Guidance

Technical guidance on the public sector equality duty: Wales

Equality and Human Rights Commission

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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 (the Commission) has a key role to play in bringing the Act to life. The Commission is committed to its vision of a modern Britain where everyone is treated with dignity and respect, and everybody has an equal chance to succeed.

That is why the Commission is 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 Act, 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 needs of the public sector equality duty, outlines the requirements of the Act 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 [the Commission’s website](https://www.equalityhumanrights.com/en/advice-and-guidance).

# Chapter 1: Introduction

## The Equality Act 2010

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’.
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 2.18**).

s.149

s.149(7)

## Status of this guidance

1. 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. This guidance is not a statutory Code issued under s.14 EA 2006. The guidance may be used as evidence in legal proceedings.
2. 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.[[1]](#footnote-1)

## Scope of the guidance

1. This guidance covers the public sector equality duty as set out in Part 11 of the Act. This guidance also covers The Equality Act 2010 (Specific Duties) (Wales) Regulations 2011 as amended (the Regulations) which impose specific duties on certain public authorities listed in the Regulations.
2. Those parts of the guide which deal with the public sector equality duty in section 149 of the Act apply (subject to the exceptions set out in **Annex C**) to all public authorities, and those discharging public functions, across Great Britain.

## Human rights

1. 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 HRA.

s.6 HRA

s.149(2) and 150(5)

1. Courts and tribunals have a duty to interpret primary legislation (including the Act) 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.
2. 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. The glossary at Annex E explains the key terms used in this Technical Guidance.

##  How to use the guidance

1. Bodies subject to the duty, including listed authorities[[2]](#footnote-2), should read **Chapters 1 to 5 and Chapter 7** of the guidance which relate to the general equality duty.
2. 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 Regulations, and

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

Appendices:

* **Annex A**: What is meant by ‘public authorities’ and ‘public functions’
* **Annex B**: Prohibited conduct
* **Annex C**: Exceptions
* **Annex D**: Assessments
* **Annex E**: Glossary
* **Annex F**: Link to the Equality Act 2010 Schedule 19, as amended
* **Annex G**: Link to The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

## Examples in the guidance

1. Two types of examples are used in this guidance:
* Case law examples, which show how the courts have interpreted the Act, are shown in yellow boxes and are taken from decided cases; these are titled ‘Case law’.
* Examples in shaded boxes coloured blue are examples of good practice; these are titled ‘Good practice’. The good practice examples are intended to 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. The Commission has published further non-statutory guidance on the public sector equality duty which is available on [our website](https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance).

# Chapter 2: Introduction to the public sector equality duty

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.
2. The public sector equality duty set out in s.149 of the Equality Act 2010 (the Act) is referred to in this guidance as the general equality duty.

## What is the general equality duty?

1. 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:
2. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
3. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and
4. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
5. In this guidance we refer to these as the three aims of the general equality duty.
6. **Paras 2.7 to 2.12** explain to which bodies and to which functions the duty applies.
7. 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**.

s.149(1)

## To whom does the general equality duty apply?

1. The general equality duty applies to public authorities listed in Schedule 19 to the Act in respect of all their functions, unless otherwise specified.[[3]](#footnote-3) It also applies to others who are not listed but exercise public functions, in respect of those functions. This is explained further in **Annex A**.[[4]](#footnote-4)
2. 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.[[5]](#footnote-5)
3. 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?

1. The duty must be complied with when a body subject to it is ‘exercising a function’.
2. The courts have said that there is no scope for depriving ‘function’ of much of its ordinary meaning.[[6]](#footnote-6) For example, in relation to a local council, the High Court said that the word ‘functions’ embraces ‘all the duties and powers of a local authority: the sum total of the activities Parliament has entrusted to it’.[[7]](#footnote-7)
3. 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. For a local authority, it can include everything from setting a school’s budget[[8]](#footnote-8) to closing libraries.[[9]](#footnote-9)

s.149(1) and (2)

1. 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.[[10]](#footnote-10) Elsewhere, the Court of Appeal has also stated that the general equality duty not only applies to general formulation of policy, but also applies to decisions made in applying policy in individual cases.[[11]](#footnote-11)
2. The courts have also made it clear that the general equality duty applies not only when overall strategies are made, but also when individual decisions that implement those strategies are made.[[12]](#footnote-12)

**Case law**

A local authority was challenged for failing to comply with the Disability Equality Duty[[13]](#footnote-13) 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.[[14]](#footnote-14)

1. 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.[[15]](#footnote-15) 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.[[16]](#footnote-16)
2. 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 **paras 5.46 and 5.47** on practical compliance).

**Case law**

A school had a uniform policy which permitted only one pair of plain ear studs and a wristwatch 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 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.[[17]](#footnote-17) 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 the general equality duty in its decision making about the particular girl’s wish to wear the Kara once the issue arose.[[18]](#footnote-18)

1. 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

1. The Act sets out nine protected characteristics:
* age
* disability
* gender reassignment
* marriage and civil partnership
* pregnancy and maternity
* race
* religion or belief
* sex, and
* sexual orientation.
1. 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.
2. However, the second and third aims of the duty (advancing equality of opportunity and fostering good relations) only apply in relation to persons who share a ‘relevant protected characteristic’.
3. S.149(7) sets out the list of ‘relevant protected characteristics’. This includes all the protected characteristics set out above except marriage and civil partnership status.
4. 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 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.[[19]](#footnote-19)
5. The first aim 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.
6. The provision banning age discrimination in services and public functions (under Part 3 of the Act) took effect on 1 October 2012.[[20]](#footnote-20) 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 **Annex C**).

s.4

## What is the purpose of the public sector equality duty?

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. **Chapter 4** discusses the tools available in the Act to enable a body subject to the duty to advance equality.

s.149(6)

1. 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, and
* a reduction in instances of discrimination and resulting claims.

## Who benefits from the duty?

1. The duty potentially benefits everyone because it applies to characteristics common to everyone. For example, everyone has a race and a sexual orientation.
2. There are also some characteristics covered by the duty which will not apply to everyone, such as disability.
3. 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.
4. 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.

Good practice

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 did not 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.

1. 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

1. 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 government minister, a chief inspector, a group of commissioners; or a board, authority, commission, council or the governors of a school.

## Exceptions

1. There are a number of exceptions to the general equality duty. These are set out in **Annex C**.

## What does ‘due regard’ mean?

1. 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.
2. 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’?

1. 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.[[21]](#footnote-21) The greater the relevance and potential impact, the higher the regard required by the duty.
2. 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.
3. 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. 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 less likely 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.
1. 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.
2. In R (on the application of 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 out[[22]](#footnote-22) have been accepted by courts in later cases.[[23]](#footnote-23) Those principles are:
* 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.
* 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][[24]](#footnote-24) 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; and (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].
1. In R (on the application of 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:
* 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.
1. 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.
2. It is important to recognise that case law subsequent to Brown and Bracking indicates that the principles set out are not to be read as statute, but provide the framework for considering the application of, and compliance with, the equality duty.[[25]](#footnote-25)
3. The role of evidence in giving proper consideration to the aims of the equality duty is dealt with in **Chapter 5** (see **para 5.16** onwards).
4. 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.
5. 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’.[[26]](#footnote-26)

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

1. 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).
2. Some actions may support more than one of the aims of the duty and so interrelate.

Good practice

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 Act and the aim to foster good relations.

# Chapter 3: The general equality duty aims

## Introduction

1. This chapter explains what the Equality Act 2010 (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.
2. 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.[[27]](#footnote-27)
3. 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**, and
* 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**.

## Section 1: Eliminating discrimination and other prohibited conduct

1. 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.[[28]](#footnote-28)
2. 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.
3. The duty requires relevant bodies to tackle the consequences of past decisions which failed to give due regard to the equality aims.[[29]](#footnote-29) This would include existing policies or practices which have never been subject to ‘due regard’ consideration.

Case law

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.[[30]](#footnote-30)

1. 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. The public sector equality duty is an important consideration when policies and procedures are being established or piloted by a public authority.[[31]](#footnote-31)
2. 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. 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.
1. 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

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

1. 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’.[[32]](#footnote-32)
2. It will be easier to successfully defend the kind of claims referred to in the case law example following **para 3.6** if the respondent is able to demonstrate that they 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.[[33]](#footnote-33)

### Discrimination or prohibited conduct by others

1. The provisions in the Act addressing harassment by third parties have been repealed.[[34]](#footnote-34) 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.[[35]](#footnote-35) However, bodies are subject to the duty to promote equality of opportunity and to foster good relations – see below – and in this respect will need to consider how they deal with the actions and potential actions of third parties.

## Section 2: Advancing equality of opportunity

1. People who share a protected characteristic as compared with people who do not 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, and
* disproportionately concentrated in certain low-status occupations or grades.

This list is not exhaustive.

1. This second aim of the duty recognises that eliminating discrimination that is unlawful under the Act will not of itself address these issues.
2. 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:
3. remove or minimise disadvantages suffered by people who share a relevant protected characteristic that are connected to that characteristic. See **paras 3.24 and 3.25**
4. 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 3.26 to 3.36, and
5. 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 3.37 to 3.41.

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

**s.149(3)**

1. 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.
2. 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 3.27**.

### The relevance of positive action measures to advancing equality of opportunity

1. 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**.
2. 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. 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.

Good practice

A police and crime commissioner 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 disproportionally 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.

