



EQUALITY TOOLKIT

Public sector equality duty - history, purpose and effect

The former race, gender and disability equality duties have been replaced by a single public sector equality duty (the 'equality duty'). The equality duty under the Equality Act 2010 ('the Act') came into effect in April 2011. The new duty builds upon and consolidates the three earlier duties.

The public sector duty, introduced under section 149 of the Act, is made up of a general duty, supported by specific duties.

The general duty is the overarching requirement of the public sector equality duty. It requires public bodies in the exercise of all of their functions, and other bodies in the exercise of their public functions, to have due regard to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations.

The specific duties set out how public authorities should demonstrate their compliance with the general duty. There are separate duties for public authorities in England and Wales, but broadly the specific duties require bodies to set equality objectives and to publish information.

The initial race equality duty was a specific statutory policy response to the findings of Sir William MacPherson's Inquiry into the handling by the police of the racist murder of Stephen Lawrence. The race equality duty was introduced in 2001. This was followed by the introduction of statutory duties in respect of disability and gender equality.

The new duty encompasses almost all protected characteristics, not just race, disability and gender. In addition, the duty is now to advance rather than to merely promote equality.

The Government has said it will review the specific duties in England after two years to verify that "they are delivering the transparency and accountability that we are seeking, and driving the better performance of the equality duty."

Public sector equality duty – protected characteristics

These are the characteristics that are protected by the public sector equality duty (the 'equality duty') under the Equality Act 2010 ('the Act'). All protected characteristics are covered to some extent by the equality duty but there are some exceptions which are explained below. Separate fact sheets on meeting the equality duty will be prepared for each protected characteristic.

Age

The Act protects individuals of a particular age, for example 16 year olds, or those falling within a particular age range, for example teachers in their 20s, 40s or 60s.

The duty in respect of age equality does not apply to functions relating to the provision of education, benefits, facilities or services to pupils in schools. So schools and local authorities

will not have to consider advancing equality and fostering good relations between pupils of different ages.

So far as the duty applies to employment functions, however, it will apply to teachers. Schools, colleges and local authorities must consider how to eliminate age discrimination and advance equality of opportunity for, for example, older and younger teachers.

Disability

The Act protects individuals who have a physical or mental impairment which has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities.

There are no exceptions under the equality duty in respect of disability. Schools, colleges and local authorities must consider how to eliminate discrimination against disabled children and disabled teachers, advance equality for disabled people and foster good relations between disabled people and people without that impairment. This requires removing barriers which disabled students and teachers face rather than regarding the condition as the problem.

Gender reassignment

The Act protects those who are proposing to undergo, are undergoing or have undergone a process or part of a process for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. Gender reassignment is the medical and/or social process whereby a person changes his or her birth sex to match his or her chosen gender identity.

There are no exceptions under the equality duty in respect of gender reassignment. Schools, colleges and local authorities must consider how to eliminate discrimination against trans children and teachers, advance equality for trans people and foster good relations between trans people and non-trans people.

Marriage and civil partnership

The Act protects married or civil partners (i.e. same-sex partners registered as civil partners under the Civil Partnership Act 2004) in the employment context, not in the provision of education. Schools, colleges and local authorities are required to consider how to eliminate discrimination, harassment and victimisation against employees and applicants who are married or in civil partnerships. The duty does not extend to advancing equality for married people or civil partners, or to fostering good relations.

Pregnancy and maternity

The Act protects employed women who are pregnant or who are on maternity leave. Employers should consider, for example, how to ensure that performance management procedures do not discriminate against pregnant women or women on maternity leave.

The duty applies only in the employment context so public authorities are not duty bound to consider the impact of their policies on girls of compulsory school age who fall pregnant though, of course, schools, colleges and local authorities should still consider the impact on gender equality when exercising their public functions.

Race

The Act protects individuals belonging to a particular racial group or groups. Race includes colour, nationality and ethnic or national origins.

There are no exceptions under the equality duty in respect of race equality. Schools, colleges and local authorities should consider how to eliminate discrimination against children and teachers of different racial groups, advance race equality and foster good relations between people of different racial groups.

