



# **Equality Act 2010**

## **Toolkit**

**A resource for the BAME  
community sector**

Produced in June 2011 by Roots Research Centre,  
in collaboration with the 1990 Trust

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## About this toolkit

The Roots Research Centre, in collaboration with the 1990 Trust, has written this toolkit<sup>1</sup>. It is designed to help voluntary and community organisations, and others working with BAME (Black Asian and Minority Ethnic) communities, use the Equality Act 2010 to challenge discrimination and promote equality. This toolkit primarily focuses on race equality, but it also provides guidance on tackling discrimination and promoting equality for all who face discrimination. To help you to access what is most relevant for you, a summary of key information is provided at the beginning of each part of this toolkit. The tools and resources include:

- an overview of the Act itself (part two);
- information on key provisions included in the Act, especially those that can be used by those working with BAME communities to hold public bodies to account (part three);
- suggestions about how to challenge public bodies and how BAME organisations, and those working with BAME communities, might wish to hold public bodies to account (part four);
- information on other key anti-discrimination and equality related provisions (part five); and
- detailed information (the boxes, tables and appendices).

A briefing on key terms introduced by, or relevant to, the Equality Act 2010, is also available online on our website: <http://www.roots-research.org.uk><sup>1a</sup>

## Key acronyms and terms

A list of key acronyms and terms used throughout this toolkit can be found immediately after the contents page. Definitions of some important terms in relation to race discrimination and/or race equality are provided in this document. Links to key websites not listed in the boxes or tables are provided in footnotes where this may be helpful.

## Disclaimer

Reasonable attempts have been made to ensure that the information provided is up-to-date as of June 2011. However, this toolkit is not intended to provide legal advice. Moreover, as at June 2011, the Government: a) has not completed the implementation of the Equality Act 2010; b) is in the process of consulting about the implementation of some key provisions; and c) has opened a number of wider reviews and consultative processes that could impact further on the implementation of the 2010 Act. To assist readers advice is provided in appendix 1, on what has been implemented, what is subject to explicit review and how readers can check the latest position on the Act's implementation.

<sup>1</sup> The Roots Research Centre is the 1990 Trust's research arm, specialising in social action research. The 1990 Trust is a leading Human Rights and Race Equality organisation.

<sup>1a</sup> To view the key terms reference tool, go to "Understanding key terms and the Equality Act 2010" on the Roots homepage.



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## **An additional resource**

A separate resource - Understanding key terms and the Equality Act 2010 - has been produced to support this toolkit – the resource is available online on our website (<http://www.roots-research.org.uk>)



## Key acronyms and terms<sup>3</sup>

<b>Acronym</b>	<b>Name</b>
BAME	Black Asian and Minority Ethnic
CERD	Committee on the Elimination of Racial Discrimination
CLS	Community Legal Service
CRE	Commission for Racial Equality
DCLG	Department for Communities and Local Government
DDA	Disability Discrimination Act
DED	Disability Equality Duty
DRC	Disability Rights Commission
EOC	Equal Opportunities Commission
EHRC	Equality and Human Rights Commission
ET	Employment Tribunal
ETS	Employment Tribunal Service
FOI	Freedom of Information
GEO	Government Equalities Office
GOQ	Genuine Occupational Qualification
GOR	General Occupational Requirement
HRA	Human Rights Act
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
JR	Judicial Review
LSC	Legal Services Commission
LVSC	London Voluntary Service Council
NAVCA	National Association for Voluntary and Community Action
NCVO	National Council for Voluntary Organisations
OR	Occupational Requirement
PLP	Public Law Project
PSED	Public Sector Equality Duty
ROTA	Race on the Agenda
RRA	Race Relations Act
WRC	Women's Resource Centre

<sup>3</sup> Note: Green text indicates that the organisation is no longer in existence, or the term is no longer applicable because the relevant legislation has been repealed.



## Part 1 Using this toolkit

### 1. This part of the toolkit

In this part of the toolkit, you will find information about:

- how to use this toolkit;
- the implementation timetable for the Equality Act 2010;
- how the toolkit can help you find relevant information.

### 2. How to use this toolkit

We hope that this toolkit will assist BAME voluntary and community organisations in their work for race equality, by using the Equality Act 2010 and understanding how this Act can be used to hold public bodies to account.

The fact that the Equality Act 2010 is being implemented in phases has presented challenges. Other challenges are linked to the Government's decisions: a) not to implement some provisions, and b) to delay making decisions about some of the key measures in the Act.

This toolkit is designed to: a) guide readers through the maze created by the Act's phased implementation, key reviews and delays; b) help readers think about how to use this Act; c) help readers understand what is in force; d) provide practical resources; and e) guide readers to key information.

Detailed information in this toolkit is provided in boxes, tables and the appendices;

Red text is used to alert readers to detailed information and its significance in this document.

Blue text identifies other important guidance.

Yellow highlighted areas are there to signpost readers to possible key actions.

In addition to the information provided in each part of this toolkit, four appendices of reference materials have been provided.

### 3. The implementation timetable and the Equality Act 2010

Most (90%) of the Act's provisions came into force in October 2010, but some key provisions came into force in April 2011. However, some important provisions will not be implemented at all, while others are still under consideration.

Appendix 1 provides the latest information on the implementation timetable for the Equality Act 2010.

### 4. Sources of advice, guidance and information<sup>4</sup>

This toolkit does not intend to duplicate the range of guidance, advice and information on the Act already produced. However, it does signpost readers to relevant sources of information, publications and documents. Our separate resource 'Understanding key terms and the Equality Act 2010' – which is available on our website<sup>4a</sup> – provides a list of key terms and definitions that readers may find helpful.

<sup>4</sup> The information is correct as at June 2011.

<sup>4a</sup> <http://www.roots-research.org.uk>



## Part 2 Overviewing the Equality Act 2010

### 1. This part of toolkit

In this part of the toolkit, you will find information about:

- the purpose of the Equality Act 2010 and how it strengthens the law;
- unlawful discrimination, 'protected characteristics', 'race' & 'prohibited conduct';
- laws to tackle institutional discrimination and to promote equality;
- key statutory tools that support the Equality Act 2010;
- key forms of prohibited conduct relevant to race discrimination cases (table 1).

### 2. The purpose of the Equality Act 2010 and how it strengthens the law

The Equality Act 2010 provided the most substantial overhaul of equality legislation for 25 years. The two main purposes were, and are, to: a) harmonise discrimination law; and b) strengthen the law to support progress on equality. For those familiar with the Race Relations Act 1976, or the Race Relations (Amendment) Act 2000, it is important to note that the race relations acts have been repealed, along with other anti-discrimination legislation, and replaced by the Equality Act 2010.

Part five of this toolkit explains what has been repealed, but also overviews other equality related laws and provisions that remain in force.

### 3. Unlawful discrimination, 'protected characteristics', 'race' & 'prohibited conduct'

It is important to understand what may be unlawful; whilst the Equality Act 2010 builds on previous legislation, including the 1976 Race Relations Act (now repealed), it does make some important changes. In this toolkit we have concentrated on the changes that are directly relevant to race discrimination or important to understanding the Act's new framework.

This Act continues to make it unlawful to discriminate in all the areas previously covered by race legislation, and it clearly lists six areas in which discrimination may be unlawful.

Detailed guidance has been published by the EHRC and the GEO. For those with responsibility for designing policies, procedures, systems or practices, you may find the statutory codes of practice or other general guidance, published by the EHRC and the GEO, on employment and services and functions helpful.

Please see Appendix 4

#### The six overall areas in which it is unlawful to discriminate

- a) Services and public functions (part 3 of the Act).
- b) Premises (part 4 of the Act).
- c) Work (part 5 of the Act).
- d) Education (part 6 of the Act).
- e) Associations (part 7 of the Act).
- f) Contracts etc. (part 10 of the Act).

Appendix 2 provides more information on the areas of unlawful discrimination.

We previously referred to 'equality strands' or 'groups', however, the Act refers to 'protected characteristics'. There are nine protected characteristics and race is one of them. It is unlawful to discriminate because someone has, or is perceived to have, a protected characteristic. It is also unlawful to discriminate because someone is associated with someone who has a protected characteristic or to segregate people because of race. The definition of race in this Act builds on the definition of race in the Race Relations Act 1976; race includes colour, nationality, ethnic or national origins. However, there is potentially an important addition if the Government is to add caste to the list of definitions of race. Research has been commissioned on the addition of caste, but a decision has not yet been made.

### The nine protected characteristics<sup>5</sup>

- a) age;
- b) disability;
- c) *gender reassignment*;
- d) *marriage and civil partnership*;
- e) *pregnancy and maternity*;
- f) race;**
- g) religion or belief;
- h) sex; and
- i) sexual orientation.

