

TECHNICAL GUIDANCE

Equality Act 2010

Technical Guidance on the Public Sector Equality Duty: Wales

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Foreword

The Equality Act 2010 (the Act) represents the culmination of years of debate about how to improve British equality law. It offers individuals stronger protection against discrimination. The Act also gives employers and businesses greater clarity about their responsibilities, and it sets a new expectation that public services must treat everyone with dignity and respect.

The Equality and Human Rights Commission has a key role to play in bringing the Act to life. We are committed to our vision of a modern Britain where everyone is treated with dignity and respect, and we all have an equal chance to succeed.

That is why we are publishing a range of guidance that will give individuals, businesses, employers and public authorities the information they need to understand the Act, exercise their rights, and meet their responsibilities in the most straightforward way.

The public sector equality duty was created by the Equality Act 2010, and replaces the race, disability and gender equality duties. It is supported by the specific duties contained in the Equality Act 2010 (Statutory Duties)(Wales) Regulations 2011. This Technical Guidance explains the three aims of the public sector equality duty, outlines the requirements of the Equality Act 2010 and the specific duty regulations and provides practical approaches to complying with the public sector equality duty. This document provides an authoritative, comprehensive and technical guide to the detail of the law. It will be invaluable to lawyers, advocates, human resources personnel, courts and tribunals, and everyone who needs to understand the law in depth, or apply it in practice.

More information about the full range of guidance available for individuals, businesses, service providers and employers can be found on our website:

www.equalityhumanrights.com

Introduction

The Equality Act 2010

- 1.1 The Equality Act 2010 (the Act) consolidates and replaces the previous discrimination legislation for England, Scotland and Wales. The Act covers discrimination because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These categories are known in the Act as ‘protected characteristics’.
- 1.2 The Act introduces a new public sector equality duty which replaces the previous three equality duties for race, disability and gender. The new duty applies to the ‘relevant protected characteristics’ – age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex and sexual orientation and, to a more limited extent, to the protected characteristic of marriage and civil partnership (see ‘How the duty applies to the protected characteristics’ at para 2.9). s.149
s.149(7)

Status of this guidance

- 1.3 The Equality and Human Rights Commission (the Commission) has prepared and issued this technical guidance on the basis of its powers to provide information and advice under s.13 of the Equality Act 2006 (EA 2006). s.13 EA 2006
- 1.4 This guidance is not a statutory Code issued under s.14 EA 2006. The guidance may be used as evidence in legal proceedings.
- 1.5 Showing that the guidance in this document has been followed – or being able to explain why it was not – will be relevant in demonstrating compliance with the public sector equality duty. The courts have said that a body subject to the duty will need to justify its departure from non-statutory guidance such as this. Kaur and Shah, R.
(on the application
of) v. London
Borough of Ealing
and Anor [2008]
EWHC 2062
(Admin), para 22
per Moses LJ

Scope of the guidance

- 1.6 This guidance covers the public sector equality duty as set out in Part 11 of the Act. Subject to the exceptions set out in Appendix 3, those parts of the guidance which deal with the public sector equality duty in s.149 of the Act apply to all public authorities, and those discharging public functions, across Great Britain.
- 1.7 This guidance also covers the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 ('the Regulations') which impose specific duties on certain public authorities listed in Part 2 of Schedule 19 to the Act.

Human rights

- 1.8 Public authorities, and other organisations when they are carrying out 'functions of a public nature', have a duty under the Human Rights Act 1998 (HRA) not to act incompatibly with rights under the European Convention for the Protection of Fundamental Rights and Freedoms (the Convention). The public sector equality duty uses the same definition of functions of a public nature as the Human Rights Act 1998 (HRA). s.6 HRA
s.149(2) and
150(5)
- 1.9 Courts and tribunals have a duty to interpret primary legislation (including the Equality Act 2010) and secondary legislation in a way that is compatible with the Convention rights, unless it is impossible to do so. This duty applies to courts and tribunals whether or not a public authority is involved in the case. So, in any discrimination claim, or any claim relating to the public sector equality duty made under the Act, the court or tribunal must ensure that it interprets the Act compatibly with the Convention rights, where it can.
- 1.10 Because of the close relationship between human rights and equality, it is good practice for those exercising public functions to consider equality and human rights together when drawing up equality or human rights policies. This guidance only addresses equality obligations.

Terms used in this technical guidance

- 1.11 **‘bodies subject to the duty’**: The term ‘bodies subject to the duty’ is used in this guidance to refer to all legal persons subject to the public sector equality duty whether for all or just some of their functions. This includes organisations, for example NHS Trusts, and named persons subject to the duty, for example Her Majesty’s Chief Inspector of Prisons.
- 1.12 **‘listed authorities’**: Some bodies subject to the general equality duty are also subject to specific equality duties which are intended to enable better performance of the general equality duty.¹ The term ‘listed authorities’ is used in this guidance to refer to these bodies. The specific equality duties are considered in Chapter 6 of this guidance.

¹ For those authorities subject to The Equality Act 2010 (Statutory Duties)(Wales) Regulations 2011 please see Schedule 19, Part 2 of the Equality Act 2010. Schedule 19 (as amended up to 1 April 2014) is at Appendix 6 to this guidance.

How to use the guidance

- 1.13 Bodies subject to the duty, including listed authorities, should read Chapters 1 to 5 and Chapter 7 of the guidance which relate to the general equality duty.

Listed authorities should in addition read Chapter 6 which relates to the specific equality duties.

Chapter 1 (this chapter) is an introduction

Chapter 2 explains what the duty is and introduces the meaning of due regard

Chapter 3 explains what each of the three aims of the public sector equality duty mean

Chapter 4 describes the tools available to advance equality

Chapter 5 outlines practical approaches to complying with the public sector equality duty

Chapter 6 outlines the requirements of the Equality Act 2010 (Statutory Duties)(Wales) Regulations 2011 (the Regulations)

Chapter 7 explains how the duty can be enforced by the Commission and others who have an interest.

Appendices:

What is meant by 'public authorities' and 'public functions'

Prohibited conduct

Exceptions

Assessments

Glossary

Equality Act 2010 Schedule 19, as amended

Specific duties regulations

Examples in the guidance

- 1.14 Two types of examples are used in this guidance. Examples which are in shaded boxes coloured blue are derived from actual court decisions and are used to illustrate how the courts have interpreted the legislation; these are titled 'Example'. Examples in shaded boxes coloured red are examples of good practice; these are titled 'Case study'. They are intended to do no more than illustrate the principles and concepts used in the legislation or to illustrate what bodies subject to the duty might (as opposed to must) do in response to the public sector equality duty.

Further information

- 1.15 The Commission has published further non-statutory guidance which is available on the Commission's website: www.equalityhumanrights.com

Chapter 2: Introduction to the public sector equality duty

Introduction

- 2.1 This chapter provides an introduction to the public sector equality duty. It explains what it is, its purpose and introduces the concept of 'due regard'. It also sets out the legal principles relevant to the duty. These provide the context for practical compliance with the general equality duty which is covered in Chapter 5 of this guidance.

The public sector equality duty set out in s.149 of the Act is referred to in this guidance as the general equality duty.

What is the general equality duty?

- 2.2 Section 149 of the Act imposes a duty on 'public authorities' and other bodies when exercising public functions to have due regard to the need to: s.149(1)
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In this guidance we refer to these as the three aims of the general equality duty.

Paragraphs 2.3 and 2.4 explain to which bodies and to which functions the duty applies.

References in this guidance to the general equality duty are to all three aims of the duty. A full consideration of each of the aims is provided in Chapter 3.

To whom does the general equality duty apply?

- 2.3 The general equality duty applies to public authorities listed in Schedule 19² to the Act in respect of all their functions, unless otherwise specified. It also applies to others who are not listed but exercise public functions, in respect of those functions. This is explained further in Appendix 1.³

The general equality duty applies to relevant bodies whatever their size, but the way in which it is implemented should be appropriate to the size of the body and its functions.⁴

- 2.4 Listed authorities are also subject to specific equality duties which are intended to enable better performance of the general equality duty. The specific equality duties are considered in Chapter 6 of this guidance.

When does the general equality duty apply?

- 2.5 The duty must be complied with when a body subject to it is 'exercising a function'. s.149(1), (2)

The courts have said that there is no scope for depriving 'function' of much of its ordinary meaning.⁵ In relation to bodies subject to the duty this means activities that form part of the purpose of their organisation or are natural to it. For example, for a school this would include any activities that relate to their purpose to educate children or are natural to it, including providing a safe environment for children to learn in.

- 2.6 The Court of Appeal has made it clear that public bodies should place considerations of equality, where they arise, at the centre of formulation of policy, side by side with all other pressing circumstances of whatever magnitude.⁶ Elsewhere, the Court of Appeal has stated that the general equality duty not only applies

² Other bodies may be added to the list in Schedule 19 by statutory instrument or by statute. A number of authorities have been added or removed since the Equality Act 2010 was passed. Appendix 6 to this guidance has a consolidated list of authorities in Schedule 19 as at 1 April 2014.

³ As explained in Chapter 1 in this guidance, unless otherwise indicated, the term **bodies subject to the duty** refers to all legal persons subject to the public sector equality duty whether for all or just some of their functions.

⁴ *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 at para 78.

⁵ *Pieretti v. Enfield Borough Council* [2010] EWCA 1104, Wilson LJ at para 26.

⁶ *Stuart Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, McCombe LJ at para 60

to general formulation of policy but also applies to decisions made in applying policy in individual cases.⁷

Example — A local authority was challenged for failing to comply with the Disability Equality Duty⁸ when considering an application for accommodation from a couple who had been evicted from their tenancy due to non payment of rent. The authority argued that the duty did not apply to making decisions about individual applications for accommodation. The Court said the authority was wrong: the general equality duty applies both when the local authority is drawing up its criteria and when it applies them in an individual case. Both of those are aspects of carrying out its functions.⁹

2.7 The courts have also said it is clear that the general equality duty is not something which has to be considered only when a body is exercising a statutory function under specific legislation. Instead it applies to the carrying out of any function of a public authority.¹⁰ For example, in the case of a local authority, a function may be the discharge of a statutory duty, the exercise of a discretion vested in it or the carrying out of a common law obligation.¹¹

This means that the general equality duty will apply to decisions made by the employees or agents of bodies subject to the duty in their day to day activities. Bodies subject to the duty will need to decide how they will enable those working for them to be aware of their responsibilities under the general equality duty (see Chapter 5 on practical compliance).

Example — A school had a uniform policy which permitted only one pair of plain ear studs and a wrist watch to be worn by pupils. A Sikh pupil wore to school her Kara (a narrow steel bangle with great significance for Sikhs). A teacher at the school asked the girl to remove it because it contravened the uniform

⁷ *Pieretti v. Enfield Borough Council* [2010] EWCA 1104, para 26 per Wilson LJ.

⁸ S.49A of the Disability Discrimination Act 1995, superseded by s.149 of the Act.

⁹ *Pieretti v. Enfield Borough Council* [2010] EWCA 1104.

¹⁰ *Barnsley MBC v. Norton* [2011] EWCA Civ 834, Lloyd LJ at para 15.

¹¹ *R. (on the application of D and S) v. Manchester City Council* [2012] EWHC 17 (Admin), Ryder J at para 48.

policy. The girl's requests to be exempted from the policy were refused by the school. The Court said it had seen no evidence that the teaching staff appreciated their obligations to fulfil the general equality duty.¹² The duty had been breached by the school's failure to reconsider the uniform policy in the light of the obligations in the general equality duty. The school had also breached the duty by failing to have due regard to its aims in its decision making about the particular girl's wish to wear the Kara once the issue arose.¹³

- 2.8 Although the duty applies to individual decisions as well as policy formulation, this does not mean that what the duty requires those exercising the function to do in both these situations is the same. The courts have made it clear that the regard due when exercising a function will depend on the circumstances in which a function is being exercised. 'Due regard' is discussed below.

How the duty applies to the protected characteristics

- 2.9 The Act sets out nine protected characteristics: s.4

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

- 2.10 The first aim of the general equality duty is to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act because of any of these protected characteristics.

However, the second and third aims of the duty (advancing

¹² In this case the Race Equality Duty set out in s.71 of the Race Relations Act 1976 (as amended) which has been superseded by the general equality duty in s.149 of the Act.

¹³ *R. (Watkins-Singh) v. Governors of Aberdare Girls' High School* [2008] EWHC 1865 (Admin).

equality of opportunity and fostering good relations) only apply in relation to persons who share a 'relevant protected characteristic'.

- 2.11 S.149(7) sets out the list of 'relevant protected characteristics'. s.149(7)
This includes all the protected characteristics set out above **except** marriage and civil partnership status.
As a result, in relation to the protected characteristic of marriage and civil partnership a body subject to the duty only needs to comply with the first aim of the duty.
- 2.12 The first aim of the duty is limited in scope to those circumstances where the Act makes discrimination, harassment, victimisation or other prohibited conduct because of a particular protected characteristic unlawful.
- 2.13 In relation to the protected characteristic of marriage and civil partnership, a body subject to the duty only needs to comply with the first aim of the duty and only in relation to work (Part 5 of the Act). This is because the parts of the Act covering services and public functions, premises, and education do not apply to that protected characteristic.¹⁴
- 2.14 The provision banning age discrimination in services and public functions (under Part 3 of the Act) took effect on 1 October 2012.¹⁵ Prior to that date, for the protected characteristic of age, a body did not need to comply with the first aim of the duty in relation to services and public functions (Part 3 of the Act). A body now needs to consider the first aim of the duty in respect of age discrimination and harassment in services and public functions, subject to exceptions (see Appendix 3).

¹⁴ See s.28(1)(a), 32(1)(b), 84(1)(b), 90 of the Act.

¹⁵ Age discrimination was already unlawful in relation to employment (Part 5 of the Act), further and higher education (Part 6, Chapter 2 of the Act) and general qualifications bodies (Part 6 Chapter 3). It is not unlawful in relation to schools (Part 6 Chapter 1).

What is the purpose of the public sector equality duty?

- 2.15 The broad aim of the general equality duty is to integrate consideration of the advancement of equality into the day-to-day business of all bodies subject to the duty.
- The general equality duty is intended to accelerate progress towards equality for all, by placing a responsibility on bodies subject to the duty to consider how they can work to tackle systemic discrimination and disadvantage affecting people with particular protected characteristics.
- 2.16 The Act recognises that not everyone's needs or experiences are the same and that equality does not mean always treating everybody in exactly the same way. For everyone to have an equal opportunity to achieve their full potential, they need to be free from any artificial barriers, such as prejudice or a failure to respond to the specific needs of people with different protected characteristics.
- 2.17 The second aim of the duty in particular reflects this by requiring relevant bodies to have due regard to the need to minimise or remove disadvantages; to take steps to meet the different needs of people with different protected characteristics; and by encouraging participation in activities by those whose participation is disproportionately low.
- 2.18 The Act makes it clear that in some circumstances compliance with the general equality duty may involve treating some persons more favourably than others, but not where this would be prohibited by the other provisions of the Act. s.149(6)
- Chapter 4 discusses the tools available in the Act to enable a body subject to the duty to advance equality.
- 2.19 Compliance with the duty should result in:
- better-informed decision making and policy development
 - a clearer understanding of the needs of service users, resulting in better quality services which meet varied needs
 - more effective targeting of policy, resources and the use of regulatory powers
 - better results and greater confidence in, and satisfaction with, public services

- a more effective use of talent in the workforce
- a reduction in instances of discrimination and resulting claims.

Who benefits from the duty?

2.20 The duty potentially benefits everyone because it applies to characteristics common to everyone. For example, everyone has a race and a sexual orientation.

There are also some characteristics covered by the duty which will not apply to everyone, such as disability.

In many situations people who share a particular protected characteristic have been, and continue to be, excluded and disadvantaged. Consideration of how to advance equality may well have more relevance for such people.

Bodies subject to the duty should not make assumptions about who is disadvantaged in a given situation. It is important to be alert to the fact that groups who may otherwise predominate may in certain situations be disadvantaged or have particular unmet needs.

Case study — A local health body provides support groups for new parents. It finds that these are well used by mothers, but very few fathers. On the face of it this may be because women tend to be the primary carers of children. However, after engagement with local fathers, the health body identifies that a significant number would like to attend these or similar sessions, but have previously felt excluded since they didn't feel the sessions catered for them. Another problem was that sessions were held during the day when the majority of new fathers were at work.

2.21 Bodies subject to the duty should also be aware of the diversity of experience within any one group of people. For example, within the group of people from ethnic minorities there are people from different ethnic minority communities with variations in experience. Within the group of disabled people there are people with different types of impairment. Relevant bodies should also bear in mind that people have multiple characteristics, for example a person may be black and a woman or disabled and a gay man.

Legal responsibility

- 2.22 Within each body subject to the duty the legal responsibility for a failure to comply with the general equality duty (and where appropriate the specific duties) will rest with the person or body who has overall responsibility for the body's acts or failures to act. This includes, for example, a Minister, a Chief Inspector, a group of Commissioners or a board, authority, commission, council or the governors of a school.

Exceptions

- 2.23 There are a small number of exceptions to the general equality duty. These are set out in Appendix 3.

What does 'due regard' mean?

- 2.24 Bodies subject to the duty must have due regard to each of the three aims set out in the general equality duty in exercising their functions.

To 'have due regard' means that in making decisions and in its other day-to-day activities a body subject to the duty must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations.

How much regard is 'due regard'?

- 2.25 How much regard is 'due' will depend on the circumstances and in particular on the relevance of the aims in the general equality duty to the decision or function in question.¹⁶ The greater the relevance and potential impact, the higher the regard required by the duty.

For example, compared to the purchase of stationery, the decisions a local authority makes about the provision of social care for older people will have greater potential impact and more relevance to the aims of the duty and so will need a higher degree of regard.

The three aims of the duty may be more relevant to some functions than others; or they may be more relevant to some protected characteristics than others.

¹⁶ In *R. (Baker) v. Secretary of State for Communities and Local Government* [2008] EWCA Civ 141 at para 31 Dyson LJ said due regard meant 'the regard that is appropriate in all the particular circumstances'.

For example:

- one or more of the aims of the duty are likely to be relevant to a Government department's policy on home working because of its direct impact on staff with different protected characteristics, for example disabled people, but it is unlikely that any of the aims will be relevant to its policy on office waste recycling
- the provision of burial and cremation services is likely to be highly relevant in relation to race and religion or belief and may have a smaller degree of relevance to the other protected characteristics.

2.26 There are many cases in which the courts have considered whether a body has complied with the public sector equality duty and the former equality duties for race, gender and disability. The principles set out in those cases will be relevant to the duty under s.149.

In *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 the court considered what a relevant body has to do to fulfil its obligation to have due regard to the aims set out in the general equality duty. The six 'Brown principles' it set out¹⁷ have been accepted by courts in later cases.¹⁸ Those principles are that:

- In order to have due regard, those in a body subject to the duty who have to take decisions that do or might affect people with different protected characteristics must be made aware of their duty to have 'due regard' to the aims of the duty.
- Due regard is fulfilled before and at the time a particular policy that will or might affect people with protected characteristics is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A body subject to the duty cannot satisfy the duty by justifying a decision after it has been taken. Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision are not enough to discharge the duty.

Continued...

¹⁷ *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 at paras 90-96.

¹⁸ Including cases about the duty in s.149 of the Act. See, for example, *R. (on the application of Greenwich Community Law Centre) v. Greenwich London Borough Council* [2012] EWCA Civ 496.

- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision. The duty has to be integrated within the discharge of the public functions of the body subject to the duty. It is not a question of ‘ticking boxes’. However, the fact that a body subject to the duty has not specifically mentioned [s.149]¹⁹ in carrying out the particular function where it is to have ‘due regard’ is not determinative of whether the duty has been performed. But it is good practice for the policy or decision maker to make reference to [s.149] and any Code or other non-statutory guidance in all cases where [s.149] is in play. ‘In that way the decision maker is more likely to ensure that the relevant factors are taken into account and the scope for argument as to whether the duty has been performed will be reduced.’
- The duty is a non-delegable one. The duty will always remain the responsibility of the body subject to the duty. In practice another body may actually carry out the practical steps to fulfil a policy stated by a body subject to the duty. In those circumstances the duty to have ‘due regard’ to the needs identified will only be fulfilled by the body subject to the duty if (1) it appoints a third party that is capable of fulfilling the ‘due regard’ duty and is willing to do so (2) the body subject to the duty maintains a proper supervision over the third party to ensure it carries out its ‘due regard’ duty.
- The duty is a continuing one.
- It is good practice for those exercising public functions to keep an accurate record showing that they had actually considered [the general equality duty] and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously. If records are not kept, it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty imposed by [s.149].

¹⁹ The equality duty in *Brown* was the Disability Equality Duty in s.49A of the Disability Discrimination Act 1995. Later cases have confirmed that the principles in *Brown* also apply to the duty in s.149 of the Equality Act 2010.

2.27 In *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, the Court of Appeal approved the ‘Brown principles’, as well as setting out some additional principles that are relevant for a public body in fulfilling its duty to have ‘due regard’ to the aims set out in the general equality duty. These principles are that:

- The equality duty is an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.
- The duty is upon the decision maker personally. What matters is what he or she took into account and what he or she knew.
- A body must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy.

In this case, the Court of Appeal also confirmed the need for a body subject to the duty to have available enough evidence to demonstrate that it has discharged the duty. The role of evidence in giving proper consideration to the aims of the equality duty is dealt with in Chapter 5 (see para 5.15 onwards).

2.28 Whilst questions of available resources may form part of its decision-making consideration, a body cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The courts have said that even where the context of decision making is financial resources in a tight budget, that does not excuse non-compliance with the duty and ‘indeed there is much to be said that in straitened times the need for clear, well informed decision making when assessing the impacts on less advantaged members of society is as great, if not greater’.²⁰

How do the three aims in the general equality duty relate to each other?

2.29 A body subject to the duty must have due regard to **each** of the three aims set out in s.149(1) in relation to each of the relevant protected characteristics set out in s.149(7).

²⁰ *R. (W) v. Birmingham City Council* [2011] EWHC 944, Blake J at para 45.

Some actions may support more than one of the aims of the duty and so inter-relate.

Case study — A university carries out a staff survey. The results indicate high levels of harassment, despite few formally reported incidences. As a result, it revises its policy on preventing and dealing with harassment and its grievance procedures. It also trains all staff on the new policy and procedures. These actions are likely to support both the aim of the duty to eliminate discrimination, harassment and other conduct prohibited by the Equality Act 2010 and the aim to foster good relations.

Chapter 3: The general equality duty aims

Introduction

3.1 This chapter explains what the Act and the courts say about each of the three general equality duty aims. As discussed in Chapter 2, a body subject to the duty must have due regard to each of the three aims in exercising its functions.

The obligations under the general equality duty go well beyond merely avoiding formal non-discrimination. The promotion of equality of opportunity is concerned with issues of substantive equality and requires a more penetrating consideration than merely asking whether there has been a breach of the principle of non-discrimination.²¹

The three aims are to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act (referred to in the rest of this chapter as eliminating discrimination and other prohibited conduct). **See section 1 of this Chapter.**
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (referred to in the rest of this chapter as advancing equality of opportunity). **See section 2 of this Chapter.**
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it (referred to in the rest of this chapter as fostering good relations). **See section 3 of this Chapter.**

²¹ *R. (Hurley and Moore) v. Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), Elias LJ at para 83 citing Dyson LJ in *R. (Baker) v. Secretary of State for Communities and Local Government* [2008] EWCA Civ 141.

Section 1: Eliminating discrimination and other prohibited conduct

3.2 The requirement to have due regard to the need to eliminate discrimination and other prohibited conduct means that a body subject to the duty needs to give advance consideration to issues of discrimination before making any policy decision that may be affected by them.²²

This means it should actively examine its current and proposed policies and practices to ensure that they are not discriminatory or otherwise unlawful under the Act.

The duty requires relevant bodies to tackle the consequences of past decisions which failed to give due regard to the equality aims.²³ This would include existing policies or practices which have never been subject to 'due regard' consideration.

Example — A school had a policy banning boys from wearing certain hairstyles, including corn rows. A pupil challenged the ban, arguing that exceptions should be made where corn rows were worn for cultural and family reasons. The Court found that the policy was indirectly discriminatory. The school would need to change the policy to avoid being in breach of the Act.

It also found that the general equality duty had not been complied with. There had been no consultation before the policy was introduced. The school argued that since it had not received any complaints about its policy it was entitled to regard it as proportionate. The Court agreed that the lack of complaints was a material factor but it could not be determinative.

The lack of complaints did not mean that there had not been a particular disadvantage to some with the same protected characteristic as the pupil who complained. Advance consultation might have painted a different picture.²⁴

²² *R. (Elias) v. Secretary of State for Defence* [2006] EWCA Civ 1293, Arden LJ at para 274.

²³ *R. (W.) v. Birmingham City Council* [2011] EWHC 1147, para 151 proposition iv.

²⁴ *G. v. St Gregory's* [2011] EWHC 1452, Collins J at paras 44-45.

- 3.3 The extent to which a body subject to the duty is required to scrutinise a particular policy, practice or decision in order to comply with the first aim of the general equality duty will depend on the likelihood that the policy or decision will have a discriminatory effect. Policies which are particularly relevant to equality (such as those involving service provision) are likely to require greater scrutiny than those which have no relevance.
- 3.4 If a body finds that an existing or proposed policy, practice or decision would potentially result in discrimination or other prohibited conduct, it will need to satisfy itself that it is lawful under the Act. For example, something which is potentially indirectly discriminatory can still be objectively justified or otherwise lawful because of an exception in the Act.
- 3.5 Where a policy, practice or decision is considered to be unlawful the body subject to the duty will need to change it to avoid being liable for discrimination or other prohibited conduct under the Act and being successfully challenged for being in breach of its public law obligations not to act unlawfully.
- 3.6 As with all the aims of the duty, to have due regard to the need to eliminate discrimination and other prohibited conduct is a continuing obligation. A body subject to the duty should remain alert to new evidence suggesting that discrimination or other prohibited conduct is, or could be, occurring and take appropriate action to prevent this happening.

Relevance of the general equality duty to certain types of prohibited conduct

- 3.7 Certain types of conduct will be unlawful under the Act only when the conduct is not ‘reasonable’ or when it cannot be ‘objectively justified’.

Continued...

Consideration of whether a body subject to the duty has acted reasonably, or whether such a body's conduct was justified will, for example, arise when determining whether there has been:

- a failure to make reasonable adjustments s.20
- indirect discrimination s.19
- discrimination arising from disability, and s.15
- positive action in circumstances where it is not permissible. s.158

Where the type of conduct is subject to the objective justification test, a failure to comply with the general equality duty does not of itself mean that the policy was not a proportionate means of achieving a legitimate aim. However, the courts have said that 'performance of the equality duty is of relevance in establishing justification'.²⁵

- 3.8 It will be easier to successfully defend the kind of claims referred to in para 3.7 if the respondent is able to demonstrate that it carefully considered whether a policy or decision with a potentially discriminatory impact is capable of being justified or if the policy or decision was reasonable in the circumstances. Compliance with the first aim of the general equality duty should enable a body subject to the duty to provide evidence of such consideration.

Discrimination or prohibited conduct by others

- 3.9 The provisions addressing harassment by third parties have been repealed.²⁶ This usually means that a body subject to the duty will not be responsible for discrimination, harassment or victimisation of its employees (and those who have applied for employment) by third parties, such as a service user, pupil, student, tenant or a supplier of works, goods or services to the body. However, case law indicates that it is possible that a body subject to the duty could be found to be legally responsible for failing to take action in

²⁵ *G. v. St Gregory's* [2011] EWHC 1452, Collins J at para 42.

²⁶ Section 65, Enterprise and Regulatory Reform Act 2013.

specific circumstances. These would arise where the relevant body has some degree of control over a situation where there is a continuing course of offensive conduct of which they are aware but do not take action to prevent its recurrence.²⁷

Section 2: Advancing equality of opportunity

3.10 People who share a protected characteristic as compared with people who don't share that characteristic may be, through historic disadvantage or a failure to recognise and address their different needs:

- under-represented in certain activities and in the take-up of certain benefits or services
- disproportionately experiencing poor health, inadequate housing, vulnerability to crime or poor educational outcomes
- under-represented in certain jobs and professions
- disproportionately concentrated in certain low-status occupations or grades.

This list is not exhaustive.

This second aim of the duty recognises that eliminating discrimination that is unlawful under the Act will not of itself address these issues.

3.11 The Act explains that having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to: s.149(3)

- a. remove or minimise disadvantages suffered by people who share a relevant protected characteristic that are connected to that characteristic. **See para 3.18.**
- b. take steps to meet the needs of people who share a relevant protected characteristic that are different from the needs of people who do not share it. **See paras 3.19–3.27.**

²⁷ *Sheffield City Council v Norouzi* [2011] IRLR 897 (and see *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] IRLR 327).

- c. encourage people who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such people is disproportionately low. **See paras 3.28–3.32.**

In this guidance we refer to these as the three elements of advancing equality of opportunity.

- 3.12 Due regard will need to be had to all three of these elements in order to comply with the need to advance equality of opportunity.
- 3.13 The second element is a duty to ‘have due regard to the **need to take steps**’ to meet different needs. The significance of this is discussed at para 3.23.

The relevance of positive action measures to advancing equality of opportunity

- 3.14 The Act permits, but does not compel, organisations to undertake measures to alleviate disadvantage experienced by people who share a protected characteristic, reduce their under-representation in particular activities, and meet their particular needs. These are more usually referred to as positive action measures. Information on when the Act allows people with different protected characteristics to be treated differently, including by way of positive action, can be found in Chapter 4.
- 3.15 The circumstances where positive action is permitted by the Act correspond exactly to the three elements of the duty to advance equality of opportunity set out in s.149(3) which emphasises the potential relevance of positive action as a tool in furthering those three aims.
- 3.16 Where a body subject to the duty has identified disadvantage, particular needs or low participation and is considering how it might address them, it could include positive action measures within the range of options considered where they would be a proportionate way of achieving the relevant aim.

Case Study — A police authority identifies from a local crime survey that gay men in the area have a significantly greater fear of crime than people with other protected characteristics. Their own data also indicates that gay men in the area experience disproportionately high levels of hate crime, compared to national levels. In response to this data, the police authority decide that it is appropriate to adopt a more visible policing profile in areas they know are frequented by gay men and where previous incidents have occurred.

- 3.17 Where during the exercise of its functions a body subject to the duty has identified proportionate positive action measures that would address disadvantage, particular needs or low participation but nevertheless decides not to take the action, it should be able to explain how it complied with the general equality duty in reaching its decision. s.149(6)

(a) Removing or minimising disadvantages

- 3.18 People who share a protected characteristic may experience disadvantage, or may be affected by consequences of past or present disadvantage. ‘Disadvantage’ is not defined in the Act, but may include exclusion, rejection, lack of opportunity, lack of choice or barriers to accessing services.

A body subject to the duty is required to have due regard to the need to remove or minimise such disadvantages.

Case Study — There are few financial products compliant with Islamic formal requirements. There is evidence that Muslim people are consistently under-represented in numbers taking out pension plans. A public body setting up a national pension savings scheme recognises this lack of choice. Based on evidence it has gathered, it decides to include an Islamic compliant fund in its range of investment fund choices.

(b) Meeting needs

- 3.19 People with certain protected characteristics may have needs that are different from others. Those needs may be intrinsic to that characteristic, for example women will have particular medical needs in relation to pre- and post-natal care. Needs may also be a consequence of past treatment by society, or by a particular body for a reason connected to that characteristic.
- 3.20 The general equality duty requires relevant bodies to have due regard to the need to 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.

Case Study — An NHS trust becomes aware that the ongoing long-term use of hormones increases the risk of breast cancer for transsexual women aged 50-70. The trust identifies that they need to make their staff aware of this and that all transsexual women are actively encouraged to take up screening.

The extent of the duty to meet needs

- 3.21 The duty is to meet ‘needs’, rather than any desires or preferences for a particular treatment or service. Bodies subject to the duty should also bear in mind the ‘due regard’ nature of the duty – there is no requirement on public bodies to take steps to offer separate services to different groups on demand.
- 3.22 The duty applies to meeting needs which arise within the scope of functions covered by the general equality duty.
- So, a body subject to the duty will not be obliged to consider establishing spaces for worship, such as a temple, where it does not have a function related to the provision of spaces of worship. But a relevant body may have to have regard to meeting needs which arise as a consequence of religious belief, where these arise in the context of a function which they do have. For example, a prison or hospital must ensure that prisoners or patients have access to appropriate forms of religious worship.

What a duty to have due regard to the ‘need to take steps’ means

- 3.23 The duty to have due regard to meet different needs is a duty to ‘have due regard to the **need to take steps**’ to meet different needs.

The Act specifically says that the steps involved in meeting the needs of disabled people include, in particular, steps to take account of disabled people's disabilities.²⁸ The particular importance of meeting the different needs of disabled people is reflected throughout the Act, for example through the positive duty to make reasonable adjustments for disabled people.²⁹

- 3.24 The previous disability equality duty, contained in s.49(A)(1) of the Disability Discrimination Act 1995, included a duty to ‘have due regard to the need to take steps to take account of a person's disability even where that involves treating disabled persons more favourably than other persons’.

