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Equality Act 2010; Implications for Hampshire Fire and Rescue Service

Report of the Chief Officer

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1 Summary

- 1.1 The Equality Act became legislation on 1 October 2010. Proposals for the Public Sector Duties will become enforceable in April 2011. This paper provides a summary of the current guidance that applies to Hampshire Fire and Rescue Service.

2 Recommendation

- 2.1 That the Authority note the report and, in particular, the legislative changes presented by the Equality Act 2010.
- 2.2 That Authority are aware of the proposed Public Sector Duties presented by the Equality Act 2010, and will become enforceable in April 2011.

3 Introduction and background

- 3.1 The Equality Act consolidated existing legislation into a single statute. The Act continues to cover race, disability and gender and also extends to cover the areas of age, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment and marital status/civil partnerships.
- 3.2 The Act simplifies and harmonises current discrimination law by consolidating these statutes into the one Act. It introduces measures to deal with discrimination and promote equality as a recognition that inequality and discrimination persists. The Act is significant because it impacts on employers, regardless of size, as well as in the delivery of public services.

4 Protected Characteristics

The number of Protected Characteristics are extended from seven to nine as follows:

a. Age

Replaces provisions in the Employment Equality (Age) Regulations 2006.

b. Disability

Replaces provisions in the Disability Discrimination Act 1995 and 2005.

c. Gender Reassignment

Replaces provisions in the Sex Discrimination Act 1975.

d. Race

Replaces provisions in the Race Relations Act 1976 and includes colour, nationality and ethnic or national origin

e. Religion or belief

Replaces provisions in the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006.

f. Sex

This provision replaces the gender duty and applies to the protected characteristic of being a man or a woman and that men share this characteristic with other men, and women with other women.

g. Sexual Orientation

Refers to the protected characteristics of being a lesbian woman, gay man, heterosexual or bisexual. Replaces similar provisions in the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2006.

h. Pregnancy and Maternity

Becomes a protected characteristic within the act, and this is in addition to existing legislative provisions.

i. Marriage and Civil Partnership

Replaces provisions in the Sex Discrimination Act 1975. People who are not married or civil partners do not have this characteristic. Engaged, single or divorced people do not have this characteristic.

5 Procurement

- 5.1 Private sector firms bidding for government contracts will now have to publish the details of their diversity policies. The Act will not impose statutory duties on private sector to promote diversity, but will use the public sector procurement to hold private firms to account.

6 Gender Pay Gap Audits

- 6.1 The framework for managing equal pay remains the same.
- 6.2 The Act requires that all employers with more than 250 staff report their gender pay gap from 2013. Public bodies with more than 150 employees will need to

report on gender pay as well as other equality data including ethnic minority profile.

- 6.3 The Act makes it unlawful to prevent or restrict employees from having a discussion to establish if differences in pay exist that relate to the protected characteristics.

7 Ban in pre-employment questionnaires

- 7.1 Employers are prevented from asking candidates questions about their health that is unrelated to the job role. People with health related conditions will not be required to disclose that condition prior to the offer of employment.

8 Ban on discrimination by association

- 8.1 Direct discrimination by association and perception to disability, sex, gender reassignment, race, sexual orientation, religion or belief, and age in both employment and service delivery is unlawful. This means a person cannot be discriminated against because they are related to, or reside with a person who has a protected characteristic, for example someone who has a disability.
- 8.2 Other discrimination terminology has been strengthened to apply across the protected characteristics including:
- a. Direct discrimination
 - b. Indirect discrimination
 - c. Harassment
 - d. Harassment by a third party
 - e. Victimisation

9 Discrimination arising from a disability

- 9.1 A person with an impairment or disability cannot now be treated unfavourably because of something that is connected with their disability and that treatment cannot be objectively justified as being a proportionate means of achieving a legitimate aim.

10 Tribunal Powers

- 10.1 Tribunal panels have the powers to order organisations found guilty of discrimination to make sweeping changes to their Human Resource policies and practices. Previously, tribunals were able to make recommendations relating only to the individual bringing the case.

11 Default Retirement Age

- 11.1 The Default Retirement Age will be removed from April 2011 with transitional arrangements until its full implementation on 1st October 2011. Individuals will not be denied the opportunity to work simply because of their age and the

assumptions relating to health and capability.

