

Appendix 1 Legislation and requirements

There are a number of pieces of legislation which outlaw discrimination and some of these (in respect of equal pay, race and sex discrimination) were enacted in the 1970s. In order to give impetus to the elimination of discrimination the government has amended acts and/or brought new ones into being with very specific requirements for public sector organisations (including Universities). These require us to work to promote equality and eliminate discrimination in all our activities. Although there are common themes (which are outlined below), the legislation has been passed at different times and there are subtle differences between requirements. All of these commonalities and differences need to be taken into account when we identify how to ensure equality of opportunity.

There are three areas in particular (with respect to Race, Disability and Gender) where we are expected to produce a policy or scheme and a corresponding action plan.

Race Relations (Amendment) Act (2000) (RR(A)A)

The original Race Relations Act (1976) outlawed discrimination on the grounds of race, colour, nationality and ethnic or national origins and covers employment, education, and the provision of facilities or services. The RR(A)A amends this legislation and requires us to take a more proactive approach to:

- eliminate unlawful racial discrimination
- promote equality of opportunity
- promote good race relations between people of different racial groups

In addition we need to comply with a number of other conditions – we must:

- prepare a written policy on race equality
- assess the impact of our policies on students and staff
- monitor the recruitment and progress of students and staff
- set out arrangements for publishing the results of monitoring

Disability Discrimination Act (2005) (DDA)

The DDA amends the Disability Discrimination Act (1995) which laid out the original definition of disability as “a physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to carry out normal day to day activities”. The 2005 Act has widened this definition in that it includes some conditions such as cancer from the day of diagnosis and removes the requirement for a mental impairment to be “clinically well recognised”. The Act defines “substantial” as being more than minor or trivial and “normal day to day activities” includes obvious activities but also includes mobility, manual dexterity, lifting, hearing, eyesight, speech, memory and the ability to concentrate, learn, or understand. In general, however, for a condition to be treated as a disability it has to last or be expected to last for twelve months or longer. The Special Educational Needs and Disability Act (2001) (SENDA) specifically covers students and requires us to ensure that disabled students are not discriminated against from admissions to graduation. This includes making reasonable adjustments to enable individual disabled students to study and to provide auxiliary aids and services.

The DDA requires us to:

- promote equality of opportunity between disabled persons and other persons
- eliminate discrimination that is unlawful under the Act

- eliminate harassment of disabled persons that is related to their disabilities
- promote positive attitudes towards disabled persons
- encourage participation by disabled persons in public life; and
- take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons

In order to achieve the aims above we must produce and publish a Disability Equality Scheme, implement it, report on it, and review and revise it at least once every three years. In doing so, there is a very specific requirement on us to involve disabled people in drawing up the Scheme.

Gender Equality Duty (2007)

The original Sex Discrimination Act (1975) outlawed discrimination on the grounds of sex, marital status, or gender reassignment and covers employment, education, and the provision of facilities or services. The Equality Act (2006) (which amends the Sex Discrimination Act (1975) introduced the Gender Equality Duty – requiring us to pay “due regard” to the need to:

- eliminate discrimination and harassment that is unlawful under the Sex Discrimination Act and discrimination which is unlawful under the Equal Pay Act and
- promote equality of opportunity between men and women

In addition we need to comply with a number of other conditions – we must:

- prepare a written scheme on gender equality, including an action plan with gender equality objectives
- formulate the gender equality objectives, considering the need to have objectives to address the causes of any gender pay gap
- gather and use information on how policies and practices affect gender equality
- consult employees, service users and others
- assess the impact of current and proposed policies and practices on gender equality
- implement the actions set out in the written scheme and review progress at least once every three years

The term “sex” is used to describe biological differences between women and men. The term “gender” refers to the wider social roles and relationships which structure men’s and women’s lives. The gender equality duty covers men, women and transgender individuals. Transgenderism or transsexualism is a recognised medical condition where an individual believes he or she was born in a body of the wrong sex.