When considering the meaning of this section in the case of *Pieretti*,³⁰ Wilson LJ, in the Court of Appeal, said that for practical purposes he saw ‘little difference between a duty to “take due steps to take account” and the duty under section 149A(1)(d) to “have due regard to ... the need to take steps to take account.” If steps are not taken in circumstances which it would have been appropriate for them to be taken, i.e. in which they would have been due, I cannot see how the decision maker can successfully claim to have had due regard to the need to take them.’

Pieretti concerned a couple who had been evicted from their tenancy due to non-payment of rent and who had applied to the local authority for accommodation because they were homeless. The local authority decided that it only owed a limited duty to provide accommodation because the couple had become homeless intentionally. In his application for assistance the man ticked a box stating that he had a mental disability. His general practitioner also confirmed that he

²⁸ S.149(4) of the Act.

²⁹ S.20 of the Act.

³⁰ *Pieretti v. Enfield Borough Council* [2010] EWCA 1104, Wilson LJ at para 34.

suffered from depression and that his wife suffered from depression and various physical problems. The Court said that, given the man's medical history there was a real possibility that his non-payment of rent was due to mental illness. When it considered his application the local authority should have taken steps to take account of this, i.e. by making further inquiries.

The judgment is likely to be relevant to public bodies in their compliance with sub-sections (3)(b) and (4) of section 149 of the Equality Duty, in regard to disability. Bodies subject to the duty should, in particular, give consideration to the need to take steps to take account of disabled people's disabilities.

Only a court could decide if similar considerations apply in relation to other protected characteristics.

Meeting needs of disabled persons

- 3.25 As mentioned in para 3.23 the Act specifically says that 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.
- 3.26 In relation to disability in particular, delivering equality of opportunity by meeting needs can sometimes in practice require additional services to be offered as an alternative alongside a 'mainstream' approach.
- 3.27 However, it would be unlawful discrimination to force a disabled person to use a separate 'disability-specific' service provided alongside a 'mainstream' service because they have a disability. Instead, any alternative service should be just that, i.e. an alternative which a disabled person can choose to use.

(c) Encouraging participation

- 3.28 There is evidence that participation in public life or other activity by some people who share a protected characteristic is disproportionately low.

The general equality duty requires bodies subject to the duty to have due regard to the need to encourage their participation.

Public life and other activities

- 3.29 'Public life and other activities' covers a broad range of activities, including employment in certain fields, professions or types of work. For example: sporting and cultural activities; voting in local and national elections; membership of school councils and tenants or residents associations; and being appointed to public office.
- 3.30 Participation is not only about overall numbers of people taking part in an activity, it also encompasses the level at which those people are taking part. For example, a body subject to the duty may find that large numbers of ethnic minority women are participating in community groups or neighbourhood forums, but that they rarely participate in the running and decision making of such groups. A body subject to the duty will need to have sufficient understanding of the causes of disproportionately low participation to enable it to comply in substance with the duty to have due regard to the need to encourage participation. This may require the body to collect additional evidence. (Chapter 5 discusses gathering equality evidence.)

Case Study — A museum reviews its annual visitor figures. It identifies that young people, over school age, have disproportionately low levels of visits for both the permanent and special exhibits. It engages with young people to identify what would make visiting the museum of more interest to them.

Identifying disproportionately low participation

- 3.31 A body subject to the duty needs to consider what activities might be affected by the exercise of its functions and whether it has enough information about levels of participation in those activities of people with different protected characteristics to enable it to have due regard to encouraging participation.

- 3.32 To properly inform a body's due regard consideration, the information should enable it to ascertain whether participation is disproportionately low for people with any particular protected characteristic. For example, wherever possible and proportionate, such participation should be broken down by protected characteristics.

Section 3: Fostering good relations

- 3.33 The Act says that fostering good relations involves having due regard, in particular, to the need to: s.149(5)
- tackle prejudice, and
 - promote understanding.

What does fostering good relations mean?

- 3.34 The Act does not define the term 'foster' so it should be given its ordinary meaning which is to promote the growth or development of, encourage, nurture or care for. It means both:
- encouraging the development or growth of ideas and attitudes which result in good or improved relations between the individuals in different groups, and;
 - encouraging the maintenance or improvement of already good relations between individuals in the different groups.
- 3.35 The Act does not define 'good relations' so it should be given its ordinary meaning. A working definition is: 'the growth of relations and structures that acknowledge the diversity of society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms.'³¹

³¹ This working definition is based on that developed by the Equality Commission of Northern Ireland: see ECNI's guide for public authorities: 'Promoting good Relations', available from: www.equalityni.org/archive/pdf/PromoteGdRel.pdf

- 3.36 The duty is to foster good relations between people with different protected characteristics. In practice this could mean fostering good relations between. For example, people with and without a visual impairment or between gay and straight people.

The aim of the duty to foster good relations

- 3.37 Fostering good relations between people who share a particular protected characteristic and those who do not is intended to, for example:
- increase integration
 - reduce the levels of admitted prejudice between people with different protected characteristics
 - increase understanding of, and reported respect for, difference
 - increase diversity in civic and political participation (including volunteering) in the relevant community
 - increase reported confidence and trust in institutions such as the body subject to the duty
 - lead to a reduction in bullying, harassment, hate crime and violence against those who share a particular protected characteristic
 - lead to a reduction in fear of crime both in respect of those who share a certain protected characteristic and those who do not.

Tackling prejudice and promoting understanding

- 3.38 The term 'prejudice' means a stereotypical opinion or feeling about individuals who share a particular protected characteristic, generally formed without proper knowledge of people with that protected characteristic. A person who acts on prejudice generalises characteristics they regard as negative or positive to the whole of the group on the basis of the perceived, reported or supposed behaviour of some members of that group. Even stereotypes that appear positive may be prejudicial and can lead, for example, to a failure to identify and address the needs of an individual from that group.

- 3.39 The term ‘understanding’ means a proper knowledge of the real nature and circumstances of individuals who share a particular protected characteristic. It should include not just an understanding of the individual in terms of the protected characteristic as a result of which they have faced prejudice, but also of the fuller range of attributes of that individual.

Case Study — A local authority plans to convert a small number of residential properties into supported accommodation for homeless young adults with children. It receives a large number of objections to the development. These objections assume that the young people concerned will increase the level of anti-social behaviour in the area by being noisy and disruptive, despite the fact that there is no evidence to substantiate these claims. Public meetings are convened to consult local residents, where council officers ask the supported housing provider to directly reassure the residents by explaining that there is no evidence for their concerns, and in doing so promote better understanding and publicly challenge prejudice.

Chapter 4: Tools available to bodies subject to the duty to advance equality

- 4.1 The basic presumption under the Act is that discrimination because of a protected characteristic is unlawful. However, this does not mean that the Act always requires that people with different protected characteristics be treated the same.
- 4.2 The Act recognises that, in certain circumstances, substantive equality will only be achieved if people with different protected characteristics can be treated differently, for example, to reflect their particular needs.

The Act does this in three main ways:

- by requiring people with some protected characteristics to be treated differently, for example by making reasonable adjustments for disabled people
- by setting out exceptions to the application of the Act's provisions which apply to specific protected characteristics in certain circumstances, for example by allowing single-sex services in some situations
- allowing positive action in limited circumstances.

All of these are particularly relevant to the second equality aim in the general equality duty, namely having due regard to the need to advance equality of opportunity. As explained in Chapter 3, because people with certain protected characteristics do not start from the same position as those without those characteristics, the Act explicitly recognises in s.149(6) that compliance with the general equality duty may involve treating some persons more favourably than others. That does not, however, permit conduct which would otherwise be prohibited by the Act; for example, the use of quotas.

- 4.3 More detail about when the Act enables or requires people with certain protected characteristics to be treated differently from others can be found in the Statutory Code of Practice relating to Services, Public Functions and Associations and the Statutory Code of Practice on Employment. The aspects of the Act which are most significant to public bodies when complying with the general equality duty are considered briefly below.

Treating disabled people more favourably than people who are not disabled

- 4.4 S.149(4) of the Act states that the steps involved in meeting the needs of disabled persons include steps to take account of disabled persons' disabilities. This emphasises the fact that equality of opportunity for disabled people cannot be achieved simply by treating disabled and non-disabled people alike. This principle is recognised in the Act through the duty to provide reasonable adjustments.

The Act contains a number of provisions allowing steps to be taken to take account of disabled persons' disabilities. They make it lawful to treat a disabled person more favourably than a non-disabled person. A disabled person can also be treated more favourably than disabled people with other impairments by relying on the positive action provisions.³² In order to comply with the general equality duty, relevant bodies should consider meeting the needs of disabled people by treating them more favourably than others.

Making use of exceptions in the Act

- 4.5 The Statutory Code of Practice relating to Services, Public Functions and Associations and the Statutory Code of Practice on Employment provide details of exceptions to the general rule against direct discrimination in the Act.

Making use of permissive exceptions in the Act may enable the delivery of services tailored to the needs of people with a particular protected characteristic. This is particularly relevant

³² For more details see the Commission's Code of Practice on Services, Public Functions and Associations at para 10.27.

to the second aim of the general equality duty with its emphasis on meeting different needs and encouraging participation. One such example is the provision of single-sex services.

Single-sex services

- 4.6 The Act allows services to be provided separately for men and women, or to be provided to one sex only, where certain conditions are met.³³ When it satisfies these conditions, a relevant body is not required by the general equality duty to discontinue single-sex services or the separate provision of services to people of different sexes. As a result of complying with the general equality duty, a relevant body could decide that it would be appropriate to use these provisions to meet different needs of, or minimise disadvantage experienced by, one sex or another.

Case Study — A council decides to set up a support unit for women who have experienced sexual and domestic violence. It can justify its decision to provide this service for women only since it has evidence that suggests there is insufficient demand for the provision of an equivalent men-only unit in its area.

Positive action

- 4.7 As part of complying with the general equality duty, relevant bodies could consider whether taking positive action is open to them and, if so, whether it would be appropriate to take that action.

When is positive action lawful?

- 4.8 It will be lawful for a relevant body to take positive action where it reasonably thinks that people who share a protected characteristic: s.158
- a. experience a disadvantage connected to that characteristic;
 - or

³³ Schedule 3, para 27 of the Act. This is explained in more detail in the Commission's Code of Practice on Services, Public Functions and Associations at para 13.54 onwards.

- b. have needs that are different from the needs of persons who do not share that characteristic; or
- c. have disproportionately low participation in an activity compared to those who do not share that protected characteristic.

Action may be taken when any one or all of these conditions exist. Sometimes the conditions will overlap – for example, people sharing a protected characteristic may be at a disadvantage which may also give rise to a different need or may be reflected in their low level of participation in particular activities.

What action is lawful?

4.9 Where the conditions above apply, the relevant body may take any action which is proportionate to meet the aims stated in the Act. Those aims are:

- enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage
- meeting those needs, or
- enabling or encouraging persons who share the protected characteristic to participate in that activity.

Positive action is not the same as positive discrimination, which is unlawful. The difference between the two is explained in the Code of Practice on Services, Public Functions and Associations.³⁴

Case Study — A council has no councillors under the age of 30. It puts in place a mentoring scheme to encourage greater numbers of young people to take an interest in local politics. Its longer term aim is to increase the number of younger councillors. Places are awarded via an open competition and the winners get to shadow nominated councillors.

³⁴ Specifically at para 10.7 of that Code.

Chapter 5: Complying with the general equality duty in practice

Introduction

- 5.1 Chapter 2 explains that to ‘have due regard’ to the three aims in the general equality duty a relevant body must consciously consider the need to do the things set out in the general equality duty in exercising any of its functions which are subject to the duty.
- 5.2 A body subject to the duty will find the principles in para 2.26 useful in deciding what action it needs to take to ensure it is complying with the general equality duty on a continuing basis. In summary those principles are:
- knowledge of the duty
 - timeliness
 - real consideration
 - sufficient information
 - non-delegable
 - review, and
 - evidence of consideration.
- 5.3 Listed authorities will need to ensure that they also comply with the mandatory steps set out in the specific duty regulations, covered in Chapter 6 of this guidance. The specific duties are intended to enable better performance of the general equality duty.
- 5.4 In order to decide what action to take a body subject to the duty could ask itself a series of questions. The sections in this chapter suggest how these questions could be answered.
1. How will it assess the relevance of the duty to the functions it exercises?

See: Identifying the relevance of the general equality duty to the functions of a body subject to the duty (paras 5.5–5.14)

2. How will it gather the information it needs to enable it to comply with the duty?

See: Ensuring a sound evidence base (paras 5.15-5.34)

3. How will it ensure that those exercising those functions understand their obligations under the duty?
4. How will it ensure that the duty is complied with both before and during any decision-making process?
5. How will it integrate rigorous and substantive consideration of the duty into the operation of its functions and its decision-making processes?

See: Ensuring due regard in decision making (paras 5.35-5.50)

6. How will it show it has complied with the duty?

See: Providing evidence of compliance (paras 5.51-5.52). Listed authorities should also refer to Chapter 6.

7. How will it build compliance with the duty into its commissioning or procurement/dealing with third parties?

See: Meeting the duty in relation to other bodies (paras 5.53-5.64)

8. What review mechanisms will it put in place to ensure that compliance with the duty is continuing?

See: Ensuring a sound evidence base (at paras 5.15-5.18).

Identifying the relevance of the general equality duty to the functions of a body subject to the duty

- 5.5 A body subject to the duty must first decide the extent to which the aims of the duty are relevant to the particular functions (including existing or proposed policies, practices, activities and decisions) it carries out, and in relation to which relevant protected characteristics. The body should bear in mind the broad meaning given to 'function' in the context of the duty (see para 2.5).

- 5.6 In some cases, it will be plain even after cursory consideration, that the aims of the general equality duty have no relevance to a particular function, for example, the auditing of its accounts. It could, therefore, decide that it does not have to do anything more to satisfy the duty in the exercise of that function. It would be good practice for it to record the reasons for this decision.
- 5.7 However, if there is any doubt about whether any of the aims are engaged the issue needs to be explored before any conclusion can be safely reached that it is not.³⁵ If a body subject to the duty does not have sufficient evidence to make an informed decision about the impact of their functions for some protected characteristics the authority should consider gathering more evidence.
- 5.8 If the body subject to the duty thinks that one or more aims in the duty are relevant to a particular function then it should go on to consider the potential impact of the function on people with the relevant protected characteristics.
- 5.9 Assessing whether the general equality duty is relevant to a function will require some analysis and should be more than guess-work but should not be a burdensome task. It is not an end in itself; rather it should help a body subject to the duty to prioritise its efforts and enable them to give greater consideration to those functions with the highest degree of relevance and impact.
- 5.10 The functions of bodies subject to the duty vary widely. The main functions of some relevant bodies will be to provide specified services, such as health and education, to the public or a section of the public. The aims in the general equality duty will be highly relevant to these functions, because of their direct impact on the lives of individuals.
- 5.11 Other bodies subject to the duty carry out functions that may be at least one stage removed from members of the public, for example those that carry out research or audit. However the elimination of discrimination or the advancement of equality of opportunity could be relevant to the exercise of their functions

³⁵ *R. (on the application of Hurley and Moore) v. Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), Elias LJ at para 96.

because of the impact of their work on other bodies subject to the duty.

- 5.12 The general equality duty may have little relevance to the work of certain bodies, for example those concerned with the purely technical aspects of physical sciences and technology and whose decisions do not have a direct impact on members of the public. The duty may still be relevant to some of that body's activities, for example in its capacity as an employer.
- 5.13 The duty is a continuing one. A relevant body should not assume that because it has once assessed whether the duty is relevant to a particular function that this need not be considered again. The relevance of the duty to a function (or a particular protected characteristic) may change over time. If circumstances change and affect the relevant activity then the applicability of the duty may need to be considered again.
- 5.14 Once a body subject to the duty has developed ways of assessing the relevance of the general equality duty to its functions, it will more easily be able to assess any new or revised functions.

Case Study — Historically, a rural council has a homogenous ethnic population. It finds that the profile of its population has changed dramatically over the past five years. An increased number of Eastern Europeans and other foreign nationals have migrated to the area for seasonal work and decided to stay. This has led to some tensions in the community and the perception that services are overstretched. Compared to before, fostering good relations on the ground of race has now assumed a higher degree of relevance to the provision of after-school clubs, for example. As a result, the council considers whether to review how it fosters good relations and whether it can do more to promote understanding.

Ensuring a sound evidence base

- 5.15 In order to give proper consideration to the aims set out in the general duty, a relevant body will need to have sufficient evidence of the impact its policies and practices are having, or are likely to have, on people with different protected characteristics. Such information is referred to in this guidance as equality evidence.
- 5.16 The courts have made clear the need to collate relevant information in order to have evidence-based decision making³⁶ and a body subject to the duty will need to be able to show that it had adequate evidence to enable it to have due regard.³⁷
- 5.17 Adequate and accurate equality evidence, properly understood and analysed, is at the root of effective compliance with the general duty. Without it, a body subject to the duty would be unlikely to be able to have due regard to its aims.

Example — A city council decided not to license a new model of taxi, restricting the type that could be used to London-style taxis. The user of a large motorised wheelchair successfully challenged this decision. She could not be secured in a London-style taxi because of the limited space for turning a wheelchair. This left her with no choice but to travel sideways, without a seatbelt, which was both uncomfortable and unsafe. She would not have had to do so in the model which the council refused to licence.

The challenge succeeded because the council's decision was based on a fundamental misunderstanding of the facts. It thought that it was dealing merely with a wish or preference of wheelchair users for greater choice, rather than something that thwarted their ability to use licensed taxis safely at all.

The judge said that these factual errors were critical in his decision since the true factual position was a 'mandatory relevant consideration' under s.49A DDA.³⁸

³⁶ *R. (Rahman) v. Birmingham City Council* [2011] EWHC 944 Blake J at para 35, sub para 3.

³⁷ For example, *Child Poverty Action Group v. Secretary of State for Work and Pensions* [2011] EWHC 2616 at para 76.

³⁸ *R. (Lunt) v. Liverpool City Council* [2009] EWHC 2356, Blake J at paras 43-45.

- 5.18 By ensuring it has a reliable evidence base a body subject to the duty will be better able to:
- understand the effect of its policies, practices and decisions
 - consider whether further research or engagement is necessary
 - consider whether there are ways of mitigating any adverse impact identified
 - decide whether to modify, or reconsider a policy, practice or decision
 - identify equality priorities; for listed authorities this includes developing equality objectives
 - monitor their progress against these objectives.

Monitoring the progress of policies and decisions will enable the body subject to the duty to address the continuing nature of the general equality duty. It will need to decide how to review progress proportionately so it is aware of circumstances which could require it to consider reviewing a current policy or decision. For example, equality evidence could show that the community it serves has changed; the context in which the body operates has changed; or that the policy is having a potentially discriminatory effect in practice.

What sort of equality evidence will be needed?

- 5.19 Where one or more aims of the duty have been identified as being relevant to a function (as described in para 5.9) in relation to one or more protected characteristics, a body subject to the duty should consider whether it has sufficient evidence to give proper consideration to the potential impact of the function on people with those protected characteristics.
- This will include consideration of whether it has sufficient understanding of the particular disadvantages, different needs and/or disproportionately low participation experienced by people who share particular protected characteristics affected by the function. That understanding is particularly relevant to compliance with the aim of advancing equality of opportunity but may also assist in identifying ways in which a policy may indirectly discriminate against people with a particular protected characteristic.

The requirement to have sufficient evidence does not imply that a body subject to the duty needs, in every instance, to have hard statistical data. A relevant body can also use more qualitative sources such as service user feedback. Where a body subject to the duty does not have sufficient information in-house it can also use external sources, for example information available from the Equality and Human Rights Commission; local or national representative groups etc.

5.20 It is not acceptable for a relevant body to say that it cannot meet the duty because it does not have evidence about a relevant issue. If a body subject to the duty does not have sufficient evidence to have due regard it will need to obtain this. Possible ways it can do this are by:

- collecting new sources of data itself, if it has time and it is proportionate to do this
- engaging with people with certain protected characteristics, or
- using external sources of information. This is likely to be particularly helpful for those protected characteristics where the collection of information is sensitive and numbers low, for example gender reassignment.

Case Study — A local authority's functions include the allocation of grants to the voluntary and community sector. It decides that the way in which it offers grants could advance equality of opportunity for people who share certain protected characteristics and foster good relations. It is also aware of the need to ensure that the grants process is exercised in a non-discriminatory way. However, the authority does not have any monitoring information to show the extent to which the current award of grants achieves those things or could do so in future. It decides to collect and analyse information on the award of grants to bodies providing services to people who share the relevant protected characteristics to ensure that its grants process is not discriminatory, and to identify whether it may need to do more to encourage some groups to apply, and to ensure that as a whole it is fostering good relations through its programme.

Lack of evidence

- 5.21 It may take some time for good quality information to be collected. A body subject to the duty will need to decide where there are gaps in its evidence base and how to address them.
- 5.22 A body subject to the duty should not delay considering issues which come to light through existing sources; for example, staff knowledge, court or tribunal cases, customer feedback or engagement of equality groups and national data.³⁹

Case Study — Using national data, a registered social landlord identifies that accessible housing is in short supply. Customer feedback also indicates that there may be an unmet need in the area. Although it does not yet have robust evidence about local need, the social landlord takes steps to improve the availability of accessible housing while also beginning to collect local data.

- 5.23 It is not always necessary, or possible, to have sophisticated equality evidence before considering an equality issue. However, any decision that there is insufficient time to collect further evidence will need to be justified. A balance needs to be struck between efforts to collect evidence and efforts to address equality issues. Further evidence gathering may not be necessary if the body subject to the duty properly considers that it can exercise its duty with the material it has.⁴⁰

Case Study — In the absence of local intelligence on numbers of gay men, lesbians or bisexual people accessing mental health services provided by a health body, national information could lead the body to decide that staff training and the promotion of these services should specifically address such issues. The lack of local intelligence could also lead to the health body deciding that it should improve qualitative and quantitative data collection to enable evidence on sexual orientation to be gathered from mental health service users.

³⁹A number of research reports including 'How Fair is Britain', the Commission's first triennial review, are available at: www.equalityhumanrights.com/publications/

⁴⁰ *Hurley and Moore, R. (on the application of) v. Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), Elias LJ at para 90.

- 5.24 As another example, although devising sophisticated measurements regarding the accessibility of local amenities can be complex and expensive, local authorities can identify the extent and location of problems through the engagement of disabled people, and should use this evidence to inform their decisions about accessibility issues.

Evidence gathering in practice

- 5.25 In deciding what evidence to gather, a body subject to the duty could ask itself the following questions:

1. What information, if any, does it already routinely collect which could help it understand the impact of its functions?
2. Is that information disaggregated by different protected characteristics? If not, can it be?
3. Does that information give it a sufficient understanding of the particular disadvantages, different needs and/or disproportionately low participation experienced by people who share particular protected characteristics?
4. Are there steps it needs to take to ensure the confidentiality of any sensitive information it collects?
5. If it does not have relevant information, what alternative sources of information are available?
6. Would it be useful to engage with the people particularly affected by a decision or policy?
7. Is it possible to work locally with other bodies subject to the duty to share resources in gathering evidence?

- 5.26 Examples of how bodies subject to the duty could respond to these questions include:

- In response to concerns about passenger safety raised by both young and older passengers, a passenger transport executive decides to collect data on age in any future surveys it runs.
- A registered social landlord is publicly funded by a local authority to provide a supported housing service. It trains its staff on the importance of data protection and collecting sensitive information such as in relation to sexual orientation from service users.

- A fire and rescue service that is reviewing its employment policies does not have sufficient information about all the relevant protected characteristics, so it decides to engage with its trade union to help it understand the potential impact of the changes it wishes to make.

Engagement

- 5.27 This section explains why engagement with persons likely to be affected by their decisions (for example service users and employees) may assist relevant bodies to comply with the general equality duty.
- 5.28 The information and insights that can be gained from engagement will help a body subject to the duty to understand the actual or potential impacts of its policies and practices. The importance of engagement has been highlighted by case law, where the court, in finding a breach of the general duty, observed that: ‘...if only the Secretary of State had consulted with them (the claimants) they would have been able (if they wished) to highlight those special equality considerations to him’.⁴¹

What does engagement mean?

- 5.29 Engagement is a broad term intended to cover the whole range of ways in which bodies subject to the duty interact with their service users and employees, over and above what they do in providing services or within a formal employment relationship. What is suitable for a particular body or appropriate for a particular function will depend on the circumstances.
- 5.30 A body subject to the duty cannot engage with everyone, in every decision, all of the time. They should, therefore, take a proportionate approach to deciding whether to engage and with whom, and the extent of the exercise. Methods and degree of

⁴¹ *R. (on the application of (1) Luton Borough Council and Nottingham City Council (2) Waltham Forest London Borough Council (3) Newham London Borough Council (4) Kent County Council (5) Sandwell Metropolitan Borough Council) v. the Secretary of State for Education* [2011] EWHC 217 (Admin) Holman J. at para 114.

engagement should also be proportionate to the size and resources of the body and the significance of the issue.

Example — A council decided to close a care home in order to use the site for self-contained supported accommodation. This was challenged by residents. The Court decided that the council had complied with the relevant general equality duty.⁴²

The council had appointed social workers specifically to take the views of the relatives, including those who had responded to the proposals. A full-time social worker was appointed for a three-month period in the home for liaison purposes. An advocate was also appointed to represent the residents. There was consideration of the views of groups representing older people. The court noted that those groups had specifically advanced arguments based on most, if not all, of the residents being disabled. There was careful recording and noting of consultation with the older people concerned, their relatives and their representative groups. The consultation showed that, for the residents, the real problems of closure (such as shock, distress, confusion, loss, loss of friends, loss of a home) were established and recorded. There was specific consideration of the impact of the closure on those suffering from dementia. A proper summary of the views expressed in the consultation was put before the decision makers in writing and orally. Spokespersons were permitted on behalf of the residents to address the decision makers.⁴³

- 5.31 Before deciding whether further engagement is necessary and the extent of the exercise, a body subject to the duty should establish what information is already available, such as research, or the results of earlier consultation and engagement exercises, and where the gaps are.

Case study — A police force is revising its victim support policy. It reviews information from victim satisfaction surveys and identifies that there is little information on the satisfaction

⁴² In this case the Disability Equality Duty in s.49A of the Disability Discrimination Act 1995.

⁴³ *Barwick and anor v. Bridgend County Borough Council* [2009] EWHC 1723, Bidder J at para 108.

of disabled people with the force's overall service. It seeks to address this gap in information by consulting members of its disability advisory group to find out if there are any unmet needs that need to be addressed.

- 5.32 If a body subject to the duty decides that it is going to consult members of the public as part of its engagement with them, it must make sure that the consultation is meaningful. Sufficient time must be allowed for people to respond and responses must be considered with an open mind. Consultations should not be an exercise of form over substance.⁴⁴

Engagement in practice

- 5.33 In deciding how to carry out engagement in practice, a body subject to the general equality duty could ask itself:
- Are there existing mechanisms in place and are they accessible to and used by people with different protected characteristics?
 - Are people with certain protected characteristics currently under-represented?
 - What steps could be taken to address any under-representation?
 - Can it work with other bodies on any engagement exercises to maximise the use of resources and to reduce 'engagement fatigue'?
 - How it will reflect the outcome of any engagement?
- 5.34 Examples of how a body subject to the duty could respond to these questions include:
- a university establishes a lesbian, gay and bisexual staff network to act as a representative forum
 - a police force changes its venue for community beat meetings to one used regularly by refugee community organisations to encourage a greater degree of participation by people from different ethnic minorities

Continued...

⁴⁴ The importance of a consultation document giving enough information to permit an intelligent response was emphasised in *R (on the application of JM and NT) v Isle of Wight Council* [2011] EWHC 2911 (Admin)

- a health body and local authority carry out a joint engagement exercise to inform the development of a local health and social care needs assessment.

Ensuring due regard in decision making

- 5.35 Every body subject to the duty makes decisions. At one end of the spectrum are decisions concerning overarching policies or budget and business planning. At the other end are the large number of routine decisions affecting individuals or families that are intrinsic to particular functions, for example stop and search decisions by police staff or dealing with applications for welfare benefits.
- 5.36 A relevant body must comply with the duty for all types of decision relating to functions where the duty is relevant. In this section, references to ‘decision makers’ are to those exercising the functions subject to the duty at whatever level within an organisation. Given the broad meaning given to ‘function’ by the courts in the context of the general equality duty, this will range from members of a formal decision-making body, such as a local authority committee, to a teacher making a decision about the application of a school uniform policy.⁴⁵
- 5.37 A relevant body will only be able to comply with the general equality duty in relation to a decision, if the ultimate decision maker:
- understands the body's obligations under the general equality duty
 - has sufficient information
 - demonstrably takes this information fully into account throughout the decision-making process.

The courts have stressed the importance of having due regard **before** and **at the time** that a particular policy is being considered, and of exercising the duty with an open mind.⁴⁶ They have also emphasised that, without evidence of ‘a

⁴⁵ See, for example, *R. (Watkins-Singh) v. Governors of Aberdare Girls' High School* [2008] EWHC 1865 (Admin).

⁴⁶ *R. (Brown) v. Secretary of State for Work and Pension and others* [2008] EWHC 3158, Aiken LJ at para 99.

structured attempt to focus on the details of equality issues', the decision maker is likely to be in difficulties if the decision is challenged.⁴⁷

The courts have accepted the importance of ensuring that the duty is complied with at a formative stage in policy formulation while also accepting that there cannot necessarily be easy identification of particular formative 'stages' in every decision-making process.

The courts have also said that 'It is certainly unreal to require a "comprehensive scrutiny" (whatever that means) at every moment throughout the [decision-making] process. Precisely what consideration is due can and will vary from time to time during the process. [To say that] a full Equality Impact Assessment will always suffice provided only that it is produced prior to the decision finally being made may be going too far.'⁴⁸

Ensuring decision makers understand the duty

5.38 Ensuring that decision makers understand the duty could lead a relevant body to:

- identify and deliver training to ensure that the duty informs decision-making processes
- ensure that decision makers are aware of this guidance or other relevant guidance
- ensure that the implications of the general equality duty are set out in reports or other papers for decision makers.⁴⁹

5.39 Training will be most useful if it involves people responsible for all stages of the decision-making process. In large organisations this may be a number of different people with different roles: those doing the analysis; those making the decision; and those responsible for carrying out the subsequent policy or practice.

⁴⁷ *Stuart Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, McCombe LJ at para 61, approving Elias LJ in *R. (on the application of Hurley and Moore) v. Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin)

⁴⁸ *R. (on the application of Bailey and Ors) v. London Borough of Brent Council and Ors* [2011] EWCA Civ 1586. Davies LJ at para 104.

⁴⁹ See, for example, *R. (on the application of Bailey and Ors) v. London Borough of Brent Council and Ors* [2011] EWCA Civ 1586, Davies LJ at para 93.

Case study — A local authority faces budget constraints. It is due to take a series of decisions about the reduction in provision of care services for adults and young people. The leader of the council knows that these decisions will be contentious and have the potential to adversely affect people with certain protected characteristics, especially disabled people and their carers. She and other party leaders ensure that officers fully brief the councillors responsible for making these decisions as to the relevance of the public sector equality duty. They are also briefed on what evidence they should be looking for in the information provided to them by officers to ensure that they can have due regard in their decision making.

Ensuring sufficient equality evidence is taken into account throughout the decision-making process

- 5.40 There is no point in collecting equality evidence if it is not used to inform a body subject to the duty about the potential impact of its decisions, as well as establishing where action needs to be taken, and measuring its success. The courts have emphasised the duty to assess the extent of any adverse impact and the ways in which such risk may be eliminated before a proposed policy is adopted. This will involve having due regard to the need to take steps to gather relevant information.⁵⁰
- 5.41 Bodies subject to the duty will want to ensure that equality evidence is readily available to staff and decision makers, including boards or senior management teams.
- 5.42 Where assessment of impact of a policy or decision is appropriate and has been carried out, this will be important in helping the decision maker have due regard. They will need to ensure that they are satisfied that they:
- understand the relevance of the aims of the equality duty to the policy or decision

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⁵⁰ *Stuart Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, McCombe LJ at para 26.

- have sufficient information on the potential impact of the decision on people with relevant protected characteristics. If not, they will need to decide if further research or consultation is necessary
- have considered whether action can be taken to mitigate any identified potential adverse impacts of the policy or decision on people who share a relevant protected characteristic, including taking positive action where this would be allowed by the Act
- have considered whether action can be taken to enable the policy or decision to advance equality of opportunity for people who share a relevant protected characteristic.

Example — Because of financial constraints, a local authority decides to restrict adult care services to people with critical needs. This was challenged by judicial review. The Court said that there was no evidence that the legal duty [in that case under section 49A of the Disability Discrimination Act 1995] and its implications had been drawn to the attention of the councillors. They should have been informed not just that disability was an issue, but also about the particular obligations which the law imposed.

