

Wearing a Mask or Face Covering in Retail Environments

This fact sheet is intended to help individuals with a disability understand their rights and businesses understand their obligations under the Equality Act 2017 in light of the Covid19 pandemic where a retailer makes it a requirement to wear a mask or face covering.

If you are entering a retail environment indoors, customers may be asked to wear a mask or face covering. The Government guidance strongly recommends that a mask or face covering is worn in public places. Retailers also have a legal obligation to protect their staff, so customers are being asked to comply with this. The mask or face covering can be a reusable or single use face covering or it could be a scarf, bandana, religious garment or hand-made cloth covering. The important thing is that it must fit securely around the side of the face and cover your nose and mouth. A visor or face shield alone is not sufficient. For some people, because of a disability that may not be obvious to others, it is not possible to wear a face covering or mask.

Who is exempt from wearing a face covering?

A retailer may decide to make it a requirement to wear a mask or face covering when entering their store which they are entitled to do. It is recommended that any requirement to wear a mask or face covering in store is subject to the following exemptions as set out in the [Government guidelines](#) which state that the following people do not need to wear a face covering or mask:

- children under the age of 11 (Public Health does not recommend face coverings for children under the age of 3 for health and safety reasons)
- people who cannot put on, wear or remove a face covering because of a physical or mental illness or impairment, or disability
- where putting on, wearing or removing a face covering will cause you severe distress
- if you are speaking to or providing assistance to someone who relies on lip reading, clear sound or facial expressions to communicate
- to avoid harm or injury, or the risk of harm or injury, to yourself or others – including if it would negatively impact on your ability to exercise or participate in a strenuous activity
- police officers and other emergency workers, given that this may interfere with their ability to serve the public

How will people know if I am exempt from wearing a mask?

Some people with a disability may already carry an exemption card with them. If you do not have one of these, it is not necessary to have one. You may be asked to explain to the retailer, the reason why you are not wearing a mask or are unable to do so, as many disabilities are not visible so it may not be obvious to the staff. Once you have made your impairment known, you must not be refused access to services. There is no requirement however for you to share details of your disability.

Is there a way of making my hidden disability known without having to explain?

The Sunflower Lanyard Scheme is a globally recognised scheme that informs others of a hidden disability without the need to explain. It is extensively supported by disability charities and organisations. This Scheme may assist you in getting the help and support you need in store and inform others that you have an exemption from wearing a mask or face covering. A local charity called Compassionate Isle of Man has both Sunflower Lanyards and Sunflower Wristbands available. Please contact Wendy on 647498 or by email at wendy.smith@hospice.org.im. Alternatively, for those with a visual impairment Manx Blind Welfare Society are also able to supply Sunflower Lanyards. They can be contacted on 674727 or by email enquiries@mbws.org.im.

Can I help reduce the risk when I am inside and not wearing a mask?

If you are not able to wear a mask or face covering whilst inside, consider staying silent inside or if you have to ask a member of staff something, speak quietly and socially distance two metres away as this also reduces the risk of virus transmission for other people around you and helps to protect you.

Does my disability exempt me from wearing a mask?

It is not possible to say whether your disability will mean you are exempt as ultimately only the Employment and Equality Tribunal can determine this for the purposes of the Equality Act, but refer to this [guidance](#) on who a disabled individual is under the Act and how the protected characteristic is defined.

Who is a disabled person for the purposes of the Equality Act?

Under the Equality Act you are protected from unlawful conduct if you have a disability. This is known within the Act as a "protected characteristic". Some disabilities are recognised automatically as being a disability under the Act but most disabilities must meet the definition of disability to get protection under the Act. The definition of disability states:

"A physical or mental impairment which has a substantial and long term adverse effect on the ability to carry out normal day-to-day activities."

This definition can be broken down into four parts.

Day-to-day activities

What is meant by day-to-day activities are the things we do every day like washing, dressing, walking, writing, following a list etc. It can also be an impairment which affects areas such as:

- mobility;
- ability to lift and carry;
- mobile dexterity;
- memory and the ability to concentrate, learn and understand;

- communication and social interaction;
- the ability to recognise danger.

This list is not exhaustive and more information is available in the [guidance](#).

Long Term

What the Act means by long-term is anything that is expected to last up to 12 months, over 12 months or for the rest of the individual's life.

Is it substantial?