12 Proposed Amendments; Positive Action

- 12.1 Proposals are to simplify but strengthen positive action. These are actions undertaken to encourage under-represented groups to apply for vacant posts. These may be seen as affirmative action (which is currently illegal) and proposes that employers can diversify its workforce by allowing for the protective characteristic to be taken into account during the recruitment and promotion process. The selection process will require proof that candidates were equal throughout, and chosen on the basis of their protected characteristic.
- 12.2 The decision on this particular aspect is expected to be made in April 2011.

13 Proposed Amendments; Public Sector Duties

- 13.1 The Act includes a new public sector Equality Duty relating to all nine protected characteristics. Current public sector duties apply to Race, Disability and Gender. This aspect is currently in consultation and the position is to be confirmed in April 2011. The proposed duties are:

13.2 General Duties

The General duty as set out by the Equality Act is to have due regard to:

- Eliminate unlawful discrimination, harassment and victimisation.
- Advance equality of opportunity between different groups.
- Foster good relations between different groups.

13.3 Specific Duties

The specific duties are legal requirements designed to help public bodies meet the general duty. It is proposed that public sector organisations will need to:

- 13.3.1 Be open about the information on which they base their decisions about what they are seeking to achieve and about the results. Public bodies will be required to publish a range of equality data relating to both their workforce and the services they provide.
- 13.3.2 Be open about how they have engaged with people as part of their work to fulfil the aims of the Equality Duty. Similarly part of normal decision making for public bodies involves assessing the impact they are having on equality and being transparent about the results of such assessments and the data that underpins them.
- 13.3.3 Publish data annually that will be broad enough to give the public a full picture of

equality in the workplace and public service provision, and if this is not available to put in place reasonable steps to fill the gap.

- 13.3.4 Provide data that equips citizens and society groups to assert pressure to drive a faster pace of change.
- 13.3.5 Publish data on equality in the workforce, including gender pay gap, the proportion of staff from ethnic minority communities and the distribution of disabled employees throughout the organisations structure.
- 13.3.6 Bring decision making into the daylight by being open with citizens about the data they use to plan, commission and evaluate the services they provide. This requires public bodies to publish data that will enable people to judge how effectively they are eliminating discrimination, advancing equality and fostering good relations through the services they provide, commission and procure.
- 13.3.7 Equality outcome objectives will be informed by evidence and data published.

14 Risk analysis

- 14.1 The risks relating to the new legislation remain the same for the outgoing legislation. By not abiding by the legislation the Service would run the risk of discrimination claims in employment and its delivery of services.
- 14.2 To control the risk of discrimination Hampshire Fire and Rescue Service have taken the following steps in response to the revised Equality Act 2010:
 - a. Updated all HR Policies to take into account all existing and new protected characteristics.
 - b. Updated the People Impact Assessment Process to take into account the new protected characteristics.
 - c. Drafted a new Equal Opportunities Statement to replace our existing Fairness and Dignity Policy which is currently being circulated for consultation.
 - d. Updated our Health Screening Questionnaires for recruitment .
 - e. A programme of training on the impact of the Act and to learn about the key provisions will be provided.
 - f. Has started consulting on the proposed public sector duties.

15 People Impact Assessment

- 15.1 The proposals in this report are considered compatible with the provisions of the European Convention on Human Rights, the Human Rights Act 1998, and the Race Relations (Amendment) Act 2000.

16 Environmental and Sustainability impact assessment

16.1 None identified.

17 Resource implications

17.1 None identified.

18 Consultation

18.1 Internal consultation has been completed with Human Resource Managers, the Service Management Team, the Local Diversity Group, Diversity Champions and Watch Diversity Liaison Officers . Communication has been distributed via the Routine Notice system to all staff.

19 Conclusion

19.1 The Equality Act 2010 is one of the most significant developments in discrimination legislation in the past 40 years. The Act's effect will be far reaching, impacting on a range of diverse issues such as recruitment, gender pay, procurement and the delivery of public services.

19.2 The Act tackles discrimination in a number of key areas including protecting the needs of a wider range of people, strengthening protection of disabled people, providing more openness around gender pay differences and increasing powers for employment tribunals. It also proposes a single public sector equality duty with specific duties to meet the general duties and the use of public procurement to improve equality in the private sector.

20 Background papers

20.1 The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of the report:

Equality Act 2010

Note: The list excludes: (1) published works; and (2) documents that disclose exempt or confidential information defined in the Act.