Officers attached to the report leading to the council's decision a summary that referred only obliquely to a potential conflict with the 1995 Act. This did not give a busy councillor any idea of the serious duties imposed on the council by the Act. As a result, the council could not weigh matters properly in the balance. It was not enough to accept that the council had a good disability record and to assume that somehow the message had got across.⁵¹

Giving due weight to the equality aims in making decisions

- 5.43 Where there is a legal challenge alleging a failure to comply with the duty, the role of the court is to review whether the body challenged did have 'due regard'. The courts have rejected the

⁵¹ *R. (Chavda) v. Harrow London Borough Council* [2007] EWHC 3064 (Admin) Mackie J at para 40.

argument that such a challenge will only succeed if the absence of due regard is shown to be irrational.⁵²

The concept of due regard requires the court to ensure that there has been proper and conscientious focus on what the duty requires. If that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. The decision maker must be clear precisely what the equality implications are when they put them in the balance, and they must recognise the desirability of achieving them, but ultimately it is for them to decide what weight they should be given in the light of all relevant factors.⁵³

In certain situations a body subject to the duty may conclude that other considerations outweigh the equality ones. This could include, for example, local priorities or available resources.

- 5.44 The weight given to countervailing factors by the decision maker can be challenged in court if the decision is irrational or based on irrelevant considerations or facts.
- 5.45 The courts have established the following principles which a body subject to the duty should take into account in making decisions to which the duty applies:
- The duty means that the potential impact of a decision on people with different protected characteristics is always taken into account by a body subject to the duty as a mandatory relevant consideration.⁵⁴
 - Where large numbers of vulnerable people – very many of whom share a relevant protected characteristic – are affected consideration of the matters set out in the duty must be very high.⁵⁵
 - However even if the number of people affected by a particular decision may be small, for example a decision

⁵² *R. (Boeyjo) v. Barnet LBC* [2009] EWHC 3261, Jarman J at paras 56-57.

⁵³ *Hurley and Moore, R. (on the application of) v. Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin). Elias LJ at para 78.

⁵⁴ *R. (E.) v. Governing Body of JFS* [2008] ELR 445, Mumby J at para 208, cited in *Domb and others v. London Borough of Hammersmith and Fulham* [2008] EWHC 3277 by Sir Michael Harrison at para 64.

⁵⁵ *R. (Hajrula) v. London Councils* [2011] EWHC 448 (Admin) Calvert-Smith J at para 69.

which affects transsexual people, the seriousness or extent of discrimination and harassment might be great. The weight given to the aims of the duty is not necessarily less when the number of people affected is small.

- When considering the meaning of the previous Disability Equality Duty⁵⁶ in the case of *Pieretti*,⁵⁷ Wilson L J in the Court of Appeal said that for practical purposes he saw ‘little difference between a duty to “take due steps to take account” and the duty under section 49A(1)(d) to “have due regard to ... the need to take steps to take account”’. Where that judgement is relevant, and steps are not taken in circumstances in which it would have been appropriate for them to be taken, i.e. in which they would have been due, a decision maker cannot successfully claim to have had due regard to the need to take them.⁵⁸

Ensuring due regard through the use of guidance and criteria

- 5.46 Many functions of a body subject to the duty require it to make decisions in individual cases. For example, licensing, child protection measures and staff discipline.
- 5.47 Such decisions are normally made in line with guidance or criteria which a body has adopted to assist its staff or officers to make decisions that are consistent and fair.
- 5.48 If the guidelines or criteria have been assessed with reference to the three aims of the duty, they can help those making individual decisions to ensure they are having due regard.

Case study — A local authority produces guidance for head teachers and governors on the use of temporary and permanent exclusions. They decide that the need to eliminate discrimination and the need to advance equality of opportunity will be relevant to its implementation. As a consequence, the guidance includes advice on how to ensure that decisions are

⁵⁶ Specifically s.49A(i)(d) of the Disability Discrimination Act 1995.

⁵⁷ *Pieretti v. London Borough of Enfield* [2010] EWCA Civ 1104.

⁵⁸ See paragraph 3.24 for more details of the *Pieretti* decision.

not discriminatory. In particular, it suggests how schools can ensure that both disabled pupils and parents who do not speak English as a first language are able to make representations.

- 5.49 Where individual decision makers exercise some degree of discretion, having a policy or guidance does not remove the responsibility on them to ensure that they have considered all relevant matters.

In the above example, a headteacher considering whether to exclude a pupil would still be expected to have due regard in making that individual decision.

- 5.50 Where there is evidence that individual decisions taken in accordance with the current policy will have a detrimental impact upon or be disadvantageous to people who share a particular protected characteristic, then the body will need to consider whether to review the policy.

Providing evidence of compliance

- 5.51 The courts have made it clear that relevant public bodies have been charged with a substantive responsibility in discharging the equality duty and in ensuring that there is evidence available, if necessary, to demonstrate that the duty has been discharged.⁵⁹ It will be difficult for a relevant body to persuade a court that it has complied with the general equality duty in the absence of records.

Other than listed authorities, bodies subject to the duty are not required to publish information on how they have complied with the duty.

However, the courts have made it clear that it is good practice to keep records showing how they have shown due regard. If records are not kept it will make it more difficult, evidentially, for a public body to persuade a court that it has complied with the general equality duty. It will be particularly important for a body to keep records showing its reasoning where it has decided to

⁵⁹ *Stuart Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, McCombe LJ at para 60.

take no action to further the aims in the duty despite equality being highly relevant to the decision in question. Publishing information about how a particular decision was reached may also in practice reduce the likelihood of challenge, including a legal challenge, from happening in the first place. If those affected by a decision understand how it was arrived at and can see that all relevant matters were considered, they may be less inclined to challenge the decision.

Example — A legal case challenged a council's decision on eligibility and criteria for support services to disabled children. The Court rejected the argument that it had had due regard. The judge said that 'there is no audit trail confirming that the local authority has complied [with the general equality duty] or even had reference to it at all. The local authority has produced no documentation to demonstrate a proper approach to the question ... where the local authority cannot produce any documentation relating to the eligibility criteria which makes reference to the duty and there is no real identification of the sort of factors that it makes relevant, it is obviously difficult to conclude that there has been compliance'.⁶⁰

5.52 In deciding what records to keep and what information to publish, a body subject to the duty should also take into account:

- that transparency about decision making should help focus the minds of those making decisions on ensuring that they can show that they took all relevant factors into consideration, including the potential impact of the decision on people with relevant protected characteristics
- whether publishing information may help to deliver the aims of the duty. For example, it will need to consider whether publishing information about how decisions are reached may help to dispel myths and help foster good relations as required by the third equality aim.

⁶⁰ L (A Child), Re [2009] EWHC 458 (Admin) (12 March 2009) Black J at paras 121 and 123.

Listed authorities should also refer to Chapter 6 which explains obligations in the specific equality duties to publish information relating to the general equality duty.

Meeting the duty in relation to other bodies

- 5.53 Many bodies subject to the duty are likely to have functions that involve interacting with other bodies. This may include:
- bodies who come under its direct influence, such as when a 'parent' government department has responsibility for certain public authorities
 - bodies which it regulates, inspects, or audits
 - bodies with whom it has contractual relationships
 - organisations with whom it works in partnership
 - organisations to which it grants aid.

A body subject to the duty will need to think consciously about how the exercise of its functions can further each of the three aims of the duty with respect to other bodies.

The following two sections deal briefly with two circumstances: Commissioning and procurement (paras 5.54–5.61), and Audit, inspecting and regulating others (paras 5.62–5.64). Further detail on procurement for listed authorities can also be found in Chapter 6 at paras 6.63–6.69.

Commissioning and procurement

- 5.54 This section explains how the general equality duty might apply to commissioning and procurement. The terms commissioning and procurement are defined in the glossary.

Commissioning

- 5.55 Commissioning covers the activities and processes used by bodies subject to the duty in making decisions about how best to provide a wide range of services, for example children's services, adult services or health services.

Where public services are being commissioned, the aims of the duty and in particular the aim of advancing equality of opportunity, will almost always be relevant because

commissioning is about meeting the needs of the public, including people with particular protected characteristics.

5.56 If a body subject to the duty decides that all or part of the service could most effectively be provided in-house then the general equality duty will apply to the exercise of that function.

5.57 If it decides that all or part of the service could be most effectively provided by an external provider then, to comply with the general equality duty, it would be expected to have due regard to the three equality aims in carrying out its procurement process. s.149(2)

Certain services are self-evidently public functions, as they would normally be performed by the state and not by a private contractor, for example running a prison. In certain circumstances such public functions can be contracted out to a private provider.

This is in contrast to services which are merely ancillary to the exercise of public functions by a public body and, therefore, are not public functions, for example the provision of catering or cleaning services in a Government building or school.

5.58 Where a contractor is delivering a service which amounts to the exercise of a public function, the contractor will be required to comply with the duty, but only in respect of carrying out that public function. A body subject to the duty must ensure that any contractors appointed in such circumstances are capable of complying with the duty, understand their obligations, and meet the duty in practice.

Procurement

5.59 When a body subject to the duty decides that they need to procure from others, the requirement to have due regard needs to be taken into account alongside other relevant requirements, in particular those imposed by EU procurement rules.⁶¹

⁶¹ This Technical Guidance is based on the EU procurement directive of 2004 and the UK Public Contract Regulations 2006 that gave effect to it. In February 2014, the EU repealed the 2004 directive and adopted a package of three new directives, including Directive 2014/24/EU on public sector procurement.⁶¹ New regulations to bring the directives into effect in the UK are expected towards the end of 2014 and our guidance will be updated to reflect the new provisions.

- 5.60 The overarching EU Treaty principles of freedom of movement of workers, freedom of movement of goods, transparency, proportionality, fairness, equal treatment and non-discrimination between tenderers apply to public bodies in all EU Member States in their procurement of works, goods or services. These principles apply to contracts of cross-border interest, irrespective of the contract value.
- 5.61 The Public Contracts Directive 2004/18/EC prescribes how certain aspects of the procurement process must be carried out for contracts valued at or above EU thresholds subject to specified exceptions;⁶² it imposes specific requirements, criteria and restrictions with the aim of ensuring compliance with the above EU Treaty principles. The Public Contracts Regulations 2006 and The Public Contracts (Scotland) Regulations 2006, as amended, implement Directive 2004/18/EC in the UK.⁶³

Auditing, inspecting and regulating others

- 5.62 For some bodies, their public functions will primarily involve interaction with others, for example through auditing, inspecting, or regulating other bodies' activities.

What would be required of an inspection body in fulfilling the general equality duty will depend upon the role and scope of that body. For example, it would not be appropriate for the Health and Safety Executive to advise authorities on the development of an effective strategy for complying with the duty, as this would be beyond its remit. Similarly, an inspection body with tightly-defined powers in law may not be able to spend money on advising public authorities on equality.

- 5.63 Where audit or inspection bodies have a broader role, such as the inspection or assessment of the general performance of an

⁶² The Directive imposes more limited requirements when public authorities are purchasing certain services ('Part B services') including catering, recruitment, security, health services, social services, recreational, cultural and sporting services — Directive Annex IIB, Regulations Schedule 2 Part B. Equality is likely to be highly relevant to many of the Part B services; with a more relaxed regime there is potentially wider scope to apply equality considerations to the procurement of such services. The EU Treaty principles, however, apply fully to Part B services.

⁶³ The Utilities Contracts Directive 2004/17/EC is implemented in the UK by the Utilities Contracts Regulations 2006 and Utilities Contracts (Scotland) Regulations 2006.

authority in relation to its service provision, they will need to ensure that compliance with the general equality duty becomes an integral part of the inspection/audit process, built into their inspection regimes and informing their judgements on what constitutes good performance. In particular, where appropriate, they will need to review inspection and auditing methods to ensure that they are designed and implemented with due regard to the aims of the duty.

This might, for example, lead an inspection or auditing body to:

- build equality considerations into their assessments of what constitutes good performance
- decide what action it should take if it identifies any potential breaches of discrimination law
- improve research surveys and data collection in order to provide useful data for public bodies to consider when analysing their performance of the duty
- identify and disseminate best practice in respect of equality, and
- consider publishing guidance on what equality information listed authorities could gather and publish in response to their specific duties (see Chapter 6).

5.64 Public authorities that influence the way in which a particular sector operates, such as inspectorates or regulators, could help standardise the formats and comparability of data. They could consider publishing guidance on what relevant information could be gathered by the organisations within that sector, for example in relation to policing, health screening or tackling homelessness.

Case study — A public body responsible for carrying out health and safety inspections amongst local businesses is made aware that there has been a significant increase in the number of complaints from pregnant women relating to their safety at work. The body instructs its inspectors to highlight with businesses their responsibilities to carry out risk assessments for pregnant women during their routine visits and to raise awareness of the sources of guidance available to employers.

Chapter 6: Complying with the specific duties

Within this chapter, words and phrases are to be interpreted in accordance with their meaning in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (the Regulations).

Section 1: Introduction to Chapter 6

The general duty

- 6.1 There is a general duty on public bodies listed in Schedule 19 of the Act when carrying out their functions (and persons when carrying out public functions) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and other conduct that is prohibited by or under the Act.
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not.
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not.

The protected characteristics are:⁶⁴

1. Age
2. Disability
3. Gender reassignment
4. Pregnancy and maternity
5. Race
6. Religion or belief
7. Sex
8. Sexual orientation
9. Marriage and civil partnership (but only with regard to the first arm of the general duty, i.e., eliminating conduct which the Act prohibits).

⁶⁴ See Chapter 2 paragraph 2.9 for further information about the protected characteristics and any exclusions that apply.

For a full explanation of the general duty and the concept of the duty to have due regard, see Chapter 2.

The specific duties

6.2 In Wales, the public bodies listed in Part 2 of Schedule 19 to the Act (as amended by the Equality Act 2010 (Specification of Relevant Welsh Authorities Order 2011)) are subject also to specific duties found in the Regulations.

Those public bodies are referred to in this chapter as ‘listed authorities’.

Appendix 6 to this guidance sets out Schedule 19 as at 1 April 2014. Other bodies may be added by order of a Minister of the Crown or the Welsh Ministers (with the consent of a Minister of the Crown).

The aim of the specific duties in the Regulations is to enable listed authorities to achieve better performance of the general duty. The Regulations seek to do this by focusing on achieving improved equality **outcomes**. Complying with the specific duties is not therefore simply about administrative processes and procedures – it is about generating positive equality outcomes. When complying with the specific duties a listed authority must therefore consider the three aims of the general duty at all times.

6.3 Four guiding principles shape the specific duties:

- **Use of evidence:** robust evidence to understand the communities served and shape future actions.
- **Consultation and involvement:** so that the needs of the citizen can help shape the design and delivery of services that are fit for purpose, meet needs and deliver a positive outcome.
- **Transparency:** about how equality objectives have been set and reporting the progress of those equality objectives.
- **Leadership:** strong leadership which sets a positive culture and climate within the Welsh public sector to use resources effectively to help successfully discharge equality duties.

6.4	The specific duties cover:	Paragraphs
	• Equality objectives	6.9 to 6.18
	• Engagement with appropriate persons	6.19 to 6.25
	• Relevant information	6.26 to 6.33
	• Assessing and monitoring the impact of policies and practices	6.34 to 6.39
	• Collecting employment information and addressing the cause of pay differences	6.40 to 6.43
	• Training	6.44
	• Pay differences and action plans	6.45 to 6.50
	• Strategic Equality Plans	6.51 to 6.55
	• Annual reports	6.56 to 6.59
	• Additional specific duties which apply only to the Welsh Ministers	6.60 to 6.62
	• Procurement	6.63 to 6.69
	• Compliance by Welsh Ministers	6.70
	• Disclosure of information	6.71
	• Accessibility of information	6.72 to 6.73

How the specific duties interlink

6.5 These specific duties are interlinked and complement each other continuously to inform the listed authority as to how to achieve better equality outcomes.

For instance, there is a duty to collect employment information in respect of the listed authority’s workforce. That information will then form part of the evidence that the listed authority must consider when considering what its equality objectives should be. There is also a duty to review equality objectives which means that the evidence it considers (such as the employment information) must also be reviewed.

The listed authority must also publish the steps it has taken to identify and collect relevant information, the effectiveness of arrangements for identifying and collecting relevant information and how the information has been used to comply with the general duty and the specific duties.

Publishing information

- 6.6 Certain regulations require certain information to be published. Regulation 6
 A listed authority must take all reasonable steps to ensure that all published information is accessible by persons who share one or more of the protected characteristics. This could include, for example, alternative formats and languages.
- There is a duty to publish a Strategic Equality Plan which must include information that arises from complying with other specific duties, such as the listed authority’s equality objectives and the arrangements it has in place in order to fulfil those objectives. Regulations 14 and 15
- There is also a duty to publish an annual report which must set out information which relates to compliance with the general duty. For example, the annual report must set out the progress that the listed authority has made in fulfilling each of its equality objectives.
- Publishing this information is in line with the principle of transparency, however note the legal limitations to publishing information referred to in paragraph 6.71. Regulation 16

What is appropriate?

- 6.7 Many of the specific duties require a listed authority to make certain decisions as it considers ‘appropriate’. What is appropriate will depend on the individual circumstances (including those of each listed authority) but the listed authority must always consider the general duty. As a matter of good practice, it should also consider the four guiding principles set out in paragraph 6.3 when deciding what is appropriate.
- The listed authority must also act according to the usual principles of public law: i.e., it must act in a reasonable and proportionate manner, taking into account relevant considerations.

Remedies, sanctions and the specific duties

- 6.8 As in the case of the general duty, breach of the specific duties will not give rise to any private law rights. Individuals will not be able to claim damages for a breach of the equality duties unlike, for instance, when they have been unlawfully discriminated against at work.

Members of the public can seek judicial review of a decision made by a public body in breach of the general duty. However, they cannot seek judicial review for breach of the specific duties alone (Section 32(11) Equality Act 2006).

The Commission has powers to issue compliance notices for breach of the general and specific duties. Furthermore, judicial review proceedings may be brought by the Commission against a listed authority in respect of an alleged failure to comply with the specific duties. Enforcement of the duty is explained in Chapter 7 of this guidance.

Section 2: Equality objectives (Regulations 3, 4 and 11(1))

Purpose of equality objectives

- 6.9 A listed authority must publish equality objectives that help it to perform the general duty. Equality objectives must be designed to lead to **better** performance of the general duty. Equality objectives must also be reviewed as appropriate, see paragraph 6.17 for further information on review. Regulation 3(1)

What is an equality objective?

- 6.10 An equality objective sets out the equality outcomes to be achieved in the specific circumstances of the listed authority. The realisation of those outcomes should lead to better performance of the general duty and bring about positive change.

Equality objectives should set out clear measurable aims to be achieved. While the aims should be ambitious, they should be realistic and have regard to the circumstances of the listed authority and the evidence it has gathered from collecting information and engaging with appropriate persons, i.e., the equality objectives should be proportional in impact.

The objectives should also be capable of being measured objectively in order to determine whether or not they have been, and are being, fulfilled. This interlinks with the duty to report annually on the progress that the listed authority has made in order to fulfil its equality objectives and the effectiveness of steps taken to fulfil those equality objectives, see paragraph 6.16.

Regulation 3(2)(b)

Considering and designing equality objectives

- 6.11 When considering and designing equality objectives, a listed authority will need to have a clear overview and understanding of the equality issues it faces. A listed authority may identify that it has significant equality issues. In those cases, the listed authority should prioritise and direct resources effectively towards addressing those specific equality issues.

The specific duties enable a listed authority to understand the equality issues it faces by requiring it to identify, collect and assess relevant information and to monitor policies and practices, while also engaging with appropriate persons. Only then can the listed authority focus on achieving specific and identifiable improvements in (a) policies; (b) the way services and functions are delivered; and (c) outcomes for employees and service users.

When considering and designing equality objectives, a listed authority should also as a matter of good practice consider the guiding principles set out in paragraph 6.3 which complement the specific duties. This will help show transparency in how decisions are made and demonstrate leadership in setting a positive culture.

- 6.12 If a listed authority does not publish an equality objective in respect of one or more of the protected characteristics it must publish reasons for its decision not to do so. Regulation 3(3)

This applies even if the listed authority has an equality objective in place for that protected characteristic that addresses the causes of pay differences. Further information about equality objectives that address the causes of pay differences are set out in paragraphs 6.45 to 6.48. Regulation 3(4)

Furthermore, in deciding not to publish an equality objective a listed authority will need to satisfy itself that it is compliant with the general duty (as well as the general principles of public law). Therefore, a listed authority that chooses not to publish an equality objective in respect of any protected characteristic will **not** be free to ignore that protected characteristic in the exercise of its functions because the general duty will still apply.

Any decision not to publish an equality objective in respect of

one or more of the protected characteristics should be made only after complying with the duties to engage with appropriate persons and have due regard to relevant information.

Any decision not to publish an equality objective in respect of one or more of the protected characteristics should also be revisited as appropriate. This is because the specific duties require a listed authority to publish equality objectives as it 'considers appropriate' and it may be appropriate to adopt an equality objective in areas where there are none at present. A listed authority cannot therefore close its mind to the possibility that it will need to revisit a decision not to publish an equality objective. Review of equality objectives is dealt with in more detail in paragraph 6.17.

Regulation
4(2)(b)

Making equality objectives

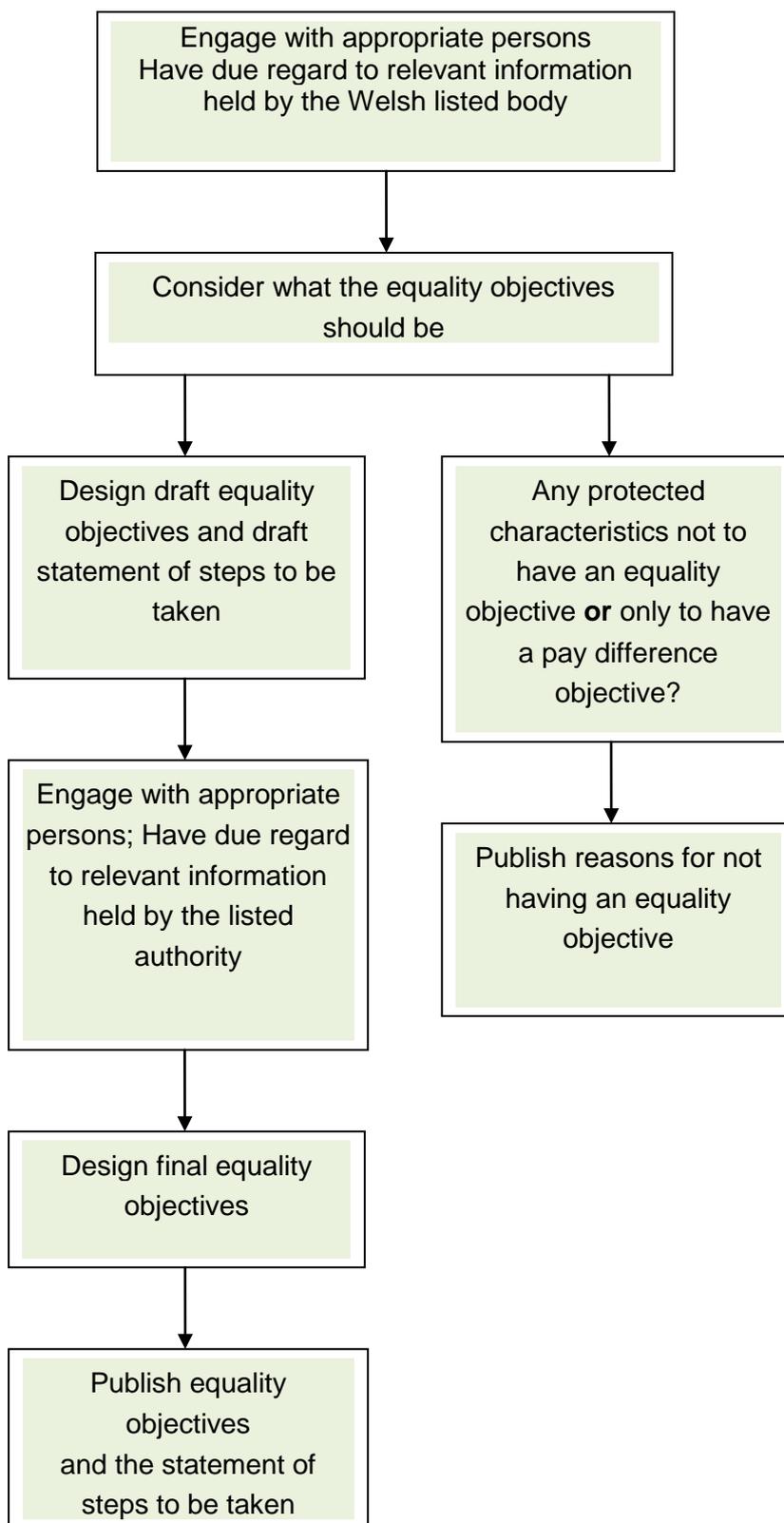
6.13 The process of making equality objectives can be broken down into three key stages:

- Considering what the equality objectives should be.
- Designing equality objectives.
- Publishing equality objectives.

The process must be transparent and well-informed. Both at the stage of considering what its equality objectives should be and at the stage of designing them, a listed authority must engage with appropriate persons (see paragraphs 6.19 to 6.25) and have due regard to the relevant information which it holds (see paragraphs 6.26 to 6.33). For a full explanation of the duty to have due regard see Chapter 2 especially paragraphs 2.24-2.28.

The following chart shows the process that the listed authority should follow.⁶⁵

⁶⁵ However, if a Welsh listed authority identifies a gender pay difference and does not publish an equality objective to address the cause of that difference then it must publish its reasons for not publishing such an objective (Regulation 11(3)).



Pay difference objective

- 6.14 When considering what its equality objectives should be, the Regulations require a listed authority to have due regard to the need to have equality objectives that address the causes of any differences between the pay of any employees who share one or more protected characteristic and those who do not, where certain conditions are met.

Regulation
11(1)

The obligation to have due regard means that the listed authority must give active consideration and appropriate weight in all the circumstances to the need to address the causes of any identified pay difference following engagement and having due regard to relevant information held by it.

Further information about specific duties relating to pay difference is set out in paragraphs 6.45 to 6.50.

Publishing equality objectives

- 6.15 There is a duty to have published equality objectives initially by 2 April 2012 and subsequently thereafter as the listed authority considers appropriate. This therefore imposes a continuing obligation on the listed authority to publish equality objectives at appropriate intervals.

Regulation
4(2)(b)

What is appropriate will depend on the circumstances of the listed authority, see paragraph 6.7.

Case study — If any of the functions or activities of the listed authority change or if any of the circumstances or evidence that led to a decision to publish or not publish an equality objective change so that there is an impact with regard to a protected characteristic, it would be appropriate to review any equality objective relating to that protected characteristic or (if there is no relevant equality objective) to examine whether one should be published after all.

Statement of steps taken, or to be taken, and monitoring progress

6.16 Alongside its equality objectives, a listed authority must publish a statement setting out the steps it has taken or intends to take in order to achieve those equality objectives, and the expected timescale for doing so.

Regulation 3(2)(a)

Case study — Following engagement with relevant stakeholders and the collection of relevant equality information, a listed authority develops and publishes an equality objective which sets out an outcome relating to disability equality. Using evidence from engagement and equality information will enable them to identify what the equality objective should be; the steps that they need to take in order to fulfil the objective; and a realistic timescale for doing so. Examples of relevant steps could include: awareness-raising about disability equality amongst employees; changing the physical structure of buildings; purchasing specialist equipment and training staff how to use it. These steps are clearly explained in a published statement about how the objective will be fulfilled in practice. The timeframe for delivery should also be included in the published statement.

The statements must be set out in a Strategic Equality Plan. Strategic Equality Plans must be kept under review and in doing so a listed authority must have due regard to relevant information that it holds as well as any other information it considers likely to assist in the review.

That information may alert the listed authority to changes that need to be reflected in the statement of steps to be taken to fulfil its equality objectives. This means that the statement will need to change and because the statement forms part of the Strategic Equality Plan, the Strategic Equality Plan may need to be revised or remade (depending on the scale of the changes).

Regulations 15(5) and 15(6)

In revising or remaking a Strategic Equality Plan, there is a duty on the listed authority to engage with appropriate persons and have due regard to relevant information that it holds. Therefore, changes in the statement of steps to be taken to fulfil equality

Regulation 15(1)

objectives must also involve appropriate engagement and having due regard to relevant information.

The listed authority must also make appropriate arrangements for monitoring the progress it makes and the effectiveness of the steps it has taken in order to fulfil its equality objectives. These arrangements must also be published in a Strategic Equality Plan.

Regulation
3(2)(b)

The listed authority must then publish a statement of the effectiveness of the steps it has taken in order to fulfil each of its equality objectives in an annual report. This assessment may itself lead to a review of the steps to be taken in order to fulfil the relevant equality objective.

Regulation
16(2)(e)(ii)

Further information on Strategic Equality Plans and annual reports are set out in paragraphs 6.51 to 6.55 and paragraphs 6.56 to 6.59, respectively.

Review of equality objectives

- 6.17 Reviews of existing equality objectives must be carried out at appropriate intervals so that the listed authority remains focused on achieving equality outcomes that are relevant and take account of developments.

When reviewing an equality objective relating to any protected characteristic, it would make sense for a listed authority to consider whether it is appropriate to publish any other equality objectives relating to that characteristic. Reviewing equality objectives should therefore be treated in the same way as considering what the equality objectives should be (and as such subject to the duties to engage and have due regard to relevant information).

A review of each equality objective must be carried out at least every four years starting from the date the objective was first published and subsequently at intervals not later than the end of the period of four years beginning with the date of the last review of the objective.

As well as the duty to review each objective at least every four years, a listed authority may carry out a review of its objectives at any other time. For instance, there is a duty to include in an annual report the progress that the listed authority has made in order to fulfil each of its equality objectives and the

Regulation
4(4)

effectiveness of the steps taken to fulfil those objectives. The matters included in the annual report may highlight issues that need to be addressed in an equality objective and alert the listed authority to the need to conduct a review of the objective itself, the timescale for fulfilling it and/or the steps to be taken to achieve fulfilment of it.

A change in the circumstances of the listed authority may also lead to a review of an equality objective, as may a change in the relevant information that led to the designing of the equality objective.

The above demonstrates how the various duties interlink and complement each other in order to form a robust framework for the thorough review of equality objectives at appropriate intervals.

Case study — A local authority is working in partnership with a voluntary organisation to support people from a particular racial group to achieve greater social integration within their local community. Due to a range of factors, the voluntary organisation is unable to secure sufficient funding to continue this work and it closes down its operations in the area. As a result, the local authority needs to review its equality objective relating to its work with that voluntary organisation. The local authority decides to work in partnership with a number of other local voluntary organisations in order to foster good relations between people from different racial groups in the local area. The local authority revises its equality objective relating to this work and publishes the revised objective. It also amends its published statement on the steps it intends to take to fulfil that objective to reflect the changed circumstances.

A review of the equality objective may lead to:

- No change in the equality objective
- A need to revise the equality objective
- A need to remake the equality objective
- A decision to no longer publish that equality objective

As a matter of good practice, and also in order to comply with the requirement to publish equality objectives as it considers

appropriate, the listed authority should also review periodically any decision not to publish any equality objective in respect of a protected characteristic (see paragraph 6.12). Reviewing a decision not to publish an equality objective will also help satisfy the duty to monitor the impact of the listed authority’s policies and practices, see paragraph 6.37.

Revising or remaking an equality objective

6.18 Revising an equality objective means any modification of an objective that is short of actually remaking or creating a new equality objective. If a listed authority revises an objective without remaking it then it must, as soon as possible after making the revision, publish the revision or the objective as revised (as it considers appropriate). Regulation 4(6)

Remaking an equality objective means a thorough reworking of the equality objective. The remade equality objective must be published as a whole.

The example in paragraph 6.17, where there is a major change in how the local authority works in partnership with voluntary organisations, may lead to a remaking of the equality objective.

An equality objective can be revised or remade at any time. The steps that must be taken when revising or remaking an equality objective are similar to those for making an equality objective set out in paragraph 6.13, i.e., the listed authority must engage with appropriate persons and have due regard to the relevant information it holds when considering, designing and drafting the revision or when remaking an objective. Regulation 4(5)

If a listed authority revises or remakes an equality objective, it must either amend the statement of steps to be taken referred to in paragraph 6.16 or publish a new statement. Regulation 4(7)

Section 3: Engagement, Regulation 5

Purpose of engagement

6.19 The duty to engage with appropriate persons helps ensure transparency and inclusivity. It will assist the listed authority to achieve better performance of the general duty. The duty interlinks with and underpins other specific duties.

Engagement must take place in relation to:

- considering, designing, revising and remaking equality objectives Regulation 4(1)
- assessing how things done (or things that could be done) contribute to compliance with the general duty Regulations 7(4) and 7(5)
- assessing the impact of policies and practices on complying with the general duty Regulations 8(1)(a) and 8(1)(b)
- making, remaking or revising Strategic Equality Plans Regulation 15(1)

Duty to involve

6.20 Whenever the duty to engage applies, the listed authority must involve such persons as it considers: Regulation 5(2)(a)

- a. represent the interests of persons who share one or more of the protected characteristics; **and**
- b. have an interest in the way that the listed authority carries out its functions.

