



## Supporting specific beneficiary groups - Equality Act summary guidance

# Who can benefit from charities?

A summary of how to avoid discrimination under the Equality Act 2010 when defining who can benefit from a charity.

A fuller version of this guidance will be available in spring 2011. For more information, see our update.

## A. About the Equality Act and the charities exemption

### A1. Introduction

All charities must have an aim for the public benefit. This means that the aim can benefit the public generally, or it can be restricted to benefit a specific group of people which is a sufficient section of the public. The Equality Act 2010 aims to ensure that all people are treated fairly and it clarifies when such a restriction is not unlawful discrimination.

### A2. What is this summary about?

In this summary we explain the part of the Equality Act 2010 ('the Act') that allows charities to limit the group of people who it helps. In this summary we call this the **charities exemption**. This summary provides an introduction to the charities exemption: we will review and develop this guidance further before the end of this year. We also describe briefly the other parts of the Act which have a particular relevance for charities.

### A3. What is the Equality Act?

The Act brings together, updates and strengthens discrimination law. In general terms, it prevents discrimination on the grounds of:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; or
- sexual orientation.

These categories are known in the Act as **protected characteristics**.

The Act makes it illegal to discriminate against anyone with a protected characteristic in many areas – for example, employment and providing services. There are some exemptions from this, including the charity exemption which we explain in this summary.

The majority of the Act's provisions are effective from 1 October 2010. The Government Equalities Office (GEO) and the Equality and Human Rights Commission (EHRC) have published a series of specialist guides to the Act. Those likely to be most relevant to charities are listed at the end of this summary.

#### A4. What is the charities exemption?

The Act allows a charity to restrict its benefits to people with a shared protected characteristic. The restriction must be allowed by the document that sets out the charity's purposes ('governing document') and it must be justified for **either** of the following reasons:

- it helps to tackle disadvantages that particularly affect someone with a protected characteristic;  
**or**
- it is for some other reason a fair, balanced and reasonable ('proportionate') way of achieving a legitimate aim.

Note: Charities cannot limit their beneficiaries by reference to skin colour.

#### A5. Which charities does this affect?

The charities exemption affects organisations applying to register as charities as well as existing charities as follows:

- *Organisations seeking to register as charities with a restriction which limits benefits to people with a protected characteristic.* We can only register these organisations as charities if the restriction is justified for either of the reasons described above.
- *Existing charities* will need to check if their governing document restricts who may benefit. If it does, they must consider whether the restriction, or the way it is used, is limited to people with a shared protected characteristic and, if so, whether it can be justified for either of the reasons described above.

We describe at the end of section B the steps that charities can take to check whether the charities exemption applies, and what to do if it does.

## A6. Which charities are not affected?

Charities which have no restriction on who may benefit, or which have a restriction that does not relate to a protected characteristic, will not need to rely on the charity exemption in the Act.

For example, a charity which provides a playing field for the use of people living in a particular town is not affected. This is because restrictions based on geography are not a protected characteristic.

## A7. How is this different from what went before?

Charities have always been able to restrict benefits to persons sharing a protected characteristic. This continues to be the case but the key difference is that the new Act explicitly requires charities to justify any such restriction using either of the two tests outlined above.

## B. How the charities exemption works

For a charity (or proposed charity) which restricts its benefits to people with a shared protected characteristic, there are two possible tests that can be used to show that this is allowed by the Act and is not discriminatory. Only one of these tests has to apply. We describe below how each one might apply.

### Test A Tackling disadvantage

The Act says that this test is met if the restriction is ‘for the purpose of preventing or compensating for a disadvantage linked to [a] protected characteristic’. In other words, a charity can limit its benefits to a group of people with a shared protected characteristic if members of that group are more likely to face a particular disadvantage or need than the general or local population.

This test can therefore be met if:

- the governing document restricts benefits to people with a shared protected characteristic; **and**
- there is a particular disadvantage which is linked to people with that protected characteristic which the charity is tackling.

For example, it is lawful for a charity to tackle unemployment among people of a particular ethnic origin if unemployment is particularly high for that group. Here, the people who can benefit from the charity are restricted to a group with a protected characteristic (ethnic origin) and the restriction is justified if unemployment is higher for that group than for the general population.

For example, it is lawful for a charity to provide software adapted to the needs of visually impaired people. Here, the group able to benefit from the charity is restricted to people with a visual impairment so the protected characteristic is based on people with a particular disability. The software compensates for any disadvantages visually impaired people may experience when using computers.

As an example of an inappropriate restriction, it is difficult to justify restricting the beneficiaries of a charity which has general charitable purposes – that is, a charity which has the freedom to choose any charitable purpose. This restriction is difficult to justify because there is no specific aim and it is therefore not clear what particular disadvantage is to be tackled.

### **Test B Achievement of a legitimate aim.**

The Act says that this test is met if it is ‘a proportionate means of achieving a legitimate aim’. In other words, where this test is met, a charity can restrict who may benefit even if there is no greater disadvantage (as in Test A) for those who the charity helps than the general population.

Test B can therefore be met if:

- the governing document restricts benefits to people with a shared protected characteristic; **and**
- the restriction can be justified as being a fair, balanced and reasonable way of carrying out a legitimate aim.

We explain below how this test might be applied.

### **B1. What is meant by ‘legitimate aim’?**

Although the Act does not define this term, the general law says that a legitimate aim is one that has a reasonable social policy objective such as health improvement or the protection of children. It must be consistent with the lawful carrying out of the charity’s stated purpose for the public benefit, and it must not itself be discriminatory.