Religion or belief

The Act protects individuals of a particular religion or belief. Religion includes any religion and lack of religion. Belief includes any religious or philosophical belief.

The duty applies to all public authorities including local authorities and schools but specific exemptions for 'designated religious schools' are included within education legislation.

Nevertheless, the NUT believe that schools, colleges and local authorities should take steps to eliminate discrimination on grounds of religion or belief, advance equality and foster good relations between members of different faiths.

Sex

The Act protects men and women. There are no exceptions under the equality duty in respect of sex equality. Schools, colleges and local authorities should consider eliminating sex discrimination, advancing sex equality and fostering good relations between men and women and girls and boys.

Sexual orientation

The Act protects gay, lesbian, bisexual and straight teachers and students. There are no exceptions under the equality duty in respect of sexual orientation equality. Schools, colleges and local authorities should consider how to eliminate discrimination, advance equality and foster good relations between gay, lesbian, bisexual and straight teachers and students.

Socio-economic disadvantage

The proposed public sector equality duty to reduce the inequalities of outcome which result from socio-economic disadvantage has not been enacted.

Public sector equality duty – the general duty

The public sector equality duty, introduced by the Equality Act 2010 ('the Act'), is made up of a general equality duty supported by specific duties.

The general duty is the overarching requirement of the public sector equality duty. It requires public bodies in the exercise of all of their functions, and other bodies in the exercise of their public functions, to have due regard to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations.

Eliminating discrimination

All bodies subject to the general duty must consider the need to eliminate any unlawful discriminatory conduct. This means considering how to eliminate discrimination, harassment and victimisation and other unlawful discriminatory conduct on grounds of a protected characteristic when making decisions or policies.

Example: a school has a record of increasing sexist cyber-bullying of teachers. This could be tackled by reviewing and enforcing the school behaviour policy, the school IT policy and introducing a whole school approach to challenging sexism and gender stereotypes.

Advancing equality of opportunity

All bodies subject to the general duty must consider the need to advance equality of opportunity between people who share a relevant characteristic and those who do not share that characteristic. Bodies should reflect on the need to remove or minimise disadvantage, take steps to meet people's needs, and encourage people to participate in public or in other activities.

Example: the racial diversity of a school governing body does not reflect the racial diversity of the school or the local community. The school could invite members of local community groups to stand as school governors when elections are due.

Fostering good relations

All bodies, subject to the general duty must make informed decisions in order to foster good relations between people who share a relevant characteristic and those who do not share that characteristic. Bodies should always consider the need to tackle prejudice and promote respect and understanding.

Example: a sixth form college is notified that a transgender student has been subjected to verbal abuse and offensive graffiti. The student union and college management could, in consultation with the student, address the prejudice and promote understanding of the needs of trans-people through the curriculum and reiterating and enforcing the college harassment and bullying procedure.

Protected characteristics

The general duty applies in respect of age, disability, gender reassignment, pregnancy and maternity (at work), race, religion or belief, sex (including equal pay), and sexual orientation. Marriage and civil partnership are covered only by the duty to eliminate discrimination at work. The coalition government decided not to extend the equality duty to address socio-economic disadvantage.

Functions

The general duty applies in respect of all of the functions of public authorities listed under schedule 19 of the Act and to the public functions of other bodies. So, the general duty:

- applies to all local authorities and all schools and colleges, including independent establishments, in respect of their public functions; and
- applies to all local authorities and schools and colleges listed in schedule 19 in respect of their non-public functions; but
- does not apply to bodies not listed in schedule 19, e.g. independent schools, in respect of their non-public functions.

Public functions, education functions and employment functions

A public function has the same meaning in the Equality Act 2010 as it does in the Human Rights Act 1998; a public function is 'a function of a public nature'.

This definition encompasses a wide range of public services such as the provision of health care, fire services, housing services and education. So, any body with a public education function is subject to the general duty in respect of that function. This will include all schools and colleges in the state sector and also independent schools which are not public bodies but which perform a public function. Non-public bodies must 'have regard' to the general duty when exercising a public function.

