

How to use the Equality Act 2010: A guide for voluntary and community organisations

The Equality Act 2010 updates, simplifies and strengthens Britain's equality laws. It introduces broadly similar provisions across all forms of discrimination – age, disability, 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 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 are new. It deals first with the parts of the Act that 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 Equality Act 2010 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 on the protected characteristics at work. It also bans discrimination in service provision on all grounds other than age, although age discrimination in service provision is likely to be banned in future. The Act applies in England, Scotland and Wales but not in Northern Ireland.

For more information and guidance about the Act as a whole, including how to comply with it, see <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>. For the Equality and Diversity Forum's quick start guides for VCS service providers, go to <http://www.edf.org.uk/blog/?p=7527>.

Public Sector Equality Duty

What is this?

The Act requires public bodies to take account of equality, discrimination and good relations between groups in the way they make policy, deliver services, buy goods and

services and employ people. This public sector equality duty is intended to prevent institutional discrimination and advance equality in practice and is expected to come into force in April 2011.

Public bodies already have separate race, disability and gender equality duties. The new duty replaces them and covers age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The public sector equality duty has two parts: a general duty (which is in the Act and applies across Britain) and specific duties (which are in regulations and which are different in England, Scotland and Wales). The general duty is the most important part of the framework because it makes clear the goals to which public bodies must have due regard in carrying out all their functions. These goals are:

- eliminating discrimination and harassment;
- advancing equality of opportunity; and
- fostering good relations on each of the specified protected characteristics.

In the past some public bodies have misinterpreted the existing race, disability and gender duties to mean that public bodies must always treat everyone exactly the same. This was incorrect and in some cases led to damaging decisions such as, for example, that groups providing services only to women or only to certain ethnic groups could not be funded. The Act makes clear that advancing equality means:

- removing or minimising disadvantages people suffer because of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation;
- taking steps to meet the needs of such people when they are different from the needs of others (who do not share that protected characteristic);
- encouraging people to participate in public life or in any other activity in which their participation is low.

Additionally, public bodies must take account of disabled people's disabilities even where that involves treating disabled people more favourably than others.

It is fundamental to the new duty that public authorities must tackle existing inequalities and not allow them to be perpetuated. To do this, public bodies will need to find and use evidence about those who are disadvantaged in their areas and what problems exist in relations between different groups or a particular group and society as a whole. The duty does not require public bodies to meet the demands of any or every group.

The Equality and Human Rights Commission (EHRC) will publish a Code of Practice and other guidance to help public bodies apply the new expanded duty. VCS organisations might also find this helpful because the Code and other guidance will explain in more detail what public bodies should be doing.

How can VCS organisations use the public sector equality duty?

The public sector equality duty is a vital tool for VCS organisations working on equality, diversity and good relations. The VCS can use it to hold public bodies to account and to challenge decisions.

Holding public bodies to account

- Public bodies must involve relevant VCS organisations when they consider and select equality objectives and make plans. If they do not offer this involvement, VCS organisations should seek it and point out that public bodies are obliged to engage relevant VCS organisations because they cannot achieve the equality duty's goals without doing so. In addition to the law, there are good reasons for public bodies to involve the VCS in their work on equality: involving and engaging VCS organisations helps to improve decision making and can also help to save money.
- VCS organisations can ask to see assessments of the equality impact of decisions on policies and services before those decisions are made. In many cases, relevant VCS organisations can also expect to be consulted about the equality impact of proposed policies or decisions. The precise form of the specific duties on impact assessment has yet to be decided (and will differ in England, Scotland and Wales), but it would not be possible for a public body to discharge its general equality duty without looking at the equality impact of its decisions. There should be opportunities for VCS organisations to challenge these equality impact assessments if VCS organisations believe they are wrong or based on inadequate or inaccurate information. Impact assessments of proposals for spending cuts are particularly important. The Equality and Human Rights Commission has produced some helpful guidance in this area, available from <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/guidance-and-codes-of-practice/using-the-equality-duties-to-make-fair-financial-decisions/>.
- The equality duty does not explicitly say that a public body's implementation plans must address all of the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. However, the general duty is clear: public bodies must have 'due regard' to the need to tackle discrimination, advance equality and foster good relations in all these areas and in all their functions. Unless there is no discrimination or inequality because of a protected characteristic, it is difficult to see how a public body could justify taking no action about that protected characteristic. This does not mean that every public body must have detailed plans in all eight areas but the action they take should be proportionate to the nature and scale of inequality and discrimination as well as to the functions and size of the public body.
- The equality duty makes it clear that procurement is one of the functions where public bodies must have due regard to the need to eliminate discrimination and harassment, advance equality of opportunity and foster good relations. If a public body fails to address relevant equality issues in the way it buys goods and services, VCS organisations can challenge this.

- Public bodies must publish a variety of information in relation to the public sector equality duty. The details of what is required will vary between England, Scotland and Wales but it is likely that public bodies in each country will need to publish reports on their progress in meeting the goals of the general equality duty. VCS organisations can scrutinise these reports and challenge public bodies about their performance on the basis of them.

