

GUIDANCE

Engagement and the Equality Duty

A Guide for Listed Public Authorities
in Wales

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1 | Context for this guide

1.1 | What is a listed public authority in Wales?

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

1.2 | The Equality Act 2010

The Equality Act 2010 (the Act) brought together and replaced the previous anti-discrimination laws with a single Act. The majority of the Act came into force on 1 October 2010. The Act includes a **public sector equality duty** (the ‘general duty’). This came into force on 5 April 2011.

1.3 | What is the general duty?

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

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

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

Continued...

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

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

The new general duty covers the following protected characteristics:

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

It applies to marriage and civil partnership, but only in respect of the requirement to eliminate discrimination in employment.

The phrase 'protected group' is sometimes used to refer to people who share a protected characteristic.

2 | Specific duties in Wales

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

2.1 | Who is covered by the specific duties?

The specific duties apply to listed bodies in Wales but not to non-devolved public authorities operating in Wales. (These authorities may be covered by the specific duties for England.)

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

This guide is one of a series of guides on the specific duties. The duties inter-relate and more details on each aspect can be found in the following guidance:

1. *The Essential Guide to the Public Sector Equality Duty (An Overview)*
2. *Equality Objectives and Strategic Equality Plans*
3. *Engagement and the Equality Duty*
4. *Assessing Impact and the Equality Duty*
5. *Equality Information and the Equality Duty*
6. *Employment Information, Pay Differences and Staff Training and the Equality Duty*
7. *Procurement and the Equality Duty*
8. *Annual Reporting, Publishing and Ministerial Duties and the Equality Duty*

2.2 | Who is the guidance aimed at?

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

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

The text box(es) in the next section outlines the requirements of the regulations and these appear also in the *Essential Guide*. The additional text in this guidance provides further context on the specific duties.

3 | Engagement

3.1 | What the duty requires on engagement

A listed body in Wales must involve people who it considers representative of those with different protected characteristics and those who have an interest in how an authority carries out its functions.

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

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

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

4 | What is engagement?

Engagement is a broad term, but for the purposes of the engagement provisions within the specific duties it is clear that it refers to involving certain people (as a requirement) and consulting certain people (as appropriate). The distinction between involvement and consultation may not always be clear cut.

Consultation is often understood to be a formal exercise undertaken by organisations to gather views on a particular proposal. Involvement indicates active participation of stakeholders – an open dialogue where those involved have a demonstrable influence on the decision-making process and any resulting decision.

5 | Effective engagement

Effective engagement will involve a sustained process of collaboration between a public body and people with an interest in its work.

Effective engagement is:

- well-structured and focused
- adequately resourced and accessible
- influential and transparent
- respectful of confidentiality.

It is established in case law¹ that where a public body consults, it must comply with the following overarching obligations:

- consultation must be at a time when proposals are at a formative stage
- the proposer must give sufficient reasons for its proposals to allow consultees to understand them and respond to them properly
- consultees must be given sufficient time for responses to be made and considered
- responses must be conscientiously taken into account in finalising the decision²

¹ *R v North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213.

² *R v London Borough of Lambeth, ex parte N* 1996 ELR 299.

6 | Who to engage

In deciding who may represent the interests of people with different protected characteristics and who may have an interest in the way the body carries out its functions, a listed body may want to include:

- former, current and potential service users
- former and current staff, including staff equality groups
- trade unions
- third sector and equality organisations
- the wider community.

A listed body must consider the need to capture firsthand the views of people with one or more protected characteristics.

The specific duties do not require listed authorities to engage with people with every characteristic on every decision. Listed bodies will need to decide how relevant the policy or decision is for people with a particular characteristic before deciding on whether (and how) to engage with them.

A listed body will need to be able to show that meaningful engagement has taken place. Listed bodies should be careful not to make assumptions when deciding who to engage. For example, lesbian, gay and bisexual people may wish to contribute as much on education or regeneration as to questions on health or homophobic crime.

