**Equality and Human Rights Commission**

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| **Table 1: Qualifying Regulatory Provisions that came into force during the first Business Impact Target reporting period (i.e. 8 May 2015–26 May 2016)**  |
| **Title of measure** | **Description of measure** | **BIT score (£ millions)** | **RPC reference number** |
| Technical Guidance on Age Discrimination | Section 29 of the Equality Act 2010 includes provisions protecting against age discrimination in services. These provisions were brought into force by the Equality Act 2010 (Commencement No. 9) Order 2012. There are a number of exceptions to the prohibition on age discrimination introduced to the Equality Act 2010 by Order 2012 (Age Exceptions). These exceptions apply to a limited number of sectors and in specific circumstances, which include: financial services, concessionary services, holidays, age-restricted services, residential mobile homes, associations and sport. Even if a service provision does not fall under one of the broad exceptions in the Equality Act 2010, it may still be legal to discriminate on the basis of age. If the service provider can provide a justification that the discrimination is ‘a proportionate means of achieving a legitimate aim’. Examples of reasons service providers can use to justify discrimination: * ensuring the health and safety of customers;
* protecting the welfare of individuals;
* enabling people of particular age groups to enjoy activities together; and
* making sure that particular services are targeted at people who need them most.

The Equality and Human Rights Commission (EHRC), in its role as enforcer of the Equality Act 2010, has published Technical Guidance on Age Discrimination in Services, Public Functions and Associations[[1]](#footnote-1) (hereafter ‘the Guidance’) to assist businesses, public authorities, courts, tribunals, lawyers and advocates to comply with that legislation. The Guidance is designed to be read alongside the legislation and the Code of Practice on Services, Public Functions and Associations[[2]](#footnote-2). The Guidance interprets the regulatory obligations on businesses and provides some good practice examples of how to comply with those obligations. It illustrates what the Commission and the courts may consider lawful or not in relation to age discrimination, using examples from a variety of contexts relating to services, public functions and associations, and demonstrate the breadth and scope of the provisions. The Guidance interprets and provides elements of good practice in relation to age specific exceptions as well. The Guidance does not establish any additional legal obligations for companies to follow, nor is it an authoritative statement of law. However, as made clear at the beginning of the Guidance it can be used as evidence in legal proceedings brought under the Equality Act 2010.  | 0 | RPC-3814(1)-DFE-CEHR   Technical guidance on age discrimination |
| Broadcasting Guidance | This publication provides guidance for the television broadcasting sector on what action can lawfully be taken to increase diversity in the industry. It aims to tackle some of the misunderstandings about what equality law prohibits and permits. The EHRC published this guidance in response to concerns raised by the then Minister for Culture and Media, Ed Vaizey and following discussions within the television industry, where it was apparent that the sector was confused about its requirements in relation to this issue. No Government Department or other public body was taking forward work in this area.The EHRC is uniquely placed to deliver this work given its role as the regulator of equality and human rights. We chose to work in partnership with the: industry regulator Ofcom; intermediary- the Creative Diversity Network; and, PACT the trade association for independent filmmakers, in order not to duplicate efforts and to bring together key advice and information in one place for ease of access.This guidance relates to England, Scotland and Wales, reflecting the EHRC’s geographic remit . | 0 | RPC-3808(1)-DFE-CEHR   Broadcasting Guidance |
| Discriminatory Advertising | This guidance provides information to businesses that advertise (henceforth 'advertisers') in relation to the Equalities Act 2010. It covers the following areas:1. Advertising employment opportunities
2. Advertising goods, facilities and services (to the public)
3. Advertising accommodation

This guidance comes in three separate documents:1. Detailed guidance on what equality law means for advertisers and publishers (17 pages)
2. Frequently asked questions about lawful advertising (18 pages)
3. A good practice checklist for advertisers and publishers (10 pages)

They are treated collectively as one QRP for the purpose of this assessment. Broadly speaking, the QRP offers guidance on how to advertise jobs, goods, facilities and services in a way that does not treat a group less favourably because of a protected characteristic (direct discrimination) or introduce an apparently neutral requirement with discriminatory effects (indirect discrimination). The QRP also outlines permissible exceptions within the Equality Act 2010, such as when it is a genuine occupational requirement to have a particular attribute.  | 0 | RPC-3807(1)-DFE-CEHR   Discriminatory Advertising |

