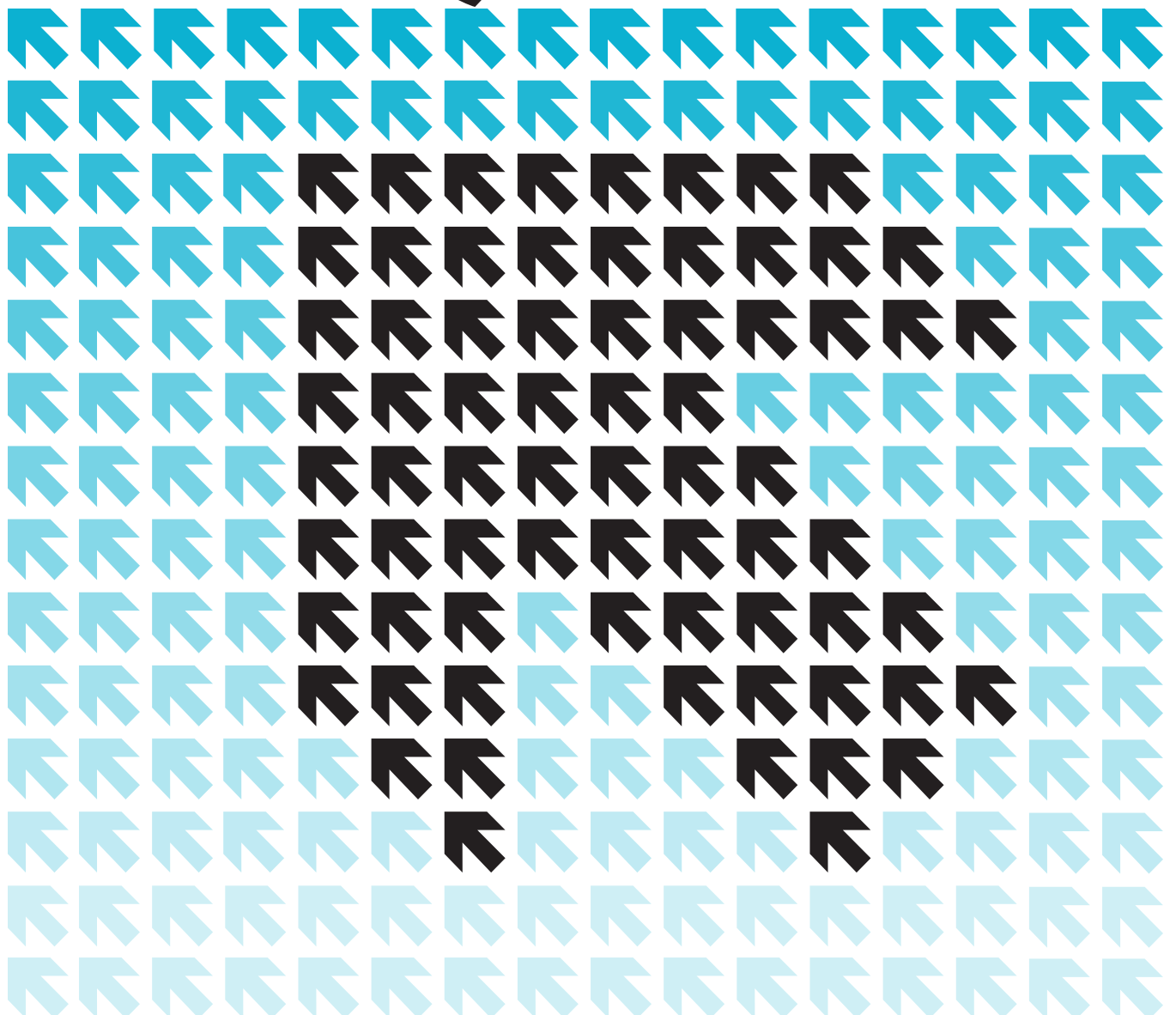
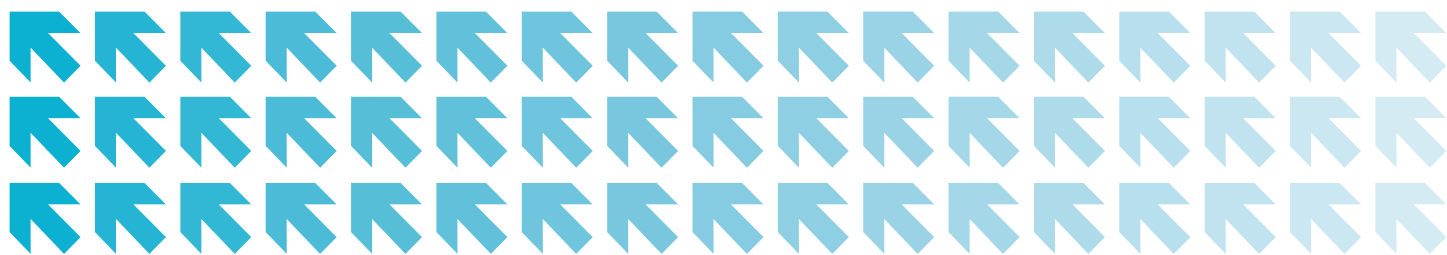




