

# 1. The essential guide to the public sector equality duty

**Vol. 1 of 5**

Equality Act 2010 guidance for English public bodies  
(and non-devolved bodies in Scotland and Wales)



**Equality and  
Human Rights  
Commission**

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# 1. Introduction

## Context for this guide

This guide is one of a series written by the Equality and Human Rights Commission (the Commission) to explain how public authorities can meet the requirements of the Equality Act 2010 (the Act). The Act brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty comes into force on 6 April 2011.

There are five guides giving advice on the equality duty:

1. *The essential guide to the public sector equality duty*
2. *Equality analysis and the equality duty*
3. *Engagement and the equality duty*
4. *Equality objectives and the equality duty*
5. *Equality information and the equality duty.*

*The essential guide* provides the main overview of duty requirements. The other four documents provide additional practical advice and advice on best practice. Further information, including resources and a frequently asked questions section can be found on the equality duty section of the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

If you require this guide in an alternative format and/or language please contact our helpline to discuss your needs.

Equality and Human Rights Commission helpline – England  
FREEPOST RRLL-GHUX-CTRX  
Arndale House, Arndale Centre, Manchester, M4 3AQ  
Telephone: 0845 604 6610  
Textphone: 0845 604 6620  
Fax: 0845 604 6630

## **Legal status of this guide**

This guide is a practical explanation of what can be done to ensure authorities are meeting the equality 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 of course 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 as their key point of reference when seeking to clarify any legal issues. The Code is due to be published later in 2011.

Where there is an explicit legal requirement under the duty, it is indicated in this guide by the terms 'you must' or 'you are required to'. Other advice in this guide is clearly labelled as 'good practice' or as a recommendation, and is therefore not a legal requirement. Case law, however, has established certain principles on meeting the previous equality duties, and we have also indicated these by a reference to case law precedent or by explaining how certain steps may help you to comply with the duty or demonstrate compliance.

This guide is for public authorities in England and for those with non-devolved functions in Scotland and Wales. Separate Codes and guidance on the equality duty will be available from the Commission for public authorities in Scotland and in Wales. These reflect the differences in the specific duties for Scotland and Wales.

This guide was last updated on 12 January 2011. Check our website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com) to see if it has been replaced by a more recent version.

## **Aims of this guide**

The aim of this guide is to help public authorities subject to the equality duty to prepare for its implementation. It provides an overview of the equality duty.

## **Who this guide is for**

This guide has been developed primarily for those responsible for implementing the equality duty in public authorities subject to the duty. This includes, for example, chief executives, senior managers, heads of education institutions and chief constables. It should be read by relevant equality, business planning, procurement and human resources staff. It will also be helpful for staff involved in grant-making functions and for those who govern or scrutinise public authorities, like local councillors or board members.

The guide will also assist those who have an interest in the work of public authorities. This includes service users, voluntary sector bodies, trade unions, equality organisations and people with the protected characteristics (also referred to as 'protected groups'), as set out in the Act. We are planning to publish a guide for

voluntary and community sector bodies in Spring/Summer 2011, as the duty has a wide range of implications for their work, such as when providing services, applying for public funding or assessing the performance of public authorities on equality.

### **Content of this guide**

This guide provides an overview of the equality duty, including the general duty, the specific duties and who they apply to. It covers what you should do to meet the duty. This includes steps that are legally required as well as recommended actions. It covers: assessing relevance, using and publishing equality information, engagement, equality analysis, equality objectives, commissioning and procurement, and business planning and reporting. This is followed by an explanation of the regulatory framework and a short summary of the duty requirements. The Appendix includes the text of the legislation, and a glossary of legal terms.

## 2. Overview of the equality duty

The public sector equality duty consists of a general equality duty, which is set out in section 149 of the Equality Act 2010 itself, and specific duties which are imposed by secondary legislation. These can be found in Appendices 1 and 2 respectively. The general equality duty comes into force on 6 April 2011. The specific duties also come into force on this date but some of the requirements of those specific duties have different timeframes for implementation.

### **Key dates for the equality duty**

6 April 2011 general and specific duties come into force

31 July 2011 listed bodies (except schools) to publish equality information

31 December 2011 schools to publish equality information

6 April 2012 listed bodies (including schools) to publish objectives

### **Protected characteristics**

The new duty covers the following eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. People with those characteristics are referred to in this guide as protected groups. People who are considering, undergoing or have undergone gender reassignment are referred to in this guide as transsexual people.

The duty also covers marriage and civil partnership, but not for all aspects of the duty. Definitions of these characteristics are set out in the glossary later in this guide.

The previous duties covered race, disability and gender. Some aspects of the previous gender duty covered gender reassignment but the new duty now gives full coverage to this group.

### **Benefits of the equality duty**

Compliance with the general equality duty is a legal obligation, but it also makes good business sense. An organisation that is able to provide services to meet the diverse needs of its users should find that it carries out its core business more efficiently. A workforce that has a supportive working environment is more productive. Many organisations have also found it beneficial to draw on a broader range of talent and to better represent the community that they serve.

Compliance with the general equality duty should also result in better informed decision-making and policy development, and better policy outcomes. Overall, compliance can lead to services that are more appropriate to the user, and services that are more effective and cost-effective. This can lead to increased satisfaction with public services.



### 3. The general equality duty

The general equality duty is set out in the Equality Act 2010 (the Act). In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

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

These are sometimes referred to as the three aims or arms of the general equality duty. The Act helpfully explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered 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 from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.

Public authorities also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status. This means that the first arm of the duty applies to this characteristic but that the others arms (advancing equality and fostering good relations) do not apply.

When this guide refers to the general equality duty, it is referring to all three arms of the duty, as set out in the Equality Act 2010. The full text of this section of the Act is set out in the Appendix to this guide.

## **Purpose of the general equality duty**

The broad purpose of the equality duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities. If you do not consider how a function can affect different groups in different ways, it is unlikely to have the intended effect. This can contribute to greater inequality and poor outcomes.

The general equality duty therefore requires organisations to consider how they could positively contribute to the advancement of equality and good relations. It requires equality considerations to be reflected into the design of policies and the delivery of services, including internal policies, and for these issues to be kept under review.

## **Who the general equality duty covers**

**Schedule 19 bodies:** The general equality duty applies to the public authorities listed in Schedule 19 of the Equality Act. This includes many public authorities who were covered by the race, disability and gender equality duties. Examples of this include local authorities, education bodies (including schools), health bodies, police, fire and transport authorities, and government departments.

Most public authorities specified in Schedule 19 are covered by the general equality duty in relation to all of their functions. A small number of public authorities are listed as being covered by the general equality duty only in relation to certain functions. The Schedule makes clear who these bodies are.

**Bodies carrying out public functions:** The general equality duty also applies to other organisations who exercise public functions. This will include private bodies or voluntary organisations which are carrying out public functions on behalf of a public authority. The Equality Act defines a public function as a function of a public nature for the purposes of the Human Rights Act 1998. An example of this would be a private company running a prison on behalf of the government. The company would, however, only be covered by the general equality duty with regard to its public functions, but not for other work, like providing security services for a supermarket.

Whether or not an organisation is exercising a function of a public nature depends on a number of factors. These include (among others) whether it is publicly funded, if it is exercising powers assigned to it by statute, or if it is taking the place of central or local government. Other factors include: if it is providing a public service, if its structures and work are closely linked with the delegating state body, and if there is a close relationship between the private body and any public authority.

Whether a particular function comes within this definition is ultimately a matter for the courts to decide. If in doubt, you may find it useful to seek legal advice.

### **Exceptions**

There are limited exceptions to the application of the general equality duty relating to certain functions, such as immigration (in relation to race, religion, age and the advancement of equality) and judicial functions. Further information on this can be found in Schedule 18 to the Equality Act. 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 House of Commons and the Security Service, but further information on this can be found in Schedule 18. Another exception sets out that the duty on age does not apply to education and service provision in schools or in relation to children's homes.

In this guide, we use the term 'general duty body' to refer to organisations which are covered only by the general equality duty (whether they are named or described in Schedule 19, or covered when they carry out public functions).

### **Changes to the law**

Discrimination on the grounds of age in relation to goods and services is not unlawful until 2012, but discrimination in relation to age in employment is unlawful. It is important therefore, that public authorities and others keep abreast of implementation dates for these parts of the Act via the Commission's website.

