



The Equality Act 2010:

a guide for
political parties

About this guide

What is the aim of this guide?

This publication provides an overview of what the Equality Act 2010 means for political parties and their members. It includes an explanation of the action that can lawfully be taken by parties to increase the participation of under-represented groups in elected office and within their own party structures. We also explain when and how members of political parties, and people who want to become members, are protected from unlawful discrimination.

It is not a comprehensive summary of equality law. Throughout the guide we refer to our Codes of Practice and guidance for more detailed information.

We have published separate guidance on our website to help local authorities, political parties and candidates understand the role of equality and human rights in elections.

Who is it for?

This is principally for political parties and their members. It will also be of interest to people and organisations who want to see more under-represented groups involved in politics.

The information relates to equality law and political parties in England, Scotland, and Wales.

There are also specific rules about political funding, donations and campaign spending. You can find out more about these from the Electoral Commission, which publishes guidance on the relevant legislation.

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Introduction

Participation in the democratic process matters. It gives people a say in the type of society they want and how they want to be governed. One important way of participating is by becoming a member of a political party, getting involved in its activities and even being selected to run for elected office. However, we know that women, ethnic minorities, young people, lesbian, gay, bisexual and transgender (LGBT) and disabled people are under-represented and do not participate equally in our elected bodies.

The Equality Act 2010 ('the Act') can help to increase diversity and improve participation in our democratic institutions. It allows political parties to address under-representation in their own structures and in the selection of candidates for elections. This is important. If our democratic institutions fully reflect the people they serve and the society in which we live, they can be more inclusive and make more informed decisions that work for everyone.

This briefing focuses on how the Act applies to the activities of political parties and their relationships with members and prospective members. It is split into three parts.

The first part explains how political parties can use positive action to increase diversity in elected positions and their party structures. The second part focuses on different types of discrimination and the duty to make reasonable adjustments and explains when members of political parties are protected from unlawful discrimination. The third part highlights some of the rules on party expenditure for campaigning purposes and the funds that have been set up to cover the additional disability-related costs that disabled candidates can incur.

Basic principles of equality law

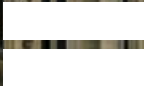
The underlying principle of the Act is that everyone should be treated fairly and have equal opportunities to fulfil their potential. Under the Act, it is unlawful to discriminate, harass or victimise someone because they have, or are perceived to have, a protected characteristic or if they are associated with someone who has a protected characteristic. The protected characteristics are:

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

The Act protects people from discrimination in a wide range of situations including the provision of services and public functions, employment, housing, work, education and the activities of associations (which includes political parties). There are a small number of exceptions which allow people to be treated differently without it being unlawful. However, it is sensible to start from the position that discrimination because of a protected characteristic is likely to be unlawful. Exceptions are rare and should generally be interpreted restrictively. More information can be found in our **Equality Act Codes of Practice**.

The Act allows disabled people to be treated more favourably than non-disabled people without this being unlawful discrimination against non-disabled people. This is to help tackle the additional barriers to equality that disabled people face in their day-to-day lives.

Certain positive action measures are also allowed. These are intended to address the disadvantages and under-representation experienced by people who share protected characteristics.



**Equality and
Human Rights
Commission**

Part 1: Steps to achieve equal representation

Part one explains the steps that political parties can take to improve the diversity of their candidates and in their democratic structures. It explains how the positive action provisions in the Act apply to the selection of candidates for local and parliamentary elections. It also explains the actions parties can take to help ensure that people from all communities can join parties and take an active part in their work.

Positive action in the selection of candidates [s.104]

The Act allows a political party to tackle a lack of diversity among their candidates by putting in place selection processes that will help to address the under-representation of:

- people from different races or ethnic groups
- disabled people
- transgender people
- women or men, and
- lesbian, gay or bisexual people.

Parties can only take positive action in their selection processes when people who share one of the protected characteristics listed above are under-represented in the party's representatives elected to the following bodies:

- UK Parliament
- Scottish Parliament
- National Assembly for Wales, and
- local government.