To put it simply, 'prohibited conduct' - the term introduced by this Act - is conduct or actions that the Equality Act 2010 says are unlawful. However, the Act does not provide full harmonisation (see [Employment Code of Practice \(2.69\)](#), see [EHRC in appendix 4](#)), as some areas of equality are treated differently to each other. On 1st October 2010, all of the forms of prohibited conduct listed below came into force, except for the combined or dual discrimination. There are new forms of unlawful conduct set out in Equality Act 2010.

**Table 1** gives the main areas of prohibited conduct, which could be used by somebody making a claim of race discrimination. **Table 2** gives further detail and examples on direct and indirect discrimination, harassment, victimisation and relationships that have ended.

**Table 1**

<b>Prohibited conduct listed in the Equality Act 2010</b>
<p>The main areas of prohibited conduct:</p> <ul style="list-style-type: none"> <li>a) direct discrimination;</li> <li>b) combined discrimination: dual characteristics<sup>6</sup> ;</li> <li>c) discrimination arising from disability;</li> <li>d) gender reassignment discrimination: cases of absence from work;</li> <li>e) pregnancy and maternity discrimination: non-work cases;</li> <li>f) pregnancy or maternity discrimination: work cases;</li> <li>g) indirect discrimination;</li> <li>h) disability discrimination, duty to make reasonable adjustments</li> <li>i) disability discrimination, failure to comply with the duty to make reasonable adjustments;</li> <li>j) harassment;</li> <li>k) victimisation.</li> </ul>

<sup>5</sup>The protected characteristics in italics were previously partially covered by sex discrimination legislation.

<sup>6</sup>The Government does not propose to introduce these provisions; but it has said that it will consult.



Additional requirements:

- a) discriminating after a relationship has come to an end;
- b) liability of employers and principals;
- c) liability of employees and agents;
- d) instructing, causing or inducing contraventions (of equality provisions);
- e) aiding contraventions (of equality provisions).

Someone experiencing race discrimination could also experience one or more other forms of discrimination, but the focus in this toolkit is on race discrimination.

Appendix 4 identifies a range of organisations that provide guidance and advice on other areas of equality, other protected characteristics and the Equality Act 2010 generally.

#### **4. Laws to tackle institutional discrimination and to promote equality**

The concept of institutional discrimination existed before the Stephen Lawrence Inquiry, but this Inquiry<sup>7</sup> and the Race Relations (Amendment) Act 2000, created a climate in which public bodies and others were formally expected to take a proactive approach to addressing both racism and institutional racism.

The Inquiry Report [46.25] defined ‘racism’ as consisting of ‘conduct or words or practices which advantage or disadvantage people because of their colour, culture or ethnic origin. In its more subtle form it is as damaging as in its overt form.’ MacPherson defined ‘institutional racism’ as consisting of ‘the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen all detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people.’

Parts 3 and 4 of this toolkit explain, and explore how to use, key provisions in this Act that can be used to tackle institutional racism.<sup>8</sup>

#### **5. Key statutory tools that support the Equality Act 2010**

Statutory regulations approved by Parliament have brought key provisions of the Act into force, repealed previous provisions and made other changes. The EHRC has published three final statutory codes of practice – the Code of Practice on Employment, the Code of Practice on Equal Pay, and the Code of Practice on Services, Public Functions and Associations. These three statutory codes of practice came into force on April 6th 2011 . Other statutory codes are due in 2011 on: a) further and higher education; b) schools; and c) the PSED.<sup>9</sup>

<sup>7</sup> On 31st July 1997, Sir William MacPherson of Cluny was asked to inquire into ‘the matters arising from the death of Stephen Lawrence, in particular to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes. The Inquiry report was published in February 1999.

<sup>8</sup> This includes: ‘positive action’, ‘unlawful discrimination in the exercise of public functions’, the ‘new public sector equality duty’ and new powers for employment tribunals; it explains when and how the new provisions build on the previous provisions in the Race Relations Act as amended.

<sup>9</sup> <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/>



**Table 2: Prohibited conduct under the Equality Act 2010 and claims of race discrimination**

Term	Definition	Simple race related explanation or an example
<b>Direct discrimination</b>	Direct discrimination occurs when someone is treated less favourably than another because s/he:	
	- has a protected characteristic;	An Asian woman faces racist abuse. She has been treated less favourably because she is Asian.
	- is associated with someone who has a protected characteristic (discrimination by association);	A white woman is married to a Turkish man. She is abused because of her relationship with her Turkish husband. She has experienced race discrimination by association.
	- is wrongly thought to have a protected characteristic (discrimination by perception).	An individual who is dark skinned receives racial abuse because s/he is mistakenly thought to belong to a minority ethnic group. This less favourable treatment is based on a mistaken assumption or perception; it is still unlawful.
<b>Indirect discrimination</b>	- Is subject to racial segregation	The practice of Asian and white staff using separate facilities for breaks has developed in a factory; management has encouraged this practice, and actually directs staff to different rest facilities.
	<p>Indirect discrimination occurs when a provision, criterion or practice is applied to everybody, but has an effect which particularly disadvantages people who share a protected characteristic.</p> <p>For a claim of indirect discrimination to be successful four requirements must be met. The example given alongside looks at policy and discrimination on the basis of race in employment.</p>	<p>‘A factory owner announces that from next month staff cannot wear their hair in dreadlocks, even if the locks are tied back. This is an example of a policy that has not yet been implemented but which still amounts to a provision, criterion or practice.</p> <p>The decision to introduce the policy could be indirectly discriminatory because of religion or belief, as it puts the employer’s Rastafarian workers at a particular disadvantage. The employer must show that the provision, criterion or practice can be objectively justified.’ [Source: Employment CoP: 4.5]</p>

The four requirements that must be met for an act to be considered to be indirect discrimination are: 1) ‘the employer applies (or would apply) the provision, criterion or practice equally to everyone within the relevant group including a particular worker; 2) the provision, criterion or practice puts, or would put, people who share the worker’s protected characteristic at a particular disadvantage when compared with people who do not have that characteristic; 3) the provision, criterion or practice puts, or would put, the worker at that disadvantage; and 4) the employer cannot show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.’ [Employment CoP: 4.4]

**Table 2: Prohibited conduct under the Equality Act 2010 and claims of race discrimination**

Term	Definition	Simple race related explanation or an example
<b>Harassment<sup>10</sup></b>	This involves unwanted conduct which is related to a relevant characteristic (e.g. race) and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant, or violating the complainant's dignity. <sup>11</sup>	'A member of staff at a neighbourhood fast food outlet calls a teenage boy 'Paki' when he comes into the shop. The staff member knows the boy was born in Britain and his family comes from Turkey, and he regards this name calling as just a joke. The boy has told him to stop, and now hates coming to the shop, especially with his mates, as he dreads being insulted and verbally abused for a characteristic he does not possess.' [Source: EHRC's statutory code on services: 8.13]
<b>Victimisation</b>	Victimisation takes place: a) 'where one person treats another badly because he or she in good faith [has] done a "protected act", for example taken or supported any action taken for the purpose of the Act, including in relation to any alleged breach of its provisions'; or 'where one person treats another badly because he or she is suspected of having done this or of intending to do this'. <sup>12</sup>	'Three years ago a customer helped an employee of a bank in a sex and race discrimination claim against the local branch of that bank. Last week, that customer was refused an overdraft facility by the local bank manager who says that he will never forget that tribunal claim. The customer can claim victimisation despite the fact that the protected act (giving information which was used in a discrimination claim) took place three years ago.' [Source: Services CoP: 9.12]
<b>Relationships that have ended</b>	Section 108 of the Equality Act makes it clear that it covers relationships that have ended. It is unlawful to discriminate when the discrimination 'arises out of and is closely connected to relationship which used to exist between 'for example, an employer and employee or a service provider and the service user.'	'The Act makes it unlawful for employers to discriminate against or harass employees after a relationship covered by the Act has ended. An employer will be liable for acts of discrimination or harassment arising out of the work relationship and which are 'closely connected to' it.' [Source: Employment CoP: 10.57]  'A builder addresses abusive and hostile remarks to a previous customer because of her race after their business relationship has ended. This would be harassment.' [Source: Services CoP: 3.10]
Although a number of employment related examples have been used, these provisions apply equally to non employment areas.		

<sup>10</sup> Sexual harassment and other forms of harassment related to sexual harassment or gender are also unlawful.

<sup>11</sup> 'Protection is provided because the conduct is dictated by a relevant protected characteristic, whether or not the worker has that characteristic themselves. This means that protection against unwanted conduct is provided where the worker does not have the relevant protected characteristic, including where the employer knows that the worker does not have the relevant characteristic'[Source: Employment CoP: 7.10]

<sup>12</sup> Source: Explanatory notes to the Equality Act 2010, page 29, para.