## 4. The specific duties

The specific duties apply to all the public authorities that are listed in Schedule 1 to the regulations. This covers almost all of the public authorities listed in Schedule 19, but there are a small number of authorities included in Schedule 19 that are not subject to the specific duties. In this guide we use the term 'listed bodies' to refer to public authorities that are covered by the specific duties. Remember that all public authorities covered by the specific duties are covered by the general equality duty.

In summary, a public authority covered by the specific duties (listed body) is required to:

### **Publish information**

- **Publish sufficient information to demonstrate its compliance with the general equality duty across its functions.** This must be done by 31 July 2011 (and by 31 December 2011 for schools), and at least annually after that, from the first date of publication.

**This information must include**, in particular:

- **Information on the effect that its policies and practices have had** on people who share a relevant protected characteristic, to demonstrate the extent to which it furthered the aims of the general equality duty for its employees and for others with an interest in the way it performs its functions.

Public authorities with fewer than 150 employees are exempt from the requirement to publish data on their effects on their employees, but all public authorities have to publish the following information:

- **Evidence of analysis that they have undertaken** to establish whether their policies and practices have (or would) further the aims of the general equality duty.
- **Details of the information that they considered** in carrying out this analysis.
- **Details of engagement that they undertook** with people whom they consider to have an interest in furthering the aims of the general equality duty.

Before publishing this information, public authorities must consider any matters specified by a Minister of the Crown. (No such matters have yet been specified, but an example might be a Minister setting out ways of reporting particular types of information, to ensure comparability across a sector.)

## **Prepare and publish equality objectives**

**By 6 April 2012, prepare and publish:**

- **Objectives** that it reasonably thinks it should achieve to meet one or more aims of the general equality duty.
- **Details of the engagement that it undertook, in developing its objectives,** with people whom it considers to have an interest in furthering the aims of the general equality duty.

**It must also:**

- **Consider the information that it published before preparing its objectives.**
- **Ensure the objectives are specific and measurable.**
- **Set out how progress will be measured.**

### **Publication**

The information on equality objectives must be published at least every four years.

The above information and equality objectives must be published in a manner that is reasonably accessible to the public. It can be published within another document.

The full legal text of these regulations will be laid before Parliament and will be available on the Government Equalities Office (GEO) and the Commission's website.

### **Purpose of the specific duties**

The purpose of the specific duties is to help you to comply with the general equality duty, by improving the focus and transparency of your activity to meet the duty. Complying with the specific duties is a necessary part of complying with the general equality duty, but it is not sufficient in itself. Complying with the general equality duty requires having due regard to the need to achieve the aims of the duty across all of your functions.

## 5. Complying with the general and specific duties

The general equality duty is not prescriptive about the approach a public authority should take in ensuring it is having due regard to the need to advance the equality aims. The steps prescribed by the specific duties are limited to preparing and publishing equality objectives and publishing information. Beyond that, it is left up to public authorities to decide how they will go about ensuring compliance with the general equality duty.

The following principles from case law on the previous equality duties will, however, continue to apply for the new duty. In order to comply with the general equality duty, a public authority must ensure that:

- Those who exercise its functions (for example, its staff and leadership) are aware of the duty's requirements. Compliance involves 'a conscious approach and state of mind'.<sup>1</sup> This means that decision-makers must be fully aware of the implications of the duty when making decisions about their policies and practices.
- The duty is complied with 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.
- Consideration of the need to advance equality forms an integral part of the decision-making process. The duty must be exercised in such a way that it influences the final decision.
- Any third parties exercising public functions on its behalf are required to comply with the duty, and that they do so in practice. This is because the duty rests with the public authority even if they have delegated any functions to a third party.
- Regard is given to the need to advance equality when a policy is implemented and reviewed.

The section below sets out a suggested approach to compliance with the general equality duty which takes into account these principles. It covers:

- assessing relevance
- collecting and publishing equality information
- engagement
- equality analysis
- equality objectives
- commissioning and procurement, and
- business planning and reporting.

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<sup>1</sup> [1] *R (Brown) v Secretary of State for Work & Pensions* [2008] EWHC 3158 (Admin).

Some of these areas (such as equality objectives and publishing information) are only legal requirements for public authorities covered by the specific duties. However, public authorities covered only by the general equality duty may also find them to be helpful tools to use as a matter of good practice.

## 6. Assessing relevance

The general equality duty applies to public authorities, whatever their size. The way in which it is implemented, however, should be appropriate to the size of the authority and to the nature of its functions. The functions of a public authority include all of their powers and duties. This means everything that they are required to do as well as everything that they are allowed to do. Examples of this include: decisions about policies and procedures, budgetary decisions, public appointments, allocating resources, regulation, service provision and employment of staff. Other examples include: audit/inspection, statutory discretion, external communication, commissioning services, conferring a qualification, procuring goods, partnerships, funding external bodies, and management of premises.

To ensure that you are having due regard to the aims of the duty, you need to consider all of your functions in order to determine which of them are relevant to the aims of the duty. Some functions will be relevant to most or all protected groups, such as recruitment. Other functions may be relevant to one 'arm' of the duty but not to others, or to the needs of some protected groups but not to others. For example, your IT policies and practices will be relevant to the elimination of discrimination and the advancement of equality for disabled people but may not be for fostering good relations or for other groups.

You should remember that the duty continues to apply to you if you have contracted out or are thinking of contracting out a function. It also applies to the allocation (or withdrawal) of funding or grants to the voluntary sector.

Due regard does not necessarily mean that advancement of equality is less important when the numbers in a protected group are small. A very small number of your staff will be transsexual, for example, but the impact of harassment at work on them is likely to be very significant.

In practice this means that you are likely to focus more on functions that have the most effect on the public (or a section of them) or on your employees (or a section of them). Examples of this include a public-facing service like a local authority advice service, or staff training policies in a hospital.

There is no prescribed process for determining or documenting relevance. Staff who are familiar with an area of work would ideally be involved in assessing the relevance of that function to equality. When you have reviewed all of your functions, think about which of them are your main priorities for action. Although some areas may not be a priority at the start, it is worthwhile capturing them so that you can go back to them at another time.



Because your functions may change in the future, it is useful to keep your initial analysis for when you may have to review it. If you choose to publish it, it will help the public understand what your organisation does and which of your functions you think are relevant.

### **Some tips**

- If you have little qualitative or quantitative evidence about the effect of a function, engagement with protected groups can be helpful.
- Assessing relevance is the first step in a means of helping you to prioritise your efforts to comply with the general equality duty. It is not an end in itself.

## 7. Equality information

Publishing and using equality information is a requirement under the specific duties. It will help you to demonstrate compliance, concentrate your efforts on the most important equality issues and enable you to monitor progress. This will help you to comply with the general equality duty. It will also help employees and service users see how you are performing on equality.

### What the duty requires

**Public authorities covered only by the general equality duty:** Although there is no express requirement in the general equality duty to collect and use equality information across all protected groups, it is essential that all public authorities understand the effect of their policies and practices, to assist them to comply with the general equality duty. Public authorities can choose to publish equality information as a matter of best practice.

**Public authorities also covered by the specific duties:** Listed bodies must publish sufficient information to demonstrate their compliance with the general equality duty. This must be done by 31 July 2011 (and by 31 December 2011 for schools), and at least annually after that.

The information to be published must include:

- information on the effect that their policies and practices have had on employees, service users and others from the protected groups
- evidence of the analysis undertaken to establish whether their policies and practices will (or have) furthered the three equality aims in the general equality duty
- details of the information used in that analysis, and
- details of engagement with people with an interest in the aims of the duty.

Public authorities with fewer than 150 employees are not required to publish information on the effect of their policies and practices on their workforce. They must remember, however, that they will still need to have workforce information in order to meet their obligation to prepare and publish objectives, and to carry out equality analysis of workforce-related policies and practices, for example in relation to promotion or pay gaps. They will also have to publish that analysis and the information used in the analysis. The information must be available in a manner that is reasonably accessible to the public. The above information can be published within another document or separately.

**The requirement to publish information at least annually does not mean that you need to wait until the end of the year to publish individual sets of information. It is good practice to publish information as soon as it is available in order to keep it up to date.**

Monitoring and demonstrating progress may be easier if you publish information at regular intervals and in a format that allows comparability with previous information.

We recommend as good practice that equality information is published in a way that is consistent with the Public Data Principles set out by the Public Sector Transparency Board.

