

# Churches and Equality Act 2010

## 1. Background and Definitions

### Introduction

The Equality Act 2010 was passed in April 2010 and the majority of its requirements came into force on 1 October 2010. It aims to simplify and harmonise various legal enactments relating to the different equality strands, combining 9 separate pieces of legislation into one act, and follows on from the Equality Act 2006.

This new Act does not contain legislation likely to have consequences for or against the current freedoms and requirements of Churches and Christians. The new provisions in this Act do not put new limits on the activities of Churches as faith groups, or as service providers. However the areas where some interpretations of Christian teaching conflict with civil law remain, and have been strengthened and clarified under the Act.

Some Christians may feel that equality legislation forces them to act against their beliefs and may fear that the new Act will mark a further step in this direction. This doesn't appear to be the case – the Act clarifies the protections to which Christians, along with other groups, are entitled. But some of the wording of the Act may lead to complex cases, which will need to be clarified in court.

### Legal Definitions of Discrimination

There are 9 main categories of protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (includes colour, nationality, ethnic or national origin), religion or belief, sex, sexual orientation.

The Equality Act legislates against various forms of discriminations based on one of these characteristics, or combinations of them. In many cases outlined by the Act, services providers and other bodies are obliged to make adjustments to prevent various forms of discrimination.

**a. Direct Discrimination** – when a person possessing a protected characteristic is treated less favourably than others without this characteristic.

**b. Indirect Discrimination** – when a person is disadvantaged by a policy or practice which renders them less well treated on account of a protected characteristic. There are also other forms of discrimination which are not direct:

- Associate discrimination: direct discrimination against someone because of their association with a person who has a protected characteristic.
- Discrimination by perception: direct discrimination against a person who is perceived to possess a protected characteristic.

**c. Harassment** – when a person engages in unwanted conduct based on a protected characteristic that violates their dignity and creates an intolerable environment for them. A claim of harassment does not need to be made by the alleged victim. There are also important changes around:

- Harassment by a third party: employers may be liable if an employee is harassed by someone they don't employ. Protection is now extended to all the characteristics.
- The three strikes rule gives three opportunities for an employer to change their practices, their provider or their services where harassment is known to have taken place.

**d. Victimisation** – this applies specifically to ill-treatment of people taking action on the basis of the Equality Act, such as an employer ill-treating an employee who has made a complaint about discrimination at work.

#### What has changed?

Most of the changes arise from harmonising the distinct strands of equalities legislation, but none of them directly affect Churches as religious organisations, services providers or employers, except to clarify the law.

There are no changes around direct discrimination. The law regarding associative discrimination, discrimination by perception, indirect perception and harassment by a third party has been extended to cover protected characteristics not previously included, and there are significant changes around harassment and victimisation. Most of these changes focus on legal clarity rather than new law.

In various cases the Act encourages 'positive action', such as a service provider providing kosher or halal meals to enable the Jews or Muslims in an area with many members of these faiths to benefit from its service. This is permitted and encouraged and does not constitute discrimination, but it is not legally obligatory.

One important principle underlying many of these is that the perception of ill treatment forms the grounds for challenge and does not need proof of comparison. For example,

- Harassment is a matter of personal experience: if one employee finds another employee's comments offensive in relation to a protected characteristic, this in itself is sufficient grounds for a claim of harassment. Moreover, the employer may be liable for harassment experienced by one of its employees at work
- If someone is victimised, that is treated badly on account of a discrimination claim they have in progress, they do not need to show that they are being treated worse than other employees.

Christians – or any other group abused or treated badly on account of their faith – are not covered by the specific definitions of harassment. However they are protected, as this ill treatment is classified as direct discrimination.

## 2. The Implication of the Act for Churches and Individual Christians

### What do Churches need to do now?

Churches should take time to understand the new legislation, particularly its overall rationale and purpose. Churches, like all organisations, are encouraged to provide Equality and Diversity training if needed, to ensure they are aware of their obligations as employers and service providers, e.g. around the need to make reasonable adjustments and to be sensitive to encouragement around taking positive action.

Where appropriate, Churches may be able to reassure their congregations that, contrary to some fears, there is little evidence that this new legislation will force them legally to act against their conscience in matters of faith.