EQUALITY ACT 2010: WHAT DO I NEED TO KNOW? DISABILITY QUICK START GUIDE

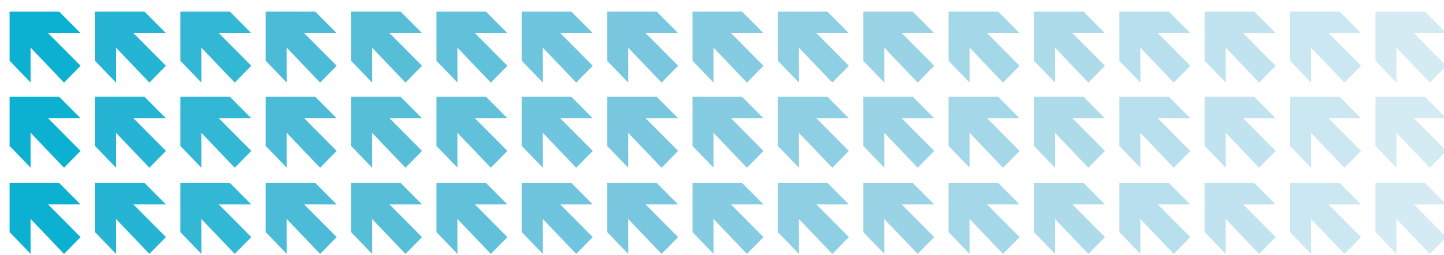




Foreword

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

This Disability Quick Start Guide tells you how the Equality Act 2010 changes how you have to act in order to prevent and address disability discrimination and disability-related harassment when you provide goods, facilities and services to the public, for example as a residential care home, community shop or after-school club. 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 the current equality law. It aims to make it 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 differences that you need to be aware of.

There are other guides that give useful information about the changes to the law. The summary guide for the voluntary and community sector gives an overview of the changes that affect you as a service provider. Other guides are available for employers, business and individuals. The guide for employers will help 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 contains 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 Disability Quick Start Guide tells you how the Equality Act 2010 changes what you have to do in order to prevent and address disability discrimination and disability-related harassment when you provide goods, facilities and services to the public. The Equality Act will replace the Disability Discrimination Acts 1995 and 2005 (DDA). The changes include new provisions on direct discrimination, discrimination arising from disability, harassment and indirect discrimination.