## **Part 3** Understanding the Act's new provisions on positive action, new powers for employment tribunals, public functions and unlawful discrimination and the PSED

### **1. This part of the toolkit**

In this part of the toolkit, you will find information about:

- the Act's key tools that can be used to hold public bodies to account;
- the Act's new general positive action provisions;
- the tie break clause - positive action, recruitment and promotion;
- an important new power for employment tribunals;
- the old and expanded provisions that prohibit unlawful discrimination in the exercise of public functions;
- the old equality duties and the new PSED;
- key new requirements in the public sector equality duty (PSED) and explains the importance of its new provisions on 'due regard'.

### **2. Key tools in this Act that can be used to hold public bodies to account**

The old race relations legislation<sup>13</sup> included provisions designed to promote equality at an organisational level; to a significant extent these provisions were designed to tackle institutional racism. The Equality Act 2010 includes an expanded, and stronger, public sector equality duty, and stronger positive action provisions. It also includes wider provisions to prevent unlawful discrimination by those responsible for delivering public services and/or making decisions that affect the public (i.e. those responsible for exercising public functions).

### **3. The new provisions in the Act on general positive action (section 158)<sup>14</sup>**

The positive action provisions were designed to identify when it would be appropriate to take action to help address the impact of previous discrimination and/or disadvantage. The general positive action provisions apply to both services and employment. There are separate provisions in the Act which specifically set out what is often called the tie breaker clause (section 159). In relation to general employment matters, not covered by section 159 (the tie breaker clause), an employer can use the positive action provisions to 'take positive action measures to improve equality for people who share a protected characteristic.' [Employment CoP, 12.1] It also allows: 'service providers to take proportionate action to achieve fuller and more effective equality outcomes for members of groups that are socially or economically disadvantaged or excluded, or who otherwise face the consequences of past or present discrimination or disadvantage.' [Services CoP 10.3] Positive action measures are voluntary and can be used by any organisation not just public authorities. The Government has the power to issue regulations setting out action which is not permitted by these provisions.

According to the Explanatory Notes to the Act: 'the extent to which it is proportionate to take positive action measures which may result in people not having the relevant characteristic being treated less favourably will depend, among other things, on the seriousness of the relevant disadvantage, the extremity of need or under-representation and the availability of other means of countering them. This provision will need to be interpreted in accordance with European law which limits the extent to which the kind of action it permits will be allowed.'

<sup>13</sup>Race Relations Act 1976 as amended

<sup>14</sup>If positive action measures are taken in recruitment or promotion under section 159(3) or the selection of political candidates under section 104, those provisions will apply rather than this section. [Source: explanatory notes to the Equality Act 2010: Para 522]

**Example of positive action [Employment Cop: 12.6]**

‘A large public sector employer monitors the composition of their workforce, and identifies that there are large numbers of visible ethnic minority staff in junior grades and low numbers in management grades. In line with their equality policy, the employer considers the following action to address the low numbers of ethnic minority staff in senior grades:

- Reviewing their policies and practices to establish whether there might be discriminatory criteria which inhibit the progression of visible ethnic minorities;
- Discussing with representatives of the trade union and the Black staff support group how the employer can improve opportunities for progression for the under-represented group;
- Devising a positive action programme for addressing underrepresentation of the target group, which is shared with all staff;
- Including within the programme shadowing and mentoring sessions with members of management for interested members of the target group.
- The programme also encourages the target group to take advantage of training opportunities such as training in management, which would improve their chances for promotion.’

Although positive action is voluntary, when dealing with a public authority subject to the PSED, it would be entirely reasonable for a BAME organisation to ask whether a public authority has considered the positive action provisions, and how the authority might use these provisions to contribute to the promotion of equality of opportunity and meeting the PSED. It would be equally reasonable to ask any organisation, subject to the PSED, that is not a public body, whether it has considered how it might use the positive action provisions to comply with the PSED.

**Positive action and the public sector equality duties [Services Cop: 10.28]**

‘Public authorities and those carrying out public functions who are subject to the public sector equality duties may wish to consider using positive action to help them comply with those duties.’

[The Services CoP provides 13 pages of detailed advice on positive action; if you are interested in this issue, you would benefit from reading chapter 10 of this Code.](#)

**4. The tie break clause - positive action and recruitment and promotion**

The tie break clause or the positive action provisions on recruitment and promotion came into force on 6th April 2011. Remember, these are not the only positive action provisions that affect employment; the general positive action provisions (section 158) also apply to employment. The tie break clause covers the voluntary use of positive action in recruitment and employment; it can be used by an employer to address underrepresentation or other forms of disadvantage within the workforce when there is a tie-break (i.e. there are two equally qualified candidates).



For example, an employer may 'take a protected characteristic into consideration when deciding who to recruit or promote, where people having the protected characteristic are at a disadvantage or are under-represented. This can be done only where the candidates are as qualified as each other.' It is important to note that it is not unlawful for an employer to treat a disabled person more favourably compared to a non-disabled person.<sup>15</sup>

This provision proved controversial and the Government took nearly a year to decide whether or not it to introduce it. The statutory code of practice on employment, published in January 2011, covers provisions in force in October 2010, so it does not cover this tie break clause.

Guidance is provided by the GEO's Quick Start guide published in January 2011.

### **Equality Act 2010: What do I need to know? A quick start guide to using positive action in recruitment and promotion.**

- a) The 12 side guide provides practice examples to assist organisations to understand these new provisions.  
<http://www.equalities.gov.uk/pdf/Positive%20Action%20in%20Recruitment%20and%20Promotion%20Guide.pdf>

### **What is positive action when it applies to recruitment and promotion?**

'The new positive action provisions mean that it is not unlawful to recruit or promote a candidate who is of equal merit to another candidate, if the employer reasonably thinks the candidate: a) has a protected characteristic that is underrepresented in the workforce; or b) that people with that characteristic suffer a disadvantage connected to that characteristic.

However, positive action does not allow an employer to appoint a less suitable candidate just because that candidate has a protected characteristic that is under-represented or disadvantaged.'  
[Source: GEO Quick Start guide, page 4]

### **Example**

'A counselling service for teenagers has no employees who are Muslim despite being located in an area of high Muslim population. When a vacancy arises two candidates of equal merit are in a tie-breaker situation with the employer having to find some way to choose between them. One candidate is Muslim and the other candidate is not. The service manager could choose to offer the job to the Muslim candidate. This would be allowed under the positive action provisions, so the non-Muslim candidate could not claim unlawful religious discrimination.' [GEO Quick Start Guide, page 5]

Guidance in the Act's explanatory notes says that: 'the question of whether one person is as qualified as another is not a matter only of academic qualification, but rather a judgement based on the criteria the employer uses to establish who is best for the job, which could include matters such as suitability, competence and professional performance.'<sup>16</sup>

<sup>15</sup> Employment statutory code of practice - para. 3.35.

<sup>16</sup> Explanatory Notes to the Equality Act 2010, para. 526

## 5. New powers for employment tribunals

Employment tribunals have been given a new power which could really benefit groups of workers facing race, on or any other form of, discrimination. An employment tribunal can now make an appropriate recommendation that: 'a respondent takes specified steps to obviate or reduce the adverse effect of any matter relating to the proceedings on the claimant and/or others who may be affected.' So for example, an employer that loses a race discrimination case, will receive a decision from the employment tribunal in relation to the person who complained, but may also be asked to take steps that may prevent other Black workers from facing similar acts of discrimination. If used effectively and proactively, by Employment Tribunals, this new power could have a really positive impact on tackling discrimination.

At present there appears to be no direct route that enables an applicant/litigant to force an Employment Tribunal to consider, or use, this new power. However we would encourage people who might have contact with employment tribunals, either because they are a claimant, or because they are supporting a claimant, to ask questions about how the tribunals are using this new power.

## 6. Unlawful discrimination in the exercise of public functions

The old race legislation made it unlawful for those exercising public functions<sup>17</sup> to discriminate on the following grounds – disability, gender, race, religion or belief and sexual orientation. Since 1st October 2010, the Equality Act has made it unlawful to discriminate unlawfully in exercising public functions in relation to any of the nine protected characteristics apart from age; age should be included by 2012. Public sector bodies, contractors, voluntary organisations or others exercising public functions should have ensured that they have arrangements in place to ensure that they do not discriminate unlawfully in the exercise of public functions; this should include having adopted appropriate equality monitoring arrangements.

