

GUIDANCE

The Essential Guide to the Public Sector Equality Duty

England (and Non-Devolved Public
Authorities in Scotland and Wales)

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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 brought together all previous equality legislation in England, Scotland and Wales. The Act included the public sector equality duty, which replaced the former duties relating to race, disability and gender equality. The public sector equality duty came into force on 5 April 2011.

There are five England/GB guides giving advice on the duty:

1. The essential guide to the public sector equality duty
2. Equality objectives and the equality duty
3. Equality information and the equality duty
4. Meeting the equality duty in policy and decision-making
5. Engagement and the equality duty

The essential guide provides an overview of the public sector equality duty requirements. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/

This is the fourth edition of this guide.

If you require this guide in an alternative format and/or language please contact us to discuss your needs. Contact details are available at the end of the publication.

Legal status of this guide

This guidance provides advice on how to meet the equality duty. It will assist public authorities to comply with their legal duties under:

- Section 149 of the Equality Act 2010 (the public sector equality duty), and
- The Equality Act 2010 (Specific Duties) Regulations 2011.

Intended audience

This guide is aimed at those responsible for implementing the equality duty in public authorities in England and for non-devolved public authorities in Scotland and Wales. The Commission has produced separate guidance on the equality duties for public authorities in Wales and Scotland, available on equalityhumanrights.com. Public authorities for the purposes of the duty are defined in section 2 of this guide. It will be of interest to staff right across public authorities, but particularly those involved in policy-making, business planning, procurement, human resources, grant-making, governance and scrutiny. The guide will also assist those who have an interest in the work of public authorities such as service users, voluntary bodies, unions, and equality organisations.

It provides advice to two types of public authority: those that are subject only to the general equality duty, and those authorities that are also subject to the specific duties ('listed authorities'). The different requirements for both of these bodies are set out clearly throughout this guide.

Content of this guide

This guide:

- Provides an overview of the public sector equality duty
- Explains what the general equality duty is, what the specific duties are and who they apply to
- Suggests a range of steps that public authorities can take in order to comply with the general and the specific duties.
- Explains the regulatory framework
- Includes the full text of the legislation and a glossary of legal terms.

2. *Introduction to the equality duty*

The public sector equality duty is made up of a general equality duty supported by specific duties. The general equality duty is set out in section 149 of the Equality Act 2010. This is the same for England, Scotland and for Wales and it came into force on 5 April 2011. The specific duties are created via secondary legislation. These are different for England, Scotland and Wales. The full text of the general equality duty and the specific duties for England can be found at the end of this guide.

The **public sector equality duty** is the title of the duty, and how it is referred to in the Equality Act. It consists of the **general equality duty** which is the overarching requirement or substance of the duty, and the **specific duties** which are intended to help performance of the general equality duty.

The general equality duty

The general equality duty applies to 'public authorities'. Further advice about who this includes is provided in the next section.

In summary, those subject to the general 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.

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These are often referred to as the three aims of the general equality duty.

The Equality Act explains that the second aim (advancing equality of opportunity) involves, in particular, having due regard to the need to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics.
- Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people.
- Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

It states that meeting different needs includes (among other things) 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 explains that compliance with the general equality duty may involve treating some people more favourably than others.

To comply with the general equality duty, a public authority needs to have due regard to all three of its aims. When this guide refers to the general equality duty, it is referring to all three aims, as set out in the Equality Act.

Who is subject to the general equality duty

Schedule 19 bodies

The general equality duty applies to the public authorities who are named or described (listed) in Schedule 19, which is part of the Equality Act 2010.¹ Examples of these 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.

¹ Schedule 19 of the Equality Act 2010 can be found in Appendix 6 of the Technical Guidance on the Public Sector Equality Duty [ADD LINK]

Bodies carrying out public functions

The general equality duty also applies to other organisations that exercise public functions. This will include private bodies or voluntary organisations that are carrying out public functions on behalf of a public authority. The 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 via legislation, 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.

In this guide, when we refer to public authorities subject to the general equality duty, this includes Schedule 19 authorities as well as public authorities who are covered when they carry out public functions.

Exceptions

Schedule 18 of the Equality Act sets out limited exceptions to the application of the general equality duty. These relate to certain functions, such as immigration (in relation to race, religion, age but only in relation to the second aim of the advancement of equality of opportunity) and judicial functions. A small number of bodies that 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. Further information on this can be found in Schedule 18.² Another exception sets out that the duty on age does not

² Schedule 18 of the Equality Act 2010 can be found here: <http://www.legislation.gov.uk/ukpga/2010/15/schedule/18>

apply to education and service provision in schools or in relation to children's homes. The Government has the power to vary the exceptions in Schedule 18. Public authorities and others can keep abreast of any changes to the law via the Commission's website.

Protected characteristics

The general equality duty covers the following protected characteristics: age (including children and young people), disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. People who are considering, undergoing or have undergone gender reassignment are referred to in this guide as transsexual people. Definitions of all of these characteristics are set out in the glossary (Appendix 3 to this guide).

The three aims of the duty apply to all protected characteristics apart from marriage and civil partnership, which is only relevant to the first aim (eliminating discrimination). Thus a body subject to the duty must have due regard to the need to eliminate discrimination where it is prohibited under the Equality Act 2010 because of marriage or civil partnership in the context of employment.

