1. Introduction

The Equality Act 2010 harmonises and extends previous equalities legislation. It aims to make the legislation more consistent, clearer and easier to follow. As a public sector organisation our responsibilities remain largely the same but there are some differences highlighted in the briefing that follows. At the end of this document there is a short section outlining the responsibilities of individual sections at the university in relation to the legislation and these changes.

2. Who has responsibilities?

The Act applies to all organisations that provide a service to the public or a section of the public. It also applies to anyone who sells goods or provides facilities. This means that all of King's activities and functions are covered by the legislation and all of its staff are both protected by and have responsibilities under the legislation.

3. Who is protected?

The Act protects people from discrimination on the basis of ‘protected characteristics’ (these used to be called ‘grounds’). The protected characteristics are:

- age
- disability
- gender reassignment – **new characteristic**
- marriage and civil partnership – **new characteristic**
- pregnancy and maternity – **new characteristic**
- race – this includes ethnic or national origins, colour and nationality
- religion or belief
- sex, and
- sexual orientation.
4. Summary of changes

4.1 Protected characteristics

Disability
The legal definition applies to a person who has ‘a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities’. The definition hasn’t changed, however to qualify disabled people only have to have an impairment that meets the definition and their condition does not need to be clinically diagnosed as in the past.

Gender reassignment
Previously protections for gender reassignment were provided under the sex legislation and now gender reassignment has become an independent characteristic. The protected characteristic of gender reassignment applies to a person who is proposing to undergo, is undergoing or has undergone a process to change their sex. To qualify for protection from discrimination a transsexual person no longer has to show that they are undergoing a medical transition, confirming that they are undertaking a personal process to transition is sufficient.

Marriage and civil partnership
This is a new protected characteristic that only covers the employment environment and is not relevant to education. At this point it is slightly unclear as to the full protections that will be provided to this group and the implications for the public sector – although it will be unlawful to directly or indirectly discriminate against someone who is married or in a civil partnership.

Pregnancy and maternity
Previously protections were provided under the sex legislation and now pregnancy/maternity has become an independent characteristic. Staff members are covered from the moment of disclosing a pregnancy through to the end of their maternity leave period. Students are covered from the moment of disclosing until 26 weeks after the birth of their baby. Protections include, the need for a health and safety assessment, time off for doctors appointments, the right to be consulted about changes to the contract or redundancy during maternity leave, the right to be notified about promotion opportunities, the right to return to the same or equivalent job and the right to provision of breastfeeding facilities.
4.2 Prohibited conduct

This section includes a review of existing legislation and highlights any changes/additions as a consequence of the Equality Act 2010.

**Direct discrimination**
This is when someone is treated less favourably than another person because of a protected characteristic. The ‘less favourable’ treatment does not have to cause significant disadvantage and could simply be as a result of a person being treated differently because of their protected characteristic when they would have preferred to have been treated the same. Direct discrimination can still occur when both parties share the same protected characteristic that gives rise to the discrimination.

An example would be where a potential student is refused a place on a programme because they have disclosed they have dyslexia as it is presumed they won’t have the ability to complete all the reading and written work involved.

**Discrimination by association – new form of discrimination**
This occurs when a person is treated less favourably because they are linked or associated with someone who has a protected characteristic and do not possess that characteristic themselves.

An example would be where someone is made redundant because they have taken a few days dependents leave to take care of their child who has a disability.

Please note: there is no protection from this form of discrimination on the grounds of pregnancy and maternity and marriage and civil partnership.

**Discrimination by perception – new form of discrimination**
This occurs when a person is treated less favourable because it is presumed they possess a protected characteristic which they actually do not have.

An example would be where a woman who is judged the best candidate for a job is not offered the position as it involves interviewing women with a range of health issues and it is presumed the candidate is transgender and that this would make the interviewees feel uncomfortable.
Please note: there is no protection from this form of discrimination on the grounds of pregnancy and maternity and marriage and civil partnership.