## 7. The old equality duties and responsibilities placed on public bodies

The race equality duty was the first of three public sector equality duties and associated requirements introduced between 2000-2006. These duties obliged public sector bodies to give due regard – e.g. proper consideration - to the promotion of race, disability and gender equality. These general equality duties were supported by specific equality duties, which set out what public sector bodies had to do to comply with the general equality duties. The general equality duties required public bodies to take proactive steps to: a) eliminate unlawful disability, gender and race discrimination; and b) promote disability, gender and race equality. The race legislation also required the fostering of good relations. However, there were important differences in: a) the legislative frameworks on which the three general equality duties were built; b) the wording of the general equality duties; and c) which bodies were directly subject to the general equality duties.

The general race, disability and gender equality duties – and their associated specific duties – remained in force until 5th April 2011, when the new PSED came into force.

<sup>17</sup>Organisations exercising public functions include public bodies and organisations acting on behalf of public bodies (e.g. private sector organisations or voluntary organisations)

## 8. Section 149 - the public sector equality duty (PSED)

The new PSED, summarised below, is set out in full in appendix 3. It came into force on 5 April 2011, replacing the previous race, disability and gender equality duties; creating a single duty that now also covers age, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment and partially covers marriage and civil partnership. 'Public bodies are expected to consider the needs of all individuals in their day to day work, in developing policy, delivering services, and in relation to their own employees'<sup>18</sup>.

The fact that requirements on 'due regard' are set out in the Act makes the new PSED stronger primary legislation than the old general equality duties. These 'due regard' provisions (section 149 (3)) mean that public bodies are required to demonstrate that they have taken proper account of their duties; this includes demonstrating that they have gathered relevant information, assessed the potential impact on equalities and taken appropriate steps to properly consult with interested parties - including BAME organisations - before making major policy, funding or other key decisions.

Part 4 of this toolkit explores how organisations can use the PSED to hold public bodies to account.

### The PSED – section 149 (1), (2) and (3)

- 1) A public authority must, in the exercise of its functions, have due regard to the need to:
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- (2) A person who is not a public authority but who exercises public functions<sup>20</sup> must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

<sup>18</sup> [http://www.equalities.gov.uk/equality\\_bill.aspx](http://www.equalities.gov.uk/equality_bill.aspx)

<sup>20</sup> 'A public function is a function that is a function of a public nature for the purpose of the Human Rights Act 1998.' Equality Act 2010, Section 150 also please see the EHRC's FAQs on the PSED.



The PSED is an improved and expanded tool for organisations and individuals to hold public bodies to account, in relation to pursuing the promotion of equality of opportunity. Where public bodies recognise these responsibilities and work in partnership with BAME organisation and others, it is to be hoped that demonstrable progress will be made. However, where public bodies fail to properly address their responsibilities under the PSED, then orgs and individuals may be forced to challenge, and even pursue, judicial review. However, as set out in Part 4, securing legal redress is often easier said than done.

Part 4 on using tools in this Act provides guidance on approaches to be considered.

## Part 4 Challenging decisions - race discrimination and using legal tools to challenge institutional racism and to promote race equality

### 1. This part of the toolkit

This part of the toolkit looks at options for using the Equality Act 2010 and the PSED to challenge discrimination and promote equality. It also provides information about:

- key publications on using the PSED, this Act and holding public bodies to account (table 3).
- using key tools in the Act to tackle institutional racism and to promote race equality;
- rules and time-limits associated with making a complaint of discrimination;
- judicial review and the EHRC's enforcement powers;
- assessing what role your organisation should play;
- organisations that may be able to provide support;
- the position in relation to race discrimination claims and employment, goods and services.

**Table 3: Key publications - the Equality Act 2010 and holding public bodies to account**

Publication	Year	Publisher	Comment
Are they doing their duty?	2011	BTEG	Very useful 10-page guide for BAME communities and organisations on holding public bodies to account.
Briefing for public authorities: gender and the public sector equality duty under the Equality Act 2010.	2011	WRC	Very useful 23-page guide to the public sector equality duty and gender equality. <sup>21</sup>
Holding public bodies to account: how the public sector equality duty will work.	2010	A number of organisations <sup>22</sup>	Report of the 2010 conference on how the PSED would work. <sup>23</sup>
How to use the Equality Act 2010: A guide for voluntary and community organisations.	2010	EDF	A useful 12-page guide to the Equality Act 2010. <sup>24</sup>
Keeping it legal: a guide for third sector organisations on public law and equality rights.	2009	NAVCA WRC	Useful guide but as it is written in 2009 it refers to the old legislative framework.
The Equality Act 2010: Discrimination another prohibited conduct - questions and answer forms.	2011	GEO	Key document for anyone seeking to submit a claim of discrimination.
The Equality Act 2010: Obtaining information – discrimination and other prohibited conduct – guidance.	2010	GEO	Key document for anyone seeking to submit a claim of discrimination.
The Equality Act 2010: What difference does it make – Supplement Issue 1.	2011	ROTA	Useful guide to aspects of the Equality Act and the difference it should make. <sup>25</sup>
VCS Empowerment Toolkit - your guide to survival. <sup>26</sup>	2011	VAL (Voluntary Action Leicester-shire)	Helpful online toolkit to help the VCS challenge decisions through: a) partnership working; b) collective voice; c) public law; d) the Compact; and e) petitions.

<sup>21</sup> Note: Guide was written before the Government decided to delay introducing the specific equality duties.

<sup>22</sup> Hear, London Civic Forum, ROTA, EHRC, London Councils and Trust for London.

<sup>23</sup> Note: The conference took place before the Government decided to delay or not introduce some key provisions.

<sup>24</sup> Note: Guide written before the Government said it would not introduce some key provisions.

<sup>25</sup> Note: Guide written before the Government said it would not introduce some key provisions.

<sup>26</sup> <http://www.valonline.org.uk/vcs-empowerment-toolkit-your-guide-survival>

### Key equality duty cases

Southall Black Sisters	<a href="http://www.publiclawproject.org.uk/SuccessStories.html">http://www.publiclawproject.org.uk/SuccessStories.html</a>
London Councils	<a href="http://www.lvsc.org.uk/">http://www.lvsc.org.uk/</a> & <a href="http://www.pierceglyn.co.uk/news_1.htm">http://www.pierceglyn.co.uk/news_1.htm</a>
Birmingham Council	<a href="http://www.judiciary.gov.uk/NR/rdonlyres/7852C851-129F-4DFB-89C1-C495BD08DCBC/0/birminghamcitycouncil19052011.pdf">http://www.judiciary.gov.uk/NR/rdonlyres/7852C851-129F-4DFB-89C1-C495BD08DCBC/0/birminghamcitycouncil19052011.pdf</a>

## 2. Using tools in the Act to tackle institutional racism and to promote race equality

Partnership working: It is clearly preferable to find ways to work in partnership with public bodies and other organisations, and to establish a proactive, partnership-based approach based on a shared commitment to: a) eliminating unlawful discrimination, harassment, victimisation etc; b) exploring the positive action provisions; and c) implementing the PSED.

Whilst it is true that the old public sector equality duties have been used to make some successful legal challenges, judicial review is a time-consuming, challenging and costly process. Even if a judicial review is successful for the complainant, it may not increase the overall funding available; although it may force a review of decisions about how to allocate limited resources. The benefits of a real partnership for public sector bodies, communities and individuals are clear; the costs, people resources, work and time involved in a judicial review - successful or unsuccessful - are significant. If a partnership approach can secure the promotion of equality of opportunity, this represents a much more positive and cost effective approach for all concerned.

Before considering legal challenges via judicial review it may be that you can achieve changes in the way your local authority operates by asking questions and requesting information. If answers are not forthcoming you could apply a freedom of information request (Freedom of Information Act 2000). For more detail see [http://www.ico.gov.uk/for\\_organisations/freedom\\_of\\_information.aspx](http://www.ico.gov.uk/for_organisations/freedom_of_information.aspx)

Here are some questions you could ask:

1. What is the authority doing to comply with the PSED? That is how does it consider it prevents discrimination, harassment, victimisation and any other conduct that is prohibited by the Act; how does it promote equality of opportunity for BAME people and how does it foster good relations?
2. What evidence has it considered in reaching its decisions for policy and practice and can this be made available?
3. What is the percentage of BAME people employed at each level in the authority?
4. How does it ensure that the services it provides (you may want to list some such as access to recreational centres) are not discriminatory, offer equality of opportunity and foster good relations?  
On a specific thing that you may have noticed:
5. How does this comply with the PSED? How does it prevent discrimination, harassment or victimisation and promote equality and foster good relations? What evidence have you based this on?

For further guidance see the BTEG guide 'Are They Doing Their Duty?'

