

Charities and the Equality Act 2010 – what charity trustees should consider

The Equality Act 2010 is relevant to all charities but affects them differently, depending on what each charity does and who it works with. Charity trustees must take equalities into account and consider whether their charity is complying with the law.

What should my charity do to check it complies with equality law?

1. Read the relevant guidance from the Equality and Human Rights Commission (EHRC) to be aware of the legal requirements that apply to your type of charity. Are you an employer, service provider or association of more than 25 people?
2. Consider if your charity is complying with general equality law. For instance, if you are providing services, are you discriminating in the way you provide these?
3. Check your charity's governing document to see if it limits its benefits to any group that shares a characteristic protected by the 2010 Act, such as gender. Any restriction must be stated in your governing document. Discuss whether your charity still needs these restrictions to achieve its charitable purposes.
4. There are exceptions that allow charities and other organisations to restrict users, for instance for religious bodies, associations and schools. If you think you qualify for any exception (other than for being a charity), read EHRC guidance to check you meet all the conditions.
5. If no other exceptions apply but you want to continue restricting your benefits, consider how your charity can justify these as either preventing or compensating for a disadvantage, or as a reasonable way to bring about a beneficial aim. Also, consider if there is a less restrictive way of achieving this aim that doesn't involve the restrictions.
6. If you decide that a restriction can no longer be justified, you may have to make changes to your governing document and open your benefits to a wider group, or to all. If you need to change your governing document see [our guidance](#) on changing your charity's purposes.

What is this guidance for?

This guidance is a starting point to help those running charities understand what to consider when they are assessing if their charity is meeting equality law requirements. It provides references to guidance from the EHRC, the independent regulator for equality, and to the Government Equalities Office (GEO), which is responsible for the UK government's overall equality strategy. This guidance complements more detailed guidance available from EHRC and the GEO. Charities dealing with complex issues relating to equalities may need specialist advice or may wish to contact their local third sector interface (see references at the end of this guidance).

For a general introduction to the Equality Act 2010 (the 2010 Act), please see the [starter kit](#) from the EHRC or the [easy read guide from GEO](#). If you are an individual using a charity and want more information about your rights under equality law you can also refer to [specific guidance](#) produced for you by the EHRC or [a summary guide](#) to your rights from GEO.

What is the Equality Act 2010?

The 2010 Act is a Westminster law that applies in England, Scotland and Wales, which aims to prevent people being treated unfairly. Most of its provisions came into force in October 2010. This Act brings together a lot of existing anti-discrimination law into a single piece of legislation.

Since many requirements of the 2010 Act are not new, charities which have considered and complied with previous equality legislation will already be meeting most of its requirements.

The 2010 Act says that organisations cannot treat someone unfairly on the basis of what it calls 'protected characteristics', which are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

The 2010 Act has widened the scope of the protection given to people with these characteristics, and those associated with them. You cannot, for example, unfairly restrict services available to a helper who assists a disabled person, or to someone who has a 'hidden' disability, such as mental illness or epilepsy.

The law also says you can't restrict your benefits based on skin colour, although you may restrict them on the basis of race as long as you meet certain conditions, which we explain below.

What are the effects of the 2010 Act on my charity?

The 2010 Act seeks to ensure that, in general, all organisations provide equal and fair treatment to all. As a matter of good practice, charity trustees might want to explain in an equality policy how they will make sure they treat people fairly, and think about whether training is needed.

If you are responsible for managing a charity you should familiarise yourself with the broader equality requirements that apply both to charities and other organisations. The 2010 Act will affect your charity if it:

- [employs people](#)
- [has volunteers](#)
- [is an association with more than 25 members](#)
- [provides services](#), sells goods or offers facilities (even if you don't charge for these)
- carries out public functions

You should refer to the [EHRC guidance](#) relevant to your circumstances to learn more.

In addition to these general rules, while charities and others may continue to restrict their services to certain groups of people, the conditions that allow charities to do so have changed. We explain below what is different for charities in particular and what you, as charity trustees, should do about this.

What's different for charities?

