

1. The essential guide to the public sector equality duty: An overview for listed public authorities in Wales



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1. Context for this guide

Key dates for the public sector equality duty

- 5 April 2011** General duty came into force
- 6 April 2011** Specific duties in Wales came into force
- 2 April 2012** Listed bodies in Wales to publish equality objectives and Strategic Equality Plans
- 2 April 2012** Listed bodies in Wales must have engaged with interested people as part of gathering relevant information to assess its activities against the general duty. Relevant information must be published as appropriate.

1.1 What is a listed public authority in Wales?

For the purpose of this guidance, a listed public authority in Wales (or 'listed body') is one contained in Part 2 of Schedule 19 of the Act as supplemented and amended by the Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011. This includes, for example, local authorities, education bodies (including schools), health bodies and the Welsh Government.

1.2 The Equality Act 2010

The Equality Act 2010 (the Act) brings together and replaces the previous anti-discrimination laws with a single Act. It simplifies and strengthens the law, removes inconsistencies and makes it easier for people to understand and comply with it. The majority of the Act came into force on 1 October 2010.

The Act includes a **new public sector equality duty** (the 'general duty'), replacing the separate duties on race, disability and gender equality. This came into force on 5 April 2011.

The new general duty covers the following protected characteristics:

- Age
- Gender reassignment
- Sex
- Race – including ethnic or national origin, colour or nationality
- Disability
- Pregnancy and maternity
- Sexual orientation
- Religion or belief – including lack of belief

It applies to marriage and civil partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination.

This guidance sometimes uses the phrase 'protected group' to refer to people who share a protected characteristic.

1.3 Who is the non-statutory guidance aimed at?

The non-statutory guidance has been developed primarily for those responsible for implementing the Wales specific duties, particularly those at senior and operational level who are responsible for policy and decision-making. The guidance will also be useful to anyone who has an interest in the work and activities of public authorities.

It is important that senior decision-makers in public authorities (such as Chief Executives, Chairs and Board members) receive adequate briefing on the general duty and specific duties. This should equip them to ensure that equality is properly considered within the organisation and influences decision-making at all levels.

2. The general duty

2.1 Who is covered by the general duty?

The majority of public authorities are covered by the general duty. These are listed in Part 2 of Schedule 19 of the Act as supplemented and amended by the Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011.

The general duty applies to private or third sector (voluntary and community) organisations where they are carrying out a public function on behalf of a public authority or in their own right. A public function is a function of a public nature as defined in the Human Rights Act 1998.

2.2 What is the general duty?

The aim of the general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. The duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept under review. This will achieve better outcomes for all.

Public bodies are required to have due regard to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
2. advance equality of opportunity between people who share a relevant protected characteristic and those who do not

3. foster good relations between people who share a protected characteristic and those who do not.

This guidance refers to these three elements as the three 'aims' of the general duty and so when we discuss the general duty we mean all three aims.

The Act explains that having due regard for advancing equality involves:

- removing or minimising disadvantages experienced by people due to their protected characteristics
- taking steps to meet the needs of people from protected groups where these are different from the needs of other people
- encouraging people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

The Act describes fostering good relations as tackling prejudice and promoting understanding between people who share a protected characteristic and those who do not. Meeting the duty may involve treating some people more favourably than others, as long as this does not contravene other provisions within the Act.

2.3 Implementing the general duty

The following principles are drawn from case law on the previous equality duties, and will continue to be relevant in relation to the new duty. In order to meet the general duty, a public authority must ensure:

- **Knowledge:** those who exercise its functions (its staff and leadership) are aware of the duty’s requirements. Meeting the duty involves ‘a conscious approach and state of mind’. Decision-makers should therefore be aware of the implications of the duty when making decisions about their policies and practices.
- **Timeliness:** the duty arises before and at the time that a particular policy is under consideration and a decision is taken. A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- **Meaningful consideration:** consideration of the three aims of the general duty must form an integral part of the decision-making process. This is not a ‘tick box’ exercise – it must be exercised with rigour, with an open mind in such a way that influences the final decision.
- **Sufficient information:** the decision-maker must consider what information she has as well as what further information might be needed to give proper consideration to the general duty.
- **Review:** public bodies must have regard to the aims of the general duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed. The general duty is a continuing duty.
- **Non-delegation:** Anyone exercising public functions on behalf of a public body is required to meet the duty. This is because the duty rests with the public authority even if they have delegated any functions to another organisation.