All public authorities listed in schedule 19 are subject to the general duty in respect of all of their functions. This includes the public functions e.g. housing and education services, but also the additional functions, for example, the employment of staff. So, all local authorities, schools and colleges in the state sector must have due regard to eliminating discrimination, etc in the exercise of their functions as an employer.

Bodies not listed in schedule 19 are subject to the general duty in respect of their public functions only. Employment by a private body is likely to be regarded a function of a private nature so independent schools are unlikely to be subject to the general duty in respect of their employment functions.

Public authorities of the Equality Act

The general duty applies to all public authorities listed under schedule 19, including:

- local authorities;
- governing bodies of schools maintained by a local authority (including community, community special, voluntary controlled, voluntary aided, foundation, foundation trust, foundation special schools and maintained nursery schools and PRUs);
- further education and sixth form colleges;
- governing bodies of publicly funded universities;
- the proprietors of City Technology Colleges, City Colleges for Technology or the Arts; and
- the proprietors of academies and free schools.

Public sector equality duty – specific duties: England

The public sector equality duty, introduced under the Equality Act 2010 ('the Act') is made up of a general equality duty supported by specific duties. The specific duties for England are set out under the Equality Act 2010 (Specific Duties) Regulations 2011. A separate fact sheet outlines the specific duties in relation to powers devolved to the Welsh Assembly.

Public authorities

The specific duties for England and cross border authorities apply to all public bodies listed in the Equality Act 2010 including:

- local authorities;
- governing bodies of schools maintained by a local authority (including community, community special, voluntary controlled, voluntary aided, foundation, foundation trust, foundation special schools and maintained nursery schools and PRUs);
- governing bodies of publicly funded universities;

- the proprietors of further education and sixth form colleges, City Technology Colleges, City Colleges for Technology or the Arts; and
- the proprietors of academies (including free schools).

They do not however apply to non-public bodies which exercise public functions, for example, independent schools.

Specific duties

In addition to meeting the general duty to have due regard to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations, listed public bodies are required to (1) prepare and publish equality objectives and (2) publish information, to demonstrate compliance with the general duty.

Equality objectives

All listed public bodies must prepare and publish one or more equality objectives which they have prioritised in order to meet the general duty. The equality objectives must be specific and they must be measurable.

Public bodies listed in the schedules should have prepared and published the objectives it aims to achieve to fulfil the general duty by 6 April 2012 and thereafter every 4 years. The information must be published in a manner accessible to the public so it must be easily available.

Publishing information

Public bodies must publish information to demonstrate that they have had due regard to the need to eliminate discrimination, advance equality of opportunity and to foster good relations. The information will usually fall into two main categories: information to identify equality issues, e.g. equality monitoring data; and information about steps taken in making certain decisions.

Local authorities and further and higher education institutions should have published this information by 31 Jan 2012. All other listed bodies should have published this information by 6 April 2012. Thereafter publication is an annual requirement.

Listed public bodies must publish information in respect of:

- employees (if the body employs more than 150 employees); and
- people affected by its policies and practices.

Publishing employment information

Public bodies should publish equality monitoring information about employees or information about the effect of the bodies' activities on employees with different protected characteristics.

Example: a local authority could publish the race, disability, gender and age distribution of the teaching workforce at different grades, and whether they are full or part time and details and feedback of engagement with staff and trade unions.

Public bodies should also publish information about the steps that the organisation has taken to meet the aims of the general duty as regards its employees.

Example: an academy chain should publish its records about how it had due regard to the general duty before deciding to alter the length of the school day. This should include all information that was considered in the decision-making process (including engagement with people affected by the decision), consideration that was given to mitigate adverse impacts, or details of policies to address equality concerns.

Public authorities with fewer than 150 employees, such as primary schools or other small education institutions, are not bound to publish information on their employees. However, it is good practice for all public employers to do so and it is likely to go some way towards meeting the general duty to service users, i.e. pupils and students, and to the wider work-seeking community.

Publishing information in respect of ‘people affected’ by policies

Public bodies should publish equality monitoring information about services users, including pupils or students, or information about the effect of the bodies' activities on people with different protected characteristics.

Example: a sixth form college could publish data on complaints about discrimination and other prohibited conduct from students.