Challenge plans and decisions

If an NGO 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; there are time limits for seeking judicial review;
- Until the new public sector duty comes into force, public bodies must continue to apply the existing race, disability and gender duties and VCS organisations can challenge any public body that fails to do so.

Is this in force?

No, it is expected to be implemented from April 2011.

Public Procurement

What is this?

All public bodies spend significant and growing parts of their budgets on public procurement. Estimates vary but in recent years more than £175bn of public money has been spent every year buying goods, works and services from external contractors. 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, to buy goods and services that will meet the needs of all sections of the community and to secure effective employment equality is to include equality

requirements in their contracts for works, goods or services. The Act clarifies that public bodies can use procurement to promote equality.

Currently, many public bodies are 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.

How can VCS organisations use the procurement provisions?

For the next five to six years there will be a major re-structuring of the economy. 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.

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?

No, it is expected to be implemented from April 2011 as part of the public sector equality duty.

Positive action

What is this?

The Act's new 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 helps 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 when an employer or service provider reasonably thinks that:

- people who share a protected characteristic (age, gender re-assignment, race, religion or belief, sex 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.

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

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.

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.

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, until now equality laws have assumed that the treatment of people should be looked at by one single characteristic at a time. 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 might not have been able to challenge this if heterosexual ethnic minority men had been promoted (so it wasn't just race discrimination) and white gay men had been promoted (so it wasn't just sexual orientation discrimination).

Section 14 of the Equality Act will outlaw direct discrimination occurring on two prohibited protected characteristics simultaneously, although it does not extend to harassment or indirect discrimination.

How can VCS organisations use this?

VCS organisations who help individuals facing discrimination will need to be aware of the possibility that discrimination because of a combination of protected characteristics is unlawful, as well as discrimination because of a single protected characteristic. If they are in doubt about the cause of any discriminatory treatment it may be wise to show them as alternatives in any legal proceedings.

Is this in force?

This is not currently in force. The Government has not announced when it will come into force.

Associations and clubs

What is this?

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.

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

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. Note that although the rules defining who can join must not use a colour criterion, an association could have a name that refers to colour.

How can VCS organisations use this?

VCS organisations that fall within the legal definition of a club or association 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 unlawfully.

Is this in force?

Yes, this provision has been implemented.

Employment tribunal powers to make recommendations

What is this?

The Equality Act 2010 introduces a new tool for employees' advisors to use; there are new powers for Employment Tribunals to make recommendations to employers. Where the Employment Tribunal finds that the employer has acted in breach of the Equality Act 2010, it may recommend that the employer takes specified steps to reduce or eliminate the adverse effect of the discrimination on its workforce. This can be for the benefit of the employee who took the case to the Employment Tribunal or for the wider workforce.

How can VCS organisations use this?

This provision gives VCS organisations who advise or represent people taking a tribunal case an important opportunity to seek an order from the Employment Tribunal that an employer who has breached the Equality Act should take action to correct a discriminatory procedure, practice or criterion. Where appropriate, advisors should remember to ask the tribunals to make such remedial orders so that the workforce as a whole can benefit.

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.

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

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

- Direct disability discrimination – 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 – 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 it will be lawful.
- Discrimination arising from disability, which 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?

Advisors and non-governmental 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 now 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 prohibited 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 breast-feeding mothers

What is this?

Breast-feeding mothers now 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 breast feeding. 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 who represent breast feeding mothers can use this provision to challenge unfair treatment of breast feeding mothers by employers or service providers. Also, it will be important for employers and service providers to anticipate the needs of breast feeding 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 that ban employees from discussing their pay with colleagues are now unenforceable. This should make it easier for individuals to establish whether they are suffering from unlawful pay discrimination.

How can VCS organisations use this?

Advisors and non-governmental organisations should ensure that any employers with whom they have dealings 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 Equality Act includes a ban on age discrimination in service provision but this has not yet been brought into force as the government is considering what exemptions will be needed to allow so-called beneficial age discrimination, such as free bus passes for older people.

How can VCS organisations use this?

It is difficult to know exactly what impact the ban on age discrimination in service provision will have until the exemptions showing what kinds of age discrimination and age-based practices will be allowed are published. However, VCS organisations that advocate for or advise or provide services to older people will want to be aware that this change is coming.

Is this in force?

No, this is not currently in force. The Government have not announced when it will come into force.

Sources of information and help

The Equality and Diversity Forum has produced a series of guides to the service provisions of the Equality Act for the VCS. These are available at <http://www.edf.org.uk/blog/?p=7527>. Many of the Equality and Diversity Forum's members produce useful guidance and information – see http://www.edf.org.uk/blog/?page_id=889

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
0845 604 6610

Information and guidance is also available from the organisations listed below:

ACAS
www.acas.org.uk

Law Centres Federation
www.lawcentres.org.uk

Advice UK
www.adviceuk.org.uk

National Council for Voluntary Organisations
www.ncvo-vol.org.uk

Citizen's Advice
www.citizensadvice.org.uk

Scottish Council for Voluntary Organisations
www.scvo.org.uk

Government Equalities Office
www.equalities.gov.uk

Wales Council for Voluntary Action
www.wcva.org.uk



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AGAINST DISCRIMINATION**

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For more information see: http://ec.europa.eu/employment_social/progress/index_en.html

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