



THE PUBLIC SECTOR EQUALITY DUTY IN WALES

BACKGROUND

The Equality Act 2010 (“the Act”) introduced a single Public Sector Equality Duty which applies to all public authorities, including maintained schools and which came into effect in April 2011. This new Public Sector Equality Duty replaces the three separate equality duties under the previous legislation to tackle discrimination and promote equality in relation to race, disability and gender.

The public sector equality duty consists of a general equality duty, which is set out in **section 149 of the Equality Act 2010** and which came into effect on 5th April 2011, and specific duties which came into effect on 10th September 2011 in England and 6th April in Wales.

GENERAL EQUALITY DUTY

Section 149(1) imposes the public sector equality duty on those public bodies subject to it requiring them, in the exercise of their functions, to have due regard to three specified matters which are the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- (b) Advance equality of opportunity between persons who share a **relevant protected characteristic** and those who do not;
- (c) Foster good relations between persons who share a relevant **protected characteristic** and those who do not.

The matters referred to at (b) and (c) apply to the “relevant protected characteristics” which are set out in **section 147(7)** of the Act as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. They do not therefore apply to the protected characteristic of marriage and civil partnership. Subsection (a) however applies to all protected characteristics. The general duty in relation to age does not apply to education and service provision to pupils in schools.

The Act also explains what is meant by having “due regard” as follows:

- Removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- Taking steps to meet the needs of persons who share a relevant protected characteristic from the needs of persons who do not share it;
- Encouraging persons who share a relevant protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.



The Act further sets out that:

- Meeting different needs involves taking steps to take account of disabled persons' disabilities;
- Fostering good relations involves tackling prejudice and promoting understanding between those who share a relevant protected characteristic and those who do not;
- Compliance with the duties may involve treating some persons more favourably than others, although this is not to be taken as permitting conduct otherwise prohibited by the Act.

SPECIFIC DUTIES

The Welsh Government introduced new specific duties set out in **The Equality Act 2010 (Statutory Duties) Regulations 2011** ("the 2011 Regulations"), which came into force on 6th April 2011. The Explanatory Note to the 2011 Regulations states that the purpose of the duties it imposes is to ensure better performance by public authorities of their duties under **section 149(1)** of the Act.

The 2011 Regulations set out requirements in the following areas:

Equality objectives

- Public authorities must have prepared and published equality objectives by no later than **2nd April 2012**. Thereafter the objectives must be reviewed within 4 years from when they are first published and at least once every four years subsequently. If an authority does not publish an equality objective in respect of one or more of the protected characteristics it must publish its reasons for its decision not to do so;
- An authority must publish a statement which sets out the steps it has taken or intends to take in order to achieve each equality objective and the timescale for fulfilling each equality objective;
- An authority must also make appropriate arrangements to monitor progress in order to fulfil each objective and to monitor the effectiveness of the steps it has taken to fulfil the equality objectives;
- "Due regard" is to be given to "relevant information" that an authority holds when considering and designing its equality objectives. "Relevant information" is defined as information that relates to compliance with the general duty;
- Authorities may revise or remake equality objectives at any time. If an objective is revised without remaking it the authority must publish the revision or the revised objective as soon as possible.



Objectives on pay differences

- When considering its equality objectives an authority must have due regard to the need to have equality objectives that address the causes of any differences in pay between employees who have any protected characteristic and those who do not, where it appears likely that the difference is related to the fact that an employee has or shares a protected characteristic;
- Arrangements must be made for identifying and collecting information about differences in pay and the causes of any differences which it must publish or publish reasons for not publishing such an objective;
- Authorities are required to publish an action plan which sets out:
 - any policy it has that relates to the need to address the causes of any gender pay difference;
 - any gender pay equality objective or revision thereof; and
 - what steps it has taken or intends to take to fulfil its gender pay objective.

Engagement

- Where “engagement provisions” apply the authority must engage with those persons that the authority considers represents the interests of the persons who share one or more of the protected characteristic and have an interest in the way that the authority carries out its functions. The authority may also involve or consult others that it considers appropriate. “Engagement provisions” apply in relation to the following:
 - Considering and designing equality objectives;
 - carrying out an assessment of whether there are things done or that could be done that contribute or are likely to contribute to an authority complying with the general duty;
 - carrying out an assessment of impact of any policies or practices being proposed or reviewed; and
 - preparing, publishing or reviewing a Strategic Equality Plan.