Public bodies should also publish information about the steps that they have taken to meet the aims of the general duty in respect of people affected by its policies and procedures.

Example: a local authority should publish its records about how it had due regard to the general duty before deciding to close a PRU. This should include all information that was considered in the decision-making process (including engagement with people affected by the decision), what consideration was given to mitigate adverse impacts, or details of policies to address equality concerns.

Public sector equality duty – specific duties: Wales

The public sector equality duty, introduced under the Equality Act 2010 ('the Act'), is made up of a general equality duty supported by specific duties. The specific duties in respect of powers to the Welsh Assembly are set out under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 ('the Regulations').

The Comisiwn Cydraddoldeb a Hawliau Dynol (Equality and Human Rights Commission) has published nine guidance documents on the specific duties applicable in Wales which can be found at www.equalityhumanrights.com/wales.

This fact sheet outlines briefly the specific duties applicable in Wales; a separate fact sheet outlines the specific duties for England and cross border authorities.

Public authorities

The specific duties in respect of devolved powers to the Welsh Assembly Government apply to all public bodies listed in the regulations including:

- local authorities;
- governing bodies of schools maintained by a local authority (including community, community special, voluntary controlled, voluntary aided, foundation, foundation trust, foundation special schools and maintained nursery schools);
- governing bodies of publicly funded universities;

- proprietors of further education and sixth form colleges.

They do not however apply to non-public bodies which exercise public functions, for example, independent schools.

Specific duties

In addition to meeting the general duty to have due regard to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations, listed public bodies are required to meet very detailed specific duties to demonstrate compliance with the general duty. The specific duties are summarised below.

Objectives: prepare and publish equality objectives in respect of each protected characteristic, or reasons for not doing so, by 2 April 2012 and review thereafter every four years. Publish details of the steps it has taken or intends to take to meet the objectives and how long it expects to take to meet each objective. Monitor progress and effectiveness of steps taken to meet the objectives and publish any new or revised objectives.

Strategic Equality Plan: prepare a strategic equality plan by 2 April 2012, publish it as soon as possible and keep it under review.

Engagement: involve representatives of protected groups in setting equality objectives, preparing and reviewing the strategic equality plan, identifying how the authority's work contributes to meeting the general duty and assessing the impact of policies and practices on protected groups.

Impact Assessments: assess the equality impact of policies and procedures, complying with the engagement provisions and considering the relevant information held by the authority. Where the impact of a policy or practice on equality is found to be substantial, a report on the equality impact assessment must be published including:

- the purpose of the proposed policy/practice;
- a summary of steps taken to carry out the assessment;
- a summary of the information taken into account in the assessment;
- the results of the assessment;
- any decisions taken in relation to those results.

Equality Information: identify what information is and is not held by the authority, identify information on differences of pay for employees with a protected characteristic, publish this information (as permitted under data protection legislation) by 2 April 2012 and review it periodically.

Employment Information: collect and publish annually:

- the number of people employed by the authority on 31 March each year by protected characteristic;
- the gender breakdown of staff by job, grade, pay, contract type (e.g. permanent, fixed term or supply), working pattern (e.g. full-time, part-time);
- applicants and leavers by protected characteristic;
- career progression by protected characteristic;
- employees applying for and completing training by protected characteristic;
- employees taking or being the subject of grievance and disciplinary procedures by protected characteristic.

Note that in Wales there is no exemption for employers of fewer than 150 employees as there is in England. The duty to provide employment information applies to all listed bodies in Wales irrespective of the size of their workforce.

Pay Differences: have regard to the need to address the causes of any pay differences and publish an action plan including any equality objective to address any gender pay gap identified or reasons why it has not done so.

Staff Training: authorities must ensure that their employees are trained on the general and specific duties.

Procurement: consider whether contracts should include considerations to meet the general duty and whether to stipulate contractual conditions relating to performance.

Publish: an annual equality report by 31 March each year.

Welsh Ministers Report: on how devolved public authorities in Wales are meeting their general duty by 31 December 2012 and thereafter every four years.

Review: review equality objectives every four years and review Strategic Equality Plans.

Accessibility: ensure that information is published in a format that is accessible to people from protected groups.