**Indirect discrimination**
This occurs where a rule, policy or practice is applied equally to everyone but which particularly disadvantages people who share a particular protected characteristic. Indirect discrimination can be justified in limited cases if it can be shown that it is a proportionate means of achieving a legitimate aim – so where the rule, policy or practice is intended to meet a legitimate objective in a fair, balanced and reasonable way. Examples of where this could occur would be the need to maintain academic/employment standards or where there are health and safety or welfare concerns. A lack of financial resources alone is unlikely to be a sufficient justification.

An example would be where the materials for a particular module are all provided in hardcopy only and on the day of the lecturers. This would disadvantage students with a range of disabilities including: hearing impairments and dyslexia.

Please note: there is no protection from this form of discrimination on the grounds of pregnancy and maternity.

**Discrimination arising from a disability – new form of discrimination**
Discrimination arising from a disability occurs when a disabled person is treated unfavourably because of something connected with their disability and this unfavourable treatment cannot be justified. Treatment can be justified if it can be shown that it is intended to meet a legitimate objective in a fair, balanced and reasonable way.

This form of discrimination can occur only if the service provider knows or can reasonably be expected to know that the disabled person has a disability.

An example would be where a student is asked not to come back to his tutorial group because he has Tourettes and is perceived to be too disruptive in order for the group to continue to function. This may be discrimination arising from a disability unless it can be justified (e.g. the group genuinely cannot function with the student present).
**Reasonable Adjustments**
Under disability legislation employers have a duty to make reasonable adjustments to their practices and premises to accommodate a disabled person, where a policy, physical feature or arrangement causes a substantial disadvantage. An anticipatory duty to make adjustments is owed to all students, under the Special Educational Needs and Disability Act (2002).

A failure to make a reasonable adjustment would be unlawful expect where the adjustment is not deemed to be considered ‘reasonable’. Only a court of law can decide on the concept of reasonableness, however the sorts of factors that should be taken in to account when assessing reasonableness include: the practicality of the adjustment, the impact on others, health and safety issues and the cost involved (bearing in mind the funds available to the whole organisation).

A failure to make a reasonable adjustment can be justified if the service provider did not know or could not reasonably be expected to know that the disabled person had a disability.

**Harassment** *provisions extended under the Equality Act*
Harassment is unwanted conduct which may create the effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Differences of attitude, background or culture and the misinterpretation of social signals can mean that what is perceived as harassment by one person may not seem so to another; nevertheless, this does not make it acceptable. The defining features are that the behaviour appears or feels offensive, humiliating, hostile or intimidating to the recipient or would be so regarded by a reasonable person.

A new aspect to the harassment protections is that if an employee has been harassed at work by a third party on two separate occasions and the employer has not responded, then on the third occasion they can claim third party harassment for which their employer is liable (the harasser need not be the same person on all three occasions).

Please note: there is no protection from this form of discrimination on the grounds of pregnancy and maternity and marriage and civil partnership
Victimisation
Victimisation occurs when someone is treated badly because they have done something in relation to the Equality Act, such as making or supporting a complaint or raising a grievance about discrimination, or because it is suspected that they have done or may do these things. A person is not protected from victimisation if they have maliciously made or supported an untrue complaint.

Positive action – provisions extended under the Equality Act
Positive action is the deliberate introduction of measures to eliminate or reduce discrimination, or its effects. It is not about special treatment for any one particular group, but the fair treatment of all people. Proportionate measures may be put in place where there is evidence of disadvantage, different needs or under-representation. Examples include mentoring schemes, networks, outreach work, welcoming statements in adverts etc.

These provisions which have been in place in the employment arena for some time are now possible within education.

In addition, if as a result of a recruitment process there are two equally suitable candidates for a post, it is now possible to select the candidate from the under-represented group over the other.

4.3 Other key changes

Prohibition of health questions during recruitment
Employers are prohibited from asking questions about the health of applicants before an offer of work i.e. reference requests prior to job offers should not ask health-related questions nor should application forms. However, employers can establish during the recruitment process whether all applicants are able to carry out a function that is intrinsic to the work, job offers can be made conditional subject to satisfactory responses to health questionnaires and employers can still support disabled applicants by asking about reasonable adjustments needed during the recruitment process.

