



Government
Equalities Office

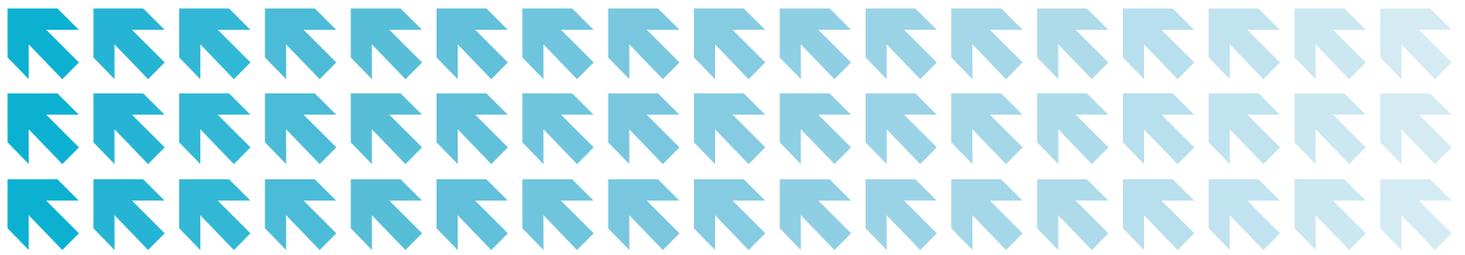
Putting equality at the heart of government



**Equality and
Diversity Forum**

EQUALITY ACT 2010: A QUICK START GUIDE TO POSITIVE ACTION IN SERVICE PROVISION FOR VOLUNTARY AND COMMUNITY ORGANISATIONS





Foreword

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 also strengthens the law in important ways to help tackle discrimination and inequality.

This quick start guide tells you how voluntary and community organisations can use the greater scope for 'positive action' in the Equality Act 2010 to provide more effective services to all the groups the Act protects. These parts of the Act will come into effect on 1 October 2010.

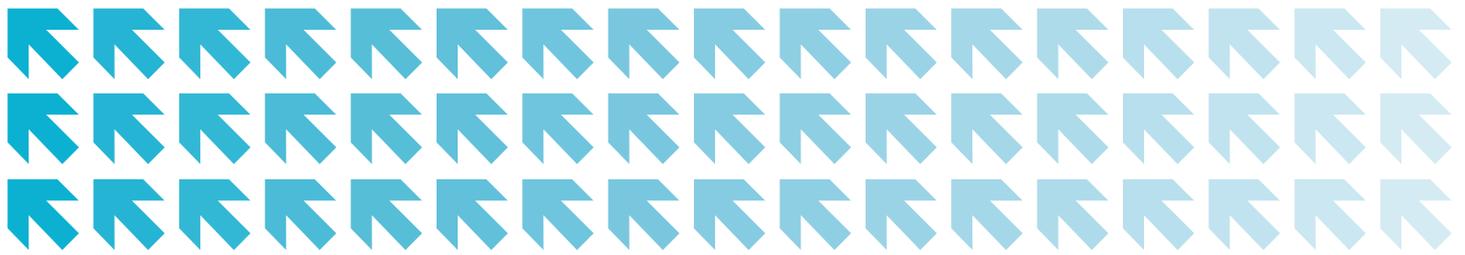
Introduction

The Equality Act 2010 brings together, harmonises and in some respects extends existing equality law. It aims to make the law more consistent, clearer and easier to follow in order to make society fairer. As a provider of goods, facilities or services in the voluntary and community sector your responsibilities remain largely the same, but there are some changes that you need to be aware of.

There are other guides that explain the changes to the law. The summary guide for the voluntary and community sector describes the main changes that affect you as a service provider. Other guides are available for employers, business and individuals. The guide for employers helps the voluntary and community sector with employment issues.

This series of guides covers key changes that are coming into effect on 1 October 2010. The Equality Act also includes other provisions, including the new concept of dual discrimination, an extended public sector Equality Duty and a prohibition on age discrimination in services and public functions. 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.

This quick start guide explains how voluntary and community organisations can use the greater scope for 'positive action' in the Equality Act 2010 to provide more effective services to all the groups the Act protects. This guide covers the characteristics of disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.



What is positive action?

For all groups of people with characteristics protected under the Equality Act to benefit equally from the services provided by voluntary and community organisations, some groups may need more help or encouragement than others. This is because some groups are disadvantaged or under-represented, or have different needs from the population as a whole due to past or present discrimination or exclusion or particular experiences.