Accessibility of information to the public is important. Although putting information on a website may be the easiest approach, it is important to remember that internet usage is not universal. You should also ensure the information is presented in a way that is easy to use. This may involve providing narrative information or a summary in addition to raw data. You can find useful guidance on website accessibility and a BSI standard for website commissioners, at the online Website Accessibility Initiative: <http://www.w3.org/WAI/>.

### **What is new**

If you are covered by the general equality duty, you need to extend your previous information collection and use from race, gender (including gender reassignment) and disability to include also pregnancy and maternity, religion or belief, age and sexual orientation. The duty also requires you to eliminate discrimination in relation to marriage and civil partnerships.. Some authorities will already have experience of collecting and using information across all of these protected groups, but for many organisations this will be new.

The requirement for listed bodies covered by the specific duties to publish equality information is new.

There is no longer an obligation for listed bodies to publish an equality scheme.

### **Benefits of equality information**

By gathering and using equality information, you will be better able to:

- understand the effect on equality of your current and proposed policies, practices and decisions
- identify what the key priority equality issues are for your organisation
- set the most appropriate equality objectives and measure progress against them
- demonstrate compliance with the duty, and
- demonstrate to the public how you are performing and what you are achieving.

## **Suggested steps**

The following steps may help you to plan your information collection and publication:

**Step 1:** Where a function has been identified as relevant to the equality duty, consider what equality information you already have. This includes both qualitative and quantitative information.

**Step 2:** Collate and publish this information by 31 July 2011 (or by 31 December 2011 for schools). This is a legal requirement.

**Step 3:** Identify any relevant information gaps. Where hard evidence does not exist, use anecdotal evidence to help you identify what further information you may need to ensure your evidence base is robust and fit for purpose. For example, many equality issues are self-evident from employment monitoring, complaints, staff knowledge, tribunal cases, customer feedback or lobbying from voluntary bodies.

**Step 4:** Take steps to fill any information gaps. Remember that as well as in-house information, you can draw on local, regional and national research. This includes information from equality organisations such as Stonewall, the Fawcett Society, Press for Change, Age UK, RADAR, the Runnymede Trust and the Commission. You may also wish to consider if engagement with stakeholders and protected groups would assist.

**Step 5:** Where it is not possible to fill information gaps in the short term, publish your plans and timescale for filling them.

## **What is ‘sufficient information to demonstrate compliance’?**

The specific duties require listed bodies to publish information to demonstrate that they have complied with the general equality duty across their functions. All such bodies must publish sufficient information to demonstrate how they are meeting the general duty for service users. Listed bodies with 150 staff or more also need to publish that information in relation to their employees.

If you employ fewer than 150 staff, you do not need to publish that information in relation to your workforce, but will need to collect equality information related to your workforce to enable you to set objectives and to undertake equality analysis of your employment policies and practices. You are under an obligation to publish this analysis, setting out how they further the aims of the duty. Any information you used in that analysis also has to be published.

So, depending on how the duty applies to your organisation’s employment function,, your aim should be to provide as complete a picture as possible across all three aims of the duty, covering your relevant functions and in relation to all of the

protected characteristics. In practice, you will need to publish enough information so that the Commission can make an assessment of whether you are meeting the requirements of the general duty and the specific duties across your functions. The information will also enable members of the public to assess your organisation's performance on equality.

The Commission would normally expect to see the following:

- For bodies with 150 staff or more:
  - the race, disability, gender, age breakdown and distribution of your workforce
  - indication of likely representation on sexual orientation and religion or belief, provided that no individuals can be identified as a result
  - an indication of any issues for transsexual staff, based on your engagement with transsexual staff or voluntary groups
  - gender pay gap information.
- Given their size it may be proportionate for larger bodies such as county and city councils and Whitehall departments, to provide staff information disaggregated by protected group on:
  - success rates of job applicants
  - take-up of training opportunities
  - applications for promotion and success rates
  - applications for flexible working and success rates
  - return-to-work rates after maternity leave
  - grievance and dismissal
  - other reasons for termination like redundancy and retirement
  - length of service/time on pay grade, and
  - pay gap information for other protected groups.

If you employ fewer than 150 staff, the minimum that we would expect you to publish to demonstrate compliance would be the legal requirement, which is:

- analysis of your employment policies and practices that you have undertaken setting out how they further the aims of the duty
- any information you used in that analysis, and
- details of any engagement with interested parties on workforce equality when you undertook the analysis.

If you have limited experience of workforce monitoring, it is important to make a start by publishing the information that you already have and to be open about what improvements to the information you would like to see over time. It is also possible to get training on this area.

In relation to services, the Commission would normally expect to see the information that you routinely publish broken down by protected group. This will obviously depend on what services you deliver but would usually include:

- performance information relating to functions relevant to furthering the aims of the duty, especially around outcomes (for example attainment and recovery rates)
- access to services
- satisfaction with services, and
- complaints (broken down by protected group, with an indication of reasons for complaints).

Public bodies already hold and publish a vast range of information regarding their services so it is likely that you already have a lot of relevant information. This includes attainment levels, patient satisfaction surveys, consultation responses, and feedback from stakeholder forums, for example. There are likely to be services or protected groups for which you do not have information, including information about potential service users and the barriers they face. Engagement with protected groups can help you to fill these gaps, and it can give you an idea of how accurate your information is. This means whether or not there are any differences between how you think you are performing, and the experiences of protected groups.

There is no need to wait until July 2011 (December 2011 for schools) if you have relevant information available for publication. You may also find it helpful to publish the action you are taking to address any information gaps, to ensure that your stakeholders are clear about what you are trying to achieve. This includes how gaps will be filled and who is responsible for doing this. Remember that after you have set your equality objectives, you will be expected to publish information that enables both you and the public to measure how successful you have been in meeting them. We would expect you to do this at least annually.

In addition, remember that you must also publish:

- equality analysis to establish whether your policies and practices further the aims of the duty
- any information you considered when undertaking that analysis
- details of engagement with interested parties concerning fulfilling the equality duty, and
- your equality objectives (no later than 6 April 2012).

These obligations are explored in more detail in the supplementary guidance on equality information.

Whatever you to publish, make sure that you are meeting the requirements of the Data Protection Act and protecting your employees' and service users' rights to confidentiality. Furthermore, the Gender Recognition Act 2004 states that for employers, where someone holds a gender recognition certificate, they must be treated according to their acquired gender and it is a criminal offence to disclose the fact that they have changed their sex. A transsexual person may consent to you disclosing the information if they decide it is in their interests to do so. Such consent, however, must be explicit. It may not be assumed.

### **Obtaining sensitive information**

Public authorities covered by the previous equality duties may already monitor the composition of their staff and service users in relation to disability, race and sex. Most will also hold information about the age of their staff, and many will collect information about the age of their service users. Other information can be more sensitive or difficult to obtain.

Because the general equality duty requires you to analyse the effect of your organisation's functions on all protected groups, you will not be able to meet the duty unless you have usable and sufficient information. This includes where information collection can be particularly sensitive.

If you have not yet achieved a culture where employees or service users are ready to be asked about their sexual orientation, gender identity or religion or belief, take steps to engender a culture of trust in which this information could be collected. There may be other means of identifying the issues faced. Analysing national or local research, and engagement with people from those groups, will help you to identify potential issues of concern.

If you do collect this information, explain why the information is being collected, what it will be used for, and how privacy will be protected. The purpose of information-gathering (as well as any legal requirements around storage or dissemination) should be explained to the staff responsible for collection. In the employment context, consider engaging your staff about the best way to do this, or working with trade unions to help increase your return rates and create a culture of trust.

Collecting information with regards to gender reassignment is a particularly sensitive area and opinion continues to be divided on this issue. People could be very negatively affected by disclosure of their status, but without information it may be difficult to monitor the impact of policies and practices on transsexual people.

## **Some reminders**

- Collecting equality information is not an end in itself – it should be analysed, interpreted and used to advance equality and good relations.
- Equality information can help to identify barriers and discrepancies between groups so you can plan remedial action. It can tell you where you are making progress on equality and where action is most needed.
- Your equality information is essential support to other duty obligations (equality analysis, engagement, objectives and measuring progress).
- Equality information can help you to base your priorities on sound information rather than assumptions or stereotypes. It can help you to use your resources more efficiently, by improving the design of your services.
- Whatever you publish, you need to meet the requirements of the Data Protection Act and protect people's right to confidentiality.
- Try to ensure that your information systems allow cross reference by different characteristics, such as race and gender or age and religion.

