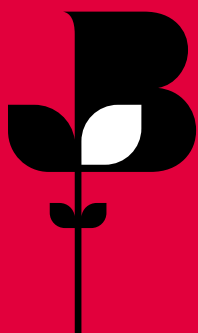


# EQUALITY ACT 2010: WHAT DO I NEED TO KNOW? QUICK-START GUIDE FOR BUSINESSES WHO SELL GOODS AND SERVICES



[www.britishchambers.org.uk](http://www.britishchambers.org.uk)

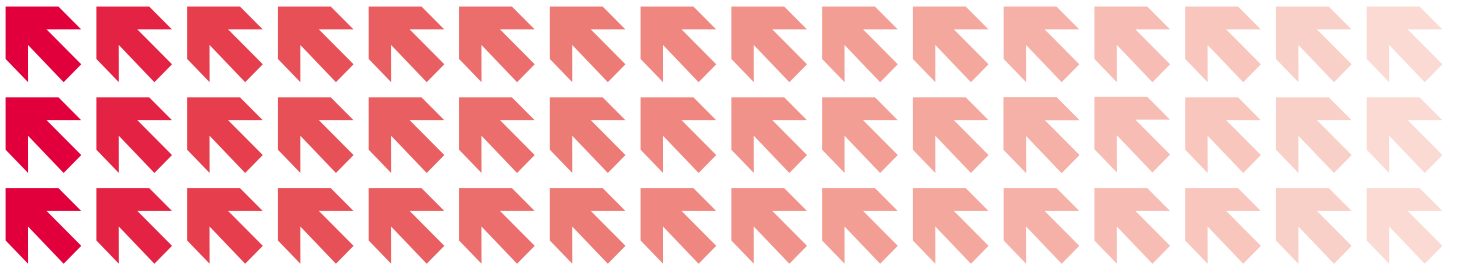


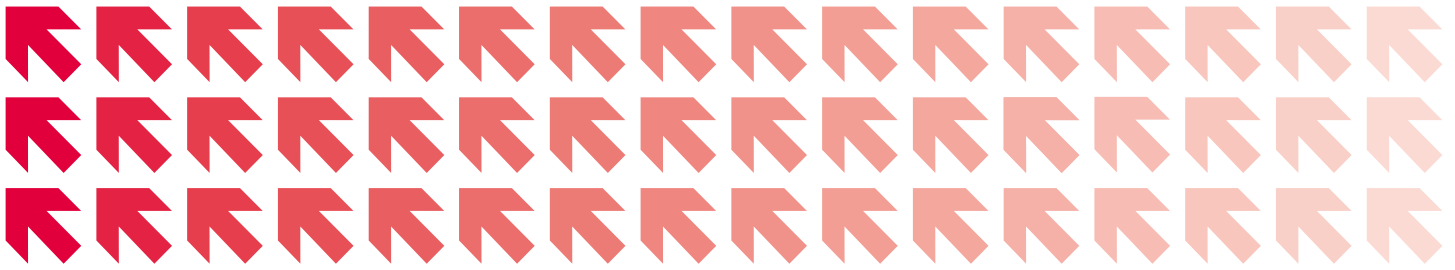
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## Introduction

The Equality Act 2010 replaces the existing anti-discrimination laws with a single Act. It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with it. It also strengthens the law in important ways to help tackle discrimination and inequality.

This series of quick start guides is intended to help businesses understand their new obligations under the Equality Act 2010 as providers of goods, services or facilities.

The changes covered in this series of quick start guides will come into effect on 1 October 2010. The Government is looking at how the rest of the Act can be implemented in the best way for business, and will make an announcement in due course.

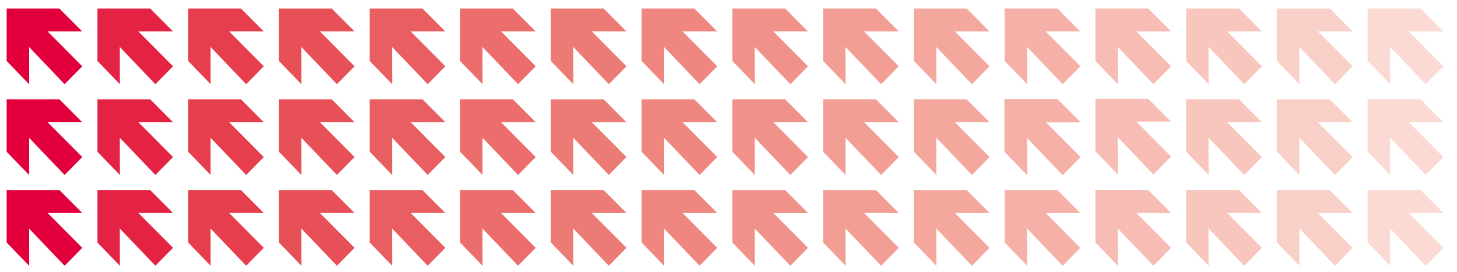
## Who the law protects

People who access your goods, facilities or services are protected from direct discrimination on the basis of a 'protected characteristic'. The relevant characteristics are:

- disability (definition changed)
- gender reassignment (definition changed)
- pregnancy and maternity
- race – this includes ethnic or national origins, colour and nationality
- religion or belief
- sex, and
- sexual orientation.

Except in the case of pregnancy and maternity, people who are protected do not actually have to possess the characteristic themselves. Protection also applies, for example, where the person is unfairly treated because they are wrongly perceived to have a particular characteristic (or are treated as though they had it) or because they associate with someone who has the characteristic.

As a matter of good practice and good business, you should treat everyone accessing your goods, facilities or services fairly, regardless of their age, gender, race, sexual orientation, disability, gender reassignment, religion or belief, and guard against making assumptions about the characteristics of individuals.