Summary of requirements - Race, Disability and Gender legislation

As can be seen from the above outline of the legislation regarding Race, Disability and Gender, there are common themes to the requirements they place on us. These are:

- eliminating unlawful discrimination/harassment
- promoting equality of opportunity
- preparing a written policy or scheme on how we will address the aims above
- assessing the impact of our policies, practices and procedures on different groups and publishing results
- monitoring the recruitment and progress of students and staff and publishing results
- reviewing and revising policies and/or schemes and action plans once every three years

Race	Disability	Gender
promote good relations between persons of different racial groups	<p>promote positive attitudes towards disabled persons</p> <p>encourage participation by disabled persons in public life</p> <p>take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons</p>	consider the need to have objectives to address the causes of any gender pay gap

Other relevant legislation

Age Discrimination

The Employment Equality (Age) Regulations 2006 outlaw age discrimination against employees (including applicants for jobs) and people applying to be students. We cannot discriminate against someone, therefore, on the grounds of their age in relation to admission, progression and graduation/non-graduation. Similarly, we cannot discriminate against people in relation to recruitment and selection, access to training and development, promotion opportunities, and retirement. Staff are entitled to request to work beyond their normal retirement date and this request will be considered. Retirement Guidelines which outline the process to be followed are available from the Human Resources website.

Sexual Orientation

The Employment Equality (Sexual Orientation) Regulations 2003 outlaw discrimination on the grounds of sexual orientation in employment. Sexual orientation is defined as an orientation to the same sex, the opposite sex, or the same and opposite sex. The Equality Act 2006 widened the scope of the Regulations to cover the provision of goods, facilities, services and education. The law also covers discrimination against someone because of a perception about their sexual orientation, even if that perception is not correct. The Civil Partnership Act 2004 gave same-sex couples the same rights as married heterosexual couples.

Legislation recognises both direct and indirect discrimination on the grounds of sexual orientation. A person who is a civil partner in a registered civil partnership of a same-sex couple should not be treated less favourably than a married person in similar circumstances. If a civil partner is treated less favourably, they may be able to bring a claim for sexual orientation discrimination under the Sexual Orientation Regulations or a claim for sex discrimination.

The Regulations outlaw direct discrimination, indirect discrimination, harassment and victimisation on the grounds of sexual orientation. It is also unlawful to discriminate against or harass someone after the working relationship has ended. The definitions of discrimination includes discriminating against someone because of their perceived sexual orientation (even if this turns out not to be the case) or because he/she is friendly with others of particular sexual orientations.

In very limited circumstances it will be lawful for an employer to treat people differently if it is a genuine occupational requirement that the job holder must be of a particular sexual orientation. For example, an organisation advising on and promoting gay rights may be able to show that it is essential to the credibility of its chief executive who will be the public face of the organisation that s/he should be gay. The sexual orientation of the holder of that post may therefore be a genuine occupational requirement. It is very unlikely that any posts at the University would fall into this category but managers should take advice from link HR Advisers if necessary.

Religion or Belief

The Employment Equality (Religion or Belief) Regulations 2003 outlaw discrimination on the grounds of a person's religion or belief, in employment. Religion or belief is defined as being "any religion, religious belief, or philosophical belief". In general, three criteria are used to determine a religion:

- a belief in a supreme being
- worship of that supreme being; and
- a group or following of people who observe the beliefs, values, customs and traditions as set down by that supreme being.

However, philosophical beliefs are much less well defined and political beliefs are explicitly excluded from the legislation. The Equality Act 2006 extended the scope of these Regulations to cover the provision for goods, facilities, services and education.

The legislation covers discrimination on the grounds of perceived as well as actual religion or belief and the religion or belief of someone with whom the person associates.

The Regulations outlaw direct discrimination, indirect discrimination, harassment and victimisation on the grounds of religion or belief. It is also unlawful to discriminate against or harass someone after the working relationship has ended. The definitions of discrimination includes discriminating against someone because of their perceived religion or belief (even if this turns out not to be the case) or because he/she is friendly with others of particular religions or beliefs.

In very limited circumstances it will be lawful for an employer to treat people differently if it is a genuine occupational requirement that the job holder must be of a particular religion or belief. For example, some organisations, such as faith schools, have an ethos based on a religion or belief. They may be able to apply a genuine occupational requirement to some of their posts (but possibly not all) and each case would need to be justified. It is very unlikely that any posts at the University would fall into this category but managers should take advice from link HR Advisers if necessary.