1. 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

1. 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.
2. A body subject to the duty is required to have due regard to the need to remove or minimise such disadvantages.

Good practice

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 a Sharia-compliant fund in its range of investment fund choices.

#### (b) Meeting needs

1. People with certain protected characteristics may have needs that are different from other people’s needs. 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.
2. 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.

Good practice

A Health Board becomes aware that the ongoing long-term use of hormones increases the risk of breast cancer for transsexual women aged 50 to 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

1. 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.
2. The duty applies to meeting needs which arise within the scope of functions covered by the general equality duty.
3. 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.

##### Meeting the needs of disabled people

1. 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.[[36]](#footnote-36) 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.[[37]](#footnote-37)

s.149(4)

s.20

1. In the case of Pieretti[[38]](#footnote-38), a couple had been evicted from their tenancy due to non-payment of rent and 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 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 (that is, by making further inquiries).
2. The judgment is 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.
3. Since Pieretti, there have been a number of other judgments concerning the obligations of authorities in relation to disability, housing and the public sector equality duty, and the nature of the focus on disability as a protected characteristic. These judgments have established that when considering an application for assistance under the Housing Act 1996 on the basis of homelessness and vulnerability, the equality duty requires that the reviewer focuses ‘very sharply’ on (i) whether the applicant has a disability (or has another relevant protected characteristic)’’ (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other features, on the applicant if and when homeless, and (iv) whether the applicant is, as a result, “vulnerable”.[[39]](#footnote-39)
4. A similar approach applies to the question whether offered accommodation is suitable;[[40]](#footnote-40) as well as to the question whether it is reasonable for someone to continue to occupy accommodation.[[41]](#footnote-41)
5. In relation to disability in particular, delivering equality of opportunity by meeting needs can sometimes in practice require additional services to be offered to disabled people. However, any alternative service should be just that – an alternative which a disabled person can choose to use.

#### (c) Encouraging participation

1. 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.

1. ‘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.
2. 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. (**Paras 5.16 to 5.30** discuss gathering equality evidence.)

Good practice

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

1. 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.
2. 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

1. The Act says that fostering good relations involves having due regard, in particular, to the need to:
2. tackle prejudice, and
3. promote understanding.

**s.149(5)**

### What does fostering good relations mean?

1. 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.
1. 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’.[[42]](#footnote-42)
2. The duty is to foster good relations between people who share a particular protected characteristic and people who do not share it. In practice this could mean fostering good relations between, for example, people with and without a visual impairment.

### The aim of the duty to foster good relations

1. 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 prejudice between people and promote understanding between people who share a protected characteristic and people who do not share it
* 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, both online and offline, and
* 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

1. 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.
2. 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.

Good practice

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

1. The basic presumption under the Equality Act 2010 (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.
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, and
* by allowing positive action in limited circumstances.
1. 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.
2. More detail about when the Act enables or requires people with certain protected characteristics to be treated differently from others can be found in our [Services, public functions and associations: Statutory Code of Practice](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf) and [Employment: Statutory Code of Practice](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf). 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

1. S.149(4) of the Act states that the steps involved in meeting the needs of disabled people include steps to take account of disabled people’s 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.
2. The Act contains a number of provisions allowing steps to be taken to take account of disabled people’s 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.[[43]](#footnote-43) 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

1. Our [Services, public functions and associations: Statutory Code of Practice](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf) and [Employment: Statutory Code of Practice](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) provide details of exceptions to the general rule against direct discrimination in the Act.
2. 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 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

1. 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.[[44]](#footnote-44) 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.

Good practice

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

1. As part of their compliance with the general equality duty, relevant bodies could consider whether it is possible to take positive action and, if so, whether it would be appropriate to take that action.

### When is positive action lawful?

1. It will be lawful for a relevant body to take positive action where it reasonably thinks that people who share a protected characteristic:
2. experience a disadvantage connected to that characteristic, or
3. have needs that are different from the needs of persons who do not share that characteristic, or
4. have disproportionately low participation in an activity compared to those who do not share that protected characteristic.
5. 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.

**s.158**

Case law

A local authority made sure it fulfilled its housing duty to residents by nominating people for housing association properties. One of these properties was managed by a charitable housing association, which allocated housing only to applicants from the Orthodox Jewish community. This housing association had mostly larger (four bedroom or above) properties. The local authority and the housing association were challenged by someone who was not offered a four-bedroom house, despite being top of the housing list, as she was not a member of the Orthodox Jewish community. The Court found that the housing association’s policy was a legitimate and proportionate means of meeting the housing needs of members of that community, as there was significant evidence of disadvantage in the specific housing needs of the Orthodox Jewish community in that area. It was therefore not unlawfully discriminatory.[[45]](#footnote-45)

### What action is lawful?

1. 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.
1. Positive action is not the same as positive discrimination, which is unlawful. The difference between the two is explained in our [Services, public functions and associations: Statutory Code of Practice](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).[[46]](#footnote-46)

Good practice

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.

# Chapter 5: Complying with the general equality duty in practice

## Introduction

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.
2. A body subject to the duty will find the principles in **paras 2.45 to 2.47** of **Chapter 2** 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 the principles to consider are:
* knowledge of the duty
* timeliness
* real consideration
* sufficient information
* the duty is non-delegable
* review, and
* evidence of consideration.
1. 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.
2. 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.
3. How will it assess the relevance of the duty to the functions it exercises?

**See: Identifying the relevance of the general equality duty (paras 5.5 to 5.15)**

1. How will it gather the information it needs to enable it to comply with the duty?
2. What review mechanisms will it put in place to ensure that compliance with the duty is continuing?

**See: Ensuring a sound evidence base (paras 5.16 to 5.30)**

1. How will it ensure that those exercising those functions understand their obligations under the duty?
2. How will it ensure that the duty is complied with both before and during any decision-making process?
3. 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 5.40 to 5.60)**

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

**See: Providing evidence of compliance (paras 5.61 to 5.63)**Listed authorities should also refer to Chapter 6

1. 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 5.64 to 5.66)**

Identifying the relevance of the general equality duty

1. 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 **Annex A**).
2. 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.
3. 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 they are not.[[47]](#footnote-47) 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.
4. 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. Assessing whether the general equality duty is relevant to a function will require some analysis and should be more than guesswork, 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.
6. 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. Bodies subject to the duty will need to ensure that they consider the application of the duty at the outset – such as at the point at which budgetary decisions are made which affect a particular service.[[48]](#footnote-48)
7. 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 because of the impact of their work on other bodies subject to the duty.
8. 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.
9. 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.
10. If circumstances change and affect the relevant activity then the applicability of the duty may need to be considered again.
11. 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.

Good practice

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 grounds 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

1. 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.
2. The courts have made clear the need to collate relevant information in order to have evidence-based decision making[[49]](#footnote-49) 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.[[50]](#footnote-50)
3. Adequate and accurate equality evidence, properly understood and analysed, is at the root of effective compliance with the general equality duty. Without it, a body subject to the duty would be unlikely to be able to have due regard to its aims.

Case law

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 license.

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 of the Disability Discrimination Act 1995.[[51]](#footnote-51)

1. 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, and
* monitor their progress against these objectives.
1. 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?

1. Where one or more aims of the duty have been identified as being relevant to a function (as described in **paras 5.5 to 5.15**) 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.
2. 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.
3. 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 Commission, local or national representative groups etc.
4. 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.

Good practice

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, 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

1. 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.
2. 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 (involvement) of equality groups, or national data.[[52]](#footnote-52)

Case law

A police force introduced a mobile network of surveillance cameras to help
it to identify people of interest on a watch list at particular times and places. The system used facial recognition technology, which is a form of artificial intelligence (AI). It is widely understood that such systems can have inbuilt bias and may lead to discriminatory decision making, for example by misidentifying women and ethnic minorities more often than other people.

An individual took action against the police force, alleging that the introduction of this AI system was in breach of his human rights, as well as equality and data protection laws. The Court established that the police had not adequately considered the equality and human rights implications of the decision to implement the new technology. The Court determined that the police force ‘never sought to satisfy themselves, either directly or by way of independent verification’ that the software program did not have an unacceptable bias on grounds of race or sex. The general equality duty required the force to have undertaken a more detailed consideration of the potential equality implications of its decision to use the new surveillance system. This should have happened before the new system was first trialled, and on an ongoing basis once it was implemented.

The case also clarified that where a public body is procuring a service from a third party, the public body must still fully consider the requirements under the general equality duty. It cannot rely on the third party to do this, and it is not good enough to suggest that the analysis is too difficult or the information needed is commercially sensitive. The duty is non-delegable.[[53]](#footnote-53)

Good practice

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.

1. 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.[[54]](#footnote-54)

Good practice

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.

1. 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

1. In deciding what evidence to gather, a body subject to the duty could ask itself the following questions:
2. What information, if any, does it already routinely collect which could help it understand the impact of its functions?
3. Is that information disaggregated by different protected characteristics? If not, can it be?
4. 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?
5. Are there steps it needs to take to ensure the confidentiality of any sensitive information it collects?
6. If it does not have relevant information, what alternative sources of information are available?
7. Would it be useful to engage with the people particularly affected by a decision or policy?
8. Is it possible to work locally with other bodies subject to the duty to share resources in gathering evidence?
9. 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

1. 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.
2. 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.
3. The importance of engagement has been highlighted by case law, where the court, in finding a breach of the general equality 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’.[[55]](#footnote-55)

### What does engagement mean?

1. Engagement[[56]](#footnote-56) 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.
2. 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 engagement should also be proportionate to the size and resources of the body and the significance of the issue.