## **Further information**

The Commission has issued a guide to *Equality information and the equality duty*.



## 8. Engagement

### What the duty requires

**Public authorities covered only by the general equality duty:** Although there is no specific requirement under the general duty to engage with the public, the general duty to have due regard requires public authorities to have an adequate evidence base for its decision-making, and engagement can assist with developing that evidence base.

**Public authorities also covered by the specific duties:** The specific duties confirm the need to undertake engagement by saying that listed bodies must publish information about the engagement they have undertaken with people with an interest in their equality performance, including while developing their objectives. The specific duties do not set out how or when engagement should be undertaken.

### What is new

Under previous duties there were various requirements to consult and involve people from different protected groups. The new duty uses the term 'engagement'. Engagement is a broad term which covers a range of different activities, from formal public consultations to direct engagement with people from protected groups in designing and delivering services. Engagement can tell you where you are successful in promoting equality and where action is most needed. It is particularly useful where there are information gaps.

People with an interest in your equality performance will include all the protected groups (race, disability, sex, age, gender reassignment, pregnancy and maternity, religion or belief, sexual orientation, marriage and civil partnership). Some authorities will already have experience of working with all of these groups.

You will already have experience of consultation and involvement from the race, disability and gender duties. Use this experience to help you plan and undertake your engagement with the protected groups under the equality duty.

### Benefits of engagement

Engagement will help you to perform the following tasks, all of which will in turn help you to meet the general equality duty:

- Identifying particular needs, patterns of disadvantage and poor relations between groups.
- Understanding the reasons for disadvantage, low participation rates and poor relations.
- Designing initiatives to meet these needs and overcome these barriers.

- Identifying opportunities to promote equality and foster good relations.
- Helping to fill gaps in equality information.
- Determining priorities.
- Identifying the relevance of functions to equality.
- Analysing the equality impact of particular programmes, policies or proposals.
- Monitoring and evaluating initiatives, policies and programmes.
- Checking the quality, relevance and comprehensiveness of your information.

If engagement is done well, it can help to improve the design and delivery of services, and the policies and practices affecting your staff. It can help increase trust in public authorities by promoting transparency and be a mechanism by which public authorities can be held to account by services users. It can lead to efficiency gains by improving service design at the planning stages. For example, public bodies who listen to the expertise and experience of disabled people may avoid costly changes to services or buildings at a later stage, as well as legal action. It can also help to identify whether more favourable treatment is necessary in order to meet particular needs. Good engagement can mean more sustainable services, as services that better meet the needs of users are likely to be more effective in the longer term.

Remember that public authorities are obliged to make reasonable adjustments for disabled people, including during engagement.

## **Some tips**

- Take an approach that is proportionate to your size and resources, and to the relevance of the issue to equality when deciding who to engage with and what methods to use.
- Establish what up-to-date information is already available and find out where your information gaps are before you plan your engagement. Look at local and national research, monitoring data and past consultations.
- Engagement only delivers benefits when it is done well so it should be clearly structured. Be clear about what you hope to achieve and about where you have scope to make any changes.
- Engagement can only be successful if it is adequately resourced and if it is accessible to enable a wide range of people to participate. Take steps to respect confidentiality and provide a safe environment.
- Successful engagement is influential and transparent. This requires reporting on the results of engagement, including an explanation of why certain points have not been taken on board. Good engagement produces tangible results for the authority and for participants.
- Consider undertaking joint engagement with other authorities in the same geographical or service area. This can save resources and prevent stakeholders

from becoming overstretched. It can encourage a more joined-up approach to equality.

- Build long-term relationships of trust with equality or voluntary sector organisations, as well as trade unions. This may involve formalising links with particular organisations or setting up a representative forum.
- Be mindful of diversity within protected groups and of the multiple barriers that many people face. Don't limit your engagement to only meeting with representative bodies.

### **Further information**

The Commission has issued a guide on *Engagement and the equality duty* which can be found on our website.

## 9. Equality analysis

Public authorities are responsible for making a wide range of decisions. This varies from decisions about over-arching policies and setting budgets to routine decisions which affect individuals. Equality analysis involves looking at your equality information and the outcome of your engagement in order to understand the effect or potential effect of your decisions on different protected groups. It can help you to identify practical steps to tackle any negative effects or discrimination, and to advance equality.

### What the duty requires

**Public authorities covered only by the general equality duty:** The general equality duty does not specify how public authorities should analyse the effect of their policies and practices on equality, but doing so is an important part of complying with the general equality duty. It is up to each organisation to choose the most effective approach for them. Case law on the meaning of the old general equality duties still has relevance and they make it clear that the analysis has to be undertaken before making the relevant policy decision, including consideration as to whether any detrimental impact can be mitigated, and that the courts would expect a written record to demonstrate that due regard had been given.

**Public authorities also covered by the specific duties:** Listed bodies must publish evidence of the analysis that they undertook to analyse the effect of their policies or practices, and details of the information that they considered in doing that analysis.

The equality analysis requirement includes new policies and existing policies. To make the task of analysing existing policies more achievable, it is good practice to set out a timetable for analysing for equality and good relations the most relevant of your existing policies. You should already have done this for the previous duties but will have to analyse the effect on the new protected groups.

### What is new

Under previous duties you were required to set out how you would assess the impact of policies and practices on race, disability and gender equality, including gender reassignment. The requirement to *set out how* you will assess no longer applies, but under the new equality duty you are required to analyse the effect of your policies and practices and how they further the equality aims, and to publish the results of that analysis and the information you used.

The change in terminology from 'impact assessment' to 'analysis of the effects' is intended to focus more attention on the quality of the analysis and how it is used in decision-making, and less on the production of a document.

You need to analyse the effect for all of the protected characteristics, and all aims of the duty, with the following exceptions.

- In relation to marriage and civil partnership, the analysis applies only to the elimination of discrimination.
- Because the duty does not apply to age discrimination in education and service provision in schools, or in relation to children's homes, analysis for age is not required in these situations..

The duty does not set out a particular process for equality analysis that all public authorities are expected to follow. This means that you can choose whether to extend an existing impact assessment approach to the new protected characteristics, or to develop a new approach for your organisation. If you decide to adapt your existing approach, you may want to review your process to ensure that it is effective and meets the new requirements.

Remember to link your work on equality analysis to your other equality work. For example, you can use information gathered in your analysis when reviewing functions and when planning engagement. The issues raised by your analysis may also be valuable when setting your objectives.

### **What this means for you**

Case law has established that you should analyse the potential effect on equality when you start to develop or review a policy and continue throughout, informing policy design and final decision-making. The Commission has produced a guide to equality analysis and the equality duty which sets out a suggested approach to how you can do this.

Whatever approach you take to equality analysis, case law has established that you should keep an accurate, dated, written record of the steps you have taken to analyse the impact on equality. This will help you to check whether you are complying with the duty and it will be useful if your decisions are challenged. You may want to use your initial analysis as the basis of engagement with protected groups. Both of these approaches will help you to improve transparency and accountability.

## Some tips

- Analysis needs to be done by the people developing the policy, not by one person or specialist team. Make sure your colleagues know their responsibilities, know where to get the data they need and have the necessary skills.
- Policies also include unwritten policies which represent custom and practice.
- Like previous duties, the equality duty means taking a proportionate approach to equality analysis. This means taking an approach that is suitable to the size, resources and functions of your organisation, and the relevance of the policy to equality and good relations. If equality analysis is well integrated into the policymaking cycle, it can help create policies that work for the whole community.
- Equality analysis early on avoids wasting resources when a policy needs to be changed because it discriminates against certain groups.
- Where a policy seems likely to be relevant to certain groups but there is no reliable data, engagement can help you understand the effect it might have.
- The policy and service areas that will need the most detailed analysis will usually be within your most relevant functions.
- Some policies or practices may not be relevant to equality. You should however, keep a note of how you decided that they were not relevant.
- You may find it useful to use your existing impact assessment methods if this approach has been integrated into your day-to-day policymaking, business planning and governance arrangements. You will of course need to expand it to the new protected groups.
- Using an agreed methodology for your analysis will help to build consistency into your work and enable you to compare progress made over time.
- Base your analysis on clear information rather than on stereotypes or untested assumptions about particular groups.
- If you are working in partnership with other public authorities, it can be helpful to work together to identify policies that will need to be analysed.
- Analyse the effect on equality of any decisions you make about commissioning out any particular functions.
- Be mindful of the implications of policies which require devolved decision-making as the effects on staff or service users may vary.

