

Understanding the

Public Sector

Equality Duty:

Resources for the

Third Sector in Wales



Comisiwn
Cydraddoldeb a
Hawliau Dynol

Equality and
Human Rights
Commission

Foreword

Promoting equality and diversity are central values for the third sector.

In Wales the sector is a diverse mix of charities, community and voluntary groups organised in both formal and informal ways. Having access to comprehensive and accessible information is vital for our knowledge and understanding as well as enabling us to influence decisions and bring about change. The Public Sector Equality Duty is an important duty for us to understand and use to advance the interests of people and communities across Wales.

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Contact Us

If you would like more information please contact:

The Equality and Human Rights Commission on 02920447710 or at wales@equalityhumanrights.com

www.equalityhumanrights.com/wales

The Equality and Human Rights Commission's

Powers and legal work

The Equality and Human Rights Commission (the Commission) is the regulatory body responsible for enforcing the Equality Act 2010. Our duties include encouraging the reducing of inequality, working towards eliminating discrimination and promoting human rights.

There are a number of different approaches we can take, depending on the particular circumstances we are trying to change. They range from guidance and assistance to investigations and court action.

We do not get involved in every issue or dispute. We only use our legal or enforcement powers when it is the best way to achieve change, such as:

- to clarify the law, so people and organisations have a clearer understanding of their rights and duties
- to highlight priority issues and force these back to the top of the agenda, and
- to challenge policies or practices that cause significant disadvantage, some times across a whole industry or sector.

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Our legal work includes:

- pre-enforcement work to informally resolve issues of compliance with the Equality Act
- enforcement work such as inquiries and investigations, and
- strategic litigation

To find out more about the Commission's legal work visit the legal pages of our website.

Public Sector Equality Duty monitoring and compliance in Wales

The Commission in Wales is the regulator of the Public Sector Equality Duty (PSED) and takes a strategic approach to working with listed public authorities around the PSED in order to encourage, guide, monitor and regulate activity.

In 2017 the Commission agreed a PSED strategy for Wales which includes analysis of compliance with the specific duties, monitoring the impact of action taken in relation to the PSED and working with the third sector to increase awareness and understanding of the obligations placed on listed public authorities by the PSED.

Find out more about our monitoring work on [our website](#).

The Public Sector Equality Duty as a lever for change

The PSED requires public sector organisations to have due regard for the need to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations between communities. For the third sector, the PSED provides an opportunity to challenge discrimination and contribute to making Wales a fairer place. Organisations can use the PSED to tackle both individual instances of discrimination and wider issues of inequality.

Understanding the duties that the PSED places on listed public authorities can help third sector organisations to challenge non-compliance, reduce inequality and challenge discrimination.

The information contained within this document will help you to understand the PSED. It will allow you to take practical steps to challenge discrimination and inequality using the other resources developed as part of this resource pack.

The Equality Act 2010

The Equality Act 2010 (the Act) brought together and replaced previous anti-discrimination laws into a single Act. It simplified and strengthened the law, removed inconsistencies and made it easier for people to understand and comply with it. Most of the Act came into force on 1 October 2010.

The Public Sector Equality Duty

The Equality Act 2010 includes a Public Sector Equality Duty (the 'general duty'), replacing the separate duties on race, disability and gender equality. This came into force on 5 April 2011. The general duty applies across Wales, England and Scotland and covers the following protected characteristics:

- age
- gender reassignment
- sex
- race – including ethnic or national origin, colour or nationality
- disability
- pregnancy and maternity
- sexual orientation, and
- religion or belief – including lack of belief.

It applies to marriage and civil partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination.

In addition to the general duty in Wales there are a number of specific duties that apply only to listed public authorities in Wales¹

¹ A listed public authority in Wales (or 'listed body') is one contained in Part 2 of Schedule 19 of the Act as supplemented and amended by the Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011.

The General Duty

Who is covered by the general duty?

Most public authorities are covered by the general duty. The general duty applies to private or third sector (voluntary and community) organisations where they are carrying out a public function on behalf of a public authority or in their own right. A public function is a function of a public nature as defined in the Human Rights Act 1998. An example of this would be a private company running a prison on behalf of the Government. The company would be covered by the general equality duty only with regard to its public functions. The general duty would not apply to the company's other work, such as providing security services for a supermarket.

What is a public function?

As set out in the Human Rights Act² there are a number of factors that must be considered when determining if a function is of a public nature:

- the extent to which the state has assumed responsibility for the function
- the role and responsibility of the state in relation to the subject matter
- the nature and extent of the public interest in the function
- the nature and extent of any statutory power or duty in relation to the function
- the extent to which the state, directly or indirectly, regulates, supervises or inspects the performance of the function
- the extent to which the state makes payment for the function
- whether the function involves or may involve the use of statutory coercive powers, and
- the extent of the risk that improper performance of the function might violate an individual's Convention right

² Human Rights Act 1998

What is the general duty?

