

WEST DUNBARTONSHIRE COUNCIL

Report by Director of Corporate Services

Corporate and Efficient Governance Committee: 27th October 2010

Subject: Equality Act 2010 - Main Employment Provisions

1. Purpose

- 1.1** The purpose of this report is to update the Committee on the employment provisions of the Equality Act 2010 which came into force on 1 October 2010. The report further provides the Committee with details of action taken to ensure compliance with the provisions of the new Act.

2. Background

- 2.1** The Equalities Act received Royal Assent on 8 April 2010 with the main employment provisions of the Act coming into force from 1 October 2010. Further provisions of the Act will come into force between April 2011 and October 2012.
- 2.2** The primary aim of the Act is to consolidate and harmonise all the existing strands of equality and discrimination legislation into a single Act. It also introduces several new rights and remedies, and creates a stronger set of obligations on public bodies to promote equality.
- 2.3** In addition to supporting the implementation of the Act the Equality and Human Rights Commission has produced non statutory guidance for employers which provides further information on the new provisions.

3. Main Issues

Protected Characteristics

- 3.1** The Act sets out the 9 “*protected characteristics*” in terms of employment equalities, which expands the previous 7 “protected characteristics” addressed by a large number of Acts and regulations. These characteristics are now: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 3.2** The Act sets out the principles that need to be applied in considering whether one or more of the ‘protected characteristics’ apply to an individual or group.
- 3.3** The Act prohibits unlawful discrimination by employers and requires them to promote equal opportunities in employment, and foster good relationships between members of different groups, although is not a requirement in terms of Marriage/Civil Partnership.

- 3.4** All HR Employment Policies have been reviewed and updated to ensure that all 9 “protected characteristics” are now included and an HR Information Note will be developed to provide clarity on these protected characteristics.

Pre Employment Health & Related Checks

- 3.5** This provision was introduced to deter employers from directly discriminating on the grounds of disability, and the Act limits the ability for employers to ask pre-employment health questions except in specific situations. An employer can no longer ask about a job applicant’s health until that person has been either offered a job (on a conditional or unconditional basis) or been included in a pool of unsuccessful candidates to be offered a job when a suitable position arises (e.g. redeployment pool).
- 3.6** The Act does however allow a range of reasonable and practical questions to be asked in specific circumstances e.g. equalities monitoring, ensuring any reasonable adjustment to recruitment processes and/or taking positive action.
- 3.7** The Council has taken steps to ensure that it does not breach the new provisions by making required changes to our recruitment process. Job applicants will only be asked to complete a health questionnaire when an offer of employment has been made and questions relating to absence have been removed from the application form and from reference requests. The Recruitment & Selection Policy will be updated to reflect this change.

Direct Discrimination - New Categories through Association and Perception

- 3.8** The scope of direct discrimination has been broadened to include both “associative” and “perceptive” discrimination following recent case law.
- 3.9** The Act protects people from direct discrimination when they are associated with someone who has a protected characteristic e.g. as their partner or carer and supports the case of Coleman-v-Attridge Law where the EAT held that the Disability Discrimination Act should be read as covering discrimination on the grounds of association with a disabled person. The provisions also protect from discrimination people who are wrongly perceived to have a particular protected characteristic e.g. a particular sexual orientation, as established in the case of English-v- Thomas Sanderson Blinds Ltd.
- 3.10** The Council’s Dignity at Work Policy and Procedure was developed to provide a discrete framework for dealing with complaints relating to Discrimination, Victimisation, Harassment or Bullying. The current Policy covers ‘associative’ discrimination and will be amended to provide clarity on the definition of “associative” and “perceptive” discrimination.

Positive Action

- 3.11** The Act does not promote Positive Discrimination, but situations where employers may take positive action have been extended. Employers have discretion to recruit or promote an individual from an under represented group where they have a choice between two or more equally qualified candidates.

However, this can only be done where in all other respects the candidates are equally qualified and positive action can be justified. Employers are not obliged to use this provision, and should be aware that in the vast majority of recruitment situations an absolute tie between two candidates is unlikely.

3.12 The Council currently actively promotes compliance with the Double Tick 'Positive About Disabled People' scheme which ensures that disabled job applicants who meets the essential requirements of a post will be guaranteed an interview.

3.13 An HR Information Note will be developed to provide clarity on positive action.

Future Provisions of the Act

3.14 The majority of the provisions came into force on 1 October 2010. However provisions on dual discrimination, the socio-economic duty and some of the specific public sector duties are intended to come into force on 1 April 2011.

3.15 There will also be a future requirement for public bodies to publish information on gender pay gaps from April 2011.

4. People Implications

4.1 HR Information Notes will be available from the intranet to provide employees and managers with information in relation to the Equalities Act. All HR employment Policies are available from the intranet.

5. Financial Implications

5.1 There is no evidence that the provisions of the new Act will have a direct impact financially in terms of costs or increased resources being required.

6. Risk Analysis

6.1 Failure to comply with the provisions of the Equality Act can lead to discrimination cases being lodged which have no upper compensatory limit and practices have been reviewed to ensure compliance with the Act. There was no further requirement to carry out a risk assessment.

7. Equalities Impact

7.1 An impact screening has been undertaken and no significant issues were identified for potential equality impact (Appendix 1). This report positively contributes to ensuring awareness of the employment provisions within the new Equality Act and raises awareness of the 9 "protected characteristics"

8. Conclusions and Recommendations

8.1 The Equality Act 2010 consolidates separate equality legislation harmonising the legislation into one Act. Action has been taken by HR to ensure compliance with the employment equalities of the Act introduced in October

and further action will be taken as further statutory provisions become effective.

8.2 The Committee asked to note:

- the main employment provisions of the Equality Act 2010 introduced from 1 October 2010 and the action taken to ensure compliance.
- that the Recruitment & Selection Policy and Dignity at Work Policy will be updated to include revised wording to reflect the Equalities Act.

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Appendices: Appendix 1 - Impact Screening - Summary Proforma

Background Papers: EHRC Guidance Note
Equalities Act 2010

Wards Affected: All Wards