6.21 The listed authority must involve persons that it considers to satisfy both of these elements. The duty is to involve persons who represent individuals who share one or more of the protected characteristics. These may or may not include those individuals themselves. The listed authority may wish to involve former, current and potential service users, staff, staff equality groups, trade unions and equality organisations.

The degree of involvement with those persons should remain open and flexible. This will ensure that the engagement informs the listed authority sufficiently to help it perform the general duty and improve equality outcomes.

Discretion to involve and consult

- 6.22 The listed authority may also involve or consult such other persons as it considers appropriate.

Regulations
5(2)(b) & (c)

In exercising this discretion the listed authority must have regard to the need to involve or consult, so far as is practicable to do so, persons who share one or more of the protected characteristics and have an interest in the way the listed authority carries out its functions.

Regulation
5(3)

This is intended to focus the attention of those exercising public functions towards direct engagement with individuals who share one or more of the protected characteristics, not only the representatives of those individuals.

What is the difference between involving and consulting?

- 6.23 Involving a person means that the person will work integrally with the listed authority, taking an active part in the decision-making process, without of course fettering the discretion of the listed authority. Consulting means listening to persons and taking their opinions.

Case study — An inspectorate wants to change its inspection criteria, so the duty to engage is relevant. Engaging with relevant stakeholders will enable them to collect useful information about whether or not the proposed new criteria are appropriate. The inspectorate needs to engage with a range of stakeholders. This must include those who represent the interests of people who share one or more protected characteristics who have an interest in the way they carry out their functions. It may also include people with protected characteristics, the organisations it inspects, other inspectorates with a similar brief, service users or other people that it considers to be relevant.

Effective engagement

- 6.24 Effective engagement should be:
- well-structured and focused

Continued...

- adequately resourced and accessible
- influential and transparent, and
- respectful of confidentiality.

When considering and designing equality objectives, engagement should take place at an early stage to gather initial opinions, evidence and ideas. This will provide an early opportunity to gain a clearer understanding of the equality issues they will need to address in equality objectives.

Engagement can be built into the work of listed authorities. For example, a local authority includes on the complaints page of its website a text box, suggesting that those people who want to engage with the local authority on equality issues should submit their details. It demonstrates the local authority's commitment to promoting equality as part of its continuous improvement work. Involvement and consultation must then be revisited whenever the duty to engage applies.

Proportionality

- 6.25 Engagement should be proportionate to the size and resources of the listed authority, as well as to the significance of the policy in relation to a protected group (i.e. a group of individuals who share one or more of the protected characteristics).

A listed authority does not need to engage with every protected group on every decision, therefore it will need to decide how relevant the decision is to a particular group and engage accordingly. In helping a listed authority make that judgement, it should make maximum use of the requirement to assess whether there are things done (or things that could be done) that contribute to complying with the general duty. That assessment forms part of identifying relevant information and requires engagement with appropriate persons (see paragraph 6.32).

This represents an early opportunity for those engaged to inform the listed authority as to what issues are important and relevant to them and will demonstrate effective and focused engagement. It will also help the listed authority avoid making any ill-founded assumptions. For example, persons who share the protected characteristic of gender reassignment may be as interested in

Regulations
7(4) and 7(5)

education as they are in health, although the listed authority had only previously engaged with such persons on health issues.

Section 4: Relevant information, Regulation 7

Purpose of relevant information

6.26 Publishing relevant information will aid transparency and enable better accountability and assessment of the equality performance of the listed authority. However, note the legal limitations to publishing information referred to in paragraph 6.71.

Identifying and collecting relevant information will allow the listed authority to rely on robust evidence when making equality-related decisions. It will help identify equality issues that must be addressed in equality objectives and will be key to measuring progress.

Identifying relevant information is therefore a critical tool in informing the listed authority as to what it needs to do to achieve better performance of the general duty.

6.27 The duty to have due regard to relevant information arises when:

- | | |
|---|---------------------------------|
| <ul style="list-style-type: none"> • considering, designing, revising and remaking equality objectives | Regulation 4(1) |
| <ul style="list-style-type: none"> • assessing how things done (or things that could be done) contribute to compliance with the general duty | Regulations 7(4) and 7(5) |
| <ul style="list-style-type: none"> • assessing the impact of policies and practices on complying with the general duty | Regulations 8(1)(a) and 8(1)(b) |
| <ul style="list-style-type: none"> • making, remaking, revising or reviewing Strategic Equality Plans. | Regulations 15 (1) and 15(5) |

What is relevant information?

6.28 Relevant information is defined as information that relates to compliance (or otherwise) by the listed authority with the general duty. Regulation 2

Relevant information may include, for instance, quantitative research (eg, surveys); qualitative research (eg, results from focus groups); service user information and feedback including complaints, administrative data and economic analysis. It will also include any document prepared or information identified in accordance with the specific duties set out in this chapter.

Relevant information includes information that the listed authority holds and information it does not hold.

The information needed to inform equality-related decisions will vary depending on circumstances such as the functions and size of the listed authority. It may take some time to develop comprehensive information but relevant information needs to have been collected before decisions are made. Identifying relevant information should therefore be one of the first steps when complying with these specific duties.

Information held by a listed authority

- 6.29 The listed authority must make appropriate and periodic arrangements to **identify** relevant information it holds and to **publish** that information when appropriate to do so. That information must initially have been published by 2 April 2012. Further information on publishing is set out in the sections on Strategic Equality Plans and annual reviews.

Regulations
7(1)(a) and
(c)

Relevant information is held by the listed authority if it is actually held by the listed authority or if it is held by another person on behalf of the listed authority.

The listed authority will also be deemed to hold relevant information if it is held by the listed authority on behalf of another person and that other person consents to the listed authority using the information to comply with its equality duties, or if the use of the information is reasonable in the circumstances and it is not contrary to law to use the information.

Information not held by a listed authority

- 6.30 The listed authority must also make appropriate arrangements to **identify** and **collect** relevant information it does **not** hold. This means that the listed authority must identify any gaps in the relevant information that it already holds and actively collect

Regulation
7(1)(b)

information to fill those gaps. Once collected, that information becomes information held by the listed authority and therefore subject to the duty to publish, see paragraph 6.29.

Case study — A local authority wants to take steps to tackle racial harassment and foster good relations in an area where there is tension between people from different racial groups. Their plans include the development of a new youth centre to encourage young people from different racial groups to interact together. It approaches the police to ask them for information about trouble spots where racial incidents or attacks have occurred. This enables them to decide where it would be most useful to locate the youth centre.

If the listed authority identifies any relevant information that it does not hold and decides not to collect, then it must publish its reason for not collecting that information in an annual report, see paragraphs 6.56 to 6.59.

Regulation
16(2)(c)

Information about pay differences

6.31 The Regulations require listed authorities to have due regard to the need to have equality objectives that address the causes of any differences between the pay of employees who share a protected characteristic and those who do not, where certain conditions are met. Further information on pay difference objectives is set out in paragraphs 6.45 to 6.50.

Regulation
11

The listed authority must make specific provision for identifying and collecting information about pay differences to fulfil this duty, see paragraphs 6.40 to 6.43.

Regulation
11(2)

Identifying and publishing relevant information

6.32 Identifying relevant information is fundamental to the development of equality objectives and better performance of the general duty.

Regulations
7(4) and 7(5)

In identifying relevant information, the listed authority must carry out an **assessment** to identify whether there are things done by the listed authority that contribute to its compliance (or otherwise) with the general duty. The assessment must also identify things

Regulation
7(6)

that the listed authority could do that would be likely to contribute to compliance with the general duty. The assessment must have been carried out no later than 2 April 2012.

When carrying out that assessment there is a duty to engage with appropriate persons. Effective engagement will help the listed authority understand what kind of information it must identify. The listed authority must also have due regard to relevant information that it already holds when carrying out the assessment. This will help keep the listed authority focused on information it has already identified and how any changes may need to be reflected in revised or remade equality objectives.

Case study — A further education college wants to identify all of the relevant information that it holds on equality. It develops a template that can be circulated to all departments which asks a series of questions about the equality information they hold about staff and service users. A number of meetings are also held for parents, applicants, former and current students. In the meetings, participants are invited to discuss their experiences of equality in relation to the different services in the college. This includes catering, careers, chaplaincy, health centre, open days, teaching and assessment. The college explains the aims and requirements of the equality duty, and what it means in practice for them. The meeting is well planned and facilitated and contributions are captured and fed back to the participants. A similar event is also held for college staff. This enables the college to assess the relevant information it holds.

The equality information collated from both of these sources is used for the development of equality objectives and for prioritising engagement when the college is assessing the impact of its activities on equality.

The arrangements made (or to be made) to: (a) identify relevant information held by the listed authority; (b) identify and collect relevant information not held by the listed authority; and (c) publish relevant information held by the listed authority and which it considers appropriate to publish, must be included in a Strategic Equality Plan.

Regulation
14(2)(d)(ii)

Continuing duty

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| 6.33 | <p>The listed authority must, from time to time, identify, collect and publish relevant information (including carrying out the assessment referred to in paragraph 6.32) as the listed authority considers appropriate. This means that there is a continuing duty to consider relevant information.</p> <p>There is also a duty to keep arrangements relating to identifying, collecting and publishing information under review, and such arrangements can be revised or remade at any time.</p> | <p>Regulation 7(1)</p> <p>Regulation 13(3)(ii)</p> |
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Section 5: Impact and monitoring of policies and practices, Regulation 8

Purpose of assessing and monitoring policies and practices

- 6.34 A listed authority is under a duty to assess and monitor the impact of policies and practices on its ability to comply with the general duty. It will have to consider how policies and practices affect protected groups.
- Periodic assessment and monitoring of policies and practices will alert the listed authority to issues that may need to be addressed in equality objectives.

Duty to assess the impact of policies and practices

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| 6.35 | <p>A listed authority must make appropriate arrangements for assessing:</p> <ul style="list-style-type: none"> • the likely impact of proposed policies and practices on its ability to comply with the general duty • the impact of any policy or practice which is being reviewed on its ability to comply with the general duty, and • the impact of any proposed revision to a policy or practice on its ability to comply with the general duty. <p>Any such assessment must engage with appropriate persons and have due regard to relevant information that the listed authority holds.</p> | <p>Regulations 8(1)(a) and 8(1)(b)</p> |
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This duty to carry out an equality impact assessment does not include existing policies and practices which the listed authority has not decided to review, however those existing policies must still be **monitored** as described in paragraph 6.37.

Assessment reports

- 6.36 The listed authority must also make arrangements for publishing reports in respect of assessments of the kind referred to in paragraph 6.35 (where there is a substantial impact on the listed authority’s ability to comply with the general duty).

Regulation
8(1)(d)

Assessment reports must set out the following:

- the purpose of the policy or practice or revision being assessed
- a summary of the steps that the listed authority has taken to carry out the assessment (including any engagement undertaken)
- a summary of the information that the listed authority has taken into account in the assessment
- the results of those assessments, and
- any decision taken by the listed authority in relation to those results, including any mitigating steps.

The publication of such reports should reflect the four guiding principles set out in paragraph 6.3. Publishing honest assessment results will help transparency and decisions taken as a result of those results will demonstrate more robust and evidence-based leadership in addressing equality issues.

Duty to monitor

- 6.37 The listed authority must also **monitor** the impact of policies and practices on its ability to comply with the general duty. Although there is no requirement to engage or have due regard to relevant information when monitoring, the listed authority must still make appropriate arrangements with regard to monitoring, i.e. monitoring should be objective and the outcomes and findings should be effectively communicated within the listed authority and made available to its decision makers.

Regulation
8(1)(c)

The decision makers may then decide whether any policy or

practice should be reviewed and subsequently assessed in accordance with paragraph 6.35.

Case study — A Local Health Board plans to reduce the level of non-emergency transport that it provides. It undertakes an equality impact assessment which includes some engagement with people with different protected characteristics who might be affected. It also involves those representing the interests of people with different protected characteristics in the assessment process. The assessment indicates that the proposed changes would lead to longer journeys for various patients, including older people and people with disabilities. As a result, the Board decides to modify its proposals in order to minimise journey times. It makes a commitment to monitor the impact of the new arrangements when it is implemented, and to formally review the new policy by a specific date.

It would be appropriate for monitoring the impact of policies and practices to form part of the internal audit of the listed authority.

Relevant policies and practices

6.38 As 'policies and practices' is a very broad term, the listed authority may need to focus on policies and practices that are most relevant to the protected groups. The following questions may be used to identify relevance:

- Does the policy significantly affect service users, employees or the wider community?
- Is it a major policy, significantly affecting how functions are delivered with regard to protected groups?
- Does it relate to an area where there are known inequalities?

If the answer to any of these questions is 'yes', then it is likely that there will be a need to assess a policy or practice and publish an assessment report.

Case study — A new primary school has been built and a gypsy traveller site is located in the local area. The school is aware (from national inspectorate reports) of potential issues around the attendance and attainment of gypsy traveller pupils. In having due regard to the need to advance equality of opportunity and foster good relations the school develops a new policy to address low participation in schools by gypsy and traveller children in its area. An information pack is sent to all parents, explaining the importance and benefits of regular attendance for pupils. The pack also provides information for parents about the advice and support available to them from the school if they have concerns about the progress their child is making in school.

Duty to review arrangements

- 6.39 There is a duty to keep under review arrangements relating to assessing (including publishing reports) and monitoring policies and practices, and such arrangements can be revised or remade at any time. Regulation 13(3)(iii)
- This interlinks with the requirements of Strategic Equality Plans which also require the listed authority to consider, among other things, the arrangements it has in place for assessing and monitoring policies and practices. Regulation 14(2)(d)(iii)

Section 6: Collection of employment information, Regulation 9

Purpose of collecting annual employment information

- 6.40 Collecting, using and publishing equality information relating to the employees will help the listed authority understand how its policies, practices and decisions affect individuals who share one or more of the protected characteristics.
Transparently communicating to employees the purpose of collecting this data is likely to lead to increased willingness by employees to provide information.
The information will become relevant information and provide further evidence upon which equality-related decisions can be made. Collecting employee information is therefore a crucial part

of identifying issues that need to be addressed in equality objectives.

Publishing the information will also aid transparency and help reveal equality patterns and the progress being made towards equality outcomes. Publication should also aim to set a benchmark for other similar organisations, but note the legal limitations to publishing information referred to in paragraph 6.71.

A listed authority cannot however use the duties to compel an employee (or applicant for employment) to disclose information about the protected characteristic of the employee.

Regulation
9(5)

Information in respect of each protected characteristic

6.41 Listed authorities have a duty to collect (and publish) the following employment information in aggregate for their workforce and also, in respect of each protected characteristic, the numbers who share that protected characteristic:

Regulation
9(2)

- In each year, the number of persons employed by the listed authority on 31 March of that year.
- For the period 6 April 2011 to 31 March 2012 and for each subsequent 12 month period (i.e. 1 April 2012 to 31 March 2013, 1 April 2013 to 31 March 2014 etc.) the number of:
 - a. persons who have applied for employment with the listed authority (excluding persons already employed by the listed authority)
 - b. the listed authority's employees who have changed position within the listed authority, including the number who applied to change position and the number who were successful (or otherwise) in their application
 - c. the listed authority's employees who have applied for training and the number who were successful (or otherwise) in their application
 - d. the listed authority's employees who completed the training
 - e. the listed authority's employees who were or are involved in grievance procedures, whether as the accused or the accuser

Continued...

- f. the listed authority's employees who were or are the subject of disciplinary proceedings, and
- g. the listed authority's employees who left the employment of the listed authority.

Information in respect of job, grade, pay, contract type and working patterns

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| 6.42 | Listed authorities also have a duty to collect (and publish) information on the aggregate number of persons employed by the listed authority on 31 March of each year broken down by: | Regulation
9(1)(b) |
| | <ul style="list-style-type: none"> • job • grade (if there is a grade system) • pay • contract type (including but not limited to permanent and fixed-term contracts), and • working patterns (including but not limited to full-time, part-time and other flexible arrangements). | |

This information **must** also be broken down according to the number who are women and the number who are men.

Collecting this information in respect of **all** protected characteristics will help the listed authority meet the requirement to consider the need for equality objectives that address the causes of any differences between the pay of employees who share a protected characteristic and those who do not. There is, however, no requirement to publish this information except in relation to men and women as mentioned above. Further information on pay differences is set out in paragraphs 6.45 to 6.50.

Regulation
9(3)

Publishing employment information

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| 6.43 | The above employment information must be included in an annual report unless it has already been published elsewhere (see paragraphs 6.57 and 6.58). However, note the legal limitations on publishing information referred to in paragraph 6.71. | Regulation
16(2)(f) |
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Section 7: Training duties, Regulation 10

Purpose and requirements of training duties

6.44 This requirement is intended to increase awareness of equality issues across the listed authority by means of appropriate training and so to set a positive culture and climate within the Welsh Public Sector.

A listed authority must make appropriate arrangements for promoting knowledge and understanding of the general duty and the specific duties amongst its employees. Any arrangements with regard to such training must be kept under review, and such arrangements can be revised or remade at any time.

Regulation
10(a)

The listed authority must also use any performance assessment procedures it has to identify and address the training needs of employees in relation to those equality duties.

Regulation
10(b)

Although there is no requirement to engage with appropriate persons when considering training duties, a listed authority must make arrangements which are appropriate. Depending on the circumstances of the listed authority and the subject matter of the training, it may be appropriate to engage so as to inform the content, emphasis and focus of training in a particular context.

Case study — A local authority delivers equality training to a range of senior staff, including Heads and Directors of Departments such as planning, housing, social services and finance. The training explains the process for carrying out an equality impact assessment (EIA), including who is responsible for undertaking an EIA, and for developing any relevant proposals to take to Committee. To evaluate the effectiveness of its training the authority asks people with different protected characteristics to review and give feedback on a sample of EIAs. This is to ensure that the EIAs are clearly explained, well reasoned, and supported by robust evidence. Local authorities use feedback from this ‘road-testing’ of EIAs to revise and improve their training for staff.

Section 8: Pay differences and action plans, Regulations 11 and 12

Purpose of addressing the causes of pay differences

- 6.45 Considering pay and the causes of unequal pay are critical to achieving equality outcomes for all protected groups. They can also be used as a key tool in demonstrating that a listed authority is complying with the general duty.

Pay differences in respect of each protected characteristic

- 6.46 When considering what its equality objectives should be, a listed authority must have due regard to the need to have equality objectives that address the causes of any differences between the pay of any employee who has a protected characteristic and an employee who does not, where either of the following two conditions is met:
- Regulation 11(1)
- a. the difference in pay is related to the employee's protected characteristic, or
 - b. it appears to be reasonably likely to the listed authority that the difference is related to the employee's protected characteristic.

Pay covers not just salaries but also any other benefits provided to employees. Any pay difference objective must be considered, designed and published in the same way as any other equality objective, see paragraph 6.13.

Collecting information

- 6.47 The arrangements for identifying and collecting relevant information (see paragraphs 6.29 and 6.30) must include arrangements for identifying and collecting information about any differences between the pay of a person who has a protected characteristic and a person who does not and the causes of any such differences (see paragraphs 6.40 to 6.43). The arrangements should reveal what kinds of jobs individuals from protected groups have within the listed authority and how much they are paid.
- Regulation 11(2)

Effect on duty to publish reasons

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| 6.48 | <p>If, in relation to a particular protected characteristic, a listed authority only publishes an equality objective that addresses the issue of equal pay and does not publish any other equality objective relating to that protected characteristic, then the listed authority must publish its reasons for not publishing any other equality objective in relation to that protected characteristic.</p> <p>If the listed authority identifies a gender pay difference and decides not to publish an equality objective to address the causes of that difference, it must then set out the reasons for not publishing such an equality objective.</p> | <p>Regulation
3(4)</p> <p>Regulation
11(3)</p> |
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Gender pay inequality

- 6.49 In relation to any gender pay inequality, the listed authority is required (in addition to considering publishing a pay difference objective under paragraph 6.46) to publish an action plan.
- The duty to publish an action plan is an obligation which must be complied with regardless of whether an equality objective has been published in relation to gender pay inequality.

Action plan

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| 6.50 | <p>The Regulations prescribe what must be set out in an action plan, namely:</p> <ul style="list-style-type: none"> • any policy of the listed authority that relates to the need to address the causes of any gender pay difference (and the listed authority should draw up such a policy if it does not already have one) • any gender pay equality objective published by the listed authority • any revision to a gender pay equality objective • a statement of the steps to achieve any gender pay equality objective and the expected timescale (see paragraph 6.16) • any reasons for a decision not to publish an objective to address the cause of any identified gender pay difference (see paragraph 6.48). | <p>Regulation
12(1)</p> |
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If a gender pay equality objective is revised or remade, the published action plan must be amended or a new action plan published.

Unjustified differences between the pay of women and men are in any event unlawful under the Act and steps must be taken to ensure compliance with the equal pay portions of the Act (see the Commission's Code of Practice on Equal Pay which is available at: www.equalityhumanrights.com/publication/equal-pay-statutory-code-practice)

Regulation
12(2)

Section 9: Strategic Equality Plan, Regulations 14 and 15

Purpose of a Strategic Equality Plan

6.51 The Strategic Equality Plan draws together various elements of the specific duties. It will demonstrate how the listed authority is fulfilling its equality duties and can be used as a timetabled plan of action for meeting those duties.

Publication of a Strategic Equality Plan will aid in the transparency of key decisions the listed authority has made in relation to its specific duties.

Although some component parts of the Strategic Equality Plan are not expressly subject to the duties to engage with appropriate persons and have due regard to relevant information, the Strategic Equality Plan as a whole is subject to those duties, so they apply to each component as part of the whole Strategic Equality Plan.

6.52 A listed authority has a duty to produce a Strategic Equality Plan setting out the following information:

- a description of the listed authority
- the listed authority's equality objectives
- the steps the listed authority has taken or intends to take in order to fulfill each objective and the expected timescale for doing so

Regulation
14(2)

Continued...

- the arrangements that the listed authority has made to comply with:
 - a. monitoring the progress made and the effectiveness of the steps taken in order to fulfil each equality objective (see paragraph 6.16)
 - b. identifying, collecting and publishing relevant information (see paragraphs 6.26 to 6.33)
 - c. assessing and monitoring the impact of policies and practices (including proposed policies and practices) and publishing any assessment reports (see paragraphs 6.34 to 6.39), and
 - d. arrangements for promoting knowledge and awareness amongst employees of the general duty and the specific duties and for using performance assessment procedures to identify training needs in relation to those duties (see paragraph 6.44)
- the action plan relating to gender pay difference (see paragraphs 6.49 to 6.50).

6.53 The Strategic Equality Plan may include any other matter that is relevant to compliance with the specific duties, for example it may provide links to the relevant information that the listed authority holds and which it considers appropriate to publish. It may also include the listed authority’s reasons for not publishing an equality objective in respect of one or more of the protected characteristics, see paragraph 6.12.

The Strategic Equality Plan may also be set out as part of another published document or within a number of other published documents, but a Strategic Equality Plan must have been made by 2 April 2012.

Regulation 7(1)(c)

Making, revising or remaking a Strategic Equality Plan

6.54 In making, revising or remaking a Strategic Equality Plan the listed authority must engage with appropriate persons and have due regard to relevant information it holds. The Strategic Equality Plan must be published as soon as possible after it is made or remade.

Regulation 15(1)

If the Strategic Equality Plan is revised (without being remade) then the listed authority must publish the revision or the revised Strategic Equality Plan as soon as possible.

Revising a Strategic Equality Plan means any modification of the Plan that is short of actually remaking or creating a new Strategic Equality Plan. Remaking a Strategic Equality Plan means a thorough reworking of the Plan.

A Strategic Equality Plan may be revised or remade at any time.

Reviewing a Strategic Equality Plan

6.55 There is a duty to keep under review a Strategic Equality Plan and any revisions made to it. Although there is no prescribed timescale for carrying out such reviews, the Strategic Equality Plan will include information which is itself periodically reviewed (such as equality objectives and the steps taken in order to fulfil them). The Strategic Equality Plan will therefore need to reflect any changes in such information. Regulation 15(5)

There is a duty to have due regard to relevant information when reviewing a Strategic Equality Plan. This presents listed authorities with another opportunity to consider the information they have available. Regulation 15(6)

That relevant information may reveal that there has been a change in the evidence that led to a previous equality objective being published. Alternatively, it may reveal a change in the functions or activities of the listed authority that has an impact on persons who share one or more of the protected characteristics.

In either case, the listed authority must have due regard to the information and, if appropriate, revise or remake both the Strategic Equality Plan and any relevant equality objectives accordingly.

Section 10: Annual reports, Regulation 16

Purpose of annual reports

6.56 The annual reports set out a number of progress statements that arise from complying with the specific duties. This will show transparency about the progress that listed authorities make

towards fulfilling their equality objectives. The information will also form the basis for the Welsh Ministers' report (see paragraphs 6.60 to 6.62).

A listed authority must publish annual reports in respect of each 12 month period from 1 April to 31 March (unless it is the first annual report in which case the report must be in respect of the period from 6 April 2011 to 31 March 2012).

The report must be published by 31 March of the year following the reporting period.

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| 6.57 | The report must set out the following information: <ul style="list-style-type: none">• the steps taken by the listed authority to identify and collect relevant information• how the listed authority has used relevant information it holds in complying with the general duty and the specific duties• any reasons for not collecting any relevant information that is identified but not held by the listed authority• the progress the listed authority has made in order to fulfil each equality objective• a statement by the listed authority of the effectiveness of:<ul style="list-style-type: none">a. arrangements for identifying and collecting relevant information, andb. steps taken in order to fulfil each equality objective.• the employment information that the listed authority has collected under paragraphs 6.40 to 6.43 (unless it has already been published). | Regulation
16(2) |
| 6.58 | The report may include any other matter that is relevant to compliance with the general duty and the specific duties. It may also be set out as part of another published document or within a number of other published documents. | Regulations
16(3) and
16(4) |

Case study — A fire and rescue service completes four equality impact assessments (EIAs) in one year. Of these EIAs, only two have identified a substantial impact on people with protected characteristics. These two reports must be published in accordance with Regulation 8(1)(d). The service does not have to publish the other two EIAs because they identified limited impact on people with protected characteristics. However, the fire and rescue service chooses to publish a synopsis of all four EIAs undertaken that year in its annual report. It also includes detailed findings from the two EIAs which identified substantial impact on people with protected characteristics.

- 6.59 The listed authority is not specifically required to engage and have due regard to relevant information when preparing annual reports, though the information set out in the report should demonstrate clearly how the listed authority has engaged and had due regard to relevant information throughout the reporting period.

Section 11: Welsh Ministers’ reports, Regulation 17

- 6.60 The Welsh Ministers are subject to the general and specific duties, and also the following additional specific duties that apply only to them.

- 6.61 The Welsh Ministers have a duty to publish reports that set out an overview of the progress made by listed authorities towards complying with the general duty. The Welsh Ministers are required to publish a report no later than 31 December 2014 and every four years thereafter. They are also required to publish an interim report every two years.

Regulation
17(2)

Welsh Ministers’ reports must also set out proposals for the co-ordination of action by listed authorities so as to bring about further progress in their compliance with the general duty.

Regulation
17(5)

The Welsh Ministers could therefore look at the Annual Reports of listed authorities and at the information identified and collected by them and use it as evidence when considering what progress (or lack of it) has been made by listed authorities. This

will enable the Welsh Ministers to identify trends or barriers to meeting the general equality duty.

6.62 The Welsh Ministers must also publish a report by 31 December 2011 setting out:

Regulation
17(4)

- an overview of the progress made by listed authorities towards compliance with the general duty so far as it relates to persons who share the protected characteristic of disability, and
- information relating to the period 2 December 2008 to 5 April 2011 that the Welsh Ministers would have been required to include in a report under regulation 5 of the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 if those regulations were in force.

Section 12: Public procurement, Regulation 18

Purpose of and background to Regulation 18

6.63 The purpose of Regulation 18 is to ensure that listed authorities take account of issues relating to equalities when undertaking public procurement exercises.

‘Public procurement’ is the purchase of goods, works or services by certain public bodies. To ensure the free movement of goods and services, the European Union issued a series of public procurement directives to provide that contracts are awarded fairly and without discrimination on the grounds of nationality. They are aimed at ensuring fair, open and transparent competition for public contracts, through advertising in the Official Journal for the European Union (OJEU) and the following of precise procedures. These directives have been implemented in England and Wales by the Public Contracts Regulations 2006 (as amended) (the ‘Procurement Regulations’) and various other regulations.

It is beyond the scope of the guidance to consider the scope and application of the Procurement Regulations. Please seek specialist legal advice if you require further guidance on these regulations.

6.64 A listed authority will only be required to comply with Regulation 18 if:

- it is a 'contracting authority' for the purposes of the Procurement Regulations, and
- the procurement relates to a contract which is caught by the Procurement Regulations (for example the contract value is over the relevant financial threshold; the contract is one which is not excluded from the scope of the Procurement Regulations).

The listed authority will need to ensure that it considers its obligations under the specific duties at an early stage of the procurement and on a case by case basis so that it can comply with both the requirements of Regulation 18 and the Procurement Regulations.

Contract Award Stage, Regulation 18(1)

6.65 Where a contract is awarded on the basis of an offer which is the 'most economically advantageous' a listed authority must have due regard to whether the 'award criteria' should include considerations relevant to its performance of the general duty. An offer which is the 'most economically advantageous tender' is one offering best value for money based on whole life costs and the quality offered to meet user requirements.

The Procurement Regulations distinguish between most economically advantageous tenders and lowest price tenders. Regulation 18(1) does not apply to contracts awarded on the basis of lowest price alone.

Case study — A local authority decides to advertise for a new supplier to provide its stationery. It sets out the standards with which all tenderers must comply, and it announces that it will award the contract on the basis of lowest price alone. It is not obliged to comply with the specific duty on procurement in this situation. However, as procurement is a function of a local authority, it will need to have due regard under the general duty in exercising that function.

Another local authority decides that it wants to include award criteria other than price, such as the quality of the goods to be supplied. This local authority must comply with the specific duty on procurement and have due regard under the general duty.

- 6.66 When assessing whether an offer is the most economically advantageous a listed authority will need to assess the bids it receives on the basis of pre-published award criteria. If a listed authority wishes to include award criteria which relate to its general duty, the award criteria must be linked to the subject matter of the contract.

This must be assessed on a case by case basis, but contracts which have a 'public-facing' element need to be accessible and reflect the needs of the people who might use the services provided under them. An example would be a local authority purchasing social care services for the elderly. In such cases, it is more likely to be appropriate that bids be assessed on the extent to which they comply with equality requirements, for instance how they ensure equality of access to goods and services, or how they create opportunities for disadvantaged persons. Please seek legal advice if further guidance is required.

Case study — A local authority procures residential care for older people. It is aware of a report that provides evidence of older LGB people facing discrimination in care homes. By setting appropriate award criterion, the local authority can assess whether tenderers have made clear provisions to meet the needs of LGB service users when it evaluates each of the bids.

Contract conditions, Regulation 18(2)

- 6.67 Where a listed authority is proposing to stipulate conditions relating to the performance of a contract it must have due regard to whether such conditions should include considerations relevant to its performance of the general duty.

- 6.68 A listed authority is only able to fulfil this duty if:
- the intention to include equality related conditions is indicated in the OJEU notice and the contract documents, and
 - the conditions are not discriminatory against providers from outside the UK.

Case study — A local authority has awarded a works contract for the construction of a new leisure centre. The works include plumbing, carpentry, brick-laying, plastering and decorating. The local authority is aware that in all of these trades, women are under-represented. The local authority includes a condition in its contract that '[x]% of the person-weeks required to complete the works are to be delivered by women who have an apprenticeship, who are a trainee or who have an employment contract with the contractor or sub-contractor, and be engaged in a training programme that is accepted by the employer'. When deciding what percentage was appropriate, they considered what number would be proportionate.

Other opportunities to promote equalities in procurement

- 6.69 Whilst not a requirement of the specific duties, a listed authority can award contracts to businesses which employ a workforce of which more than 50 per cent are disabled persons ('supported businesses') where it assesses that the procurement need can be met by supported businesses. This is permitted pursuant to Regulation 7 of the Procurement Regulations. If a listed authority wishes to do this, it must state this in the OJEU notice issued. A listed authority may also wish to take into account equality considerations at the stage when it is selecting bidders to invite to tender. Again, this is not a requirement under the specific duties.

Section 13: Compliance with duties by Welsh Ministers etc, Regulation 19

6.70 The Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Government may prepare a Strategic Equality Plan, publish a report or do any other thing to comply with the Regulations by acting jointly.

Section 14: Disclosure of information, Regulation 20

6.71 The Regulations state that nothing in the specific duties requires a listed authority to publish information if:

- To do so would constitute a breach of confidentiality or the Data Protection Act 1998. This would in any event be illegal, so the listed authority has no authority to publish such information.
- The listed authority would be entitled to refuse to produce the information in or for the purposes of court proceedings. In this case, however, the listed authority could choose to publish the information if it wished. For example, whilst the listed authority may be entitled to refuse to produce legal advice it had received, it may nonetheless choose to produce it.

