

## How to use the Equality Act 2010: A guide for voluntary and community organisations (revised June 2015)

The Equality Act 2010 updated, simplified and strengthened Britain's equality laws.

It introduced broadly similar provisions across all forms of discrimination – age, disability,<sup>1</sup> gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These are called the protected characteristics.

The Equality Act 2010 (the Act) gives voluntary and community sector (VCS) organisations some powerful tools they can use in advocacy, service delivery and campaigning work. This leaflet looks at how VCS organisations can use the Act in their work. Because it is a guide to using the Act the leaflet concentrates on parts of the Act that we think will be particularly useful to VCS organisations and on those that were introduced by the Act. It deals first with the parts of the Act that will affect all or most protected groups and then with parts of it that are relevant to particular groups, such as disabled people or older people.

Most of the Act came into force on 1 October 2010, replacing previous acts such as the Disability Discrimination Act 1995, the Race Relations Act 1976 and the Sex Discrimination Act 1975. The Act bans discrimination based on the protected characteristics both at work and also in access to goods, facilities and services on all grounds. The Act applies in England, Scotland and Wales but not in Northern Ireland.

### Public Sector Equality Duty

#### What is it?

The Public Sector Equality Duty (The Equality Duty) is a legal duty in the Equality Act 2010 that applies to most public bodies across Great Britain. It requires those public bodies and others carrying out public functions to take account of equality, discrimination and good relations between different people in the way they make policy, deliver or buy goods and services, and employ people. The Equality Duty is intended to ensure that equality forms part of the day-to-day decision making and operational delivery of public bodies and so prevent discrimination and advance equality of opportunity in practice.

The Equality Duty has two parts: a *general duty* (which is in the Act and applies across Britain) and *specific duties* to promote better compliance with the general duty. The specific duties are in regulations and are different in England, Scotland and Wales.

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<sup>1</sup> There are more differences in the disability provisions than for other forms of discrimination.

The Equality Duty covers all of the following protected characteristics:

- age
- disability
- gender reassignment
- Marriage and civil partnership (but only in respect of the requirement to have due regard to the need to eliminate discrimination)
- pregnancy and maternity
- race – including ethnic or national origins, colour or nationality
- religion or belief – including lack of religion or belief
- sex
- sexual orientation

To meet their responsibilities under the Equality Duty, public bodies must consider what they can do to eliminate existing inequalities relating to the bodies functions. To do this, public bodies will usually need to find and use evidence about disadvantaged people in their areas, particularly where this disadvantage is related to one of the protected characteristics. It is important to know that the Equality Duty applies to all the functions of a public body and this will include their procurement functions when buying goods and services from a private or voluntary sector supplier.

### **Challenge plans and decisions**

If a VCS organisation believes that a public body is not fulfilling its Public Sector Equality Duty, there are a number of things it can do:

- VCS organisations can challenge public bodies directly, drawing attention to the legal standing of the Equality Duty and to the fact that public bodies who fail to apply it can be challenged in court;
- VCS organisations can also alert the Equality and Human Rights Commission to any failure to implement either the specific or the general Equality Duty. The Commission has a range of powers to tackle public bodies that fail to implement the duty, including powers to carry out assessments and to require action plans, as well as the power to bring court proceedings in its own name;
- If a public body is failing to fulfill the general Equality Duty, this can be challenged in court by way of a judicial review by any organisation that can persuade the court it has a sufficient interest in the issue. However, there are very strict time limits for seeking judicial review. Judicial review is a special form of court action in which a judge reviews the lawfulness of a decision or action made by a public body. For further information see [The Public Law Project: A brief guide to judicial review procedure](#); [Ministry of Justice: Administrative Court Guidance - Notes for guidance on applying for judicial review](#); [Pierce Glynn Solicitors: Judicial Review - Procedure guide](#)

The EDF has published a leaflet on 'How to use the Public Sector Equality Duty: A guide for voluntary and community organisations'. This has more detailed information about the Equality Duty and how VCS organisations can use it.

### **Is this in force?**

Yes, it was implemented from April 2011.

## **Public procurement**

### **What is it?**

All public bodies spend significant and growing parts of their budgets on public procurement. Estimates vary but in recent years more than £238bn of public money has been spent every year in the UK in buying goods, works and services from external contractors.<sup>2</sup> This includes contracts for: major construction projects such as schools, roads or office buildings; equipment or supplies; buying in specialist services, such as IT support; or contracting-out services that the public body itself previously carried out, such as school dinners, hospital cleaning, training, or management of a prison.

One significant way for public bodies to meet their existing duties to advance equality of opportunity, and to buy goods and services that will meet the needs of all sections of the community and secure effective employment equality, is to include equality requirements in their contracts for works, goods or services. The Act is clear that public bodies can use procurement to promote equality.