Positive action is voluntary and political parties cannot be forced to do it.

Where there is under-representation, parties can take positive steps to encourage members from the under-represented group to come forward for selection. This could include providing mentoring schemes, training opportunities and additional or tailored support specifically designed to encourage these members to put themselves forward.

Political parties can also make sure that following the selection of candidates, people from under-represented groups are not ranked at the bottom of party lists, or they could 'twin' constituency candidates (where, for example, the party selects a male candidate for one constituency and a female candidate for another).

Political parties need to show that positive action is proportionate. For example, selection arrangements that aim to improve the representation of one particular group but would unreasonably reduce the selection prospects for another protected group are likely to be disproportionate.

Example:

A political party realises that, in an area with a large Asian community, it has too few councillors from an Asian background. It decides to adopt new selection arrangements to increase the number of Asian people standing for election as councillors, including writing to all party members known to be of Asian origin and offering training, mentoring and coaching opportunities to encourage people to put themselves forward for selection.

A party member who is not of Asian origin and wants to stand for election complains of race discrimination when she is not shortlisted. Her complaint is not upheld because the party can provide evidence that the steps it has taken are lawful – in other words that they genuinely address under-representation and are proportionate.

Reserved places on shortlists [s.104 (6)]

Where there is under-representation of people who share a protected characteristic within a political party's elected representatives, the Act allows parties to reserve a fixed number of places on their candidate shortlists for people from the under-represented group.

Examples include:

- Having at least one candidate from each under-represented group on shortlists.
- Introducing a 'balanced shortlist', where there has to be, for example, an equal number of male and female candidates.
- Proportional shortlists (for example 20 per cent of the candidates must be disabled).

As a general rule political parties cannot reserve all the places on an election shortlist for people who share a particular protected characteristic. There is an exception to this rule for the protected characteristics of sex and disability.

Sex [s.104 (7)]

Political parties can reserve all of the places on their shortlist for one sex if this will help reduce unequal representation in Parliament or local government. Shortlists made up entirely of one sex will be allowed until 31 December 2030. In practice, this means 'women-only' shortlists (although, if a political party had an under-representation of men in the future, it could mean a 'men-only' shortlist). The party does not have to show that 'women-only' shortlists are proportionate.

Disability

Political parties can restrict shortlists to disabled candidates. This is because only those who meet the definition of disability under the Act are protected from disability discrimination and the Act specifically says that it is not discrimination to treat disabled people more favourably than someone who is not disabled [s.13(3)].

However, it would be disability discrimination if a party restricted a shortlist to disabled candidates with a particular impairment or type of impairment. This would be treating some disabled people more favourably than others because of their disability.

Positive action: the general provisions [s.158]

Beyond the provisions that allow positive action in the selection or shortlisting of candidates, the general positive action provisions in the Act allow political parties to address disadvantage and under-representation in their membership and party structures.

Positive action is allowed if the party needs to take steps to overcome disadvantage, to meet different needs or to increase the participation of people sharing a protected characteristic. The party must 'reasonably think' that people in protected groups suffer disadvantages connected to their protected characteristic, have different needs, or are under-represented, and the steps taken must be proportionate.

Example:

A party carried out a survey of the diversity of their members and interviewed party officials and equality organisations about how to improve diversity. The research identified more limited participation of LGBT members in the party structures compared to other groups. The party decided to take positive action to encourage and support LGBT members to get involved in committees, groups, campaigning activities and conferences. The action was specifically directed at LGBT members and included: training, mentoring schemes, targeted invitations to become active in the party structures and paid internships.

Publishing information about the diversity of candidates [s.106]

The Act gives UK Ministers the power to make regulations requiring political parties to publish data on the protected characteristics of all of their candidates at a relevant election. If such regulations were made, the information would be published anonymously and candidates would be able to refuse disclosure of any or all the information requested by the party.

