The Equality Act 2010

The Equality Act 2010

The Equality Act 2010 is a single legal framework that protects the rights of equal opportunity and against unlawful discrimination, harassment and victimisation based on someone's personal, protected characteristics. It came into force in October 2010 and brings together over 116 separate pieces of legislation into a single Act. The Act provides a legal framework to protect the rights of individuals and advance equality of opportunity for all.

Source: www.gov.uk/guidance/equality-act-2010-guidance

The Public Sector Equality Duty (PSED)

The Public Sector Equality Duty aims to positively promote equality, not merely to avoid discrimination (Scot. Gov., 2022). The PSED came in to force in April 2011 (s.149 of the Equality Act 2010). It requires **Listed public authorities and orgs carrying out public functions** (explained in Glossary) in **carrying out their functions** (explained in Glossary), **to have due regard** (explained in Glossary) to the need to achieve the objectives set out under s149 to:

- **eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;**
- **advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;**
- **foster good relations between persons who share a relevant protected characteristic and persons who do not share it.**

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

While the subject matter of the PSED is largely reserved to the UK Government, Scottish Ministers have used their powers to support compliance with the PSED by placing specific duties on Scottish public authorities. Scottish Ministers used these powers to make The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. Listed authorities covered by the Scotland specific duties must publish equality objectives, at least every four years as well as information to demonstrate their compliance with the PSED.

1. Duty to report progress on mainstreaming the equality duty

A listed authority must publish a report on its progress to make the equality duty integral to the exercise of its functions to help better perform that duty. It must do this at least every two years from when it last published a report.

2. Duty to publish equality outcomes and report progress

A listed authority must publish a set of equality outcomes which it considers will enable it to better perform the equality duty. It must do this at least every four years, from when it last published a set of equality outcomes.

In preparing a set of equality outcomes, a listed authority must:

- take reasonable steps to involve persons who share a relevant protected characteristic and any person who appears to the authority to represent the interests of those persons; and
- consider relevant evidence relating to persons who share a relevant protected characteristic.

If a set of equality outcomes published by a listed authority does not seek to further the needs mentioned in section 149(1) of the Act in relation to every relevant protected characteristic, the authority must publish its reasons for proceeding in this way.

A listed authority must publish a report on the progress made to achieve the equality outcomes published by it no later than 30th April 2015; and then at least every two years, beginning with the date on which it last published a report.

In this regulation, "equality outcome" means a result that the listed authority aims to achieve in order to further one or more of the needs mentioned in section 149(1) of the Act.

Source: www.legislation.gov.uk/sdsi/2012/9780111016718/contents

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 Continued

3. Duty to assess and review policies and practices

A listed authority must, where and to the extent necessary to fulfil the equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs mentioned in section 149(1) of the Act:

- In making the assessment, a listed authority must consider relevant evidence relating to persons who share a relevant protected characteristic (including any received from those persons).
- A listed authority must, in developing a policy or practice, take account of the results of any impact assessment made by it in respect of that policy or practice.
- A listed authority must publish, within a reasonable period, the results of any assessment made by it in respect of a policy or practice that it decides to apply.
- A listed authority must make such arrangements as it considers appropriate to review and, where necessary, revise any policy or practice that it applies in the exercise of its functions to ensure that, in exercising those functions, it complies with the equality duty.
- For the purposes of this regulation, any consideration by a listed authority as to whether or not it is necessary to assess the impact of applying a proposed new or revised policy or practice is not to be treated as an assessment of its impact.

4. Duty to gather and use employee information

A listed authority must take steps to gather information on:

- the composition of the authority's employees (if any); and
- the recruitment, development and retention of persons as employees of the authority, with respect to, in each year, the number and relevant protected characteristics of such persons.

The authority must use this information to better perform the equality duty.
A report published by the listed authority in accordance with regulation 3 must include:

- an annual breakdown of information gathered by it which has not been published previously in such a report; and
- details of the progress that the authority has made in gathering and using that information to enable it to better perform the equality duty.