## Breastfeeding mothers

*A business cannot discriminate against mothers who are breastfeeding a child of any age.*

The Equality Act 2010 has specifically clarified that it is unlawful for a business to discriminate against a woman because she is breastfeeding a child.

A business may ask a breastfeeding woman to leave their premises if the reason for this request is not due to her breastfeeding. However, if the woman later claims that discrimination occurred because she was breastfeeding, the business will have to prove that there was in fact no discrimination.

**DO** make sure women you're providing services to are allowed to breastfeed on your premises if they want to.

**DO** also ensure that mothers breastfeeding babies are not discriminated against, no matter how old the baby is.

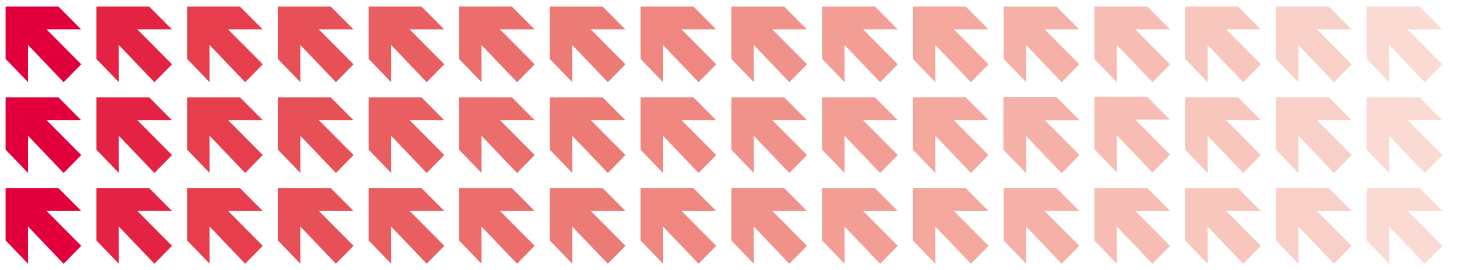
**DO** train all your employees, especially those who deal with the public, to be aware of the protection from discrimination given to breastfeeding mothers under the Equality Act 2010.

**DON'T** forget, under the Equality Act 2010, discriminating against someone because they are with a breastfeeding mother is also prohibited, so companions of breastfeeding mothers who are also treated unfairly may have a claim, too.

### Examples

Saul, a bus driver, tells Kate, who is breastfeeding on the bus, that if she does not either stop or get off the bus she could be arrested for indecency. This is not only inaccurate, but it is unlawful direct discrimination, and the company will be liable under the Equality Act 2010 unless it can show that it has taken all reasonable steps to stop the driver from acting in this way. Saul will be liable whether or not his employer is.

Anne is in a café owned by Chris. Anne is swearing loudly at her partner, Bob, while breastfeeding her child. Chris asks Anne to talk more quietly or to leave. Anne and Bob leave and they decide to claim that this was discrimination because Anne was breastfeeding. But because the reason why they left was unconnected to Anne breastfeeding, this would not amount to unlawful discrimination.



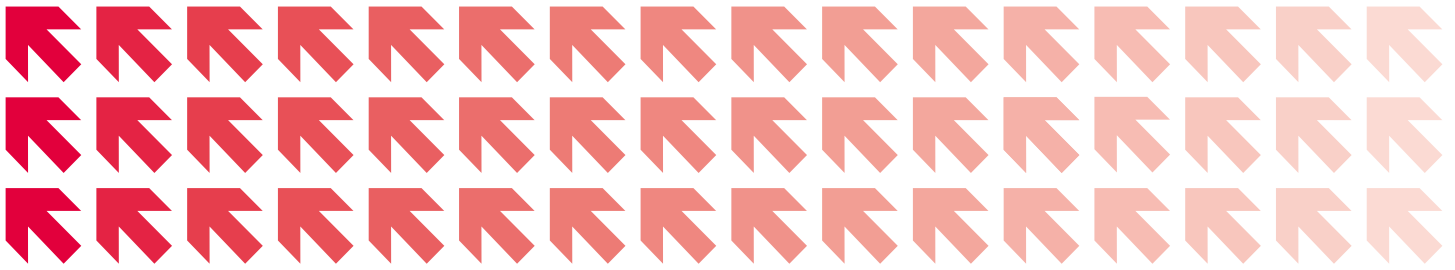
## FAQs

- *Am I responsible for how other customers treat a woman who is breastfeeding?*

Yes, you may be responsible, and you will be responsible if other customers' behaviour has been brought to your attention and you failed to act. You have an obligation to ensure that a woman who is breastfeeding while receiving a service you provide is not treated unfairly. The Equality Act 2010 aims to give women complete confidence to breastfeed while going about their day-to-day business. Businesses must facilitate this.

- *Does this mean I have to create a separate facility to allow women customers to breastfeed?*

No, but you are under an obligation to ensure that a woman can breastfeed without being treated unfairly. It is up to you to decide how best to do this.



## Private members' clubs

*A private club with 25 or more members, and whose membership is controlled by rules, must not discriminate against members, potential members, associates, guests or potential guests because of any of the protected characteristics set out on page 3 of this guide.*

The Equality Act 2010 requires private members' clubs to act in a non-discriminatory way. This means that clubs will no longer be able to restrict access to activities or benefits, or apply different conditions and fees for membership on the basis of any of the protected characteristics. In addition, the Government is considering how the part of the Act providing additional protection from age discrimination can be implemented in the best way for business, and will make an announcement in due course.

A private club is an organisation with 25 or more members whose membership is controlled by rules involving a selection process. Single-sex clubs, and clubs solely for people with other protected characteristics (other than clubs who restrict membership based on colour) will continue to be lawful, but clubs which have mixed membership must treat all members fairly.