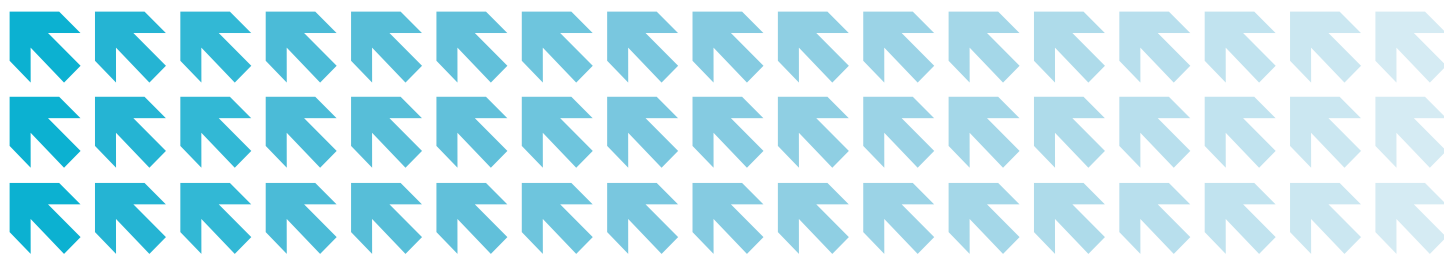
Who has responsibilities?

The Act applies to all service providers and those providing goods and facilities in Great Britain. This includes, for example, those providing information, advice and day care or running leisure centre facilities. It applies to all your services, whether or not a charge is made for them. It also applies to private clubs and other associations with 25 or more members which have rules about membership and select their members.

Who is protected? (changed)

The Act protects anyone who has, or has had, a disability. So, for example, if a person has had a mental health condition in the past that met the Act's definition of disability and is harassed because of this, that would be unlawful.

The Act also protects people from being discriminated against and harassed because of a disability they do not personally have. For example, it protects people who are mistakenly perceived to be disabled. It also protects a person from being treated less favourably because they are linked or associated with a disabled person. For example, if the mother of a disabled child was refused service because of this association, that would be unlawful discrimination.



What has changed?

Previously, protection did not extend to people who are mistakenly thought to be disabled, or people who experience discrimination because of their association with a disabled person. These people are now protected against direct discrimination and harassment.

Further details are given in the Association and Perception Quick Start Guide.

The rest of this guide will discuss discrimination against disabled people, but this should be understood as including direct discrimination and harassment because of perception, association or a past disability.

What is a disability?

Disability has a broad meaning. It is defined as a physical or mental impairment that has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities. 'Substantial' means more than minor or trivial. 'Impairment' covers, for example, long-term medical conditions such as asthma and diabetes, and fluctuating or progressive conditions such as rheumatoid arthritis or motor neurone disease. A 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). Some people, including those with cancer, multiple sclerosis and HIV/AIDS, are automatically protected as disabled people by the Act. People with severe disfigurement will be protected as disabled without needing to show that it has a substantial adverse effect on day-to-day activities.

What has changed?

To qualify for protection from discrimination, a disabled person no longer has to show that their impairment affects a particular 'capacity', such as mobility or speech, hearing or eyesight.

What is direct disability discrimination? (changed)

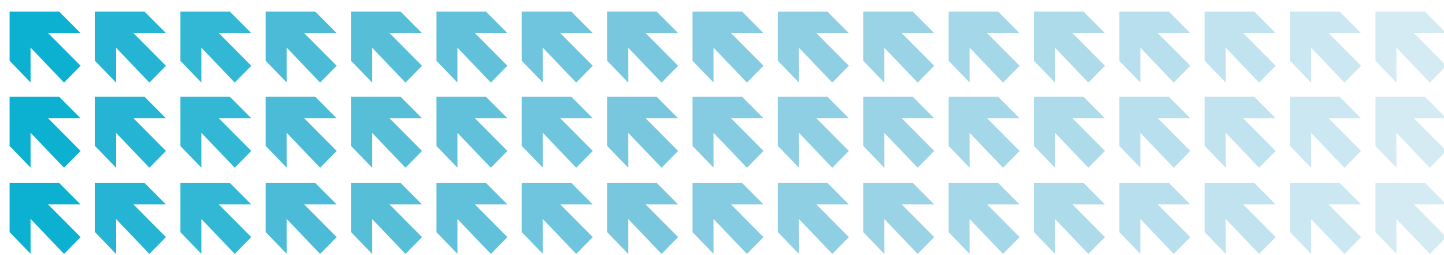
Direct discrimination occurs where, because of disability, a person receives worse treatment than someone who does not have a disability. This provision is intended to stop people being denied a service, or receiving a worse service, because of prejudice.