2.4 Who needs to be aware of the general and specific duties?

It is important for people throughout public bodies to be aware of the equality duty so that it is considered in their work where relevant. Examples may include:

- **Board members** – in how they set strategic direction, review performance and ensure good governance of the organisation
- **Senior managers** – in how they oversee the design, delivery, quality and effectiveness of the organisation’s functions
- **Equality and diversity staff** – in how they raise awareness and build capacity about the general and specific duties within the organisation and how they support staff to deliver on their responsibilities
- **Human resources staff** – in how they build equality considerations into employment policies and procedures
- **Policy makers** – in how they build equality considerations into all stages of the policy making process including review and evaluation
- **Communications staff** – in how they ensure equality information is available and accessible
- **Analysts** – in how they support the organisation to understand the effect of its policies and practices on people from protected groups
- **Frontline staff** – in how they meet the needs of people from protected groups
- **Procurement and commissioning staff** – in how they build equality considerations into the organisation’s relationships with suppliers.

3. Specific duties in Wales

The broad purpose of the specific duties in Wales is to help listed bodies in their performance of the general duty and to aid transparency.

3.1 Who is covered by the specific duties?

The specific duties apply to listed bodies in Wales. They do not apply to non-devolved public authorities operating in Wales.

Most devolved public authorities in Wales covered by the general duty are also covered by the specific duties. The specific duties set out the steps that listed bodies in Wales must take in order to demonstrate that they are paying due regard to the general duty.

3.2 What are the specific duties?

The specific duties in Wales are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. The specific duties in Wales came into force on 6 April 2011.

The specific duties in Wales cover:

- Objectives
- Strategic Equality Plans
- Engagement
- Assessing impact
- Equality information
- Employment information
- Pay differences
- Staff training
- Procurement

- Annual reporting
- Publishing
- Welsh Ministers' reporting
- Review
- Accessibility

3.3 The guides on the specific duties

There are eight guides giving advice on the specific duties in Wales:

1. The essential guide to the public sector equality duty (an overview)
2. Equality objectives and Strategic Equality Plans
3. Engagement
4. Assessing impact
5. Equality information
6. Employment information, pay differences and staff training
7. Procurement
8. Annual reporting, publishing and Ministerial duties (including review and accessibility)

The *Essential guide* gives an overview of all of the specific duties that apply to listed bodies in Wales. The other guides in this series give further information on individual aspects of each of the duties.

4. Legal status of non-statutory guidance

The non-statutory guidance provides a summary of the specific duties and a practical explanation of what authorities in Wales can do to ensure that they are meeting the general duty. It does not have legal standing like the statutory Code of Practice on the public sector equality duty, which can be used as evidence in legal proceedings under the Act. This guide can be referred to, but courts do not have to

take it into account when making a decision.

We therefore recommend that public authorities use the Code of Practice as their key point of reference when seeking to clarify any legal issues. The Code of Practice is due to be published later in 2011.

5. Exceptions

There are limited exceptions to the application of the general duty in relation to certain functions, such as immigration (in relation to race, religion, age and the advancement of equality) and to judicial functions.

A small number of bodies which would otherwise be covered by the duty because

they carry out public functions are specifically excluded from being subject to the duty. This includes the National Assembly for Wales.

The general duty in relation to age does not apply in relation to education and service provision in schools or in relation to children's homes.

Equality objectives

A listed body in Wales must:

- prepare and publish its equality objectives by 2 April 2012
- publish objectives to meet the general duty. If an authority does not have an objective for each protected characteristic – in addition to any objective to address pay differences – it must publish reasons why not
- publish a statement setting out the steps it has taken or intends to take to meet the objectives and how long it expects to take to meet each objective
- make appropriate arrangements to monitor progress towards meeting its objectives and to monitor the effectiveness of its approach
- give appropriate consideration to relevant equality information it holds when considering what its equality objectives should be.

Objectives on pay difference

A listed body in Wales must:

- have due regard to the need to have objectives to address the causes of any pay differences that seem reasonably likely to be related to any of the protected characteristics
- publish an equality objective to address any **gender** pay gap identified or else publish reasons why it has not done so.