### Typical Concerns and Test Cases

Equality legislation is sometimes a cause of apprehension to Christians. Stories in the media can exacerbate the feeling that civic law is pitted against the belief and practice of Christians. The law applying to two well-publicised cases in recent years is essentially unchanged under the Equality Act 2010 but provides additional clarity, which should help Christians as service providers and in their working life

- *A Christian couple running a guesthouse cancelled a booking made by two homosexual men.*

This remains illegal under the new Act: denying people services on the grounds of their sexual orientation, or any other protected characteristic constitutes unlawful direct discrimination. Business and community service providers are not permitted to discriminate on protected characteristics. However, religious, community and charitable groups are allowed to do this in certain situations (see below).

- *A Christian air stewardess with British Airways was banned from wearing her crucifix on the grounds that jewellery was forbidden, despite the fact that some of her Sikh colleagues were allowed to wear clothing and jewellery with religious significance.*

The Court of Appeal decided that to require the removal of the cross did not amount to discrimination. They accepted the argument from British Airways that being a Christian did not actually require the visible wearing such items, and that employees were free to do under their clothing. An employer may argue that religious attire, disability, or sexual orientation, makes an employee less fit for work, but in the first instance it is up to the employer to provide a work environment that includes employees, and it will need to demonstrate why adjustments have not been made.

- *Must a Church employ a gay minister or an atheist caretaker, or provide services for people with other protected characteristics, if this is against the wishes of its congregation?*

The general rule is that associations formed around one protected characteristic which provide a service must not discriminate on other protected characteristics. One notable exception to the prohibition on sex-based discrimination is that religious organisations can refuse to employ persons

with characteristics incompatible with its doctrines and/or that would offend 'a significant number of its followers'. But this would only apply to functions related to the essence of the religion. A Church could object to having a gay minister, but not an atheist caretaker.

Likewise, a Church could object the use of its hall by a lesbian and gay support group 'if this would cause upset to a significant number of its members', unless it had a contract with a public body involving the provision of such services.

To note:           Genuine Occupational Requirements (GORs) and Genuine Occupational Qualifications (GOQs) replaced by Occupational Requirements (ORs)  
The defence of an OR can be made when –  
                          Appointing applicants  
                          Promotions  
                          Transfers  
                          Training  
                          Dismissing  
They are no defence when harassment or bullying are claimed

### 3. Implications for religious organisations and service providers

#### Membership and Constitutional Rules

Churches fall under the regulations for Voluntary and Community Sector Associations. These replace "associations' separate obligations relating to disability, race and sexual orientation with a single set of requirements covering these characteristics, and extends them to include religion or belief, gender reassignment, pregnancy and maternity, sex and age". It bans associations from discriminating against, harassing or victimising people in these areas:

- In the arrangements associations make for selecting or rejecting new members and the terms for joining
- In the ways in which associations give or deny members benefits or services or remove or vary the terms of membership
- In the ways in which associations give or deny associates benefits or services or remove or vary their rights as an associate. Associates are people who are not members but have some membership rights because they are members of another association
- In the arrangements associations make for deciding who can be invited as a guest and the terms for inviting or refusing people as guests
- In the ways in which associations give or deny guests benefits or services

Associations and clubs with more than 25 members and a selection process "can restrict their membership to people with a protected characteristic, provided that this is not a group defined by colour. However they cannot discriminate against members or people applying to become members or members' guests on any other protected ground".

Thus, an association limited to those of a particular religion would be permitted, and this would be able to restrict guests and recipients of services to those of the same characteristics. But neither of

these groups would be able to discriminate against people who were disabled or gay, and associations are not allowed to discriminate by race or have a name that refers to race.

In addition, the Act requires voluntary and community sector organisations to make reasonable adjustments, notably access for those with disabilities.

### Services

Charities are allowed to provide benefits solely to people with a particular protected characteristic (but not defined by colour) provided that the charity acts on the basis of its charitable instrument and this:

- Can be justified as intended to meet a legitimate objective in a fair, balanced and reasonable way, or
- Is for the purpose of preventing or compensating for a disadvantage linked to that protected characteristic.

This places a burden on Churches, especially those where an individual congregation has its own charity number, to be aware of their governing documents and confident that their approach is legally defensible.

The Equality Act 2010 clarifies the status of Voluntary and Community Sector Service Providers, including Churches and Church-based organisations. The characteristics protected under equality law applying to the voluntary and community sector are disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

## 4. The Broader Context

### How should Christians relate to Equality Legislation?

The initiative behind creating this new single Equality Act is not only to harmonise the law but to take a legal step towards creating a fair and just society. It seeks to recognise that people are different and need different approaches in order to allow them to flourish in the contemporary world. This underpinning value is at the heart of the gospel imperative to love our neighbours and to value all, and with this understanding the Act is to be welcomed.