Example

Ahmed has a severely disfigured arm. A community centre refuses to serve him in the bar unless he wears long-sleeved clothing to cover the arm. This would be direct discrimination.

What has changed?

Previously, direct disability discrimination was only unlawful when it happened in relation to work. The previous law did protect disabled customers from prejudicial discrimination in practice, but in a different way. The Equality Act 2010 means the ban on direct discrimination will now apply in other areas, such as access to goods and services.



What is discrimination arising from disability? (new)

Discrimination arising from disability occurs when a disabled person is treated unfavourably because of something connected with their disability and the unfavourable treatment cannot be justified.

Discrimination arising from disability is different from direct discrimination. Direct discrimination occurs when a service provider treats someone less favourably **because of the disability itself**. 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.

Treatment can be justified and will be lawful if it can be shown that it is intended to meet a legitimate objective in a fair, balanced and reasonable way. This means that a service provider must strike a careful balance between the negative impact of a provision on the disabled person and any lawful reason for applying it. It is important to understand the need to apply this flexible approach when it is clear that a rule or practice disadvantages a disabled person.

Also, discrimination arising from disability will not be unlawful if the service provider can show that it did not know, or could not be reasonably expected to know, that the person was disabled. This means that service providers should take reasonable steps to find out whether someone is disabled, though care should be taken to ensure that any enquiries do not infringe the disabled person's privacy or dignity.

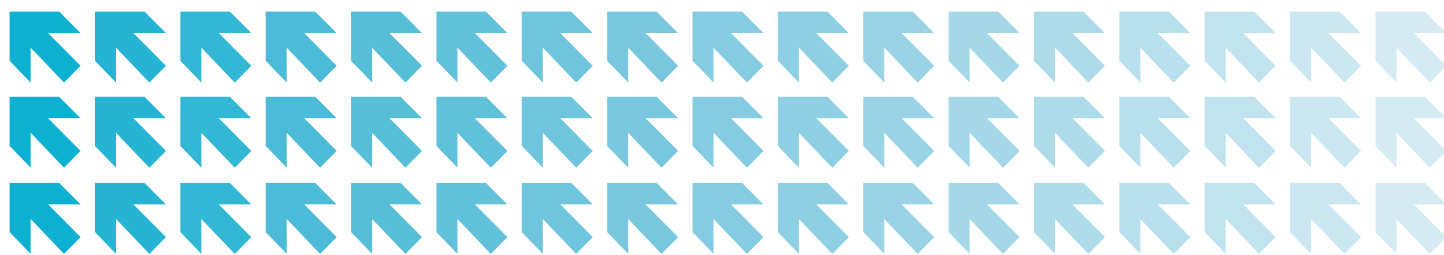
Example

Sarah seeks admission to a crèche for her son who has a disability which means that he does not have full bowel control. The crèche says that they cannot admit her son because he is not toilet trained and the children at the crèche are required to be. The refusal to admit Sarah's son is not because of his disability itself; but he is experiencing detrimental treatment as a consequence of his incontinence, which is something arising from his disability. Sarah could challenge this exclusion on her son's behalf by making a claim in the county court. The exclusion would be unlawful discrimination arising from disability unless the crèche could demonstrate to the court that it did not know that the boy was disabled, or could demonstrate that its action was justified.

What has changed?

This is a new provision which replaces previous protection in disability discrimination law that was not fully effective.

The way in which a service provider can legally justify treatment that has a negative impact on a disabled person has also changed. The test is now clearly objective. A service provider would have to show that it had a genuine reason for its treatment of the disabled person and that the treatment was an appropriate response.