The ban on age discrimination in services and public functions came into effect on 1st October 2012. As the ban does not extend to people under 18,³ this limits the scope of the duty to have due regard to the need to eliminate 'unlawful discrimination' under the first aim of the duty (although it does not limit the other two aims).

Purpose and benefits of the general equality duty

The broad purpose of the general equality duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities. It is an integral part of the mechanisms for fulfilling the requirements of the Equality Act 2010. If a public authority does not consider how a function can affect different groups in different ways, the function may not meet its own objectives. For example, a smoking cessation programme may not be fully effective if it does not take into account the different marketing tools that have the most impact on people of different ages. This can contribute to greater inequality and poor outcomes. The general equality duty

³ A ban on age discrimination in associations, commenced at the same time, does not exclude under 18s.

therefore requires organisations to consider how they could positively contribute to the advancement of equality and good relations. It requires equality to be considered in decision-making, in the design of policies and in the delivery of services, including internal policies, and for these issues to be kept under review.

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 for users and more cost effective. This can improve satisfaction with public services.

The specific duties

The specific duties were created by secondary legislation in the form of the Equality Act 2010 (Specific Duties) Regulations 2011 (see Appendix 2). The specific duties are different in England, Scotland and Wales. This guide relates to the specific duties for **England** (and non-devolved public authorities in Scotland and Wales). In summary, each listed authority is required to:

1. Publish information to demonstrate its compliance with the general equality duty. This needed to be done for the first time by 31 January 2012 and at least annually thereafter. Schools and pupil referral units were required to do this for the first time by no later than 6 April 2012. This information must include, in particular, information relating to people who share a protected characteristic who are:
 - its employees, and
 - people affected by its policies and practices.

Public authorities with fewer than 150 employees are exempt from the requirement to publish information on their employees.

2. Each listed authority (including schools and pupil referral units) must prepare and publish one or more objectives that it thinks it needs to achieve to further

any of the aims of the general equality duty. This needed to be done for the first time by 6 April 2012 and at least every four years thereafter. The objectives must be specific and measurable.

Both the equality information and the equality objectives must be published in a manner that is accessible to the public. They can be published as a separate document, or within another document such as an annual report or a business plan. The Commission has published guides for public authorities on equality objectives and on equality information. These can be found on our website.

Purpose of the specific duties

The purpose of the specific duties is to help listed authorities improve their performance on the general equality duty, by improving their focus and transparency. However, complying with the specific duties does not necessarily ensure that an authority is having due regard to the aims of the general equality duty across all of its functions. See section 4 of this guide for advice on the steps you can take to comply with the general equality duty.

Who is subject to the specific duties

Many authorities that are subject to the general equality duty are also covered by the specific duties. These listed authorities are named or described in Schedules 1 and 2 of the specific duties regulations.

Summary of key dates

- 5 April 2011 general equality duty came into force
- 31 January 2012 listed authorities (except schools and pupil referral units) required to publish equality information
- 6 April 2012 schools and pupil referral units required to publish equality information
- 6 April 2012 all listed authorities (including schools and Pupil Referral Units) required to publish equality objectives

3. What the law requires

The general equality duty is not prescriptive about the approach a public authority should take in order to comply with their legal obligations. The specific duties are limited to requirements about publishing equality information and objectives.

The following principles, drawn from case law on the public sector equality duty, explain that in order to properly have due regard to the general equality duty aims, each public authority should keep in mind that:

- Those who exercise its functions must be aware of the general equality duty's requirements. Compliance with the general equality duty involves a conscious approach and state of mind. General regard to the issue of equality is not enough to comply.
- The duty places equality considerations, where they arise, at the centre of policy formulation, side by side with all other pressing circumstances, however important these might be.
- The duty is on the decision maker personally in terms of what he or she knew and took into account. A decision maker cannot be assumed to know what was in the minds of his or her officials giving advice on the decision.
- Each aim of the duty must be considered. The requirement to have due regard to the need to advance equality of opportunity is a separate obligation, in addition to the need to avoid unlawful discrimination.
- The general equality duty must be complied with before and at the time a particular policy is under consideration, as well as at the time a decision is taken. A public authority subject to the general equality duty cannot satisfy the general equality duty by justifying a decision after it has been taken.
- A public authority must consciously think about the need to do the things set out in the general equality duty as an integral part of the decision-making process. Having due regard is not a matter of box ticking. The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision. There should be evidence of a structured attempt to focus on the details of equality issues.

- A public authority must have sufficient evidence on which to base consideration of the impact of a policy or decision. It will need to consider whether it has sufficient information about the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority must take responsibility for complying with the general equality duty in relation to all functions to which the general equality duty applies. Responsibility for the general equality duty cannot be delegated to external organisations that are carrying out functions on its behalf.
- A public authority must consciously consider the need to comply with the general equality duty, not only when a policy is developed and decided upon, but also when it is being implemented. The general equality duty is a continuing one, so public authorities may need to review policies or decisions in light of the general equality duty, for example if the make-up of service users changes.
- Although a public authority is not legally required to keep records of its consideration of the aims of the general equality duty in making decisions, it is good practice to do so and it encourages transparency. If it is challenged it will be difficult to demonstrate that it has had due regard to the aims of the general equality duty if records are not kept.

The general equality duty applies to the exercise of all public functions. The duty applies to all of the decisions made in the course of exercising public functions, not just to policy development and high-level decision-making. To ensure compliance with the duty at all levels of decision-making, including in an individual case, there must be arrangements to integrate it properly into the day-to-day activities of those bodies to which it applies.