It is important, therefore, to challenge the fearful perception that the law is 'biased against Christians' or that it only exists for people from 'minority groups'. It is undeniable that secular law has taken a different view of justice and moralities to some Christians, however in the vast majority of cases this legislation is not only compatible but can actively safeguard social justice and inclusion, helping to bring about God's Kingdom, which is a Kingdom of Diversity, united in the love of Christ.

Others will fear that this is secular ethics challenging biblical understanding. Churches have the potential to inform their members of their rights and opportunities under the Equality Act 2010 to guard their freedoms as Christians and use the legal framework to challenge unfairness they may witness. Churches may wish to strongly endorse the basic principles of equality legislation, which are in line with the Christian call for justice, tolerance of diversity and fairness, while giving careful

consideration where the letter of the law may inadvertently lead to ill-treatment of themselves or others.

Inevitably, the Equality Act 2010 is not perfect, and some parts of the legislation are yet to be completed. Secular law is an imperfect human instrument by which societies attempt to understand and comply with justice. Christians should understand equality legislation and not be afraid to use the powers it affords for the sake of creating a just and fair world. The Act demands fair treatment for all and aims to prevent all manner of discrimination that limits people's ability to participate in society.

#### Future Progress of this Legislation

Some of the legislation tabled in April 2010 was not enacted on 1 October 2010. As well as elements considered legally challenging, there were controversial clauses such as the Public Sector Equality Duty which would have required employers to "*have due regard to the desirability of exercising [their functions] in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage*", as well as clauses requiring big business to report on gender pay gaps and allow employers to practice positive action in recruitment.

The progress of the legislation not enacted on 1 October 2010 is unclear. Most of that which was shelved does not relate to Churches or Christian believers directly, but Churches will wish to observe.

## 5. Further Information

#### Government Documents

The best place to start researching the Equality Act 2010 is at the following page:

[http://www.equalities.gov.uk/equality\\_act\\_2010/equality\\_act\\_2010\\_what\\_do\\_i\\_n.aspx](http://www.equalities.gov.uk/equality_act_2010/equality_act_2010_what_do_i_n.aspx)

In some cases it may be helpful to consult the full document of the Act:

<http://www.legislation.gov.uk/ukpga/2010/15/contents/enacted>

or go to the web link below and search for Equality Act 2010

<http://www.statutelaw.gov.uk/>

all other relevant information can be accessed through the Government Equalities Office website:

[http://www.equalities.gov.uk/equality\\_bill.aspx](http://www.equalities.gov.uk/equality_bill.aspx)

#### The Relation of the Equality Act 2010 to Previous Legislation<sup>1</sup>

The Equality Act 2010 continues the work of the Equality Act 2006, which emerged from the Labour Party's manifesto in 2005. It brings together law relating to equality and discrimination embodied in

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<sup>1</sup> The information in this section was taken from Wikipedia: [http://en.wikipedia.org/wiki/Equality\\_Act\\_2010](http://en.wikipedia.org/wiki/Equality_Act_2010) and [http://en.wikipedia.org/wiki/Equality\\_Act\\_2006](http://en.wikipedia.org/wiki/Equality_Act_2006)

separate legislation, specifically the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Age) Regulations 2006.

The **Equality Act 2006** specified protection against discrimination on grounds of age, disability, gender, proposed, commenced or completed gender reassignment; race; religion or belief and sexual orientation. This led to secondary legislation in the form of the Equality Act (Sexual Orientation) Regulations 2007. It involved:

- creating the [Equality and Human Rights Commission](#) (EHRC) (merging the [Commission for Racial Equality](#), the [Equal Opportunities Commission](#) and the [Disability Rights Commission](#))
- outlawing of discrimination on goods and services on the grounds of religion and belief (subject to certain exemptions)
- allowing the Government to introduce regulations outlawing discrimination on the ground of sexual orientation in goods and services, which led to the [Sexual Orientation Regulations 2006](#)
- creating a public duty to promote [equality on the ground of gender](#) (EA 2006 s 84, inserting [SDA 1975](#) s 76A, now found in [EA 2010](#) s 1)

The [Equality Act 2010](#) combines all of the equality enactments within Great Britain and provides comparable protections across all equality strands.

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