<http://www.bteg.co.uk/>



Seeking other support: Those interested in public law issues, judicial review and legal challenge, if unfamiliar with these provisions, should first draw on the resources produced by NCVO, NAVCA and the PLP as part of their Empowering Communities initiative. The 1990 Trust and Roots Research Centre, ROTA, BTEG, regional race equality networks and others have developed training programmes and materials to support BAME organisations. Working in partnership with other organisations may provide more scope for funding any collective action, so do seek involvement of your local CVS, Race or Equality Council or **other agencies listed in appendix 4** – intervention may encourage a public body to address its PSED duties.

Enforcement action by the EHRC: If the partnership approach is not delivering, given the EHRC's enforcement powers, do inform the EHRC about any serious concerns to assess your case and whether the EHRC can act. However remember the EHRC has finite resources.

Judicial review: An individual, who has standing<sup>27</sup>, can challenge alleged breaches of the PSED by way of judicial review. In some important cases, the EHRC has intervened, promoting a positive outcome from the complainant's perspective. If you are considering using judicial review, it is essential to get proper advice. NCVO, NAVCA, the Public Law Project provide general advice and may also be able to provide more comprehensive support (see table 3 and appendix 4).

### 3. Key information, rules & time limits in relation to taking a race discrimination case

The GEO has issued standard forms and guidance<sup>28</sup> for use by applicants and respondents in discrimination cases<sup>29</sup>. Citizen's Advice's online Advice Guide provides information on taking race discrimination cases and on how to access legal help<sup>30</sup>. These are important and helpful resources for anyone making a claim of race discrimination to an Employment Tribunal, or organisations wishing to understanding more about the system. **The EHRC advises that claims must be made promptly because of the strict time limits generally in force.**

#### **EHRC – time limits on employment discrimination claims**

<http://www.equalityhumanrights.com/legal-and-policy/strategic-human-rights-and-equality-litigation/time-limits-for-discrimination-claims/>

'Most claims to an Employment Tribunal must be made within strict time frames - the tribunal must receive a claim within three months minus 1 day from the date of the first act(s) you are complaining about. For example, in an unfair dismissal claim it would be three months from the date of your dismissal. In discrimination cases, claims must be lodged within three months (minus one day) of the act or acts of discrimination about which you are complaining. Where there has been continuing discrimination or a series of acts of discrimination, the date from which the time limit starts to run will differ. It can be difficult to determine if your case involves a series of linked acts or separate distinct acts, but this can affect the time limits.

<sup>27</sup> In law, standing or locus standi is the term for the ability of a party to demonstrate to the court sufficient connection to, and harm, from the law or action challenged to support their participation in the case. .

<sup>28</sup> Equality Act 2010: obtaining information

<sup>29</sup> The Equality Act 2010 – discrimination and other prohibited conduct – questions and answers form [http://www.equalities.gov.uk/news/equality\\_act\\_2010\\_forms\\_for\\_ob.aspx](http://www.equalities.gov.uk/news/equality_act_2010_forms_for_ob.aspx)

<sup>30</sup> [http://www.adviceguide.org.uk/index/your\\_rights/legal\\_system/help\\_with\\_legal\\_costs.htm](http://www.adviceguide.org.uk/index/your_rights/legal_system/help_with_legal_costs.htm)

### **EHRC – time limits on non-employment discrimination claims**

The EHRC advises that if ‘you have been discriminated against in other matters, like purchasing goods or receiving a service, this is dealt with by the County Court (in England and Wales) and the Sheriff Court in Scotland. County and sheriff court deadlines for these claims are six months less one day from the date of the incident you are complaining about.’

### **EHRC – time limits and Judicial Review Proceedings**

‘The EHRC advises that Judicial Review ‘allows people with a sufficient interest in a decision or action by a public body to ask a judge to review its lawfulness. This can be in relation to an enactment or a decision, action or failure to act in relation to the exercise of a public function and may be used where there is no right of appeal or where all avenues of appeal have been exhausted. The pre-action protocol for Judicial Review must be followed. An application for judicial review must be filed promptly and in any event not later than three months after the grounds to make the claim first arose. Consideration should always be given to alternative dispute resolution including mediation. [Detailed information about the procedural rules can be found on the Ministry of Justice website.](#)’

## **4. Judicial review and the EHRC’s enforcement powers**

Judicial review is the procedure by which you can seek to challenge the decision, action or failure to act of a public body, such as a government department, a local authority, or other body exercising a public law function<sup>31</sup>. After the introduction of the race equality duty and the specific race equality duties in 2000 and 2001, organisations began to explore whether the race, disability and gender equality duties could be used to challenge the actions or inactions of public bodies. More recently, NCVO and NAVCA have also encouraged organisations to explore whether public bodies have played due regard to the requirements of the Compact<sup>32</sup>.

All three general equality duties allowed individuals, with standing<sup>33</sup>, to use judicial review to challenge failures to comply with these duties. The ability to challenge, using judicial review, remains part of the legal framework under the Equality Act 2010. And the EHRC has the power to institute or intervene in relevant legal cases<sup>34</sup>. The EHRC has separate enforcement powers to assess whether public bodies are complying with the PSED, or its associated requirements and the power to issue compliance notices.

[Detailed guidance on judicial review is available from the Public Law Project, NVCO and NAVCA. Detailed information on the EHRC’s enforcement powers is available from the EHRC and on its website.](#)

<sup>31</sup>Source: HM Courts and Tribunal Service] <http://www.hmcourts-service.gov.uk/cms/1220.htm>

<sup>32</sup>The Compact is an agreement between the Government and the voluntary and community sector made in November 1998, and renewed in December 2010. It aims to improve the relationship between the two sectors for mutual advantage - <http://www.ncvo-vol.org.uk/news/compact>

<sup>33</sup>In law, standing or locus standi is the term for the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party’s participation in the case. In British administrative law, the applicant needs to have a sufficient interest in the matter to which the application relates. This sufficient interest requirement has been construed liberally by the courts.

<sup>34</sup>Equality Act 2006, section 30

## 5. Assessing your organisation's role

No organisation should advise an individual on any discrimination case unless the organisation and its employees are suitably qualified to give this advice. The Community Legal Service (CLS) is a network of organisations and advice providers that fund, provide and promote civil legal aid services. Organisations funded by the Legal Services Commission, law centres, CABs and other experienced advice providers will already be clear whether their organisation and staff are competent to provide advice and guidance in relation to discrimination cases. Where an organisation does not already provide advice, or support on race or other discrimination cases, it is incredibly important that individuals requiring advice and support are signposted promptly to competent advice providers.

Table 3 lists key publications on using the PSED to hold public bodies to account.

The BTEG guide – Are they doing their duty? - Is particularly helpful for BAME organisations.

Appendix 4 identifies key advice providers and networks whose members may be able to provide support. It is critical that anyone who may have a claim is advised to seek advice from a competent advisor, advocate or representative body as soon as possible.

## 6. Organisations that may be able to provide support

Apart from the EHRC, advice networks and other bodies - whose members or representatives may be able to provide advice and guidance to individuals and organisations include:

- agencies funded by the EHRC to provide advice, support, guidance and /or representation;
- CABs – which can be located via the Citizen's Advice website;
- Race and /or Discrimination Advice Units – often parts of law centres or advice agencies;
- independent advice providers – who may be members of Advice UK, previously called FIAC - the Federation of Independent Advice Centres;
- law centres – that may be members of the Law Centres Federation;
- the Public Law Project;
- solicitors who may operate on a no win, no fee basis; and
- a trade union.

## 7. Race discrimination claims and employment, goods and services

For six years, between 2004 and 2010, the percentage of employment discrimination cases won outright at Employment Tribunals has averaged less than 5% each year across race discrimination, sex discrimination and disability discrimination cases. A significant number of cases are settled by ACAS. Around 40% of cases were settled by ACAS each year between 2004/5 and 2009/10, although there is no data to identify how satisfied the claimants or the respondents were in these cases. The success rate for unfair dismissal has stuck at 10% for the last six years, whilst the success rate for applicants claiming race discrimination has been 3% for the last six years.

The data suggests that it is very difficult to win any form of discrimination case at an employment tribunal; key factors may include lack of adequate advice and/or representation, and the complexity of the legal system - it is difficult to prove discrimination and the adversarial nature of the system. There have been a number of unsuccessful attempts over the years to improve the availability of assistance in relation to discrimination cases<sup>35</sup>. As we move towards 2012, cuts to legal aid, advice services and the voluntary and community sector are only likely to make it more difficult for organisations and individuals to access effective support for discrimination cases.

