



Equality & Diversity Factsheet

EQUALITY ACT 2010: WHAT DOES IT MEAN FOR HOUSING ORGANISATIONS?

Introduction

The Equality Act, which came into effect in October 2010, brings existing equalities legislation together into one Act and sets out a number of new provisions. Introduced as a Bill by the previous Labour administration, since the general election the Coalition Government has confirmed its support for the Act albeit with amendments. The initial implementation of the Equality Act came into force on 1 October 2010 when existing legislation was brought together in an effort to make compliance with discrimination and equal pay legislation easier.

The Equality Act is an important milestone in discrimination legislation and presents an opportunity for discussion about how public authorities, businesses and others can better promote equality. This factsheet begins by reminding us of the background to the Equality Act before moving on to consider its content and in particular, what the Act means for housing organisations.

Background to the Equality Act 2010: why is it important?

Disadvantage and inequality remain key challenges in the UK today. For example, as the Equality and Human Rights Commission (EHRC) notes¹: half of disabled people of working age are out of work; a Bangladeshi woman is six times more likely to be unemployed than a white woman; and 40 years after the Equal Pay Act, men earn, on average, £1 for every £0.85 earned by women. There is not only an important ethical imperative to overcome such inequalities but also an economic one as unequal treatment inhibits individuals' ability to contribute to the local and national economy.

Moreover, in the current economic climate it is vital that we are not distracted from equalities issues. Indeed, the economic situation makes it even more important to tackle inequality with fears that public sector cuts introduced by the Budget will adversely affect women, disabled people, older people and people from black and minority ethnic backgrounds.

In bringing together existing discrimination legislation together it is hoped that the Equality Act will provide clearer direction for public bodies, businesses and the voluntary and community sector as well as act as a framework for the provision of tailored services to meet community needs.

A reminder of what is in the Act

In the last 45 years, a number of acts and statutory instruments have passed through Parliament with the aim of tackling inequality and discrimination: from the Race Relations Act 1965 to the introduction of civil partnerships in 2004. For some time it has been against the law to discriminate against people when delivering a service on the grounds of their: race; gender; disability; sexual orientation; gender reassignment; and religion/belief. The Equality Act maintains and develops the existing provisions and defines the following as 'protected characteristics': age; disability; gender reassignment; race; religion or belief; sex; sexual orientation; marriage and civil partnership; and pregnancy and maternity. Encouragingly, the Act recognises the complexity of people's identity by allowing people to make a claim of discrimination related to more than one protected characteristic.

¹ See <http://www.ccpr.org.uk/OneStopCMS/Core/CrawlerResourceServer.aspx?resource=3CA8C58E-B9C8-4D8A-BC78-AE07733D99AD&mode=link&guid=3fa86eac44164507880ff9637f428406>

The four types of discrimination

- 1. Direct discrimination** is when an individual is treated less favourably than others are or would be treated and this is because of a protected characteristic.
- 2. Indirect discrimination** generally occurs where the effect of certain requirements, conditions or practices has an adverse effect on people who share a particular protected characteristic or puts them at a disadvantage.
- 3. Harassment** refers to unwanted conduct which is related to a protected characteristic. This conduct may violate a person's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. This conduct may be purposeful or effectual.
- 4. Victimisation** is treating someone less favourably because they have made a complaint of discrimination against a protected characteristic, or are thought to have done so. Victimisation may also occur when an individual has supported someone to make a complaint of discrimination.

What does the Equality Act 2010 mean for housing organisations?

The Equality Act maintains the current discrimination legislation but also introduces a number of important changes which are detailed below.

A general duty to advance equality

Previous legislation separated the duty to promote equality on the grounds of disability, gender and race under three different duties (the Disability Equality Duty, the Gender Equality Duty and the Race Equality Duty). The new Act, replaces these with a new duty to advance equality covering all protected characteristics. This duty requires organisations that carry out a public function to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations, tackle prejudice and promote understanding. According to the National Housing Federation (2010), this new duty will apply to ALMOs and may also apply to Housing Associations.

Disability

The Act retains a number of important aspects from previous legislation. Since the Disability Discrimination Act 1995, housing associations and registered social landlords with responsibility for managing and retaining properties have had

obligations not to discriminate against people with disabilities by treating them less favourably for a disability related reason, without justification. Existing legislation also allows service providers to treat disabled people more favourably than people who are not disabled, for example prioritising that disabled tenants are allocated ground-floor accommodation. The Equality Act also maintains the duty to make 'reasonable adjustments' that enable disabled people to take up or continue work for an organisation or to gain access to services. This may involve, for example, providing or improving disabled access to buildings or providing information in accessible formats. Under the Equality Act, there is a new duty on landlords and managers of premises to ensure that communal areas are made accessible where reasonable.

