetable - key elements

October 2010 – Main provisions of the Equality Act come into force

April 2011 – Public Sector Equality Duty anticipated to come into force

April 2012 – Age protection outside of the workplace

8.2. Initial Internal/implementation Timetable

22 October 2010 - Equality Act briefing for EDAG and HR staff and managers plus other public sector partners.

8 November 2010 - Cabinet policy briefing.

December 2010 – repeated Equality Act briefing

February/March 2011 – report to Cabinet setting out proposals for the Councils approach to the new statutory duties

April 2011 – Revised statutory duties begin

9. Conclusion

9.1. The Equality Act is a major piece of legislation with significant implications for the Council, especially relating to employment law but also, to service delivery. In order to comply with Act the following actions have been taken:

- All HR employment policies have been reviewed to ensure compliance.
- The approach to medical checks for applicants has been amended to comply with the Act.
- Hampshire Learning Centre have revised all the Equality and Diversity courses to reflect the new requirements of the Act
- Two briefings have been held for senior managers involving an external barrister; over 140 people attended.
- An article appeared in HOG providing a pragmatic overview of the Act, see Appendix 2.
- A project is underway to review the Corporate Equality Scheme; this will assess progress and make recommendations for a future approach to ensure the Council meets the requirements of the public sector equality duty with effect from April 2011.

- Provided further guidance for authors of decision reports to strengthen the equality impact assessment statements.
- 9.2. During the Council's drive for efficiencies it is essential that key decisions adequately address inequalities. The statutory duty requires public bodies to show how they are assessing the impact on different groups. It is likely that this aspect will increasingly be used to challenge decisions made by the Council.
- 9.3. The approach being taken by the Council is in line with the Equality Act, the main elements of which came into force in October 2010. This will be reviewed to ensure compliance with the revised statutory duty by April 2011.

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

Hampshire safer and more secure for all:	yes
Corporate Business plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Business plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Business plan link number (if appropriate):	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1 This report describes actions required to advise and inform the Council of a change in the Equality laws. It proposes an approach to ensure compliance with legal requirements and Equality impact assessment is a crucial part. It will have a positive impact on all protected characteristics.

2. Impact on Crime and Disorder:

2.1 This report will have a positive impact on Crime reporting as there will need to be a greater focus on considering hate crime data as an indicator of community cohesion.

3. Climate Change:

3.1 This report is unlikely to have an impact on climate change.

Equality Act 2010 What's new & what's changed: at a glance

	Characteristic covered in existing legislation – no changes	Changes	New	Not covered	Age	Disability	Gender Reassignment	Race	Religion or Belief	Sex	Sexual Orientation	Marriage & Civil Partnership	Pregnancy & Maternity
Direct Discrimination Someone is treated less favourably than another person because of a protected characteristic (PC)													
Associative discrimination Direct discrimination against someone because they associate with another person who possesses a PC			New			New	New			New			
Discrimination by perception Direct discrimination against someone because the others think they possess a particular PC						New	New			New			
Indirect discrimination Can occur when you have a rule or policy that applies to everyone but disadvantages a particular PC						New	New						
Harassment Employees can now complain of behaviour they find offensive even if it is not directed at them					Changes	Changes	Changes	Changes	Changes		Changes		
Harassment by a third party Employers are potentially liable for harassment of their staff by people they don't employ			New		New	New	New	New	New		New		
Victimisation Someone is treated badly because they have made/supported a complaint or grievance under the Act					Changes	Changes	Changes	Changes	Changes	Changes	Changes	Changes	Changes