Anecdotal evidence suggests that few people take claims of discrimination to court and fewer people win such claims. Often what many people want in the first instance is an apology and for the matter to be rectified. When the service being provided is ongoing in nature, and/ or particularly important to the health and well-being of the individual (s) concerned, then a more complex range of issues may develop and need to be addressed.

<sup>35</sup> Employment Tribunals (Representation and Assistance in Discrimination Proceedings) Bill  
<http://www.publications.parliament.uk/pa/cm200506/cmbills/014/06014.i.html>

## Part 5 Other key legislation, reviews and key developments

### 1. This part of toolkit

In this part of the toolkit, you will find information about:

- other important equality related legislation;
- what key equality legislation has been repealed by the Equality Act 2010;
- key reviews initiated by the Government;
- the Government's decisions about the Equality Act 2010;
- the potential impact of delays, Government reviews and other proposed legislation.

### 2. Other important equality related legislation

We have looked in some detail in this toolkit at Equality Act 2010, but it is important to note that there are other equality provisions, including:

- various civil rights provisions set out in other acts of Parliament;
- other important employment and equality rights provisions;
- the Human Rights Act 1998 also has important equality and anti-discrimination provisions; and
- the UK is a signatory to a number of European and international directives and conventions, including: two key international legal instruments on race equality – the European Race Directive and the International Convention on the Elimination of all forms of Racial Discrimination.

### Other key equality and human rights legislation and provisions

#### A: Other equality legislation

Equality Act 2006 - This Act set up the EHRC

#### B: Employment related equality provisions not in the Equality Act 2010

ACAS and the HSE (Health and safety Executive) produce guidance, and can advise, on the provisions below. You may also find helpful information on the DirectGov website:

<http://www.direct.gov.uk/en/index.htm>

#### Health and Safety Provisions

Health and safety at work provisions cover pregnant workers and young workers for example, source of advice HSE:

<http://www.hse.gov.uk/mothers/faqs.htm> and direct gov:

[http://www.direct.gov.uk/en/Employment/HealthAndSafetyAtWork/DG\\_4016686](http://www.direct.gov.uk/en/Employment/HealthAndSafetyAtWork/DG_4016686)

<http://www.hse.gov.uk/mothers/faqs.htm>

#### Minimum wage.

The National Minimum Wage Act 1998 - see ACAS for guidance:

<http://www.acas.org.uk/index.aspx?articleid=1902>

**Paternity, parental and adoption leave** - a variety of Employment law provisions – see:

<http://www.adviceguide.org.uk> and see ACAS:

<http://www.acas.org.uk/index.aspx?articleid=1637>



**Pregnancy related employment rights** - see ACAS website:

<http://www.acas.org.uk/index.aspx?articleid=1370>

**Time off for dependents.** In addition to annual leave (holidays) and common types of leave, such as maternity, paternity or carer's leave, there are other commitments for which workers might be entitled to take time off work. See ACAS: <http://www.acas.org.uk/index.aspx?articleid=1370>

### **Working time regulations**

[http://www.direct.gov.uk/en/Employment/Employees/WorkingHoursAndTimeOff/DG\\_10029426](http://www.direct.gov.uk/en/Employment/Employees/WorkingHoursAndTimeOff/DG_10029426)

### **C: Civil and human rights – key legislation with equality implications**

Carers (Equal Opportunities) Act 2004

Children Act 2004

Civil Partnerships Act 2004

Data Protection Act 1998

Domestic Violence, Crime & Victims Act 2004

Gender Recognition Act 2004

Protection from Harassment Act 1997

Racial and Religious Hatred Act 2006 (England & Wales)

Crime and Disorder Act 1998<sup>36</sup>. For racially or religiously aggravated criminal offences

**Human Rights Act 1998** – There are many relevant articles for example freedom of expression, and article 14 on discrimination can be used in conjunction with other articles.

The Human Rights Act 1998 [Article 14: Prohibition of discrimination]

*'The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, colour, language, religion, political or other opinion, national or social origin, association with the national minority, property, birth or other status.'*

<sup>36</sup> <http://www.legislation.gov.uk/ukpga/1998/37/part/II/crossheading/raciallyaggravated-offences-england-and-wales>

### 3. What the Equality Act 2010 replaces<sup>37</sup>

The Act is divided into 16 parts, 218 sections, 28 schedules and over 230 pages and it represents a fundamental overhaul of equality legislation; it became an Act of Parliament on 8/4/10, just before the election. It replaced previous primary legislation and statutory regulations;<sup>38</sup> covering discrimination provisions on age, disability, race, religion or belief, sex, sexual orientation and previous race, disability and gender equality public sector equality duties.

The Equality Act 2010 replaces the Race Relations Act 1976 as amended, and key provisions contained within the previous legislation were largely replicated, made clearer, harmonised and/or improved in the Equality Act 2010.

A separate paper, [Understanding key terms and the Equality Act 2010](http://www.roots-research.org.uk), available on our website: [www.roots-research.org.uk](http://www.roots-research.org.uk), has been produced to assist readers.

### 4. Key reviews by the Government

Between March and May 2011, the Government:

- reopened and concluded a consultation on the specific equality duties ;
- announced that it would be establishing a Committee to consider the development of a Bill of Rights to replace the Human Rights Act 1998<sup>40</sup>;
- announced a major review of the EHRC and the Equality Act 2006;
- launched the Red Tape Challenge to review of up to 21,000 statutory regulations but in the case of the Equality Act 2010, the entire Equality Act 2010 is being reviewed<sup>41</sup>;
- announced, and commenced, a review of all local authority statutory duties<sup>42</sup>; and
- continued with two Bills – the Localism Bill and the Public bodies Bill - which contain provisions that could potentially allow the Secretary of State to decide not to apply the Equality Act 2010 in certain circumstances.

<sup>37</sup> The Acts and other provisions repealed by the Equality Act 2010 are listed in the schedules to the Act.

<sup>38</sup> Statutory regulations or instruments are secondary legislation: they are used to exercise a power granted under the 'parent' primary legislation.

<sup>39</sup> [http://www.equalities.gov.uk/equality\\_act\\_2010/public\\_sector\\_equality\\_duty.aspx](http://www.equalities.gov.uk/equality_act_2010/public_sector_equality_duty.aspx)

<sup>40</sup> An independent Commission to investigate the case for a UK Bill of Rights was launched on 18th March 2011 by Deputy Prime Minister Nick Clegg and Secretary of State for Justice Kenneth Clarke. <http://www.justice.gov.uk/news/press-releases/moj/press-release-180311.htm>

<sup>41</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

<sup>42</sup> <http://www.communities.gov.uk/localgovernment/decentralisation/tacklingburdens/reviewstatutoryduties/>

## 5. The Government's decisions about the Equality Act 2010

Late in 2010 and early in 2011, the Government announced that it would not be implementing some provisions contained within the Act (see appendix 1).

### Key provisions that the Government has announced that it will not implement or will review

#### Not being implemented

- The Socio-Economic Duty.
- The gender pay transparency regulations.
- The dual discrimination provisions.

#### To be reviewed in Autumn 2011

3rd party harassment and employment.

## 6. The impact of delays, the reviews and other proposed legislation

The phased introduction of the Act, delays and the reviews have made it difficult for organisations to be clear which provisions are in force. The absence of the PSED statutory code of practice is problematic, given that the PSED came into force on 5th April 2011<sup>43</sup>.

The Government has announced that it will not repeal the Equality Act 2010, but there is a concern that other decisions<sup>44</sup> suggest that it:

- has a limited commitment to implementing the Equality Act 2010 and it is possible that it may seek to amend the Equality Act 2010.
- may be seeking to reverse the significant gains made and incorporated within the Equality Act 2006 and the Equality Act 2010.

Nevertheless, despite these challenges, unless and until the Equality Act 2010 is amended, we urge organisations to use the Act to tackle discrimination and promote equality, and we hope that this toolkit will assist you.

<sup>43</sup> A statutory code of practice provides 'authoritative, comprehensive and technical guide to the detail of law... is invaluable to lawyers, advocates, human resources personnel, courts and tribunals, everyone who needs to understand the law in depth, or to apply it in practice.. draws on case law and precedent to illustrate where and how different provisions can be brought to bear in real-life situations.' A court or tribunal considering a claim of discrimination must consider the guidance provided in the relevant statutory code of practice.

<sup>44</sup>The decision to reopen consultations on the Act's provisions and support framework, the approach to the Equality Act 2010 in the Red Tape Challenge, the EHRC review and provisions in the Localism Bill and the Public Bodies Bill.