The aim of the general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. It is an integral and important part of the mechanisms for ensuring the fulfilment of the aims of the Equality Act 2010. The duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept under review. This will achieve better outcomes for all. In exercising their functions, public authorities are required to have due regard to the need to:

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

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

The Act explains that having due regard for advancing equality of opportunity (the second aim) involves:

- removing or minimising disadvantages experienced by people due to their protected characteristics
- taking steps to meet the needs of people from protected groups where these are different from the needs of other people, and
- encouraging people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low

The Act describes fostering good relations (the third aim) as tackling prejudice and promoting understanding between people who share a protected characteristic and those who do not. Meeting the duty may involve treating some people more favourably than others, as long as this does not contravene other provisions within the Act.

The specific duties in Wales

The specific duties apply to listed public bodies³ in Wales. They do not apply to non-devolved public authorities operating in Wales. Most devolved public authorities in Wales covered by the general duty are also covered by the specific duties. The specific duties set out the steps that listed bodies in Wales must take in order to demonstrate that they are paying due regard to the general duty.

The specific duties in Wales are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. These duties came into force in Wales on 6 April 2011. The specific duties in Wales cover:

- [objectives](#)
- [strategic equality plans](#)
- [engagement](#)
- [assessing impact](#)
- [equality information](#)
- [employment information](#)
- [pay differences](#)
- [staff training](#)
- [procurement](#)
- [annual reporting](#)
- [publishing](#)
- [Welsh Ministers' reporting](#)
- [review, and](#)
- [accessibility](#)

For example, all listed bodies are required to publish equality objectives based on relevant equality information and an equality impact assessment.

These resources will set out the requirements that each of the specific duties places on relevant bodies.

Exceptions

There are limited exceptions to the application of the general duty in relation to certain functions, such as immigration (in relation to race, religion, age and the advancement of equality) and to judicial functions. A small number of bodies which would otherwise be covered by the duty because they carry out public functions are specifically excluded from being subject to the duty. This includes the National Assembly for Wales. The general duty in relation to age does not apply in relation to education and service provision in schools or in relation to children's homes.

Understanding the specific duties in action

Some of the specific duties are more likely to create opportunities to challenge discrimination and reduce inequality. The duties on engagement, objectives, strategic equality plans, equality information and equality impact assessments have greatest potential and are therefore covered in greater detail in these resources. More information on all the duties can be found on the Commission's website.

³ A listed public authority in Wales (or 'listed body') is one contained in Part 2 of Schedule 19 of the Act as supplemented and amended by the Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011.

Equality Objectives

Listed bodies are required to prepare and publish equality objectives to meet the general duty. Listed bodies should have objectives to cover each of the protected characteristics and show how they will address any pay gaps.

Listed bodies that do not have an objective for the gender pay gap or an objective that covers each of the protected characteristics must publish their reasoning for not having these objectives.

Equality objectives should be based on relevant equality information, for example a health board may have an equality objective to increase the take up of mental health services among men because data shows they are underrepresented.

In preparing their equality objectives listed bodies should engage with relevant individuals or groups that would have an interest in this objective.

Arrangements must be made to ensure that progress against each objective is monitored and that timescales are published alongside the objectives.

Listed bodies can review their objective at any stage. It is reasonable to expect public bodies to review their objectives when new evidence becomes available that is relevant to their activities.

Strategic Equality Plans

All listed bodies in Wales must have Strategic Equality Plans that include:

- a description of the authority
- its equality objectives
- how it intends to meet its objectives
- what arrangements it has to identify and collect relevant equality information (and arrangements for publishing this) details of how it will promote knowledge and understanding of the general and specific duties
- its arrangements for assessing impact, monitoring the actual and ongoing impact and publishing reports where an assessment shows a substantial impact
- an action plan relating to gender pay objectives

In preparing its Strategic Equality plan a listed body must engage appropriately and have due regard to any relevant equality information.

Engagement

Listed bodies in Wales must involve people who they consider to be representatives of one or more of the protected groups that have an interest in how the listed body carries out its functions. Engagement must take place in relation to: setting equality objectives, preparing and reviewing Strategic Equality Plans, identifying how a listed body's work and activities may contribute to meeting its general duty, assessing the likely impact on protected groups of any policies or practices being proposed or reviewed.