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| **Table 2: Qualifying Regulatory Provisions that came (or are expected to come) into force during the second and final Business Impact Target reporting period (i.e. 27 May 2016–8 June 2017)** |
| **Title of measure** | **Description of measure** | **BIT score (£ millions)** | **RPC reference number** |
| Equal Pay | As per the Equality Act 2010 (hereafter referred to as ‘EA 2010’), ‘equal pay’ constitutes the notion that men and women in the same employment (i.e. performing equal work) must receive equal rewards[[3]](#footnote-3). The Act thus entitles employees to equality in their pay and other contractual terms and conditions of employment (such as holiday entitlement, bonuses, pay and reward schemes, pension payments and other benefits) with employees of the opposite sex doing equal work for the same employer[[4]](#footnote-4). It does so by providing that a sex equality clause is included in contracts of employment, thereby ensuring that women’s contractual terms are no less favourable than men’s, and vice versa. The Act purports that ‘equal work’ relates to one (or more) of the following types of work:* ‘Like work,’ which relates to similar tasks, i.e. tasks that require similar skills.
* ‘Work rated as equivalent,’ which relates to work that has been rated, under a fair job evaluation scheme[[5]](#footnote-5), as being of equal value in terms of how demanding it is.
* ‘Work of equal value,’ which relates to work that is not similar and / or has not been rated as equivalent, but is of equal value in terms of demands such as effort, skill and decision-making.

The EHRC Guidance on equal pay covers the following:(1) the interpretation of ‘equal pay’(2) the legal provisions contained in EA 2010 pertaining to equal pay and the target audience’s legal responsibilities(3) the identification of risky practices and how to limit them (and resulting equal pay claims by employees)(4) the step-by-step process to undertaking an equal pay audit(5) proposed policies and systems to implement to achieve equal pay internally. | 0 | RPC-3809(1)-DFE-CEHR   Equal Pay |
| Business and human rights: A five-step guide for company boards | The EHRC's five-step guide for company boards[[6]](#footnote-6) explains the UN Guiding Principles (UNGP) on Human Rights and Business, and the types of actions that businesses can take to put these principles into practice. In doing so, it makes clear that introducing such practices would support businesses to meet their UK statutory reporting requirements under the Companies Act 2006, Modern Slavery Act 2015 and forthcoming EU Directive[[7]](#footnote-7). However, it distinguishes clearly between statutory reporting requirements under UK law and the additional actions possible under the UNGP framework. The EHRC published this guide in response to a call from its stakeholder groups (including businesses) for greater clarification on boards' obligations in the area of human rights, as well as a relevant request and funding from UK Government[[8]](#footnote-8).Under UK and EU law, certain large businesses are obliged to publish non-financial information relating to their human rights impacts, including annual slavery and human trafficking statements. The EHRC’s five-step guide does not establish any additional legal obligations for companies, as made clear at the beginning of the guide itself (page 2)[[9]](#footnote-9). Instead, it presents good practice examples[[10]](#footnote-10) of voluntary actions that businesses may pursue if they wish to address their human rights impacts in line with the UN Guiding Principles on Human Rights and Business.Specifically, the EHRC’s five-step guide calls upon each company board to: (1) embed the responsibility to respect human rights into its culture, knowledge and practices; (2) identify and understand its salient, or most severe, risks to human rights; (3) systematically address its salient, or most severe, risks to human rights and provide for remedy when needed; (4) engage with stakeholders to inform its approach to addressing human rights risks, and (5) report on its salient, or most severe, human rights risks and meet regulatory reporting requirements. For each of these five steps, the guide outlines good practice examples of supporting actions, such as introducing performance incentives to motivate staff to discuss human rights risks; using audits, terms of tender and contracts to improve human rights standards in partner organisations; and engaging stakeholders as part of human rights due diligence. As confirmed by the EHRC Legal Team, businesses would not be penalised in domestic courts for failing to uphold the UNGP, as the types of actions in the guidance are technically voluntary. The reason this guide is considered a QRP is because it provides good practice examples for businesses on the actions they could take in relation to their statutory obligations when addressing human rights impacts. Due to a lack of generalizable primary data on the actions that UK companies have taken to support human rights, this BIT assessment quantifies only the direct administrative costs of this QRP. In practice, this means the monetised impact of the guidance is considered relative to the time it takes a business to familiarise itself with, and interpret, the guidance. Other impacts are described qualitatively, with reference to relevant secondary data.  | 0 | RPC-3812(1)-DFE-CEHR   Business and human rights: A five-step guide for company boards |
| Pregnancy and Maternity Guidance and Toolkit | [A suite of web based materials](https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/help-and-support-employers) aimed at helping and supporting employers to comply with their obligations under the Equality Act 2010 in relation to pregnancy and maternity discrimination. The suite consists of :* + an online guide/FAQs for employers about their legal obligations
	+ toolkits for SMEs to assist employers in complying with the legislation
	+ Working Forward campaign: facilitating dissemination of existing good practice by and between business

