

Legislation

Equality Act 2010 and the Statutory Duties (Wales) Regulations 2011

The Equality Act 2010 came into effect in October 2010. It condenses nine pieces of legislation into one single Act and replaced the following pieces of legislation: Equal Pay Act 1970, Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995, Employment Equality (Religion or Belief) Regulations 2003, Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Age) Regulations 2006, Equality Act 2006 (Part 2), and the Equality Act (Sexual Orientation) Regulations 2007.

The Act establishes additional anticipatory legal duties for public authorities: The “public sector equality duties” are in two parts referred to as the general duty and the specific duties. The duties are complimentary to each other, in practice this means taking a pro-active approach to meeting all aspects of the Act.

The General Duty requires public authorities, when carrying out their functions (and on other persons when carrying out public functions), to have due regard to:

- the need to eliminate conduct which the Act prohibits
- the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not
- The need to foster good relations between people who share a relevant protected characteristic and people who do not.

In addition to the new general public sector equality duty that was brought into force by the UK Government in April 2011, the Act also made provision for Welsh Ministers to be able to make regulations and impose specific equality duties to enable better performance of the general duty by public authorities in Wales.

The Welsh Government have developed and introduced specific duties for listed public authorities in Wales. These are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and came into force on 6 April 2011.

Welsh Language (Wales) Measure 2011

The Welsh Language Measure requires public bodies in Wales, including unitary councils, to conduct their public business in such a way as to treat the Welsh and English languages “on a basis of equality”. The Council’s statutory Welsh Language Scheme, revised in 2004, sets out how the Council will implement this principle of equality in the delivery of its services. This document can be found on the Council’s internet/intranet website.

Human Rights Act 1998

The 1950 European Convention on Human Rights (ECHR) is a binding international agreement that provides protection for individual human rights and freedoms and aims to balance these with the interests of the community. In October 2000 the Human Rights Act (HRA) came into force in the UK and makes many of the Articles contained in the 1950 European Convention on Human Rights (ECHR) enforceable in UK domestic Courts and Tribunals. It also places a duty on public authorities to respect these rights when carrying out their functions and delivering services. In some cases there are positive obligations on authorities to protect and enforce individual's rights.

The Articles contained in the HRA are expressed in a way that informs local authorities of how they must act to comply with the Article. Some of the Articles are 'Absolute' and must not be infringed, some Articles are 'Limited' and can only be infringed if the ECHR says so and some Articles 'Qualified' which means that authorities can interfere with these so long as they are allowed to in law, have a legitimate reason to do so and act in a proportionate manner. We need to pay regard to the HRA because we regularly make decisions that affect people's lives such as:

- taking enforcement action
- providing schools
- tackling anti-social behaviour
- approving planning applications
- providing protection for vulnerable children and adults
- ensuring our staff are treated fairly and with respect
- licensing taxis, public entertainment and street trading

This means that Conwy County Borough Council must have human rights principles in mind when making decisions that affect people and that human rights, and the protection of rights in some cases, must be part of all policy making within the Council.

Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 2000/1551)

Under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, part-time workers (regardless of the number of hours they work) must not be treated less favourably than comparable full-time workers unless this can be justified on wholly objective grounds.

Part-time workers therefore have the same statutory and contractual rights as equivalent full-timers. The majority of part-time employees in local government are female so the possibility of a breach in sex discrimination legislation must be avoided.

Part-time employees have the same statutory and contractual rights as equivalent full-timers. One of the provisions in the Regulations is that part-time workers must not be excluded from training on account of their part-time

status and that training should be structured wherever possible to be at the most convenient times for the majority of staff, including part-timers.

Rehabilitation of Offenders Act 1974

Under the Rehabilitation of Offenders Act 1974, a conviction becomes 'spent' after the elapse of a defined period of time, allowing a job applicant to be treated for most purposes as if his or her conviction had never occurred. Job applicants are in most cases permitted to conceal details relating to spent convictions except where the job is exempt from this provision, for example in the case of work involving vulnerable young or older people, in schools and care homes. It is unlawful to refuse to employ someone on the grounds that they have a spent conviction (except where there is an exemption to this provision).