Ministers have not acted on this power but parties could collect and publish this information anyway to be more transparent about their diversity and to build support for positive action within the party.



Part 2: Non-discrimination of party members

This section provides information about the relationship between a political party and its existing and prospective members. It explains how the non-discrimination provisions in the Act apply to the way political parties treat their members and prospective members.

Any association or club that has at least 25 members and a selection process to become a member is covered by the Act as an 'association'. Political parties will normally meet the Act's definition of an 'association'. This means the party's members, and those wanting to become members, are protected from being discriminated against when they access any benefits, facilities or services provided by the party to members.

More information about how the Act applies to associations can be found in **'What equality law means for your association, club or society'** and **'What equality law means for your membership of an association'**.

Who is protected?

Members of political parties, and those wanting to become members, are protected from discrimination, harassment and victimisation involving all of the protected characteristics in the Act except marriage and civil partnership.

When discrimination is unlawful

Unlawful discrimination can take a number of different forms. Examples are provided throughout this section. More information about the definitions of discrimination, harassment and victimisation can be found in our **Equality Act Codes of Practice**.

Avoiding unlawful discrimination

Political parties can take steps to avoid discrimination by:

- Reviewing conditions or requirements for membership in their constitution or rules to ensure they are not discriminatory.
- Involving equality groups, people with lived experience or people who share one or more of the protected characteristics in any reviews of party policies or practices to identify areas of potential discrimination that need to be addressed.
- Providing equality and diversity training to anyone who acts on behalf of the party.
- Taking complaints of discrimination, harassment or victimisation very seriously and making any necessary changes to rules, policies and practices.
- Identifying potential barriers for disabled people and making reasonable adjustments.

Becoming a member [s.101 (1)]

The Act lays down specific rules in relation to the conditions of membership of political parties and makes it unlawful for parties to discriminate against, harass or victimise a person seeking to become a member. This includes:

- who can apply for membership
- how people find out about joining the party
- application procedures, processes and forms
- any membership selection procedures or processes, and
- who can attend meetings or events about party membership.

A political party must not discriminate in the **terms for admitting people as members**. This could include the:

- types of membership
- joining fees, and
- conditions for admission.

Political parties are not allowed to restrict membership to people who share a protected characteristic [Schedule 16, 1(5)].

Example:

The ninth Constitution of the British National Party (BNP) stated that:

‘Membership of the BNP is strictly defined within the terms of, and our members also self-define themselves within, the legal ambit of a defined ‘racial group’ this being ‘Indigenous Caucasian’ and defined ‘ethnic groups’ emanating from that Race’.

In 2009 we started legal proceedings against the BNP because we considered the membership criteria to be unlawful direct race discrimination.

During the legal proceedings we raised against the BNP, the party amended its constitution to make membership open to people of any race or ethnic origin. However, the party also introduced a requirement that new members had to agree with or support, and to not oppose or disagree with, ‘the proposition that each of the Indigenous British, Civic British, British Nationalist or Other Nationalist Statements are in all material respects true and accurate.’ They also introduced a Member Induction Condition stipulating that no member would be allowed to attend any official meeting of the party, branch or group until they had allowed authorised party representatives to interview them at their home for the purpose of conducting market research and a member expectations and aspirations survey.

The court found that these were conditions for admission to the party, they would deter someone from applying to join the party, and they indirectly discriminated on grounds of race. The court also recognised that it is not unlawful to hold discriminatory views. However, if these discriminatory views are part of the system for admission to membership of the party it runs the risk of being in breach of equality law.

Access to party benefits, facilities or services [s.101 (2)(a)]

A political party must not discriminate against, harass or victimise members in how they allow them access to a benefit, facility or service. Benefits, facilities or services include a wide range of existing advantages, opportunities and activities enjoyed by members of a political party. This includes:

- participating in national, regional or local party meetings, conferences or events
- participating in internal committees or decision-making groups
- participating in party elections and postal ballots
- being selected as a candidate for elected office
- voting on decisions at local and national party meetings
- using party equipment or facilities
- accessing party documents, such as the constitution, rule book or policy reports, and
- receiving newsletters and accessing other party communications, such as online forums.