## Further information

The Commission has produced a guide *Equality analysis and the equality duty* which is available on our website.

## 10. Equality objectives

### What is required

**Public authorities covered only by the general equality duty:** The general equality duty does not require these authorities to set equality objectives.

**Public authorities also covered by the specific duties:** Listed bodies (including schools) must prepare and publish equality objectives by 6 April 2012, and at least every four years after that. They must be specific and measurable, and they should set out how progress towards the objectives will be measured. Listed bodies must publish details of their engagement in developing the equality objectives, also every four years. They will need to have considered equality information they have published, and undertaken engagement, before preparing and publishing these objectives. Objectives must be published in a reasonably accessible format, either as an individual document or as part of another report.

### What is new

If you are a listed body, your equality objectives should be reviewed and revised at least every four years (although you can choose to publish them in a shorter timeframe if you wish, for example if it fits better with your business-planning mechanisms). There is no longer a requirement to develop or publish an equality scheme, but you can choose to present your objectives within a similar document if you have found it to be a useful approach for organising your equality information and for communicating your plans to stakeholders, provided you meet all the other publication requirements.

### What this means for you

Equality objectives are a requirement for listed bodies under the specific duties and they are there to help you to meet your obligations under the general equality duty. Remember, however, that they are not enough on their own to enable you to meet the general equality duty.

Your objectives should be challenging but achievable. Many of the issues facing protected groups are deep-seated and difficult, and it may take time to fully address these. When choosing your priorities, consider all three aims of the duty across all of your functions. This means looking at issues of harassment, discrimination, equality and good relations across all of your policy, service delivery and employment functions, including any functions that you contract out.

When you set your objectives, you are required to take into account the information that you have published. You may also wish to use national information or

information published by equality organisations. You should develop your objectives on the basis of evidence of the key issues facing the protected groups, including through engagement with them about your objectives. Your review of functions, engagement and equality analysis can also help you to decide on the areas where most effort is needed or you can have the most impact on equality.

The purpose of the equality duty is to bring about positive change. It is therefore important to focus on achieving real equality and good relations outcomes when you develop your objectives. This means identifiable improvements in policies, in the way services and functions are delivered, or in the outcomes for different employees and service users. You are required to ensure that your objectives are specific and measurable and you must set out how you will measure progress. Objectives and the progress made towards them are likely to be an important piece of evidence to demonstrate your compliance with the equality duty and to help the public assess your equality performance. It is therefore good practice for your senior management team and governing body to be involved in the choice of equality objectives and to receive regular updates about the progress you have made towards your objectives. They will need this information as part of the governance and leadership of the organisation.

### **Some tips**

- When setting your objectives, engaging with people from the protected groups can help you to prioritise the most significant equality issues.
- When prioritising your objectives, look for areas where the need for action is greatest rather than focusing on areas you are more familiar with.
- 'Measurable' does not mean that you cannot use qualitative information to assess progress. For example, you can use staff surveys, complaint letters or feedback forms to measure success.
- Consider setting a timetable for reviewing and setting new objectives over your agreed reporting period (for example, three years or four years).
- Reviewing progress is essential to enable you to revise your objectives. Engaging with protected groups and other interested stakeholders can be a valuable tool for this.

### **Further information**

The Commission has produced a guide *Objectives and the equality duty*, which is available on our website.



## 11. Commissioning and procurement

The public sector spends over £220 billion per year on contracts with external organisations, amounting to 15% of GDP.<sup>2</sup> When undertaking procurement you must have due regard to equality considerations in order to meet your obligations under the duty. In order to comply with procurement law, when doing this you must consider the extent to which equality considerations are relevant and proportionate to the subject matter of the contract.

### What is required

**Public authorities covered by the general equality duty:** The general equality duty will apply to procurement and commissioning by Schedule 19 authorities. As explained in Section 3 of this guide, the general equality duty also applies to some bodies which are carrying out public functions, in relation to those functions only (i.e. 'general duty bodies' who are not listed in Schedule 19). For those authorities, the general equality duty will also apply to their procurement and commissioning, in so far as procurement and commissioning are part of the exercise of those public functions.

The public authority is legally responsible for complying with the general equality duty in its timing and undertaking of procurement. Where functions are contracted out, the external contractor may themselves be subject to the general equality duty in carrying out a public function. Where the duty does not directly apply to the contractor, the commissioning public authority may need to include obligations relating to equality in the contract relating to the service, in order to comply with its obligations under the duty. The requirement to comply with the general equality duty applies to all procurement regardless of the value; the value of the contract may, however, impact upon the relevance and proportionality of equality considerations.

**Public authorities also covered by the specific duties:** There is no explicit specific duty relating to procurement. Public authorities covered by the specific duties will, however, have to ensure that they meet those duties in relation to all of their functions, including any that are contracted out.

### What is new

Under previous duties, public authorities were required to pay due regard to equality in relation to disability, gender and race in all their functions, including in any functions that were carried out by external suppliers, where relevant. You now need to have due regard to the new protected groups as well. Some organisations will already be doing this as a matter of good practice, but for some this will be new.

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<sup>2</sup> *Equality Act 2010: The public sector equality duty: Promoting equality through transparency*, GEO 2010.

## **What is staying the same**

As before, whenever one of your functions is carried out by an external supplier, you remain responsible for meeting the equality duty. This means building equality considerations into the appropriate stages of your commissioning and procurement processes, where relevant and proportionate. This is also the case for contracts let under private finance initiatives. Staff involved in commissioning will need to have a good understanding of the equality duty.

Organisations that are carrying out public functions on behalf of a public authority are also subject to the general equality duty when they carry out commissioning and procurement in the exercise of those public functions. Where an external body undertakes public functions, remind them of their responsibilities under the general equality duty, bring the relevant sections of the Code of Practice to their attention and assist them to understand their obligations.

## **What this means for you**

The general duty obligation to analyse the effect of policies and practices will include analysis of your procurement and commissioning policies, if relevant to the aims of the duty. The first step public authorities are therefore advised to take, to help them meet the duty, is to embed equality considerations into their corporate strategies or policies on commissioning and procurement. This will ensure that relevant equality issues are taken into account when undertaking these functions. Remember that it is important to take equality considerations into account when you are de-commissioning services, as well as when you are commissioning new ones.

Before you design and commission a service, it is helpful to understand the needs of the service users, including any needs due to having a particular characteristic. This is important for effective commissioning, as well as for meeting the general equality duty. This will often involve engaging with existing or potential service users and using equality information.

If you have decided that a service should be contracted out, take steps to determine the relevance of equality matters to the service to be delivered. You can then decide to what extent, if any, relevant equality matters should be incorporated into the various stages of the procurement process, taking into account proportionality.

The specific duty on information requires listed bodies to publish information about their compliance with the duty across all of their functions, including contracted-out functions. Where a function is contracted out, you may therefore need to specify in the tender documentation what information you need the contractor to collect and report on, in order for you meet that obligation. For example, you might need to monitor health outcomes for people with learning disabilities or take-up of ante-natal services by ethnic minority women, in relation to contracted-out health services.

Where relevant and proportionate, it may be useful for the requirement specification to set out what equality outcomes you require the contractor to achieve. For example, how the goods, service or works that are being procured will meet the needs of protected groups, or how take-up will be increased for different groups that may face barriers in accessing the service. The contractor could be required to monitor, and report on how it is meeting these outcomes.

As a minimum, include contract conditions which:

- Prohibit the contractor from unlawfully discriminating under the Equality Act
- Require them to take all reasonable steps to ensure that staff, suppliers and subcontractors meet their obligations under the Equality Act.

Whilst these just require the contractor to act lawfully, they remind contractors of their obligations and they provide grounds for enforcement against breach of contract if required. The Office of Government Commerce has published standard model terms and conditions which include a clause on complying with relevant equality legislation. These are being updated, but can be found on their website. [www.ogc.gov.uk/Model\\_terms\\_and\\_conditions\\_for\\_goods\\_and\\_services.asp](http://www.ogc.gov.uk/Model_terms_and_conditions_for_goods_and_services.asp).

