

# Briefing on Public Sector Duties in Wales



WLGA • CLILC

## **Introduction**

The Equality Act 2010 is a key piece of legislation that has been introduced by the UK government. It replaces the previous 116 different equality statutes in one all encompassing statute. It simplifies and clarifies the role of public authorities as leaders in achieving equality improvements for their citizens and communities. Specific duties developed by the Welsh Government provide detailed and challenging requirements for authorities but an overall emphasis on 'due regard' leaves authorities with greater freedom to produce distinctive local solutions and greater accountability to their communities.

## **The General Duty**

Local authorities and other public bodies including schools 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.

These are essentially the aims of the Act. Having due regard for advancing these equality aims 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.

## **Who is protected under the Act?**

In actual fact everyone is. The Act sets out a new prescribed list of protected characteristics which replace what have traditionally been referred to as Equality Strands. These groups are protected through the general and specific duties of the Act. They cover the following protected characteristics:

Age  
Disability  
Gender reassignment  
marriage and civil partnership  
Pregnancy and maternity  
Race – including ethnic or national origin, colour or nationality  
Religion or belief  
Sex

## Sexual orientation

In the case of marriage and civil partnership, the general duty only applies in respect of the requirement to have due regard to the need to eliminate discrimination.

### Who is required to fulfil the Public Sector Duties in Wales?

- **The Welsh Government**
- **National Health Service:** including Local Health Board, NHS Trusts and Community Health Council.
- **Local government:** including county councils, and county borough councils, fire and rescue authorities and national park authorities.
- **Educational Bodies:** including the governing bodies of an educational establishment maintained by a Welsh local authority (Schools); further education institutions, higher education institutions, the Higher Education Funding Council for Wales or Cyngor Cyllido Addysg Uwch Cymru, the General Teaching Council for Wales or Cyngor Addysgu Cyffredinol Cymru, Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.
- **Other public Authorities:** a full list is available in Schedule 19 of the Act <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/Schedule-19>

### The Specific Duties in Wales

Each of the specific duties outlined in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 apply to Public Authorities listed in the act. Both local authorities and schools in Wales are listed as public authorities so the specific duties apply to both. There is one exception to this which is the specific duty for the Welsh Government to produce a Welsh Ministers' report on how devolved public authorities in Wales are meeting their general duty. The specific duties on local authorities and schools are summarised below:

#### Objectives and Strategic Equality Plans

Local authorities (corporately) and schools are required to develop and publish Equality Objectives and a Strategic Equality Plan by **2<sup>nd</sup> April 2012**. The purpose of the objectives and plans is to enable the delivery of measurable equality outcomes which improve the lives of individuals and communities. An example of an equality outcome could be that pupils are free from homophobic bullying, or services are accessible to all.

The local authority's equality objectives should be mainstreamed so that all services and departments contribute to equality improvement and manage their equality commitments as part and parcel of their general improvement

and customer service commitments. A school's equality objectives should also clearly link with its general work on improvement and inclusion and should be linked in with school improvement or development plans.

If a local authority or school chooses not to publish an equality objective covering each of the protected characteristics the authority is required to publish robust and justifiable reasons for this choice. However, many objectives will produce benefits for multiple protected groups so a thematic or function based approach can be more efficient. For example, a single objective to tackle identity based bullying may make more sense than five separate ones for anti-disabled, homophobic, racist, religious, and transphobic bullying.

### **Engagement**

Understanding the complexity of the differing needs of the citizen or pupil enables an organisation to shape service provision in the best way. Not all needs can be met, but a good understanding means an organisation is better placed to divert valuable resource into the right places, at the right times, and in the right ways. The duties require meaningful engagement when developing objectives and in completing assessments of impact.

As part of gathering relevant information, a local authorities and schools will need to engage appropriate people in assessing its work in relation to meeting the three aims of the general duty. Local authorities and schools must involve people who represent the interests of those who share one or more of the protected characteristics and have an interest in the way that the authority (or school) carries out its functions.

Ongoing work with School Councils and the Participation Standards can form part of this engagement but schools should also consider consulting with teaching and non-teaching staff, and members of the wider community outside of school, such as parents and local community groups. Best practice guidance is available for School Councils:

<http://www.wlga.gov.uk/english/education-publications/school-councils-in-wales-best-practice-guide/>

Further guidance on engagement activity is available as part of the WLGA's revised Equality Improvement Framework which is can be found at:  
<http://www.wlga.gov.uk/english/equality-improvement-framework-for-wales/>

### **Assessing Impact**

The role and scope of equality impact assessments has been clarified in the new duties. Assessments need to be completed when a policy or practice is being proposed or reviewed. This will include business planning, efficiency proposals and staff restructures. For schools this will mean School Development or Improvement Plans as well as specific policies which affect

pupils, parents or staff. Local authorities and schools must publish a report where an assessment finds a substantial impact. More information on conducting assessments is available below.