**DO** review all your existing arrangements to ensure that they do not discriminate.

**DO** continue to have separate rules for guests and members and different types of membership if you wish.

## Examples

Brian wants to take his wife, who is a Muslim, to his golf club dinner. The club refuses admission because she is a Muslim. This is unlawful discrimination under the Equality Act 2010.

A private members' tennis club, which has members of both sexes, allows its male members to play at all times but female members can only play on certain days. The Equality Act 2010 means that the club will now need to offer the same facilities to all members.

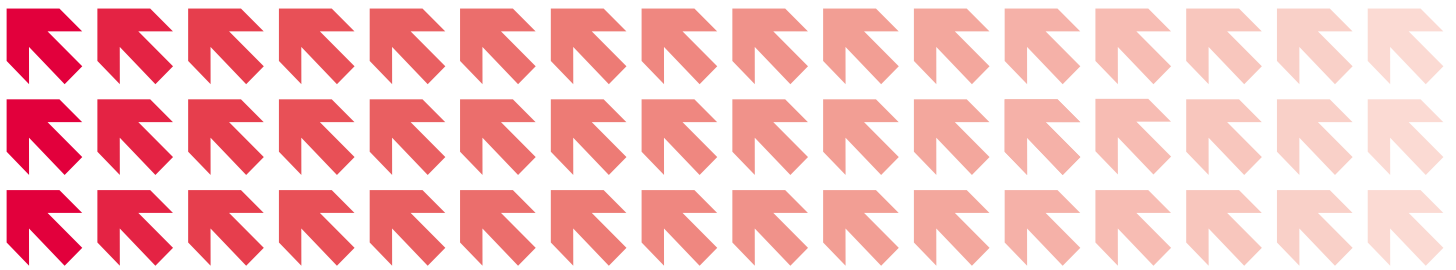
## FAQs

- *Can I continue to offer different types of membership, such as peak and off-peak?*

Yes, provided that whatever types of membership offered are open to all, regardless of their protected characteristics.

- *My club is open to all members of the public who pay an entry fee. Do these rules apply to me?*

No, your club is not a private members' club. But it is already unlawful for you to discriminate against any of these characteristics because you are considered to be a service provider.



## Gender reassignment

*When providing goods, facilities or services, it is unlawful to discriminate against or harass a transsexual person, whether or not they are under medical supervision.*

A transsexual person is protected if they are undergoing or have undergone a process of changing their sex by changing physiological or other attributes of sex, like clothes and names, or even if they have just told someone that they are intending to do this. A person will be protected once they have proposed changing their sex, even if they later change their mind.

The Equality Act 2010 changes the current law so that a person born in one gender who decides to live their life in the opposite gender does not need to seek medical advice in order to be protected from discrimination and harassment because of their gender reassignment. Not everyone undergoing gender reassignment will want or need medical supervision.

The Equality Act also makes it unlawful for a business to discriminate against a customer because they think the person is transsexual, even if they are not. Discriminating against someone because they are with a transsexual person is also prohibited, so friends out with a transsexual person who are treated unfairly may have a claim, too.

The Act allows the provision of single-sex or separate-sex services for men and women in certain circumstances.

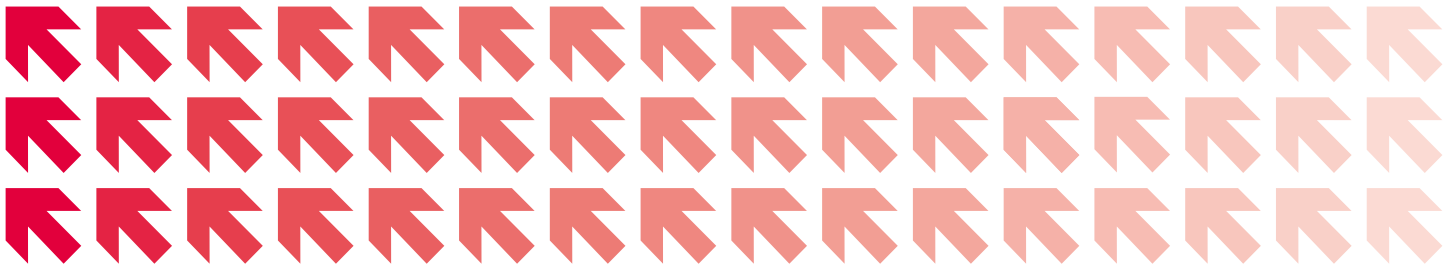
The business or service provider can decide whether and how a transsexual person can use women- or men-only services depending on all the circumstances. The decision must be *objectively justified* – in other words, it must be a fair and reasonable way of achieving a legitimate aim. A *legitimate aim* might be any lawful decision you make in running your business or organisation, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful. Being fair and reasonable includes showing that you've looked at whether there are other ways of doing things which would cause less discrimination.

**DO** make sure that transsexual people using your business and people with them are treated fairly.

### FAQs

- *Will a transsexual woman be allowed into a women's refuge if she is subjected to abuse?*

It will be for the manager of a women's refuge to decide on a case-by-case basis, depending on all the circumstances, whether it would be appropriate for a transsexual woman to be allowed to stay in the refuge, or whether it would be more suitable, for both the transsexual person and the other residents, if alternative arrangements were made. This decision would need to be made following discussion and consultation with the transsexual woman herself.



- *What is going to happen about the use of toilets and changing facilities?*

The law allows separate-gender sanitary and changing facilities. Businesses are allowed to balance the rights of the transsexual user with those of other users, taking account of all the circumstances. A service provider will need to take into account a number of factors, including:

- what the transsexual person wants
- the likely impact on other service users/ consumers, for example, in terms of privacy/ likelihood of serious embarrassment
- the stage of gender reassignment, and
- the impact on the business, i.e. the practicality of treating a transsexual person in their acquired sex.

