

Guide Number 12

The ILiS Do-It-Yourself Guide to The Equality Act 2010

This guide looks at the Equality Act 2010. It explains why this law exists and what new protections were introduced in 2010. The guide also shows ways that the law applies to disabled people and suggests places that you can get more information.

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1. What's the Equality Act all about?

Achieving Equality is about a lot of things and one of those things is eliminating discrimination, treating individuals and groups fairly and promoting a more equal society. To make sure this happens, it is important to have clear laws.

There has been legislation on equality in the UK for many years but it has developed at different speeds and in different ways for different people. These laws covered different people in separate laws, depending on their characteristics e.g. disability, race, gender. A lot has changed during this time, including attitudes and so the Government felt it they should update the many different laws to protect equality.

The Equality Act 2010 applies across the whole of the UK. It protects the rights of individuals and helps to make faster progress on achieving equality for all, in one new law. It replaces the many other laws that covered equality. The Equality Act 2010 is one simpler law that gives all groups in society the same levels of protection. This was done to make it easier for employers, businesses, public service providers and individuals to understand and comply with equality legislation.



2. What are the main things that the Equality Act covers?

The Act includes a wide range of equality issues. The 3 main parts in it cover:

- a) Who is protected by it
- b) What they are protected from
- c) What responsibilities public bodies have not to discriminate and to promote equality

a) Who is protected by the Act?

The Act introduces the term 'protected characteristics'. This describes the different aspects of an individual's identity that might mean they experience discrimination or inequality. There are nine protected characteristics described in the Act. These are listed below with a brief description of what they cover.

Disability	Includes mental health (more on the definition of disability below). Does not cover discrimination against people as a result of them not being disabled.
Race	Includes colour, nationality, ethnic or national origin.
Sex	Covers both men and women
Age	Covers older and younger people
Sexual orientation	Includes lesbian, gay, bisexual or heterosexual people
Religion or belief	Includes not having a particular religion or belief
Pregnancy and maternity	Covers women who are pregnant or have given birth
Marriage and civil partnership	Prevents discrimination resulting from a married or civil partnership status but does not cover being single
Gender reassignment	Covers people who are having or have had a sex change as well as transvestites and transgender people



b) What sorts of discrimination are people protected from?

Discrimination means treating one person less well than another because of a particular aspect of who they are; because of a 'protected characteristic'. The Act describes seven different ways that this discrimination might occur. This is important because different people can experience unfair treatment in many ways.

Discrimination can be very obvious and direct. It can also occur from actions that may not be intended by the person or organisation to be discriminatory but which are still against the law.

The seven terms that describe these different types of discrimination covered in the Act are listed below along with examples of what each means:

1. Direct discrimination	A person is treated in a discriminatory way as a direct result of them having one of the nine protected characteristics listed above.
2. Associative discrimination	This is like the 'direct discrimination' described above but it happens to someone because they are associated with another person who has one of the protected characteristics. For example this might occur if someone cares for a disabled person and is treated unfairly because of this.
3. Indirect discrimination	This occurs when you have a rule or policy that appears to apply to everyone equally but in reality it disadvantages a person with a protected characteristic. For example a restaurant can have a rule that says 'no pets allowed' but this would indirectly discriminate against a blind person with an assistance dog. They would have to allow the blind person in or they would be breaking the law.

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4. Harassment	This describes behaviour that is felt to be offensive by the person who is the target of it. It can also apply even when it is not directed at a particular individual if it creates an unpleasant environment.
5. Harassment by a third party	Employers and service providers have to take some responsibility if their staff or customers are harassed by other people that they don't even directly employ, such as a contractor or even another service user. For example, if a disabled person worked in the mail room of a large company and every day the postman made discriminatory comments to them – their employer has a responsibility to address the problem (even though the postman is employed by the Royal Mail).
6. Victimisation	This is a particular type of discrimination where an individual is treated unfairly because they made (or supported someone else in making) a complaint under the Equality Act. For example an employee gives evidence in support of a disabled colleague who has been harassed at work. Whatever the outcome of the legal action, neither person can then be treated unfairly because they were involved in taking it.
7. Discrimination by perception	This is direct discrimination (as described above) that occurs against someone because others think they have a protected characteristic (even if they don't). For example colleagues don't want to work with someone because they think she has HIV and might infect them. Whether or not the woman actually has HIV is not relevant in recognising that discrimination has occurred.



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c) What additional responsibilities do public bodies have not to discriminate and to actively promote equality?

Before the Equality Act, the existing disability, race and gender equality legislation all contained a 'Public Sector Duty'. This Duty gave a series of obligations to public bodies. These were intended to make them responsible for proactively creating a more equal environment – rather than waiting for individuals to complain of having been discriminated against.

As part of the Equality Act 2010 a new combined public sector equality duty has been created. This covers all nine of the protected characteristics listed above (not just race, disability and gender as previously). This Equality Duty is made up of a General Duty and a series of Specific Duties.

The **General Duty** is part of the main Act and has three main aims. It requires public bodies to have **due regard** to the need to: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010; advance equality of opportunity between people from different groups; and foster good relations between people from different groups.

Having **due regard** means consciously thinking about the three aims of the general duty as part of the processes of decision making. This means that Public Bodies should think about equality issues when making all decisions. It comes into effect from April 2011.

The **Specific Duties** are intended to give more detailed guidance to public bodies on how they are expected to deliver the General Duty. These Specific Duties are normally detailed through secondary legislation but in Scotland, this has been delayed for further consideration and is now not expected until later in 2011.