4. *Putting the general equality duty into practice*

This section sets out a suggested approach for compliance by public authorities subject to the general equality duty. This takes case law principles into account.

a. **Establishing the relevance of the duty to your functions**

The general equality duty applies to public authorities, whatever their size. Compliance 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 its powers and duties. This means everything it is required to do as well as everything it is allowed to do. Examples of this include: policy decisions, individual decision-making, budgetary decisions, public appointments, service provision, statutory discretion, employment of staff and procurement of goods.

To ensure that you are having due regard to the aims of the general equality duty, consider whether and the extent to which the duty is relevant to the functions you carry out. The duty will be relevant for some functions in relation to most or all of the protected characteristics, for example, employment functions. The different aims of the duty may be relevant for some functions but not others, or to the needs of people with some protected characteristics, but not to others. For example, elimination of discrimination and the advancement of equality for disabled people will be relevant to your IT policies and practices but fostering good relations is unlikely to be. In practice, 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. Remember that having regard to the aims of the general equality duty is no less important when the numbers of people with a protected characteristic are small, especially where the potential impact on that group is significant.

There is no prescribed process for determining or documenting relevance but it will be helpful if you consider all the reliable evidence you have about the actual or likely impact of your functions. If you do not have sufficient evidence to enable you to determine relevance, consider gathering more evidence. Assessing whether the duty is relevant will require some analysis or assessment and should be more than just guess work, but it should not be a burdensome task. Staff that are familiar with an area of work would ideally be involved in any assessment of relevance. Once you have established the relevance of the duty to the different functions you perform, you will be better able to prioritise your efforts.

Because the duty is a continuing duty and your functions may change in the future, it is useful to keep records of your findings. You may find it helpful to publish your findings to help the public understand what your organisation does and its degree of relevance to the duty. The general equality duty continues to apply to you if you have contracted out a function. It also applies to the allocation (or withdrawal) of funding to the voluntary sector.

Remember:

- Establishing relevance to the aims of the general equality duty is a means of helping you to prioritise your efforts to comply, it is not an end in itself.
- If you have little qualitative or quantitative evidence about the effect of a function, engagement with people with different protected characteristics can be helpful.

b. Collecting and using equality information

What the general equality duty requires

Having due regard to the aims of the general equality duty requires public authorities to have an adequate evidence base for their decision-making. Collecting and using equality information will enable them to develop a sound evidence base. Case law has made clear that public authorities should ensure that they have enough relevant information to hand about equality issues to make informed choices and decisions, and to ensure that this is fully considered before and at the time decisions are taken. See section 3 above for further information about case law principles.

Collecting and using equality information will help you to identify equality priorities and to understand the impact of your proposals and decisions on people with protected characteristics. It will help you to set useful objectives and measure progress against them. It can help you to base your priorities and decision-making on sound evidence rather than assumptions or stereotypes. It is not an end in itself – it will help you to identify ways to eliminate discrimination, advance equality, and foster good relations. Some authorities will already have experience of collecting and using information across most of the protected characteristics, but for many organisations at least some of this will be new. The Commission has issued a detailed guide to *Equality information and the equality duty* which is on our website.

What information should be collected?

The information that different authorities will need to collect to inform their decisions under the general equality duty will vary widely between different sectors. This will depend on a number of factors, which will be particular to your organisation and the field in which you operate. Public authorities already hold a wide range of information about their employees, services and other functions such as enforcement, statutory discretion or planning. This includes functions that are contracted out.

There may be functions or protected characteristics for which you do not have information, for example about potential service users and the barriers they face. Engagement can help you to fill gaps and establish how accurate your information is.

Before deciding whether to put in place arrangements to gather relevant information through equality monitoring, consider:

- Why you want the information. Only collect information that is relevant and that will actually be used. .
- Whether the information you need is already available from other sources. Is there national data you could use?
- How easy or difficult it will be to get complete information.
- How its potential accuracy and completeness will affect its usefulness.
- The process you might use to gather information and how you will ensure the data remains confidential and anonymous (see page 24 for more on anonymised data).

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

- Consider what information you already have for your relevant functions.
- Identify any relevant information gaps. Use anecdotal evidence to help you identify what further information you may need.
- Take steps to fill any information gaps. Use in-house information and local, regional and national research, including publications from the Commission.

It will be difficult for you to understand the impact of your functions on people with different protected characteristics unless you have sufficient information, so 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 whereby this information could be collected. There may be other means of identifying the issues faced such as analysing national or local research or engagement. Collecting information about gender reassignment is a particularly sensitive area and opinion is divided on this issue. People could be very negatively affected by disclosure, but without any information it may be difficult to monitor the impact of policies and practices on transsexual people.

Benchmarking your performance and processes can help you to identify potential information gaps and new organisations to engage with. It can help you to gauge the accuracy of your equality information, and to identify good practice.

c. Meeting the equality duty in policy and decision-making

What the general equality duty requires

Assessing the impact on equality of your decision-making and your policies and practices is an important part of complying with the general equality duty. It is up to each public authority to choose the most effective approach for doing this, and approaches are likely to vary depending on the size of the public authority, the type of functions they carry out, and the nature of the decisions they are making.

The general equality duty requires public authorities to have due regard to the aims of the general equality duty when making decisions and setting policies.