**DO** remember that this is a very sensitive issue, and it is important that you take the views of the transsexual person into account when making a decision. The dignity and privacy of the transsexual customer need to be given serious consideration.

While preventing use of a single-sex facility may appear to be justified, great care needs to be taken in deciding whether it is fair and reasonable to refuse use in the particular circumstances. You will need to consider if simple alternatives can be offered to ensure that the needs of all customers are met, although take care because any different treatment may be considered less favourable.

- *Can a transsexual woman be allowed to use the female changing rooms in a clothes shop?*

If changing cubicles in a clothes shop allow privacy, there is no reason to object to a transsexual person using one. But offering a transsexual person the broom cupboard to change in as an alternative to a communal changing room may be discriminatory.

- *Can a man just put on some lipstick and try to get into the ladies toilet?*

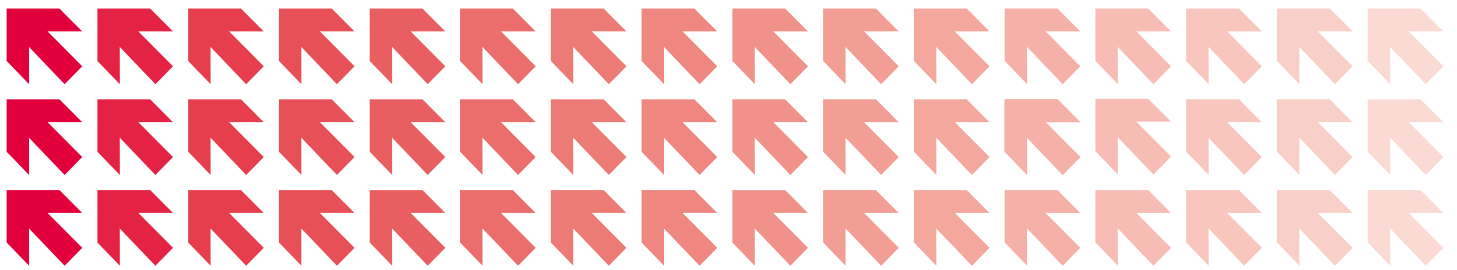
No. A man who just puts on lipstick but does not wish to change his sex is not a transsexual person who is undergoing the process of changing his gender; nor is he likely to be thought to be transsexual, so he cannot rely on this protection.

### Further information

For guidance on dealing with transsexual people as service users or customers, the Equality and Human Rights Commission (EHRC) provides information:

- [www.equalityhumanrights.com/your-rights/transgender/transsexual-people-your-rights-relating-to-the-provision-of-goods-facilities-and-services/](http://www.equalityhumanrights.com/your-rights/transgender/transsexual-people-your-rights-relating-to-the-provision-of-goods-facilities-and-services/)





## Types of direct discrimination

The Equality Act 2010 extends protection for people who experience direct discrimination because of a protected characteristic they do not in fact have. In practice, this means that when providing goods, facilities or services, as long as you are not discriminating on the basis of any of the protected characteristics, you should not need to worry.

### Perception

*When providing goods, facilities or services, businesses must not discriminate against people who are thought to have or are treated as having a protected characteristic.*

Protection from direct discrimination applies where the person is unfairly treated because they are wrongly perceived to have a particular characteristic (or are treated as though they had it).

**DO** treat everyone fairly, regardless of their age, sex, race, sexual orientation, disability, transsexualism, religion or belief.

**DO** guard against making assumptions about the characteristics of individuals.

**DON'T** think that an individual needs to have the protected characteristic themselves in order to have been discriminated against. If they are discriminated against because they are wrongly perceived to have that characteristic, they will also be protected by the Equality Act 2010.

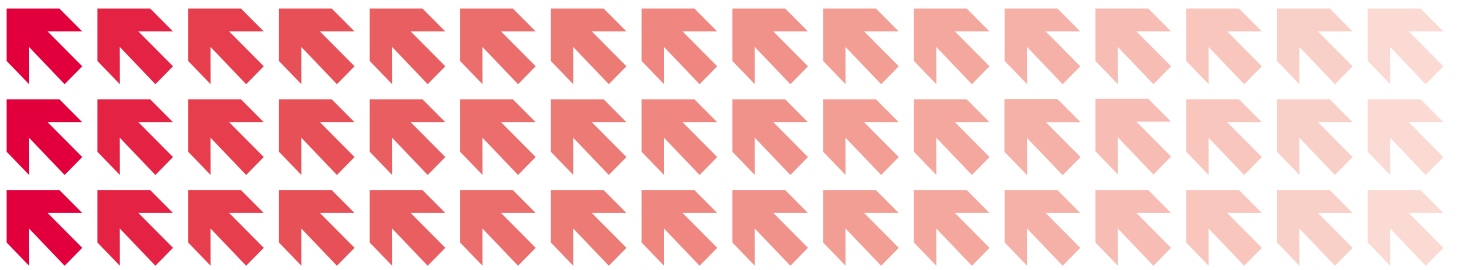
### Example

A bar decides to organise a singles night, promoting it as an opportunity to meet the woman of your dreams. The ticket seller wrongly assumes Phillip is gay and tells him that he cannot attend. Phillip complains to the bar that he is being discriminated against, as the ticket seller thinks he is gay when he is not. This is direct discrimination because of sexual orientation. If Phillip were in fact gay he could claim discrimination on the same basis.

### FAQs

- *How does the law on perception work in cases of pregnant women/new mothers?*

Women who are discriminated against because they are wrongly perceived to be pregnant or new mothers are likely to be protected through the protection from sex discrimination.