Pay secrecy clauses unlawful
In order to improve pay transparency and improve practice in relation to equal pay, employers can no longer enforce ‘gagging’ clauses to prevent employees sharing information about their pay with colleagues. This relates to all protected characteristics.
4.4 Public Sector Equality Duty ~ this was passed in April 2010 and replaces the three previous equality duties in the areas of race, disability and gender, bringing them together under a single duty, and extending the responsibilities to cover age, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion and belief and sexual orientation.

The aim of the Public Sector Equality Duty is to put a greater onus on public bodies to help drive forward improvements in equality for society as a whole. These responsibilities are over and above the requirements summarised above. Public bodies are required to take a proactive and anticipatory approach to promoting equality.

Public bodies must have due regard to the three arms of the General Duty in relation to all the protected characteristics¹, these are to:

- eliminate discrimination, harassment, victimisation;
- advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it;
- foster good relations between people who share a relevant protected characteristic and people who do not share it.

Advancing equality of opportunity includes the need to minimise any disadvantage experienced by particular groups and putting in place special arrangements to meet their specific needs. It also requires public bodies to consider how to encourage protected groups to participate in public life, where they are considered to be underrepresented.

Fostering good relations includes tackling prejudice and promoting understanding between different groups.

The Equality Act 2010 sets out Specific Duties that public bodies should undertake in order to demonstrate compliance with the General Duty. These are to:

1. Publish equalities objectives every 4 years (by April 2012)

¹ In relation to the protected characteristic of marriage and civil partnership, only the first arm of the General Equality Duty applies. However all three arms apply to the other 8 protected characteristics.
These must be based on relevant equalities information (quantitative data) and engagement with staff and students (qualitative data)

2. Publish information annually to demonstrate compliance with the general equality duty
   (by December 2011)
   This should include information relating to staff and students affected by their policies and practices and should be used to understand the effect these policies and practices have had on equality (including a review of qualitative and quantitative data as above).

Information must be published in a way that is accessible to the public.

In relation to the specific function of procurement, there are now firmer requirements in relation to the General Duty. Public bodies are responsible for all their functions, including those carried out by an external supplier. Where the supplier is not covered by the legislation the public body may need to include obligations relating to equality in the contract in order to ensure it complies with its obligations under the duty. This means building equality considerations into the appropriate stages of commissioning and procurement processes, where relevant and proportionate.

5. Implications for King’s staff and the university

Individual departments, teams, units and sections need to understand the requirements of the Equality Act and how these impact on each of their activities. This includes thinking through whether any of their activities need to be reviewed to ensure that they are not inadvertently discriminating on the grounds of one of the 9 protected characteristics. When considering the range of activities undertaken by your part of the university – you will need to think about each of the following:

- Policies or practices that relate to staff/employment
- Policies or practices that relate to students/education
- Services provided to staff
- Services provided to students
- Physical features
- Learning and teaching materials and methods
- Research activities
Policies and practices that have the most relevance to equality will be those that have the greatest impact on outcomes/opportunities – such as recruitment, admissions, assessment and promotion.

In relation to the public sector equality duty – much of the work required to ensure the university is compliant will be coordinated by the Diversity & Inclusion Team. However given the size of the university, the Diversity & Inclusion Team can only take a lead on this and can not be responsible for overseeing the responses required for every individual section of the university. The legal requirements apply to the university as a whole and each department, unit or team must have due regard to the three arms of the general duty, to eliminate prohibited conduct, promote equality of opportunity and foster good relations.

In working toward the General Duty departments/teams/units should where possible consider:
- relevant quantitative information about their activities broken down by protected characteristic – e.g. data on outcomes for staff/students undergoing key processes such as recruitment and promotion (for staff) and admissions, progression and achievement (for students)
- information on complaints or grievances by protected characteristic
- responses to any feedback or satisfaction surveys by protected characteristic
- ways to gather qualitative data from groups of staff and students on areas of concern where these have been identified – by protected characteristic

This information can then be utilised to identify areas where improvement is required or where policies might need to be amended.

For further advice about how to respond to the legislation in your part of the university, please contact the Diversity & Inclusion Team email: diversity@kcl.ac.uk or telephone: 020 7848 3767.