To do this, it is necessary for decision-makers to understand the potential impact of their decisions on people with different protected characteristics and to identify

potential mitigating steps to reduce or remove adverse impacts. This should help to ensure that the policy is fully effective for different groups of people.

The general equality duty does not set out a particular process for assessing impact on equality that public authorities are expected to follow. Having due regard to the aims of the general equality duty is about informed decision-making, not about carrying out particular processes or producing particular documents. This means that you do not need to produce a document called an equality impact assessment, but organisations may choose to do so if they have found it to be helpful. In practice, you can choose to extend an existing impact assessment approach to all of the protected characteristics; or you can develop a new approach for your organisation. If you decide to adapt your existing approach, ensure that it meets all the requirements of the general equality duty. Take a proportionate approach to assessing impact on equality. This means taking an approach that is suitable to the size, resources and functions of your organisation, and to the relevance of the decision or policy to equality and good relations.

Assessing impact on equality involves using good equality information and analysis, and doing this **at the right time**, as part and parcel of your decision-making. In the past, a number of public authorities have assessed the impact on equality of their policies and practices at the end of the policy development process. In some cases this has resulted in successful legal challenges. There is no point in assessing your policies if your findings do not influence your decision-making.

Inevitably your initial focus is likely to be on new policies and programmes that you are currently working and making decisions on. You should already have assessed your existing policies with regard to race, disability and gender. You will therefore need to take steps to understand their impact on the new protected characteristics. These are: age, sexual orientation and religion or belief and marriage and civil partnership in relation to employment discrimination. Pregnancy and maternity and gender reassignment were captured to some extent by the gender equality duty, but they are now defined as separate protected characteristics. It might be useful to carry out this work when these policies come up for review, if they are allocated funding to continue, or if you are in receipt of critical audit or inspection reports to help you improve your work. The policy and service areas that will need the most detailed assessment will usually be within the functions that are most relevant to equality. You may need to assess the impact on equality of decisions that are made together, such as during a major review of services or when setting overall budgets.

This would mean having sufficient information to understand the cumulative impact of these decisions.

Case law states that it is good practice for a public authority to keep records of its consideration of the aims of the general equality duty when making decisions. If a body is challenged it will be difficult to demonstrate that it has had due regard if no records have been kept. Listed authorities must publish equality information to demonstrate compliance with the general equality duty. In practice, written assessments of impact on equality, or the relevant sections of decision documents are likely to be a key component of this information.

Assessing the impact on equality is an ongoing process that does not end once a policy has been agreed or implemented. Your assessment will have helped you to anticipate and to address the policy's potential impact on different groups. However, the actual impact of the policy will only be known once it has been introduced.

The Commission has produced a guide: *Meeting the equality duty in policy and decision-making*. This is available on our website.

Remember:

- Make sure staff know their responsibilities, what this means in practice and where they can access relevant information.
- Assessing impact on equality early on avoids wasting resources if a policy needs to be changed because it discriminates against certain groups or misses obvious opportunities to advance equality of opportunity or to foster good relations.
- Where a policy is likely to be relevant to certain groups but there is no reliable data, engagement can help you understand the impact it might have.
- Using a consistent methodology for assessing impact will help to build consistency into your work and enable you to compare progress made over time.
- Assess the impact on equality of any decisions you make about procuring out any particular functions.

d. Engagement

What the general equality duty requires

Having due regard to the aims of the general equality duty requires public authorities to have an adequate evidence base for their decision-making. Engagement with people with different protected characteristics can help you to develop this evidence base. Case law has stressed the importance of engagement in ensuring public authorities understand the impact of their decisions on different people.

Engagement is a broad term, intended to cover the whole range of ways in which public authorities interact with their service users, employees (and other stakeholders such as equality organisations), over and above what they do in providing services, or within a formal employment relationship. Engagement enables public authorities, and people with an interest in their work, to pool their knowledge and experience of eliminating discrimination, advancing equality of opportunity and fostering good relations. The Commission has issued a guide on *Engagement and the equality duty* which can be found on our website.

Good equality information is the foundation of evidence-based decisions, and it will enable public authorities to design and deliver effective and efficient policies. Engaging with stakeholders and employees will help public authorities to base their policies on evidence, rather than on assumptions. Where you have gaps in your information base, engagement can help you to fill them. This may be particularly helpful for areas which are most sensitive, like gender reassignment, where you are less likely to have quantitative information.

Engagement can help you to assess the impact of your policies on people with different protected characteristics. It can be useful for finding solutions to problems, and for overcoming barriers faced by particular groups. Engagement can help you prioritise your objectives, by determining which are most likely to make the biggest difference to tackling inequality. As well as informing decisions, engaging stakeholders can help you to understand how effective your work is, whether there are unexpected consequences from it, and how to make it more effective in the future.

In deciding who to engage with, consider the nature of the policy and the groups who are most likely to be affected by it. Consider people from less visible groups, and

groups you may not have engaged with before, as they may also be interested in, or affected by your work. To make the best use of everyone's time and resources, identify what information you may already have from previous research and stakeholder engagement. Look at local and national research and monitoring data. You can then determine where the gaps in evidence are, what you are seeking to find out, and from whom. This will help focus your engagement activities.

Engagement should be proportionate to the size and resources of your organisation, as well as to the significance of the policy. This means that the greater the impact of your policy on equality of opportunity and good relations and the greater risk of it being discriminatory, the more likely you are to need significant public (or more tailored) engagement.