## Association

*When providing goods, facilities or services, businesses must not discriminate against people because they associate with someone who has a protected characteristic.*

The Equality Act 2010 extends protection to people who experience direct discrimination because they associate with someone who has a protected characteristic, even if they do not have the protected characteristic themselves. So, for example, a business must not discriminate against a carer because they are caring for someone with a disability. It is now against the law for a business to discriminate against someone who has caring responsibilities.

**DO** be considerate to those with caring responsibilities.

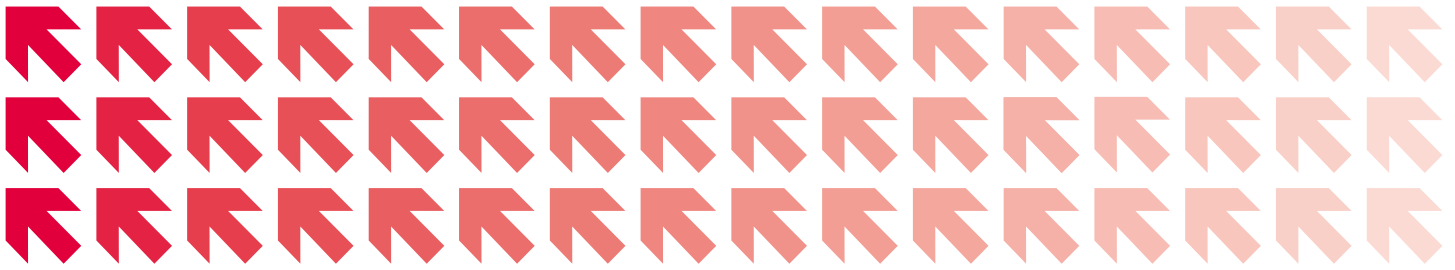
**DON'T** make assumptions when providing them with goods, facilities or services.

**DON'T** think that an individual needs to have a protected characteristic themselves in order to be protected from discrimination under the Equality Act 2010.

## Examples

Patrick wants to go to the local nightclub with his disabled girlfriend, Bridget. The doorman turns them away because disabled people do not fit with the club's image. Patrick would be able to claim that he has been discriminated against because of disability, as he was refused entry because of his association with Bridget, an individual with that protected characteristic.

A local pub is organising a Sunday league cricket competition and is fielding its own team. Kevin, who is a regular customer of the pub, asks why he was not picked for the team. He is told that the pub managers knew he was the primary carer for Holly, his disabled mother, and they assumed he would be at home looking after her on a Sunday. When he says he would be able to make alternative arrangements for looking after Holly, the managers say they will not select him as they think he would be unreliable. The Equality Act 2010 outlaws discrimination against associates of disabled people, including carers, in this way. Kevin would be able to claim that he was discriminated against because of his association with Holly, who is disabled.



## Positive action

*Businesses are able to use positive action to target the provision of their goods, facilities or services to a particular group that is either currently under-represented in their consumer base, disadvantaged or that has particular needs.*

The use of positive action will remain voluntary – there will be no mandatory requirements for businesses to use it. The Equality Act 2010 will allow businesses to use a range of measures to meet the particular needs of people when they are providing goods, facilities and services. This will enable businesses to target their services to meet the needs of particular disadvantaged groups, if they wish to do so.

**DO** research your potential consumer base to work out which, if any, groups are disadvantaged or disproportionately under-represented, or which have particular needs, and whom you may wish to target.

**DO** still make sure the treatment of all your customers still complies with discrimination law.

**DO** ensure your employees understand what positive action is allowed under the Act, and are able to explain the business rationale to interested consumers.

**DON'T** just assume a particular group is underrepresented.

## Example

A new pharmacy opens in an area with a large Bangladeshi community. The manager decides to offer Asian men free blood sugar checks as Asian men are at higher risk of diabetes.

## FAQs

- *Can positive action be used to increase service, facilities and goods delivery to all groups of individuals with protected characteristics?*

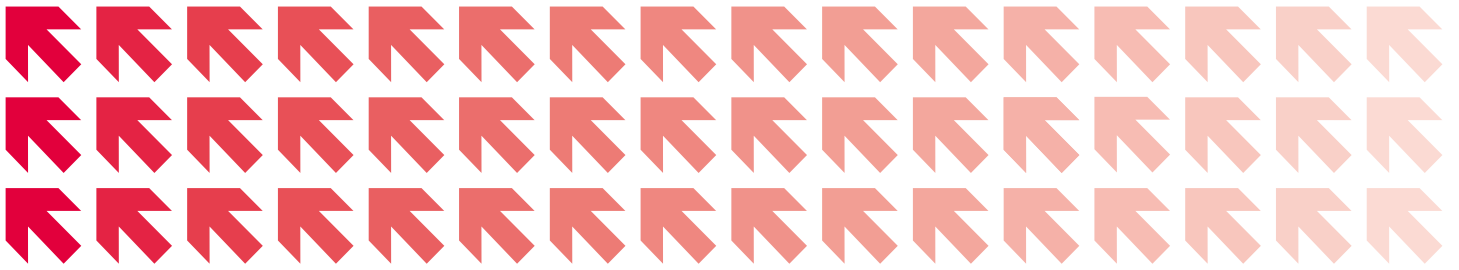
Yes. The Equality Act 2010 extends positive action provisions to all protected characteristics, although it works slightly differently for disability.

- *How does it work in relation to disability?*

It is lawful to treat a disabled person more favourably than a non-disabled person. In addition, the positive action provisions allow businesses to treat people with a particular disability more favourably than people with another disability in order to address disadvantage, particular needs or low participation.