## B2. When is it acceptable to discriminate in carrying out a legitimate aim?

Limiting the benefits to those with a protected characteristic is only acceptable under Test B if there is a strong justification that shows that the restriction is appropriate and necessary to the carrying out of the aim. The more serious the disadvantage caused to the group(s) excluded by the restriction, the more convincing the case that must be made to justify the restriction.

Where the charity restricts its benefits to a group that shares a protected characteristic such as race, sexual orientation, or gender and the restriction is not justified on the basis of disadvantage or need (see Test A) this can only be justified by particularly convincing and weighty reasons.

For example, a charity may have an aim to provide housing for men who have worked in the police force and who are in financial need. By restricting beneficiaries to men, the charity is helping people with a shared protected characteristic (gender / sex) and the charity must consider if the charity exemption applies.

It is unlikely that Test A can be used to justify the restriction because, for example, men who have worked in the police force are not likely to face poverty or homelessness to any greater extent than women from the same background. To justify the restriction using Test B, therefore, the charity would have to identify the legitimate aim that they seek to achieve and show that providing single sex accommodation was a fair, balanced and reasonable ('proportionate') way of achieving it.

## B3. What must existing charities do to comply with the Act?

Charities have a legal duty to comply with the Act. Whilst it is likely that many charities with a restriction will be able to rely on the charities exemption, we recommend that they check that they do comply with the Act. This can be done as part of any routine review of the charity's operations and we would recommend the following approach:

1. Review the charity's governing document. Does it restrict who may benefit?
2. If there is a restriction, does it relate to people with a shared protected characteristic?
3. If the answer to question 2 is 'yes', consider whether the restriction can be justified using either Test A or Test B. If it can, then no further action is needed.
4. If it is difficult to apply either Test A or Test B, we recommend that the charity seeks professional advice from a lawyer or other adviser who specialises in charity advice. If it is necessary to change the restriction please follow our guidance *Changing your Charity's Governing Document* (CC36).

## B4. What must organisations seeking registration as charities do to comply with the Act?

If the organisation's governing document limits those who can benefit from the charity's aim to a group with a protected characteristic, the restriction should be reviewed in order to check that it can be justified using either of the tests described in this guidance.

## C. Other exemptions relevant to charities

The Act contains some other exemptions for charities from the requirement not to discriminate against people with a protected characteristic. More information about exemptions is contained in the guides provided by Government Equality Office and Equality and Human Rights Commission. The following list sets out the main exemptions which can apply to charities.

### C1. Other charity specific exemptions

#### **Fundraising**

Events held to support or promote charities can be restricted to one sex only such as Race for Life which is a women only event held to support Cancer Research UK.

#### **Membership**

If a charity is offering membership, it can ask someone to make a statement to say or imply that they are a member of a particular religion or belief, or accept that religion or belief in order to become a member of the charity. In these circumstances, charities can also refuse members access to benefits if they do not accept that religion or belief but only as long as this requirement has existed since before 18 May 2005.

## C2. Exemptions which apply to particular types of organisation, including charities

### Associations

Associations (any group of 25 people or more which has rules to control how someone becomes a member) may restrict membership to people who share a protected characteristic provided membership is not based solely on someone's colour. For example, an association to support women with breast cancer can restrict membership to women. However, associations which are charities will need to be able to demonstrate that they are established for the public benefit. This includes a requirement to show that there is a rational link between any restriction on who can benefit and the association's charitable aim.

### Religion or belief organisations

There are some exceptions to equality law that only apply to services provided by religion and belief organisations, including charities which fall into this category. In certain circumstances religion and belief organisations can discriminate in the way they operate on the ground of religion and belief or the ground of sexual orientation. For example, a religious group may in certain circumstances restrict their membership and other benefits to heterosexual people so that the organisation can comply with its religious doctrine or to avoid conflict with strongly held convictions of the belief's followers. Unlike other types of charity, religion and belief charities do not need a governing document restriction to be able to do this. However, permitted discrimination is only possible in certain circumstances. For example, religion and belief organisations cannot discriminate because of sexual orientation where they are providing services on behalf of a public authority under a contract with that public authority.

### Schools

In some circumstances, in line with admissions policies, schools can select pupils based on certain criteria, including gender in the case of single sex schools and preference for children who follow a particular faith in the case of faith schools.

### Positive action

Some people with protected characteristics are disadvantaged or under represented in some areas of life or have particular needs linked to their characteristic. New positive action provisions in the Act allow service providers to take proportionate action to help such groups achieve the same chances as everyone else.

## D. Further information

The Government Equalities Office (GEO) and the Equality and Human Rights Commission (EHRC) have produced a series of guides giving advice on what organisations must do to meet the requirements of equality law. These give a full account of equality obligations and how they impact on different types of organisations and different activities. The guides clearly highlight what has been changed by the new law. The series includes specialist guides which will be relevant for particular groups of charities. Examples of these are listed below.

### **EHRC guides**

What equality law means for your voluntary and community sector organisation (including charities and religion or belief organisations)

What equality law means for your association, club or society

What equality law means for you as an education provider - schools

### **GEO guides**

Equality Act 2010: What do I need to know? A summary guide for voluntary and community sector service providers

Equality Act 2010: What do I need to know? A quick start guide to positive action in service provision for voluntary and community organisations

Equality Act 2010: What do I need to know? A quick start guide for voluntary and community sector associations