Ensuring confidentiality is likely to be a particular issue when dealing with sensitive data or where the numbers of people with any characteristic are numerically low, potentially making it easier to identify individuals. This would include data in relation 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.⁶⁶

⁶⁶ Information Commissioner's Office, Anonymisation: managing data protection risk code of practice, November 2012. http://ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation

Section 15: Accessibility of information, Regulation 6

6.72 Listed authorities must take all reasonable steps to ensure that any document or information that a listed authority is required to publish under these specific duties is accessible by persons who share one or more of the protected characteristics.

For example, information may need to be provided in Easy Read form or in Braille. The listed authority may also need to consider whether the information is accessible to younger people. Where the information is published online, care must be taken to ensure that the information is accessible and usable by those with visual, learning or other impairments. The information should also be easy to locate using a search facility.

6.73 Listed authorities will also need to consider whether it is reasonable to produce information not only in Welsh and English, but also in other languages including BSL.

Consolidating case study

A local authority is reviewing its provision of residential care for older people. It considers that it needs to rationalise its stock of care homes, and is contemplating the transfer to external providers (housing associations or private sector) of certain homes which need repair, on the basis that the providers will achieve a guaranteed level of business if the external providers bring them up to standard.

In carrying out this review, it must act in accordance with the general duty.

In accordance with Regulation 8 it carries out an impact assessment. It considers what relevant information it holds, but discovers early on that it lacks relevant information about the situation of people sharing certain protected characteristics.

It therefore publicises (in an accessible manner) the fact that it is conducting the review, and also engages directly with various non-governmental organisations and community groups.

As a result of this engagement, the local authority acquires much more information about the situation of elderly people belonging to various protected groups, and how they are catered for in terms of residential care. It decides to publish this information.

Among the issues raised during the engagement is the situation of same sex couples within the residential care sector.

With the exception of one of the older homes earmarked for transfer to an external provider, it is considered that none of the homes in the county which cater for couples is notably welcoming to same sex couples. There is some evidence indeed of hostility in certain homes, with couples feeling that obstacles have been put in the way of their going there to live.

The local authority has an equality objective under Regulation 3 'to ensure that all local authority services are available to all individuals regardless of sexual orientation'. The local authority's statement of steps makes no reference to care for the elderly.

The local authority considers that the use of the word 'individual' may not have been sufficiently clear to cover couples.

In the light of the information it now holds, the local authority therefore decides after consultation, and ensuring the involvement of people representing elderly gay and lesbian people:

1. To revise its equality objective under Regulation 4 by replacing 'individuals' with 'people', and adding 'whether those services are provided directly or via an external provider funded by the local authority'.
2. To instigate a programme of training under Regulation 10 for all staff in the elderly care sector in order to ensure that same sex couples are not discriminated against.
3. To devise a plan of action which ensures that same sex couples have equal access to all local authority residential homes and to amend the statement of steps in support of the equality objective to include this plan (under Regulation 3).

In the context of its review and the proposed transfer of residential home, the local authority decides that it must ensure that any private or third sector provider complies with the local authority's policy on equal access to all couples regardless of sexual orientation. The local authority already requires as a standard clause that its suppliers of services do not discriminate unlawfully, but it is felt that this does not adequately ensure that the specific issues facing elderly same sex couples are brought

to the foreground and therefore addressed.

Consequently, the local authority decides that it will include a specific contract condition requiring equality of admission and of treatment for all couples, regardless of their gender or sexual orientation (Regulation 18(2)). It also decides that it will include in its award criteria a requirement to produce a training and implementation plan to ensure equality of treatment, including details of the resources to be allocated to this. The better the plan, the more marks it will get in assessing the contract award (Regulation 18(1)).

To ensure that the local authority complies with its duties under the Regulations and the Procurement Regulations, it notes in the contract notice and the contract documents of its intention to include equality-related conditions of contract.

The local authority includes an account of what it has done in its Annual Report (Regulation 16) and its Strategic Equality Plan (Regulation 14).

Chapter 7: Enforcement

Introduction

- 7.1 This chapter explains the role of the Equality and Human Rights Commission (the Commission) in relation to the public sector equality duty and how the duty is enforced, both by the Commission and by others with an interest in its implementation.
- 7.2 The Commission is an independent statutory agency which was established under the Equality Act 2006.

The Commission’s duties

- 7.3 Amongst its other duties set out in the Equality Act 2006, the Commission has the duty to promote awareness and understanding of rights under the Equality Act 2010 and to enforce that Act, including the enforcement of the public sector equality duty. ss.8 and 10
EA 2006

Commission enforcement powers: the general duty

- 7.4 **Assessment:** The Commission can conduct an assessment into the extent to which, or the manner in which, a body has complied with its general equality duty. See Appendix 4 for more details. s.31 EA
2006
- 7.5 **Compliance notice:** If, following an assessment, the Commission thinks that a person has failed to comply with their general equality duty, it can issue a notice requiring the person to comply with its duty and to give the Commission, within the period of 28 days beginning with the date on which they receive the notice, written information of steps taken or proposed for the purpose of complying with the duty. This notice is known as a ‘compliance notice’. s.32(2)

The compliance notice can require a person to give the Commission information required for assessing compliance with the duty. If it does so, it must specify the period within which the information is to be given (beginning with the date s.32(3)

on which the notice is received, and not exceeding three months), and the manner and form in which the information is to be given.

Whilst the notice can require information that is required for assessing compliance with the duty, the Commission cannot oblige the person to give information that he or she is prohibited from disclosing under an enactment or that he or she could not be compelled to give in proceedings before the High Court.

- 7.6 **Failure to comply with a compliance notice:** If the Commission thinks that a person to whom the notice has been given has failed to comply with a requirement of the notice, it may apply to the High Court in England and Wales for an order requiring the person to comply. s.32(8)

Commission enforcement powers: the specific duties

- 7.7 The Commission can also issue a compliance notice where it thinks that a listed authority has not complied with its specific duties. It can do this without the need to conduct an assessment. s.32

If the Commission thinks that a person to whom the notice has been given has failed to comply with a requirement of the notice, it may apply to the county court in England and Wales for an order requiring the person to comply. s.32(9)

Judicial review

- 7.8 In addition to the Commission’s powers to enforce the duty, if a public authority does not comply with the general duty, its actions, or failure to act, can be challenged by means of a claim to the High Court for judicial review. A claim for judicial review could be made by a person or a group of people with an interest in the matter. A claim can also be made by the Commission.

Where a judicial review is successful, the court can quash the decision made by the public authority being challenged. That can result in the authority concerned having to repeat the decision-making process, this time ensuring it does give the

due regard to the aims of the duty which it failed to do in reaching its original decision. A number of public authorities have been successfully challenged in this way in relation to the equality duties which preceded the public sector equality duty. For example:

- The Department for Education (decision to end the Building Schools for the Future programme)⁶⁷
- Birmingham City Council (decision to restrict access to care services to those with ‘critical’ needs).⁶⁸

7.9 A claim for judicial review cannot be made in respect of the specific duties – these can only be enforced by means of a compliance notice, as set out above. A failure to comply with the specific duties may nevertheless be used as evidence of a failure to comply with the general duty. s.32(11)

⁶⁷ *R. (on the application of (1) Luton Borough Council and Nottingham City Council (2) Waltham Forest London Borough Council (3) Newham London Borough Council (4) Kent County Council (5) Sandwell Metropolitan Borough Council) v. the Secretary of State for Education* [2011] EWHC 217 (Admin).

⁶⁸ *R. (W.) v. Birmingham City Council* [2011] EWHC 944.

Appendix 1: Public authorities and public functions

- 1.0 The general equality duty applies to two kinds of bodies:
- public authorities (s.149(1))
 - bodies that are not 'public authorities' but who carry out 'public functions' (s.149(2)).

Public authority

- 1.1 For purposes of the general equality duty, the Act defines a **public authority** as a person specified in Schedule 19 of the Act.
- 1.2 Appendix 6 includes the full list of bodies currently specified (individually or generically) in Schedule 19 as at 1 April 2014.
- 1.3 The Act enables a Minister of the Crown, the Welsh Ministers and the Scottish Ministers power by order to amend Schedule 19, with obligations to consult the Equality and Human Rights Commission and other Ministers. A body can only be added to Schedule 19 if the Minister considers that it exercises a public function (see below).
- 1.4 The effect of this definition is that at any one time there will be bodies in the **public sector**, as well as in the private or voluntary sector, all or part of whose functions are public functions, but who will not be specified in Schedule 19. However, these bodies will be subject to the duty for their public functions under s.149(2) (see below).

Exercising public functions

- 1.5 S.149(2) of the Act says that the general equality duty also applies to bodies carrying out public functions. This brings within the scope of the duty both public bodies not listed as a 'public authority' in Schedule 19 of the Act and bodies in the private or voluntary sector which, under statutory provisions

or contractual or other arrangements, carry out public functions.

- 1.6 The Act says that a public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998. s.150(5)
- 1.7 It is the nature of the function and not the nature of the person that determines whether a person is exercising a public function. Public functions may be carried out by private and voluntary organisations, for example when a private company manages a prison or when a voluntary organisation takes on responsibilities for child protection.
- 1.8 In general terms, a person will be **exercising a public function** where it is carrying out activities on behalf of the State and which are not similar in kind to services that could be performed by private persons.
- 1.9 Whether or not an organisation is exercising a function of a public nature will ultimately be a matter for the courts.
- 1.10 As the law presently stands, a private body might be held to be exercising a public function and thus subject to the general equality duty if in respect of that function some or all of the following factors are present:
- it is publicly funded, or has significant reliance on public funding
 - it is exercising powers of a public nature directly assigned to it by statute, or
 - it is taking the place of central or local government
 - it is providing a public service
 - it is acting in the public interest
 - its structures and work are closely linked with that of the delegating or contracting-out state body
 - there is a close relationship between the private body and any public authority
 - it is supervised by a state regulatory body

Continued...

- it is exercising coercive powers devolved from the state.⁶⁹

Which functions are covered?

1.11 **Public authorities:** Most public authorities specified in Schedule 19 are subject to the general equality duty in relation to the exercise of all of their functions – that is everything they are required and permitted to do. However, some public authorities are listed in Schedule 19 as subject to the duty in relation to certain functions only. This is clearly set out in Schedule 19.

Bodies carrying out public functions: Bodies subject to the duty because they carry out public functions are in a different position. They are subject to the duty only in relation to the public functions they exercise.

So, in the case of a private sector or voluntary sector body contracted to carry out a specific function of a public nature, the duty will apply only to that function.

For a public body not listed as a public authority in Schedule 19 the position may be different. Most if not all of its functions may be functions of a public nature for the purposes of the Human Rights Act and so covered by the duty.

⁶⁹ The leading cases on this issue are *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v. Wallbank & Anor* [2003] UKHL 37 (26 June 2003) and *London & Quadrant Housing Trust v Weaver, R. (On the application of)* [2009] EWCA Civ 587 (18 June 2009).

Appendix 2: Prohibited conduct

- 1.0 The following types of conduct are prohibited under the Act which means that the body subject to the duty must have due regard to the need to eliminate them:
- Direct discrimination s.13
 - Discrimination arising from disability s.15
 - Gender reassignment discrimination involving absence from work s.16
 - Pregnancy and maternity discrimination in both work and non-work situations s.17/18
 - Indirect discrimination s.19
 - Failure to make reasonable adjustments for disabled persons s.21
 - Harassment s.26
 - Victimisation s.27
 - Enquiries about disability and health before the offer of a job is made s.60
 - Breach of non-discriminatory rule s.61
 - Breach of an equality clause s.66
 - Breach of an equality rule s.67
 - Breach of maternity equality clause s.73
 - Breach of maternity equality rule s. 75
 - Discrimination and harassment in relation to relationships which have ended s.108
 - Unlawful acts by agents or employees s.110
 - Instructing, causing or inducing discrimination s.111
 - Aiding contraventions. s.112
- 1.1 More detailed information on these forms of prohibited conduct and examples in practice can be found in the Statutory Codes of Practice on Employment and Services, Public Functions and Associations.

Appendix 3: Exceptions

Exceptions

- 1.0 The Act includes three types of exceptions from the general equality duty: Sch.18
- certain functions to which the general equality duty does not apply
 - certain bodies, not specified in Schedule 19, that exercise public functions but which are not subject to the general equality duty
 - certain public functions of bodies not specified in Schedule 19 to which the general equality duty does not apply.

As specific duties may be imposed for the better performance of the general equality duty, it follows that specific duties will also not apply to the above functions or bodies.

Excluded public functions

- 1.1 Where the exercise of a particular function is excluded, this means that a public authority is not required to meet the general equality duty in exercising that function.

Excluded functions relating to age

- 1.2 The general equality duty as it relates to the protected characteristic of age does not apply to the exercise of the following functions: Sch.18, para 1
- a. the provision of education to pupils in schools
 - b. the provision of benefits, facilities or services to pupils in schools
 - c. the provision of accommodation, benefits, facilities or services in community homes pursuant to s.53(1) Children Act 1989
 - d. the provision of accommodation, benefits, facilities or services pursuant to arrangements by the Secretary of State relating to the accommodation of children under s.82(5) Children Act 1989.
- Exceptions** that apply in England and Wales omitting exceptions that apply in Scotland (where different from England and Wales)

- 1.3 For the purpose of (a) and (b), ‘schools’ includes schools maintained by local authorities and independent educational institutions such as independent schools and academies.
- 1.4 In relation to England and Wales, ‘pupils’ have the same meaning as that given in s.3(1) of the Education Act 1996.

Exclusion of judicial functions

- 1.5 The general equality duty does not apply to the exercise of:
- a. a judicial function, and
- b. a function exercised on behalf of, or on the instructions of, a person exercising a judicial function.
- Sch.18,
para 3

Partially excluded immigration functions

- 1.6 Public authorities carrying out immigration or nationality functions are not required to have due regard to the need to advance equality of opportunity in relation to the protected characteristics of:
- age
 - religion or belief, or
 - race where race means **nationality** or **ethnic or national origins** (this exception does not apply to **colour**).
- 1.7 For this purpose ‘immigration and nationality functions’ means functions exercisable by virtue of –
- a. the Immigration Acts (excluding sections 28A to 28K of the Immigration Act 1971 so far as they relate to criminal offences)
- b. the British Nationality Act 1981
- c. the British Nationality (Falkland Islands) Act 1983
- d. the British Nationality (Hong Kong) Act 1990
- e. the Hong Kong (War Wives and Widows) Act 1996
- f. the British Nationality (Hong Kong) Act 1997
- g. the Special Immigration Appeals Commission Act 1997, or
- h. a provision made under section 2(2) of the European Communities Act 1972, or of Community law, which relates to the subject matter of an enactment within paragraphs (a) to (g).
- Sch.18,
para 2

Exception for certain bodies that exercise public functions

- | | | |
|-----|---|--|
| 1.8 | <p>The general equality duty does not apply to the following bodies:</p> <ul style="list-style-type: none"> a. the House of Commons b. the House of Lords c. the Scottish Parliament d. the National Assembly for Wales e. the General Synod of the Church of England f. the Security Service g. the Secret Intelligence Service h. the Government Communications Headquarters i. a part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters. | <p>Sch.18, para 4 (1) and (2) and s.149(2)</p> |
|-----|---|--|

Exception for certain public functions⁷⁰

- | | | |
|-----|--|---|
| 1.9 | <p>The general equality duty does not apply to any of the following functions, where they are carried out by bodies that are not public authorities:</p> <ul style="list-style-type: none"> a. a function in connection with proceedings in the House of Commons or the House of Lords b. a function in connection with proceedings in the Scottish Parliament (other than a function of the Scottish Parliamentary Corporate Body) c. a function in connection with proceedings in the National Assembly for Wales (other than a function of the Assembly Commission). | <p>Sch.18, para 4(3) (b) and (c) have been included as such functions could be carried out by a body anywhere in GB</p> |
|-----|--|---|

Power to amend exceptions

- 1.10 A Minister of the Crown may add to, vary or remove the exceptions in Schedule 19 to the Act, with some restrictions:

⁷⁰ This exception does not apply to functions in connection with parliamentary proceedings carried out by public bodies listed in Schedule 19 of the Act; for example a Minister or government department (other than the Security Service, the Secret Intelligence Service or the Government Communications headquarters). See, *R (Staff Side of the Police Negotiating Board) v Secretary of State for Work and Pensions* [2011] EWHC 3175 (Admin) at paras 110-112.

- the exclusion of judicial functions must remain
- the exception from the general equality duty for certain bodies may not be amended in relation to bodies (a) to (e) in para 1.8 above
- the exception from the general equality duty of functions in para 1.9 above must not be amended
- any amendment must not reduce the extent to which the exclusion of judicial functions or the exception from the general duty of certain bodies and certain functions applies.

Appendix 4: Assessments

Terms of reference

- 1.0 Before conducting an assessment under s.31 of the Act, the Commission must: Sch.2, para 4 EA 2006
- a. prepare terms of reference
 - b. give the person under consideration notice of the proposed terms of reference
 - c. give that person an opportunity to make representations about the proposed terms of reference
 - d. consider any representations made, and
 - e. publish the terms of reference once settled.

Representations

- 1.1 The Commission must make arrangements for giving people an opportunity to make representations in relation to the assessment, particularly to any person specified in the terms of reference. These may (but need not) include oral representations. Sch.2, paras 6 and 7 EA 2006

When representations are made, the Commission must consider them. However, it can, where it thinks it appropriate, refuse to consider representations– Sch.2, para 8 EA 2006

- a. made neither by nor on behalf of a person specified in the terms of reference, or
- b. made on behalf of a person specified in the terms of reference by a person who is not a relevant lawyer (relevant lawyer being a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation).

If the Commission does refuse to consider representations it must give the person who makes them written notice of its decision and the reasons for it.

Provision of information: notice

1.2 During the course of an assessment, the Commission can give a notice to a person to provide information or documents in his possession, or to give oral evidence. The notice may include provision about the form of information documents or evidence, and about timing. Sch.2, paras 9 and 10 EA 2006

The notice cannot, however,

- require a person to provide information that he is prohibited from disclosing by virtue of an enactment
- require a person to do anything that he could not be compelled to do in proceedings before the High Court, and
- require a person to attend at a place unless the Commission undertakes to pay the expenses of his journey.

Anyone who receives such a notice can apply to a county court in England and Wales to have it cancelled on the grounds that the requirement imposed by the notice is unnecessary having regard to the purpose of the assessment to which the notice relates, or that it is otherwise unreasonable. Sch.2, para 11 EA 2006

There are limitations to what a person is required to disclose when it amounts to sensitive or intelligence- service-related information and so the notice can be disregarded in these circumstances. Sch.2, para 14 EA 2006

Failure to comply with a notice

1.3 Where the Commission thinks that a person has failed without reasonable excuse to comply with a notice regarding information or is likely to fail without reasonable excuse to comply with the notice, it may apply to a county court in England and Wales for an order requiring a person to take such steps as may be specified in the order to comply with the notice. Sch.2, para 12 EA 2006

If a person, without reasonable excuse, –

- a. fails to comply with a notice
 - b. falsifies anything provided or produced in accordance with a notice, or
 - c. makes a false statement in giving oral evidence in
- Sch.2, para 13 EA 2006

accordance with a notice that persons commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Conclusion of an assessment

- | | | |
|-----|---|------------------------------------|
| 1.4 | Once the Commission has concluded its assessment, it must publish a report of the assessment. It can make recommendations as part of such a report; or in respect of a matter arising in the course of the assessment. Courts or tribunals may have regard to a finding of an assessment but it is not to be taken as conclusive. | Sch.2, paras 15, 16 and 17 EA 2006 |
| | If a recommendation in the report of an assessment is addressed to a particular person, they shall also have regard to it. | Sch.2, para 18 EA 2006 |

Appendix 5: Glossary

This Glossary gives short definitions of the key terms used in this Technical Guidance. Where relevant it also sets out where fuller explanations of those terms can be found. References to paragraphs in this guidance are shown in bold. Where relevant, references have been made to the Commission's Statutory Code of Practice on Employment and to the Commission's Statutory Code of Practice on Services, public functions and associations. In the Glossary these are referred to as 'the Employment Code' and 'the Services Code' respectively.

Advancing equality of opportunity

The second of the equality aims: to advance equality of opportunity between people who share a protected characteristic and those who don't (s.149(1)(b) of the Equality Act 2010). S.149(3) of the Equality Act 2010 says that having due regard to advancing equality of opportunity 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. Advancing equality of opportunity is explained in **paras 3.10-3.32** of this guidance.

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. Age is one of the nine protected characteristics in the Equality Act 2010. It is explained more fully in paras 2.1-2.7 of the Employment Code.

- Alternative formats** Media formats which are accessible to disabled people with specific impairments, for example Braille, audio description, subtitles and Easy Read.
- Assessing impact on equality** For Listed Authorities see **para 6.34**. This involves looking at your equality information and the results of any engagement to understand the impact (or potential impact) of your policies, practices or decisions on people with different protected characteristics. Assessing impact on equality should be an integral part of policy development and decision-making. It involves considering whether a policy or practice could be revised or delivered in a different way to better advance equality or foster good relations. If there is adverse impact on people with a particular protected characteristic, it involves considering whether or not it is justifiable to continue with the decision, practice or policy, or whether you could achieve the same aim in a way which reduces the adverse impact, or which does not disadvantage people with that characteristic. Assessing impact is explained more fully in the Commission's non-statutory guidance: *Meeting the Equality Duty in Policy and Decision Making*, please see www.equalityhumanrights.com. The importance of understanding the impact of your policies, practices or decisions is discussed in **Chapter 3** and **paras 5.40-5.45** of this guidance.
- Bodies subject to the duty** In this guidance, this is used to mean the two kinds of bodies to which the general equality duty applies: public authorities (see below) and bodies carrying out a public function (see Public functions below). To whom the duty applies is explained at **para 2.3-2.4** of this guidance.
- Civil partnership** Legal recognition of a same-sex couple's relationship. Civil partners must be treated the same as married couples. 'Marriage and civil partnership' is one of the nine protected characteristics in the Equality Act 2010. It is explained more fully in paras 2.31-2.34 of the Employment Code.

Commissioning	The process for deciding how to use the total resource available in order to improve outcomes in the most efficient, effective, equitable and sustainable way. It includes the whole cycle of planning from assessing needs, designing services and securing and funding delivery. How the general equality duty might apply to commissioning is explained at paras 5.55-5.58 of this guidance.
Compliance notice	Under s.32 Equality Act 2006 the Commission may serve a compliance notice if it thinks a body or authority has failed to comply with the general equality duty or specific equality duties. This is explained at paras 7.5-7.7 of this guidance.
Different needs	The different requirements that people with protected characteristics may have which either must or should be met to provide equality, including equality of opportunity and access. Having due regard to the need to meet different needs is one element of having due regard to Advancing equality of opportunity (see above). This is explained at paras 3.19-3.27 of this guidance.
Direct discrimination	Less favourable treatment of a person compared with another person because of a protected characteristic. It includes discrimination because someone is perceived to have a protected characteristic or where someone is discriminated against because they are associated with someone else who has a protected characteristic. Direct discrimination is explained in Chapter 3 of the Employment Code and Chapter 4 of the Services Code.
Disability	A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Disability is one of the nine protected characteristics in the Equality Act 2010. It is explained in paras 2.8-2.20 and Appendix 1 of the Employment Code and paras 2.5-2.16 and the Appendix to the Services Code.
Disabled person	Someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.

Disadvantage	A detriment or impediment – something that the individual affected might reasonably consider changes their position for the worse. Having due regard to the need to remove or minimise disadvantage is one element of having due regard to Advancing equality of opportunity (see above). This is explained at para 3.18 of this guidance.
Discrimination arising from disability	When a person is treated unfavourably because of something arising in consequence of their disability. This is explained in Chapter 5 of the Employment Code and Chapter 6 of the Services Code.
Discriminatory effect	Where the consequences of a decision or policy result in less favourable treatment because of a protected characteristic. See also Direct discrimination and Indirect discrimination.
Disproportionately low	Refers to situations where people with a protected characteristic are under-represented (for example in the workforce or among service users) compared to their numbers in the population.
Due regard	A body subject to the general equality duty has to have due regard to the equality aims in exercising its functions. The courts have given guidance on what due regard means. Due regard is explained at para 2.24-2.28 of this guidance.
Duty to make reasonable adjustments	Where a disabled person is at a substantial disadvantage in comparison with people who are not disabled, there is a duty to take reasonable steps to remove that disadvantage by (i) changing provisions, criteria or practices, (ii) altering, removing or providing a reasonable alternative means of avoiding physical features, and (iii) providing auxiliary aids. This is explained in Chapter 6 of the Employment Code and Chapter 7 of the Services Code.

Eliminating discrimination:	The first of the equality aims: to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010 (s.149(1)(a) of the Equality Act 2010). Eliminating discrimination is explained in paras 3.2-3.9 of this guidance.
Encouraging participation	Having due regard to the need to encourage participation in public life or any other activity in which participation by such people is Disproportionately low (see above). This is one element of having due regard to Advancing equality of opportunity (see above). This is explained at paras 3.28-3.32 of this guidance.
Engagement	For Listed Authorities see para 6.19 . 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. Engagement is explained in paras 5.29-5.34 of this guidance.
Equality Act 2006	This legislation made provision for the establishment of the Equality and Human Rights Commission ('the 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 Act reformed and harmonised equality law (repealing previous equality legislation) and introduced the public sector equality duty which replaced the separate equality duties applying to race, disability and gender.
Equality aims	The general equality duty requires due regard to the need to eliminate discrimination; advance equality; and foster good relations. This guidance refers to these as the three 'equality aims'. They are set out in s.149 of the Equality Act 2010 and are explained in para 2.2 and Chapter 3 of this guidance. See also: Advancing equality of opportunity, Eliminating discrimination, and Fostering good relations.

Equality evidence	The information that you hold (or will collect) about people with protected characteristics, and the impact of your decisions and policies on them.
Equality information	For Listed Authorities see para 6.26 . The general equality duty is supported by specific duties, including a duty on listed authorities to publish information to demonstrate their compliance with the general equality duty. In this guidance this is referred to as 'equality information'. This is explained in Chapter 6 of this guidance.
Equality objectives	For Listed Authorities see para 6.9 . The general equality duty is supported by specific duties, including a duty on listed authorities to set specific, measurable equality objectives and to publish those objectives at least every four years. This is explained in Chapter 6 of this guidance.
Equality outcome	The results that individuals or groups actually achieve and are able to benefit from. For example, equal pay between men and women.
Equality training	Training on equality law and effective equality practice.
Fostering good relations	The third of the equality aims: to foster good relations between persons who share a relevant protected characteristic and persons who do not share it (s.149(1)(c) of the Equality Act 2010). S.149(5) Equality Act 2010 states that having due regard to the need to foster good relations between people who have a particular protected characteristic and those who don't have it involves, in particular, having due regard to the need to tackle prejudice and promote understanding. Fostering good relations is explained at paras 3.33-3.39 of this guidance.
Function	The full range of a body's activities, duties and powers. This is explained at para 2.5 of this guidance.
Functions of a public nature	See Public functions .
Gender	The wider social roles and relationships that structure men's and women's lives. These change over time and vary between cultures. See also Sex .

Gender reassignment	This is the process of transitioning from one sex to another. See also trans, transgender, transsexual. People who are proposing to undergo, are undergoing or have undergone a process (or part of a process) to reassign their sex have the protected characteristic of gender reassignment under the Equality Act 2010. It is one of the nine protected characteristics under the Equality Act 2010 and is explained in paras 2.21-2.30 of the Employment Code and paras 2.17-2.27 of the Services Code.
General duty	See General equality duty .
General equality duty	The duty on a public authority when carrying out its functions to have due regard to the three equality aims. The duty also applies to other bodies when carrying out public functions. Chapter 2 of this guidance explains what the general equality duty is.
Good relations	See Fostering good relations .
Harassment	Unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment. Harassment is explained in Chapter 7 of the Employment Code and Chapter 8 of the Services Code.
Impact	This term refers to the effect or potential effect that a decision, policy or practice has on persons with protected characteristics. Impacts can be positive, negative or neutral.
Impairment	A functional limitation which may lead to a person being defined as disabled according to the definition under the Equality Act 2010. See also Disability.
Indirect discrimination	The use of an apparently neutral practice, provision or criterion which puts people with a particular protected characteristic at a disadvantage compared with others who do not share that characteristic, and applying the practice, provision or criterion cannot be objectively justified. This is explained in Chapter 4 of the Employment Code and Chapter 5 of the Services Code.

Judicial review	A procedure by which the High Court supervises the exercise of public authority power to ensure that it remains within the bounds of what is lawful. Failure to comply with the general equality duty can be challenged by judicial review. This is explained at paras 7.8-7.9 of this guidance.
Listed authority	A public authority required to comply with the specific duties. These authorities are listed in Part 2 of Schedule 19 to the Equality Act 2010 which is at Appendix 6 to this guidance. The specific duties are explained in Chapter 6 of this guidance.
Marriage	Marriage is no longer restricted to a union between a man and a woman and now includes a marriage between a same-sex couple. Same-sex couples can also have their relationships legally recognised as 'civil partnerships.' 'Marriage and civil partnership' is collectively described as one of the nine protected characteristics in the Equality Act 2010. It is explained in paras 2.31-2.34 of the Employment Code.
Maternity	See Pregnancy and maternity .
Minister of the Crown	This is a formal term that refers to a minister in the government.
Mitigation	This is when measures are put in place that lessen the negative effects of decisions, practices or policies on people with protected characteristics.
Objective justification test	This is when something (for example, an otherwise discriminatory action) can be objectively justified.
Objectively justified	This is 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 Indirect discrimination.
Permissive exceptions	Exceptions which allow but do not require different treatment for people with different protected characteristics. Exceptions are explained in Chapter 13 of the Employment Code and Chapter 13 of the Services Code. Their relevance to the general equality duty is explained at paras 4.3-4.4 of this guidance.

Positive action	Refers to a range of lawful actions that seek to overcome or minimise disadvantages (for example, in employment opportunities) that people who share a protected characteristic have experienced, or to meet their different needs. Positive action is explained in Chapter 12 of the Employment Code and Chapter 10 of the Services Code. Its relevance to the general equality duty is explained at paras 3.14-3.17 and Chapter 4 of this guidance.
Pregnancy and maternity	Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and 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, and this includes treating a woman unfavourably because she is breastfeeding. Pregnancy and maternity is one of the nine protected characteristics in the Equality Act 2010. It is explained in para 2.35 and Chapter 8 of the Employment Code and paras 2.28 and 4.34-4.38 of the Services Code.
Procurement	For Listed Authorities see para 6.34 . Is the term used in relation to the range of goods and services a body requires and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided. How the general equality duty might apply to commissioning and procurement is explained at paras 5.54-5.61 of this guidance.
Prohibited conduct	Conduct prohibited by the Equality Act 2010. Eliminating discrimination (see above) relates to such conduct. Conduct prohibited by the Equality Act 2010 is listed in Appendix 2 of this guidance.
Proportionality	The weight given to equality should be proportionate to its relevance to a particular function. This means giving greater consideration and resources to decisions, procedures, policies or functions that have the most effect on equality.

Protected characteristics

The nine characteristics protected under the Equality Act 2010. The public sector equality duty applies fully to eight of these: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These are known as the ‘relevant protected characteristics’. It also applies in a more limited way to the ninth characteristic, marriage and civil partnerships. This is explained in **para 2.9** of this guidance. The protected characteristics are explained in detail in Chapter 2 of the Employment Code and Chapter 2 of the Services Code.

Public authority

For the purposes of the general equality duty a public authority is one that is named (listed) or described in Schedule 19 of the Equality Act 2010. See also Bodies subject to the duty (above). Schedule 19 has been amended since the Equality Act 2010 came into force. The list as at 1 April 2014 is at Appendix 6 to this guidance.

Public functions

If a body is not a Public authority (see above) the general equality duty will apply only when it is exercising a public function. 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. To whom the general equality duty applies is explained at **paras 2.3-2.4** of this guidance. Public functions are explained in **Appendix 1** to this guidance.

Public sector equality duty

In this guidance ‘public sector equality duty’ is used to refer to the general equality duty and the specific duties.

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. It is one of the nine protected characteristics under the Equality Act 2010 and is explained more fully in paras 2.36-2.49 of the Employment Code and paras 2.29-2.42 of the Services Code.

Reasonable adjustment

See Duty to make reasonable adjustments.