Case law

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.[[57]](#footnote-57)

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.[[58]](#footnote-58)

1. 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.

Good practice

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 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.

1. 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.[[59]](#footnote-59)

### Engagement in practice

1. 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 will it reflect the outcome of any engagement?
1. 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, and
* 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

1. Everybody 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.
2. A relevant body must comply with the duty for all types of decisions 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.[[60]](#footnote-60)
3. 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, and
* demonstrably takes this information fully into account throughout the decision-making process.
1. 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.[[61]](#footnote-61) They have also emphasised that, without evidence of ‘a structured attempt to focus on the details of equality issues’, the decision maker is likely to be in difficulties if the decision is challenged.[[62]](#footnote-62)
2. 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.
3. The courts have also said that ‘It is certainly unreal to require a “comprehensive scrutiny” (whatever that may mean) at every moment throughout the process. Precisely what consideration is due can and will vary from time to time during the process… To the extent that the Judge may have indicated at one stage of his judgment that a full Equality Impact Assessment will *always* suffice, provided only that it is produced prior to the decision finally being made, that may be going too far.’[[63]](#footnote-63)

### Ensuring decision makers understand the duty

1. 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, and
* ensure that the implications of the general equality duty are set out in reports or other papers for decision makers.[[64]](#footnote-64)
1. 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.

Good practice

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

1. 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.[[65]](#footnote-65)
2. 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.
3. 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
* 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 Equality Act 2010 (the Act), and
* 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.

Case law

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 that 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.[[66]](#footnote-66)

### Giving due weight to the equality aims in making decisions

1. 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 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.[[67]](#footnote-67)
2. 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.
3. 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.
4. 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.[[68]](#footnote-68)
* 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.[[69]](#footnote-69)
* However even if the number of people affected by a particular decision may be small, for example a decision which affects trans 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.

### Ensuring due regard through the use of guidance and criteria

1. 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.
2. 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.
3. 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.

Good practice

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 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.

1. 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.
2. In the above example, a head teacher considering whether to exclude a pupil would still be expected to have due regard in making that individual decision.
3. 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

1. 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.[[70]](#footnote-70) 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.
2. 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 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.

Case law

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’.[[71]](#footnote-71)

1. 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, and
* 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.

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

1. 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, and
* organisations to which it grants aid.
1. 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.
2. The following two sections deal briefly with two circumstances: Commissioning and procurement (**paras 5.67 to 5.76**, and Audit, inspecting and regulating others (**paras 5.77 to 5.81)**.

### Commissioning and procurement

1. 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

1. 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.

1. 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.
2. 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.
3. 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.
4. 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.

**s.149(2)**

1. 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

1. The general equality duty applies to procurement activities when they are carried out by a public authority subject to the duty, or when a body is exercising a public function.
2. The requirement to comply with the general duty must be taken into account alongside other relevant requirements.[[72]](#footnote-72)
3. Procurement should advance and contribute to a body’s equality objectives. In identifying a body’s needs at the outset of the procurement process, the impact upon equality can be identified and relevant equality requirements built into the specification, so that when it goes to market the ability of a tenderer to meet those requirements can be assessed and built into the contract. Equality can then be subject to review and performance management alongside the other elements of the contract. Listed authorities may be required to consider award criteria and conditions in relation to public procurement in accordance with the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, Regulation 18. Further guidance is provided in **Chapter 6**.

### Auditing, inspecting and regulating others

1. For some bodies, their public functions will primarily involve interaction with others, for example through auditing, inspecting or regulating other bodies’ activities.
2. 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.
3. Where audit or inspection bodies have a broader role, such as the inspection or assessment of the general performance of an 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.
4. 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).
1. 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 equality information could be gathered by the organisations within that sector, for example in relation to policing, health screening or tackling homelessness.

Good practice

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

### Who is covered by the specific duties?

1. In Wales, the public bodies listed in Part 2 of Schedule 19 to the Equality Act 2010 (as amended) (the Act) are subject also to specific duties found in the Regulations[[73]](#footnote-73).
2. Those public bodies are referred to in this chapter as ‘listed authorities’. All the public authorities that are listed in Part 2 of Schedule19 of the Act must comply with the specific duties[[74]](#footnote-74).
3. Other bodies may be added by order of a minister of the Crown or the Welsh Government’s ministers.[[75]](#footnote-75)

### The specific duties

1. 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.
2. When complying with the specific duties a listed authority must therefore consider the three aims of the general duty at all times.
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.
1. The specific duties cover:
2. equality objectives. **See paras 6.24 to 6.60**.**(Section 2 of Chapter 6)**
3. engagement with appropriate persons. **See paras 6.61 to 6.75**. **(Section 3 of Chapter 6)**
4. relevant information. **See paras 6.76 to 6.95**. **(Section 4 of Chapter 6)**
5. assessing and monitoring the impact of policies and practices. **See paras 6.96 to 6.110**. **(Section 5 of Chapter 6)**
6. collecting employment information and addressing the cause of pay differences. **See paras 6.111 to 6.120**. **(Section 6 of Chapter 6)**
7. training. **See paras 6.121 to 6.124**.**(Section 7 of Chapter 6)**
8. pay differences and action plans. **See paras 6.125 to 6.136**. **(Section 8 of Chapter 6)**
9. strategic equality plans. **See paras 6.137 to 6.150**. **(Section 9 of Chapter 6)**
10. annual reports. **See paras 6.151 to 6.156**. **(Section 10 of Chapter 6)**
11. additional specific duties which apply only to the Welsh Government’s ministers. **See paras 6.157 to 6.160**. **(Section 11 of Chapter 6)**
12. procurement. **See paras 6.161 to 6.174**. **(Section 12 of Chapter 6)**
13. compliance by the Welsh Government’s ministers. **See para 6.175**. **(Section 13 of Chapter 6)**
14. disclosure of information. **See paras 6.176 to 6.178**. **(Section 14 of Chapter 6)**
15. accessibility of information. **See paras 6.179 to 6.181**. **(Section 15 of Chapter 6**

### How the specific duties interlink

1. These specific duties are interlinked and complement each other continuously to inform the listed authority as to how to achieve better equality outcomes.
2. 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.
3. 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.

### Partnerships

1. Listed authorities may be involved in partnerships in order to better deliver their services, for example Regional Partnership Boards. Where those partnerships do not have a separate legal identity, they will not be subject themselves to the general equality duty or specific duties. However, where a partner carries out a public function it will have to comply with the general equality duty and, if listed in the Schedule to the Regulations, the specific duties in relation to any public functions that it exercises in the partnership.
2. A listed authority which works in partnership with one or more other listed authorities might wish to collaborate in assessing the impact of a policy or practice of the partnership. This should help to make sure there is consistency in relation to the assessment of the impact of the policy or practice in question between members of the partnership, and should also reduce the burden on any single member of the partnership.
3. Where a national or supervisory body or ‘umbrella’ organisation is developing a policy in the expectation that the policy will be adopted by one or more listed authorities, each authority should, where necessary, individually assess the impact before adopting the policy.
4. Where the body developing the broad policy is a listed authority then it will be expected to have assessed the impact of the policy before it promotes it to the bodies it oversees or supports.

### Publishing information

1. Certain regulations require certain information to be published. 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.[[76]](#footnote-76)

Regulation 6

1. 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

1. 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.

Regulation 16

1. Publishing this information is in line with the principle of transparency; however, note the legal limitations to publishing information referred to in **paras 6.176 and 6.177**.

### What is appropriate?

1. 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 **para 6.6** when deciding what is appropriate.
2. The listed authority must also act according to the usual principles of public law (that is, it must act in a reasonable and proportionate manner, taking into account relevant considerations).

### Remedies, sanctions and the specific duties

1. 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.
2. 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 (s.32(11) of the EA 2006).
3. 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

1. 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 **paras 6.49 to 6.56** for further information on review).

Regulation 3(1)

### What is an equality objective?

1. 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.
2. 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 (that is, the equality objectives should be proportional in impact).
3. 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 **paras 6.43 to 6.48)**. Equality objectives should not be seeking to achieve an improvement for everyone; in order to achieve the three aims of the general duty, they need to address specific disadvantages which apply to groups with protected characteristics.

Regulation 3(2)(b)

Good practice

An NHS Health Board sets an equality objective to improve mental health provision for all residents within its area. This does not eliminate the disadvantage. The evidence shows that mental health provision for children and young people has the worst outcomes in their area. In order to eliminate that disadvantage and advance equality of opportunity, the Health Board amends its equality objective so that it states to improve mental health provision for children and young people.

### Considering and designing equality objectives

1. 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.
2. In those cases, the listed authority should prioritise and direct resources effectively towards addressing those specific equality issues.
3. 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.
4. When considering and designing equality objectives, a listed authority should also as a matter of good practice consider the guiding principles set out in **para 6.6**, which complement the specific duties. This will help show transparency in how decisions are made and demonstrate leadership in setting a positive culture.
5. 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.
6. 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 **Section 8 of Chapter 6**.

Regulations 3(3) and (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.

1. 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.
2. 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 **paras 6.49 to 6.56**.