The impact on these abilities has to be more than minor or trivial. You could consider the following:

- the amount of time it takes to carry out your normal day to day activities;
- the way in which an activity is carried out;
- the cumulative effects of the impairment;
- the manner in which behaviour could be reasonably modified to prevent the effects of the impairment;
- the effects of the environment;
- where an impairment is subject to treatment (such as medication) or correction, look at the effects of the impairment as it would be without the treatment or correction.

Example: if an individual has a mobility issue and corrects this with a walking stick, the Act looks at the impairment as though the aid is not there; effectively in its unaided form.

Is it a physical or mental impairment?

The last thing to consider is the type of impairment you have and this could be physical, mental or both.

Am I disabled under the Equality Act 2017?

It is down to you to consider the definition of disability and whether you meet it, though ultimately it is up to the Employment and Equality Tribunal to decide whether you meet the definition under the Act.

What can I do when an organisation tells me to wear a mask or face covering and I can't and I am refused service?

In light of the COVID situation there are specific parts of the Act that you may find useful to know about if you have been refused service.

The Reasonable Adjustment Duty

This duty requires organisations to make reasonable adjustments for disabled individuals who are placed at a substantial disadvantage due to their disability.

Service providers such as retailers have a duty to anticipate certain types of disabilities or a disabled individual can make a request to make a change to help them access the service, if they are placed at a substantial disadvantage.

The reasonable adjustment duty can be triggered if:

- a provision, criterion or practice (the way the organisation does things –policies, practices, decisions etc.),
- a physical feature (the built environment)¹,
- or the lack of the provision of an auxiliary aid or service (providing something extra to overcome the disadvantage) and

this puts a disabled individual at a substantial disadvantage when compared to a non-disabled individual.

If a disabled person is disadvantaged by any of the above, they can request a change to that to remove the disadvantage. It is down to the individual to decide what may be the best adjustment to make as the Act doesn't have specific examples of what requests can be made they just have to be reasonable.

Requests made under the reasonable adjustment duty should be considered by the organisation and if they are not provided then reasons why should be justified.

Some things to consider regarding reasonable adjustments requests are:

- the practicability of the requested adjustment.
- the financial and other costs of making the adjustments.
- the extent of any disruption caused.
- whether taking any particular steps would be effective in preventing the substantial disadvantage.

If a reasonable adjustment request is not provided and the organisation cannot justify not putting in an adjustment then this may amount to a failure to make a reasonable adjustment, which is unlawful under the Act.

Are there any other types of disability discrimination?

Yes, indirect discrimination because of disability and discrimination arising from disability.

What is indirect discrimination?

Where an organisation has decided to impose a mask or face covering requirement, this is a policy of the organisation. The organisation's intention is for the policy to apply to everyone

¹ physical features are exempt in the sector of education and premises

equally however not everyone is the same and the result may be that some people are disadvantaged by the policy. This may be the case if you cannot wear a face covering because of your disability.

The organisation may be able to justify why they have this policy, which is to protect their staff because of health and safety. However, it may be that an organisation can protect their staff through other ways not just the requirement to make customers wear face coverings for example, asking customers to socially distance or protecting staff behind screens at checkouts. If an organisation cannot prove that their policy is justified, it may be that you have been indirectly discriminated against. You can read more about indirect discrimination [here](#) or by going to www.gov.im/equality

What is discrimination arising from disability?

This type of discrimination is where you are treated unfavourably because of something connected to your disability rather than the disability itself. So if you are refused service or entry at a shop because you could not hear the shop assistant asking you to socially distance outside and cannot read their lips because they were wearing a mask, this may be treating you unfavourably because of something connected to your disability and may be discrimination. Or if you are unable to wear a face covering because you have epilepsy and a risk of regular seizures, if the door staff refuse you entry to the store despite your explanation, this may be treating you unfavourably because of something connected to your disability.

An organisation may be able to justify why they have treated you unfavourably.

What can I do if I feel I have been discriminated against or there has been a failure to make a reasonable adjustment?

If you feel that you have been discriminated against or you consider that there has been a failure to make a reasonable adjustment, you should always try to resolve the complaint informally first by asking to speak to the manager or following the complaints process. The Office of Fair Trading provide [template letters](#) to help make a formal complaint. Alternatively you can contact the Office of Fair Trading for assistance on 687540 or email them at equality.OFT@gov.im.

I have made a complaint and I'm not happy with the response

If the issue cannot be resolved informally first by letter, then you can contact the Office of Fair Trading for further support. Alternatively, more information about submitting a claim to the Employment and Equality Tribunal can be found by clicking [here](#). Or you can call the Tribunals Service on 685941 or by emailing tribunals@gov.im.