There are ways to engage with stakeholders that do not require significant resources. For example, a school might use a scheduled parent–teachers meeting to engage but a local authority might run an online questionnaire and some focus groups with local residents. Public authorities should ensure that their engagement methods take into account the needs of people with the different protected characteristics. Under the Equality Act 2010, public authorities are obliged to make reasonable adjustments for disabled people, including during engagement.

To be transparent and clear to stakeholders about how their contribution has informed your work, consider whether it would be useful to publish information about who you have engaged with (being mindful of privacy concerns), and what the outcomes were. If you are a listed authority, this information could form part of the information published to demonstrate compliance with the general equality duty.

Remember:

- Be clear about your aims and share those with the people you engage with.
- Engagement is most successful when people are engaged at an early stage, prior to key decisions being made.
- Take steps to respect confidentiality.
- Successful engagement is influential and transparent. This involves reporting on the results of engagement, and why certain points have not been taken on board.

- Consider whether there are other authorities locally you could work with to share resources and prevent stakeholders becoming overstretched.
- Build long-term relationships of trust with voluntary sector organisations and trade unions. This may involve formalising links or setting up representative forums.
- Be mindful of diversity within characteristics and the multiple barriers people face.
- Don't limit your engagement to representative bodies only.
- Any public consultation must be meaningful. You must allow sufficient time for people to respond and you must genuinely consider the responses with an open mind and take them into account in your planning and decision-making.

e. Procurement

What the general equality duty requires

The general equality duty applies to the procurement (including commissioning) function of public authorities subject to the duty. For authorities that are subject to the duty because they carry out public functions (as opposed to being listed in Schedule 19), the general equality duty only applies in so far as procurement is 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 public functions are contracted out, the external contractor will 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 procuring public authority may need to include obligations relating to equality in the contract, 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.

When undertaking procurement you must have due regard to the aims of the general equality duty in order to meet your obligations. 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. Integrating

equality into your procurement can improve your services by making them more appropriate and this can lead to better value for money.

Whenever one of your functions is carried out by an external supplier, you remain responsible for meeting the general equality duty. This means building equality considerations into the appropriate stages of your procurement processes, where relevant and proportionate. Staff involved in procurement 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 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.

Assessing the impact on equality of your policies and practices will include reviews of your procurement policies, if relevant to the aims of the general equality duty. The first step public authorities are therefore advised to take, to help them meet the general equality duty, is to embed equality considerations into their corporate strategies or policies on procurement. Remember also to take equality considerations into account when you are de-commissioning services.

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 protected characteristic. This information can be used to improve the design of your service. This is important for effective procurement, 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.

Where relevant and proportionate, it may be useful for the contract 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 people with the protected characteristics, or how take-up will be increased for different groups that may face barriers in accessing the service. You may also need to specify what information you need the contractor to collect and report on. For example, you might need to monitor health outcomes for people with learning disabilities in relation to contracted-out health services. If you are covered by the

specific duties, this will help you to meet your obligation to publish annual information on your service users. Further advice on this is provided in the next section of this guide.

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 encourage a more 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 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. 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.

You may find it useful to include the following contract conditions:

- Prohibit the contractor from unlawfully discriminating under the Equality Act 2010
- Require them to take all reasonable steps to ensure that staff, suppliers and subcontractors meet their obligations under the Equality Act 2010.

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.

To ensure that you are meeting your obligations under the general equality duty, we recommend that you review the contractor's performance, including with regard to any equality conditions in the contract. Take prompt action to deal with poor performance if you become aware of it.

5. *Putting the specific duties into practice*

This section covers what listed authorities need to do to meet their specific duties obligations. It covers two areas, publishing equality information and publishing equality objectives.

a. Publishing equality information

What the specific duties require

Listed authorities must publish information to demonstrate compliance with the general equality duty. This must be at least annually from the first date of publication (which should have been no later than 31 January 2012 or 6 April 2012 for schools and pupil referral units). The information must include information relating to people who share a protected characteristic who are its employees, or affected by its policies and practices. The information must be available in a manner that is accessible to the public. It can be published separately or within another document.

Public authorities with fewer than 150 employees are exempt from the requirement to publish information on their employees. However, they may still need to collect workforce information to be able to understand the impact of their policies and practices on their workforce. They may also need to publish some information about the impact of their employment functions on people with the different protected characteristics in order to demonstrate compliance with the general equality duty.

The Regulations are not particularly prescriptive about the content of the information published, other than the requirements set out above. However, publishing equality information should enable service users, staff, the Commission, regulators and other

interested parties to assess the equality performance of your organisation. It will help you to explain how and why you have reached certain conclusions and made certain decisions. It will provide a clear picture of how you have complied with the general equality duty and it will make your decision-making more transparent. The Commission has issued a guide *to Equality information and the equality duty* which is available on our website.

Publishing information is not simply a matter of being transparent about what information you have (ie the breadth and quality of the information you hold), although this will be useful. More importantly, it is about demonstrating how you have used your information to have due regard to the aims of the general equality duty (ie how you have used it in making a particular decision or in the way you have delivered your work).

What should be published?

What you publish will depend on the size of your organisation and on the functions you carry out. When publishing information, consider providing relevant, proportionate information which is broad enough to give a full picture of performance on the general equality duty across your functions, and to demonstrate that you have had due regard to all three aims of the duty, for all relevant protected characteristics.