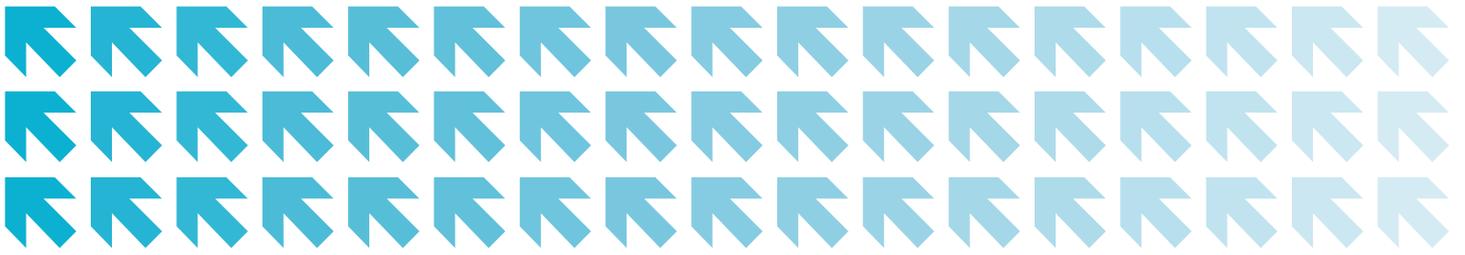
The Equality Act allows service providers to take action that may involve treating one group more favourably where this is a proportionate way to help members of that group overcome a disadvantage or participate more fully, or in order to meet needs they have that are different from the population as a whole. This is called 'positive action'.

Positive action is always voluntary – not compulsory.

When is positive action allowed?

You can take positive action when three conditions are met:

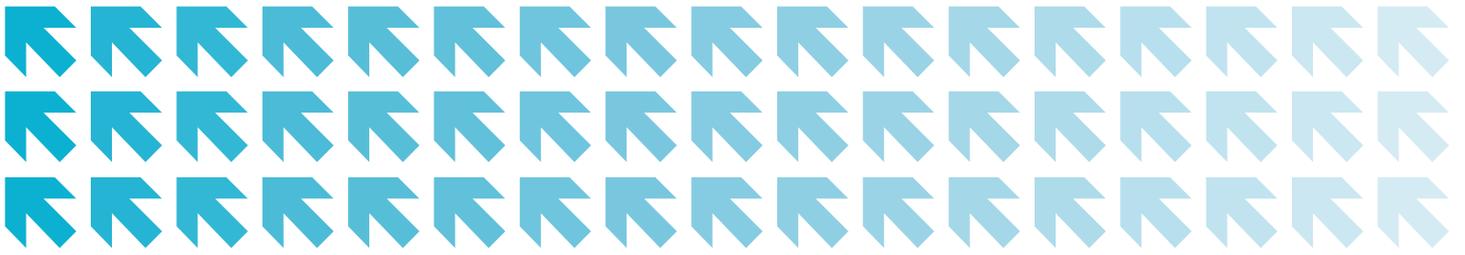
1. You must reasonably think that a group of people who share a protected characteristic and who are, or who could be, using your services:
 - suffer a disadvantage linked to that characteristic
 - have a disproportionately low level of participation in this type of service or activity, or
 - need different things from this service from other groups.
- 'Reasonably think' means that you can see the disadvantage, low level of participation or different needs, but you do not have to show any detailed statistical or other evidence.
2. The action you take is intended to:
 - meet the group's different needs
 - enable or encourage the group to overcome or minimise that disadvantage, or
 - enable or encourage the group to participate in that activity.
 3. The action you take is a proportionate way to increase participation, meet different needs or overcome disadvantage. This means that the action is appropriate to that aim and that other action would be less effective in achieving this aim or likely to cause greater disadvantage to other groups.



Example of positive action

A youth club is concerned that very few of its members are of Somali origin, despite many Somali families living in the area. The club considers the following different steps it could take:

1. It could distribute leaflets to homes in the area advertising the club in both English and Somali, or the club leader could meet Somali parents to explain what the club does and how it is run. Such steps would always be lawful.
2. It could invite Somali young people to a free evening to try out the club's equipment, see the facilities and meet the staff, and follow this by writing to the young people who attended inviting them to join with a reduced fee for their first week. While these steps involve more favourable treatment of Somali young people, the disadvantage caused to other young people (of not getting a reduced fee for a week) would be short term and unlikely to affect their use of club's facilities. The disadvantage to non-Somali young people is likely to be outweighed by the benefit of more Somali young people joining and attending the club. These steps are positive action permitted under the Act.