When advertising the contract, set out how the ability to meet any relevant equality-related matters will be assessed in the competition. Engaging with potential suppliers can help them to better understand your equality-related requirements and could encourage a diverse range of suppliers to tender for the contract. You must not, however, give any potential supplier an advantage over another.

In some circumstances, you may decide it is appropriate to exercise your discretion, in accordance with Regulation 23(4) of the Public Contracts Regulations 2006, to exclude a prospective tenderer if they have been found by a court or tribunal to have breached equality law, and if they are unable to provide evidence of how they have taken remedial steps to prevent this occurring again in the future. Any decision to exclude must be proportionate. This means that public authorities would need to carefully consider all of the circumstances, for example, the extent to which equality is relevant to the procurement in question and whether such a breach is likely to adversely affect the goods, service or works to be delivered. Public authorities may wish to seek legal advice in these circumstances before making any decision to exclude.

You will need to review the contractor's performance on any equality conditions in the contract and may find it helpful to schedule regular meetings. Act promptly when you become aware of poor or non performance regarding the equality requirements of a contract, as you may be liable under the general equality duty. Where issues of poor or non-compliance become apparent, public authorities may want to seek to identify the reasons for it and work with the contractor to rectify the problem.

## **Benefits of embedding equality**

Integrating equality into your commissioning work can improve your services by making them more appropriate and responsive to the needs of different groups. This can lead to better value for money. Good equality practice makes good business sense for private and for voluntary organisations. It makes them better employers, it improves their ability to meet the needs of potential customers, and it can help them to be better placed to deliver public services.

## **Further information**

The Commission plans to publish a guide on commissioning and the equality duty in Spring/Summer 2011.

## 12. Business planning and reporting

### What is required

**Public authorities covered only by the general equality duty:** The essence of the duty is the obligation to have due regard to the need to achieve the three equality aims in carrying out your functions. This should be reflected in how you plan. The reporting requirements in relation to the duty are set out in the specific duties

**Public authorities also covered by the specific duties:** Listed bodies are required to publish objectives and the means by which they will be measured by 6 April 2012, and then at least every four years after that. This information can be published as an individual document or as part of another report. It needs to be presented in a format that is reasonably accessible.

You also have to publish information on your compliance with the duty at least once a year and this should include information on progress on your objectives.

### What is new

Under the gender equality duty you were required to review and revise your objectives every three years, but under the equality duty this needs to be done at least every four years. You can choose to publish your new objectives within a shorter timeframe if this helps you to align them with your business-planning processes.

### What this means for you

It is good practice to integrate the general equality duty into all of your business-planning processes and this will help you to meet the duty. This includes when you draw up your budgets and develop and approve your plans. Having clear equality objectives in your business plan or annual work plan, measuring the progress made, and reporting against them in your annual report can improve staff ownership and increase transparency and accountability to the public.

Clear leadership from senior management is crucial to ensuring that you meet the duty. This involves taking responsibility for compliance with the duty, taking account of equality analysis when making decisions, taking the duty into account in strategic planning, building it into partnership working, informing and reminding staff about the duty, and designating clear staff roles for implementation.

It can involve allocating resources for advancing equality, including equality targets in staff appraisals, requiring updates on action taken and outcomes from the duty, and promoting the benefits of the duty in public communication. It is good practice to

give operational responsibility for coordinating work on the equality duty to staff at a senior level.

Depending on the size of your authority, you may already employ staff with equality expertise or you may choose to assign different tasks to staff in various roles. Whichever model you adopt, it is poor practice to rely only on a few staff to implement the duty. The duty involves generating a culture change across your organisation where equality issues are viewed as a matter for everyone. Case law has established that public bodies need to ensure their staff members are aware of their obligations. Training covering the requirements of the equality duty and the implications for their role would be beneficial for staff from a range of functions.

Government departments' functions include influencing their wider sector so they need to have due regard to the aims of the general duty in the leadership they offer, especially for areas that have high relevance to equality and good relations. This could include:

- providing information to the sector on the key equality and good relations challenges nationally
- ensuring equality and good relations are factored into any relevant guidance issued to the sector, and
- ensuring national data collection adequately incorporates issues of equality and good relations.

Departments can also use their influence to promote the equality duty across the public sector through their inspection frameworks, research, commissioning, service frameworks, budget setting and sponsorship of non-departmental public bodies.

#### **The duty at a glance for senior managers: getting started**

- Is your organisation covered by the general or the specific duties? (See Sections 3 and 4.)
- If you are covered by the specific duties, do you have 150 employees or more?
- Have you already undertaken any engagement or information collection on the new protected groups?
- Do staff and leadership understand their obligations?
- Can you undertake any of your equality work with other public authorities?
- Are you aware of the key dates for the duty? (See Section 2.)
- Who will be accountable for the duty within your organisation?
- How will you build the duty into your decision-making?

## 13. Regulatory framework

### Government Equalities Office

The Government Equalities Office (GEO) is responsible for the legislative framework for equality in Great Britain. This is contained mainly in the Equality Act 2010.

### Equality and Human Rights Commission

The Commission is the regulator of equality legislation, including the equality duty. It commented on the development of the legislation and now has a critical role to play in promoting awareness and understanding about the duty. This includes the provision of advice, guidance and information to a range of audiences. Examples of this include:

- **Guidance:** Producing a range of guides on the equality duty. Further guides are planned, including on procurement/commissioning and for voluntary and community organisations.
- **Code:** Developing a statutory Code of Practice on the public sector equality duty for England and non-devolved bodies in Wales and Scotland. This is expected to go out for consultation early in 2011 and is expected to be laid before the UK parliament later in the year.
- **Information:** Providing dedicated web pages on the equality duty providing guidance, updates, government documents, equality information about the new protected groups and frequently asked questions.
- **Advice:** Providing advice to public authorities on technical aspects of the duty and advice to individuals about using the duty to advance equality. This is done through our helpline, with support from our public sector duty team.
- **Promotion:** Promoting awareness about the equality duty and its business benefits, for example through our media and marketing work and through collaboration with sector-based organisations, unions and voluntary bodies.
- **Capacity:** Developing the capacity of stakeholders to understand the Equality Act and to use the equality duty to scrutinise public authorities on equality and good relations issues (for example, voluntary bodies, equality organisations, advice agencies, law centres and recognised trade unions).
- **Good practice:** Collating and promoting good practice among public authorities.
- **Partnership:** Working with a range of public service inspectorates to ensure that their inspection frameworks fit with their own obligations under the duty.

### Monitoring and enforcement

The Commission has responsibility for monitoring and enforcing the equality duty. The main purpose of this work is to promote compliance, improve standards, and collate and promote best practice.

**Monitoring:** Our monitoring work will involve assessing equality information published by public bodies, undertaking research on progress in different sectors, collating best practice, and compiling evidence to support our compliance and enforcement work. This includes monitoring compliance with duty obligations, and wider progress on equality outcomes.

**Compliance:** We will use a range of strategies to promote compliance. This may include: working with organisations to ensure that remedial or preventative action is taken; giving specific advice or guidance to an organisation; meeting with senior managers and other staff. It may also include: carrying out desk-based reviews of information provided by organisations and providing feedback, and exchanging relevant information with other law enforcement bodies and regulators. We will select the most appropriate tool to achieve the best outcomes, depending on the circumstances. This can involve building collaborative relationships with public bodies to achieve wider and more sustainable change. We will work to promote compliance as the preferred option and we will usually only take formal enforcement action where efforts to encourage compliance have failed.

**Enforcement:** We have a number of statutory powers to enforce the general and the specific duties. These include undertaking assessments under section 31 of the Equality Act 2006, to assess to what extent a body has complied with the equality duty. We can issue compliance notices in respect of a failure to comply with the general equality duty or the specific duties. These notices require public authorities to provide information about how they will comply with the general or specific duties, including what steps they will take.

We can intervene in legal proceedings related to the duty by providing the Court with expert advice to help the Court reach its decision. We can enter into a formal agreement with an organisation under section 23 of the Equality Act 2006 if we believe that they have breached an equality duty. A section 23 agreement usually includes developing and implementing an action plan to address any breach and prevent future breaches and will required reports on progress on the action plan to the Commission.

If a public authority doesn't comply with the general equality duty, its actions or failure to act can be challenged through an application to the High Court for judicial review. An application could be made by a person or group of people with an interest in the matter, or by the Commission.

**Civil society:** The equality data published by public bodies will enable the public and external stakeholders to hold public bodies to account on their performance on equality. This involves citizens (including people from the protected groups) being



able to scrutinise equality data and challenge decisions that they are unhappy with, including through judicial review.