Your information will usually fall into two main categories:

1. **information to identify equality issues.** Examples of this include equality monitoring information about employees or service users, or information about the effect of your activities on people with different protected characteristics.
2. **information about steps taken to have due regard** to the aims of the general equality duty. For example, any records you have about how you had due regard in making certain decisions, information that was considered in that decision-making (including engagement), consideration of steps to mitigate adverse impacts, or details of policies to address equality concerns.

Remember that small organisations like primary schools may only need simple methods for publishing, eg by publishing a short evidenced account of their equality priorities and work, with an indication of key trends and issues. Larger organisations like government departments will need to publish a more detailed account of their equality considerations and performance across a wider range of functions.

The requirement to publish equality 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 when it is available to keep it up-to-date.

The specific duties do not require your equality information to be published in any particular document. You can choose to publish it on a dedicated page on your website or within a relevant document, such as a business plan. If it is included in a larger document, this should be clearly signposted in the document and on your website. **It will be easier for you to demonstrate compliance with the specific duties if your information is clearly labelled, easy to find, and in one place on your website.** The specific duties require published equality information to be 'accessible to the public'. We recommend that you consider making it available in accessible formats or in different languages, as appropriate. You can find useful guidance on this issue at the online Website Accessibility Initiative:

www.w3.org/WAI/.

When deciding what equality information to publish, you will need to take account of the Data Protection Act 1998, and in particular to ensure that no individuals can be identified from any published equality information without their express consent.

Ensuring confidentiality is likely to be a particular issue when you are dealing with sensitive data or where the numbers of people with that characteristic are numerically low, potentially making it easier to identify individuals; for example, data relating to sexual orientation, religion and belief and gender reassignment.

Anonymisation is the process of converting data into a form where identification of individuals is unlikely to take place. The Information Commissioner's Office has published a code of practice on the anonymisation of personal data and the disclosure of data once it has been anonymised.⁴

These steps may help you to plan your information publication:

- Collate your existing information and publish it at least annually from the first date of publication (this should have been no later than 31 January 2012, or 6 April 2012 for schools and pupil referral units). This is a legal requirement.

⁴ http://ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation

- Where it is not possible to fill information gaps in the short term, consider publishing your timeframe for filling them.

b. Publishing equality objectives

What the specific duties require

A listed authority (including schools and pupil referral units) must publish one or more equality objectives that it thinks it needs to achieve to further the aims of the general equality duty. This should have been done by 6 April 2012 and then at least every four years thereafter. The objectives must be specific and measurable. They must be published in an accessible format as a separate document, or in another document.

The purpose of setting specific, measurable equality objectives is to help public authorities to better perform the general equality duty. Equality objectives help focus attention on the priority equality issues within an organisation, to deliver improvements in policy-making, service delivery and employment, including resource allocation. Ideally, the development of equality objectives should be carried out as part of the normal business planning processes of your organisation. The flexibility to publish objectives any time up to 6 April 2012, and to publish new objectives at any point in the following four years, accommodates this. The Commission has produced a guide, *Objectives and the equality duty*, which is on our website.

When choosing your priorities, consider 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. Your objectives should be challenging but achievable. Many of the issues facing people with particular protected characteristics are deep-seated and difficult, and it may take time to fully address these. When setting your objectives, you may wish to use national information or information published by equality organisations. Your review of functions, your engagement and your assessments of impact on equality can also help you to decide on the areas where most effort is needed or you can have the most impact on equality.

Although you must publish one equality objective as a minimum, there is no maximum number required. Public authorities should take a proportionate approach.

This means that the number of objectives they set and their level of ambition will be different, depending on the size and role of the public authority. Larger public authorities like government departments are likely to set a greater number of equality objectives, across a broader range of issues, than a smaller public body with a narrower area of influence, such as a primary school.

Objectives which focus on the biggest equality challenges facing the public authority, and that are based on evidence of the effect of your activities on people with particular protected characteristics, are more likely to help you meet the aims of the general equality duty. The objectives you set must be specific and measurable.

Objectives and the progress made towards them are likely to be an important piece of evidence to demonstrate your compliance with the general 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 updates about the progress you have made.

The specific duties do not require your equality objectives to be published in any particular document. You may choose to publish them on your website or within your business plan, your workplan or another document. Your objectives should be clearly signposted. The objectives should be presented clearly, and in a way that the general public will understand.

It will be easier for you to demonstrate compliance with the specific duties if your objectives are clearly labelled, easy to find in a short period of time and in one place on your website.

The specific duties require published equality objectives to be 'accessible to the public'. We recommend that you consider publishing them in alternative accessible formats and in different languages, where proportionate and appropriate. You may also find it useful to publish information on the progress you are making on your objectives to demonstrate your compliance with the general equality duty.

Remember:

- Focus on areas where the need for action on equality is greatest.
- 'Measurable' does not mean that you cannot use qualitative information to assess progress. Staff surveys, complaints, and feedback forms are all useful sources.

- Think about which equality objectives would best enable you to make improvements to your service design and delivery.
- Consider setting a timetable for reviewing and setting new objectives.

6. Embedding the equality duty into your organisation

Taking steps to integrate the general equality duty into your business planning processes will assist you in meeting it. These processes are likely to vary, depending on the size of your organisation and breadth of functions you perform. This includes when drawing up budgets and developing and approving 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.