5. Duty to publish gender pay gap information

6. Duty to publish statements on equal pay, etc.

Every four years, the statement required for the above must also specify the authority's policy on equal pay among its employees between:

- men and women;
- **persons who are disabled and persons who are not**; and
- persons who fall into a minority racial group and persons who do not; and

occupational segregation among its employees, being the concentration of—

- men and women;
- **persons who are disabled and persons who are not**; and
- persons who fall into a minority racial group and persons who do not, in particular grades and in particular occupations.

The information published must be based on the most recent data available for a date when the authority had at least 150 employees. No publication is necessary if, throughout the period since these Regulations came into force or since publication was last due, the authority did not have 150 or more employees at any point.

7. Duty to consider award criteria and conditions in relation to public procurement

8.Duty to publish in a manner that is accessible, etc.

9. Duty to consider other matters

In carrying out its duties under these Regulations, a listed authority may be required to consider such matters as may be specified from time to time by the Scottish Ministers.

10. Duty of the Scottish Ministers to publish proposals to enable better performance

- The Scottish Ministers must publish proposals for activity to enable a listed authority to better perform the equality duty
- not later than 31st December 2013; and then at least every four years from when it last published proposals.
- The Scottish Ministers must publish a report on progress in relation to the activity
- not later than 31st December 2013; and then at least every four years from when it last published a report

Source: www.legislation.gov.uk/sdsi/2012/9780111016718/contents

The Equality Act 2010 and Mental Health Stigma and Discrimination

See Me
End mental health discrimination

Relevance of The Equality Act 2010 to Tackling Mental Health Stigma and Discrimination

The Equality Act 2010:

- Requires employers and providers of goods, services and facilities not to discriminate against people who have disabilities, **including mental health problems that fall within the description of a disability.**

- Discrimination is not just about bullying and harassment, and the act defines four main types of discrimination.

  - **Direct discrimination:** treating someone less favourably because of a protected characteristic
  - **Indirect discrimination:** applying a rule or policy that disadvantages people with a protected characteristic
  - **Harassment:** unwanted behaviour related to a protected characteristic or of a sexual nature
  - **Victimisation:** treating someone unfairly because they have made a complaint or supported someone else's complaint about discrimination

- The three specific needs which are required to be met under the Public Sector Equality Duty align with See Me's strategy With Fairness in Mind as shown in the below table.

The Equality Act 2010	See Me – With Fairness in Mind
1. Eliminate unlawful discrimination	By tackling stigma AND discrimination
2. Advance equality of opportunity	Addressing and removing barriers
3. Foster good relations	Embedding social contact

1.Eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010.

- In order to tackle discrimination we must consider how it operates, which includes stigma, because where stigma and prejudice exists there is potential for discrimination to occur.

2. Advance equality of opportunity between people who share a relevant protected characteristic and those who do not.

- We promote mental health inclusion, working to create environments and cultures where people are able to speak out about experiencing a mental health problem without fear or recrimination; and when they do, they are treated equitably, with dignity and respect.

3. Foster good relations between people who share a protected characteristic and those who do not.

- People who have lived with, or are living with, mental health problems are central to successful action to end stigma and discrimination.

Examples of unlawful discrimination in the workplace based on mental health problems (protected under disability)

- Refusing a request for a reasonable adjustment (e.g. because of the belief that it's not fair on the rest of the team OR that workplace adjustments are only for employees with physical disabilities).
- Withholding work-related opportunities (like promotions or taking on new work/projects because of an assumption the employee won't be able to cope).
- Avoiding or ignoring the employee (e.g. because they don't feel comfortable having conversations about mental health or because they are worried that they'll say the wrong thing).
- Moving someone into another role without discussing it with them.
- Breaching confidentiality (by sharing details of the employee's situation with colleagues, without their consent).
- Not allowing time off (to attend counselling or therapy sessions, this can sometimes be due to not knowing therapy counts as a medical appointment).