Even where an authority publishes an equality objective to address pay differences in relation to any protected characteristic, it must still have due regard to the need to have other equality objectives in relation to that protected characteristic. If a listed body publishes no other objective in relation to the protected characteristic, it will need to explain why not.

Review and revision of objectives

A listed body in Wales must:

- review all its equality objectives at least once every four years.

A listed body may revise or remake its equality objectives at any stage. If it does so, it must publish the new objective or revision and reflect any changes in its published statement about the timescale and steps for meeting its objectives. If a change is made to an equality objective on gender pay, it will need to be reflected in its gender pay action plan.

Engagement

A listed body in Wales must:

- involve people who it considers representative of one or more of the protected groups and who have an interest in how an authority carries out its functions.

A listed body in Wales may:

- consult and involve other people that it considers appropriate. In reaching the decision as to who is appropriate, an authority must consider the need to involve or consult people from one or more of the protected groups who have an interest in the way the authority carries out its functions, where it is reasonably practicable to do so.

This engagement **must** take place in relation to:

- setting equality objectives
- preparing and reviewing a Strategic Equality Plan
- identifying how an authority's work and activities may contribute to meeting the general duty
- assessing the likely impact on protected groups of any policies or practices being proposed or reviewed.

Assessment of impact

A listed body in Wales must:

- assess the likely impact of proposed policies and practices on its ability to comply with the general duty
- assess the impact of any policy which is being reviewed and of any proposed revision
- publish reports of the assessments where they show a substantial impact (or likely impact) on an authority's ability to meet the general duty
- monitor the impact of policies and practices on its ability to meet that duty.

Reports on assessments must set out in particular:

- the purpose of the policy or practice (or revision) that has been assessed
- a summary of the steps the authority has taken to carry out the assessment (including relevant engagement)
- a summary of the information the authority has taken into account in the assessment
- the results of the assessment
- any decisions taken in relation to those results.

In addition, when assessing for impact on protected groups, listed authorities must:

- comply with the engagement provisions
- have due regard to the relevant information the authority holds.

Equality information

A listed body in Wales must:

- make appropriate arrangements to ensure that it periodically identifies relevant information it holds, and identifies and collects information that it does not have
- make appropriate arrangements to identify and collect information about differences in pay, and the causes of any such differences, between employees who have a protected characteristic and those who do not
- publish relevant information that it holds, unless it would be inappropriate to do so (e.g. if it would breach the Data Protection or other legislation). This information must be published by 2 April 2012 and reviewed periodically.

As part of the process of identifying relevant information, an authority will need to assess how its work and activities may help in fulfilling the three aims of the general duty.

In assessing how it carries out its activities in line with the general duty, an authority must fulfil the engagement obligations and have due regard to other relevant information. This assessment must be undertaken by 2 April 2012 and reviewed periodically.

As part of its specific duties on annual reporting, a listed body is required to publish its reasons for not collecting relevant information that it has identified, but does not hold.

Listed bodies must collect and publish detailed information on the profile of its employees (see **Employment information** below).

Employment information

A listed body in Wales must collect and publish on an annual basis the number of:

- people employed by the authority on 31 March each year by protected characteristic
- men and women employed, broken down by:
 - job
 - grade (where grading system in place)
 - pay
 - contract type (including permanent and fixed term contracts)
 - working pattern (including full time, part time and other flexible working patterns)
- people who have applied for jobs with the authority over the last year
- employees who have applied to change position within the authority, identifying how many were successful in their application and how many were not
- employees who have applied for training and how many succeeded in their application
- employees who completed the training
- employees involved in grievance procedures either as a complainant or as a person against whom a complaint was made
- employees subject to disciplinary procedures
- employees who have left an authority's employment.

All of the information above must be presented for each of the separate protected groups. The exception to this requirement is the data on job, grade, pay, contract type and working pattern, which must be broken down only in relation to women and men.

An authority may use its annual report to publish this employment information.

An authority cannot require any employee or applicant to provide any information in relation to their protected characteristics.

Pay differences

A listed body in Wales must:

- when drawing up equality objectives have due regard to the need to have objectives that address the causes of any difference in pay between employees who are from any protected group and those who are not, if it appears reasonably likely that the reason for the difference is related to the fact that those employees share a protected characteristic
- make appropriate arrangements to identify and collect information about differences in pay, and the causes of any such differences, between employees who have a protected characteristic and those who do not. This information must be published as appropriate.