Listed bodies are likely to have relevant information from other engagement activities, for example community strategy consultations, and staff and service surveys. Listed bodies will need to have systems for the retention and use of evidence from engagement activities undertaken at various stages by the specific duties (setting objectives, assessing impact and gathering relevant information).

It may be helpful to work with other public authorities to carry out engagement activities (for example in Local Service Boards). This can save time and resources for you and for other organisations and it can avoid overloading stakeholders.

7 | When to engage

The specific duties require a listed body to engage when carrying out certain activities:

- setting equality objectives
- preparing and reviewing a Strategic Equality Plan
- assessing how its work and activities may contribute to meeting the general duty
- assessing the likely impact on people with protected characteristics of any policies or practices being proposed or reviewed.

8 | Benefits of engagement

Engagement will help improve outcomes, for example by:

- 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 needs and overcome barriers
- determining priorities
- analysing the impact of initiatives on people with protected characteristics
- monitoring and evaluating initiatives, policies and programmes.

9 | How to engage

Listed bodies should review their range of engagement methods to ensure they are accessible and effective in reaching an appropriate range of people sharing protected characteristics.

Common methods of engagement are set out at Appendix A.

The First Minister of Wales has endorsed a document entitled the 'National principles for public engagement for public service organisations in Wales'. This document can be found at: www.participationcymru.org.uk/national-principles.

The document provides an overarching set of principles aimed at public service organisations across all sectors in Wales. These principles are helpful in aiming to offer a consistent approach and high standard for public engagement across Wales.

A range of case studies of how engagement methods have been used with people with different characteristics is available on the Commission's website: www.equalityhumanrights.com.

Appendix A |

Engagement methods

Review group

This is a formal group of representatives with expertise in key areas, for example on the needs of disabled people or the experiences of different groups. A review group can provide expertise on an on-going basis. This will allow it to input information and highlight risks, opportunities and options for action. Group members are often recruited via a formal recruitment process and participants are often paid.

Setting up a review group will be most suited to medium to large organisations that have the capacity to devote the necessary time and resources to establishing and managing a group. A review group can be involved on an on-going basis and at all stages throughout a decision-making process.

Focus groups

This is a small number of people brought together with a moderator to discuss a specific topic in depth. It is usually between six and 12 people with the aim of generating a discussion on a topic and collecting information on the preferences and beliefs of the participants. Using discussion rather than formal questions and answers allows for greater probing of views.

Focus groups can be held throughout your decision-making process. For example, you can set up a focus group to identify key themes and priorities at the start of your decision-making process then reconvene the group at set stages through your decision-making process to consider options for action and to evaluate implementation. You can use focus groups to involve specific groups who may not respond to other, more general engagement methods. For example, you might establish a focus group made up of older people with a mental health condition or of disabled parents.

Representative groups

This is a body of people which represents the interests of a particular group. These vary in form and size from small, locally based and informally structured self-

advocacy or support groups to large regional and national organisations with formal structures and dedicated staff. Working with representative groups will help you to obtain both evidence and their views. These groups can advise you on how to involve relevant people.

Representative groups can help you deliver any engagement activity. For example, you could arrange for representative groups to arrange and hold meetings or focus groups. They could be commissioned to collect information and write reports on relevant issues to help you in your decision-making. Any engagement of this type should be seen as a professional partnership and payment may be appropriate.

Existing structures

Some common existing structures include school councils, service user forums, staff networks, trade unions and local area networks. Existing structures can be useful where time is short, and to help avoid stakeholder overload, but it is important to check that membership is relevant to the matter being reviewed i.e. that there is adequate participation of affected people.

Online engagement

Online methods include online forums, social networks and live discussions with a facilitator. Online engagement can be useful because it is easy and relatively inexpensive to involve a wide range of participants. It is a good way to involve those who may prefer a greater degree of privacy. You can invite particular groups or individuals to participate.