## Appendix 1:

### The Equality Act 2010 - the implementation timetable as at June 2011

A: Provisions that came into force on 1 October 2010	Part/section
a) The basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations, and transport.	Parts 2, 3, 4, 5, 6, 7, 8, 12
b) Changing the definition of gender reassignment - requirement for medical supervision removed.	Section 7
c) Levelling up protection for people discriminated against who are perceived to have, or associated with someone who has, a protected characteristic, provides new protection for people like carers.	Section 13
d) Clearer protection for breastfeeding mothers;	Section 17
e) Applying the European definition of indirect discrimination to all protected characteristics.	Section 19
f) Extending protection from indirect discrimination to disability.	Section 19
g) Introducing a new concept of “discrimination arising from disability”, to replace protection under previous legislation lost as a result of a legal judgment.	Section 15
h) Applying the detriment model to victimisation protection).	Section 27
i) Harmonising the thresholds for the duty to make reasonable adjustments for disabled people.	Section 20
j) Extending protection from 3rd party harassment to all protected characteristics <sup>45</sup>	Section 40
k) Making it more difficult for disabled people to be unfairly screened out when applying for jobs, by restricting when employers can ask job applicants questions about disability or health.	Section 60
l) Allowing claims for direct gender pay discrimination where there is no actual comparator.	Section 71
m) Making pay secrecy clauses unenforceable.	Section 77
n) Extending protection in private clubs to sex, religion or belief, pregnancy and maternity, and gender reassignment.	Section 100 - 103
o) Introducing new powers for employment tribunals to make recommendations which benefit the wider workforce.	Section 124
p) Harmonising provisions allowing voluntary positive action.	Section 158

<sup>45</sup> In March 2011, the Government announced it will consult in the autumn on harassment where employers have no direct control over the 3rd party.

## Appendix 1:

### The Equality Act 2010 - the implementation timetable as at June 2011

B: Provisions that came into force on 5th or 6th April 2011	Part/section
a) Positive action in recruitment and promotion – provisions were commenced on 6th April 2011.	Section 159
b) Public Sector Equality Duty – in force on 5th April 2011.	Section 149
C: Provisions that the Government has rejected	Part/section
a) The Socio-economic Duty on public bodies.	Sections 1-3
b) Dual discrimination <sup>46</sup> .	Section 14
D: Provisions the Government is still considering or has decided to reconsider	Part/section
a) Duty to make reasonable adjustments to common parts of leasehold and commonhold premises and common parts in Scotland.	Sections 36 -37
b) Provisions relating to auxiliary aids in schools.	Section 88
c) Diversity reporting by political parties.	Section 106
d) Provisions about taxi accessibility.	Section 160
e) Prohibition on age discrimination in services and public functions.	See note <sup>47</sup>
f) Family property.	Part 15
g) Civil partnerships on religious premises <sup>48</sup> .	Section 202
a) Extending protection from 3rd party harassment to all protected characteristics.	Section 40

<sup>46</sup> In March 2011, the Government said that it did not intend to introduce the dual discrimination provisions but it would consult.

<sup>47</sup> The age discrimination provisions are set out in section 5 but they will not apply to services and public functions generally (sections 28 and 29) until the Government reports on the consultation on this matter. The consultation - Equality Act 2010: Ending age discrimination in services, public functions and associations - A consultation – ran from 3rd March 2011 until 25th May 2011 and the outcome is awaited - [http://www.equalities.gov.uk/equality\\_act\\_2010/age\\_consultation\\_2011.aspx](http://www.equalities.gov.uk/equality_act_2010/age_consultation_2011.aspx)

<sup>48</sup> On 31 March 2011, Lynne Featherstone announced the start of a consultation on this matter. The consultation 'Civil partnerships on religious premises: a consultation' ran from 31st March 2011 – 23rd June 2011 [http://www.equalities.gov.uk/equality\\_act\\_2010/civil\\_partnership\\_consultation.aspx](http://www.equalities.gov.uk/equality_act_2010/civil_partnership_consultation.aspx)

## Appendix 2:

### Areas in which it is unlawful to discriminate

Part	Area and sub areas	Sections
Part 3	Services and public functions <ul style="list-style-type: none"> <li>• Services provided by any organisation to the public.</li> <li>• Any function undertaken by a public authority (unless otherwise exempted by the Act).</li> </ul>	28 - 31
Part 4	Premises Disposals; permission for disposal; management (of premises).	32 - 38
Part 5	Work <ul style="list-style-type: none"> <li>• Employment               <ul style="list-style-type: none"> <li>o employees;</li> <li>o police officers;</li> <li>o partners;</li> <li>o the Bar;</li> <li>o office-holders;</li> <li>o qualification (qualification bodies);</li> <li>o employment services (employment service providers);</li> <li>o trade organisations;</li> <li>o local authority members;</li> <li>o recruitment (inquiries about disability and health).</li> </ul> </li> <li>• Occupational pension schemes</li> <li>• Equality of terms<sup>49</sup>.</li> <li>• Supplementary – ships and hovercraft.</li> </ul>	39 - 83
Part 6	Education <ul style="list-style-type: none"> <li>• Schools.</li> <li>• Further and higher education.</li> <li>• General qualifications bodies.</li> <li>• Miscellaneous provisions<sup>50</sup>.</li> </ul>	84 - 99
Part 7	Associations: Members and associates, guests. Special provisions for political parties.	100 - 107
Part 10	Contracts etc. <ul style="list-style-type: none"> <li>• Contracts, other agreements (inc. unenforceable contractual terms &amp; contracting out).</li> <li>• Collective agreements and rules of undertakings.</li> </ul>	142 - 147

<sup>49</sup> Including sex equality, pregnancy and maternity equality, disclosure of information, and supplementary provisions.

<sup>50</sup> Reasonable adjustments & educational charities and endowments.

## Appendix 3:

### Equality Act 2010 - the PSED [Section 149]

- 1) A public authority must, in the exercise of its functions, have due regard to the need to:
  - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions<sup>51</sup> must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
  - a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to: a) tackle prejudice; and b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (7) The relevant protected characteristics are: a) age; b) disability; c) gender reassignment; e) pregnancy and maternity; f) race; g) religion or belief; h) sex; and i) sexual orientation.
- (8) A reference to conduct that is prohibited by or under this Act includes a reference to: (a) a breach of an equality clause or rule; (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.

<sup>51</sup>'A public function is a function that is a function of a public nature for the purpose of the Human Rights Act 1998.' Equality Act 2010, Section 150

## Appendix 4: Key sources of information, guidance, support and training

Name	General comment and examples of support and resources	Website
Advice UK	Advice UK is the UK's largest support network for free, independent advice centres. It formed in 1979 as the Federation of Independent Advice Centres.	<a href="http://www.adviceuk.org.uk/home">http://www.adviceuk.org.uk/home</a>
Advisory, Conciliation and Arbitration Service (ACAS)	ACAS aims to improve organisations and working life through better employment relations. In this capacity provides a range of information guidance and advice on discrimination and equality. Key resources include: a) Rights at work: equality and discrimination; b) What has changed at a glance; c) The Equality Act – What's new for employers	<a href="http://www.acas.org.uk">http://www.acas.org.uk</a>
Age UK	Age UK is a leading national organisation for older people in the UK. It has led on a number of equality campaigns focusing on older people - most recently launched a campaign about care homes and the crisis and funding.	<a href="http://www.ageuk.org.uk/">http://www.ageuk.org.uk/</a>
Black Training Enterprise Group	BTEG is a national organisation providing a voice to government for black and minority ethnic service providers. In June 2011, BTEG published 'Are they doing their duty?'	<a href="http://www.bteg.co.uk/">http://www.bteg.co.uk/</a>
Citizens Advice	CAB has been funded by the EHRC in recent years to provide advice on discrimination. Part of the CAB's online Advice Guide specifically addresses discrimination and equality. Another part of the online advice guide provides detailed advice about access to legal help and what the various options are.	<a href="http://www.adviceguide.org.uk/?gclid=CIGWjoDSiqkCFYINfAod0GWjoA">http://www.adviceguide.org.uk/?gclid=CIGWjoDSiqkCFYINfAod0GWjoA</a>
Communities and Local Government	DCLG has responsibility at government level for race equality. One of its ministers, Andrew Stunell MP, has responsibility for race equality.	<a href="http://www.communities.gov.uk/corporate/">http://www.communities.gov.uk/corporate/</a>
Disability Charities Consortium (DCC)	The DCC is made up of seven leading disability charities; Scope, Leonard Cheshire Disability, Mencap, Mind, RADAR, RNIB and RNID. The DCC, hosted by SCOPE, responds to government policy initiatives and highlights issues of joint concern to disabled people and disability organisations.	<a href="http://www.scope.org.uk/search/node/Disability%20Charities%20Consortium">http://www.scope.org.uk/search/node/Disability%20Charities%20Consortium</a>
Discrimination Law Association	The DLA brings together a broad range of discrimination law practitioners, policy experts, academics and concerned individuals, all united around a commitment to improving equality law, practice, education and advice for those who face discrimination.	<a href="http://www.discriminationlaw.org.uk/">http://www.discriminationlaw.org.uk/</a>