Regulation 4(2)(b)

### Making equality objectives

1. 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.
1. The process must be transparent and well informed. When considering what equality objectives should be, a listed authority may wish to tackle the most significant inequalities that affect people across different protected characteristics in relation to which it, as an authority, can take action, based on the evidence gathered. Robust and reliable evidence such as the Commission’s periodic state of equality and human rights report[[77]](#footnote-77) should be used to help inform this. 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 **Section 3 of Chapter 6**) and have due regard to the relevant information which it holds (see **Section 4 of Chapter 6**). For a full explanation of the duty to have due regard, see **Chapter 2**, especially **paras 2.39 to 2.51**.
2. The following chart shows the process that the listed authority should follow.[[78]](#footnote-78)

No

Yes

Engage with appropriate persons

Have due regard to relevant information held by the Welsh listed authority

Consider what the equality objectives should be

Any protected characteristics not to have an equality objective **or** only to have a pay difference objective?

Publish reasons for not having an equality objective

Design draft equality objectives and draft statement of steps to be taken

Engage with appropriate persons; have due regard to relevant information held by the listed authority

Design final equality objectives

Publish equality objectives

and the statement of steps to be taken

### Pay difference objective

1. 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.
2. 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.
3. Further information about specific duties relating to pay difference is set out in **Section 8 of Chapter 6**.

Regulation 11(1)

### Publishing equality objectives

1. There is a duty to have published equality objectives initially by 2 April 2012 and subsequently thereafter as the listed authority considers appropriate, at least every four years. This therefore imposes a continuing obligation on the listed authority to publish equality objectives at appropriate intervals. What is appropriate will depend on the circumstances of the listed authority (see **para 6.19**).

Regulation 4(2)(b)

**Good practice**

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 objectives 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

1. 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. Timescales must be included but can be amended if circumstances change.

Regulation 3(2)(a)

**Good practice**

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; and purchasing specialist equipment and training staff how to use it. These steps are clearly explained in a published action plan about how the objective will be fulfilled in practice. The timeframe for delivery must also be included in the published action plan. The action plan is regularly reviewed and updated when actions are completed or need amending.

1. 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.
2. 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 also need to be revised or remade (depending on the scale of the changes).

Regulations 15(5) and (6)

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

Regulation 15(1)

1. 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)

1. 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. Further information on strategic equality plans and annual reports is set out in **Sections 9 and 10 in Chapter 6**, respectively.

Regulation 16(2)(e)(ii)

### Review of equality objectives

1. Reviews of existing equality objectives must be carried out at appropriate intervals (at least every four years) so that the listed authority remains focused on achieving equality outcomes that are relevant and take account of developments.
2. 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 be subject to the duties to engage and have due regard to relevant information).
3. 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.
4. 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 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.
5. 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.
6. 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.

Regulation 4(4)

**Good practice**

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.

1. 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 the equality objective.
1. As a matter of good practice, and 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 **paras 6.32 to 6.35)**. 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 **paras 6.104 and 6.105**).

### Revising or remaking an equality objective

1. 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)

1. Remaking an equality objective means a thorough reworking of the equality objective. The remade equality objective must be published as a whole. The example following **para 6.54** 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.
2. 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 **para 6.36** (that is, 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)

1. If a listed authority revises or remakes an equality objective, it must either amend the statement of steps to be taken referred to in **para 6.43** or publish a new statement.

Regulation 4(7)

## Section 3: Engagement, Regulation 5

### Purpose of engagement

1. 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.
2. 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

Regulation 7(4) and (5)

* assessing the impact of policies and practices on complying with the general duty, and

Regulation 8(1)(a) and(b)

* making, remaking or revising strategic equality plans.

Regulation 15(1)

### Duty to involve

1. Whenever the duty to engage applies, the listed authority must involve such persons as it considers:
2. represent the interests of persons who share one or more of the protected characteristics, and
3. have an interest in the way that the listed authority carries out its functions.

Regulation 5(2)(a)

1. The listed authority must involve persons that it considers 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.
2. 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. Details of engagement activity should be recorded, including how such engagement has shaped the design of equality objectives in order to clearly demonstrate compliance with the engagement provisions.

### Discretion to involve and consult

1. The listed authority may also involve or consult such other persons as it considers appropriate. In exercising this discretion the listed authority must have regard to the need to involve or consult, so far as it 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.
This is intended to focus the attention of those exercisingpublic functions towards direct engagement with individuals who share one or more of the protected characteristics, not only the representatives of those individuals.

**Regulation 5(2)(b) & (c) and (3)**

### What is the difference between involving and consulting?

1. 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.

**Good practice**

An inspectorate wants to change its inspection criteria, so the duty to engage is relevant. Engaging with relevant stakeholders will enable it 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 the inspectorate carries out its 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

1. Effective engagement should be:
* well-structured and focused
* adequately resourced and accessible
* influential and transparent, and
* respectful of confidentiality.
1. 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.
2. 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.
3. Involvement and consultation must then be revisited whenever the duty to engage applies. (See **para 6.62**.)

### Proportionality

1. 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 (that is, a group of individuals who share one or more of the protected characteristics).
2. 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 **para 6.61**).
3. 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.
4. 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 education as they are in health, although the listed authority had only previously engaged with such persons on health issues.

Regulation 7(4) and (5)

## Section 4: Relevant information, Regulation 7

### Purpose of relevant information

1. 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 **paras 6.176 and 6.177**.
2. 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.
3. 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.
4. The duty to have due regard to relevant information arises when:
* 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

Regulation 7(4) and (5)

* assessing the impact of policies and practices on complying with the general duty, and

Regulation 8(1)(a) and (b)

* making, remaking, revising or reviewing strategic equality plans.

Regulation 15(1) and (5)

### What is relevant information?

1. Relevant information is defined as information that relates to compliance (or otherwise) by the listed authority with the general duty.
2. Relevant information may include, for instance: quantitative research (for example, surveys); qualitative research (such as results from focus groups); and 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.
3. 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.

Regulation 2

### Information held by a listed authority

1. 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. Further information on publishing is set out in the sections on strategic equality plans and annual reviews.
2. 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.
3. 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.

Regulation 7(1)(a) and (c)

### Information not held by a listed authority

1. 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 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 **paras 6.83 to 6.85**).

Regulation 7(1)(b)

**Good practice**

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 voluntary organisations who work with young people from different racial groups for information about where they contact young people. This enables them to decide where it would be most useful to locate the youth centre.

1. 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 **Section 10 of Chapter 6**.

Regulation 16(2)(c)

### Information about pay differences

1. 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 **Section 8 of Chapter 6**.

Regulation 11

1. The listed authority must make specific provision for identifying and collecting information about pay differences to fulfil this duty, see **Section 6 of Chapter 6**.

Regulation 11(2)

### Identifying and publishing relevant information

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

Regulation 7(4) and (5)

1. 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 that the listed authority could do that would be likely to contribute to compliance with the general duty.
2. 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.

Regulation 7(6)

**Good practice**

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, and 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 services, 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 meetings are 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.

1. 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

1. The listed authority must, from time to time, identify, collect and publish relevant information (including carrying out the assessment referred to in **paras 6.91 to 6.93**) as the listed authority considers appropriate. This means that there is a continuing duty to consider relevant information.

**Regulation 7(1)**

1. 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.

Regulation 13(3)(ii)

## Section 5: Impact and monitoring of policies and practices, Regulation 8

### Purpose of assessing and monitoring policies and practices

1. 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.
2. 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

1. A listed authority must make appropriate arrangements for **assessing**:
* 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.
1. Any such assessment must engage with appropriate persons and have due regard to relevant information that the listed authority holds.
2. 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 **paras 6.104 to 6.106**.

Regulation 8(1)(a) and (b)

### Assessment reports

1. The listed authority must also make arrangements for publishing reports in respect of assessments of the kind referred to in **para 6.98** (where there is a substantial impact on the listed authority’s ability to comply with the general duty).
2. Assessment reports must set out:
* the purpose of the policy, 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.
1. The publication of such reports should reflect the four guiding principles set out in **para 6.6**. 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.

**Regulation 8(1)(d)**

### Duty to monitor

1. 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 (that is, monitoring should be objective and the outcomes and findings should be effectively communicated within the listed authority and made available to its decision makers).
2. The decision makers may then decide whether any policy or practice should be reviewed and subsequently assessed in accordance with **para 6.98**.

**Regulation 8(1)(c)**

**Good practice**

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 disabled people.
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.

1. 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

1. 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?
1. 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.

**Good practice**

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

1. 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)

1. 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

1. Collecting, using and publishing equality information relating to employees will help the listed authority understand how its policies, practices and decisions affect individuals who share one or more of the protected characteristics.
2. Transparently communicating to employees the purpose of collecting this data is likely to lead to increased willingness by employees to provide information. Some listed authorities have introduced self-service systems to ensure that they are able to collect this data from all employees. Listed authorities must do all they can to ensure employees provide the information.
3. 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.
4. 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 **paras 6.176 and 6.177**.
5. 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

1. 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:
* In each year, the number of persons employed by the listed authority on 31 March of that year.
* In each year from 1 April to 31 March, the number of:
* persons who have applied for employment with the listed authority (excluding persons already employed by the listed authority)
* 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
* the listed authority’s employees who have applied for training and the number who were successful (or otherwise) in their application
* the listed authority’s employees who completed the training
* the listed authority’s employees who were or are involved in grievance procedures, whether as the accused or the accuser
* the listed authority’s employees who were or are the subject of disciplinary proceedings, and
* the listed authority’s employees who left the employment of the listed authority.

Regulations 9(1)(a) & (c) and (2)

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

1. 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:
* 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).