3. It could consider waiving annual fees for Somali young people in order to encourage them to join; however, with no evidence that cost is the main barrier there is no certainty that waiving fees would increase Somali participation, and this action would involve less-favourable treatment in the longer term of other young people who might want to join the club, but have to pay fees. The club decides against this action, as it is aware that there are less-discriminatory ways to achieve its aim, so this action may not be proportionate and would therefore be unlawful.

What isn't positive action?

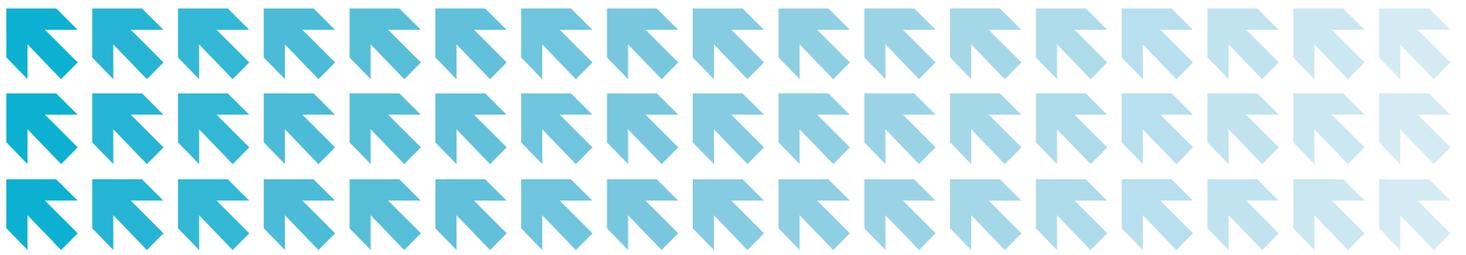
It is not lawful to treat members of a disadvantaged or under-represented group more favourably than other groups if the three conditions above do not apply or are not met. If these conditions are not met, such action is likely to be unlawful direct discrimination under the Act. This type of unlawful preferential treatment is sometimes called 'positive discrimination'.

It is, however, always lawful to treat a disabled person more favourably than a non-disabled person. Similarly, under the Act, it is lawful to treat a transsexual person more favourably than a non-transsexual person.

The Act does not stop a voluntary organisation taking steps to increase take-up or participation by a particular disadvantaged or under-represented group that do not involve more favourable treatment – for example, by advertising a service more widely or by extending opening hours. Such steps are always allowed.

Who can take positive action?

Any voluntary or community organisation of any size, whatever its structure, can take positive action in providing goods, facilities or services to the public. You are never obliged to take positive action – it is your choice.



Who can benefit from positive action?

The new positive action provisions can be used to help any of the groups of people who share a protected characteristic and are protected under the Act against discrimination in the provision of goods, facilities and services. Until 1 October 2010 there are different rules about positive action relating to sex, race, religion or belief and sexual orientation.

Voluntary organisations have always been able to treat disabled people more favourably than non-disabled people, and this will not change under the Act. It is also the case that you are able to treat a transsexual person more favourably than a person who is not a transsexual person.

What is new under the Act is that you can also use positive action to meet the particular needs of people who have a particular disability, or to increase their take-up of your services.

Example

A voluntary organisation that runs summer play schemes is aware that very few deaf children take part. The organisation sets up an additional play scheme for deaf children. To encourage parents to enrol their deaf children, the organisation arranges free transport to and from the scheme with a British Sign Language signer.

Further information

The Equality and Human Rights Commission is the statutory body established to help eliminate discrimination and reduce inequality. It will issue a Statutory Code of Practice explaining in more detail how the Equality Act applies. It also produces a range of materials providing practical guidance on how to comply with the law.

www.equalityhumanrights.com

Advice UK
www.adviceuk.org.uk

Citizens Advice
www.citizensadvice.org.uk

Government Equalities Office
www.equalities.gov.uk

Law Centres Federation
www.lawcentres.org.uk

Charity Commission for England and Wales
www.charity-commission.gov.uk

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

Office of the Scottish Charity Regulator
www.oscr.org.uk

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

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

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