Regulations	Secondary legislation made under an Act of Parliament (or European legislation) setting out subsidiary matters which assist in the Act's implementation.
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. Identifying relevance to the general equality duty is explained at paras 5.5-5.14 of this guidance.
Relevant protected characteristics	The eight protected characteristics in S.149(7) of the Equality Act 2010. The public sector equality duty applies in full to these characteristics and in a more limited way to marriage and civil partnership. See also Protected characteristics.
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). Religion or belief is one of the nine protected characteristics under the Equality Act 2010 and is explained more fully in paras 2.50-2.61 of the Employment Code and paras 2.43-2.54 of the Services Code.
Section 23 agreement	The 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 public sector equality duty. Enforcement of the public sector equality duty is explained in Chapter 7 of this guidance.
Section 31 assessment	Under section 31 of the Equality Act 2006 the Commission can carry out a formal assessment to establish to what extent, or the manner in which, a public authority has complied with the general equality duty or specific duties. Enforcement of the public sector equality duty is explained in Chapter 7 of this guidance.

Service user(s)	People who are users of 'services' provided by bodies subject to the duty. This includes users of facilities and people who benefit from or are subject to public functions. People who attempt to or want to use a service or benefit from a public function may also be 'service users', even if they cannot actually use the 'service' because of discrimination.
Sex	Someone being a man or a woman. It is one of the nine protected characteristics under the Equality Act 2010 and is explained more fully in paras 2.62-2.63 of the Employment Code and paras 2.55-2.57 of the Services Code.
Sexual orientation	This is whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes. It is one of the nine protected characteristics under the Equality Act 2010 and is explained more fully in paras 2.64-2.68 of the Employment Code and paras 2.58-2.62 of the Services Code.
Single-sex services	A service provided only to men or women. It is not always discriminatory to provide single-sex services, for example provision of single-sex changing facilities in a leisure centre. This is explained at paras 13.54-13.56 of the Services Code.
Specific duties	S.153 of the Equality Act 2010 allows specific duties to be imposed on Listed Authorities to enable better performance by those authorities of the general equality duty. For Welsh Listed Authorities the specific duties are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. Different specific duties apply to bodies in England and Scotland.
Stakeholders	People with an interest in a subject or issue who are likely to be affected by any decision relating to it and/or have responsibilities relating to it.

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 androgyne/polygender people, and others who define as gender variant. See also Gender reassignment.
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. See also Gender reassignment.
Transsexual	A person who intends to undergo, is undergoing or has undergone gender reassignment (which may or may not involve hormone therapy or surgery). Transsexual people have the protected characteristic of gender reassignment under the Equality Act 2010. See also Gender reassignment.
Victimisation	Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Equality Act 2010; giving evidence or information in connection with proceedings under the Equality Act 2010; doing any other thing for the purposes or in connection with the Equality Act 2010; making an allegation that a person has contravened the Equality Act 2010. Victimisation (including the meaning of 'protected act') is explained in Chapter 9 of the Employment Code and Chapter 9 of the Services Code.

Appendix 6: Consolidated Version of Schedule 19 of the Act as at 1 April 2014

Schedule 19 (Equality Act 2010) Public authorities

Part 1: Public authorities - General

Ministers of the Crown and government departments

- A Minister of the Crown.
- A government department other than the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

Armed forces

- Any of the armed forces other than any part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

Broadcasting

- The British Broadcasting Corporation ('BBC'), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003); and the reference to the BBC includes a reference to a body corporate which—
 - a. is a wholly owned subsidiary of the BBC
 - b. is not operated with a view to generating a profit, and
 - c. undertakes activities primarily in order to promote the BBC's public purposes.
- The Channel Four Television Corporation, except in respect of—
 - a. functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003), and
 - b. the function of carrying on the activities referred to in section 199 of that Act.

- The Welsh Authority (as defined by section 56(1) of the Broadcasting Act 1990), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003).

Civil liberties

- The Commission for Equality and Human Rights.
- The Information Commissioner.

Court services and legal services

- The Children and Family Court Advisory and Support Service.
- The Judicial Appointments Commission.
- The Legal Services Board.

Criminal justice

- Her Majesty's Chief Inspector of Constabulary.
- Her Majesty's Chief Inspector of the Crown Prosecution Service.
- Her Majesty's Chief Inspector of Prisons.
- Her Majesty's Chief Inspector of Probation for England and Wales.
- The Parole Board for England and Wales.
- A probation trust established by an order made under section 5(1) of the Offender Management Act 2007.
- The Youth Justice Board for England and Wales.

Environment, housing and development

- The Homes and Communities Agency.
- Natural England.
- The Olympic Delivery Authority.

Health, social care and social security

- The National Health Services Commissioning Board.
- A clinical commissioning group established under section 14D of the National Health Service Act 2006.
- The Care Quality Commission.
- The Health Service Commissioner for England, in respect of—

- (a) the Commissioner's functions set out in paragraph 11 of Schedule 1 to the Health Service Commissioners Act 1993, and
- (b) the Commissioner's public procurement functions (as defined in section 155(3) of this Act).
- Monitor.
- An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006.
- An NHS trust established under section 25 of that Act.
- A Special Health Authority established under section 28 of that Act other than NHS Blood and Transplant and the NHS Business Services Authority.
- The National Institute for Health and Care Excellence.
- The Health and Social Care Information Centre.

Industry, business, finance etc

- The Advisory, Conciliation and Arbitration Service.
- The Bank of England, in respect of its public functions.
- The Civil Aviation Authority.
- The Competition and Markets Authority.
- The Comptroller and Auditor General.
- The Financial Conduct Authority.
- The National Audit Office.⁷¹
- The Office of Budget Responsibility.
- The Office of Communications.
- The Payment Systems Regulator established under [section 40](#) of the Financial Services (Banking Reform) Act 2013.
- The Prudential Regulation Authority.

Local government

- A county council, district council or parish council in England.
- A parish meeting constituted under section 13 of the Local Government Act 1972.
- Charter trustees constituted under section 246 of that Act for an area in England.
- The Greater London Authority.

⁷¹ From 1 April 2012 this means the National Audit Office established by section 20 of the Budget Responsibility and National Audit Act 2011: Article 2 of The Budget Responsibility and National Audit Act 2011 (Consequential Amendments) Order 2012.

- A London borough council.
- The Common Council of the City of London in its capacity as a local authority or port health authority.
- The Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in that person's capacity as a local authority.
- The London Fire and Emergency Planning Authority.
- Transport for London.
- A Mayoral development corporation.
- The Council of the Isles of Scilly.
- The Broads Authority established by section 1 of the Norfolk and Suffolk Broads Act 1988.
- A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in England.
- An internal drainage board which is continued in being by virtue of section 1 of the Land Drainage Act 1991 for an area in England.
- A National Park authority established by an order under section 63 of the Environment Act 1995 for an area in England.
- A Passenger Transport Executive for an integrated transport area in England (within the meaning of Part 2 of the Transport Act 1968).
- A port health authority constituted by an order under section 2 of the Public Health (Control of Disease) Act 1984 for an area in England.
- A waste disposal authority established by virtue of an order under section 10(1) of the Local Government Act 1985.
- A joint authority established under Part 4 of that Act for an area in England (including, by virtue of section 77(9) of the Local Transport Act 2008, an Integrated Transport Authority established under Part 5 of that Act of 2008).
- A body corporate established pursuant to an order under section 67 of the Local Government Act 1985.
- A joint committee constituted in accordance with section 102(1)(b) of the Local Government Act 1972 for an area in England.
- A joint board which is continued in being by virtue of section 263(1) of that Act for an area in England.
- The Audit Commission for Local Authorities and the National Health Service in England.

- A Local Commissioner in England as defined by section 23(3) of the Local Government Act 1974(7), in respect of—
 - a. the Commissioner’s functions under sections 29(6A) and 34G(6) of that Act(8), and section 210(5) of the Apprenticeships, Skills, Children and Learning Act 2009(9), and
 - b. the Commissioner’s public procurement functions (as defined in section 155(3) of this Act).
- The Standards Board for England.

Other educational bodies

- The governing body of an educational establishment maintained by an English local authority (within the meaning of section 162 of the Education and Inspections Act 2006).
- The governing body of an institution in England within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992).
- The governing body of an institution in England within the higher education sector (within the meaning of section 91(5) of that Act).
- The Higher Education Funding Council for England.
- A local authority with respect to the pupil referral units it establishes and maintains by virtue of section 19 of the Education Act 1996(10).
- The proprietor of a City Technology College, a City College for Technology or the Arts, or an Academy.

Parliamentary and devolved bodies

- The National Assembly for Wales Commission (Comisiwn Cynulliad Cenedlaethol Cymru).
- The Parliamentary Commissioner for Administration, in respect of—
 - a. the Commissioner’s functions set out in section 3(1) and (1A) of the Parliamentary Commissioner Act 1967; and
 - b. the Commissioner’s public procurement functions (as defined in section 155(3) of this Act).
- The Scottish Parliamentary Corporate Body.

Police

- The British Transport Police Force.

- A chief constable of a police force maintained under section 2 of the Police Act 1996.
- The Chief Inspector of the UK Border Agency.
- The Civil Nuclear Police Authority.
- The Commissioner of Police for the City of London.
- The Commissioner of Police of the Metropolis.
- The Common Council of the City of London in its capacity as a police authority.
- The Independent Police Complaints Commission.
- A police and crime commissioner established under section 1 of the Police Reform and Social Responsibility Act 2011.
- The Mayor's Office for Policing and Crime established under section 3 of the Police Reform and Social Responsibility Act 2011.
- A Port Police Force established under an order made under section 14 of the Harbours Act 1964.
- The Port Police Force established under Part 10 of the Port of London Act 1968.
- A Port Police Force established under section 79 of the Harbours, Docks and Piers Clauses Act 1847.

Regulators

- The Association of Authorised Public Accountants, in respect of its public functions.
- The Association of Certified Chartered Accountants, in respect of its public functions.
- The Association of International Accountants, in respect of its public functions.
- The Chartered Institute of Patent Attorneys, in respect of its public functions.
- The Council for Licensed Conveyancers, in respect of its public functions.
- The General Chiropractic Council, in respect of its public functions.
- The General Council of the Bar, in respect of its public functions.
- The General Dental Council, in respect of its public functions.
- The General Medical Council, in respect of its public functions.
- The Health and Safety Executive.
- The Insolvency Practitioners Association, in respect of its public functions.
- The Institute of Chartered Accountants in England and Wales, in respect of its public functions.
- The Institute of Legal Executives, in respect of its public functions.

- The Institute of Trade Mark Attorneys, in respect of its public functions.
- The Law Society of England and Wales, in respect of its public functions.
- The Nursing and Midwifery Council, in respect of its public functions.
- The Office of the Immigration Services Commissioner.
- The Office for Nuclear Regulation.

Schedule 19 (Equality Act 2010) Public authorities

Part 2: Public authorities – Relevant Welsh authorities

Welsh Assembly Government, etc.

- The Welsh Ministers.
- The First Minister for Wales.
- The Counsel General to the Welsh Assembly Government.
- A subsidiary of the Welsh Ministers (within the meaning given by section 134(4) of the Government of Wales Act 2006).

National Health Service

- A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.
- An NHS trust established under section 18 of that Act.
- A Community Health Council in Wales.
- The Board of Community Health Councils in Wales or Bwrdd Cynghorau Iechyd Cymuned Cymru.

Local government

- A county council or county borough council in Wales.
- A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in Wales.
- A National Park authority established by an order under section 63 of the Environment Act 1995 for an area in Wales.

Other educational bodies

- The governing body of an educational establishment maintained by a Welsh local authority (within the meaning of section 162 of the Education and Inspections Act 2006).
- The governing body of an institution in Wales within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992).
- The governing body of an institution in Wales within the higher education sector (within the meaning of section 91(5) of that Act).
- The Higher Education Funding Council for Wales or Cyngor Cyllido Addysg Uwch Cymru.
- The General Teaching Council for Wales or Cyngor Addysgu Cyffredinol Cymru.
- Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.

Other public authorities

- The Auditor General for Wales or Archwilydd Cyffredinol Cymru.
- The Public Services Ombudsman for Wales or Ombwdsmon Gwasanaethau Cyhoeddus Cymru.
- The Care Council for Wales or Cyngor Gofal Cymru.
- The Arts Council for Wales or Cyngor Celfyddydau Cymru.
- The National Museum of Wales or Amgueddfa Genedlaethol Cymru.
- The National Library of Wales or Llyfrgell Genedlaethol Cymru.
- The Sports Council for Wales or Cyngor Chwaraeon Cymru.
- Comisiynydd y Gymraeg (the Welsh Language Commissioner).
- The Commissioner for Older People in Wales or Comisiynydd Pobl Hŷn Cymru.
- The Children's Commissioner for Wales or Comisiynydd Plant Cymru.
- The Wales Audit Office or Swyddfa Archwilio Cymru.

Schedule 19 (Equality Act 2010) Public authorities

Part 3: Public authorities – Relevant Scottish authorities

Scottish Administration

- An office-holder in the Scottish Administration (within the meaning given by section 126(7)(a) of the Scotland Act 1998).

National Health Service

- A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.
- A Special Health Board constituted under that section.

Local government

- A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.
- A community council established under section 51 of the Local Government (Scotland) Act 1973.
- A joint board within the meaning of section 235(1) of that Act.
- A licensing board established under section 5 of the Licensing (Scotland) Act 2005, or continued in being by virtue of that section.
- A National Park authority established by a designation order made under section 6 of the National Parks (Scotland) Act 2000.
- Scottish Enterprise and Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990.

Other educational bodies

- An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980).
- The managers of a grant-aided school (within the meaning of that section).
- The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992).
- In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.

- The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992).

Police and Fire

- The Scottish Police Authority.
- The chief constable of the Police Service of Scotland.
- The Scottish Fire and Rescue Service.
- The Chief Officer of the Scottish Fire and Rescue Service.

Other bodies and offices

- Accounts Commission for Scotland.
- Audit Scotland.
- Board of Trustees of the National Galleries of Scotland.
- Board of Trustees of the National Museums of Scotland.
- Board of Trustees of the Royal Botanic Garden, Edinburgh.
- Bòrd na Gàidhlig.
- A chief officer of a community justice authority.
- Commissioner for Children and Young People in Scotland.
- Commission for Ethical Standards in Public Life in Scotland.
- The Common Services Agency for the Scottish Health Service.
- A community justice authority.
- Creative Scotland.
- The Crofters Commission.
- The General Teaching Council for Scotland.
- Healthcare Improvement Scotland
- Learning and Teaching Scotland.
- The Mental Welfare Commission for Scotland.
- The Police Investigations and Review Commissioner.
- Quality Meat Scotland.
- A regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005.
- Risk Management Authority.
- Royal Commission on the Ancient and Historical Monuments of Scotland.
- Scottish Children's Reporter Administration.

- Scottish Commission for Human Rights.
- The Scottish Criminal Cases Review Commission.
- Scottish Environment Protection Agency.
- Scottish Further and Higher Education Funding Council.
- Scottish Futures Trust Ltd.
- Scottish Information Commissioner.
- The Scottish Legal Aid Board.
- The Scottish Legal Complaints Commission.
- Scottish Natural Heritage.
- Scottish Public Services Ombudsman.
- Scottish Qualifications Authority.
- The Scottish Road Works Commissioner.
- The Scottish Social Services Council.
- The Scottish Sports Council.
- Scottish Water.
- Skills Development Scotland.
- Social Care and Social Work Improvement Scotland.
- The Standards Commission for Scotland.
- The National Library of Scotland.
- VisitScotland.
- A Water Customer Consultation Panel.
- The Water Industry Commission for Scotland.

Other bodies and offices added on 5 March 2012

- Children's Hearings Scotland.
- The National Convener of Children's Hearings Scotland.

Schedule 19 (Equality Act 2010) Public authorities

Part 4: Public authorities – cross-border Welsh authorities

- The Environment Agency – D
- The Natural Resources Body for Wales – A
- NHS Blood and Transplant – D
- The NHS Business Services Authority – D
- The Student Loans Company Limited – D

Appendix 7: The Equality Act 2010 (Specific Duties) Regulations 2011



OFFERYNNAU ST
ATUDOL CYMRU

WELSH STATUTORY
INSTRUMENTS

2011 Rhif 1064 (Cy.155)
CYDRADDOLDEB, CYMRU

2011 No. 1064 (W.155)
EQUALITY, WALES

Rheoliadau Deddf Cydraddoldeb
2010 (Dyletswyddau Statudol)
(Cymru) 2011

gwneud y Rheoliadau hyn o dan y pŵer a
roddwyd iddynt gan adran 153(2) o'r Ddeddf.
Mae'r Rheoliadau hyn yn gosod dyletswyddau ar
awdurdodau Cymreig perthnasol a bennir yn
Rhan 2 o Atodlen 19 i'r Ddeddf ("awdurdodau").

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae adran 149(1) o Ddeddf Cydraddoldeb
2010 ("y Ddeddf") yn darparu bod rhaid i
awdurdod cyhoeddus a restrir yn Atodlen 19 i'r
Ddeddf roi sylw dyladwy wrth arfer ei
swyddogaethau i'r angen i wneud y canlynol:

Mae rheoliad 3 yn ei gwneud yn ofynnol i'r
awdurdodau gyhoeddi un neu fwy o amcanion, y
cyfeirir atynt fel "amcanion cydraddoldeb", y
mae'n rhaid eu llunio mewn modd sy'n galluogi'r
awdurdod i gyflawni'r ddyletswydd gyffredinol yn
well. Os na fydd awdurdod yn cyhoeddi amcan
cydraddoldeb ar gyfer un neu fwy o'r nodweddion
gwarchoddedig, mae'n rhaid iddo gyhoeddi'r

- (a) dileu gwahaniaethu, aflonyddu, fictimeiddio ac
unrhyw ymddygiad arall sydd wedi ei
wahardd gan y Ddeddf neu odani;
- (b) hybu cyfle cyfartal rhwng personau sy'n
rhannu nodwedd warchoddedig berthnasol a
phersonau nad ydynt yn ei rhannu; ac
- (c) hybu perthynas dda rhwng personau sy'n
rhannu nodwedd warchoddedig berthnasol a
phersonau nad ydynt yn ei rhannu.

Er mwyn galluogi'r ddyletswydd o dan adran
149(1) o'r Ddeddf (y cyfeirir ati yn y nodyn hwn
fel "y ddyletswydd gyffredinol") i gael ei
chyflawni'n well, mae Gweinidogion Cymru yn

The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 149(1) of the Equality Act 2010 ("the Act") provides that a public authority listed in Schedule 19 to the Act must in exercising its functions have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

For the purpose of enabling the better performance of the duty under section 149(1) of the Act (referred to in this note as "the general duty"), the Welsh Ministers make these Regulations under the power given to them by section 153(2) of the Act. These Regulations impose duties on relevant Welsh authorities who are specified in Part 2 of Schedule 19 to the Act ("authorities").

Regulation 3 requires authorities to publish objectives, which are referred to as "equality objectives", which must be designed so as to enable the authority to better perform the general duty. If an authority does not publish an equality objective in respect of one or more of the protected characteristics it must publish its reasons for its decision not to do so.

rhesymau dros ei benderfyniad i beidio â gwneud hynny. Mae amcan cydraddoldeb sydd â'r diben y cyfeirir ato yn rheoliad 11(1) i'w anwybyddu. Mae rheoliad 11(1) yn ymwneud ag amcanion cydraddoldeb am y gwahaniaeth cyflog rhwng y rhywiau. Felly, at ddibenion rheoliad 3(3) bydd yn rhaid, er enghraifft, i'r awdurdod roi rhesymau os na fydd yn cyhoeddi amcan cydraddoldeb ynghylch nodwedd warchoddedig rhyw hyd yn oed os yw wedi gosod amcan am gyflog cyfartal rhwng y rhywiau.

Mae rheoliad 3(2) yn ei gwneud yn ofynnol i awdurdod gyhoeddi datganiad sy'n nodi'r camau y mae wedi eu cymryd neu'n bwriadu eu cymryd er mwyn cyflawni pob amcan cydraddoldeb a hefyd yr amserlen er mwyn cyflawni pob amcan cydraddoldeb. Rhaid i awdurdod wneud trefniadau priodol hefyd i fonitro ei gynnydd er mwyn cyflawni pob amcan ac i fonitro pa mor effeithiol yw'r camau y mae wedi eu cymryd er mwyn cyflawni'r amcanion cydraddoldeb.

Mae rheoliad 4 yn ei gwneud yn ofynnol i awdurdod gydymffurfio â'r darpariaethau ymgysylltu yn rheoliad 5 a rhoi sylw dyladwy i'r "wybodaeth berthnasol" y mae'n ei dal wrth iddo ystyried a llunio'i amcanion cydraddoldeb. Diffinnir "gwybodaeth berthnasol" yn rheoliad 2 ac mae'n golygu gwybodaeth sy'n ymwneud â chydymffurfiaeth (neu ddiffyg cydymffurfiaeth) yr awdurdod â'r ddyletswydd gyffredinol.

Mae'n rhaid i awdurdod gyhoeddi ei amcanion cydraddoldeb erbyn 2 Ebrill 2012 fan bellaf. Wedi hynny, mae'n rhaid i awdurdod adolygu ei amcanion cydraddoldeb o fewn pedair blynedd i'r adeg y cawsant eu cyhoeddi gyntaf ac o leiaf unwaith bob pedair blynedd ar ôl hynny. Caiff awdurdodau ddiwygio neu ail-wneud amcanion cydraddoldeb ar unrhyw adeg. Os bydd awdurdod yn diwygio amcan heb ei ail-wneud, yna mae'n rhaid iddo gyhoeddi'r diwygiad neu'r amcan diwygiedig cyn gynted ag y bo modd. Os bydd awdurdod yn diwygio neu'n ail-wneud amcan, mae'n rhaid iddo naill ai ddiwygio'r datganiad y mae'n ofynnol iddo'i gyhoeddi o dan reoliad 3 neu gyhoeddi datganiad newydd.

Mae rheoliad 5 yn ei gwneud yn ofynnol, pan fo rheidrwydd ar awdurdod i gydymffurfio â

darpariaethau ymgysylltu o dan y Rheoliadau hyn, i'r awdurdod hwnnw gynnwys y personau hynny y mae'r awdurdod yn credu eu bod yn cynrychioli buddiannau personau sy'n rhannu un neu fwy o'r nodweddion gwarchoddedig ac sydd â buddiant yn y ffordd y mae'r awdurdod yn cyflawni ei swyddogaethau. Caiff awdurdod hefyd gynnwys unrhyw bersonau eraill y mae'n credu eu bod yn briodol neu ymgynghori â hwy.

Mae darpariaethau ymgysylltu yn gymwys i'r gweithgareddau a ganlyn: ystyried a llunio amcanion

An equality objective with the purpose referred to in regulation 11(1) is to be ignored. Regulation 11(1) is in relation to equality objectives on gender pay difference. Therefore, for the purposes of regulation 3(3) an authority will, for example, have to give reasons if it does not publish an equality objective in respect of the protected characteristic of sex even if it has a gender pay objective in place.

Regulation 3(2) requires an authority to publish a statement which sets out the steps it has taken or intends to take in order to achieve each equality objective and the timescale for fulfilling each equality objective. An authority must also make appropriate arrangements to monitor its progress in order to fulfil each objective and to monitor the effectiveness of the steps it has taken in order to fulfil the equality objectives.

Regulation 4 requires an authority to comply with the engagement provisions in regulation 5 and have due regard to "relevant information" that it holds when considering and designing its equality objectives. "Relevant information" is defined in regulation 2 and means information that relates to compliance (or otherwise) by the authority with the general duty.

An authority must publish its equality objectives by no later than 2 April 2012. Thereafter an authority must review its equality objectives within four years from when they were first published and at least once every four years subsequently. Authorities may revise or remake equality objectives at any time. If an authority revises an objective without remaking it then it must publish the revision or the revised objective as soon as possible. If an authority revises or remakes an objective it must either amend the statement it is required to publish under regulation 3 or publish a new statement.

Regulation 5 requires that where an authority has to comply with engagement provisions under these Regulations it must involve those persons that the authority considers represent the interests

of persons who share one or more of the protected characteristics and who have an interest in the way the authority carries out its functions. An authority may also involve or consult such other persons as it considers appropriate.

Engagement provisions apply to the following activities: considering and designing equality

cydraddoldeb (rheoliad 4(1)(a)); cynnal asesiad i weld a oes pethau yn cael eu gwneud neu a allai gael eu gwneud sy'n cyfrannu neu a fyddai'n debyg o gyfrannu at sicrhau bod awdurdod yn cydymffurfio â'r ddyletswydd gyffredinol (rheoliad 7(5)(a)); cynnal asesiad o effaith debygol polisïau ac arferion arfaethedig, polisïau neu arferion y penderfynodd eu hadolygu ac ar unrhyw ddiwygiadau arfaethedig i'r polisïau a'r arferion hynny ar gydymffurfio â'r ddyletswydd gyffredinol (rheoliad 8(3)(a)) ac â pharatoi, cyhoeddi neu adolygu Cynllun Strategol Cydraddoldeb (rheoliad 15(1)(a)).

Mae rheoliad 6 yn ei gwneud yn ofynnol i awdurdod gymryd pob cam rhesymol i sicrhau bod unrhyw ddogfennau neu unrhyw wybodaeth y mae'n ofynnol yn ôl y Rheoliadau hyn i'r awdurdod eu cyhoeddi yn hygyrch i bersonau sy'n rhannu un neu fwy o nodweddion gwarchoddedig. Mae hyn yn golygu bod rhaid i awdurdod gymryd i ystyriaeth bob un o nodweddion gwarchoddedig person, ac nid un yn unig. Os oes amrediad o gamau y byddai'n rhesymol i'r awdurdod eu cymryd i drefnu bod yr wybodaeth yn hygyrch, yna mae'n rhaid iddo gymryd pob un o'r camau hynny.

Mae rheoliad 7 yn gosod dyletswyddau ar awdurdodau o ran gwybodaeth berthnasol. Mae'n rhaid i awdurdod osod trefniadau priodol yn eu lle i sicrhau ei fod yn nodi'r wybodaeth berthnasol sydd ganddo a'i fod yn nodi ac yn casglu gwybodaeth berthnasol nad yw'n ei dal. Mae gwybodaeth bellach ynghylch yr hyn y mae'n rhaid ei gynnwys yn y trefniadau wedi ei nodi yn rheoliad 11(2), sy'n datgan bod rhaid cael trefniadau hefyd ar gyfer nodi a chasglu gwybodaeth ynghylch unrhyw wahaniaeth rhwng cyflog unrhyw berson (neu bersonau) sydd ag un neu fwy o'r nodweddion gwarchoddedig (neu sy'n eu rhannu) a'r rheini sydd hebddynt, neu nad ydynt yn eu rhannu, ac ynghylch achosion gwahaniaethau o'r fath.

Mae awdurdod yn dal gwybodaeth berthnasol os yw'n cael ei dal gan awdurdod heblaw ar ran person arall, neu os yw'n cael ei dal gan berson arall ar ran yr awdurdod. Yn ychwanegol, gall gwybodaeth sy'n cael ei dal gan awdurdod ar ran person arall fod hefyd yn wybodaeth berthnasol sy'n cael ei dal gan awdurdod. Serch hynny, yr unig ffordd y gall hynny ddigwydd yw os yw'r person y mae'r

awdurdod yn dal yr wybodaeth ar ei ran yn cydsynio bod yr awdurdod yn cael defnyddio'r wybodaeth at y diben o gydymffurfio ei hun â'r ddyletswydd gyffredinol a'r dyletswyddau o dan y Rheoliadau hyn, neu os nad yw'n groes i'r gyfraith i ddefnyddio'r wybodaeth a'i bod yn rhesymol gwneud hynny o ystyried yr holl amgylchiadau.

Mae'n rhaid i awdurdod gynnal asesiad er mwyn nodi gwybodaeth berthnasol. Dylai'r asesiad nodi a oes pethau'n cael eu gwneud gan yr awdurdod sy'n cyfrannu at beri i'r awdurdod gydymffurfio (neu beidio â chydymffurfio) â'r ddyletswydd gyffredinol ac a oes pethau y gallai'r awdurdod eu gwneud a fyddai'n debygol o gyfrannu at gydymffurfio â'r ddyletswydd

objectives (regulation 4(1)(a)); carrying out an assessment of whether there are things done or that could be done that contribute or would be likely to contribute to an authority complying with the general duty (regulation 7(5)(a)); carrying out an assessment of the likely impact of proposed policies and practices, of policies or practices that it has decided to review and any proposed revisions to those policies and practices on compliance with the general duty (regulation 8(3)(a)) and preparing, publishing or reviewing a Strategic Equality Plan (regulation 15(1)(a)).

Regulation 6 requires an authority to take all reasonable steps to ensure that any documents or information that the authority is required by these Regulations to publish, are accessible by persons who share one or more protected characteristics. This means that an authority must take into account all of a person's protected characteristics, not just one. If there are a range of steps that it would be reasonable for the authority to take to make the information accessible then it must take all of those steps.

Regulation 7 imposes duties on authorities in relation to relevant information. An authority must put appropriate arrangements in place to ensure that it identifies the relevant information that it holds and identifies and collects relevant information that it does not hold. Further information as to what the arrangements must contain is set out in regulation 11(2), which states that there must also be arrangements for identifying and collecting information about any difference between pay of any person (or persons) who has (or share) one or more of the protected characteristics and those who do not and the causes of such differences.

An authority holds relevant information if it is held by an authority, otherwise than on behalf of another person, or held by another person on behalf of the authority. In addition, information which is held by an authority on behalf of another person can also be relevant information that an authority holds. However this can only be the case if the person on whose behalf the information is held by the authority consents to the authority using the information for the purpose of the

authority complying with the general duty and the duties under these Regulations or if it is not contrary to law to use the information and that it is reasonable to do so having regard to all the circumstances.

An authority must carry out an assessment in order to identify relevant information. The assessment should identify whether there are things done by the authority that contribute to the authority complying (or otherwise) with the general duty and things that it could do that would be likely to contribute to compliance with the general duty. An authority must

gyffredinol. Mae'n rhaid i awdurdod, wrth gynnal asesiad o'r fath, roi sylw dyladwy i unrhyw wybodaeth berthnasol y mae eisoes wedi ei nodi, neu wedi ei chasglu ac y mae yn ei dal. Rhaid i awdurdod hefyd gydymffurfio â'r darpariaethau ymgysylltu. Dylai awdurdod edrych oddi mewn ac oddi allan i'w sefydliad er mwyn canfod tystiolaeth (gwybodaeth berthnasol) y gallai ei defnyddio, er enghraifft, mewn asesiadau effaith cydraddoldeb.

Mae rheoliad 8 yn ei gwneud yn ofynnol i awdurdod wneud trefniadau er mwyn asesu effaith debygol polisiau ac arferion arfaethedig ar ei allu i gydymffurfio â'r ddyletswydd gyffredinol yn ogystal ag effaith unrhyw bolisi neu arfer y penderfynodd yr awdurdod ei adolygu neu unrhyw ddiwygiad arfaethedig i bolisi neu arfer. Mae'n rhaid cael trefniadau i gyhoeddi adroddiadau ynghylch yr asesiadau hyn os yw'r asesiad yn dangos y byddai, yn ôl pob tebyg, effaith sylweddol ar allu'r awdurdod i gydymffurfio â'r ddyletswydd gyffredinol. Wrth asesu materion o'r fath o dan reoliad 8(1)(a) neu (b), mae'n rhaid i awdurdod gydymffurfio â'r darpariaethau ymgysylltu a rhoi sylw dyladwy i'r wybodaeth berthnasol. Mae'n rhaid i awdurdod hefyd fonitro effaith ei bolisiau a'i arferion ar ei allu i gydymffurfio â'r ddyletswydd gyffredinol.

Mae rheoliad 9 yn gosod dyletswyddau ynglŷn â hyfforddi a chasglu gwybodaeth am gyflogaeth. Mae'n gosod pa wybodaeth y mae'n rhaid i'r awdurdod ei chasglu bob blwyddyn ac yn ei gwneud yn ofynnol i'r awdurdod gyhoeddi'r wybodaeth a gasglwyd ganddo. Caniateir cyhoeddi gwybodaeth o'r fath yn adroddiad blynyddol yr awdurdod. Mae rheoliad 9(5) a (6) yn ei gwneud yn glir na all awdurdod ddibynnu ar effaith rheoliad 9 i orfodi ei gyflogeion neu bersonau a all wneud cais i'r awdurdod am gyflogaeth i ddatgelu, er enghraifft eu bod yn hoyw, yn strêr neu'n ddeurywiol.

Mae rheoliad 10 yn ei gwneud yn ofynnol i'r awdurdod wneud unrhyw drefniadau y mae'n credu eu bod yn briodol i hybu ymhlith ei gyflogeion wybodaeth a dealltwriaeth o'r ddyletswydd gyffredinol a'r dyletswyddau o dan y Rheoliadau hyn. Dylai'r awdurdod hefyd nodi unrhyw anghenion hyfforddi sydd gan ei gyflogeion parthed y dyletswyddau hynny a mynd i'r afael â hwy.