Regardless of the size of your organisation clear leadership has an important role to play. This involves senior staff and any elected or appointed officials taking responsibility for compliance with the general equality duty (and the specific duties if they apply). This includes taking account of information about the impact of your activities on equality when making decisions, building compliance into strategic planning and partnership working and informing staff about their obligations to enable them to have due regard in their decision-making.

It may involve designating clear staff roles for implementation, allocating resources for advancing equality, including equality targets in staff appraisals, requiring updates on action taken and practical outcomes, and promoting the benefits of the general equality duty in public communication. In larger organisations, it is good practice to give operational responsibility for coordinating this work 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 general equality duty.

Internal governance

It will be beneficial if you have internal systems in place to be able to check the general equality duty and the specific duties (if you are listed) have been complied with. These can be proportionate to your organisation's size and resources, and will work best if supported at senior levels. Effective performance involves generating a culture across your organisation where equality issues are viewed as a matter for everyone, and as routine as asking for the financial implications of a decision. A range of methods have been used by public authorities, including the following approaches:

- Introduce a standing item for board meetings on the duty.
- Convene an internal working group with representation across departments, chaired by a member of the senior management team.
- Ensure that relevant policies are only signed off when it is clear that the general equality duty has been complied with..
- Introduce a 'critical friends' panel of local stakeholders to provide a robust challenge to staff.
- Lead equality work from the chief executive's department or the business planning team to ensure it is put at the heart of decision-making.
- Identify a senior staff member to oversee work in this area, and provide them with specialist training, which they can cascade throughout the organisation.

Training

Case law has established that compliance with the general equality duty requires public authorities to be conscious of their obligations. It has also established that compliance requires public authorities to take a deliberate approach to meeting their obligations - see section 3 of this guide for further information about case law principles. Taking steps to help your staff, decision-makers and contractors understand the general equality duty, including their own obligations, will help your organisation to develop this conscious state of mind and take a deliberate approach. Training for those with a governance role will help them embed equality into their scrutiny and decision-making. Training can be delivered for new staff and

contractors, and refresher briefings for existing staff can also be useful. It will be more effective if your training is:

- Appropriate to the responsibilities of your staff.
- Tailored to your own approach to assessing impact.
- Built into the mainstream training you provide to staff (and, where you have them, to councillors, board members or governors).
- Looks at how to assess impact on equality, why it is done, what the benefits are, and how it can be used in decision-making.
- Focused on how equality information should be used.

The public sector equality duty at a glance for senior managers

Requirements:

- Is your organisation covered by the general equality duty? Is it also covered by the specific duties?
- Are you aware of implementation dates for the specific duties?

Decision-making:

- Are all decision-makers fully aware of their obligations?
- What information do you have in relation to your service users and staff with particular protected characteristics, including from any engagement?
- Do you have mechanisms in place to ensure that your equality evidence is available to decision-makers, both on time and in the right format so that it can influence policy development effectively?
- Do decision-makers and others have clear guidance about the role and value of record-keeping when they are making decisions on behalf of the organisation?
- Are systems in place for policies to be reviewed in the light of the general equality duty if circumstances change?

7. *Regulatory framework*

The Equality and Human Rights Commission is the independent regulator of equality and human rights legislation, including the public sector equality duty. In our regulatory role, we undertake a range of work to assist and promote compliance and best practice on the equality duty.

Promoting awareness

We use a range of tools to promote awareness of, and understanding about, the equality duty. This includes partnership working with relevant bodies. It includes the provision of advice via publishing information on the equality duty on our website, and issuing non-statutory guidance.

We provide information about the requirements of the equality duty as well as broad advice about what we are looking for from public authorities in terms of compliance. We suggest steps that public authorities can take to comply with their legal obligations. We also provide advice about particular matters raised by case law, where appropriate.

As the functions and size of public authorities will vary, we are unable to set out in this guide exactly what we expect to see as this will vary according to the type of public authority, their sector and geographical area that they work in. We have sought to give a good indication of the steps that we will be looking for, and when we are able to provide more detailed information (such as advice resulting from case law) we will provide updates on our website.

Monitoring

We monitor and enforce the public sector equality duty. This involves assessing published equality information, undertaking research, collating best practice, and compiling evidence to support our compliance and enforcement activity.

Enforcement

We use a range of strategies to promote compliance, and we select the most appropriate tool depending on the circumstances. This can involve building collaborative relationships with public bodies to achieve change. We work to promote compliance as the preferred option and we usually only take formal enforcement action where efforts to encourage compliance have failed.

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 whether a body has complied with the public sector 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, including what steps they will take. We can intervene in legal proceedings related to the public sector equality duty by providing the Court with expert advice to help it 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 the general equality duty. Such agreements usually include implementing an action plan to address any breach and prevent future breaches. If a public authority doesn't comply with the general equality duty, its actions or failure to act can also 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, including the Commission.

Working with other regulators

Regulators, inspectorates and ombudsmen who are subject to the general equality duty need to have due regard to the aims of the general equality duty in their functions. For example, this could mean inspectorates ensuring that their assessments of performance of public sector bodies include consideration of performance on equality. They can help public authorities to identify equality issues through individual inspection reports and through national studies. This can help public authorities to benchmark the progress they have made.

Role of stakeholders

Finally, the public and external stakeholders (including people with particular protected characteristics) can scrutinise equality information published by public authorities, and challenge decisions that they are unhappy with, including through judicial review.

