

New equality legislation affects nurses personally and professionally, and the organisations that employ them

How the Equality Act affects you

This article...

- Outlines the main provisions of the Equality Act and how it differs from previous legislation
- Describes how it affects groups it specifically protects
- Sets out new duties of public sector bodies and contractors
- Looks at how nurses will be affected

Author Wendy Irwin is the diversity and equality coordinator, Royal College of Nursing.

Abstract Irwin W (2011) How the Equality Act affects you. *Nursing Times*; 107: 2, 12-13.

This article examines what the Equality Act 2010 covers and how it affects nurses and healthcare organisations. It outlines the main groups the act sets out to protect and the protection it offers, and describes how this law differs from previous legislation.

The word “equality” has the power to prompt much debate. Speculation over the Equality Act 2010 has provoked hope as well as some disappointment and even hostility. Some feel the act heralds an aggressive era of political correctness, while others suggest it does not go far enough to prevent the discrimination and inequality that affects those who are already at a disadvantage.

However the Equality Act is viewed, it will undoubtedly have a significant impact on nurses, both personally in extending protection to them if they are at risk of discrimination, and professionally in requiring them to ensure they do not

discriminate against colleagues or patients and their families.

It also affects healthcare providers, which must put in place procedures to ensure employees and patients are protected from discrimination by the organisation or its staff.

The act received royal assent in April 2010, with the majority of its provisions coming into effect from 1 October 2010. Other parts of the act will be implemented from April 2011, with the final elements going live for the health sector in April 2012.

Purpose of the Equality Act

The act has three purposes: to harmonise, streamline and strengthen the laws that protect people from discrimination. It brings together around 116 pieces of equality legislation into a single act.

It strengthens equality law by making it more effective and ironing out inconsistencies, particularly those arising from case law. These inconsistencies are generally seen to have weakened protection from being discriminated against in relation to disability.

Finally, the act is designed to improve protection against discrimination for

more groups through increasing the number of “protected characteristics”.

Protected characteristics

The act defines nine protected characteristics or groups that are covered legally against discrimination:

Age: service providers should not unjustifiably discriminate against individuals or groups because of their age.

Disability: the act changes how a person with a disability qualifies for protection against discrimination. The protected characteristic of disability applies to people with physical or mental impairments that have a substantial and long-term effect on their ability to carry out day to day activities. Disabled people no longer have to show that their impairment reduces a particular ability, such as walking, speech, sight or hearing.

Gender reassignment: this applies to people who plan to undergo, are in the process of or have completed a process to change sex. It is important to note that, to qualify, people are not required to show they are under medical supervision.

Relationships: the act protects people who are married or in a civil partnership against discrimination in employment and vocational training.

Sex: this applies to people being paid less than others of the opposite sex for similar work.

Pregnancy and maternity: the act protects women against unfavourable treatment if they become pregnant or have given birth.

Race: this protection relates to colour, ethnicity, nationality and national origin.

Religion, faith and belief: it is likely the courts will decide what constitutes a religion under the Equality Act. Belief is generally described as any religious or philosophical belief, or lack of belief such as humanism or atheism. A belief system does not have to include a faith or deity worship, but it must affect how people live their lives and shape their view of the world.

Sexual orientation: The act protects against discrimination because of attraction to people of the same or the opposite sex.

Public sector equality duty

The Equality Act applies to the vast majority of public sector organisations. It also applies to organisations that the NHS commissions to provide public services.

The public sector equality duty requires organisations to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation;

5 key points

1 The Equality Act streamlines and harmonises the law on discrimination and equality, bringing together over 100 pieces of legislation

2 It protects more groups against discrimination and those who care for or are associated with them

3 Organisations have to tackle disadvantage and improve the balance where a group is under represented

4 Staff in protected groups gain significant protection against harassment from customers, clients and contractors

5 All employees have to work in ways that promote and respect their colleagues' dignity

BOX 1. KEY CHANGES AFFECTING HEALTHCARE

● **Protecting people from discrimination during recruitment.** It is unlawful for employers to ask job applicants about disability or health before making a job offer, except in specified circumstances. This may affect recruitment to the nursing workforce.

● **Protecting people discriminated against because they are perceived to have or are associated with someone who has a protected characteristic.**

The act will protect people who are, for example, caring for a disabled child or relative. They will be protected by virtue of their association with that person.

● **Protecting pregnant women and mothers from discrimination.** The act makes it clear that mothers should not be treated less favourably because they are breastfeeding. It also prohibits schools from

discriminating against pupils who are mothers or pregnant.

● **Extending the equality duty to require the public sector to take into account the needs of all protected groups (except marital and civil partnership status).**

Public authorities will have to consider the needs of all the protected groups in, for example, employment and when designing and delivering services. Timescales for this duty are to be confirmed by the government by April.

● **Changing the definition of gender reassignment** by removing the requirement for medical supervision.

● **Harmonising the thresholds for the duty to make reasonable adjustments for disabled people.**

securing equality for disabled people. For example, the act makes it unlawful for employers to ask job applicants about their health before making a job offer, except in exceptional circumstances.

The act also sets out what it calls "prohibited conduct" – this covers what individuals, groups and organisations must avoid doing.

What the Equality Act means for healthcare workplaces

The act significantly extends protection against harassment of employees. Harassment by customers, clients and contractors apply to all protected characteristics.

Where an employer becomes aware that a member of staff with a protected characteristic or who is associated with someone with a protected characteristic has been harassed on a least two occasions and fails to take reasonable steps to prevent this, the employee is likely to have grounds for a claim against the employer.

It may be useful for healthcare organisations to think about how they could monitor harassment among patients and employees, and how they can act when they identify any incidents, to prevent it from happening again.

Under the act, all staff are required to work in ways that promote and respect colleagues' dignity.

Organisations will need to think about how they use information from diversity monitoring to make informed choices about service design and delivery.

Meaningful engagement and dialogue with a wide range of interested parties, including trade unions, will be valuable in increasing organisations' ability to understand and work with the consequences of their decisions related to equality across a wide range of groups.

Organisations must also think about how they can carry out reasonable adjustments to enable people with a disability to continue working or take up employment opportunities.

The Equality Act is potentially a powerful tool in shaping workplaces and services that are free from discrimination. It also demonstrates the critical role that a positive work environment that promotes dignity plays in motivating staff and boosting productivity. **NT**

Further information

Equality and diversity work at the RCN:
www.rcn.org.uk/diversity
Equality and Human Rights Commission:
www.equalityhumanrights.com

- » Advance equality of opportunity;
- » Promote good relations between different groups.

Consultation has closed on what public sector bodies should do to meet the general duty to promote equality.

Overcoming disadvantage

The act gives organisations a duty to take proportionate action to tackle disadvantage and improve the balance where a group is under represented.

For example, it:

- » Requires organisations to take into account the needs of all groups with protected characteristics, particularly in terms of employment and designing and delivering services to the public;
- » Protects carers from discrimination and brings in associative discrimination. This would cover, for example, a staff member who cares for a relative with a disability;
- » Makes some important strides in