Mae rheoliad 11 yn ei gwneud yn ofynnol i awdurdod, pan fydd yn ystyried beth ddylai ei amcanion cydraddoldeb fod, roi sylw dyladwy i'r angen, mewn cysylltiad â'i gyflogeion, i gael amcanion cydraddoldeb sy'n mynd i'r afael ag achosion unrhyw wahaniaethau mewn cyflog. Y gwahaniaethau hynny mewn cyflog yw'r gwahaniaethau rhwng cyflog unrhyw berson neu bersonau sydd â nodweddion gwarchoddedig neu sy'n eu rhannu, a'r rheini sydd hebddynt neu nad ydynt yn eu rhannu, pan fo'r rheswm dros y gwahaniaeth neu pan fo'n rhesymol debyg bod y rheswm hwnnw, yn un sy'n gysylltiedig â'r ffaith bod gan y person (neu'r personau) nodwedd warchoddedig (neu ei fod/eu bod yn ei rhannu). Ystyr "gwahaniaeth

when carrying out such an assessment have due regard to any relevant information that it has already identified or collected and holds. An authority must also comply with the engagement provisions. An authority should look inside and outside of its organisation to find evidence (relevant information) that can be used, for example, in equality impact assessments.

Regulation 8 requires an authority to make arrangements in order to assess the likely impact of proposed policies and practices on its ability to comply with the general duty, as well as the impact of any policy or practice that an authority has decided to review or any proposed revision to a policy or practice. There must be arrangements for publishing reports regarding these assessments where the assessment shows that there is likely to be a substantial impact on an authority's ability to comply with the general duty. When assessing such matters under regulation 8(1)(a) or (b) an authority must comply with the engagement provisions and have due regard to the relevant information. Also an authority must monitor the impact of its policies and practices on its ability to comply with the general duty.

Regulation 9 imposes duties in relation to training and the collection of employment information. It sets out what information an authority must collect each year and requires an authority to publish information it has collected. Such information may be set out in an authority's annual report. Regulation 9(5) and (6) make it clear that an authority cannot rely on the effect of regulation 9 to compel its employees or persons who may apply to the authority for employment to disclose, for example, that they are gay, straight or bisexual.

Regulation 10 requires an authority to make such arrangements as it considers appropriate for promoting amongst its employees knowledge and understanding of the general duty and of the duties in these Regulations. An authority should also identify and address any training needs of its employees in relation those duties.

Regulation 11 requires that when an authority is considering what its equality objectives should be, it must have due regard to the need, in respect of its employees, to have equality objectives that address the causes of any pay differences. Those pay differences

are between the pay of any person or persons who have

or share a protected characteristics and those who do not where the reason for the difference is or is reasonably likely to be for a reason that is related to the

fact that the person (or persons) has (or share) a protected characteristic. "Gender pay difference" means any difference between the pay of a person or persons where the difference is or is reasonably likely

to be for a reason that is related to the difference in

cyflog rhwng y rhywiau" yw unrhyw wahaniaeth rhwng cyflog person neu bersonau pan fo'r gwahaniaeth, neu pan fo'r gwahaniaeth yn rhesymol debyg o fod, yn un am reswm sy'n gysylltiedig â'r gwahaniaeth mewn rhyw. Os yw awdurdod wedi nodi "gwahaniaeth cyflog rhwng y rhywiau" ond heb gyhoeddi amcan cydraddoldeb i fynd i'r afael ag ef, rhaid i'r awdurdod gyhoeddi rhesymau dros ei benderfyniadau i beidio â chyhoeddi amcan o'r fath.

Mae rheoliad 12 yn ei gwneud yn ofynnol i'r awdurdod gyhoeddi cynllun gweithredu sy'n gosod unrhyw bolisi sydd ganddo ynghylch yr angen i fynd i'r afael ag achosion unrhyw wahaniaeth cyflog rhwng y rhywiau ac unrhyw amcan cyflog cyfartal rhwng y rhywiau a gyhoeddwyd gan yr awdurdod. Rhaid i'r cynllun gweithredu hefyd osod, er enghraifft, unrhyw ddiwygiadau i amcan cyflog cyfartal rhwng y rhywiau a gwybodaeth ynghylch amcanion cyflog cyfartal rhwng y rhywiau y mae'n ofynnol iddo'u cyhoeddi yn rhinwedd rheoliad 3(2)(a) megis pa mor hir y mae'r awdurdod yn disgwyl y bydd yn ei gymryd er mwyn cyflawni amcan cyflog cyfartal rhwng y rhywiau.

Mae rheoliad 13 yn darparu bod pob trefniant o dan y Rheoliadau hyn yn cael ei adolygu'n barhaus.

Mae rheoliad 14 yn ei gwneud yn ofynnol i awdurdod lunio Cynllun Strategol Cydraddoldeb (CSC) erbyn 2 Ebrill 2012 fan bellaf. Bwriedir i'r CSC fod yn offeryn canolog sydd yn cynnwys y gwahanol bethau sy'n ofynnol o dan y Rheoliadau hyn fel bod un pwynt mynediad i'r cyhoedd. Rhaid i'r CSC gynnwys datganiad sy'n rhoi disgrifiad o'r awdurdod, yn gosod amcanion cydraddoldeb yr awdurdod, yn rhoi manylion y camau y mae'r awdurdod wedi eu cymryd neu'n bwriadu eu cymryd er mwyn cyflawni ei amcanion, a pha mor hir y bydd yn ei gymryd er mwyn cyflawni ei amcanion a manylion y trefniadau a wnaed ganddo neu y mae'n bwriadu eu gwneud i gydymffurfio â'r Rheoliadau hyn. Gellir diwygio neu ail-wneud yr CSC ar unrhyw adeg.

Mae rheoliad 15 yn gosod darpariaethau ynghylch paratoi, cyhoeddi a diwygio CSC. Rhaid i awdurdod gyhoeddi ei CSC cyn gynted ag y bo modd ar ôl iddo gael ei wneud neu ei ail-wneud. Os yw wedi ei ddiwygio heb gael ei ail-wneud rhaid i'r awdurdod gyhoeddi'r diwygiadau. Caiff yr CSC fod yn rhan o ddogfen gyhoeddedig arall. Rhaid i'r awdurdod gadw ei CSC dan adolygiad.

Mae rheoliad 16 yn ei gwneud yn ofynnol i awdurdod gyhoeddi adroddiad ynghylch pob "cyfnod adrodd". Ystyr "cyfnod adrodd" yw'r cyfnod o 1 Ebrill i 31 Mawrth ac eithrio mewn perthynas â'r cyfnod adrodd sy'n dod i ben ar 31 Mawrth 2012 ac yn yr achos hwnnw ystyr cyfnod adrodd yw'r cyfnod o 6 Ebrill 2011 i 31 Mawrth 2012. Rhaid cyhoeddi'r adroddiad heb fod yn hwyrach na'r "dyddiad perthnasol" yn y flwyddyn sy'n dilyn y flwyddyn y bydd y cyfnod adrodd hwnnw yn dod i ben. Ystyr "y dyddiad perthnasol" yw 31 Mawrth. Mae'r rheoliad yn

gender. Where an authority has identified a "gender pay difference" and has not published an equality objective to address it, then the authority must publish reasons for its decisions not to publish such an objective.

Regulation 12 requires an authority to publish an action plan which sets out any policy it has relating to the need to address the causes of any gender pay difference and any gender pay equality objective published by the authority. The action plan must also set out, for example, any revisions to a gender pay equality objective and information in respect of gender pay objectives that it is required to publish by virtue of regulation 3(2)(a) such as how long the authority expects it will take to achieve in order to fulfil a gender pay objective.

Regulation 13 provides for all arrangements made under these Regulations to be kept under review.

Regulation 14 requires an authority to make a Strategic Equality Plan (SEP) no later than 2 April 2012. The SEP is intended to be a central vehicle to carry the various things these Regulations require so there can be a single point of access to the public. The SEP must contain a statement setting out a description of the authority, the authority's equality objectives, details of the steps the authority has taken or intends to take in order to fulfil its objectives, how long it will take in order to fulfil its objectives, and details of arrangements it has made or intends to make to comply with these Regulations. The SEP can be revised or remade at any time.

Regulation 15 sets out provisions concerning the preparation, publication and review of a SEP. An authority must publish its SEP as soon as possible after it had been made or remade. If it has been revised without being remade, then the authority must publish the revisions. The SEP may be part of another published document. An authority must keep its SEP under review.

Regulation 16 requires an authority to publish a report in respect of each "reporting period". "Reporting period" means the period 1 April to 31 March except in relation to the reporting period ending 31 March 2012 in which case reporting period means the period 6 April 2011 to 31 March 2012. The report must be published not later than the "relevant date" in the year following the year in which that reporting period ends. "The relevant date" means 31 March. The regulation sets out what the report must contain. The report may be part of another published document.

gosod yr hyn y mae'n rhaid ei gynnwys yn yr adroddiad. Caiff yr adroddiad fod yn rhan o ddogfen gyhoeddedig arall.

Mae rheoliad 17 yn ei gwneud yn ofynnol i Weinidogion Cymru gyhoeddi adroddiadau sy'n rhoi trosolwg o'r cynnydd a wnaed gan awdurdodau tuag at gydymffurfio â'r ddyletswydd gyffredinol. Rhaid i'r adroddiadau hefyd osod cynigion Gweinidogion Cymru ar gyfer cydlynu camau awdurdodau er mwyn sicrhau rhagor o gynnydd tuag at gydymffurfiaeth gan yr awdurdodau hynny â'r ddyletswydd gyffredinol.

Mae rheoliad 18 yn gwneud darpariaeth ynghylch caffael cyhoeddus mewn achosion pan fo'r awdurdod yn awdurdod contractio. Dylai awdurdodau o'r fath ystyried a ddylai meini prawf dyfarnu gynnwys ystyriaethau sy'n berthnasol i'r modd y mae'r ddyletswydd gyffredinol yn cael ei chyflawni. Rhaid i awdurdod contractio hefyd roi sylw dyladwy i'r cwestiwn a ddylai unrhyw amodau a osodir ganddynt hwy hefyd gynnwys ystyriaethau sy'n berthnasol i gyflawni'r ddyletswydd gyffredinol.

Mae rheoliad 19 yn datgan y caiff Gweinidogion Cymru, Prif Weinidog Cymru a Chwmsler Cyffredinol Llywodraeth Cynulliad Cymru, pan fônt yn ddarostyngedig i ddyletswyddau o dan y Rheoliadau hyn, weithredu ar y cyd - er enghraifft cânt lunio un CSC ar gyfer Llywodraeth Cynulliad Cymru.

Mae rheoliad 20 yn datgan na ddylid cymryd bod unrhyw beth yn y Rheoliadau hyn yn ei gwneud yn ofynnol i awdurdod gyhoeddi gwybodaeth petai gwneud hynny yn doriad ar gyfrinachedd y gallai person ddwyn achos llys yn ei gylch neu yn doriad ar Ddeddf Diogelu Data 1998. Nid yw'n ofynnol i awdurdod gyhoeddi unrhyw wybodaeth y byddai ganddo hawl i wrthod ei dangos mewn llys neu dribiwnlys yng Nghymru neu Loegr - e.e. gwybodaeth sy'n ddarostyngedig i fraint broffesiynol gyfreithiol. Ar wahân i'r uchod nid oes eithriadau eraill i'w cael rhag datgelu'r wybodaeth.

Regulation 17 requires the Welsh Ministers to publish reports that set out an overview of the progress made by authorities towards compliance with the general duty. The reports must also set out Welsh Ministers' proposals for the coordination of action by authorities so as to bring about further progress towards compliance by those authorities with the general duty.

Regulation 18 makes provision about public procurement in instances where an authority is a contracting authority. Such authorities should have regard to whether award criteria should include considerations relevant to performance of the general duty. Also a contracting authority must have due regard as to whether any conditions imposed by them should include considerations relevant to performance of the general duty.

Regulation 19 states that where the Welsh Ministers, First Minister and Counsel General to the Welsh Assembly Government are subject to duties under these Regulations they may act jointly, for example, they may produce a single SEP for the Welsh Assembly Government.

Regulation 20 states that nothing in these Regulations should be taken as to require an authority to publish information if doing so would constitute a breach of confidence actionable by a person or a breach of the Data Protection Act 1998. An authority is not required to publish any information that it would be entitled to refuse to produce in a court or tribunal in England or Wales, e.g. information subject to legal professional privilege. Apart from the above there are no other available exemptions from disclosure of the information.

OFFER YNNAU ST
ATUDOL CYMRU

2011 Rhif 1064 (Cy.155)

CYDRADDOLDEB,
CYMRU

Rheoliadau Deddf

Cydraddoldeb

2010 (Dyletswyddau

Statudol)

(Cymru) 2011

Gwnaed

3 Ebrill 2011

Yn dod i rym yn unol â rheoliad 1(2)

Mae'r Rheoliadau hyn wedi eu gwneud drwy arfer y pwerau a roddwyd i Weinidogion Cymru gan adrannau 153(2) a 207(4) o Ddeddf Cydraddoldeb 2010(1).

Mae Gweinidogion Cymru wedi ymgynghori â'r Comisiwn dros Gydraddoldeb a Hawliau Dynol yn unol ag adran 153(4) o'r Ddeddf honno.

Cafodd drafft o'r Rheoliadau hyn ei osod gerbron Cynulliad Cenedlaethol Cymru a'i gymeradwyo drwy benderfyniad ganddo yn unol ag adran 209(6) o'r Ddeddf honno.

Mae Gweinidogion Cymru, drwy arfer y pwerau hyn, yn gwneud y Rheoliadau a ganlyn:

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Deddf Cydraddoldeb 2010 (Dyletswyddau Statudol) (Cymru) 2011.

(2) Daw'r Rheoliadau hyn i rym ar 6 Ebrill 2011.

Dehongli

2. Yn y Rheoliadau hyn—

ystyr "amcan cyflog cyfartal rhwng y rhywiau" ("gender pay equality objective") yw amcan cydraddoldeb—

- (i) sy'n ymwneud â'r angen i fynd i'r afael ag achosion unrhyw wahaniaeth cyflog rhwng y rhywiau; ac
- (ii) y mae'r awdurdod wedi ei gyhoeddi;

WELSH
STATUTORY
INSTRUMENTS

2011 No. 1064
(W.155)

EQUALITY,
WALES

The Equality Act 2010
(Statutory Duties) (Wales)
Regulations 2011

Made 3 April 2011

Coming into force in accordance with
regulation 1(2)

These Regulations are made in exercise of
the powers conferred on the Welsh Ministers
by sections 153(2) and 207(4) of the Equality
Act 2010(1).

The Welsh Ministers have consulted the
Commission for Equality and Human Rights
in accordance with section 153(4) of that Act.

(1) 2010 p.15.

A draft of these Regulations was laid before
and approved by a resolution of the National
Assembly for Wales in accordance with
section 209(6) of that Act.

The Welsh Ministers, in exercise of these
powers, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is
the Equality Act 2010 (Statutory Duties)
(Wales) Regulations 2011.

(2) These Regulations come into force
on 6 April 2011.

Interpretation

2. In these Regulations—

"authority" ("awdurdod") means an authority
specified in Part 2 of Schedule 19 to the
Equality Act 2010 and "authorities"
("awdurdodau") is to be construed
accordingly;

"employment" ("cyflogaeth"), "employees"
("cyflogeion") and "persons employed"
("personau a gyflogir") are to be construed in
accordance with

(1) 2010 c. 15.

ystyr "awdurdod" ("authority") yw awdurdod a bennir yn Rhan 2 o Atodlen 19 i Ddeddf Cydraddoldeb 2010 ac mae "awdurdodau" ("authorities") i'w dehongli yn unol â hynny;

mae "cyflogaeth", "cyflogeion" a "personau a gyflogir" i'w dehongli yn unol ag ystyr ("employment"), ("employees") a ("persons employed") yn ôl eu trefn yn adran 83 o Ddeddf Cydraddoldeb 2010;

ystyr "cyfnod adrodd" ("reporting period") yw'r cyfnod o 1 Ebrill i 31 Mawrth ac eithrio mewn perthynas â'r cyfnod adrodd sy'n dod i ben ar 31 Mawrth 2012 ac, yn yr achos hwnnw, ystyr "cyfnod adrodd" yw'r cyfnod o 6 Ebrill 2011 i 31 Mawrth 2012;

ystyr "dyddiad perthnasol" ("relevant date") yw 31 Mawrth;

ystyr "y ddyletswydd gyffredinol" ("the general duty") yw'r ddyletswydd yn adran 149(1) o Ddeddf Cydraddoldeb 2010;

ystyr "gwahaniaeth cyflog rhwng y rhywiau" ("gender pay difference") yw unrhyw wahaniaeth rhwng cyflog—

- (i) menyw a dyn; neu
- (ii) menywod a dynion,

a gyflogir gan awdurdod a phan fo'r amod cyntaf neu'r ail amod yn cael ei fodloni.

Yr amod cyntaf yw bod y gwahaniaeth yn wahaniaeth am reswm sy'n gysylltiedig â nodwedd warchoddedig rhyw.

Yr ail amod yw ei bod yn ymddangos yn rhesymol debyg i'r awdurdod bod y gwahaniaeth yn wahaniaeth am reswm sy'n gysylltiedig â nodwedd warchoddedig rhyw;

ystyr "gwybodaeth berthnasol" ("relevant information") yw gwybodaeth sy'n ymwneud â chydymffurfiaeth (neu ddiffyg cydymffurfiaeth) yr awdurdod â'r ddyletswydd gyffredinol.

Amcanion cydraddoldeb

3.—(1) Rhaid i awdurdod gyhoeddi amcanion a lunnir i'w alluogi i gyflawni'r

ddyletswydd gyffredinol yn well.

(2) Rhaid i'r awdurdod hefyd —

(a) cyhoeddi datganiad sy'n nodi—

- (i) y camau y mae wedi eu cymryd neu'n bwriadu eu cymryd er mwyn cyflawni pob amcan; a
- (ii) pa mor hir y mae'r awdurdod yn disgwyl y bydd yn ei gymryd er mwyn cyflawni pob amcan;

section 83 of the Equality Act 2010;

"gender pay difference" ("gwahaniaeth cyflog rhwng y rhywiau") means any difference between the pay of—

- (a) a woman and a man; or
- (b) women and men,

who are employed by an authority and where either the first or second condition is met.

The first condition is that the difference is for a reason that is related to the protected characteristic of sex.

The second condition is that it appears to the authority to be reasonably likely that the difference is for a reason that is related to the protected characteristic of sex;

"the general duty" ("y ddyletswydd gyffredinol") means the duty in section 149(1) of the Equality Act 2010;

"gender pay equality objective" ("amcan cyflog cyfartal rhwng y rhywiau") means an equality objective—

- (i) that relates to the need to address the causes of any gender pay difference; and
- (ii) which the authority has published;

"relevant date" ("dyddiad perthnasol") means 31 March;

"relevant information" ("gwybodaeth berthnasol") means information that relates to compliance (or otherwise) by the authority with the general duty; and

"reporting period" ("cyfnod adrodd") means the period 1 April to 31 March except in relation to the reporting period ending 31 March 2012 in which case "reporting period" means the period 6 April 2011 to 31 March 2012.

Equality objectives

3.—(1) An authority must publish

objectives that are designed to enable it to better perform the general duty.

(2) The authority must also—

- (a) publish a statement setting out—
 - (i) the steps that it has taken or intends to take in order to fulfil each objective; and
 - (ii) how long the authority expects it will take in order to fulfil each objective;

- (b) gwneud unrhyw drefniadau y mae'n credu eu bod yn briodol i fonitro'r cynnydd y mae'n ei wneud a pha mor effeithiol yw'r camau y mae'n eu cymryd er mwyn cyflawni ei amcanion cydraddoldeb.

Yn y Rheoliadau hyn cyfeirir at yr amcanion hyn fel "amcanion cydraddoldeb".

(3) Os na fydd awdurdod yn cyhoeddi amcan cydraddoldeb mewn perthynas ag un neu fwy o'r nodweddion gwarchoddedig, rhaid iddo gyhoeddi ei resymau dros ei benderfyniad i beidio â gwneud hynny.

(4) Mae paragraff (3) yn gymwys hyd yn oed os yw awdurdod yn cyhoeddi amcan cydraddoldeb at y diben y cyfeirir ato yn rheoliad 11(1) (ac oherwydd hynny mae amcan o'r fath i'w anwybyddu at ddiben paragraff (3)).

Paratoi ac adolygu etc. amcanion cydraddoldeb

4.—(1) Wrth ystyried pa amcanion cydraddoldeb y dylai eu harddel ac wrth lunio unrhyw amcan cydraddoldeb (neu unrhyw ddiwygiad i amcan o'r fath) rhaid i'r awdurdod—

- (a) cydymffurfio â'r darpariaethau ymgysylltu

(gweler rheoliad 5); a

- (b) rhoi sylw dyladwy i'r wybodaeth berthnasol y mae'n ei dal.

(2) Rhaid i awdurdod gydymffurfio â rheoliad 3(1) drwy gyhoeddi amcanion cydraddoldeb—

- (a) erbyn 2 Ebrill 2012 fan bellaf; a
- (b) ar ôl hynny fel y bo'n briodol yn ei farn ef.

(3) Rhaid i awdurdod adolygu pob un o'i amcanion cydraddoldeb—

- (a) heb fod yn hwyrach na diwedd y cyfnod o bedair blynedd sy'n dechrau ar y dyddiad y cyhoeddwyd yr amcan gyntaf; a
- (b) bob hyn a hyn ar ôl hynny heb fod yr ysbeidiau rhwng yr adolygiadau yn hwyrach na diwedd y cyfnod o bedair blynedd sy'n dechrau ar ddyddiad yr adolygiad diwethaf o'r amcan.

(4) Caiff awdurdod gynnal adolygiad o unrhyw un neu ragor o'i amcanion cydraddoldeb ar unrhyw adeg arall.

(5) Caiff awdurdod ddiwygio amcan cydraddoldeb neu ei ail-wneud ar unrhyw bryd.

(6) Os bydd awdurdod yn diwygio amcan heb ei ail-wneud, yna rhaid i'r awdurdod, cyn gynted ag y bo modd ar ôl gwneud y diwygiad, gyhoeddi'r diwygiad neu'r amcan fel y'i diwygiwyd (fel y mae'n credu ei bod yn briodol).

(7) Os bydd awdurdod yn gwneud unrhyw un neu rai o'r pethau y cyfeirir atynt ym mharagraff (5) rhaid iddo naill ai ddiwygio'r datganiad a gyhoeddwyd ganddo o

- (b) make such arrangements as it considers appropriate for monitoring the progress that it makes and the effectiveness of the steps that it takes in order to fulfil its equality objectives.

In these Regulations such objectives are referred to as "equality objectives".

(3) If an authority does not publish an equality objective in respect of one or more of the protected characteristics it must publish reasons for its decision not to do so.

(4) Paragraph (3) applies even if an authority publishes an equality objective for the purpose referred to in regulation 11(1) (and for that reason such an objective is to be ignored for the purpose of paragraph (3)).

Preparation and review etc. of equality objectives

4.—(1) When considering what its equality objectives should be and when designing any equality objective (or any revision to such an objective) the authority must—

- (a) comply with the engagement provisions (see regulation 5);
and
- (b) have due regard to relevant information that it holds.

(2) An authority must comply with regulation 3(1)

by publishing equality objectives—

- (a) not later than 2 April 2012; and
- (b) subsequently as it considers appropriate.

(3) An authority must review each of its equality objectives—

- (a) not later than the end of the period of four years beginning with the date that the objective was first published; and
- (b) subsequently at intervals not later than the end of the period of four years beginning with the date of the last review of the

objective.

(4) An authority may carry out a review of any of its equality objectives at any other time.

(5) An authority may revise or remake an equality objective at any time.

(6) If an authority revises an objective without remaking it then the authority must, as soon as possible after making the revision, publish the revision or the objective as revised (as it considers appropriate).

(7) If an authority does any of the things referred to in paragraph (5) it must either amend the statement published by it under regulation 3(2) or publish a new

dan reoliad 3(2) neu gyhoeddi datganiad newydd.

Darpariaethau ymgysylltu

5.—(1) Cyfeirir at y darpariaethau ym mharagraff (2) yn y Rheoliadau hyn fel "y darpariaethau ymgysylltu".

(2) Pan fo unrhyw ddarpariaeth yn y Rheoliadau hyn yn ei gwneud yn ofynnol i awdurdod gydymffurfio â'r darpariaethau ymgysylltu wrth gyflawni unrhyw weithgaredd (gweler, er enghraifft, rheoliad 4(1)(a)), mae cydymffurfio â'r darpariaethau hynny'n golygu bod yr awdurdod wrth gyflawni'r gweithgaredd hwnnw—

- (a) yn gorfod cynnwys unrhyw bersonau y mae'r awdurdod yn credu—
 - (i) eu bod yn cynrychioli buddiannau personau sy'n rhannu un neu fwy o'r nodweddion gwarchoddedig; a
 - (ii) bod ganddynt fuddiant yn y modd y mae'r awdurdod yn cyflawni ei swyddogaethau;
- (b) yn cael cynnwys unrhyw bersonau eraill y mae'r awdurdod yn credu eu bod yn briodol; ac
- (c) yn cael ymgynghori ag unrhyw bersonau y mae'r awdurdod yn credu eu bod yn briodol.

(3) Wrth ddod i benderfyniad o dan baragraff (2)(b) neu (c) rhaid i'r awdurdod roi sylw i'r angen i gynnwys neu i ymgynghori (yn ôl y digwydd), i'r graddau y mae'n rhesymol ymarferol gwneud hynny, â phersonau—

- (a) sy'n rhannu un neu fwy o'r nodweddion gwarchoddedig; a
- (b) sydd â buddiant yn y ffordd y mae'r awdurdod yn cyflawni ei swyddogaethau.

Hygyrchedd gwybodaeth a gyhoeddir

6.—(1) Mae'r rheoliad hwn yn gymwys i unrhyw ddogfen neu wybodaeth y mae'r Rheoliadau hyn yn ei gwneud yn ofynnol i awdurdod ei chyhoeddi.

(2) Rhaid i'r awdurdod gymryd pob cam rhesymol i sicrhau bod y ddogfen neu'r wybodaeth

yn hygyrch i bersonau sy'n rhannu un neu fwy o'r nodweddion gwarchoddedig.

Trefniadau i gasglu etc. gwybodaeth am gydymffurfio â'r ddyletswydd gyffredinol

7.—(1) Rhaid i awdurdod wneud unrhyw drefniadau y mae'n credu eu bod yn briodol i sicrhau ei fod, o dro i dro—

- (a) yn nodi'r wybodaeth berthnasol y mae'n ei dal; (b) yn nodi ac yn casglu gwybodaeth berthnasol
 - nad yw'n ei dal; ac
- (c) yn cyhoeddi'r wybodaeth berthnasol y mae'n ei dal ac y mae'n credu y byddai'n briodol ei chyhoeddi.

statement.

Engagement provisions

5.—(1) The provisions in paragraph (2) are referred to in these Regulations as "the engagement provisions".

(2) Where any provision of these Regulations requires an authority to comply with the engagement provisions in carrying out any activity (see for example regulation 4(1)(a)), compliance with those provisions means that in carrying out that activity the authority—

- (a) must involve such persons as the authority considers—
 - (i) represent the interests of persons who share one or more of the protected characteristics; and
 - (ii) have an interest in the way that the authority carries out its functions;
- (b) may involve such other persons as the authority considers appropriate;
- (c) may consult such persons as the authority considers appropriate.

(3) In reaching a decision under paragraph (2)(b) or (c) the authority must have regard to the need to involve or consult (as the case may be), so far as is reasonably practicable to do so, persons who—

- (a) share one or more of the protected characteristics; and
- (b) have an interest in the way that the authority carries out its functions.

Accessibility of published information

6.—(1) This regulation applies to any document or information that an authority is required by these Regulations to publish.

(2) The authority must take all reasonable steps to ensure that the document or information is accessible by persons who share one or more protected characteristics.

Arrangements for collection etc. of information about compliance with the general duty

7.—(1) An authority must make such arrangements as it considers appropriate to ensure that, from time to time, it—

- (a) identifies relevant information that it holds;
- (b) identifies and collects relevant information that it does not hold; and
- (c) publishes relevant information that it holds and which it considers appropriate to publish.

I weld darpariaeth bellach am yr hyn y mae'n rhaid i'r trefniadau ei gynnwys, gweler hefyd reoliad 11(2).

(2) At ddibenion y Rheoliadau hyn, mae awdurdod yn dal gwybodaeth berthnasol—

- (a) os yw'n cael ei dal gan yr awdurdod, heblaw ar ran person arall;
- (b) os yw'n cael ei dal gan berson arall ar ran yr awdurdod; neu
- (c) os yw'n cael ei dal gan yr awdurdod ar ran person arall ac—
 - (i) bod y person hwnnw wedi cydsynio bod yr awdurdod yn cael defnyddio'r wybodaeth er mwyn i'r awdurdod gydymffurfio â'r ddyletswydd gyffredinol a'r dyletswyddau o dan y Rheoliadau hyn; neu
 - (ii) bod defnydd yr awdurdod o'r wybodaeth er mwyn iddo gydymffurfio â'r dyletswyddau hynny yn bodloni'r amodau ym mharagraff (3).

(3) Yr amodau y cyfeirir atynt ym mharagraff (2)(c)(ii) yw—

- (a) nad yw defnydd yr awdurdod o'r wybodaeth yn groes i'r gyfraith; a
- (b) bod defnydd yr awdurdod o'r wybodaeth yn rhesymol, o roi sylw i'r holl amgylchiadau gan gynnwys, yn benodol, natur yr wybodaeth ac o dan ba amgylchiadau y cafodd yr awdurdod yr wybodaeth.

(4) Mae nodi gwybodaeth berthnasol yn cynnwys nodi'r wybodaeth honno drwy gynnal asesiad i weld—

- (a) a oes pethau yn cael eu gwneud gan yr awdurdod sy'n cyfrannu at gydymffurfiaeth (neu ddiffyg gydymffurfiaeth) yr awdurdod â'r ddyletswydd gyffredinol; a
- (b) a oes pethau y gallai eu gwneud ac a fyddai'n debyg o gyfrannu at gydymffurfiaeth yr awdurdod â'r

ddyletswydd honno.

(5) Wrth gynnal asesiad y cyfeirir ato ym mharagraff (4), rhaid i'r awdurdod—

- (a) cydymffurfio â'r darpariaethau ymgysylltu; a
- (b) rhoi sylw dyladwy i'r wybodaeth berthnasol y mae'n ei dal.

(6) Rhaid i'r trefniadau y cyfeirir atynt ym mharagraff (1) sicrhau bod yr awdurdod, erbyn 2 Ebrill 2012 fan bellaf—

- (a) yn cynnal asesiad y cyfeirir ato ym mharagraff (4); a
- (b) yn cyhoeddi'r wybodaeth berthnasol y mae'n ei dal ac y mae'n credu ei bod yn briodol ei chyhoeddi.

For further provision about what the arrangements must contain see also regulation 11(2).

(2) For the purposes of these Regulations an authority holds relevant information if—

- (a) it is held by the authority, otherwise than on behalf of another person;
- (b) it is held by another person on behalf of the authority; or
- (c) it is held by the authority on behalf of another person and—
 - (i) that person has consented to the authority using the information for the purpose of compliance by the authority with the general duty and the duties under these Regulations; or
 - (ii) use of the information by the authority for the purpose of compliance by it with those duties meets the conditions in paragraph (3).

(3) The conditions referred to in paragraph (2)(c)(ii) are that the use of the information by the authority—

- (a) is not contrary to law; and
- (b) is reasonable, having regard to all the circumstances including, in particular, the nature of the information and the circumstances in which it was obtained by the authority.

(4) The identification of relevant information includes identifying such information by means of carrying out an assessment of whether there are—

- (a) things done by the authority that contribute to the authority complying (or otherwise) with the general duty; and
- (b) things that it could do that would be likely to contribute to compliance by the authority with that duty.

(5) When carrying out an assessment referred to

in paragraph (4), the authority must—

- (a) comply with the engagement provisions; and
- (b) have due regard to relevant information that it holds.

(6) The arrangements referred to in paragraph (1) must ensure that, not later than 2 April 2012, the authority—

- (a) carries out an assessment referred to in paragraph (4); and
- (b) publishes relevant information that it holds and which it considers appropriate to publish.

Effaith polisiâu ac arferion a'u monitro

8.—(1) Rhaid i awdurdod wneud unrhyw drefniadau y mae'n credu eu bod yn briodol—

- (a) i asesu effaith debygol ei bolisiâu a'i arferion arfaethedig ar ei allu i gydymffurfio â'r ddyletswydd gyffredinol;
- (b) i asesu effaith
 - (i) unrhyw bolisi neu arfer y mae'r awdurdod wedi penderfynu ei adolygu,
 - (ii) unrhyw ddiwygiad y mae'r awdurdod yn bwriadu ei wneud i bolisi neu arfer,

ar ei allu i gydymffurfio â'r ddyletswydd honno;

- (c) i fonitro effaith ei bolisiâu a'i arferion ar ei allu i gydymffurfio â'r ddyletswydd honno; a c

(ch) i gyhoeddi adroddiadau mewn cysylltiad ag unrhyw asesiad—

- (i) y cyfeirir ato yn is-baragraff (a) neu (b); a
- (ii) sy'n dangos bod yr effaith neu'r effaith debygol (yn ôl y digwydd) ar allu'r awdurdod i gydymffurfio â'r ddyletswydd honno yn sylweddol.