- *My research shows that one group is under-represented in my consumer base. What do I do now?*

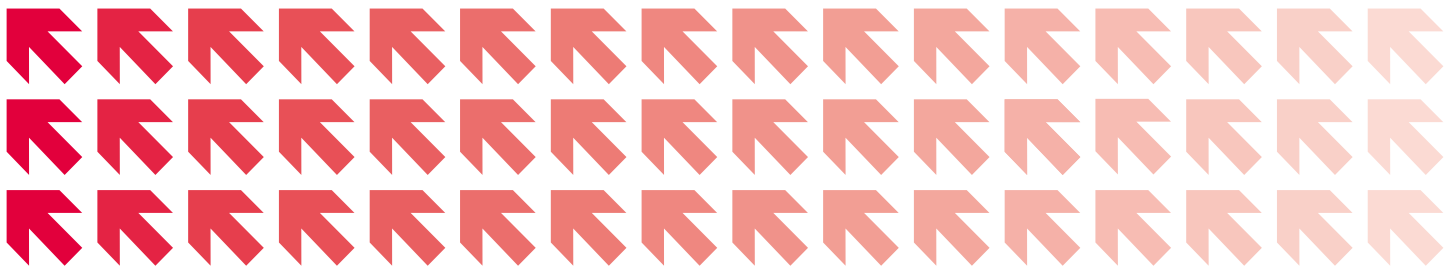
Positive action allows you to take action to target the delivery of your goods, facilities and services. If you want to target your services at the under-represented group, the evidence/justification you have found from your research can be used to support the fact that you 'reasonably believed' such measures were appropriate.



- *Isn't this the kind of thing I do in my business all the time?*

Probably. It makes good business sense to tailor your goods, facilities and service delivery to the needs of your customers. This provision in the Act allows you to do this with confidence.

For further information about how you can use positive action as a business, please refer to the forthcoming EHRC guidance that will be available at [www.equalityhumanrights.com](http://www.equalityhumanrights.com).



## Disability

The Equality Act 2010 has introduced protection from three new forms of disability discrimination:

- direct discrimination because of disability in relation to goods, facilities and services
- indirect disability discrimination, and
- discrimination arising from disability.

Businesses also have an obligation to make reasonable adjustments to help disabled individuals access their goods, facilities and services.

### Direct discrimination because of disability

Direct discrimination applies to disability in the same way it applies to all the other protected characteristics. In relation to disability, this is where a person is treated less favourably than someone else because they have a disability.

**DO** remember that goods, facilities and service providers now have a responsibility not to directly discriminate against someone with a disability.

### Example

Geoff is a former soldier who lost both his legs during his service. Staff at his local café ask him to leave as they are worried that other customers may feel distressed when they see him. This is direct discrimination because of disability.

### FAQ

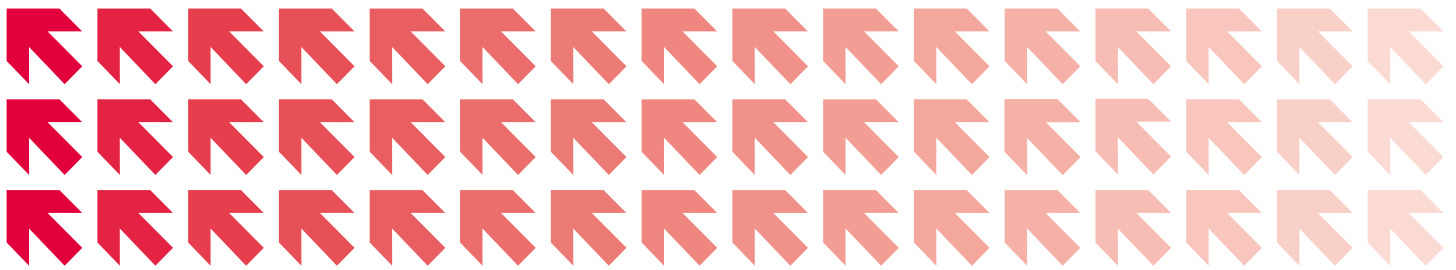
- Can direct discrimination because of disability ever be justified?

No. The Equality Act 2010 does not allow any justification for direct discrimination.

### Indirect disability discrimination

The Equality Act 2010 makes indirect disability discrimination by businesses unlawful. This could be when a business applies a policy, criterion or practice in the same way to all individuals, but that policy has an effect that particularly disadvantages disabled people. The business would need to show that the policy can be *objectively justified* – in other words, it must be a fair and reasonable way of achieving a legitimate aim. A *legitimate aim* might be any lawful decision you make in running your business or organisation, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful. Being fair and reasonable includes showing that you've looked at whether there are other ways of doing things which would avoid discrimination.

**DO** consider the characteristics of your consumer base and remember that not all disabilities are physical and obvious from the outside.



### Example

The local sports centre only allows people to use the swimming pool if they can swim a minimum of one length. Jim has a heart condition which means that he can only swim a width of the pool before he feels tired and has to stop for a rest. The policy therefore puts Jim and other centre users who share his disability at a particular disadvantage when compared to other users. If the sports centre cannot objectively justify its decision, this is likely to be indirect discrimination.

