# An introduction to the Equality Act 2010

This briefing provides an introduction to the Equality Act 2010 and the Disability Equality Duty. It is not a comprehensive guide, more of a short overview which focuses on a number of areas that we think will be of use to campaigners.

## The Equality Act 2010

The Equality Act 2010 replaced the Disability Discrimination Act 1995 in England, Scotland and Wales (the DDA still applies in Northern Ireland). The Equality Act prohibits discrimination because of a “protected characteristic”. There are nine protected characteristics – one of these is disability. The Equality Act defines what disability means. If you can show that you meet this definition, then employers, service providers, education providers, and other authorities and organisations have duties towards you. If they do not do what the Equality Act requires and comply with these duties, then you can take action to challenge them.

## Who is disabled under the Act?

The Equality Act says that a disabled person is someone who has “a physical or mental impairment” which “has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities”. This is called the definition of disability. If you have sight loss, then this definition should cover you.

If you are registered blind (also referred to as “severely sight impaired”) or partially sighted (“sight impaired”), then the Act and additional regulations say that you are treated as automatically meeting the Equality Act’s definition of a disabled person. If you are not registered or do not meet the criteria for registration then you could still be covered by the Equality Act. You need to check if you meet the Equality Act’s definition of a disabled person. You can contact our Legal Rights Service on 0303 123 9999 for more information.

## Who has to comply with the Act?

The Equality Act imposes duties on service providers. This means a service provider has to do what the law says. The Equality Act says that a service provider is not allowed to discriminate against someone because of his or her disability or other “protected characteristic”. For disabled people, the Equality Act also says that service providers may have to make “reasonable adjustments”.

## What is a “service provider”?

This is a person which provides a service to the public or a section of the public. It does not matter if the service is paid for or free. “Person” includes a company, organisation, public authority or sole trader. “Service” is likely to include providing or selling goods as well as a mixture of selling goods and providing a service. For example, buying food would be covered (goods) as well as having your hair cut (service) or a meal in a restaurant (goods and service). All of these are examples of situations covered by the Equality Act as “services” and all of the companies or individuals would be “service providers”.

The Equality Act defines what are prohibited acts of discrimination. It says that a service provider must not discriminate by not providing the service. Also, a service provider must not discriminate, in providing the service:

1. in the terms it provides the service – for example, charging you more
2. stopping providing the service
3. treating the disabled person in any other detrimental way.

## Reasonable adjustments

There are three parts to the reasonable adjustments duty.

1. Where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the service provider must take such steps as it is reasonable to have to take to avoid the disadvantage.
2. Where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the service provider must take such steps as it is reasonable to have to take to avoid the disadvantage.
3. Where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison who persons who are not disabled, the service provider must take such steps as it is reasonable to have to take to provide the auxiliary aid.

Where the third part of the duty relates to providing information, the reasonable adjustments can include providing that information in an accessible format. For example, when a bank sends statements to its customers, it is providing information. Reasonable adjustments for blind or partially sighted customers could include providing statements in accessible formats such as large print or braille.

“Substantial disadvantage” means that the disadvantage has to be “more than minor or trivial.”

The duty to make reasonable adjustments is anticipatory. This means a service provider has to plan ahead so that it is able to comply with the duty and make a reasonable adjustment when a disabled person needs it to do so. For example, by making sure that it can provide information in large print if necessary or having a text only or graphics free version of its website.

A service provider may have to find a reasonable alternative method of providing a service in relation to physical feature.

### What does “reasonable” mean?

This depends on various factors. These include:

* how effective the adjustment will be in overcoming the substantial disadvantage
* practicality of making the adjustment
* the cost of the adjustment and the resources of the business
* size and nature of the business
* what help (such as funding or advice) is available.

The Equality Act says that a service provider is not allowed to pass on the costs of making a reasonable adjustment to disabled people. This is because adjustments are part of a service providers general running costs.

## The Public Equality Duty for public authorities

The Public Equality Duty (PED) puts public authorities (such as local authorities, the NHS and schools) under a duty to eliminate discrimination, harassment and victimisation, to promote equality of opportunity, and to foster good relations. The Equality Act says that in order to do this, public authorities may need to treat disabled people more favourably.

### Who are public authorities?

Local authorities, health bodies, the police, schools, courts are all covered by the PED. A full list of public authorities can be found at <https://www.gov.uk/government/publications/equality-act-2010-schedule-19-consolidated-april-2011>

Section 149 of the Equality Act states that the basic requirement for a public authority when carrying out their functions is to have due regard to do the following:

* Eliminate all forms of discrimination, harassment and victimisation that are prohibited by the Equality Act
* Advance equality of opportunity and
* Foster good relations by promoting understanding and tackling prejudice

## The specific equality duties

The s.149 duty is underpinned by further, specific duties. Under previous legislation, public authorities had to publish a disability equality scheme which set out what they intended to do to promote disability equality and they had to involve disabled people in creating this. It also included details of how they would impact assess their policies to see how they affect disabled people. All of this helped focus the minds of the public authorities on equality.

The coalition government has taken a new approach to the specific duties, reflecting its concerns about “reducing burdens and bureaucracy”. There are now only two specific duties that the majority of public authorities have to comply with. These are:

**Publication of information**

Each public authority must publish information to show that it is complying with the s.149 duty and at least on an annual basis. Authorities must include information about persons who share a protected characteristic who are its employees (if it has 150 or more employees) and its service users.

**Equality objectives**

Each public authority must prepare and publish one or more objectives it thinks it should achieve to have due regard to the need to eliminate discrimination and harassment, to advance equality of opportunity or to foster good relations. Any objective must be specific and measurable.

Authorities had to publish their first objectives no later than 6 April 2012 and at least every four years after that.

### Impact Assessment

A key purpose of the equality duty is to require public bodies to give advance consideration to any likely impact on equality before deciding what their policy should be or making decisions that may have equality implications. This means that a public body that gathers evidence and compiles an Equality Impact Assessment (EIA) to defend a decision after it has been made or at the end of a policy development process is unlikely to be complying with the duty.

There is actually no longer any duty under the Equality Act 2010 for a public authority to carry out an Equality Impact Assessment, however, the Equality and Human Rights Commission (EHRC) recommends that carrying out an EIA may be the best way of ensuring that the authority has taken a properly informed, rational view of the likely impact on equality.

But even if no formal EIA is carried out, a public authority would still need to do the following in order to have due regard to equality:

* Gather and consider information about who is going to be affected by a decision, policy or practice
* Ensure that the information is sufficient to enable the public body to assess the impact on people with different protected characteristics and relations between them
* If there is evidence of a possible negative impact, give proper consideration to the extent, nature and duration of that impact
* If there is a greater negative impact on one or more of the protected groups than others, then consider whether or not that impact can be eliminated, mitigated or justified

Campaigners should keep asking public authorities for EIA’s as a basic way of checking that the duty to have due regard is being complied with. If you are told that the public authority no longer believes it has to do an EIA then you should ask how it intends to demonstrate that it has had due regard.

Failure to comply with the s.149 duty can be challenged by means of an application for judicial review to the High Court. If a judicial review action is successful, it could result in a decision being quashed and sent back to the public authority to review, this time having due regard to equality. Cases must be brought promptly and at least within three months of the action that is being challenged.

Further information about the Equality Act 2010, including a ‘challenging discrimination toolkit’ can be found on [RNIB’s website](https://www.rnib.org.uk/information-everyday-living-your-rights/equality-act-2010), or by contacting the RNIB Advice Service at [helpline@rnib.org.uk](mailto:helpline@rnib.org.uk) or by calling 0303 123 9999.