What is indirect disability discrimination? (new)

Indirect disability discrimination happens when there is a rule, a policy or even a practice that applies to everyone but which particularly disadvantages people with a particular disability compared with people who do not have that disability, and it cannot be shown to be justified as being intended to meet a legitimate objective in a fair, balanced and reasonable way. As with discrimination arising from a disability, it is necessary to strike a balance between the negative impact of rules or practices on some people and the reasons for applying them. So you should consider whether there is any other way to meet your objectives that would not have a discriminatory effect. Remember that a lack of financial resources alone is unlikely to be a sufficient justification.

Example

An outdoor centre provides a variety of activities. On safety grounds, it requires a medical certificate of good health for all participants in any activities. Jane complains that she cannot get such a certificate as her doctor does not consider her 'in good health' because she has severe depression. Although ensuring that health and safety is a legitimate aim, the blanket application of the policy is unlikely to be justified because some conditions such as mental health problems do not in practice impede the ability to undertake strenuous exercise safely.

What has changed?

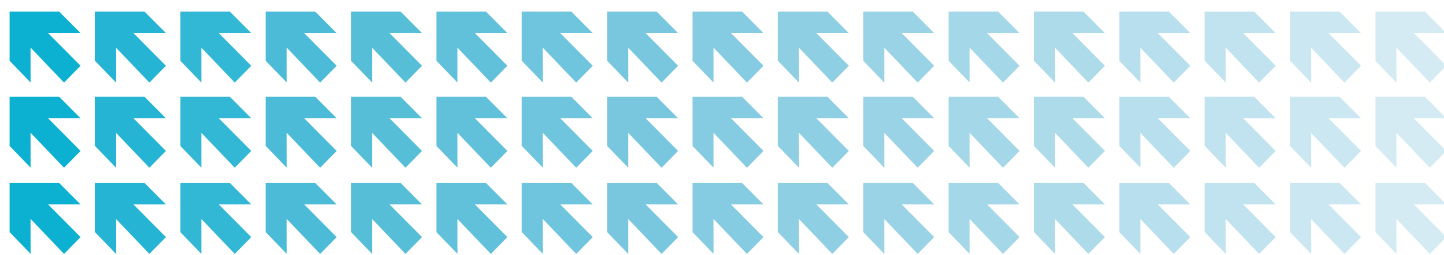
Protection from indirect discrimination for disabled people is new. This is a technical improvement to the law but it does not change much in practice because previous law already required service providers to make reasonable adjustments for disabled people.

What reasonable adjustments do you have to make for disabled people? (changed)

Service providers are required to make changes, where needed, to improve service for disabled customers or potential customers. There is a legal requirement to make reasonable changes to the way things are done (such as changing a policy), 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 when using a service).

Where a service is delivered from a building that cannot be made accessible through reasonable adjustments, it may be a reasonable adjustment to provide the service at a different venue, including a home visit.

Reasonable changes are required wherever disabled customers or potential customers would otherwise be at a substantial disadvantage compared with non-disabled people. A substantial disadvantage is more than a minor or trivial disadvantage. Service providers cannot charge disabled customers for reasonable adjustments.



What is reasonable will depend on all the circumstances, including the cost of an adjustment, the potential benefit it might bring to other customers (ramps and automatic doors benefit customers with small children or heavy luggage, for example), the resources an organisation has and how practical the changes are.

The Equality Act 2010 requires that service providers must think ahead and take steps to address barriers that impede disabled people. In doing this, it is a good idea to consider the range of disabilities that your actual or potential service users might have. You should not wait until a disabled person experiences difficulties using a service, as this may make it too late to make the necessary adjustment.

Example

Sandra is arranging a conference for her charity to discuss new ways of fund-raising. She looks at a number of venues to find one that has good physical adaptations with accessible toilets, an induction loop and places for people to eat their lunch at tables if they want to. She contacts speakers and participants beforehand to ask if they have any disability-related requirements, such as a sign language interpreter or information in alternative formats.

What has changed?

Previously, adjustments to premises and to policies, practices and procedures had to be made by service providers only where it would otherwise be 'impossible or unreasonably difficult' for a disabled person to use the service. Now, under the new Equality Act, adjustments must be made where disabled people experience a 'substantial disadvantage'. This means that service providers may have to make more adjustments.