Listed bodies should:

- understand that engagement rather than consultation is required; engagement should involve the active participation of stakeholders and an open dialogue where those involved have a demonstrable influence on the decision making process
- engage when proposals are at formative stage, and
- consult the National Principles for Public Engagement⁴

Assessing impact

Listed bodies must assess the likely impact of proposed policies and practices on their ability to comply with the general duty, including any policies or practices being reviewed or revised.

They must also publish reports of the assessment where they have identified substantial impact (or likely impact) on the listed body's ability to meet the general duty. Following the introduction or revision of policies and practices, listed bodies must monitor the ongoing impact of its ability to meet the general duty.

Reports on assessments must include the purpose of the policy or practice that has been assessed, the steps taken to carry out the assessment, the information used as part of the assessment, the result of the assessment and any decision taken in relation to those.

In addition listed bodies must have conducted engagement as part of the process, and had due regard for the relevant information it holds.

⁴ <https://participation.cymru/en/principles/>

Equality information

Listed bodies in Wales should identify relevant information to allow them to assess how the work they do may help fulfil the three aims of the general duty. This information should be used when developing equality objectives, strategic equality plans and when assessing impact.

Listed bodies must:

- make arrangements to periodically identify relevant information that is held, and to identify and collect relevant information that it does not hold
- make arrangements to identify and collect information about differences in pay, the causes of any differences between employees with and without a protected characteristic, and
- publish relevant information if it is appropriate to do so.

As part of the specific duty on annual reporting these bodies must publish the reasons for not collecting relevant information that it has identified but does not hold.

Other specific duties

Employment information - listed bodies must collect and publish on an annual basis information relating to their workforce by protected characteristic.

Pay differences – listed bodies must have due regard to the need to have objectives to address the causes of any pay differences between those who are from protected groups and those who are not; or to make arrangements to identify and collect information about differences in pay between those who share protected characteristics and those who do not.

Listed bodies must also prepare and publish an objective in relation to addressing any gender pay differences identified.

Staff training – listed bodies must make arrangements to promote knowledge and understanding of the PSED among its employees.

Procurement – when procuring works, goods or services listed bodies must consider if it is appropriate to include award criteria that would help to meet the general duty, and if it would be appropriate to include conditions relating to the performance of the contract.

Annual reporting – listed bodies in Wales must produce an annual report which includes information required by the specific duties and sets out progress against their equality objectives.

Welsh Ministers' reporting – Welsh Ministers are subject to all the specific duties in the same way as other listed bodies in Wales. In addition, Welsh Ministers have a specific duty to publish a report on how devolved public authorities in Wales are meeting their general duty.

Publishing – listed bodies must publish in an accessible format: an annual report, Strategic Equality Plan, equality objectives, their reasons for not publishing an equality objective in respect of one or more protected characteristic or an identified gender pay difference, reports of impact assessments where impact is substantial, specific employment information, and any relevant equality information.

Review – listed bodies must review their equality objectives at least every four years but can update them whenever they deem it necessary. They must also review their Strategic Equality Plan with due regard to relevant information that may be available.

Accessibility – listed bodies in Wales must take all reasonable steps to ensure that any document or information they are required to publish to meet their general or specific equality duties is published in a form that is accessible to people from protected groups.

Further information

The Commission's website contains several guides which give greater detail on the general and specific duties in Wales:

1. [The essential guide to the public sector equality duty: An overview for listed public authorities in Wales](#)
2. [Equality objectives and Strategic Equality Plans: A guide for listed public authorities in Wales](#)
3. [Engagement: A guide for listed public authorities in Wales](#)
4. [Assessing impact: A guide for listed public authorities in Wales](#)
5. [Equality information: A guide for listed public authorities in Wales](#)
6. [Employment information, pay differences and staff training: A guide for listed public authorities in Wales](#)
7. [Procurement: A guide for listed public authorities in Wales](#)
8. [Annual reporting, publishing and Ministerial duties: A guide for listed public authorities in Wales](#)

Resources for the third sector in Wales

A number of practical resources accompany this document and can be used to take forward your priorities:

1. [Using this resource pack](#)
2. [Equality objective and Strategic Equality Plan information sheet](#)
3. [Staff training information sheet](#)
4. [Equality Impact Assessment information sheet](#)
5. [Engaging representatives of protected groups information sheet](#)
6. [Who is covered by the PSED? information sheet](#)
7. [The nine protected characteristics](#)
8. [Flyer: Introducing the PSED](#)
9. [Template letters](#)

Advice for individuals

The Equality Advisory Support Service provides free advice to individuals who may have been treated unfairly:

Freephone 0808 800 0082

Textphone 0808 800 0084

Or write to them at:

FREEPOST
EASS HELPLINE
FPN6521