### FAQ

- *Changing my policies would be very expensive. Can I use this as a justification for keeping them as they are?*

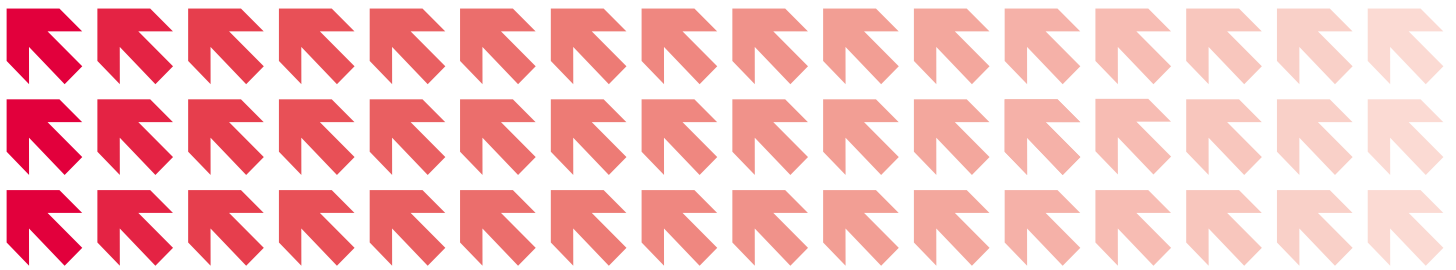
No. Expense alone is not sufficient justification for maintaining a policy that is indirectly discriminatory. However, it can be taken into account as part of the justification if there are also other, good reasons. An example of another, good reason may be that the policy is necessary to safeguard an individual's health and safety, whether they are disabled or not. However, the service provider must also consider whether there are any reasonable adjustments that could be made to allow the disabled person to use the service. Reasonable adjustments are explained overleaf.

### Discrimination arising from disability

The Equality Act 2010 puts another new obligation on business with regards to disability. Discrimination arising from disability occurs where a disabled person is treated unfavourably, not because they have a disability (which would be direct discrimination), but because of something connected with their disability. The treatment will not be unlawful if it can be objectively justified as described above under indirect disability discrimination. However, this form of discrimination can only occur if the business knows, or can reasonably be expected to know, that the person is disabled.

### Example

Jane has Tourette syndrome and often shouts loudly. She is not allowed into a café because the owner objects to her shouting. Jane is excluded not because she has the syndrome, but because of her shouting, which is a manifestation of (something 'arising from') her disability. Unless the café owner can justify this treatment towards Jane, she will have experienced discrimination arising from her disability.



## FAQ

- *I had no idea that the individual had a disability. What can I do?*

In the event of a claimant being able to show that you have treated them unfavourably, you would have to prove you were not aware of the claimant's disability, and that you could not have reasonably been expected to know of it. If you did know about the claimant's disability, you would have either to prove that you did not treat them unfavourably for a reason relating to it, or objectively justify the treatment.

### Reasonable adjustments

Businesses are under an obligation to make reasonable adjustments where, if the adjustment were not made, a disabled person would be at a substantial disadvantage compared to people who are not disabled. The question is whether the adjustment is a reasonable one to make in all the circumstances.

The Equality Act 2010 sets out the three requirements for making reasonable adjustments:

#### Adjustments to a policy or procedure (referred to in the Act as a provision, criterion or practice)

**DO** monitor your policies and procedures to ensure that they are not putting disabled people at a substantial disadvantage in comparison to non-disabled people when accessing goods, facilities and services.

**DO** take reasonable steps to ensure that any policies or procedures that put disabled people at a substantial disadvantage are changed or ended.

### Example

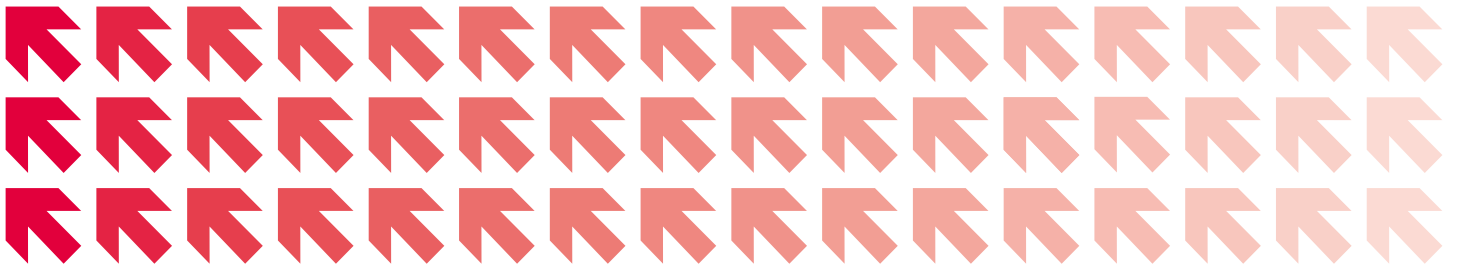
A guesthouse has a practice of only serving breakfast between 7.00 and 9.00 am. This disadvantages people like James, whose disability requires him to take medication mid-morning before he eats any food. If it would be reasonable for the owner to alter his practice and provide James with a breakfast later in the morning, but the owner fails to do so, he could be found to have discriminated against James by failing to make a reasonable adjustment.

#### Adjustments involving the provision of auxiliary aids and services

**DO** anticipate what reasonable adjustments you need to make, and auxiliary aids or services you need to make available to disabled individuals who would otherwise be at a substantial disadvantage compared to non-disabled people.

### Example

A bank makes information about its savings accounts available on audio tape and CD. Customers with visual impairments can listen to the same information at home, via the bank website, or in branch. This is a reasonable adjustment using an auxiliary aid.



### Adjustments to physical features

**DO** consider making reasonable adjustments not only to your services and policies, but also to the physical features of your business premises, to better enable disabled people to access your goods, facilities and services. This can include, for example, reasonable adjustments to stairways, steps, parking areas, entrances, exits, doors and gates, toilets and washing facilities, and lifts and escalators.

