

# WLGA Briefing

## The Equality Act 2010 Public Sector Duties in Wales July 2011



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### Background

The Equality Act 2010 is about ensuring a fair deal for everyone and focuses on ending discrimination, advancing equality of opportunity and outcome and fostering good relations between different individuals and communities.

It replaces the previous 116 different equality statutes in one all encompassing statute. It simplifies and clarifies the role of Local Authorities as leaders in achieving equality improvements for their citizens and communities. Specific duties developed by the Welsh Government provide detailed and challenging requirements for Authorities but an overall emphasis on 'due regard' leaves authorities with greater freedom to produce distinctive local solutions and greater accountability to their communities.

### Who is protected under the Act?

In actual fact everyone is. The Act sets out a new prescribed list of protected characteristics which replace what have traditionally been referred to as Equality Strands. These groups are protected through the general and specific duties of the Act. The new general duty covers the following protected characteristics:

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

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

### The General Duty

Local Authorities and other public bodies are required to have due regard to the need to:

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

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

These are essentially the aims of the Act. Having due regard for advancing these equality aims involves:

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

The Act describes fostering good relations as tackling prejudice and promoting understanding between people who share a protected characteristic and those who do not. This will include the type of community cohesion activities developed by Local Authorities and Community Safety Partnerships in the past as well as initiatives such as intergenerational projects which may not have been linked to the equality agenda previously.

### **Specific Duties for Local Authorities in Wales**

Each of the specific duties outlined in the *Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011* applies to Local Authorities, Fire and Rescue Authorities and the National Parks in Wales, with the exception of a specific duty for the Welsh Government to produce a Welsh Ministers' report on how devolved public authorities in Wales are meeting their general duty. The requirements on Local Authorities are detailed below:

### **Objectives and Strategic Equality Plans**

Local Authorities are required to develop and publish Equality Objectives and a Strategic Equality Plan by **2<sup>nd</sup> April 2012**. The purpose of the objectives and plans is to enable the delivery of measurable equality outcomes which improve the lives of individuals and communities. This allows Authorities to be more proactive, in developing planning, performance monitoring and reporting arrangements which meet local needs, and in achieving equality improvements which make sense locally.

There is significant alignment between the requirement to produce Equality Objectives and the 'Fairness' element of the Wales Programme for Improvement. Ideally a Council's equality objectives and strategic equality plan will have clear links to the area's Community Strategy, and the Council's Improvement Plan or Corporate Plan. Guidance on how this can be achieved is in the WLGA's advice note on Equalities and Community Planning:

<http://www.wlga.gov.uk/english/equalities-publications/wlga-advice-note-promoting-equality-within-community-planning/>

Equality objectives should be mainstreamed so that all services and departments contribute to equality improvement and manage their equality commitments as part and parcel of their general improvement and customer service commitments.

This kind of approach can utilise tools such as the Ffynnon System or other performance management tools, which can allow equality activities to be reported against Strategic Equality Plans and Service Plans simultaneously without the need for duplication in data input.

If an authority chooses not to publish an equality objective covering each of the protected characteristics the Authority is required to publish robust and justifiable reasons for this choice. However, many objectives will produce benefits for multiple protected groups.

## **Engagement**

Understanding the complexity of the differing needs of the citizen enables an organisation to shape service provision in the best way. Not all needs can be met, but a good understanding means an organisation is better placed to divert valuable resource into the right places, at the right times, and in the right ways. The duties require meaningful engagement when developing objectives and in completing equality impact assessments. As part of gathering relevant information, an Authority will need to engage appropriate people in assessing its work in relation to meeting the three aims of the general duty.

Authorities must involve people who represent the interests of those who share one or more of the protected characteristics and have an interest in the way that the authority carries out its functions. Further guidance on engagement activity is available as part of the WLGA's revised Equality Improvement Framework which is available at:

<http://www.wlga.gov.uk/english/equality-improvement-framework-for-wales/>

## **Assessing Impact**

The role and scope of equality impact assessments has been clarified in the new duties. Assessments need to be completed when a policy or practice is being proposed or reviewed. This will include business planning, efficiency proposals and staff restructures. Authorities must publish a report where an equality assessment finds a substantial impact.

## **Equality Information**

Authorities' Objectives, Equality Impact Assessments and Strategic Equality Plans need to be based on solid evidence and analysis. Recent legal cases including *R.Rahman v Birmingham City Council* have also emphasised the need for Equality Impact Assessments, including of financial decisions, to be grounded in hard evidence. For these reasons Authorities have a duty to collect a range of equality information to contribute to this evidence base. They are required to consider what information they hold, and what further information they would need to collect, in order to demonstrate compliance with the General Duty.

The type of evidence which should be considered may include information from local sources such as; customer surveys, equality impact assessments, community forums, as well as national resources such as the census or annual population survey and reports relating to issues affecting protected groups. Authorities should attempt to create a

picture of the needs of local communities that can be broken down by the protected characteristics.