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Name	General comment and examples of support and resources	Website
Equality and Diversity Forum (EDF)	EDF is a network of national organisations committed to equal opportunities, social justice, good community relations, respect for human rights and an end to discrimination. EDF has been working with the EHRC and the GEO to promote equality, it also lobbies. Its core membership is made up of VCS organisations. EDF has produced a range of guidance and information and advice which is available on its website. One helpful document is 'How to use the Equality Act 2010: A guide for voluntary & community organisations.'	<a href="http://www.edf.org.uk/blog/wp-content/uploads/2011/01/EDF_Using-the-equality-act-leafletFeb11.pdf">http://www.edf.org.uk/blog/wp-content/uploads/2011/01/EDF_Using-the-equality-act-leafletFeb11.pdf</a>
Equality and Human Rights Commission (EHRC)	The EHRC is the independent statutory body which has a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the nine "protected" grounds - age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. <sup>52</sup> The EHRC has published statutory codes of practice and advice and guidance on discrimination and equality. Detailed advice is provided on the public sector equality duty,	<a href="http://www.equalityhumanrights.com/about-us/vision-and-mission/">http://www.equalityhumanrights.com/about-us/vision-and-mission/</a>  <a href="http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/">http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/</a>
Government Equalities Office	The GEO is a Home Office unit, which operates across Government; it has responsibility within Government for equality strategy and legislation and leads on issues relating to women, sexual orientation and transgender equality matters. The GEO is also leading on the major consultations on the regulations to be issued under the Equality Act 2010. Equality Act 2010. It has produced guides on the new public sector equality duty, the positive action provisions including the positive action provisions on employment.	<a href="http://www.equalities.gov.uk/pdf/110503%20GEO%20General%20EqualityDuty%20guide%20-%20FINAL.pdf">http://www.equalities.gov.uk/pdf/110503%20GEO%20General%20EqualityDuty%20guide%20-%20FINAL.pdf</a>
Law Centres Federation (LCF)	The Law Centres Federation champions free legal advice and representation. It publishes advice on discrimination cases and provides information on all law centres in the UK. In 2008, 3 funding streams enabled LCF to establish a new Equality and Human Rights Project providing funding for devising public legal education materials and raising awareness.	<a href="http://www.lawcentres.org.uk">www.lawcentres.org.uk</a> <a href="http://www.lawcentres.org.uk/projects/detail/equalities-and-human-rights-project/">http://www.lawcentres.org.uk/projects/detail/equalities-and-human-rights-project/</a>
London Discrimination Unit (LDU)	LDU is part of the Lambeth Law Centre. London Discrimination Unit Advice Line: 020 7840 2000 (same as general advice line)	Unit 4, The Co-op Centre 11 Mowl St, London SW9 6BG Tel: 020 7840 2000

<sup>52</sup> The EHRC is currently subject to a review. The consultation is being led by the GEO and the deadline for responses to the consultation was 15th June 2011.

## Appendix 4: Key sources of information, guidance, support and training

Name	General comment and examples of support and resources	Website
Discrimination Unit (LDU)	Line: 020 7840 2000 (same as general advice line)	11 Mowl St, London SW9 6BG Tel: 020 7840 2000
National Association for Voluntary and Community Action (NAVCA)	NAVCA aims to champion and strengthen voluntary and community action by supporting its members. The Empowering the Voluntary Sector project brings together the expertise of Compact Advocacy, based at NCVO, NAVCA and the Public Law Project. The organizations provide advice on managing disputes and training on the principles of public law and Compact to prevent and manage disputes with public bodies. The project, funded until September 2011, also publishes regular newsletters with updates, case studies, and hints and tips to manage and prevent breaches non-compliance with the Compact and public law. NAVCA provides information on public law.	<a href="http://www.navca.org.uk/">http://www.navca.org.uk/</a> <a href="http://www.navca.org.uk/links/policy/publiclaw">http://www.navca.org.uk/links/policy/publiclaw</a> <a href="http://www.navca.org.uk/services/learningopps/evs">http://www.navca.org.uk/services/learningopps/evs</a>
National Council for Voluntary Organisations (NCVO)	NCVO's Compact Advocacy programme works in partnership with the PLP to give advice to voluntary sector organisations and challenges unfair decisions made by public bodies. The Compact Advocacy team can: a) identify breaches of the Compact; b) set and agree objectives; c) identify key decision makers; d) represent organisations through communications, including letters, emails, phone calls, meetings and press work; e) seek policy and practice change. The project aims to identify best and worst practice and share lessons within the sector. If an organization would prefer not to openly challenge a decision made by a public body, this project can act without naming the organization that has raised the concerns.	<a href="http://www.ncvo-vol.org.uk/compactadvocacy">http://www.ncvo-vol.org.uk/compactadvocacy</a>
Public Law Project (PLP)	PLP is an independent, national legal charity which aims to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers. Guidance on judicial review, information on key cases taken under the relevant public sector equality duties. PLP is a central partner to the Empowering the Voluntary Sector project. PLP has represented applicants in key public sector equality duty cases.	<a href="http://www.publiclawproject.org.uk/">http://www.publiclawproject.org.uk/</a> <a href="http://www.publiclawproject.org.uk/casework.html">http://www.publiclawproject.org.uk/casework.html</a> <a href="http://www.publiclawproject.org.uk/AdviceGuides.html">http://www.publiclawproject.org.uk/AdviceGuides.html</a>
Race on the Agenda (ROTA)	A range of information under the heading of Winning the Race Coalition. Race on the Agenda: Supplement (Spring 2011) The Equality Act 2010. London: Detailed briefings and training on race equality and the Act.	<a href="http://www.rota.org.uk/pages/default.aspx">http://www.rota.org.uk/pages/default.aspx</a>

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Name	General comment and examples of support and resources	Website
Race on the Agenda (ROTA)	Race on the Agenda: Supplement (Spring 2011) The Equality Act 2010. London: Detailed briefings and training on race equality and the Act.	<a href="#">default.aspx</a>
Racial Harassment & Discrimination Unit	The Racial Harassment & Discrimination Unit provides advice and assistance to anyone living or working in Westminster who is affected by discrimination in areas of employment, education, housing, goods or services, public functions, stop and search or attacks on the street. The Project is run by Westminster Citizens Advice. The project can give help, advice and support to anyone suffering racial harassment to tackle racial harassment and monitors and assesses the level / nature of racial incidents in Westminster.	<a href="http://www.casweb.org/cab-tellus/">http://www.casweb.org/cab-tellus/</a>
Runnymede Trust	Runnymede is the UK's leading independent race equality think tank. It undertakes policy and research work on a wide range of race issues.	<a href="http://www.runnymedetrust.org/">http://www.runnymedetrust.org/</a>
Stonewall	A campaigning and lobbying organisation; it helped secure the equalisation of the age of consent, lifting the ban on lesbians and gay men serving in the military, securing legislation allowing same-sex couples to adopt.	<a href="http://www.stonewall.org.uk/">http://www.stonewall.org.uk/</a>
TUC	The national body for trade unions, the TUC reports on its work on discrimination / equality and comments on government policy. The website contains a section on equality and a range of resources and information.	<a href="http://www.tuc.org.uk/equality/index.cfm?mins=24&amp;minors=24&amp;majorsubjectID=6">http://www.tuc.org.uk/equality/index.cfm?mins=24&amp;minors=24&amp;majorsubjectID=6</a>
Women's Resource Centre	The Women's Resource Centre (WRC) is a charity which supports women's organisations to be more effective and sustainable. It provides training, information, resources and one-to-one support on a range of organisational development issues and lobbies decision makers on behalf of the women's not-for-profit sector for improved representation and funding. WTC has produced a range of guidance on the Equality Act 2010 including how to guides. WRC has produced a range of guidance and run training on the equality duties and how to use public law effectively.	<a href="http://www.wrc.org.uk/">http://www.wrc.org.uk/</a> <a href="http://www.wrc.org.uk/resources/guidance_for_public_bodies.aspx">http://www.wrc.org.uk/resources/guidance_for_public_bodies.aspx</a> <a href="http://www.wrc.org.uk/training_events/public_law_training.aspx">http://www.wrc.org.uk/training_events/public_law_training.aspx</a>



# **Equality Act 2010**

## Toolkit

**A resource for the BAME community sector**

Produced in June 2011 by Roots Research Centre,  
in collaboration with the 1990 Trust

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