#### Example

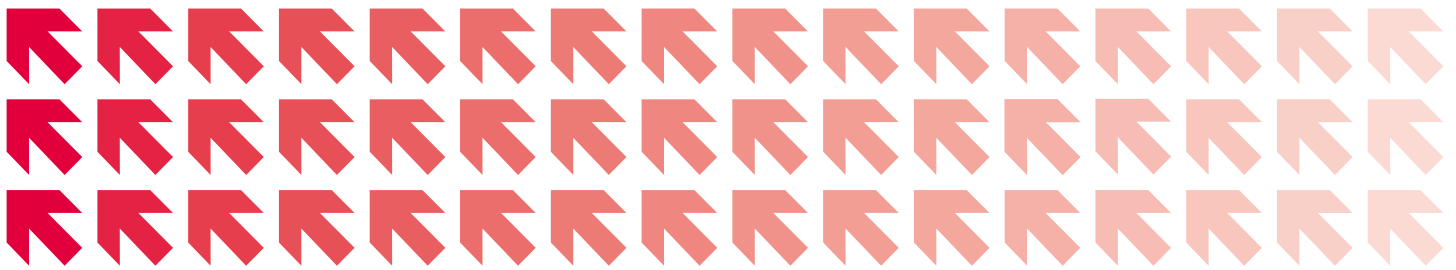
A restaurant on two floors fits an additional handrail on its stairs so that it is easier for mobility-impaired customers to use the upper floor. This is a reasonable adjustment to physical features.

#### FAQs

- *I know most of my customers, and none of them has a disability. Do I have to anticipate the needs of potential users and make reasonable adjustments?*

Yes. You need to consider the needs of disabled people who may access your services in the future.





## Harassment

*Businesses which provide goods, facilities or services must not allow their customers to be subjected to harassment.*

There are two main types of harassment as laid out in the Equality Act 2010. These are:

- unwanted conduct related to a protected characteristic, and
- unwanted conduct that is sexual in nature.

In either case, the conduct must have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

It is also harassment to treat a customer unfavourably because the customer has rejected or submitted to sexual harassment, or harassment related to sex or to gender reassignment.

**DO** remember that harassment only occurs when the conduct is unwanted.

**DO** remember that harassment is unlawful whether it is intended or not.

**DO** be aware that in deciding whether harassment has taken place, a court will take into account the customer's perception of the unwanted conduct, the circumstances of the conduct being complained about, and whether or not it would be reasonable to consider that the unwanted conduct amounts to harassment.

**DON'T** think that the conduct has to be directed at the customer for it to amount to harassment.

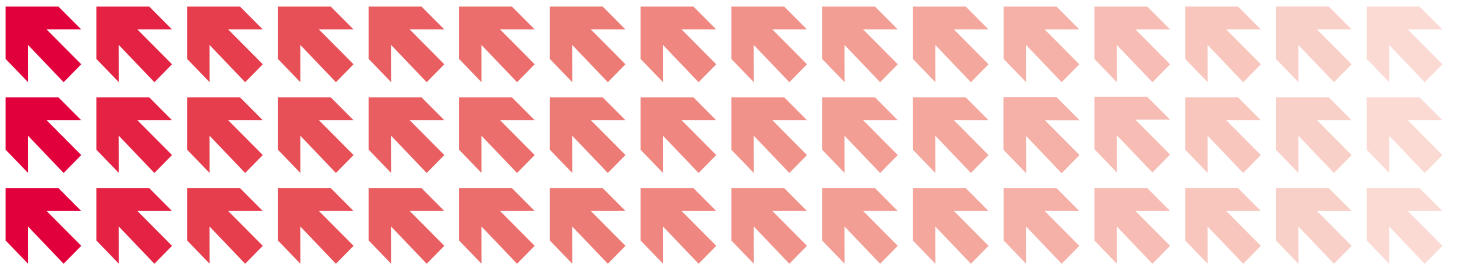
**DON'T** think that the customer needs to have the protected characteristic in order to experience harassment related to it.

### Examples

#### *Unwanted conduct related to protected characteristics*

Moira, a black woman, is shopping in her local grocery store and overhears a shop assistant and a customer chatting and making racially abusive comments. As this conduct was unwanted by Moira and it made her feel humiliated and degraded, she can make a claim of harassment, even though it was not directed at her.

Gavin visits a car repair centre to have his car fixed, and Mike, one of the mechanics, makes homophobic remarks towards Gavin. Gavin explains that he finds the behaviour offensive and tells Mike that he is not gay. When Gavin returns to collect his car, Mike makes further homophobic comments towards Gavin. Even though Gavin is not gay and Mike knows he is not gay, Gavin could still make a claim of harassment because of unwanted conduct related to a protected characteristic, in this case sexual orientation.



## Examples

### *Unwanted conduct that is sexual in nature*

Jack is eating with some friends in a burger bar. The waiter, Paul, makes lewd and suggestive comments to Jack, in front of his friends, throughout the meal. Jack complains to the manager who tells him to lighten up. Jack makes a claim for harassment as the conduct was both sexual in nature and unwanted.

Kelly is sitting in the hairdressers and the hairdresser makes several unkind comments about her size. A claim for harassment is unlikely to succeed because the comments were neither related to a protected characteristic nor sexual in their nature, despite the unwanted nature of the comments.

### *Less favourable treatment because the customer has rejected or submitted to sexual harassment or harassment related to sex or to gender reassignment*

Joan goes to a pub for a quiet drink with some friends. Fred, a barman, asks her out but she turns him down. Later on, she goes up to the bar to place an order, but the landlord, George, tells her she's not welcome in his pub and asks her to leave. She decides to make a claim of harassment as she believes George only treated her unfairly because she had rejected his barman's advances.

## FAQs

- *I have a regular customer who is hard of hearing and usually jokes around with us about his disability. Would he be able to make a claim?*

The fact that a customer participates in this kind of conduct does not automatically mean the conduct is not unwanted or create a humiliating or offensive atmosphere. Your customer might, for instance, feel obliged by peer pressure to join in and not complain even though he finds the jokes deeply offensive. If that is so, he might well be able to make a claim.