FUTURE EQUALITY LEGISLATION

The Equality Bill was introduced on 24th April 2009. Some of the main provisions in the Bill are set out below¹. The aim of the Bill is to 'harmonise discrimination law, and to strengthen the law to support progress on equality'. The Bill will replace **all** existing equality legislation, including the Equal Pay Act.

¹ based upon briefings from the Equal Opportunities Review and the Equality Challenge Unit

The Bill strengthens the law in a number of key areas by:

1. Creating a general public duty. The Bill replaces the three existing duties (relating to race, disability and gender) with a single duty covering eight² protected characteristics: race, sex, pregnancy and maternity, gender reassignment, disability, age, sexual orientation and religion or belief.

We will have to consider how our policies, programmes and service delivery will affect people with the protected characteristics. For example we will have to:

- Consider taking proactive steps to address disadvantage arising on grounds of age (mature students, early researchers).
 - Foster good relations through addressing any tensions that exist with Lesbian Gay and transgender staff and students and those of certain religions and beliefs. Strategies may include discussion, consultation, policies, induction and training.
2. Extending the range of lawful positive action to overcome or minimise a disadvantage arising from a protected characteristic. This means if the University believes a certain group of students need particular support or additional tuition we would now be able to lawfully target that support in a proportionate way. Positive action will now also be extended to recruitment and promotion in tie-break situations where the candidates are equally qualified.
 3. Extending the circumstances in which a person is protected against discrimination, harassment or victimisation because of a protected characteristic.

The Bill now extends protection based on association and perception to race, sex, gender reassignment, disability, age, sexual orientation and religion or belief.

Example of association: If a mature student has a disabled dependant living with them, they should not be treated less favourably because of the dependant's disability. The student may be also entitled to have some accommodating reasonable adjustments, even though it is the dependant that is disabled and not the student.

The existing provisions on employer liability for third party sexual harassment are extended to all the other strands.

4. Allowing employment tribunals to make recommendations in discrimination cases which apply to the whole workforce.

Equal pay

The key change here is that hypothetical comparators are to be permitted where there is no colleague doing equal work. Previously, a claimant had to identify an actual comparator doing equal work before a claim could be pursued. In such a case, claimants will no longer be debarred from showing direct sex discrimination in pay arrangements.

² The Bill refers to nine protected characteristics and includes marriage and civil partnership

A new provision seeks to promote greater transparency and dialogue about pay in the workplace by outlawing pay secrecy clauses and protecting people who wish to discuss their pay with colleagues. Terms of employment that restrict people from disclosing or talking about their pay will be unenforceable.

There are provisions requiring reporting on the gender pay gap. The EHRC has been asked to develop a "set of metrics for gender pay reports".

Timetable

The Second Reading of the Bill in the House of Commons is expected in May, with the Bill entering Committee Stage in June. It is expected to receive Royal Assent in Spring 2010, and the majority of the provisions are expected to come into force in October 2010.

Appendix 3 Involvement and Consultation

All Areas

1. The University's Equality Committee and Equality Advisory Group draws on a wide range of expertise in all the areas covered by this Scheme and has been closely involved in designing and commenting on it.
2. We have also consulted our staff generally and those in key departments and areas including the Trade Unions.

Race Equality Scheme

3. We consulted with staff and students through forums, external stakeholders and the Equality and Diversity Committee and Equality and Diversity Group.
4. We have consulted with our Religion and Faith Advisory Group who represent the major religions and faiths in the University and local community

Disability Equality Scheme

5. We have collaborated with our Dyslexia and Disabilities Unit to involve and consult our disabled students and students with dyslexia
6. We have involved and consulted with the Disabled Staff network
7. We have involved and consulted external groups

Gender Equality Scheme

8. We have conducted a literature review and consulted with University experts, drawing upon the range of existing consultation that has shaped the context for gender equality
9. We have held a consultation exercise on gender issues forum for staff and students

Sexual Orientation diversity

10. We have collaborated with Kingston University's Student Union to consult with lesbian, gay men, bi-sexual and trans-gender students
11. We have consulted through a forum for lesbian, gay men, bi-sexual and trans-gender staff.

Age Diversity

12. An internal review of our HR policies for compliance with Employment Equality (Age) was conducted

Other

13. Institutional research on student composition, retention, progression, achievement and employment is conducted annually and circulated to faculties for action