Immigration, Asylum and Nationality Act 2006

The Asylum and Immigration Act, 2006 makes it a criminal offence for an employer to employ those who do not have permission to live or work in the UK. We will ask any applicants who are unable to provide a National Insurance Number to provide proof of permission to live and work in the UK.

Positive Action

We recognise the impact of positive action measures on discrimination and disadvantage and will, within the resources available and within permitted legislation, employ such measures that are necessary to redress any imbalances as demonstrated from employment monitoring data to achieve equal opportunities within the Council. This will help us to attain a workforce that more closely reflects the balance of the community we serve.

Equal Pay

It is unlawful for employers to discriminate between men and women in terms of their pay and conditions where they are doing the same or similar work; work rated as equivalent; or work of equal value.

The Act applies to both men and women but does not give anyone the right to claim equal pay with a person of the same sex. In other words, a claimant who can show evidence that they would have received better remuneration from their employer if they were of a different sex, may have a claim. A job evaluation process is in place to help us achieve consistency of terms and conditions of employment.

Social Model of Disability

The Council recognises that the barriers which disabled people experience are lack of provision, discriminatory and patronising attitudes and physical barriers within the built environment. These barriers disable and prevent disabled people from being fully independent, and having full participation in

society. We support the right of disabled people to lead an independent life, playing a full and integrated part in society.

Occupational requirements under the Equality Act 2010

The Equality Act 2010 permits employers, in limited circumstances, to operate an exception to the general principle of equality and apply to a post a requirement to have a particular protected characteristic.

An occupational requirement will apply where, having regard to the nature or context of the work, the employer applying the requirement shows that:

- having a particular protected characteristic is an occupational requirement;
- the application of the requirement is a proportionate means of achieving a legitimate aim; and
- either the person to whom the requirement is applied does not have the required characteristic or the employer has reasonable grounds for not being satisfied that the person has the required characteristic.

Therefore, it may be lawful, depending on the type of work, for an employer to apply an occupational requirement to possess a particular protected characteristic, when considering whom to recruit, transfer or promote to, or train for, a vacant job, on the basis that the job can be performed effectively only by someone with that protected characteristic. For example, there may be an occupational requirement for the job to be performed by: a man or a woman; someone from a specified racial or religious group; a person with a particular sexual orientation; a married person; someone with a disability; or someone with a particular characteristic based on age.

For an occupational requirement to be valid, the requirement for the job applicant to possess a defined characteristic must be a proportionate means of achieving a legitimate aim.

Burden of Proof

Discrimination rarely takes place openly, and may not even be conscious. Direct evidence of discrimination is seldom available and the employment tribunal will have to consider whether, if the facts of the case suggest there could have been discrimination, it is satisfied by the employer's explanation that the difference in treatment was not due in any way to discrimination. If the explanation is not satisfactory, the tribunal will draw an inference of unlawful discrimination from the facts of the case.

Indirect discrimination is very broad and covers formal and informal practices in employment. 'Practice' may be defined as the customary ways in which an intention or policy is actually carried out. It includes attitudes and behaviour

that could amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and stereotyping. To find discrimination, it will be sufficient only to show that a practice is *likely* to affect the group in question adversely.

The Burden of Proof used by the Tribunals and Courts varies according to the grounds for the alleged discrimination but will consider

- whether there is evidence of less favourable treatment and the employer will have to prove that the difference in treatment was not due in any way to unlawful discrimination. If the employer cannot do this, the employment tribunal *will* uphold the claim.
- whether unlawful discrimination can be inferred and will look to the employer for a satisfactory explanation, and *may* find that unlawful discrimination took place.

Gypsies and Travellers

Caselaw has established that Romany Gypsies and Irish Travellers are covered by the protected characteristic of race for the Equality Act 2010. Local authorities have a duty under the Equality Act to actively seek to eliminate unlawful discrimination, advance equality of opportunity and promote good race relations for this group.