Example:

A female member has a three-month old baby that she breastfeeds. She is told she should not attend the constituency party AGM because members would not be comfortable watching her breastfeeding her child. This means she is excluded from the meeting and voting for officeholders, which are benefits of membership, and this is likely to be pregnancy and maternity discrimination.

Depriving a member of their membership [s.101 (2)(b)]

A political party must not discriminate against a member by depriving them of their membership because of a protected characteristic. This could include suspending or expelling a member from the party.

Varying terms of membership [s.101 (2)(c)]

A political party must not discriminate against a member by varying their terms of membership because of a protected characteristic. Terms of membership are usually found in written party policies or documents such as the constitution or rule book and can include:

- voting rights to nominate and select candidates for national or local elections and party elections and appointments
- conditions applied to speaking rights at party events, conferences and meetings, and
- conditions for use of party facilities.

Any other detriment [s.102 (2)(d)]

A political party must not discriminate against a member by subjecting them to any other detriment. A detriment is anything that might reasonably be considered to have changed the member's position for the worse or put them at a disadvantage. Even if the party thinks that they are acting in someone's best interests, they may be subjecting them to a detriment.



The duty to make reasonable adjustments [s.20 and Sch. 15]

Political parties must make reasonable adjustments for their disabled members. The duties on political parties in relation to their disabled members are different from the duty to make reasonable adjustments to services, education and work.

The duty on political parties to make reasonable adjustments **is anticipatory**. This means parties are under a positive and proactive duty to think about, and take steps to remove, any barriers which prevent disabled people from enjoying the rights and benefits that come with membership of the party. Parties must plan and put in place adjustments that people with a range of impairments might reasonably need to be able to access a right or benefit. If they have not done this, they will have failed to comply with the reasonable adjustment duty. If someone who is disabled cannot then access a right or benefit, the party will have discriminated against them.

Parties must take reasonable steps to avoid disabled members facing disadvantage and, where possible, find ways to allow them to access **existing rights, benefits, facilities or services in the same way as everyone else**.

Example:

A political party normally allows each prospective candidate five minutes to speak at selection meetings. One of the candidates has a speech impairment and is allowed extra time.

The duty to make reasonable adjustments also involves **providing additional aids and services** if this will allow or make it easier for disabled members to have access to the rights, benefits, facilities and services that come with membership of the party.

Political parties must also take steps to ensure that information for members is provided in an accessible format, such as large print.

Example:

The venue where the party holds its annual conference is inaccessible to some disabled people. When members register to attend the conference they are asked if they require any additional support or assistance. A disabled member asks for assistance to help them move around the conference venue and fringe meetings. Staff are allocated to provide assistance with guiding. This would be an additional service.

The duty also applies if disabled members are **put at a disadvantage by a physical feature** when they are:

- accessing a benefit, facility or service, or
- being admitted to membership.

Example:

A regional branch meets every month in the party HQ building. There are stairs at the entrance and despite the reasonable adjustment duty being anticipatory, no ramp has been installed. A new member who is a wheelchair user wants to become active in the branch and attend the meetings. The branch arranges for a ramp to be built at the entrance to the building so the new member can attend branch meetings. They also undertake an audit of the whole building to ensure any other reasonable adjustments are made. As a result they also install an accessible toilet and improve the building's signage.

When is an adjustment 'reasonable'?

What is reasonable depends on the circumstances. When deciding whether an adjustment is reasonable, factors such as those following should be considered:

- Whether particular steps would be effective in overcoming the disadvantage that disabled people face.
- The extent to which it is practicable for the political party to make changes.
- The financial and other costs of making the adjustment.
- The extent of any disruption making the changes would cause.
- The extent of the political party's financial and other resources.
- The amount of resources already spent on making adjustments.
- The availability of financial or other assistance.