(2) Rhaid i adroddiadau o dan baragraff (1)(ch) nodi, yn benodol—

- (a) diben—
 - (i) y polisi neu'r arfer arfaethedig;
 - (ii) y polisi neu'r arfer; neu
 - (iii) y diwygiad arfaethedig i bolisi neu arfer

a gafodd ei asesu;

- (b) crynodeb o'r camau y mae'r awdurdod wedi eu cymryd i gynnal yr asesiad;
- (c) crynodeb o'r wybodaeth y mae'r awdurdod

wedi ei chymryd i ystyriaeth yn yr asesiad;

(ch) canlyniadau'r asesiad; a

(d) unrhyw benderfyniadau a wnaed gan yr awdurdod mewn perthynas â'r canlyniadau hynny.

(3) Wrth gynnal asesiad y cyfeirir ato ym mharagraff

(1)(a) neu (b), rhaid i'r awdurdod—

- (a) gydymffurfio â'r darpariaethau ymgysylltu; a
- (b) rhoi sylw dyladwy i'r wybodaeth berthnasol y mae'n ei dal.

Hyfforddiant a chasglu gwybodaeth am gyflogaeth

9.—(1) Rhaid i awdurdod, ym mhob blwyddyn, gasglu'r wybodaeth a ganlyn—

Impact and monitoring of policies and practices

8.—(1) An authority must make such arrangements as it considers appropriate for—

- (a) assessing the likely impact of its proposed policies and practices on its ability to comply with the general duty;
- (b) assessing the impact of any—
 - (i) policy or practice that the authority has decided to review,
 - (ii) revision that the authority proposes to make to a policy or practice,

on its ability to comply with that duty;

- (c) monitoring the impact of its policies and practices on its ability to comply with that duty; and
- (d) publishing reports in respect of any assessment that—
 - (i) is referred to in sub-paragraph (a) or (b); and
 - (ii) shows that the impact or likely impact (as the case may be) on the authority's ability to comply with that duty is substantial.

(2) Reports under paragraph (1)(d) must set out, in particular—

- (a) the purpose of—
 - (i) the proposed policy or practice;
 - (ii) the policy or practice; or
 - (iii) the proposed revision to a policy or practice,

that has been assessed;

- (b) a summary of the steps that the authority has taken to carry out the assessment;
- (c) a summary of the information that the authority has taken into account in the assessment;

(d) the results of the assessment; and

(e) any decisions taken by the authority in relation to those results.

(3) When carrying out an assessment referred to in paragraph (1)(a) or (b) the authority must—

- (a) comply with the engagement provisions; and
- (b) have due regard to relevant information that it holds.

Training and collection of employment information

9.—(1) An authority must, in each year, collect the following information—

- (a) nifer y personau a gyflogir gan yr awdurdod ar y dyddiad perthnasol yn y flwyddyn honno; neu am mai hwy yw'r person y gwnaed cyhuddiad yn ei erbyn;
- (b) nifer y personau a gyflogir gan yr awdurdod ar y dyddiad hwnnw yn ôl—
- (i) swydd;
 - (ii) gradd, ond dim ond pan fo awdurdod yn gweithredu system graddau mewn cysylltiad â'i gyflogeion;
 - (iii) cyflog;
 - (iv) y math o gontract (gan gynnwys contractau parhaol a chyfnod penodol, ond heb fod yn gyfyngedig i hynny); a
 - (v) y patrwm gwaith (gan gynnwys trefniadau gweithio
llawnamser, rhan-amser a threfniadau gweithio hyblyg eraill ond heb fod yn gyfyngedig i hynny).
- (c) nifer y canlynol, yn ystod y cyfnod adrodd sy'n diweddu ar y dyddiad perthnasol yn y flwyddyn honno—
- (i) personau sydd wedi gwneud cais am gyflogaeth gyda'r awdurdod (heb gynnwys personau sydd eisoes wedi eu cyflogi gan yr awdurdod);
 - (ii) cyflogeion yr awdurdod sydd wedi newid swydd yn yr awdurdod gan gynnwys y nifer a wnaeth gais am newid swydd a'r nifer a fu'n llwyddiannus (neu fel arall) yn eu cais;
 - (iii) cyflogeion yr awdurdod sydd wedi gwneud cais am hyfforddiant a'r nifer a fu'n llwyddiannus (neu fel arall) yn eu cai
 - (iv) cyflogeion yr awdurdod a gwblhaodd yr hyfforddiant;
 - (v) cyflogeion yr awdurdod a fu neu sydd yn rhan o weithdrefnau cwyno naill ai am mai hwy yw'r person a wnaeth gyhuddiad yn erbyn un arall
- (vi) cyflogeion yr awdurdod a fu neu sydd yn destun achos disgyblu; a
- (vii) cyflogeion yr awdurdod a ymadawodd â chyflogaeth yr awdurdod.
- (2) Ym mharagraff (1) (ac eithrio paragraff (1)(b)) mae unrhyw gyfeiriad at nifer y personau neu'r cyflogeion yn cynnwys, mewn cysylltiad â phob un o'r nodweddion gwarchoddedig, y niferoedd sy'n rhannu'r nodwedd warchoddedig.
- (3) Ym mharagraff (1)(b) mae'r cyfeiriad at nifer y personau a gyflogir yn cynnwys, mewn cysylltiad â nodwedd warchoddedig rhyw, y nifer sydd yn fenywod a'r nifer sydd yn ddynion.

- (a) the number of persons employed by the authority at the relevant date in that year;
 - (b) the number of persons employed by the authority at that date broken down by—
 - (i) job;
 - (ii) grade but only where an authority operates a grade system in respect of its employees;
 - (iii) pay;
 - (iv) contract type (including, but not limited to permanent and fixed-term contracts); and
 - (v) working pattern (including, but not limited to full-time, part-time and other flexible working arrangements).
 - (c) the number, during the reporting period ending with the relevant date in that year, of—
 - (i) persons who have applied for employment with the authority (excluding persons already employed by the authority);
 - (ii) the authority's employees who have changed position within the authority including the number who applied to change position and the number who were successful (or otherwise) in their application;
 - (iii) the authority's employees who have applied for training and the number who were successful (or otherwise) in their application;
 - (iv) the authority's employees who completed the training;
 - (v) the authority's employees who were or are involved in grievance procedures by reason of either being
 - the person who made an accusation against another or being the person against whom an accusation was made;
 - (vi) the authority's employees who were or are the subject of disciplinary proceedings; and
 - (vii) the authority's employees who left the employment of the authority.
- (2) In paragraph (1) (other than paragraph (1)(b)) any reference to the number of persons or employees includes, in respect of each protected characteristic, the numbers who share the protected characteristic.
- (3) In paragraph (1)(b) the reference to the number of persons employed includes, in respect of the protected characteristic of sex, the number who are women and the number who are men.

(4) Rhaid i'r awdurdod gyhoeddi'r wybodaeth y mae wedi ei chasglu yn unol â pharagraffau (1), (2) a (3).

(5) Nid oes dim yn y rheoliad hwn y mae awdurdod i'w ddibynnu arno yn y fath fodd ag i'w gwneud yn ofynnol i unrhyw berson y mae'r paragraff hwn yn gymwys iddo ddarparu gwybodaeth i'r awdurdod.

(6) Mae paragraff (5) yn gymwys—

(a) i unrhyw gyflogai i'r awdurdod; a

(b) i unrhyw berson sy'n gwneud cais am gyflogaeth gyda'r awdurdod.

10. Rhaid i awdurdod wneud unrhyw drefniadau y mae'n credu eu bod yn briodol—

(a) i hyrwyddo gwybodaeth a dealltwriaeth ymhlith ei gyflogeion o'r ddyletswydd gyffredinol a'r dyletswyddau yn y Rheoliadau hyn; a

(b) i ddefnyddio ei weithdrefnau asesu perfformiad (os oes ganddo rai) i nodi anghenion hyfforddi ei gyflogeion mewn perthynas â'r dyletswyddau hynny ac i fynd i'r afael â hwynt.

Cyflog a chynlluniau gweithredu

11.—(1) Rhaid i awdurdod, pan fydd yn ystyried beth ddylai ei amcanion cydraddoldeb fod, roi sylw dyladwy i'r angen i gael amcanion cydraddoldeb sy'n mynd i'r afael ag achosion unrhyw wahaniaethau rhwng cyflog unrhyw berson neu bersonau a gyflogir gan yr awdurdod ("P") (yn ôl y digwydd)—

(a) sydd â nodwedd warchoddedig;

(b) sydd yn rhannu nodwedd warchoddedig,

a'r rheini nad oes ganddynt neu nad ydynt yn rhannu nodwedd o'r fath, pan fo'r amod cyntaf neu'r ail amod yn cael ei fodloni.

Yr amod cyntaf yw bod y gwahaniaeth yn wahaniaeth am reswm sy'n gysylltiedig â'r ffaith bod gan P nodwedd warchoddedig neu ei fod yn rhannu'r nodwedd warchoddedig honno (yn ôl y

digwydd).

Yr ail amod yw ei bod yn ymddangos yn rhesymol debyg i'r awdurdod bod y gwahaniaeth yn wahaniaeth am reswm sy'n gysylltiedig â'r ffaith bod gan P nodwedd warchoddedig neu ei fod yn rhannu'r nodwedd warchoddedig honno (yn ôl y digwydd).

(2) Rhaid i'r trefniadau y cyfeirir atynt yn rheoliad

7(1) gynnwys hefyd drefniadau ar gyfer nodi a chasglu gwybodaeth ynghylch—

(a) unrhyw wahaniaethau rhwng cyflog personau y cyfeirir atynt ym mharagraff (1); a

(b) achosion unrhyw wahaniaethau o'r fath.

(3) Os yw awdurdod—

(a) yn unol â pharagraff (1), wedi nodi unrhyw

(4) The authority must publish the information it has collected in accordance with paragraphs (1), (2) and (3).

(5) Nothing in this regulation is to be relied upon by an authority so as to require any person to whom this paragraph applies to provide information to the authority.

(6) Paragraph (5) applies to—

- (a) any employee of the authority; and
- (b) any person who applies for employment with the authority.

10. An authority must make such arrangements as it considers appropriate for—

- (a) promoting amongst its employees knowledge and understanding of the general duty and the duties in these Regulations; and
- (b) for using its performance assessment procedures (if any) to identify and address the training needs of its employees in relation to those duties.

Pay and action plans

11.—(1) An authority must, when considering what its equality objectives should be, have due regard to the need to have equality objectives that address the causes of any differences between the pay of any person or persons employed by the authority ("P") who (as the case may be)—

- (a) has a protected characteristic;
- (b) share a protected characteristic,

and those who do not where either the first or second condition is met.

The first condition is that the difference is for a reason that is related to the fact that P has or share that protected characteristic (as the case may be).

The second condition is that it appears to the authority to be reasonably likely that the difference is for a reason that is related to the fact that P has or share that protected characteristic (as the case may be).

(2) The arrangements referred to in regulation 7(1) must also contain arrangements for identifying and collecting information about—

- (a) any differences between the pay of persons referred to in paragraph (1); and
- (b) the causes of any such differences.

(3) Where an authority—

- (a) has, in accordance with paragraph (1),

wahaniaeth cyflog rhwng y rhywiau; a

- (b) heb gyhoeddi amcan cydraddoldeb i fynd i'r afael ag achosion y gwahaniaeth hwnnw,

rhaid i'r awdurdod gyhoeddi'r rhesymau dros ei benderfyniad i beidio â chyhoeddi amcan o'r fath.

12.—(1) Rhaid i awdurdod gyhoeddi cynllun gweithredu sy'n gosod—

- (a) unrhyw bolisi sydd gan yr awdurdod sy'n ymwneud â'r angen i fynd i'r afael ag achosion unrhyw wahaniaeth cyflog rhwng y rhywiau;
- (a) unrhyw amcan cyflog cyfartal rhwng y rhywiau a gyhoeddwyd ganddo;
- (b) unrhyw ddiwygiad i amcan cyflog cyfartal rhwng y rhywiau neu unrhyw amcan diwygiedig o ran cyflog cyfartal rhwng y rhywiau y mae'n ofynnol iddo ei gyhoeddi yn unol â rheoliad 4(6);
- (ch) gwybodaeth y mae'n ofynnol iddo ei chyhoeddi yn unol â rheoliad 3(2)(a) mewn cysylltiad ag unrhyw amcan cyflog cyfartal rhwng y rhywiau;
- (c) unrhyw resymau y mae'n ofynnol iddo eu cyhoeddi yn unol â rheoliad 11(3).

(2) Os bydd awdurdod, mewn perthynas ag unrhyw amcan cyflog cyfartal rhwng y rhywiau, yn gwneud unrhyw un neu ragor o'r pethau y cyfeirir atynt yn rheoliad 4(5), rhaid iddo naill ai ddiwygio'r cynllun gweithredu a gyhoeddwyd ganddo neu gyhoeddi cynllun gweithredu newydd.

Adolygu etc. trefniadau

13.—(1) Rhaid i awdurdod adolygu'n barhaus y trefniadau y mae'r rheoliad hwn yn gymwys iddynt.

(2) Caiff awdurdod, ar unrhyw adeg, ddiwygio'r trefniadau y mae'r rheoliad hwn yn gymwys iddynt neu eu hail-wneud.

(3) Mae'r rheoliad hwn yn gymwys i drefniadau y mae'r awdurdod wedi eu gwneud i gydymffurfio

â'r canlynol—

- (i) rheoliad 3(2)(b); (ii) rheoliad 7(1); (iii) rheoliad 8(1); a (iv) rheoliad 10.

Cynlluniau Strategol Cydraddoldeb

14.—(1) Erbyn 2 Ebrill 2012 fan bellaf, rhaid i awdurdod wneud Cynllun Strategol Cydraddoldeb (CSC).

(2) Rhaid i'r CSC gynnwys datganiad sy'n nodi—

- (a) disgrifiad o'r awdurdod;
- (b) amcanion cydraddoldeb yr awdurdod;

identified any gender pay difference; and

- (b) has not published an equality objective to address the causes of that difference,

the authority must publish reasons for its decision not to publish such an objective.

12.—(1) An authority must publish an action plan setting out—

- (a) any policy of the authority that relates to the need to address the causes of any gender pay difference;
- (b) any gender pay equality objective published by it;
- (c) any revision to a gender pay equality objective or any revised gender pay equality objective it is required to publish in accordance with regulation 4(6);
- (d) information it is required to publish in accordance with regulation 3(2)(a) in respect of any gender pay equality objective;
- (e) any reasons it is required to publish in accordance with regulation 11(3).

(2) If, in respect of a gender pay equality objective, an authority does any of the things referred to in regulation 4(5) it must either amend the action plan published by it or publish a new action plan.

Review etc. of arrangements

13.—(1) An authority must keep the arrangements to which this regulation applies under review.

(2) An authority may, at any time, revise or remake the arrangements to which this regulation applies.

(3) This regulation applies to arrangements that the authority has made to comply with—

- (i) regulation 3(2)(b);
 - (ii) regulation 7(1);
 - (iii) regulation 8(1);
- and
- (iv) regulation 10.

Strategic Equality Plans

14.—(1) Not later than 2 April 2012, an authority must make a Strategic Equality Plan (SEP).

(2) The SEP must contain a statement setting out—

- (a) a description of the authority;
- (b) the authority's equality objectives;

- (c) mewn perthynas â phob un o'r amcanion hynny—
- (i) y camau y mae'r awdurdod wedi eu cymryd neu'n bwriadu eu cymryd er mwyn cyflawni'r amcan; a
- (ii) pa mor hir y mae'r awdurdod yn disgwyl y bydd yn ei gymryd er mwyn cyflawni'r amcan; ac
- (ch) y trefniadau y mae wedi eu gwneud neu'n bwriadu eu gwneud i gydymffurfio â'r canlynol—
- (i) rheoliad 3(2)(b); (ii) rheoliad 7(1); (iii) rheoliad 8(1); a (iv) rheoliad 10 a
- (d) cynllun gweithredu yr awdurdod y cyfeirir ato yn rheoliad 12.

(3) Caiff yr CSC gynnwys unrhyw faterion eraill sy'n berthnasol ar gyfer cydymffurfio â'r ddyletswydd gyffredinol fel y bo'r awdurdod yn credu eu bod yn briodol.

(4) Caiff yr awdurdod ddiwygio'i CSC neu ei ail- wneud ar unrhyw adeg.

Paratoi, cyhoeddi ac adolygu CSCau

15.—(1) Wrth wneud CSC, ei ail-wneud neu ei ddiwygio rhaid i'r awdurdod—

- (a) cydymffurfio â'r darpariaethau ymgysylltu; a
- (b) rhoi sylw dyladwy i'r wybodaeth berthnasol y mae'n ei dal.

(2) Rhaid i awdurdod gyhoeddi ei CSC cyn gynted ag y bo modd ar ôl i'r CSC gael ei wneud neu ei ail- wneud.

(3) Os bydd awdurdod yn diwygio'i CSC heb ei ail- wneud yna rhaid i'r awdurdod, cyn gynted ag y bo modd ar ôl gwneud y diwygiadau, gyhoeddi'r diwygiadau neu'r CSC fel y'i diwygiwyd (fel y mae'n credu ei bod yn briodol).

(4) Caiff awdurdod gydymffurfio â'r ddyletswydd i gyhoeddi ei CSC drwy nodi'r CSC

fel rhan o ddogfen gyhoeddedig arall neu mewn nifer o ddogfennau cyhoeddedig eraill.

At ddibenion y paragraff hwn mae "CSC" yn cynnwys unrhyw ddiwygiadau i'r CSC.

(5) Rhaid i'r awdurdod adolygu'n barhaus—

(a) ei CSC; a

(b) unrhyw ddiwygiadau a wnaed i'r CSC.

(6) Wrth gydymffurfio â'r ddyletswydd ym mharagraff (5), rhaid i'r awdurdod roi sylw dyladwy—

- (i) i'r wybodaeth berthnasol y mae'n ei dal; a

(c) in respect of each of those objectives—

(i) the steps that the authority has taken or intends to take in order to fulfil the objective; and

(ii) how long the authority expects it will take in order to fulfil the objective;

(d) the arrangements that it has made or intends to make to comply with—

(i) regulation

3(2)(b); (ii)

regulation 7(1);

(iii) regulation

8(1); (iv) regulation

10, and

(e) the authority's action plan referred to in regulation 12.

(3) The SEP may contain such other matters that are relevant to compliance with the general duty as the authority considers appropriate.

(4) The authority may revise or remake its SEP at any time.

Preparation, publication and review of SEPs

15.—(1) In making, remaking or revising a SEP the authority must—

(a) comply with the engagement provisions; and

(b) have due regard to relevant information that it holds.

(2) An authority must publish its SEP as soon as possible after the SEP is made or remade.

(3) If an authority revises its SEP without remaking it then the authority must, as soon as possible after making the revisions, publish the revisions or the SEP as revised (as it considers appropriate).

(4) An authority may comply with the duty to

publish its SEP by setting out the SEP as part of another published document or within a number of other published documents.

For the purpose of this paragraph "SEP" includes any revisions to the SEP.

(5) The authority must keep under review—

(a) its SEP; and

(b) any revisions made to the SEP.

(6) In complying with the duty in paragraph (5) the authority must have due regard to—

(i) relevant information that it holds; and

- (ii) i unrhyw wybodaeth arall y mae'r awdurdod yn credu y byddai'n debyg o'i gynorthwyo yn yr adolygiad.

Adroddiadau gan awdurdodau ar gydymffurfio â'r ddyletswydd gyffredinol

16.—(1) Rhaid i awdurdod, mewn perthynas â phob cyfnod adrodd, gyhoeddi adroddiad heb fod yn hwyrach na'r dyddiad perthnasol yn y flwyddyn yn dilyn y flwyddyn y mae'r cyfnod adrodd hwnnw'n diweddau ynddi.

(2) Rhaid i'r adroddiad nodi—

- (a) y camau y mae'r awdurdod wedi eu cymryd i nodi a chasglu gwybodaeth berthnasol;
- (b) mewn cysylltiad â gwybodaeth berthnasol y mae'n ei dal, sut y mae'r awdurdod wedi defnyddio'r wybodaeth honno er mwyn cydymffurfio â'r ddyletswydd gyffredinol a'r dyletswyddau yn y Rheoliadau hyn;
- (c) rhesymau'r awdurdod dros beidio â chasglu unrhyw wybodaeth berthnasol y mae wedi ei nodi ond nad yw'n ei dal;
- (ch) y cynnydd y mae'r awdurdod wedi ei wneud er mwyn cyflawni pob un o'i amcanion cydraddoldeb.
- (d) datganiad gan yr awdurdod ar effeithiolrwydd y canlynol—
 - (i) ei drefniadau er gyfer nodi a chasglu gwybodaeth berthnasol; a
 - (ii) y camau y mae wedi eu cymryd er mwyn cyflawni pob un o'i amcanion cydraddoldeb; ac
- (dd) yr wybodaeth y mae'n ofynnol i'r awdurdod ei chyhoeddi o dan reoliad 9(4) oni bai bod yr awdurdod eisoes wedi cyhoeddi'r wybodaeth honno.

(3) Caiff yr awdurdod, os yw'n credu ei bod yn briodol gwneud hynny, gynnwys mewn adroddiad unrhyw fater arall sy'n berthnasol ar gyfer cydymffurfiaeth yr awdurdod â'r ddyletswydd gyffredinol a'r dyletswyddau yn y Rheoliadau hyn.

(4) Caiff yr awdurdod gydymffurfio â'r ddyletswydd i gyhoeddi adroddiad o dan baragraff (1) drwy osod ei adroddiad (gan gynnwys unrhyw fater y cyfeirir ato ym mharagraff (3)) fel rhan o ddogfen gyhoeddedig arall neu o fewn nifer o ddogfennau cyhoeddedig eraill.

Adroddiadau gan Weinidogion Cymru ar gydymffurfio â'r ddyletswydd gyffredinol etc. gan awdurdodau

17.—(1) Rhaid i Weinidogion Cymru, yn unol â pharagraff (2), gyhoeddi adroddiadau sy'n rhoi trosolwg o'r cynnydd a wnaed gan awdurdodau tuag at gydymffurfio eu hunain â'r ddyletswydd gyffredinol.

- (ii) any other information that the authority considers would be likely to assist it in the review.

Reports by authorities on compliance with the general duty

16.—(1) An authority must, in respect of each reporting period, publish a report not later than the relevant date in the year following the year in which that reporting period ends.

(2) The report must set out—

- (a) the steps that the authority has taken to identify and collect relevant information;
- (b) in respect of relevant information that it holds, how the authority has used that information for the purpose of complying with the general duty and the duties in these Regulations;
- (c) the authority's reasons for not collecting any relevant information that it has identified but does not hold;
- (d) the progress that the authority has made in order to fulfil each of its equality objectives;
- (e) a statement by the authority of the effectiveness of—
 - (i) its arrangements for identifying and collecting relevant information; and
 - (ii) the steps it has taken in order to fulfil each of its equality objectives; and
- (f) the information that the authority is required to publish by regulation 9(4) unless the authority has already published that information.

(3) The authority may, if it considers it appropriate to do so, include in a report any other matter that is relevant to compliance by the authority with the general duty and the duties in these Regulations.

(4) The authority may comply with the duty to publish a report under paragraph (1) by setting out its report (including any matter referred to in paragraph (3)) as part of another published document or within a number of other published documents.

Reports by Welsh Ministers on compliance with the general duty etc. by authorities

17.—(1) The Welsh Ministers must, in accordance with paragraph (2), publish reports that set out an overview of the progress made by authorities towards compliance by those authorities with the general duty.

- (2) Rhaid i adroddiadau o dan baragraff (1) (a) cael eu cyhoeddi—
- (i) erbyn 31 Rhagfyr 2014 fan bellaf; a
 - (ii) bob hyn a hyn ar ôl hynny heb fod yr ysbeidiau rhwng yr adroddiadau yn hwyrach na diwedd pob cyfnod olynol o bedair blynedd gan ddechrau ar y dyddiad y cyhoeddwyd yr adroddiad diwethaf arno yn unol â'r is- baragraff hwn; a

(b) cael eu cyhoeddi

- (i) erbyn 31 Rhagfyr 2016 fan bellaf; a
- (ii) bob hyn a hyn ar ôl hynny heb fod yr ysbeidiau rhwng yr adroddiadau yn hwyrach na diwedd pob cyfnod olynol o bedair blynedd gan ddechrau ar y dyddiad y cyhoeddwyd yr adroddiad diwethaf arno yn unol â'r is-baragraff hwn.

(3) Rhaid i adroddiadau o dan baragraff (1), ac eithrio'r adroddiadau cyntaf yn unol â pharagraff (2)(a)(i) a (b)(i), gwmpasu'r cyfnod ers y dyddiad y cyhoeddwyd yr adroddiad diwethaf o dan baragraff (2)(b).

(4) Rhaid i Weinidogion Cymru gyhoeddi adroddiad, erbyn 31 Rhagfyr 2011 fan bellaf —

- (a) yn nodi trosolwg o'r cynnydd a wnaed gan awdurdodau tuag at gydymffurfio eu hunain â'r ddyletswydd gyffredinol i'r graddau y mae'n ymwneud â phersonau sy'n rhannu nodwedd warchoddedig anabledd; a
- (b) gwybodaeth sy'n ymwneud â'r cyfnod o 2 Rhagfyr 2008 i 5 Ebrill 2011 y byddai wedi bod yn ofynnol i Weinidogion Cymru ei chynnwys mewn adroddiad o dan reoliad 5 o Reoliadau Gwahaniaethu ar sail Anabledd (Awdurdodau Cyhoeddus) (Dyletswyddau Statudol) 2005(1) yn rhinwedd rheoliad 5(2)a o'r rheoliadau hynny petai'r rheoliadau hynny mewn grym.

(5) Rhaid i adroddiadau o dan y rheoliad hwn nodi hefyd gynigion Gweinidogion Cymru

yn glŷn â chydlynu camau gan awdurdodau mewn modd a fydd yn sicrhau rhagor o gynnydd tuag at gydymffurfiaeth yr awdurdodau hynny â'r ddyletswydd gyffredinol.

(2) Reports under paragraph (1) must— (a) be published—

- (i) not later than 31 December 2014; and
- (ii) subsequently at intervals not later than the end of each successive period of four years beginning with the date that the last report was published in accordance with this sub-paragraph; and

(b) be published—

- (i) not later than 31 December 2016; and
- (ii) subsequently at intervals not later than the end of each successive period of four years beginning with the date that the last report was published in accordance with this sub-paragraph.

(3) Reports under paragraph (1), other than the first reports in accordance with paragraph (2)(a)(i) and (b)(i), must cover the period since the date that the last report under paragraph (2)(b) was

published.

(4) The Welsh Ministers must publish a report, not later than 31 December 2011, setting out—

- (a) an overview of the progress made by authorities towards compliance by them with the general duty so far as it relates to persons who share the protected characteristic of disability; and
- (b) information relating to the period 2 December 2008 to 5 April 2011 that the Welsh Ministers would have been required to include in a report under regulation 5 of the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005(1) by virtue of regulation 5(2)(a) of those regulations if those regulations were in force.

(5) Reports under this regulation must also set out the Welsh Ministers' proposals for the coordination of action by authorities so as to bring about further progress towards compliance by those authorities with the general duty.

(1) O.S. 2005/2966. Yn rhinwedd rheoliad 5(1) a (3) o'r Rheoliadau hynny ac Atodlen 2 iddynt yr oedd Cynulliad Cenedlaethol Cymru a gyfansoddid gan Ddeddf Llywodraeth Cymru 1998 (p.38) yn awdurdod adrodd at ddibenion rheoliad 5. Trosglwyddwyd y swyddogaeth honno yn union ar ôl diwedd y cyfnod cychwynnol, i Weinidogion Cymru yn rhinwedd y ffaith bod paragraff 30(1) o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p.32) yn weithredol. Diffinnir y cyfnod cychwynnol (yr "initial period") yn adran 161(5) o Ddeddf 2006 a diffinnir swyddogaeth ("function") yn adran 158(1) o'r Ddeddf honno.

(1) S.I. 2005/2966. By virtue of regulation 5(1) and (3) of and Schedule 2 to those Regulations the National Assembly for Wales constituted by the Government of Wales Act 1998 (c. 38) was a reporting authority for the purposes of regulation 5. That function was transferred, immediately after the end of the initial period, to the Welsh Ministers by virtue of the operation of paragraph 30(1) of Schedule 11 to the Government of Wales Act 2006 (c. 32). The "initial period" is defined in section 161(5) of the 2006 Act and "function" is defined in section 158(1) of that Act.

Caffael cyhoeddus

18.—(1) Pan fo awdurdod sy'n awdurdod contractio yn bwriadu gwneud cytundeb perthnasol ar sail y cynnig mwyaf manteisiol yn economaidd, rhaid iddo roi sylw dyladwy i'r cwestiwn a ddylai'r meini prawf ynglŷn â dyfarnu gynnwys ystyriaethau sy'n berthnasol i'r modd y mae'n cyflawni'r ddyletswydd gyffredinol.

(2) Pan fo awdurdod sy'n awdurdod contractio yn bwriadu pennu amodau ynglŷn â chyflawni cytundeb perthnasol, rhaid iddo roi sylw dyladwy i'r cwestiwn a ddylai'r amodau gynnwys ystyriaethau sy'n berthnasol i sut mae'n cyflawni'r ddyletswydd gyffredinol.

(3) Yn y rheoliad hwn—

mae i "awdurdod contractio", "cytundeb fframwaith" a "contractau cyhoeddus" yr un ystyr â ("contracting authority"), ("framework agreement") a ("public contracts") yn y drefn honno yn y Gyfarwyddeb Sector Cyhoeddus(1); ac

ystyr "cytundeb perthnasol" ("relevant agreement") yw contract cyhoeddus sydd wedi ei ddyfarnu neu gytundeb fframwaith sydd wedi ei gwblhau a'r naill neu'r llall yn un sy'n cael ei reoleiddio gan y Gyfarwyddeb Sector Cyhoeddus.

Cydymffurfio â dyletswyddau gan Weinidogion Cymru etc.

19. Pan fo'r Rheoliadau hyn yn ei gwneud yn ofynnol i Weinidogion Cymru, Prif Weinidog Cymru a Chwnsler Cyffredinol Llywodraeth Cynulliad Cymru baratoi CSC, cyhoeddi adroddiad neu wneud unrhyw beth arall, cânt gydymffurfio â'r ddyletswydd drwy weithredu ar y cyd.

Datgelu gwybodaeth

20. Nid oes dim yn y Rheoliadau hyn i'w gymryd fel petai'n ei gwneud yn ofynnol i awdurdod gyhoeddi gwybodaeth—

(a) petai gwneud hynny'n gyfystyr â thorri—

(i) cyfrinachedd mewn modd y gallai

unrhyw berson fynd i gyfraith yn ei gylch; neu

(ii) Deddf Diogelu Data 1998(2); neu

(b) petai gan yr awdurdod hawl i wrthod dangos yr wybodaeth mewn achos neu at ddibenion achos mewn llys neu dribiwnlys yng Nghymru a Lloegr.

Public procurement

18.—(1) Where an authority that is a contracting authority proposes to enter into a relevant agreement on the basis of an offer which is the most economically advantageous it must have due regard to whether the award criteria should include considerations relevant to its performance of the general duty.

(2) Where an authority that is a contracting authority proposes to stipulate conditions relating to the performance of a relevant agreement it must have due regard to whether the conditions should include considerations relevant to its performance of the general duty.

(3) In this regulation—

"contracting authority" ("awdurdod contractio"), "framework agreement" ("cytundeb fframwaith") and "public contracts" ("contractau cyhoeddus") have the same meaning as in the Public Sector Directive(1); and

"relevant agreement" ("cytundeb perthnasol") means the award of a public contract or the conclusion of a framework agreement that is regulated by the Public Sector Directive.

(1) Mae'r term cyfatebol Saesneg ("Public Sector Directive") wedi ei ddiffinio yn adran 155(3) o Ddeddf Cydraddoldeb 2010 (p.15).

(2) 1998 p.29.

Compliance with duties by Welsh Ministers etc.

19. Where the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government are required by these Regulations to prepare a SEP, publish a report or do any other thing, they may comply with the duty by acting jointly.

Disclosure of information

20. Nothing in these Regulations is to be taken to require an authority to publish information if—

(a) to do so would constitute a breach—

(i) of confidence actionable by any person; or

(ii) of the Data Protection Act 1998(2); or

(b) the authority would be entitled to refuse to produce the information in or for the purposes of proceedings in a court or tribunal in England and Wales.

(1) The term "Public Sector Directive" is defined in section 155(3) of the Equality Act 2010 (c. 15).

(2) 1998 c. 29.

Carl
Sargeant

Y Gweinidog dros Gyfiawnder
Cymdeithasol a Llywodraeth Leol, un o
Weinidogion Cymru

Minister for Social Justice and Local
Government, one of the Welsh Ministers

3 Ebrill 2011

3 April 2011

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