Regulation 9(1)(b)

1. This information **must** also be broken down according to the number who are women and the number who are men.
2. There is no requirement to collect or publish the information based on any protected characteristic other than sex. However, although not a requirement, collecting and publishing 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 **Section 8 of Chapter 6**.

Regulation 9(3)

### Publishing employment information

1. The above employment information must be included in an annual report unless it has already been published elsewhere (see **paras 6.154 and 6.155**). However, note the legal limitations on publishing information referred to in **para 6.176 and 6.177**.

Regulation 16(2)(f)

## Section 7: Training duties, Regulation 10

### Purpose and requirements of training duties

1. 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.
2. 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)

1. 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.
2. 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.

Regulation 10(b)

**Good practice**

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 local 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

1. 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

1. 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:
2. The difference in pay is related to the employee’s protected characteristic.
3. It appears to be reasonably likely to the listed authority that the difference is related to the employee’s protected characteristic.
4. 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 **paras 6.36 and 6.37**).

Regulation 11(1)

### Collecting information

1. The arrangements for identifying and collecting relevant information (see **paras 6.83 to 6.95**), 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 **Section 6 of Chapter 6**.
2. 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

1. If, in relation to a particular protected characteristic, a listed authority only publishes an equality objective that addresses the issue of pay differences 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.

Regulation 3(4)

1. 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.

Regulation 11(3)

### Gender pay inequality

1. In relation to any gender pay inequality, the listed authority is required (in addition to considering publishing a pay difference objective under **para 6.126** to publish an action plan.
2. 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

1. The regulations prescribe what must be set out in an action plan, namely:
* 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 **para 6.43**), and
* any reasons for a decision not to publish an objective to address the cause of any identified gender pay difference (see para **6.131**).

Regulation 12(1)

1. If a gender pay equality objective is revised or remade, the published action plan must be amended or a new action plan published.
2. 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 our [Equal Pay: Statutory Code of Practice](http://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

1. The strategic equality plan (the 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.
2. Publication of a plan will aid in the transparency of key decisions the listed authority has made in relation to its specific duties.
3. Although some component parts of the plan are not expressly subject to the duties to engage with appropriate persons and have due regard to relevant information, the plan as a whole is subject to those duties, so they apply to each component as part of the whole plan.
4. A listed authority has a duty to produce a strategic equality plan setting out:
* 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 fulfil each objective and the expected timescale for doing so
* the arrangements that the listed authority has made to comply with:
* monitoring the progress made and the effectiveness of the steps taken in order to fulfil each equality objective (see **para 6.43 to 6.48**)
* identifying, collecting and publishing relevant information (see **Section 4 of Chapter 6**
* assessing and monitoring the impact of policies and practices (including proposed policies and practices) and publishing any assessment reports (see **Section 5 of Chapter 6**)
* 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 **Section 7 of Chapter 6**, and
* the action plan relating to gender pay difference (see **para 6.134**).

Regulation 14(2)

1. 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.
2. 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 **paras 6.32 to 6.35**).
3. The plan may also be set out as part of another published document or within a number of other published documents.

Regulation 7(1)(c)

### Making, revising or remaking a strategic equality plan

1. In making, revising or remaking a plan, the listed authority must engage with appropriate persons and have due regard to relevant information it holds. The plan must be published as soon as possible after it is made or remade.
2. If the plan is revised (without being remade) then the listed authority must publish the revision or the revised plan as soon as possible.
3. Revising a strategic equality plan means any modification of the plan that is short of actually remaking or creating a new plan. Remaking a plan means a thorough reworking of the plan.
4. A strategic equality plan may be revised or remade at any time.

Regulation 15(1)

### Reviewing a strategic equality plan

1. 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 plan will include information which is itself periodically reviewed (such as equality objectives and the steps taken in order to fulfil them). The plan will therefore need to reflect any changes in such information.

Regulation 15(5)

1. 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. 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.
2. In either case, the listed authority must have due regard to the information and, if appropriate, revise or remake both the plan and any relevant equality objectives accordingly.

## Section 10: Annual reports, Regulation 16

### Purpose of annual reports

1. 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 **Section 11 of Chapter 6**).
2. 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).
3. The report must be published by 31 March of the year following the reporting period.
4. The report must set out:
* 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:
* arrangements for identifying and collecting relevant information, and
* steps taken in order to fulfil each equality objective, and
* the employment information that the listed authority has collected under **Section 6 of Chapter 6** (unless it has already been published).

Regulation 16(2)

1. 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.

Regulation 16(3) and (4)

**Good practice**

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.

1. 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

1. The Welsh Government’s ministers (Welsh ministers) are subject to the general and specific duties, and also the following additional specific duties that apply only to them.
2. 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 every four years (the first of these reports having been required by 31 December 2014). They are also required to publish an interim report every two years.

Regulation 17(2)

1. Welsh ministers’ reports must also set out proposals for the coordination of action by listed authorities so as to bring about further progress in their compliance with the general duty.
2. 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.

Regulation 17(5)

## Section 12: Public procurement, Regulation 18

### Purpose of and background to Regulation 18

1. The purpose of Regulation 18 is to ensure that listed authorities take account of issues relating to equalities when undertaking public procurement exercises.
2. Public procurement can provide excellent opportunities to meet the aims of the general equality duty, for example to advance equality of opportunity.
3. ‘Public procurement’ is the purchase of goods, works or services by certain public bodies.
4. It is governed by the Public Contracts Regulations 2015 (the ‘Procurement 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. Also see our guidance, [[Buying better outcomes: mainstreaming equality considerations in procurement – a guide for public authorities in Wales.](https://equalityhumanrights.com/en/publication-download/buying-better-outcomes-wales-mainstreaming-equality-considerations-procurement)](https://equalityhumanrights.com/en/publication-download/buying-better-outcomes-wales-mainstreaming-equality-considerations-procurement)
5. 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).
1. 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)

1. 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.
2. 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.
3. 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.
4. 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 older people. 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.

**Good practice**

A local authority procures residential care for older people. It is aware of a report that provides evidence of older lesbian, gay and bisexual 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 lesbian, gay and bisexual service users when it evaluates each of the bids.

### Contract conditions, Regulation 18(2)

1. 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.
2. A listed authority is only able to fulfil this duty if:
* the intention to include equality-related conditions is indicated in the call for competition and the contract documents, and
* the conditions are pursuant to international rules.

**Good practice**

A local authority has awarded a works contract for the construction of a new leisure centre. The works include plumbing, carpentry, bricklaying, 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

1. Whilst not a requirement of Regulation 18, a listed authority can award contracts to businesses whose main aim is the social and professional integration of disabled people or as part of employment programmes. In order to qualify, the business must employ a workforce of which more than 30 per cent are disabled people where it assesses that the procurement need can be met. This is permitted pursuant to Regulation 20 of the Procurement Regulations. If a listed authority wishes to do this, it must state this in the call for competition.
2. 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 Regulation 18.

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

1. The Welsh Government’s 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

1. 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 2018 and the UK General Data Protection Regulations[[79]](#footnote-79). This would in any event be illegal, so the listed authority has no authority to publish such information, or
* 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.
1. Ensuring confidentiality is likely to be a particular issue when dealing with sensitive data (special category or criminal offence data[[80]](#footnote-80)) 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 racial or ethnic origin, sexual orientation, religion or belief, data concerning health, and gender reassignment.
2. 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.[[81]](#footnote-81)

## Section 15: Accessibility of information, Regulation 6

1. 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.
2. 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.
3. 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 British Sign Language.

**Good practice**

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 and 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.

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:

a. 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’.

b. 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.

c. 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 homes,
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 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

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.
2. The Commission is an independent statutory agency which was established under the Equality Act 2006 (EA 2006).

## The Commission’s duties

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

**s.8 EA 2006**

## Commission enforcement powers: the general duty

### Assessment

1. 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 **Annex D** for more details.

**s.31 EA 2006**

### Compliance notice

1. 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) and (4) EA 2006**

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

s.32(3) EA 2006

1. 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.

**s.32(6) EA 2006**

## Failure to comply with a compliance notice

1. 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) EA 2006**

## Commission enforcement powers: the specific duties

1. 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(1) and (4) EA 2006**

1. 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(8) and (9) EA** 2006

## Judicial review

1. 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.
2. 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, for example in the case of Bracking discussed above.[[82]](#footnote-82)
3. 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) EA 2006**

# Annex A: Public authorities and public functions

1. The general equality duty applies to two kinds of bodies:
* public authorities (s.149(1)), and
* bodies that are not ‘public authorities’ but who carry out ‘public functions’ (s.149(2)).

## Public authority

1. For purposes of the general equality duty, the Equality Act 2010 (the Act) defines a public authority as a person specified in Schedule 19 of the Act.
2. **Annex F** provides a link to the full list of bodies currently specified (individually or generically) in Schedule 19.
3. The Act enables a Minister of the Crown, the Welsh Government’s ministers and the Scottish Government’s ministers power by order to amend Schedule 19, with obligations to consult the 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).
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. 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.
2. 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 (the HRA).

**s.150(5)**

1. 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.
2. 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.
3. Whether or not an organisation is exercising a function of a public nature will ultimately be a matter for the courts.
4. 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
* 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, or
* it is exercising coercive powers devolved from the State.[[83]](#footnote-83)

## Which functions are covered?

### Public authorities

1. 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

1. 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 HRA and so covered by the duty.