Many public bodies have been confused about the extent to which they can or should consider equality of opportunity when making procurement decisions. This clarification will give public authorities a clear basis on which they can promote equality – when this is appropriate – when they buy goods and services.

Additionally, the European Union has passed a directive on public procurement which must be implemented by April 2016 which requires that public authorities must comply with their obligations in respect of equal treatment.<sup>3</sup>

### **How can VCS organisations use the procurement provisions?**

As the public sector diminishes in size, it is essential that there is a fair distribution of contracts by the public sector. Small and medium size enterprises and voluntary sector service providers must not be ignored as they may be able to offer more distinctive or specialised services than larger, all-purpose suppliers. Moreover, businesses led by people from groups facing discrimination should have a fair chance to secure contracts.

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<sup>2</sup> Booth, L. (2015) Public Procurement Standard Note: SN/EP/6029. House of Commons Library.

<sup>3</sup> European Union Directive on Public Procurement 2014/24/EU see [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.094.01.0065.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.094.01.0065.01.ENG)

VCS organisations can monitor the procurement policies of public authorities and remind them of the need to include equality provisions in their tendering documents on every occasion where it is appropriate.

### **Is this in force?**

Yes, it was implemented from April 2011 as part of the Public Sector Equality Duty.

## **Positive action**

### **What is it?**

The Act's positive action provisions:

- simplify the law on positive action in general;
- do not require employers to take any action that they do not wish to;
- extend women-only shortlists to 2030 and make it explicit that political parties can use positive action to ensure better balanced representation on other protected characteristics.

The most important aspect here is the simplification of the law on positive action. In the past there were different tests for different protected characteristics before positive action could be used, which was confusing. Simplifying the law will help employers and service providers, including VCS organisations, who can see a case for action to do something about it.

### **When can positive action apply?**

Positive action can be used if an employer or service provider reasonably thinks that:

- people who share a protected characteristic (age, disability, gender re-assignment, marriage and civil partnership, race, religion or belief, sex, including pregnancy and maternity, or sexual orientation) suffer a disadvantage connected to that characteristic; or
- people who share a protected characteristic have needs that are different from people who do not share the characteristic; or
- participation in an activity by persons who share a protected characteristic is disproportionately low.

If such a situation exists then an employer or service provider can take 'proportionate' action to:

- enable or encourage persons sharing a protected characteristic to overcome or minimise that disadvantage; or
- to meet their needs; or
- to enable or encourage such people to participate in the activity in question.

Additionally, there are some limited circumstances in which an employer may lawfully choose to employ someone with a protected characteristic in preference to someone without that characteristic. In the first place this is only possible where an employer reasonably thinks that people sharing a protected characteristic suffer a disadvantage connected to that characteristic and that participation of people who share this characteristic is low. Where this is the case, then the law permits the employer to take specific action in order to encourage or enable these people to overcome or minimise their disadvantages. However, this is subject to three further conditions:

- the two people must be equally qualified for the job in question, and
- the employer must not have a policy of automatically favouring the person with the protected characteristic, and
- the proposed action must be proportionate.

An employer can also choose to employ someone with a particular protected characteristic if there is a genuine occupational requirement to employ a person with this particular protected characteristic.

These tests do not need to be applied to positive action intended to benefit disabled people, which is always permitted.

Positive action can be a powerful tool to tackle entrenched disadvantage but it can be controversial, so it is worth planning carefully and making sure everyone involved understands the case for positive action. The Equality and Human Rights Commission provides practical guidance on implementing positive action provisions.<sup>4</sup>

### **How can VCS organisations use the positive action provisions?**

There are two main things that VCS organisations can do:

- encourage public and private sector employers and service providers to consider taking positive action to address under-representation, disadvantage or different needs, and work with them when this is appropriate; and
- consider taking positive action in their own activities.

### **Is this in force?**

Yes, this provision has been implemented.

## **Associations and clubs**

### **What is this?**

Associations and clubs must not discriminate against, harass or victimise people and they must also make reasonable adjustments to allow disabled people to participate.

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<sup>4</sup> <http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/recruitment/positive-action-in-recruitment/>

The Act does allow an association (other than a political party) to restrict its membership and the benefits of membership to people who share a particular protected characteristic. However, an association cannot restrict who can be a member on the basis of colour although it may restrict them on the basis of racial or ethnic origin or nationality.

### **Who does this apply to?**

This will apply to voluntary or community organisations that have 25 or more members that have rules (not necessarily formal or written) regulating who can be a member, and where there is some process of selection to become a member. It does not include trade or business organisations or trade unions.