**Inspectorates:** Inspectorates are subject to the general equality duty so they must have due regard to the aims of the duty in their inspection functions. Where their inspection functions are relevant to the aims of the duty, this would include ensuring that their assessment of public sector performance included consideration of performance on equality. They can help public authorities to identify equality issues through individual inspection reports and through national studies. This may help public authorities to benchmark their progress made, and they will be a source of information for the Commission.

## 14. Summary of requirements

A number of requirements under the equality duty have been carried forward from the previous equality duties. The equality duty also includes some new requirements. This section summarises the requirements on public authorities, making a distinction between those that are only covered by the general equality duty and listed bodies, which are subject to the specific duties.

### Protected groups

**General and specific duties:** The previous duties covered race, disability and gender, with some aspects covering gender reassignment. The equality duty covers race, sex, disability, age, gender reassignment, religion or belief, sexual orientation, and pregnancy and maternity. It also covers marriage and civil partnership with regard to eliminating discrimination. The coverage for gender reassignment now applies to all three arms of the duty.

### Principles

**General and specific duties:** As with previous duties, the essence of the equality duty remains the requirement to have due regard to the need to achieve the three general duty aims.

### Equality information

**For authorities only covered by the general equality duty:** Although there is no express requirement in the general equality duty to collect and use equality information across all protected groups, it will be extremely difficult for a public authority to show that it has had due regard to the need to achieve the equality aims in the general equality duty without doing so.

**For authorities also covered by the specific duties:** You must publish sufficient information to demonstrate that you have complied with the general equality duty. This must be done by 31 July 2011 (31 December 2011 for schools), and at least annually after that. The information to be published must include: information on the effect that your policies and practices have had on employees and people from the protected groups; evidence of the analysis undertaken to establish whether your policies and practices will (or have) furthered the three equality aims in the general equality duty; details of the information used in that analysis, and details of the engagement you undertook. Bodies with fewer than 150 staff do not need to publish information on the effect of their policies and practices on their workforce. They still need to have workforce information in order to meet their obligations to carry out equality analysis of their workforce-related policies and practices and to publish the information that they used. By 6 April 2012, and at least every four years after that,

you also need to publish equality objectives and details of the engagement you undertook in developing them.

## Engagement

**For authorities only covered by the general equality duty:** Although there is no express requirement in the general equality duty to undertake engagement, the general duty to have due regard requires public authorities to have an adequate evidence base for their decision-making, and engagement assists with developing that base. Consider what engagement you need to undertake with people who have an interest in tackling discrimination, advancing equality and fostering good relations. This includes people from the protected groups, staff, service users and trade unions (among others).

**For authorities also covered by the specific duties:** Listed bodies need to publish information about the engagement you have undertaken, including while developing your objectives. The specific duties do not set out how or when your engagement should be undertaken.

## Equality analysis

**For authorities only covered by the general equality duty:** The general equality duty does not specify how you should analyse the effect of your policies and practices on equality, but doing so is an important part of complying with the general equality duty. It is up to you to choose the most effective approach for your organisation. Cases on the meaning of the old general equality duty still apply and they make it clear that the analysis has to be undertaken before making the relevant policy decision.

**For authorities also covered by the specific duties:** The specific duties don't set out how the equality analysis should be carried out. However, they say that you must publish evidence of the equality analysis you undertook and the details of the information you considered when you carried out that analysis.

## Equality objectives

**For authorities only covered by the general equality duty:** The general equality duty does not require these bodies to set equality objectives.

**For authorities also covered by the specific duties:** Listed bodies must prepare and publish equality objectives. This must be done by 6 April 2012 and at least every four years after that. They must be specific and measurable, and you must also set out how progress towards the objectives will be measured. You must also publish details of your engagement in developing the equality objectives at least every four years. You will need to have considered your published equality information before

preparing and publishing these objectives. You must publish objectives in a reasonably accessible format, either as an individual document or as part of another report. As well as publishing the information you have considered in setting them, you must also publish details of the engagement you undertook in developing those objectives.

## **Commissioning and procurement**

**For authorities only covered by the general equality duty:** The duty applies to procurement and commissioning by public authorities. The requirement to comply with the general duty applies to all contracts, regardless of the value.

**For authorities also covered by the specific duties:** There is no specific duty covering procurement. Public authorities covered by the specific duties will, however, have to ensure that they meet those duties in relation to all of those functions, including any that are contracted out.

## 15. Points to remember

### Delivering the duty

- Build on your experience from the race, disability, and gender equality duties.
- Take action proportionate to your size, your resources and to the relevance of the issue to equality and good relations.
- Key tools like objectives, using equality information, reporting, and reviewing functions are still relevant and important.
- The specific duties are there to help you to meet the general equality duty.
- The equality duty applies to all of your work, including services, policymaking, employment, planning, procurement and statutory decision-making.
- Clear leadership from your senior management and governing body is crucial. This includes ensuring that staff across your functions are aware of their obligations under the duty.

### Equality information

- Collecting and using equality information will help you to identify priorities for action, design better policies and measure progress made.
- Establishing what information you have and a timetable for filling in gaps is particularly important for the new protected groups.
- People are more likely to provide information about their equality characteristics if they know why this is done and how it will be used and if they know it will be treated confidentially.

### Engagement

- Engagement will help you to understand key equality issues and define your priorities for action. You can undertake this with other public authorities.
- Be mindful of diversity within protected groups and of the multiple barriers that many people face. Don't limit your engagement to representative bodies only.

### Equality objectives

- Equality objectives will help you focus your efforts where your information shows the key issues are and demonstrate improvements to stakeholders.

### Equality analysis

- Whatever approach you take to equality analysis, keep a dated, written record of the steps you have taken. This will help you to check compliance and it will be useful if your decisions are challenged.

## Appendix 1 Section 149 of the Equality Act 2010

### Public sector equality duty

(1) – A public authority must, in the exercise of its functions, have due regard to the need to –

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) – A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) – Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) – The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) – Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

(a) tackle prejudice, and

(b) promote understanding.

(6) – Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) – The relevant protected characteristics are – age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

(8) – A reference to conduct that is prohibited by or under this Act includes a reference to –

(a) a breach of an equality clause or rule;

(b) a breach of a non-discrimination rule.

(9) Schedule 18 (exceptions) has effect.



## **Appendix 2 The Equality Act 2010 (Statutory Duties) regulations 2011**

The draft specific duties regulations are available on the website of the Government Equalities Office (GEO). They can also be accessed via the equality duty section of the Commission's website.

## Appendix 3 Glossary

**Advancing equality:** The Equality Act 2010 states that this involves having due regard to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic
- meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- encourage persons who share a relevant protected characteristic to participate in public or in any other activity in which participation by such persons is disproportionately low.

**Age:** This refers to a person having a particular age (for example, 32 year-olds) or being within an age group (for example, 18-30 year-olds).

**Belief:** see **Religion and belief**

**Civil partnership:** Legal recognition of a same-sex couple's relationship. Civil partners must be treated the same as married couples on a range of legal matters.

**Compliance notice:** The Equality and Human Rights Commission can, if a public authority does not comply with its general or specific duties, serve a compliance notice on that authority under section 32 of the Equality Act 2006. The notice will state that the authority must meet its duty and inform the Commission within 28 days what it has done or is doing to meet its duty.

**Direct discrimination:** This refers to less favourable treatment because of a person's protected characteristic.

**Disability:** A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

**Engagement:** A broad term, intended to cover the whole range of ways in which public authorities interact with their service users and their employees, over and above what they do in providing services or within a formal employment relationship.

**Equality Act 2006:** This legislation made provision for the establishment of the Equality and Human Rights Commission and the dissolution of the three legacy commissions for Disability, Race and Gender Equality. The Equality Act sets out the Commission's powers and responsibilities (these provisions were not repealed by the Equality Act 2010).

**Equality Act 2010:** This brings together the majority of existing equality legislation into one place so that it is easier to use. It also strengthens the legislation in some

areas. It sets out the protected characteristics that are protected by the law and the behaviour that is unlawful.