# Annex B: Prohibited conduct

1. The following types of conduct are prohibited under the Equality Act 2010 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 people

**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-discrimination rule

**s.61**

* breach of an equality clause

**s.66**

* breach of an equality rule

**s.67**

* breach of a maternity equality clause

**s.73**

* breach of a 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, and

**s.111**

* aiding contraventions.

**s.112**

1. More detailed information on these forms of prohibited conduct and examples in practice can be found in our [Employment: Statutory Codes of Practice](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and [Services, public functions and associations: Code of Practice](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

# Annex C: Exceptions

## Exceptions

1. The Equality Act 2010 includes three types of exceptions from the general equality duty:
2. certain functions to which the general equality duty does not apply
3. certain bodies, not specified in Schedule 19, that exercise public functions but which are not subject to the general equality duty, and
4. 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.

**Sch. 18**

### Excluded public functions

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. The general equality duty as it relates to the protected characteristic of age does not apply to the exercise of the following functions:
2. the provision of education to pupils in schools
3. the provision of benefits, facilities or services to pupils in schools
4. the provision of accommodation, benefits, facilities or services in community homes pursuant to s.53(1) of the Children Act 1989, and
5. 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) of the Children Act 1989.

Sch. 18, para 1

#### Exceptions that apply in England, omitting exceptions that apply in Scotland and in Wales (where different from England)

1. For the purpose of (a) and (b), ‘schools’ has the meaning given in section 4 of the Education Act 1996 and includes schools maintained by local authorities and independent educational institutions such as independent schools and academies.
2. In relation to England and Wales, ‘pupils’ has the same meaning as that given in s.3(1) of the Education Act 1996.

### Exclusion of judicial functions

1. The general equality duty does not apply to the exercise of:
2. a judicial function, and
3. 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. 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:
2. age
3. religion or belief, or
4. race, where race means **nationality** or **ethnic** or **national origins** (this exception does not apply to **colour**).

**Sch. 18, para 2**

1. For this purpose ‘immigration and nationality functions’ means functions exercisable by virtue of:
2. the Immigration Acts (excluding sections 28A to 28K of the Immigration Act 1971 so far as they relate to criminal offences)
3. the British Nationality Act 1981
4. the British Nationality (Falkland Islands) Act 1983
5. the British Nationality (Hong Kong) Act 1990
6. the Hong Kong (War Wives and Widows) Act 1996
7. the British Nationality (Hong Kong) Act 1997
8. the Special Immigration Appeals Commission Act 1997, or
9. anything forming part of retained EU law by virtue of section 2(2)(a), 3 or 4 of the European Union (Withdrawal) Act 2018 and related to the subject matter of an enactment within **paras (a) to (g)** above.

## Exception for certain bodies that exercise public functions

1. The general equality duty does not apply to the following bodies:
2. the House of Commons
3. the House of Lords
4. the Scottish Parliament
5. the Senedd[[84]](#footnote-84)
6. the General Synod of the Church of England
7. the Security Service
8. the Secret Intelligence Service
9. the Government Communications Headquarters, and
10. a part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

**Sch. 18, para 4 (1) and (2), and s.149(2)**

### Exception for certain public functions

1. 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:
2. a function in connection with proceedings in the House of Commons or the House of Lords
3. a function in connection with proceedings in the Scottish Parliament (other than a function of the Scottish Parliamentary Corporate Body), and
4. a function in connection with proceedings in the Senedd (other than a function of the Senedd Commission).

**Sch. 18, para 4(3)**

Please note, Sch. 18, para 4(3)(b) and (c) have been included as such functions could be carried out by a body anywhere in Great Britain

### Power to amend exceptions

1. A minister of the Crown may add to, vary or remove the exceptions in Schedule 19 to the Act, with certain restrictions. These restrictions are that an amendment to Schedule 19 may not either remove or reduce the extent of the following exceptions:
2. the exclusion of judicial functions
3. the exclusion from the general equality duty for certain bodies in relation to bodies **(a) to (e) in para C9** above, and
4. the exclusion from the general equality duty of functions in **para C10** above.

[Sch. 18, para 5](https://www.legislation.gov.uk/ukpga/2010/15/schedule/18)

# Annex D: Assessments

The Equality and Human Rights Commission (the Commission), as regulator of the Equality Act 2010 (the Act), has a unique power in relation to ensuring compliance with the public sector equality duties.[[85]](#footnote-85)

This power allows the Commission to assess the extent to which or the manner in which an organisation has complied with the equality duty. The assessment includes the power to require evidence and information to be provided.

## Terms of reference

1. Before conducting an assessment, the Commission must:
2. prepare terms of reference
3. give the person under consideration notice of the proposed terms of reference
4. give that person an opportunity to make representations about the proposed terms of reference
5. consider any representations made, and
6. publish the terms of reference once settled.

**Sch. 2, para 4 EA 2006**

## Representations

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:

1. made neither by nor on behalf of a person specified in the terms of reference, or
2. made on behalf of a person specified in the terms of reference by a person who is not a relevant lawyer (relevant lawyer being an advocate or solicitor in Scotland, or 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.

**Sch. 2, para 8 EA 2006**

## Provision of information: notice

1. During the course of an assessment, the Commission can give a notice to a person to provide information or documents in his or her possession, or to give oral evidence. The notice may include provision about the form of information documents or evidence, and about timing.

The notice cannot, however:

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

**Sch. 2, paras 9 and 10 EA 2006**

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. 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:

1. fails to comply with a notice
2. falsifies anything provided or produced in accordance with a notice, or
3. makes a false statement in giving oral evidence in accordance with a notice

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

**Sch. 2, para 13 EA 2006**

## Conclusion of an assessment

1. 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**

# Annex E: Glossary

This glossary gives short definitions of the key terms used in this 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 our [Employment: Statutory Code of Practice](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and [Services, public functions and associations: Statutory Code of Practice](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf) . 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 do not (s.149(1)(b) of the Equality Act 2010) (the Act). S.149(3) of the Act says that having due regard to advancing equality of opportunity involves having due regard, in particular, to the need to:

1. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
2. 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, and
3. 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 **Section 2 of Chapter 3** 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 Act. It is explained more fully in paras 2.1 to 2.7 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf).

**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**

This involves looking at equality information and the results of any engagement to understand the impact (or potential impact) of 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 the same aim could be achieved in a way which reduces the adverse impact, or which does not disadvantage people with that characteristic. The importance of understanding the impact of policy development and decision making on equality is discussed in **Chapter 3** and **paras 5.51 to 5.54** of this guidance. Listed authorities are under a specific duty to assess the impact of applying any proposed new or revised policy or practice against the needs mentioned in the general equality duty, to the extent necessary to fulfil its general equality duty. This is explained further in **Section 5 of Chapter 6** 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 authority** below). To whom the duty applies is explained at **paras 2.7 to 2.9** of this guidance.

**Civil partnership**

Legal recognition of a couple’s relationship.[[86]](#footnote-86) Civil partners must be treated the same as married couples. ‘Marriage and civil partnership’ is one of the nine protected characteristics in the Act. It is explained more fully in paras 2.31 to 2.34 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf).

**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 5.68 to 5.73** of this guidance.

**Compliance notice**

Under s.32 of the Equality Act 2006, the Equality and Human Rights Commission (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 to 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 3.26 to 3.36** 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](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and Chapter 4 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**Disability**

A person has a disability if she or 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 Act. It is explained in Appendix 1 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf), and paras 2.5 to 2.16 and the Appendix to the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**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 **paras 3.24 and 3.25** 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](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and Chapter 6 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**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 **paras** **2.39 to 2.51**of this guidance.

**Duty to make reasonable adjustments**

Where a disabled person is at (or in a non-employment context, disabled people are 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: (a) changing provisions, criteria or practices; (b) altering, removing or providing a reasonable alternative means of avoiding physical features; and (c) providing auxiliary aids. This is explained in Chapter 6 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and Chapter 7 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**Eliminating discrimination**

The first of the equality aims: to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act (s.149(1)(a)). Eliminating discrimination is explained in **paras 3.4 to 3.10** 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 3.38 to 3.41** of this guidance.

**Engagement**

A broad term, intended to cover the whole range of ways in which public authorities interact with their service users, employees and other stakeholders, over and above what they do in providing services or within a formal employment relationship. Engagement is explained in **paras 5.31 to 5.39** of this guidance. For listed authorities in Wales see **Section 3 of Chapter 6**.

**Equality Act 2006**

This legislation made provision for the establishment of 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 Act).

**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 Act and are explained in **paras 2.3 to 2.6** and **Chapter 3** of this guidance. See also **Advancing equality of opportunity**, **Eliminating discrimination** and **Fostering good relations**.

**Equality evidence**

The information that is held (or will be collected) about people with protected characteristics, and the impact of decisions and policies on them.

**Equality information**

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**

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 Act). S.149(5) of the Act states that having due regard to the need to foster good relations between people who have a particular protected characteristic and those who do not have it involves, in particular, having due regard to the need to tackle prejudice and promote understanding. Fostering good relations is explained at **paras 3.42 to 3.48** of this guidance.

**Function**

The full range of a body’s activities, duties and powers. This is explained at **paras 2.10 to 2.17** 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 pay gap information**

The duty placed on employers (both listed authorities and non-listed) to gather information about employees and their pay in order to identify what gaps there are between the sexes for the purposes of taking action to close the gender pay gap. This is explained in **Chapter 6** of this guidance.

