

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 11: Advancement of Equality**

##### *Chapter 1: Public sector equality duty*

##### *Section 149: Public sector equality duty*

#### **Effect**

479. This section imposes a duty, known as the public sector equality duty, on the public bodies listed in Schedule 19 to have due regard to three specified matters when exercising their functions. The three matters are:
- eliminating conduct that is prohibited by the Act, including breaches of non-discrimination rules in occupational pension schemes and equality clauses or rules which are read, respectively into a person's terms of work and into occupational pension schemes;
  - advancing equality of opportunity between people who share a protected characteristic and people who do not share it; and
  - fostering good relations between people who share a protected characteristic and people who do not share it.
480. The second and third matters apply to the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. They do not apply to the protected characteristic of marriage and civil partnership.
481. As well as the public bodies listed in Schedule 19, the section also imposes the public sector equality duty on others that exercise public functions, but only in respect of their public functions. Section 150 explains what is meant by "public function".
482. Subsections (3), (4) and (5) expand on what it means to have due regard to the need to advance equality of opportunity and foster good relations. In particular, subsection (4) makes clear that having due regard to the need to advance equality of opportunity between disabled people and non-disabled people includes consideration of the need to take steps to take account of disabled people's disabilities. Subsection (6) makes clear that complying with the duty might mean treating some people more favourably than others, where doing so is allowed by the Act. This includes treating disabled people more favourably than non-disabled people and making reasonable adjustments for them, making use of exceptions which permit different treatment, and using the positive action provisions in Chapter 2 of this Part where they are available.
483. [Schedule 18](#) sets out persons and functions to which the equality duty does not apply.

## **Background**

484. This section replaces section 71 of the Race Relations Act 1976, section 49A of the Disability Discrimination Act 1995 and section 76A of the Sex Discrimination Act 1975. These provisions imposed similar public sector equality duties in relation to race, disability and gender (including pregnancy and maternity as an implicit part of gender, and partly covering gender reassignment) respectively. There were no equivalent public sector equality duties for age, religion or belief or sexual orientation in previous legislation. The section extends the new public sector equality duty to cover gender reassignment in full, age, religion or belief and sexual orientation.

## **Examples**

- The duty could lead a police authority to review its recruitment procedures to ensure they do not unintentionally deter applicants from ethnic minorities, with the aim of eliminating unlawful discrimination.
- The duty could lead a local authority to target training and mentoring schemes at disabled people to enable them to stand as local councillors, with the aim of advancing equality of opportunity for different groups of people who have the same disability, and in particular encouraging their participation in public life.
- The duty could lead a local authority to provide funding for a black women's refuge for victims of domestic violence, with the aim of advancing equality of opportunity for women, and in particular meeting the different needs of women from different racial groups.
- The duty could lead a large government department, in its capacity as an employer, to provide staff with education and guidance, with the aim of fostering good relations between its transsexual staff and its non-transsexual staff.
- The duty could lead a local authority to review its use of internet-only access to council services; or focus "Introduction to Information Technology" adult learning courses on older people, with the aim of advancing equality of opportunity, in particular meeting different needs, for older people.
- The duty could lead a school to review its anti-bullying strategy to ensure that it addresses the issue of homophobic bullying, with the aim of fostering good relations, and in particular tackling prejudice against gay and lesbian people.
- The duty could lead a local authority to introduce measures to facilitate understanding and conciliation between Sunni and Shi'a Muslims living in a particular area, with the aim of fostering good relations between people of different religious beliefs.