Until the specific duties are finalised, public bodies are still subject to the requirements of the new General Duty. They have been advised to continue to apply the previous specific equality duties (from the old Disability Discrimination Act, the Race Discrimination Act and the Gender Discrimination Act) until the new specific duty is finalised.



3. What are the key issues in the Equality Act for disabled people?

The first thing to remember is that disabled people have many identities and they are protected by all relevant areas of the Equality Act not just those bits of it that relate to disability. Since the Equality Act has brought all of the protected characteristics together into one piece of legislation, disabled people are likely to be part of many of the groups listed.

What is the definition of 'disability'?

According to the Act, a person has a disability if:

- They have a physical or mental impairment
- The impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities

This definition introduces some words that are used in very specific ways

'Physical Impairment'	Covers the commonly understood range of mobility and sensory impairments as well as, e.g. long-term medical conditions such as asthma and diabetes, and conditions that might change or get worse such as rheumatoid arthritis or motor neurone disease. It also covers people with severe disfigurement who no longer need to prove that it has an effect on their day to day activities.
'mental impairment'	Includes mental health conditions (such as bipolar disorder or depression), learning difficulties (such as dyslexia) and learning disabilities (such as autism and Down's syndrome).
'substantial'	Means more than minor or trivial. In other words, it must make a real difference to how you live.
'long-term'	Means that the effect of the impairment has lasted or is likely to last for at least twelve months (there are special rules covering recurring or changing conditions)
'normal day-to-day activities'	This includes everyday things like eating, washing, walking and going shopping



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The Act recognises that disabled people's circumstances and conditions can change, so it also protects people who have previously been disabled e.g. to discriminate against someone who has had a mental health condition in the past, is now unlawful.

Fit for work

To help prevent disabled people being discriminated against when they apply for jobs, the Equality Act now limits the questions that a prospective employer can ask about disability and health when recruiting new staff. They cannot ask candidates questions about their health that are not related to what they need to do for the job role e.g. a traffic warden might be expected to show that they are physically able to get around to check parked cars but would not be forced to say that they had a mental health issue, prior to a job offer.

Reasonable adjustments

The Equality Act 2010 requires service providers and employers to think ahead and take steps to address barriers that disabled people face. They should not wait until a disabled person experiences difficulties before they make necessary adjustments. In previous disability legislation, adjustments only had to be made where it would be 'impossible or unreasonably difficult' for a disabled person to use a service or participate. Now, under the new Equality Act, adjustments must be made where disabled people experience any 'substantial disadvantage'.



4. Checklist for action - How can it help me?

The Equality Act is about ensuring protections for individuals and groups. It also makes clear the responsibilities of service providers and employers. Understanding what the Act says can help ensure that you are not unknowingly experiencing discrimination e.g. :

- **Involvement in service or policy developments** – Since the Disability Discrimination Act, public bodies have had to involve disabled people in the development of their plans to ensure disability equality. This might be active engagement in assessing the impact of a service change or providing evidence on disabled people's needs. Increasingly there is a movement towards disabled people working far more closely and equally with public bodies – this is known as co-production (see separate ILiS DIY factsheet on coproduction at <http://www.ilis.co.uk/get-active/ilis-do-it-yourself-guides/>). Getting involved in this way helps ensure things develop in a way that best meets disabled people's expectations.
- **Accessing everyday services** – Service providers must make reasonable adjustments to premises or to the way they provide a service. This includes both public and private services from hairdressers to schools and banks to the doctors. Access to services is not just about physical access, it is about making services easier to use for everybody. So it could be about ramps and accessible toilets but it could also be about making communication easier to understand or changing opening times.
- **Employment** – it is unlawful for an employer to discriminate against or harass a disabled person. An employer must make reasonable adjustments for disabled people. An employer cannot ask about your health or disability unless it is directly related to the requirements of the job.
- **Education** – It is unlawful for a school or other education provider to treat disabled pupils, students and adult learners unfavourably.



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- **Health** – it is unlawful to discriminate against disabled people in accessing health or social services. This includes providing information if necessary in ways that you can understand.
- **Transport and motoring** – it is unlawful to discriminate against disabled people in the use of transport services and this includes access to places such as airports or railway stations. Reasonable adjustments might include providing timetables or travel information in a way that is suitable for you.

You might want now to spend a few moments to think about what you have read in this DIY guide and to think about how you might use the Act:

- **To promote a more equal society and independent living**
 - Ensuring that public and private organisations promote equality as well as eliminating discrimination
- **To avoid discrimination**
 - Recognising who is protected by the equality act and what types of discrimination they are protected from
- **To ensure your voice is heard**
 - Getting involved through public engagement or even co-production
- **To take action if you think you have been discriminated against**
 - Ensuring that what has happened is covered by the Act and raising the issue with the person or organisation that you think has acted wrongly.



5. Where can I get more information?

- More information on the Equality Act itself is available from the UK Government Equalities Office. This can be accessed online at; http://www.equalities.gov.uk/equality_bill.aspx
- Some examples of how the UK Government is working with disabled people to ensure that legislation is delivered can be found on the website of the Office for Disability Issues at; <http://odi.dwp.gov.uk/index.php>
- The Equality and Human Rights Commission's website can help keep you updated on the progress of the specific duties in Scotland. <http://www.equalityhumanrights.com/scotland/>

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