Gender pay differences

A listed body in Wales must:

- publish an equality objective in relation to addressing any gender pay difference identified or publish reasons why it has not done so
- publish an action plan in respect of gender pay setting out:
 - any policy it has that relates to the need to address the causes of any gender pay difference
 - any gender pay equality objective it has published (including any revisions). Where it has identified a gender pay difference amongst its staff, but has not published an equality objective to address the causes of that pay difference, the action plan must set out the reasons for not doing so
 - a statement about the steps it has taken or intends to take to fulfil its gender pay objective and how long it expects to take.

Staff training

A listed body in Wales must make appropriate arrangements to:

- promote knowledge and understanding of the general duty and specific duties amongst its employees
- use any performance assessment procedures to identify and address training needs of employees in relation to the duties.

Strategic Equality Plan

A listed body in Wales must:

- draw up a Strategic Equality Plan by 2 April 2012.

This Strategic Equality Plan must include:

- a description of the authority
- its equality objectives (including pay objectives)
- the steps it has taken or intends to take to meet its objectives and in what timescale
- its arrangements to monitor progress on meeting its equality objectives and the effectiveness of the steps it is taking to meet those objectives
- its arrangements to identify and collect relevant equality information. This includes information gathered from engaging with protected groups about how the work of an authority may relate to the general duty. It also includes any information about pay differences related to a protected characteristic and the causes of these differences
- its arrangements for publishing relevant equality information that it holds and which it considers appropriate to publish
- its arrangements for:
 - assessing the likely impact on protected groups of any policies and practices that an authority is proposing, reviewing or revising
 - monitoring their actual and ongoing impact
 - publishing reports where an assessment shows a substantial impact (or likely impact) on an authority's ability to meet the general duty
- details of how an authority will promote knowledge and understanding of the general and specific duties among employees, including through performance assessment procedures to identify and address training needs
- an action plan relating to gender pay objectives (see Gender pay differences above).

It is open to an authority to include in its Strategic Equality Plan any other information relevant to meeting its general duty.

In preparing and revising its Strategic Equality Plan an authority is required to engage appropriately and have due regard to relevant equality information.

Procurement

When procuring works, goods or services from other organisations on the basis of a **relevant agreement, a listed body in Wales must:**

- have due regard to whether it would be appropriate for the award criteria for that contract to include considerations to help meet the general duty
- have due regard to whether it would be appropriate to stipulate conditions relating to the performance of the contract to help meet the three aims of the general duty.

Relevant agreements:

The specific duty on procurement only applies to contractual arrangements that are ‘relevant agreements’, which in this context means either the award of a ‘public contract’ or the conclusion of a ‘framework agreement’, both of which are regulated by the Public Sector Directive (Directive 2004/18/EC).

The Directive regulates arrangements that are on or above specified EU thresholds. The thresholds are revised every two years and different thresholds apply according to the nature of the public contract, particularly, whether the contract relates to works or to goods and services. Thresholds for goods or services differ according to the nature of contracting authority.

Public authorities covered by the general duty:

In any event, the requirement to meet the **general duty** applies to all procurement regardless of the value of the contract.

Even where, for example, the provision of a service is contracted out by a public authority to another organisation, the public authority remains responsible for meeting the general duty. The organisation actually carrying out the work or providing the goods or services may be exercising a public function. If so, it will itself be covered by the general duty to that extent.

Annual reporting

A listed body in Wales must:

- produce an annual report by 31 March each year.

The annual equality report must specifically set out:

- the steps the authority has taken to identify and collect relevant information
- how the authority has used this information in meeting the three aims of the general duty
- any reasons for not collecting relevant information
- a statement on the effectiveness of the authority's arrangements for identifying and collecting relevant information
- progress towards fulfilling each of the authority's equality objectives
- a statement on the effectiveness of the steps that the authority has taken to fulfil each of its equality objectives
- specified employment information, including information on training and pay (unless it has already published this information elsewhere).

An authority may include in its annual reports any other matter it feels is relevant to meeting the general duty and the specific duties.

Welsh Ministers' reporting

The Welsh Ministers are subject to all of the specific duties in the same way as other listed bodies in Wales.