Also, it was previously possible for a service provider to legally justify failing to provide a reasonable adjustment in certain circumstances. Now, the only question is whether the adjustment is a reasonable one to make.

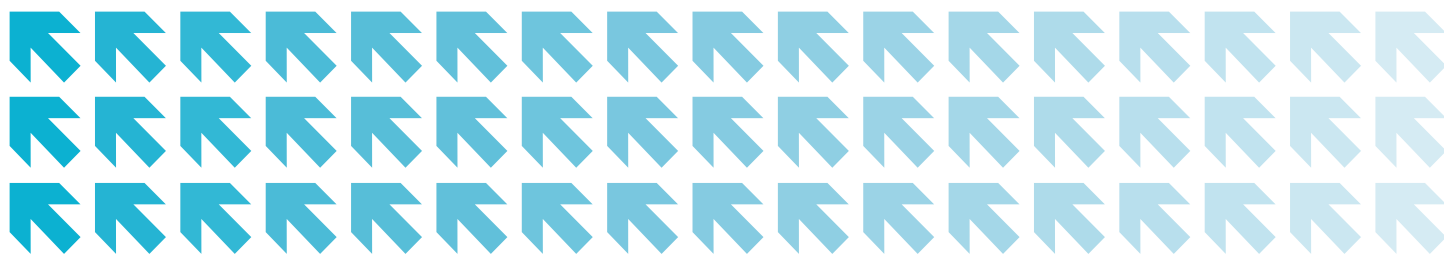
Harassment (new)

Disability harassment is unwanted behaviour related to disability that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Example

Andrew attends a day centre for adults with learning difficulties. Some of the staff make fun of him by mimicking him. He could bring a claim of harassment related to disability.

For further details see the Harassment Quick Start Guide.



What has changed?

Protection from disability-related harassment in services is new.

Victimisation (changed)

It is unlawful victimisation for a service provider to treat someone badly because they have made a complaint about discrimination or harassment under the Act, or helped someone else to make a complaint, or because the service provider thinks that they are doing or may do these things. This applies whether or not the person being victimised is disabled.

A person is not protected from victimisation if they have maliciously made or supported an untrue complaint.

Example

In the example above, if one of the other staff at the day centre supported Andrew to make his complaint about harassment, and was as a consequence ostracised by her manager, this would constitute victimisation.

What has changed?

There is now no need for a victim to show that they have been treated less favourably than someone who has not made or supported a complaint under the Act. They only need to show that they have been treated badly.

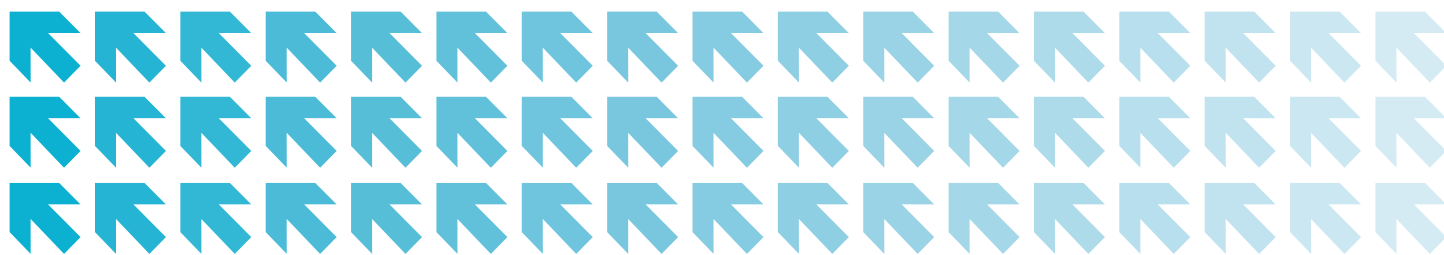
What do you need to do now?