These materials were developed in response to research that investigated the prevalence and nature of pregnancy discrimination and disadvantage in the workplace. All materials were extensively tested by 23 employers from a range of sectors and business size. The goal was to aid employers to comply with the legislation and improve practice. An advisory group, consisting of 12 representatives, of which 5 employers (organisations) oversaw the programme of work.The materials updated, replaced and brought together previous Pregnancy and Maternity web materials. | 0 | RPC-3813(1)-DFE-CEHR   Pregnancy and Maternity Guidance and Toolkit |
| Women on Boards | The Guidance sets out practical steps that companies, search firms and recruitment agencies may take to improve diversity in boards. The Guidance specifies what can be considered good practice in the process of search and recruitment of new board members. The Guidance indicates also what may be lawful and unlawful practice, and particularly in relation to any “positive action” that companies and executive recruitment agencies may take in order to improve greater diversity at board level. Among other dispositions, it reminds companies of their ability to use the “tie-break provision” in the Equality Act 2010, which allows treating a candidate from an under-represented (protected) group more favourably at any stage of the recruitment or promotion process, from longlisting to selection. The Guidance aims also to improve diversity within senior staff at companies with boards, by suggesting initiatives that may widen diversity in the senior leadership talent pool. | 0 | RPC-3815(1)-DFE-CEHR   Women on boards |

1. <https://www.equalityhumanrights.com/sites/default/files/technical_guidance_on_age_discrimination_in_services_public_functions_and_associations.pdf> [↑](#footnote-ref-1)
2. The Code of Practice provides information on all areas of discrimination in services and public functions detailed in part 3 and 7 of the Equality Act 2010. The technical guidance however, focuses solely on age discrimination and is designed to elucidate the concepts already explained in the Code of Practice using easily understood examples. [↑](#footnote-ref-2)
3. EHRC. 2016. ‘What is equal pay?’ Available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/what-equal-pay> [↑](#footnote-ref-3)
4. EHRC. 2016. ‘Equal pay explained.’ Available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equal-pay-explained> [↑](#footnote-ref-4)
5. A job evaluation scheme is a method of systematically assessing the relative value of different jobs (source: EHRC https://www.equalityhumanrights.com/en/advice-and-guidance/what-equal-work) [↑](#footnote-ref-5)
6. <https://www.equalityhumanrights.com/en/publication-download/business-and-human-rights-five-step-guide-company-boards> [↑](#footnote-ref-6)
7. These obligations derive from the Companies Act 2006, the EU Non-Financial Reporting Directive 2014 and the Modern Slavery Act 2015. For more information, see pp. 15-16 of the five-step guide. The impact assessment of this QRP will not cover these statutory reporting requirements, due to the risk of double counting. Note that there is already a detailed IA available for the Modern Slavery Bill, which includes the transparency requirements. Furthermore, obligations in EU legislation are outside the scope of the BIT assessment. [↑](#footnote-ref-7)
8. Specifically, the Government requested EHRC's support in the fulfilment of the National Action Plan on Business and Human Rights, as this is a way for it to fulfil State Party obligations under the UNGPs. [↑](#footnote-ref-8)
9. Although note that the legal status of the Guiding Principles is somewhat complex; the Guiding Principles technically do not create new international obligations *for business*, but the UK Government has a legal duty to protect human rights against business-related abuse. These obligations derive from the UK's ratification of major international human rights treaties (e.g. ICCPR, ICESCR and others). See also Q.6 and Q.7 in this document: [www.ohchr.org/Documents/Publications/FAQ\_PrinciplesBussinessHR.pdf](http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBussinessHR.pdf) [↑](#footnote-ref-9)
10. They are not labelled as such in the Guidance, but could be interpreted in this way. [↑](#footnote-ref-10)