## **Employment Information**

The new specific duties in Wales also require Authorities to collect and publish an extensive list of employment information on an annual basis. This includes data on recruitment and retention, promotion, training opportunities, and grievance and disciplinary actions. This information must be presented for **each** of the separate protected groups. Further information is required to be published in relation to male and female employees, including data on job roles, pay and grading, contract type and working pattern.

Remember, however, that an authority cannot require an employee to disclose information in relation to their protected characteristics. Therefore, it is often useful to collect and publish numbers for 'unknown' or 'prefer not to say' categories. This information can indicate privacy concerns and levels of confidence in information and equality systems.

## **Pay Differences**

Local Authorities are required to identify, collect and publish information on pay differences between employees with **any** protected characteristic and those who do not share that characteristic. There is also a requirement to consider this information when drawing up equality objectives. Local Authorities must also publish an equality objective and action plan in relation to addressing any **gender** pay difference identified or publish reasons why it has not done so. This can be encompassed in the Authorities Strategic Equality Plan.

## **Staff Training**

Authorities are required to promote knowledge and understanding of the general and specific duties amongst employees and must ensure that performance assessment procedures, such as personal appraisals or personal development reviews, are used to identify and address training needs.

## **Procurement**

The general duty described on page 1 applies to all procurement regardless of the value of the contract. Even where provision of a service is contracted out, the Local Authority remains responsible for meeting the general duty.

The specific duty applies when a Local Authority is procuring works, goods or services from other organisations on the basis of a 'relevant agreement'. Relevant agreements include the award of a 'public contract' or the conclusion of a 'framework agreement' which are regulated by Public Sector Directive (Directive 2005/18/EC).

The specific duty requires Local Authorities to consider whether it would be appropriate to include specific stipulations relating to the general duty, in the award criteria and / or in conditions relating to the performance of a contract of this type.

Examples could be; requiring tenders to provide specific evidence of their organisation's own equality policies and procedures; or requiring commissioned care homes to demonstrate ongoing monitoring of service user satisfaction broken down by protected characteristics.

Local Authorities wishing to adopt best practice should consider applying such stipulations, wherever relevant, regardless of the value of the contract.

## **Reporting and Publishing**

Local Authorities are required to publish an Annual Equality Report describing the steps taken by the Authority to:

- identify and collect relevant information
- utilise this information in meeting the three aims of the general duty

Alongside this; the report should contain a statement on the effectiveness of the authority's arrangements for identifying and collecting information and reasons why any identified information has not been collected. It should also contain progress reports on the Authorities Equality Objectives and may contain the employment information described above if this has not been published elsewhere. However, it should be noted that data protection legislation and guidance applies. Where a particular protected group has very low numbers then it may be necessary to suppress the information to prevent disclosure of personal identities.

## **Accessibility**

Local Authorities must ensure that any document or information published to meet its general or specific equality duties is in a form that is accessible to people from protected groups.

## **Review**

Equality objectives must be reviewed at least every 4 years. Authorities are also required to keep under review other aspects of compliance with general and specific duties.

## **Revised Equality Improvement Framework for Wales**

The WLGA's revised Equality Improvement Framework states that:

*'Equality improvement achieves far more than meeting legislative requirements; it brings with it particular benefits both to local authorities and the citizens that they serve. Improved performance, greater customer satisfaction, increased efficiency and improved staff morale and motivation are some of the many benefits provided by achieving effective equality improvement.'*

The framework has been updated in order to facilitate compliance with the Equality Act 2010 including the specific duties for Wales. The framework is designed to support Authorities in developing:

- **Community Engagement**
- **Leadership and Organisational Commitment**

- **Generating Outcomes**
- **Equipped Workforce**

A significant new element is the development of a peer review function to help Authorities with an assessment of their performance. Details of the peer review process can be found in the Equality Improvement Framework Guidance and Authorities interested in participating should contact:

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<b>Key dates for the public sector equality duty</b>	
<b>5 April 2011</b>	General duty came into force
<b>6 April 2011</b>	Specific duties in Wales came into force
<b>2 April 2012</b>	Public Authorities in Wales to publish equality objectives and Strategic Equality Plans
<b>2 April 2012</b>	Local Authorities in Wales must have engaged with interested people as part of gathering relevant information to assess its activities against the general duty. Relevant information must be published as appropriate.

<b>Links to further information</b>
<b>Equality and Human Rights Commission: Non Statutory Guidance</b> <a href="http://www.equalityhumanrights.com/wales/publications/guidance-on-the-equality-duty-for-the-welsh-public-sector/">http://www.equalityhumanrights.com/wales/publications/guidance-on-the-equality-duty-for-the-welsh-public-sector/</a>
<b>Equality and Human Rights Commission: How Fair is Wales?</b> <a href="http://www.equalityhumanrights.com/wales/publications/how-fair-is-wales/">http://www.equalityhumanrights.com/wales/publications/how-fair-is-wales/</a>