### **How can VCS organisations use this?**

VCS organisations that fall within the legal definition of an association or club must make sure they comply with the provisions outlined above.

VCS organisations who are advising associations and clubs should make sure that they understand their obligations about when and how they can discriminate in their membership criteria or the way that they operate. They should encourage associations and clubs to review their policies and practices to ensure that they do not discriminate impermissibly.

### **Is this in force?**

Yes, this provision has been implemented.

## **Carers and discrimination by association and perception**

### **What is this?**

It is unlawful to discriminate against or harass someone because they are 'linked to' or 'associated with' or perceived to be a person who is of a different age, gender, race, religion or belief or sexual orientation, to have a disability or to be undergoing gender reassignment.<sup>5</sup>

This will protect people who care for a disabled person or an older person from discrimination because of their role as a carer.<sup>6</sup>

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<sup>5</sup> The European Court of Justice found previous UK law inadequate in the case of *Coleman v Attridge Law* case no C-303/06, 29.7.08., which involved a mother who was discriminated against because she was the carer for her disabled son.

<sup>6</sup> For more information about uses of discrimination by association or perception, go to [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85022/vcs-association-perception.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85022/vcs-association-perception.pdf)

## **How can VCS organisations use this?**

VCS organisations who advocate for carers can use this provision to challenge unfair treatment of carers by employers or service providers.

## **Is this in force?**

Yes, this provision has been implemented.

## **Stronger protection for disabled people**

### **What is this?**

There are four forms of disability discrimination which together provide comprehensive protection. At times these may overlap.

- Direct disability discrimination. This is when a person is less favourably treated because of a disability. Note: this does not enable a person to complain about the more favourable treatment of a disabled person which is always lawful.
- Indirect disability discrimination. This is when there is a rule, a policy or even a practice that applies generally but which particularly disadvantages disabled people. This form of discrimination can be justified if it can be shown that the rule, policy or practice is intended to meet a legitimate objective in a fair, balanced and reasonable way. If such justification can be shown then the discrimination will be lawful.
- Discrimination arising from disability is different from direct discrimination. Direct discrimination occurs when a service provider treats someone less favourably because of the protected characteristic of disability. In the case of discrimination arising from disability, the question is whether the disabled person has in practice been treated unfavourably because of something connected with their disability. However, discrimination arising from disability will not be unlawful if it can be shown that the employer or service provider concerned did not know, or could not be reasonably expected to know, that the person was disabled. This means that service providers must take reasonable steps to find out whether someone is disabled. Also, it will not be unlawful if a service provider can justify the treatment complained of as being a proportionate means of achieving a legitimate aim.
- Disability discrimination by a failure to make reasonable adjustments for a disabled person. Both employers and service providers are required to make changes, where needed, to improve access to employment or services for disabled customers or would be customers. There is a legal requirement to make reasonable changes to the way things are done (such as changing a practice), to the built environment (such as making changes to the structure of a building to improve access), and to provide auxiliary aids and services (such as providing information in an accessible format, an induction loop for customers with hearing aids, special computer software or additional staff support in using a service).

### **How can VCS organisations use this?**

VCS organisations should review their own policies and practices to make sure that they are not discriminatory. It will be important to anticipate the needs of disabled people and build this into the planning process. They will also be able to use these provisions to show employers and other service providers the need to include consideration of the needs of disabled people in all business planning.

### **Is this in force?**

Yes, this provision has been implemented.

## **Pre-employment health enquiries**

### **What is this?**

Employers are only permitted to ask job applicants about their health before making a job offer in a restricted number of circumstances. These include making enquiries about whether the applicant needs any reasonable adjustments to be made for them and assessing whether the applicant can carry out a function that is 'intrinsic to the work concerned'. This should help to improve job opportunities for people with disabilities.

### **How can VCS organisations use this?**

Advisors and VCS organisations should review their own recruitment policies and practices to make sure that impermissible questions are not raised. They should ensure that any employers with whom they have dealings also understand the law.

### **Is this in force?**

Yes, this provision has been implemented.

## **Clearer protection for breastfeeding mothers**

### **What is this?**

Breastfeeding mothers have specific protection for the first 26 weeks after they have given birth from discrimination by both employers and/or service providers because they are breastfeeding. Similar protection will be available after this period because they will be able to claim direct sex discrimination.

### **How can VCS organisations use this?**

VCS organisations that represent breastfeeding mothers can use this provision to challenge unfair treatment of breastfeeding mothers by employers or service

providers. Also, it will be important for employers and service providers to anticipate the needs of breastfeeding mothers when planning for the future.

### **Is this in force?**

Yes, this provision has been implemented.