**Equality analysis:** Equality analysis involves looking at your equality information and the outcome of your engagement in order to understand the effect or potential effect of your decisions on different protected groups. The general equality duty does not specify how public authorities should analyse the effect of their policies and practices on equality

**Equality information:** The information that you have (or that you will collect) about people with protected characteristics that will help you to show compliance with the equality duty. This will include the findings of engagement with protected groups and others and the effect of your policies on protected groups. It includes both qualitative and quantitative information, as well as evidence of analysis you have undertaken.

**Equality objectives:** A requirement to prepare, set and publish objectives is one of the specific duties set out under the equality duty. An authority's objectives should aim to further one or more aims of the equality duty.

**Equality outcome:** The results that individuals or groups actually achieve and are able to benefit from. For example, equal pay between men and women.

**Fostering good relations:** The Equality Act 2010 states that having due regard to the need to fostering good relations involves having due regard, in particular, to the need to tackle prejudice and promote understanding between people who share a protected characteristic and those who do not.

**Function:** The full range of a public authority's activities, duties and powers.

**Gender reassignment:** This is the process of transitioning from one sex to another. See also trans, transgender, transsexual.

**General duty:** The requirement to show due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.; advance equality of opportunity between people who share a protected characteristic and those who do not; and to foster good relations between people who share a protected characteristic and those who do not.

**Harassment:** Unwanted conduct related to a protected characteristic that has the purpose or effect of violating a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. It may also involve unwanted conduct of a sexual nature or be related to gender reassignment or sex.

**Indirect discrimination:** This is when a provision, criterion or practice is applied in a way that creates disproportionate disadvantage for a person with a protected

characteristic as compared to those who do not share that characteristic, and is not a proportionate means of achieving a legitimate aim.

**Intervention:** The Equality and Human Rights Commission can intervene in legal proceedings in matters that are relevant to its functions by providing the Court with expert advice to help the Court reach its decision.

**Judicial review:** A claim to the High Court asking the Court to review the way a public authority or certain other bodies carrying out public functions made a decision. The Court can quash a decision and so require the authority to reconsider the matter. The Commission can institute judicial review proceedings in relation to matters that are relevant to its functions.

**Listed body:** A listed body is one that is listed to be covered for the general or specific duties. Bodies are listed either in Schedule 19 of the Equality Act for the general duty or Schedule 1 of the regulations for the specific duties.

**Marriage:** A union between a man and a woman.

**Maternity:** The period after giving birth. It is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, including as a result of breastfeeding.

**Mitigation:** This is when measures are put in place that lessen the negative effects of a policy or policies on protected groups. For example, delivering a service by telephone alone may cause problems for those with a language barrier. Rather than changing the way the service is delivered, this could be mitigated by using telephone interpreting services.

**Positive action:** Lawful actions that seeks to overcome or minimise disadvantages that people who share a protected characteristic have experienced, or to meet their different needs (for example, providing mentoring to encourage staff from under-represented groups to apply for promotion).

**Pregnancy:** The condition of being pregnant.

**Proportionality:** The weight given to equality should be proportionate to its relevance to a particular function. This may mean giving greater consideration and resources to functions or policies that have the most effect on the public or on employees.

**Protected characteristics:** The equality duty covers the following characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These are also referred to as **protected groups**. The duty also covers marriage and civil partnerships, but not for all aspects of the duty.

**Protected groups:** see **Protected characteristics** above

**Public authority:** The general equality duty applies to public authorities. For this purpose, a public authority is a body that is named (listed) or described in Schedule 19 of the Equality Act. It also applies to other organisations who exercise public functions. This includes private bodies or voluntary organisations which are carrying out public functions on behalf of a public authority.

**Public functions:** The Equality Act 2010 defines a public function as a function that is of a public nature for the purposes of the Human Rights Act 1998.

**Race:** This is the protected characteristic of race. It refers to a group of people defined by their colour, nationality (including citizenship), ethnic or national origins.

**Reasonable adjustment:** Public authorities making adjustments to the way in which they carry out their functions so that disabled people are not disadvantaged by the way in which those functions are carried out. This is with regard to policies, practices or procedures, premises, and the provision of auxiliary aids or services.

**Relevance:** How far a function or policy affects people, as members of the public, and as employees of the authority. Some functions may be more relevant to some protected groups than to others, and to one or more of the three elements of the general equality duty. The function or policy may still be relevant if the numbers affected by it are very small.

**Religion or belief:** Religion means any religion, including a reference to a lack of religion. **Belief** includes religious and philosophical beliefs including lack of belief (for example, Atheism). Generally, a belief should affect your life choices or the way you live for it to be included.

**Section 23 agreement:** The Equality and Human Rights Commission can enter into a formal agreement with an organisation under section 23 of the Equality Act 2006 if it believes the organisation has committed an unlawful act. This means that the organisation agrees not to commit a specified unlawful act, or to take certain actions. It will be required to report on progress to the Commission. Such an agreement is enforceable by the Commission in Court.

**Section 31 assessment:** Under section 31 of the Equality Act 2006 the Equality and Human Rights Commission can carry out a formal assessment to establish to what extent, or the manner in which, a public authority has complied with the equality duty.

**Sex:** Someone being a man or a woman.

**Sexual orientation:** This is whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

**Specific duties:** Certain public authorities named or described (listed) in Schedule 1 of the Equality Act 2010 (Statutory Duties) Regulations 2011 are required to comply

with certain specific duties. These duties are intended to assist authorities in complying with the general equality duty.

**Stakeholders:** People with an interest in a subject or an issue who are likely to be affected by any decision relating to it and/or have responsibilities relating to it.

**Statutory Code of Practice:** A document which offers practical guidance on the law, has been approved by parliament and is admissible as evidence in a Court of law.

**Trans:** The terms 'trans people' and 'transgender people' are both often used as umbrella terms for people whose gender identity and/or gender expression differs from their birth sex, including transsexual people (those who propose to undergo, are undergoing or have undergone a process of gender reassignment to live permanently in their acquired gender), transvestite/cross-dressing people (those who wear clothing traditionally associated with the other gender either occasionally or more regularly), androgyne/polygender people (those who have non-binary gender identities and do not identify as male or female), and others who define as gender variant.

**Transgender:** An umbrella term for people whose gender identity and/or gender expression differs from their birth sex. They may or may not seek to undergo gender reassignment hormonal treatment/surgery. Often used interchangeably with trans.

**Transsexual:** A person who intends to undergo, is undergoing or has undergone gender reassignment (which may or may not involve hormone therapy or surgery). Transsexual people feel the deep conviction to present themselves in the appearance of the opposite sex. They may change their name and identity to live in the preferred gender. Some take hormones and have cosmetic treatments to alter their appearance and physical characteristics. Some undergo surgery to change their bodies to approximate more closely to their preferred gender. Transsexual people have the protected characteristic of gender reassignment under the Equality Act 2010. Under the Act, gender reassignment is a personal process rather than a medical one and it does not require someone to undergo medical treatment in order to be protected.

**Victimisation:** Subjecting a person to a detriment because they have made a complaint of discrimination, or are thought to have done so; or because they have supported someone else who has made a complaint of discrimination. Victimisation is unlawful under the Equality Act 2010.



## Contact us

The Equality and Human Rights Commission aims to reduce inequality, eliminate discrimination and harassment, strengthen good relations between people, and promote and protect human rights.

You can find out more or get in touch with us via our website at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com) or by contacting our helpline below. If you require this publication in an alternative format and/or language please contact our helpline to discuss your needs.

### **Equality and Human Rights Commission helpline – England**

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

8am–6pm, Monday to Friday

### **Equality and Human Rights Commission helpline – Scotland**

Telephone: 0845 604 55 10

Textphone: 0845 604 5520

Fax: 0845 604 5530

8am–6pm, Monday to Friday

### **Equality and Human Rights Commission helpline – Wales**

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

8am–6pm, Monday to Friday

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)



This guide is one of a series written by the Equality and Human Rights Commission to explain your responsibilities under the public sector equality duty in England (and non-devolved bodies in Scotland and Wales).

The five guides in this series are:

1. The essential guide to the public sector equality duty
2. Equality analysis and the equality duty: A guide for public authorities
3. Engagement and the equality duty: A guide for public authorities
4. Equality objectives and the equality duty: A guide for public authorities
5. Equality information and the equality duty: A guide for public authorities

If you would like a copy of any of these guides or require this guide in an alternative format, please call our helpline on **0845 604 6610**, textphone **0845 604 6620** Monday to Friday 8am to 6pm or see our website **[www.equalityhumanrights.com](http://www.equalityhumanrights.com)**.