Equality information

- an authority must put appropriate arrangements in place to ensure that it identifies “relevant information” it holds and collects “relevant information” that it does not hold;
- arrangements must include identifying and collecting information about any differences between pay of persons who have or share one or more protected characteristics and those who do not;
- an authority must carry out an assessment in order to identify “relevant information” which should identify whether things done by the authority contribute to it complying with the general duty and things that it could do to contribute to compliance. When



carrying out the assessment the authority must have due regard to any relevant information it already holds and comply with the engagement provisions;

- authorities are required to make arrangements to assess the likely impact on policies or practices, or their review, on its ability to comply with the general duty;
- there must be arrangements for publishing reports regarding the assessments.

Employment information

The 2011 regulations impose duties in relation to training and the collection of employment information, including the following:

- an authority must collect and publish in each year i.e. 1st April to 31st March, except for the period ending 31st March 2012 in which case the period is 6th April to 31st March 2012, the following information:
 - the number of people employed broken down in relation to men and women, and further by:
 - job;
 - grade, where grading systems apply;
 - pay;
 - contract type, including permanent and fixed term contracts; and
 - working patterns, including full time, part time and other flexible working arrangements;
 - the number of people, broken down for each of the separate protected characteristics, who have:
 - applied for employment, excluding people already employed;
 - employees who have changed position and the number successful or otherwise;
 - employees who completed the training;
 - employees involved in grievance procedures either as a complainant or the subject of a complaint;
 - employees subject to disciplinary proceedings; and
 - employees who have left employment.

The 2011 Regulations make clear that a person cannot be required to provide this information but there is a requirement to promote knowledge and understanding of the general and specific duties among employees and to use performance assessment procedures to identify and address training needs in this regard.



Strategic Equality Plan

The 2011 Regulations required an authority to have made a Strategic Equality Plan (SEP) no later than 2nd April 2012. The SEP must contain a statement setting out:

- a description of the authority;
- the authorities equality objectives;
- details of the steps the authority has taken or intends to take to fulfil its objectives and the timescale; and
- details of arrangements it has made or intends to make to comply with the requirements of the 2011 Regulations, including monitoring progress on meeting its objectives, identifying and collecting “relevant information”, assessing impact of policies and practices and publishing reports where an assessment shows a likely or substantial impact on the authority’s ability to comply with the general duty, promoting knowledge and understanding among employees including through the use of the performance assessment procedures;
- the SEP can be revised or remade at any time;

The 2011 Regulations set out provisions concerning the preparation, publication and review of the SEP including:

- the SEP must be published as soon as possible after it has been made or remade;
- the SEP may be part of another published document;
- the SEP must be kept under review.

Publication of reports

- an authority must publish a report in respect of each reporting period i.e. 1st April to 31st March except in relation to the reporting period ending 31st March 2012 in which case the reporting period means 6th April 2011 to 31st March 2012;
- the report must be published no later than the “relevant date” i.e. 31st March;
- the 2011 Regulations set out what the report must contain including:
 - the steps the authority has taken to identify and collect relevant information;
 - in respect of relevant information it holds, how it has used that information for the purposes of complying with the general duty and the duties in the 2011 Regulations;
 - the authority’s reasons for not collecting any relevant information;
 - the steps it has taken to fulfil each of its equality objectives;
 - the information required to be published regarding its employees;
 - the report may be part of another published document.



Public Procurement

- An authority must when procuring works, goods or services on the basis of a “relevant agreement” have due regard to whether award criteria and any conditions imposed by them for the contract should include considerations relevant to performance of the general duty;
- A “relevant agreement” means the award of a public contract or the conclusion of a framework agreement regulated by the Public Sector Directive;
- Essentially the public procurement rules apply to “contracting authorities” as defined by the Public Contracts Regulations 2006. Schools are contracting authorities for the purposes of these procurement regulations;
- Agreements above certain thresholds are regulated and below the thresholds contracting authorities are required to demonstrate “best value”;
- While the specific duties may not apply the general duty will in any event apply regardless of the value of the contract.

GUIDANCE

The Equality and Human Rights Commission has produced a series of guidance documents which can be accessed via the following website:
<http://www.equalityhumanrights.com/wales/>

An overview of the requirements can be found in *“The essential guide to the public sector equality duty: An overview for listed public authorities in Wales.”*

Governors Wales has also produced a useful short guide *“The Public Sector Equality Duty – Key points for Schools in Wales”* which can be accessed via the following link:
http://www.governorswales.org.uk/media/files/documents/2011-09-20/English_Final_-_Equality_Act_Public_Sector_Equality_Duty.pdf

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