### **Equality Information**

Objectives, assessments of impact and Strategic Equality Plans need to be based on solid evidence and analysis. For these reasons there is a duty to collect a range of equality information to contribute to this evidence base. Local authorities and schools are required to consider what information they hold, and what further information they would need to collect, in order to demonstrate compliance with the General Duty. The type of evidence which should be considered may include information from local sources such as; School Census information, performance and attainment information, Pupil or Parent surveys, equality impact assessments, and information from Schools Councils, as well as national resources such as the Census or annual population survey and reports relating to issues affecting protected groups. Local authorities should attempt to create a picture of the needs of local communities that can be broken down by the protected characteristics and schools need to develop a similar picture of the needs of pupils.

### **Employment Information**

The new specific duties in Wales also require public authorities to collect and publish an extensive list of employment information on an annual basis. In most circumstances arrangements for gathering and analysing this information will be organised by the local authority although schools may be required to provide some information or to respond to recommendations from the local authority on addressing any issues that are identified. Where a school carries out its own human resources functions independently from the local authority it may not be covered by the local authority's arrangements. In all circumstances schools should check with their local authority if they are covered or if they will need to make their own arrangements.

### **Pay Differences**

Similarly, in most circumstances, local authorities will organise any necessary processes for compliance with the specific duty to eliminate unjustifiable pay differences. They are required to identify, collect and publish information on pay differences between employees with **any** protected characteristic and those who do not share that characteristic. There is also a requirement to consider this information when drawing up equality objectives. Local authorities must also publish an equality objective and action plan in relation to addressing any **gender** pay difference identified or publish reasons why it has not done so. This can be encompassed in the authority's Strategic Equality Plan but once again schools should check with their local authority if they are covered or if they will need to make their own arrangements.

### **Staff Training**

This duty expresses the need to promote knowledge and understanding of the general and specific duties amongst employees including the use of

performance assessment procedures, such as personal appraisals or personal development reviews, to identify and address training needs. Both local authorities and schools will need to consider this duty.

### **Procurement**

The general duty described above applies to all procurement regardless of the value of the contract. Even where provision of a service is contracted out the local authority or school remains responsible for meeting the general duty.

The specific duty applies when a public authority is procuring works, goods or services from other organisations on the basis of a 'relevant agreement'. Relevant agreements include the award of a 'public contract' or the conclusion of a 'framework agreement' which are regulated by Public Sector Directive (Directive 2004/18/EC) / Public Contracts Regulations (2006). The specific duty requires local authorities or schools to consider whether it would be appropriate to include specific stipulations relating to the general duty, in the award criteria and / or in conditions relating to the performance of a contract of this type. Examples could be; requiring tenders to provide specific evidence of their organisation's own equality policies and procedures; or requiring commissioned care homes to demonstrate ongoing monitoring of service user satisfaction broken down by protected characteristics. Local authorities and schools wishing to adopt best practice should consider applying such stipulations, wherever relevant, regardless of the value of the contract.

### **Reporting and Publishing**

Both local authorities and schools are required to publish an Annual Equality Report describing the steps taken to:

- identify and collect relevant information
- utilise this information in meeting the three aims of the general duty

Alongside this; the report should contain a statement on the effectiveness of the authority's arrangements for identifying and collecting information and reasons why any identified information has not been collected. It should also contain progress reports on the authority's Equality Objectives and may contain the employment information described above if this has not been published elsewhere. However, it should be noted that data protection legislation and guidance applies. Where a particular protected group has very low numbers then it may be necessary to suppress the information to prevent disclosure of personal identities.

### **Accessibility**

Local authorities and schools must ensure that any document or information published to meet its general or specific equality duties is available in a form that is accessible to people from protected groups.

## **Review**

Equality objectives must be reviewed at least every 4 years. Local authorities and schools are also required to keep under review other aspects of compliance with general and specific duties.

## **Bringing it all together**

The production and delivery of a good Strategic Equality Plan can bring together all of the necessary requirements and ensure that schools and local authorities deliver for all. The specific duties can seem prescriptive and process driven but the intention is to ensure that local authorities and schools have the tools available to identify, understand, and address issues of inequality. When considering potential objectives and action plans it may be necessary to consider improvements to internal processes to enable change but it is the delivery of changes in outcomes for pupils, parents and staff that is critical.