See Me
End mental health discrimination

Some Key Challenges with The Equality Act 2010

1. It is largely reserved to Westminster

2. Accountability

The Scottish Government has acknowledged that the current equality accountability regime needs to be strengthened. Ongoing work at the Scottish Government level (Scot. Gov., 2021) has already acknowledged the challenges with implementation and accountability around the Public Sector Equality Duty, which:

- was intended to prompt public authorities to dismantle discriminatory practices in their systems and processes, and to actively promote equality within and between protected groups. It was always conceived as a positive duty, to shift the tide away from responding to individual cases of discrimination towards creating a culture of positively promoting equality. (Scot. Gov., 2021)

The PSED Review Consultation responses (Scot. Gov., 2022) include recommendations, which are key to ending intersectional stigma and discrimination as it relates to mental health and some examples are included below:

- "new regulation should set out minimum standards that public bodies must comply with in how they use equality impact assessment" (Close the Gap in Scot. Gov., 2022: p 48).
- "There may be benefit in the drafting of legislation to have clear definitions/be carefully worded in order to convey and mandate their intent and to maximise effectiveness and impact – "We urge Scottish Government to ensure that wording around this is as strong as possible" (Scot. Gov., 2022: p 48).
- "Set national equality outcomes" (Scot. Gov., 2022: p 48). [this could include for those living with severe and complex mental illness – SMISS could be used as a data source for developing these outcomes].

Sources:

Scottish Government 2021 'Review of the operation of the (www.gov.scot)'
Scottish Government 2022 'Public Sector Equality Duty - operation review: consultation analysis - gov.scot (www.gov.scot).

3. Misunderstanding/lack of consensus over concepts/definitions

A key concept which is very often misunderstood is institutional discrimination. Often, individuals believe it to be a personal accusation (such as a person being labelled as a racist or misogynist). However, The McPherson Report (1999) definition relating to institutional racism helps us to understand that it incorporates a much broader context:

Institutional discrimination is defined as "The **collective failure** of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. **It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping** which disadvantage minority ethnic people" (MacPherson, 1999: 50).

Source: MacPherson, W. (1999). The Stephen Lawrence Inquiry: Report of an Inquiry. Re-port of an Inquiry by Sir William Macpherson of Cluny. Available at: 4262.pdf (publishing.service.gov.uk) [Accessed 02.11.23]

Further complexity comes with the definitions used regarding race, for example and the implicit assumption of the Act that race exists, rather than being a social construct.

4. Dual discrimination and intersectionality not accounted for

The Equality Act 2010 which included a provision (s.14) for bringing forward claims of direct discrimination based on more than one protected characteristic "dual discrimination" would have gone some way to address intersectional stigma and discrimination. However, this was not brought forward, as it was considered too complicated, and costly to business, and burdensome (EHRC, 2017).

Source: www.legislation.gov.uk/ukpga/2010/15/section/14

5. Data

There are many challenges related to equality data (often termed 'diversity data'). This is in terms of collecting it in the first instance and a lack of trust from communities in what it will be used for, leading to an understandable reluctance to disclose.

Storage and usage is also rarely understood, among many other challenges.

There is a programme of Scottish Government work currently looking to improve the situation around equality data, which emerged from the Covid-19 pandemic and stark inequalities this exposed, primarily in relation to ethnicity data. This is called the Equality Data Improvement Programme and you can read more at the following link: ***www.gov.scot/groups/equality-data-improvement-programme-edip-group/***

Glossary

Public authorities and organisations carrying out public functions - 'Listed Authorities'

Public authorities are organisations that work for, or provide services for, the public. For example, local councils, schools and education bodies, health providers, police, fire and transport providers, and government departments.

Organisations carrying out public functions are private businesses or volunteer organisations that are contracted to work on behalf of public authorities.

This means that they must consider, and keep reviewing, how they are promoting equality in in **'exercising their functions'**:

- decision-making
- internal and external policies
- procuring goods and services
- the services they provide
- recruitment, promotion and performance management of employees.

Due Regard

Having due regard means that you have made yourself fully aware of – and understood – what the PSED requires, and that you have put this knowledge into practice. There is no standard legal definition of 'due regard', although various court cases have clarified the general duty and what 'due regard' means.

Advancing equal opportunities means:

- removing or reducing the disadvantage that people with protected characteristics face
- taking steps to meet the specific needs of people with protected characteristics
- encouraging people with protected characteristic to participate fully in all activities, especially where they are underrepresented.

Fostering good relations

- means you are taking action to reduce prejudice and increase understanding between different groups of people.

Source: www.equalityhumanrights.com/guidance/public-sector-equality-duty-psed