**Gender reassignment**

This is the process of transitioning from one sex to another. See also **Transsexual or trans**. 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 Act. It is one of the nine protected characteristics under the Act and is explained in paras 2.21 to 2.30 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and paras 2.17 to 2.27 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**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](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and Chapter 8 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**Impact**

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 Act. 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](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and Chapter 5 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**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 7.11 to 7.13** of this guidance.

**Listed authority**

A public authority required to comply with the specific duties. These are listed in Schedule 2 of the Regulations which can be found via a link in **Annex G** 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 two people of the same sex. Same-sex and heterosexual 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 Act. It is explained in paras 2.31 to 2.34 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf).

**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](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and Chapter 13 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf). Their relevance to the general equality duty is explained at **paras 4.7 to 4.9** 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](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and Chapter 10 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf). Its relevance to the general equality duty is explained at **paras 3.20 to 3.23** and **paras 4.10 to 4.14** 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 Act. It is explained in para 2.35 and Chapter 8 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and paras 2.28 and 4.34 to 4.38 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**Procurement**

This is the term used in relation to the range of goods and services a body purchases. It may include 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 procurement is explained at **paras 5.74 to 5.76** of this guidance. Also see our guidance, [Buying better outcomes: mainstreaming equality considerations in procurement – a guide for public authorities in Wales](https://equalityhumanrights.com/en/publication-download/buying-better-outcomes-wales-mainstreaming-equality-considerations-procurement).

**Prohibited conduct**

Conduct prohibited by the Act. **Eliminating discrimination** (see above) relates to such conduct. Conduct prohibited by the Act is listed in **Annex B** 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 Act. 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 2.22** of this guidance. The protected characteristics are explained in detail in Chapter 2 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and Chapter 2 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**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 Act. See also **Bodies subject to the duty** (above). Schedule 19 has been amended since the Act came into force. A link to the list can be found at **Annex F** 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 Act defines a public function as a function that is of a public nature for the purposes of the HRA. To whom the general equality duty applies is explained at **paras 2.7 to 2.9** of this guidance. Public functions are explained in **Annex A** 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 Act and is explained more fully in paras 2.36 to 2.49 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and paras 2.29 to 2.42 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**Reasonable adjustment**

See **Duty to make reasonable adjustments**.

**Regulations**

Secondary legislation made under an Act of Parliament 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 to 5.15** of this guidance.

**Relevant protected characteristics**

The eight protected characteristics in s.149(7) of the Act. 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 Act and is explained more fully in paras 2.50 to 2.61 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and paras 2.43 to 2.54 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**Section 23 agreement**

The Commission can enter into a formal agreement with an organisation under section 23 of the EA 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 EA 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 Act and is explained more fully in paras 2.62 and 2.63 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and paras 2.55 to 2.57 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**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 Act and is explained more fully in paras 2.64 to 2.68 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and paras 2.58 to 2.62 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**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 to 13.56 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

**Specific duties**

S.153 of the Act 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.

**Transsexual or trans**

The term used in the Act to describe someone who has the protected characteristic of gender reassignment. Protection extends to those treated less favourably because they are perceived to be transsexual. 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 (that is, bringing proceedings under the Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act). Victimisation (including the meaning of ‘protected act’) is explained in Chapter 9 of the [Employment Code](https://www.equalityhumanrights.com/sites/default/files/employercode.pdf) and Chapter 9 of the [Services Code](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf).

# Annex F: Schedule 19 of the Act

Schedule 19

The [most up-to-date version schedule 19](https://www.legislation.gov.uk/ukpga/2010/15/schedule/19) is available on the GOV.UK website.

# Annex G: The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011

The most up to date version of these regulations is [available on the GOV.UK website](https://www.legislation.gov.uk/wsi/2011/1064/contents).

# Contacts

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## Equality Advisory and Support Service (EASS)

If you are an individual and would like advice, information or guidance on equality, discrimination or human rights issues, please contact the [EASS](http://www.equalityadvisoryservice.com), a free and independent service.

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 19:00 (Monday to Friday)

 10:00 to 14:00 (Saturday)

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1. R (on the application of Kaur and Shah) v London Borough of Ealing and Another [2008] EWHC 2062 (Admin), para 22 per Moses LJ. See also R (on the application of Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin), [2009] at paras 119-120. [↑](#footnote-ref-1)
2. They are listed in the Equality Act 2010 (Part 2 of Schedule 19). [↑](#footnote-ref-2)
3. 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 Act passed. **Annex F** to this guidance has a link to Schedule 19. [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)
5. R (on the application of Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 at para 78. [↑](#footnote-ref-5)
6. Pieretti v London Borough of Enfield [2010] EWCA 1104, Wilson LJ at para 26. [↑](#footnote-ref-6)
7. Lord Templemann in Hazell v London Borough of Hammersmith and Fulham [1991] 1 All ER 545, [1992] 2 AC 1, approved by the Court of Appeal in R (on the application of Jewish Rights Watch Ltd (trading as Jewish Human Rights Watch)) v Leicester City Council [2018] EWCA Civ 1551 where it was held that debating and passing a motion to boycott goods from Israel was a ‘function’ for the purposes of the s.149 duty. [↑](#footnote-ref-7)
8. R (on the application of KE and Others) v Bristol City Council [[2018] EWHC 2103 (Admin)](https://www.lexisnexis.com/uk/legal/search/enhRunRemoteLink.do?linkInfo=F%23GB%23EWHCADMIN%23sel1%252018%25year%252018%25page%252103%25&A=0.6460525799161525&backKey=20_T29256862960&service=citation&ersKey=23_T29256862066&langcountry=GB), [[2018] ELR 502](https://www.lexisnexis.com/uk/legal/search/enhRunRemoteLink.do?linkInfo=F%23GB%23ELR%23sel1%252018%25year%252018%25page%25502%25&A=0.21125085746747874&backKey=20_T29256862960&service=citation&ersKey=23_T29256862066&langcountry=GB). [↑](#footnote-ref-8)
9. R (on the application of WX) v Northamptonshire County Council : R (on the application of John Connolly) v Northamptonshire County Council (2018) [2018] EWHC 2178 (Admin). [↑](#footnote-ref-9)
10. R (on the application of Bracking) v Secretary of State for Work and Pensions [2013] EWCA Civ 1345, McCombe LJ at para 60. [↑](#footnote-ref-10)
11. Pieretti v London Borough of Enfield [2010] EWCA Civ 1104, Wilson LJ at para 26. [↑](#footnote-ref-11)
12. R (on the application of Williams) v Caerphilly County Borough Council [2019] EWHC 1618 (Admin). See also Pieretti v London Borough of Enfield [2010] EWCA Civ 1104. [↑](#footnote-ref-12)
13. S.49A of the Disability Discrimination Act 1995, superseded by s.149 of the Act. [↑](#footnote-ref-13)
14. Pieretti v London Borough of Enfield [2010] EWCA Civ 1104. [↑](#footnote-ref-14)
15. Barnsley Metropolitan Borough Council v Norton [2011] EWCA Civ 834, Lloyd LJ at para 15. [↑](#footnote-ref-15)
16. R (on the application of D and S) v Manchester City Council [2012] EWHC 17 (Admin), Ryder J at para 48. [↑](#footnote-ref-16)
17. 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. [↑](#footnote-ref-17)
18. R (on the application of Watkins-Singh) v Governors of Aberdare Girls’ High School [2008] EWHC 1865 (Admin). [↑](#footnote-ref-18)
19. See s.28(1)(a), 32(1)(b), 84(1)(b), 90 of the Act. [↑](#footnote-ref-19)
20. 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 of the Act). It is not unlawful in relation to schools (Part 6, Chapter 1 of the Act). [↑](#footnote-ref-20)
21. 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’.

See also: Hotak v Southwark London Borough Council; Kanu v Southwark London Borough Council; Johnson v Solihull Metropolitan Borough Council 2015 UKSC 30, where Lord Neuberger said in respect of due regard that ‘the weight and extent of the duty are highly fact-sensitive and dependent on individual judgment’ at para 74.

See also: R (on the application of Simone) v The Chancellor of the Exchequer and the Secretary of State for Education [2019] EWHC 2609, in which Mr Justice Lewis, at para 63, said that the question of what regard is due will be influenced by a number of factors including, but not limited to, the nature of the decision being taken, the stage of the decision-making process that has been reached and the particular characteristics of the function being exercised, R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 at paras 90 to 96. [↑](#footnote-ref-21)
22. R (on the application of Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 at paras 90 to 96. [↑](#footnote-ref-22)
23. Includes cases about the duty in s.149 of the Act. See, for example, R (on the application of Greenwich Community Law Centre) v London Borough of Greenwich [2012] EWCA Civ 496. [↑](#footnote-ref-23)
24. 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 Act. [↑](#footnote-ref-24)
25. See, for example, R (on the application of End Violence Against Women Coalition) v Director of Public Prosecutions [2021] EWCA Civ 350. [↑](#footnote-ref-25)
26. R (W) v Birmingham City Council [2011] EWHC 944, Blake J at para 45. [↑](#footnote-ref-26)
27. 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 83, citing Dyson LJ in R (on the application of Baker) v Secretary of State for Communities and Local Government [2008] EWCA Civ 141. [↑](#footnote-ref-27)
28. R (on the application of Elias) v Secretary of State for Defence [2006] EWCA Civ 1293, Arden LJ at para 274. [↑](#footnote-ref-28)
29. R (on the application of W) v Birmingham City Council [2011] EWHC 1147, para 151 proposition iv. [↑](#footnote-ref-29)
30. G v St Gregory’s [2011] EWHC 1452, Collins J at paras 44 and 45. [↑](#footnote-ref-30)
31. R (on the application of Bridges) v Chief Constable of South Wales [2020] EWCA Civ 1058. [↑](#footnote-ref-31)
32. G v St Gregory’s [2011] EWHC 1452, Collins J at para 42. [↑](#footnote-ref-32)
33. R (on the application of Elias) v Secretary of State for Defence [2006] EWCA Civ 1293.

