



THE EQUALITY BILL

The Equality Bill, which is intended to reform and harmonise existing equality legislation and introduce new equality measures, was published on 27 April 2009.

Key issues arising out of the Bill are:

- Central and local government, and other public bodies such as strategic health authorities and Regional Development Agencies will be under a duty to exercise their functions in a way that has due regard to the need to reduce socio-economic disadvantage and

orientation will be added gender reassignment, marriage and civil partnership, and pregnancy and maternity.

- The concept of “disability-related” discrimination will be replaced by “discrimination arising from disability”. This is the government’s response to the House of Lords’ decision in *London Borough of Lewisham -v- Malcolm*, which reduced the amount of protection afforded to disabled persons. The new form of discrimination does not require there to be a comparator against which

- Universities and colleges will be liable if a member of their staff is harassed on the grounds of any of the protected characteristics on more than two occasions by the same or different third parties, unless they can demonstrate that they have taken such steps as are reasonably practicable to prevent the harassment occurring. Once in force, this provision could require a review of the institutional approach to a range of student behaviours, including comments on social networking sites.

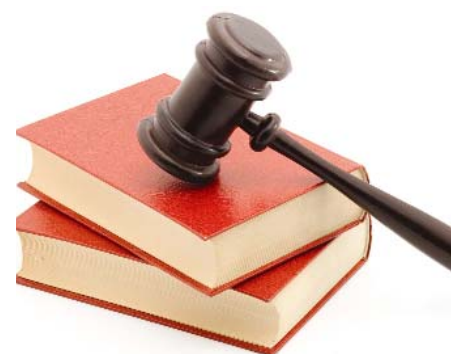
“The concept of “disability-related” discrimination will be replaced by “discrimination arising from disability”.

inequalities. Universities and colleges will not be caught directly by this duty, but may notice its impact in their dealings with these other public bodies.

- The characteristics protected by the anti-discrimination legislation will be extended, so to age, disability, race, religion and belief, sex and sexual

the treatment of the disabled person is to be judged, but does allow treatment which is detrimental to a disabled person to be justified if it is a proportionate means of achieving a legitimate aim.

- Indirect discrimination (where an apparently neutral provision, criterion or practice has a disproportionate effect on certain groups) will in future cover all the protected characteristics.





- ||| The burden of proof will be reversed in respect of all the protected characteristics. In other words, if there are facts which, in the absence of any other explanation, suggest that discrimination has occurred, the burden will shift to the institution to prove that it has not discriminated in the manner alleged.
- ||| Universities and colleges will be under a single positive equality duty to eliminate discrimination, promote equality of opportunity and foster good relations in respect of all the protected characteristics, except marriage/civil partnership. This could lead to some challenging issues where, for example, promoting equality of opportunity for the LGB community might compromise good relations in the arena of religion and belief.

- ||| Possibly the most well-publicised aspect of the Bill are the new provisions relating to positive action. The Bill will enable positive action to be taken in relation to any of the protected characteristics to encourage better representation of the relevant group in the activity in question, to meet the needs of the relevant group, or to eliminate disadvantage suffered by that group. This may enable institutions to develop specific training programmes targeted at particular groups. In relation to recruitment and promotion in employment, positive action is only permissible if the person with the protected characteristic is as qualified as the other candidate, and there is no wider policy of treating persons from that group more favourably. The effect of this is that it would be permissible for a university or college to elect to employ a female employee above an equally well qualified male candidate, but not if the institution had a wider policy to recruit more women.

The Bill is making its way through Parliament and it is likely that some of these provisions may be amended. We will be closely following developments and will keep you updated in future issues of this bulletin and in Education Brief.

This Education Bulletin aims to introduce you to legal issues of concern to managers in education. It is not a substitute for taking appropriate specialist advice in individual cases. The Education Bulletin may be photocopied for the use of colleagues within your institution.

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