## **Pay secrecy clauses**

### **What is this?**

Pay secrecy clauses are provisions that attempt to prevent or restrict an employee from disclosing information about their terms of work. They are unenforceable. This should make it easier for individuals to establish whether they are suffering from unlawful pay discrimination.

### **How can VCS organisations use this?**

VCS organisations should ensure that any employers with whom they have dealings with understand that such contractual provisions are unlawful and unenforceable.

### **Is this in force?**

Yes, this provision has been implemented.

## **Ban on age discrimination in services provision**

### **What is this?**

The Act includes a ban on age discrimination in relation to the provision of goods, facilities and services as well as for public functions. It covers both direct and indirect discrimination, victimisation and harassment and applies only to people aged 18 and over. These provisions do not cover age discrimination in relation to premises.

### **What is excluded?**

Both direct and indirect discrimination on grounds of age can be justified as being 'a proportionate means of achieving a legitimate aim'. Neither harassment nor victimisation can be justified. The regulations set out a number of specific exclusions:

- use of age criteria in immigration control;
- age-based treatment in financial services;
- general age-based concessions (e.g. cheaper travel cards);
- age related holidays;

- age restricted services – where a law provides that people need to be above a certain age to buy particular goods (e.g. alcohol);
- minimum age limits for occupants of residential mobile home parks; and
- age limits for sport.

### **How can VCS organisations use this?**

VCS organisations that advocate for or advise older people will want to use these provisions to challenge any unlawful discrimination they encounter. They will also need to be able to advise people when age discrimination is permitted. VCS organisations that are providing age-related services will need to consider whether this provision is justifiable or covered by one of the specific exclusions.

### **Is this in force?**

Yes, this provision has been implemented.

## **Combined or dual discrimination**

### **What is this?**

There is an increasing awareness of the complexity of discrimination within our society. People do not simply fit into single-issue categories as black, disabled, gay etc. Individuals' identities are diverse, complex and multi-layered, and sometimes they are treated unfairly for more than one reason. However, equality law looks at how people are treated on the basis of a single characteristic. This sometimes means that an individual who has been unfairly treated cannot secure justice: for example, an ethnic minority gay man who had been unfairly overlooked for promotion may not be able to challenge this if heterosexual ethnic minority men have been promoted (so it wasn't just race discrimination) and white gay men have been promoted (so it wasn't just sexual orientation discrimination). Section 14 of the Act proposed to outlaw direct discrimination occurring on two prohibited protected characteristics simultaneously, although it did not extend to harassment<sup>7</sup> or indirect discrimination.

### **Is this in force?**

No, this has not been brought into force.

## **Further information and support**

The Equality and Diversity Forum has produced a series of guides to the service provisions of the Equality Act for the VCS: <http://www.edf.org.uk/blog/?p=11210>

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<sup>7</sup> Some harassment is covered by the definition of direct discrimination.

The Equality and Human Rights Commission is the statutory body established to help eliminate discrimination, and reduce inequality. It produces a statutory Code of Practice explaining in more detail the law in relation to discrimination. It also produces a range of material providing practical guidance on how to comply with the law. [www.equalityhumanrights.com](http://www.equalityhumanrights.com) / 0845 604 6610

- [ACAS](#) (Advisory, Conciliation and Arbitration Service) provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law.
- [Advice UK](#) is a membership network for organisations who give advice, and they can help put you in touch with the right one to help you.
- [brap](#), a 'think fair tank' that provides equalities training, consultancy and common sense approaches to community engagement issues, has published [Equality objectives and public authorities: Tips, hints, and bright ideas](#) – a guide for public authorities on making and shaping equality objectives.
- [Citizen's Advice](#) provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities.
- [The Compact](#) is the agreement between the government and the third sector (independent voluntary organisations, charities, community groups, etc.). The Compact offers improved funding processes, clear consultation standards, enforceable rights, and an overall improvement in working relationships. [The Compact Accountability and Transparency Guide](#) outlines steps to take at national and local level, including dispute resolution, internal complaints procedures and ombudsmen functions.
- [Law Centres Network](#). Law Centres are not-for-profit legal practices providing free legal advice and representation to disadvantaged people.
- [National Council for Voluntary Organisations](#) (NCVO) is the largest umbrella body for the voluntary and community sector in England.
- [Public Law Project](#) (PLP) is an independent, national legal charity which aims to improve access to public law remedies for people whose access is restricted by poverty, discrimination or other similar barriers. They provide telephone advice to voluntary and community groups on public law matters.
- [Scottish Council for Voluntary Organisations](#)
- [Wales Council for Voluntary Action](#)

The information in this leaflet is provided as general guidance for VCS organisations and does not constitute legal advice.

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