Consider how to make people aware of your online engagement and ensure that it is clearly signposted and accessible, for example having a specific section of the site for older users. It will be best used as one of several engagement methods on a particular policy, rather than in isolation, because not everyone has access to technology or the capacity to use it effectively. It is estimated that approximately one-third of the population in Wales is digitally excluded.

Future search conference

This is an event for stakeholders to come together to consider a decision or policy in the context of their priorities and aspirations for the future. To use this method effectively, you should aim to involve people who are interested in or affected by your work, as well as people who have influence in your community.

Stakeholders participate in a moderated discussion of their priorities, views, goals and aspirations as they relate to the relevant policy. A key aim is for participants to develop a shared vision for the future through discussion and deliberation. This approach is useful if you want to collect and use information on the perspectives and priorities of your main stakeholders. It helps participants understand the agendas of others. This can help the group start to identify shared interests and to develop common goals.

Conversation café

This technique recognises that some people prefer participating in a less formal way. In a conversation café, a mediator runs the event and participants are encouraged to divide into smaller groups for informal discussions on a range of topics. Participants can drop in or out of groups as it suits them. They normally take place in familiar places where participants feel comfortable, for example, libraries, bookshops or cafés.

Appreciative inquiry

This method uses questions designed to encourage people to talk about their experiences of a particular issue. It aims to encourage participants to focus on finding solutions to issues and their experiences of 'what works'. It can be empowering, as it gives people the confidence to think broadly and take risks. It can help to build relationships and to improve understanding. It can be useful in encouraging motivation, particularly if participants feel resistant to change or that they are being criticised.

Citizens' juries

A citizens' jury is a way of structuring an event that is modelled on the idea of a criminal jury. Around 10 to 20 people are selected to participate and they are presented with information by expert 'witnesses'. This could be information on a policy or a range of options for action. This process can take a few days, depending on the resources available and the complexity of the issues. The jury then considers the information and makes recommendations on key points.

For example, the jury might recommend priorities for an action plan or call for further background work on particular areas. Citizens' juries do not involve large numbers of people and will not be suitable for every organisation and every policy. They may require significant resources, such as external experts and specialists to attend and present information. They are best used by organisations with sufficient time and

financial resources to 'test' awareness and different options for action on contentious and high-impact decisions.

Open space

Open space is a method for convening people on a specific question or task and giving them responsibility for the agenda. A facilitator identifies the question that brings people together and offers a simple process for participants to start the discussions. It works best when the work is complicated, the ideas are diverse and the participants are keen to find a solution. It usually takes place over half a day to two days.

Citizens' summit

This is a large-scale meeting where participants spend time working in small groups and a facilitator collates participants' ideas and votes on a computer. The information from different groups is sent to a central point and distilled into themes, which all participants can comment or vote on. It is useful as it combines small scale discussions with large group decision-making. This approach is resource intensive and will be most suited to larger organisations considering decisions on issues that have a wide and deep impact on their communities. It can be used to consider policy options and help set priorities for action.

Engagement to evaluate

In addition to the methods already listed, the following can be particularly useful in the monitoring and evaluation of work.

User panels

These are regular meetings of service users to consider and discuss the quality of a service or other related topics, for example possible improvements to current practice. They can help you identify the concerns and priorities of service users and can lead to the early identification of problems or ideas for improvements. They are a way of getting the views of users on their experiences and expectations of services. You can use them to test the reaction of users to changes and proposals and to find and generate ideas for improvements.

This is by no means an exhaustive list. You may wish to consult organisations such as Participation Cymru (www.participationcymru.org.uk) or Involve (www.involve.org.uk) for more information.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website www.equalityadvisoryservice.com

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)
10:00 to 14:00 (Saturday)

Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. The Commission welcomes your feedback

Alternative formats

This guide is available as a PDF file and as a Microsoft Word file in English and Welsh from www.equalityhumanrights.com. For information on accessing a Commission publication in an alternative format, please contact: correspondence@equalityhumanrights.com

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Last updated October 2014

ISBN 978-1-84206-573-0