The 2010 Act recognises that charities sometimes restrict the kind of people they benefit because this helps prevent or compensate for disadvantage, or is a justifiable way to achieve a beneficial aim. Therefore, the 2010 Act includes a 'charity exception', which allows charities to restrict the people they benefit, **but only if the restriction of benefits:**

- **is specified in its governing document (constitution)**

and, it is either

- A. To prevent, or compensate for, a disadvantage, or**
- B. A proportionate means of achieving a legitimate aim**

The restriction must be permitted by the charity's constitution – but this by itself is not enough. Charities which restrict the benefits they provide must now be able to explain how by doing so they are either addressing disadvantage, or that this

restriction is a fair, balanced and reasonable way to bring about a legitimate objective (which they must be able to identify).

Charity trustees should consider if a restriction can be justified by either of the conditions above and how they would demonstrate that this is the case.

Test (A) of preventing or compensating for a disadvantage

When you are restricting benefit, your trustees should be able to:

- Identify the disadvantage and be able to show evidence of this
- Show how the benefits offered by the charity would help address this disadvantage

For example

A charity that aims to get Afro-Caribbean people into work may legally restrict its beneficiaries to that group of people if the restriction is stated in its constitution, and it has evidence that Afro-Caribbeans have greater difficulty than other people in finding jobs.

Note that this evidence should be current because circumstances may change. If, over time, Afro-Caribbean people are finding work as easily as other people then the charity may no longer be able to justify restricting its services to them.

Test (B) of being a proportionate means of achieving a legitimate aim

Trustees should be able to:

- Identify a legitimate aim
- Show that the means being used are proportionate
 - Is there reasonable, convincing, weighty justification for this restriction?
 - Have you considered if there are other less discriminatory ways of achieving the same aim?

For example

A charity that helps rape victims only offers its services to women because female rape victims have told the charity they would be less likely to use its centre if it were for both sexes.

You can read about how the 2010 Act applies to charities and the charity exception in specific [EHRC guidance](#) for voluntary organisations, including charities.

What restrictions are not allowed under this charity exception?

Your charity is not allowed to discriminate on the basis of skin colour.

For example

A charity set up to assist homeless black people in Lanarkshire must offer its services to people of all skin colours.

What if my charity provides a public service?

The 2010 Act imposes duties on many public bodies, such as councils or the Scottish Government. Sometimes charities may have a public function – they may, for example, provide services for a public authority, be acting under a statutory duty, or be publicly funded. When a charity has a public function, it may be subject to the public sector general equality duty to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity between different groups
- Foster good relations between different groups

Your charity should check whether any public service it carries out means it has these duties.

Is a charity allowed to restrict who benefits for any other reason?

Yes, there are other exceptions in the 2010 Act, notably exceptions for religious or belief organisations (see below), associations, schools, further and higher education, and positive action. If you think that your organisation fits any of these categories, please refer to the relevant EHRC guidance. There is detail about how the different exceptions apply in Chapter 13 of the [EHRC Code of Practice](#).

One exception covers charity fund-raising events. If you hold such an event, you are allowed to restrict this to one gender.

For example:

The Race for Life, to raise funds for cancer charity, can be restricted to women only.

Charities with religious or belief purposes

Organisations which advance a religion or belief, or have certain religious purposes, may lawfully discriminate against people with two of the protected characteristics (religion and sexual orientation) – but only if certain conditions are met. The interpretation and application of this exception is complex. To find out more, please refer to Chapter 13 of the [EHRC Code of Practice](#).

What is OSCR doing in response to the Equality Act?

We have published an [Equality Strategy](#) which explains how we plan to meet our general public sector equality duty. Our Strategy proposes that we publish more detailed guidance in future once we have more experience of how recent equality law is working in practice for charities.

Where can I get more advice?

Equality and Human Rights Commission – www.equalityhumanrights.com

Government Equalities Office - www.homeoffice.gov.uk/equalities/equality-government

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

Third Sector Interfaces - Each of Scotland's 32 regions has a Third Sector Interface that can offer advice to voluntary organisations. Find out details of your local interface at www.voluntaryactionsotland.org.uk/Find_an_interface.asp