In addition, Welsh Ministers have a specific duty to publish a report on how devolved public authorities in Wales are meeting their general duty. They are required to publish a report no later than 31 December 2014 and every four years thereafter. They are required to publish an interim report every two years.

These reports must set out an overview of the progress made by public authorities in Wales towards complying with the general duty and proposals to coordinate action by public authorities in Wales to bring about further progress on the general duty.

As a transition arrangement from the requirements of the previous disability equality duty, Welsh Ministers must also publish a report by 31 December 2011, setting out an overview of progress made by devolved public authorities in Wales towards meeting the general duty in respect of disability and proposals for the coordination of action.

Publishing

A listed body in Wales must publish in an accessible format:

- an annual equality report
- a Strategic Equality Plan (and any revisions)
- equality objectives including accompanying statements regarding timescales and actions to be taken
- its reasons for deciding not to publish an equality objective in respect of one or more protected characteristic. This must be done even where an authority has published an equality objective to address the causes of any pay difference related to that protected characteristic
- its reasons for deciding not to publish an equality objective to address the causes of gender pay difference if it has identified a difference in pay between men and women
- an action plan to address gender pay difference
- reports of its assessments of impact on protected groups of proposed policies and practices and any reviews of existing policies and practices, **where the impact is substantial**. Reports must include:
 - the purpose of the proposed policy or practice
 - a summary of the steps taken in carrying out the assessment
 - a summary of the information taken into account in the assessment
 - the results of the assessment
 - any decision taken
- specified employment information, including information on training and pay. (This may be published as part of the annual equality report)
- any relevant equality information (that it holds and which it considers appropriate to publish)

An authority may publish its annual report or its Strategic Equality Plan separately or within other documents.

When to publish

- **Equality objectives:** A listed body must publish its equality objectives by **2 April 2012**. A listed body may revise an equality objective at any time, but must publish the new version (or revisions) as soon as possible after making any changes
- **Strategic Equality Plan:** A listed body must publish its first Strategic Equality Plan by **2 April 2012**. A listed body may revise a Strategic Equality Plan at any time, but must publish the new version (or revisions) as soon as possible after making any changes
- **Equality information:** A listed body is required to make appropriate arrangements to ensure it periodically:
 - identifies relevant information it holds
 - identifies and collects relevant information it does not hold
 - publishes relevant information it holds, unless it would be inappropriate to do so.

This information must be published by **2 April 2012** and reviewed periodically. The information will include an assessment of things done by the authority that could contribute to its meeting the general duty.

- **Employment information:** An annual report may include the specified employment information in respect of employees and applicants as of 31 March each year. If the annual report does not contain that information, it will need to be published in other documentation on an **annual basis**
- **Annual equality reports** must be published by **31 March each year**.

Review

Listed bodies need to review:

- their equality objectives at least every four years
- their Strategic Equality Plan and any revisions. This must be done with due regard to relevant information held by the authority and to any other information that the authority considers would be likely to help in the review.

As a result of the review process an authority may choose to revise the arrangements, objectives or Strategic Equality Plans. If it does so, it must again publish these changes as soon as possible and in an accessible way.

A listed body in Wales must keep under review its arrangements for:

- monitoring the effectiveness of its steps, and its progress, towards fulfilling its equality objectives
- identifying, collecting and publishing relevant information
- assessing the impact of policies and practices being proposed or reviewed
- monitoring the impact of policies and practices
- promoting knowledge and understanding of the general and specific equality duties, using any performance assessment procedures to identify and address related training needs.

Accessibility

A listed body in Wales must:

- take all reasonable steps to ensure that any document or information it is required to publish to meet its general or specific equality duties is published in a form that is accessible to people from protected groups.

Contact us

Wales

3rd Floor
3 Callaghan Square
Cardiff CF10 5BT

Helpline:

Telephone
0845 604 8810

Textphone
0845 604 8820

Fax
0845 604 8830

England

Arndale House
The Arndale Centre
Manchester M4 3AQ

Helpline:

Telephone
0845 604 6610

Textphone
0845 604 6620

Fax
0845 604 6630

Scotland

The Optima Building
58 Robertson Street
Glasgow G2 8DU

Helpline:

Telephone
0845 604 55 10

Textphone
0845 604 5520

Fax
0845 604 5530

Helpline opening times:

Monday to Friday: 8am–6pm

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