Someone who is disabled cannot be asked to pay for reasonable adjustments. It is the responsibility of the party to cover any reasonable costs [s.20(7)].

Enforcement

Members should complain about potentially discriminatory behaviour directly to the party in the first instance. They can also bring legal claims for discrimination in court. In England and Wales, claims must be raised in the County Court. In Scotland, they must be raised in the Sheriff Court [s.114]. Claims must be raised within six months of the discrimination or the failure to make adjustments.



Part 3: Additional financial support for disabled candidates

In this section we look at some of the restrictions on parties providing additional financial support to disabled candidates, and how these restrictions might be overcome.

Election law sets limits on how much candidates and parties can spend on election campaigns, and the rules generally still apply where financial support is given to address inequality in representation. There are exemptions to candidate spending limits for personal expenses, and this can include expenses related to disability. Candidates and political parties should check the rules for the election before a party provides additional financial support to candidates standing for public office. The Electoral Commission provides detailed guidance about party funding and campaign expenditure.

Rules on political party expenditure

In the period before certain elections, the Political Parties, Elections and Referendums Act 2000 (PPERA) places controls on all expenditure by a registered political party to promote its success or enhance the standing of the party or any of its candidates. Such expenditure includes advertising of any kind, party election broadcasts, unsolicited material sent to voters, market research, press conferences, rallies and events.

PPERA imposes financial limits on campaign expenditure by a registered political party which contests one or more constituencies at a UK Parliament election. There are no explicit exemptions for additional costs incurred to address inequality in representation or additional costs related to disability.

If campaign expenditure exceeds the limits, the treasurer or any deputy treasurer of the party will be guilty of an offence if they knew of and authorised the excess expenditure, or reasonably ought to have known that it happened.

Rules on election expenses incurred by candidates

The Representation of the People Act 1983 provides a limit on election expenses incurred by, or on behalf of, a candidate for UK Parliament elections. If the election expenses incurred are in excess of the maximum amount, the candidate or election agent who ought to have reasonably known are guilty of an illegal practice. Although there is no explicit exemption for additional costs to address inequality in representation or additional costs in relation to disability, there is an exemption for a candidate's personal expenses which can include costs relating to disability.

Recognising the additional costs faced by disabled candidates

The UK Government set up the Access to Elected Office Fund in 2012 to provide financial support to disabled people standing for election to the UK Parliament. This fund paid for candidates' disability-related costs. However, the fund closed in May 2015 and has not been replaced with an alternative source of financial support for disabled candidates.

The Scottish Government amended the candidate spending rules for the Scottish Parliament elections in 2016 to ensure that additional costs faced by disabled candidates were not included in the statutory limits on campaign spending. Article 80 (2)(c) of the Scottish Parliament (elections, etc.) Order 2015 explicitly stated that expenditure incurred by a candidate as a result of his or her disability was to be regarded as a personal expense. Article 80 (1) of the Order specified that this expenditure did not count towards the personal expenses limit of either a constituency or regional candidate. Similar provisions were passed for the Scottish local government elections in 2017.

The Scottish Government then set up the Access to Elected Office Fund for disabled people standing as candidates in the Scottish local government elections in May 2017. Disabled candidates, and those standing for selection, can apply to the Fund to cover additional costs associated with their disability, such as accessible transport, a personal assistant or a sign language interpreter. However, the Fund cannot be used towards general campaigning costs that go beyond levelling the playing field between a disabled and a non-disabled candidate. The Scottish Government is continuing the Fund for any local government by-elections and the Scottish Parliament elections in 2021.

Links to other sources of information

The Electoral Commission guidance for political parties and campaigners, and candidates and agents:

<https://www.electoralcommission.org.uk/our-work/publications/guidance>

Inclusion Scotland Access to Elected Office Fund Scotland:

<http://inclusionScotland.org/information/employability-and-civic-participation/access-to-politics/aeofs/>

Contacts

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Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. The Commission welcomes your feedback.

Alternative formats

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