Voluntary and community organisations will want to ensure that all staff (including volunteers) understand the new Act. You will be held responsible for all acts of discrimination, harassment or victimisation by those working on your behalf, unless you can show that you took all reasonable steps to prevent them.

As a matter of good practice, such steps might include:

- informing your staff and management committee of the new provisions
- reviewing regularly whether your services are accessible to disabled people
- providing regular training to staff
- implementing your equality policy and reviewing its effectiveness
- having an easy-to-use, well-publicised complaints procedure and using this to identify problems that need to be addressed, and
- consulting disabled customers, organisations representing disabled people and staff about the quality and equality of your services and how they could be made more inclusive.

Small organisations may find a less formal approach sufficient – such as talking to staff and service users, thinking about whether services are being used by disabled people, and considering whether there are any reasonable adjustments that need to be made.



Further sources of information and advice

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 the law in relation to service provision and discrimination. It also produces a range of material providing practical guidance on how to comply with the law.

www.equalityhumanrights.com
0845 604 6610

The Employers' Forum on Disability is a not-for-profit organisation focused on disability as it affects employers and service providers. It produces useful and practical publications about serving disabled customers and improving access to buildings.

www.efd.org.uk
020 7403 3020

AbilityNet is a charity that brings the benefits of computer technology to disabled people. It offers a programme of courses, an assessment service, an information and advice line and consultancy.

www.abilitynet.org.uk
Freephone 0800 269545 (if you call from home) or
01926 312847 (if you call from work, minicom accessible)

The Centre for Accessible Environments is a charity, and is the information and training body on the accessibility of the built environment for disabled people.

www.cae.org.uk
020 7840 0125

Law Centres Federation
www.lawcentres.org.uk

Citizen's Advice
www.citizensadvice.org.uk

Advice UK www.adviceuk.org.uk

Government Equalities Office
www.equalities.gov.uk

Specific disability organisations

There is a wide range of voluntary organisations representing disabled people and providing advice in connection with particular disabilities. The Office for Disability Issues website links page provides a useful starting point.

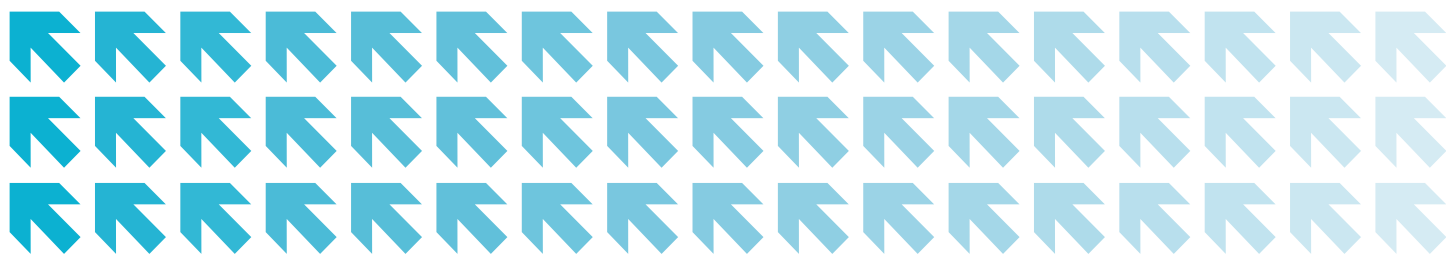
www.officefordisability.gov.uk/contacts/links.php#skiple

Mencap is the leading UK charity for people with a learning disability and their families.
www.mencap.org.uk

Mind is a leading mental health charity that campaigns for a better life for everyone experiencing mental distress. Mind can provide training in mental health awareness.
www.mind.org.uk

The Royal National Institute of Blind People is the largest charity representing blind and partially sighted people in the UK, and can provide information about meeting their needs as customers, including the provision of accessible information.

www.rnib.org.uk
Helpline 0303 123 9999



The Royal National Institute for Deaf People is the largest charity representing deaf and hard of hearing people in the UK, and can provide information about meeting their needs as customers.

www.rnid.org.uk

Information Line 0808 808 0123 (freephone)

Voluntary sector advice

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