Appendix 1: Section 149 of 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 Secretary of State has consulted the Commission for Equality and Human Rights in accordance with sections 153(4) and 154(4) of that Act. The Secretary of State has consulted the Welsh Ministers in accordance with section 154(3) of that Act so far as these Regulations apply to cross-border Welsh authorities. A draft of these Regulations was laid before and approved by a resolution of each House of Parliament in accordance with section 208(4), (5)(f) and (8) of that Act. The Secretary of State, in exercise of those powers, makes the following Regulations:

1) Citation, commencement and interpretation

- a) These Regulations may be cited as the Equality Act 2010 (Specific Duties) Regulations 2011 and come into force on the day after the day they are made.
- b) In these Regulations ‘the Act’ means the Equality Act 2010.

2) Publication of information

- a) Each public authority listed in either Schedule to these Regulations must publish information to demonstrate its compliance with the duty imposed by section 149(1) of the Act.
- b) A public authority listed in Schedule 1 to these Regulations must publish the information—
 - i) not later than 31st January 2012; and
 - ii) subsequently at intervals of not greater than one year beginning with the date of last publication.
- c) A public authority listed in Schedule 2 to these Regulations must publish the information—

- i) not later than 6th April 2012; and
 - ii) subsequently at intervals of not greater than one year beginning with the date of last publication.
- d) The information a public authority publishes in compliance with paragraph (1) must include, in particular, information relating to persons who share a relevant protected characteristic who are—
 - i) its employees;
 - ii) other persons affected by its policies and practices.
- e) Paragraph (4)(a) does not apply to a public authority with fewer than 150 employees.

3) Equality objectives

- a) Each public authority listed in either Schedule to these Regulations must prepare and publish one or more objectives it thinks it should achieve to do any of the things mentioned in paragraphs (a) to (c) of subsection (1) of section 149 of the Act.
- b) The objectives must be published—
 - i) not later than 6th April 2012; and
 - ii) subsequently at intervals of not greater than four years beginning with the date of last publication.
- c) An objective published by a public authority in compliance with paragraph (1) must be specific and measurable.

4) Manner of publication

- a) A public authority may comply with a duty to publish information imposed by Regulation 2 or 3 by publishing the information within another published document.
- b) A public authority may comply with a duty to publish information imposed by Regulation 2 or 3 by publishing the information within another published document.

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; and 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). This includes all ages, including children and young people.

Assessing impact on equality: This involves looking at your equality information and the outcomes of any engagement in order to understand the impact or potential impact of your decisions on people with different protected characteristics.

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.

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

Disability: A person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities. Certain medical conditions are automatically classed as being a disability – for example, cancer, HIV infection, multiple sclerosis.

Engagement: A broad term, intended to cover the whole range of ways in which public authorities interact with their service users, employees and other

stakeholders, 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. It sets out the Commission's powers and responsibilities (these 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.

Equality information: The information that you hold (or will collect) about people with protected characteristics, and the impact of your decisions and policies on them.

Equality objectives: A requirement to prepare, set and publish objectives is one of the specific duties set out under 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: The wider social roles and relationships that structure men's and women's lives. These change over time and vary between cultures.

Gender reassignment: The process of changing or transitioning from one gender to another. The Equality Act prohibits discrimination against a person who is proposing to undergo, is undergoing or has undergone a process, or part of a process, for the purpose of reassigning their sex. See also transsexual person.

Gender recognition certificate: A certificate issued under the Gender Recognition Act to a transsexual person who seeks such a certificate and who has, or has had gender dysphoria, has lived in the acquired gender throughout the preceding two years, and intends to continue to live in the acquired gender until death.

General equality duty: The requirement to 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; and 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.

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 other body carrying out public functions made a decision.

Listed authority: A public authority covered by the specific duties and who is listed in Schedules 1 and 2 of the Equality Act 2010 (Specific Duties) Regulations 2011.

Marriage and civil partnership: In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between two people of the same sex.⁵ This will also be true in Scotland when the relevant legislation is brought into force.⁶ Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples (except where permitted by the Equality Act).

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.

⁵ Section 1, Marriage (Same Sex Couples) Act 2013.

⁶ Marriage and Civil Partnership (Scotland) Act 2014.

Mitigation: This is when measures are put in place that lessen the negative effects of a policy or policies on protected groups.

Objective justification: See objectively justified.

Objectively justified: When something can be shown to be a proportionate means of achieving a legitimate aim – that is, the way of achieving the aim is appropriate and necessary. See also proportionality.

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.

Procurement: The term used in relation to the range of goods and services a public body or authority commissions and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided.

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 public sector equality duty covers age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It also covers marriage and civil partnerships, but not for all aspects of the duty.

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 all other organisations who exercise public functions. In this guidance we use 'public authority' to mean both bodies listed in Schedule 19 and bodies not listed but subject to the general equality duty because they carry out public functions.

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.

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 people with certain protected characteristics than to others, and to one or more of the three aims of the general equality duty.

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).

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 or failed to comply with the general equality duty.

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 or 2 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. The specific duties are different in England, Scotland and Wales.

Stakeholders: People with an interest in a subject or an issue.

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, transvestite/cross-dressing people androgynous/polygender people, 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 person: Refers to a person who has the protected characteristic of gender reassignment. This may be a woman who has transitioned or is transitioning to be a man, or a man who has transitioned or is transitioning to be a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person. Once a transsexual person has acquired a gender recognition certificate, it is probably the case that they should be treated entirely as their acquired gender.

More information

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

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