Positive action

On 6 April 2011, provisions in the Equality Act related to positive action in recruitment and promotion were commenced. These voluntary provisions cover the use of positive action in matters of recruitment and employment and can be used by an employer to address under-representation or other forms of disadvantage within the workforce. Positive action will also be allowed to encourage wider take up in activities where the participation of members of a protected group is disproportionately low, for example, a scheme to encourage more women into construction. However, as the National Housing Federation (2010) note, "it is important to stress that positive action initiatives can only be adopted where a housing association can demonstrate that the group which will benefit is currently underrepresented on its Board, in its workforce or with regard to a service it provides" (p.7). Moreover, once underrepresentation has been addressed the positive action initiative should stop. This means that it is important for housing organisations to 'keep tabs' on emerging equalities issues and remain aware of which groups may be underrepresented in the uptake of services or as employees. Positive action initiatives will, however, remain discretionary.

Procurement

The Equality Act introduces a new duty to use public procurement processes to promote equality. Under the Act, designated public authorities will be expected to include equality and diversity factors in the procurement process. This is an encouraging step as there are real 'community benefits' to be gleaned from 'clever' procurement practices including tackling local unemployment, alleviating environmental concerns, and also promoting the principles of equality and diversity. As procurers, housing associations can incorporate equality and diversity into their contracting processes by: simplifying tendering arrangements; advertising in a range

of media; and stipulating equality and diversity requirements in contracts. Because Housing Associations are not designated public authorities, they are not covered by these sections of the Act. However, as detailed in the previous factsheet, 'How can housing organisations maximise the community benefit of procurement?', there are compelling reasons why housing organisations should be engaging with this agenda as part of their equality and diversity commitments. Therefore, housing organisations should take note of the new duty introduced by the Equality Act and consider how equality and diversity can be incorporated into procurement procedure.

Employment practices

Under the Equality Act it is expected that all public bodies employing 150 or more staff will have to publish: their gender pay gap; the ethnic minority employment rate; and the disability employment rate. The Equality Act also makes it unlawful for employers to discriminate against employees with caring responsibilities. Furthermore, employers are now liable for discrimination committed by its employees unless it has taken reasonable steps to stop acts occurring. The Equality Act also makes it unlawful to discriminate against a woman because of her pregnancy and to discriminate against a woman who is breastfeeding in public.

Housing organisations are often significant local employers and therefore have the potential to tackle inequality through their role as a direct employer of local residents. To ensure that housing organisations are subscribing to the principles of the Equality Act, even if they are not legally required to comply, it would be valuable for housing organisations to conduct equal pay reviews and to ensure that men and women are equally encouraged in applying for 'non-traditional' roles.

The removal of the duty to promote socio-economic disadvantage

Originally, the Equality Act was going to introduce a new duty for public authorities to consider how to tackle socio-economic disadvantage in strategic decision-making related to spending and service delivery. However, this element of the legislation was removed following a consultation last summer by the then newly elected Coalition Government. Whilst the Equality Act no longer compels public authorities to consider how to tackle socio-economic disadvantage, housing organisations will maintain an interest in doing so. Indeed, many housing organisations already factor socio-economic disadvantage into their strategy-making. For example, in recent years many housing organisations have taken a leading role in tackling long-term unemployment amongst residents.

Conclusion

As this factsheet has highlighted, the Equality Act introduces a number of changes to the equalities legislation. The impact that the various elements of the Act will have on housing organisations, in terms of their duty to comply, will vary according to their status, i.e. whether they are a Housing Association, ALMO or local authority. However, it is recommendable that *all* housing organisations familiarise themselves with the changes in legislation and remain focused on tackling discrimination and mainstreaming the promotion of equality in all of their work. This means taking equality and anti-discrimination measures into account when delivering services and also when developing policy and strategy. As such, the Equality Act is just as relevant to local authority housing departments, which no longer have housing, stock as it is to Housing Associations providing frontline services. More pragmatically, the Equality Act provides an opportunity for housing organisations to reflect on their equality plans and strategies and, if necessary, refresh them.

References and further reading

Bryant, J. (2010) 'Briefing: The Equality Act 2010' (National Housing Federation: London) accessed at:

<http://www.housing.org.uk/Uploads/File/Policy%20briefings/Neighbourhoods/Equality%20Act%202010%20-%20nspo2010br16.pdf>

Government Equalities Office (2010) 'The Equality Act, making equality real', accessed at:

<http://www.equalities.gov.uk/pdf/GEO%20-%20Equality%20Act%20easy%20read%20ROYAL%20ASSENT%20PRINT%20VERSION.pdf>

Office of Public Sector Information (2010) 'Equality Act 2010', accessed at:

http://www.opsi.gov.uk/acts/acts2010/pdf/ukpga_20100015_en.pdf

Further information

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This [Housing Diversity Network](#) provides support and bespoke training on equality & diversity issues and as a member you are entitled to a discount on all our training packages. For more information, please contact: Hannah Mason, Communications Director, Housing Diversity Network, Hannah@housingdiversitynetwork.co.uk 0870 143 2732.