See also R (on the application of Ward and Others) v The London Borough of Hillingdon [2019] EWCA Civ 692, and R (on the application of Bridges) v Chief Constable of South Wales [2020] EWCA Civ 1058. [↑](#footnote-ref-33)
34. [↑](#footnote-ref-34)
35. Section 65, Enterprise and Regulatory Reform Act 2013. There may be some circumstances in which employers can be held liable for discrimination against their employees by third parties. See our [Sexual harassment and harassment at work: Technical guidance](https://www.equalityhumanrights.com/sites/default/files/sexual_harassment_and_harassment_at_work.pdf). [↑](#footnote-ref-35)
36. S.149(4) of the Act. [↑](#footnote-ref-36)
37. S.20 of the Act. [↑](#footnote-ref-37)
38. Pieretti v London Borough of Enfield [2010] EWCA 1104, Wilson LJ at para 34. [↑](#footnote-ref-38)
39. In Hotak v London Borough of Southwark; Kanu v London Borough of Southwark; Johnson v Solihull Metropolitan Borough Council [2015] UKSC 30, per Lord Neuberger at para 78. [↑](#footnote-ref-39)
40. London Borough of Hackney v Haque [2017] EWCA Civ 4. [↑](#footnote-ref-40)
41. Lomax v Gosport Borough Council [2018] EWCA Civ 1846. [↑](#footnote-ref-41)
42. This working definition is based on that developed by the Equality Commission for Northern Ireland (ECNI): see ECNI’s [Promoting Good Relations: A Summary Guide for Public Authorities](https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/Good_Relations_Public-Authorities-Summary_Guide.pdf). [↑](#footnote-ref-42)
43. For more details see para 10.27 in our [Services, public functions and associations: Statutory Code of Practice](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf). [↑](#footnote-ref-43)
44. Schedule 3, paras 26 and 27 of the Act. This is explained in more detail from para 13.51 onwards in our [Services, public functions and associations: Statutory Code of Practice](https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf). [↑](#footnote-ref-44)
45. R (on the application of Z) v London Borough of Hackney [2020] UKSC 40. [↑](#footnote-ref-45)
46. Specifically at para 10.7 of that Code. [↑](#footnote-ref-46)
47. 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. [↑](#footnote-ref-47)
48. See for example R (on the application of Barrett) v London Borough of Lambeth [2012] EWHC 4557 (Admin), which involved a breach of the equality duty in cutting the budget to a voluntary organisation where it would result in services closing as the implications had not been made clear to the decision makers. [↑](#footnote-ref-48)
49. R (on the application of Rahman) v Birmingham City Council [2011] EWHC 944 (Admin), Blake J at para 35, sub para 3. [↑](#footnote-ref-49)
50. For example, R (on the application of the Child Poverty Action Group) v Secretary of State for Work and Pensions [2011] EWHC 2616 (Admin) at para 76. [↑](#footnote-ref-50)
51. R (on the application of Lunt) v Liverpool City Council [2009] EWHC 2356 (Admin), Blake J at paras 43 to 45. [↑](#footnote-ref-51)
52. A number of research reports cover such issues, including our [Is Britain Fairer?: The state of equality and human rights 2018](https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018). Also the [Office for National Statistics](https://www.ons.gov.uk/) offers a huge range of statistical information on employment, economic matters and the UK’s population. [↑](#footnote-ref-52)
53. R (on the application of Bridges) v Chief Constable of South Wales [2020] EWCA Civ 1058. [↑](#footnote-ref-53)
54. 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 90. [↑](#footnote-ref-54)
55. R (on the application of (1) Luton Borough Council and Nottingham City Council, (2) London Borough of Waltham Forest , (3) London Borough of Newham, (4) Kent County Council, and (5) Sandwell Metropolitan Borough Council) v the Secretary of State for Education [2011] EWHC 217 (Admin) Holman J at para 114. [↑](#footnote-ref-55)
56. The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, regulation 5 relates to specific ‘engagement provisions’ for listed public authorities in Wales – see **Section 3 of Chapter 6**. [↑](#footnote-ref-56)
57. In this case the Disability Equality Duty in s.49A of the Disability Discrimination Act 1995. [↑](#footnote-ref-57)
58. Barwick and Another v Bridgend County Borough Council [2009] EWHC 1723 (Admin), Bidder J at para 108. [↑](#footnote-ref-58)
59. 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)](http://www.edf.org.uk/blog/?p=18473). [↑](#footnote-ref-59)
60. See, for example, R (on the application of Watkins-Singh) v Governors of Aberdare Girls’ High School [2008] EWHC 1865 (Admin). [↑](#footnote-ref-60)
61. R (on the application of Brown) v Secretary of State for Work and Pension and Others [2008] EWHC 3158, Aiken LJ at para 99. [↑](#footnote-ref-61)
62. R (on the application of Bracking) 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). [↑](#footnote-ref-62)
63. R (on the application of Bailey and Others) v London Borough of Brent and Others [2011] EWCA Civ 1586, Davies LJ at para 104. [↑](#footnote-ref-63)
64. See, for example, R (on the application of Bailey and Others) v London Borough of Brent and Others [2011] EWCA Civ 1586, Davies LJ at para 93. [↑](#footnote-ref-64)
65. R (on the application of Bracking) v Secretary of State for Work and Pensions [2013] EWCA Civ 1345, McCombe LJ at para 26. [↑](#footnote-ref-65)
66. R (on the application of Chavda) v London Borough of Harrow [2007] EWHC 3064 (Admin) Mackie J at para 40. [↑](#footnote-ref-66)
67. 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 78. [↑](#footnote-ref-67)
68. R (on the application of 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. [↑](#footnote-ref-68)
69. R (on the application of Hajrula) v London Councils [2011] EWHC 448 (Admin) Calvert-Smith J at para 69. [↑](#footnote-ref-69)
70. R (on the application of Bracking) v Secretary of State for Work and Pensions [2013] EWCA Civ 1345, McCombe LJ at para 60. [↑](#footnote-ref-70)
71. R (on the application of JL (A Child)) v London Borough of Islington [2009] EWHC 458 (Admin) Black J at paras 121 and 123. [↑](#footnote-ref-71)
72. See our [Buying better outcomes: mainstreaming equality considerations in procurement – a guide for public authorities in Wales](https://equalityhumanrights.com/en/publication-download/buying-better-outcomes-wales-mainstreaming-equality-considerations-procurement) for details of these legal requirements and further details of how compliance with the general duty can be built into the procurement process. [↑](#footnote-ref-72)
73. A link to the Regulations can be found at **Annex G**. [↑](#footnote-ref-73)
74. A link to Part 2 Schedule 19 can be found at **Annex F**. [↑](#footnote-ref-74)
75. For example the Equality Act 2010 (Public Authorities subject to the Public Sector Equality Duty) (Wales) Order 2021/347 added ‘A corporate joint committee established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021.’ [↑](#footnote-ref-75)
76. This is in addition to providing information in Welsh and English. [↑](#footnote-ref-76)
77. Required under section12 of the EA 2006 as amended by the Enterprise and Regulatory Reform Act 2013. [↑](#footnote-ref-77)
78. 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)). [↑](#footnote-ref-78)
79. General Data Protection Regulation 2016 as retained by the European Union (Withdrawal) Act 2018 (known as the ‘UK GDPR’). [↑](#footnote-ref-79)
80. Special category data is personal data that warrants more protection due to its sensitive nature. Further information on the [Information Commissioner’s Office’s website](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/#scd1). [↑](#footnote-ref-80)
81. Information Commissioner’s Office, [Anonymisation: managing data protection risk – code of practice](https://ico.org.uk/media/fororganisations/documents/1061/anonymisation-code.pdf), November 2012. [↑](#footnote-ref-81)
82. R (on the application of Bracking) v Secretary of State for Work and Pensions [2013] EWCA Civ 1345. See **Chapter 2** above. [↑](#footnote-ref-82)
83. The leading cases on this issue are Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v Wallbank and Another [2003] UKHL 37 (26 June 2003) and R (on the application of Weaver) v London and Quadrant Housing Trust [2009] EWCA Civ 587 (18 June 2009). [↑](#footnote-ref-83)
84. The name of the National Assembly for Wales was changed to Senedd Cymru/Welsh Parliament by the Senedd and Elections (Wales) Act 2020. The Equality Act 2010 has yet to be amended and continues to refer to the National Assembly for Wales. To avoid confusion we have used the term Senedd. [↑](#footnote-ref-84)
85. This refers to section 31 of the EA 2006. The Commission may assess the extent to which, or the manner in which, a person has complied with a duty under or by virtue of s.149, 153 or 154 of the Act. [↑](#footnote-ref-85)
86. In England and Wales the Civil Partnership Act 2004 was amended by the Civil Partnership (Opposite-sex Couples) Regulations 2019/1458, which allows for heterosexual couples to have a civil partnership agreement. [↑](#footnote-ref-86)