

6. Employment information, pay differences and staff training: A guide for listed public authorities in Wales



Contents

| | | |
|------------|--------------------------------------------------|-----------|
| 1. | Context for this guide | 2 |
| 1.1 | What is a listed public authority in Wales? | 3 |
| 1.2 | The Equality Act 2010 | 3 |
| 1.3 | What is the general duty? | 3 |
| 2. | Specific duties in Wales | 4 |
| 2.1 | Who is covered by the specific duties? | 4 |
| 2.2 | Who is the non-statutory guidance aimed at? | 4 |
| 3. | Employment information | 5 |
| 3.1 | What the duty requires on employment information | 5 |
| 4. | Employment information on gender | 6 |
| 5. | The purpose of collecting workforce data | 7 |
| 6. | Pay differences | 8 |
| 7. | Overview on pay differences | 9 |
| 8. | Gender pay difference | 9 |
| 9. | Analysing pay differences | 10 |
| 10. | Equal pay | 10 |
| 11. | Staff training | 11 |

1. Context for this guide

Key dates for the public sector equality duty

- 5 April 2011** General duty came into force
- 6 April 2011** Specific duties in Wales came into force
- 2 April 2012** Listed bodies in Wales to publish equality objectives and Strategic Equality Plans
- 2 April 2012** Listed bodies 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.

1.1 What is a listed public authority in Wales?

For the purpose of this guidance, a listed public authority in Wales (or ‘listed body’) is one contained in Part 2 of Schedule 19 of the Act as supplemented and amended by the Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011. This includes, for example, local authorities, education bodies (including schools), health bodies and the Welsh Government.

1.2 The Equality Act 2010

The Equality Act 2010 (the Act) brings together and replaces the previous anti-discrimination laws with a single Act. It simplifies and strengthens the law, removes inconsistencies and makes it easier for people to understand and comply with it. The majority of the Act came into force on 1 October 2010.

The Act includes a **new public sector equality duty** (the ‘general duty’), replacing the separate duties on race, disability and gender equality. This came into force on 5 April 2011.

1.3 What is the general duty?

The aim of the general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. The duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept

under review. This will achieve better outcomes for all.

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.

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

The 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 – including lack of belief

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

This guidance sometimes uses the phrase ‘protected group’ to refer to people who share a protected characteristic.

2. Specific duties in Wales

The broad purpose of the specific duties in Wales is to help listed bodies in their performance of the general duty and to aid transparency.

2.1 Who is covered by the specific duties?

The specific duties apply to listed bodies in Wales but not to non-devolved public authorities operating in Wales.

Most devolved public authorities in Wales covered by the general duty are also covered by the specific duties. The specific duties set out the steps that listed bodies in Wales must take in order to demonstrate that they are meeting the general duty.

This guide is one of a series of non-statutory guides on the specific duties.

The duties inter-relate and more details on each aspect can be found in the following guidance:

1. The essential guide to the public sector equality duty (an overview)
2. Equality objectives and Strategic Equality Plans
3. Engagement
4. Assessment of impact
5. Equality information
6. Employment information, pay differences and staff training
7. Procurement
8. Annual reporting, publishing and Ministerial duties (including review and accessibility).

2.2 Who is the non-statutory guidance aimed at?

The non-statutory guidance has been developed primarily for those responsible for implementing the Wales specific equality duties, particularly those at senior and operational level who are responsible for policy and decision-making. The guidance will also be useful to anyone who has an interest in the work and activities of public authorities.

It is important that senior decision-makers in public authorities (such as Chief Executives, Chairs and Board members) receive adequate briefing on the equality duty. This should equip them to ensure that equality is properly considered within the organisation and influences decision-making at all levels.

The text box(es) below outline the requirements of the regulations and these appear also in the *Essential guide*. The additional text in this guidance provides further context on the specific duties.

3. Employment information

3.1 What the duty requires on employment information

A listed body in Wales must collect and publish on an annual basis the number of:

- people employed by the authority on 31 March each year by protected characteristic
- men and women employed, broken down by:
 - job
 - grade (where grading system in place)
 - pay
 - contract type (including permanent and fixed term contracts)
 - working pattern (including full time, part time and other flexible working patterns)
- people who have applied for jobs with the authority over the last year
- employees who have applied to change position within the authority, identifying how many were successful in their application and how many were not
- employees who have applied for training and how many succeeded in their application
- employees who completed the training
- employees involved in grievance procedures either as complainant or as a person against whom a complaint was made
- employees subject to disciplinary procedures
- employees who have left an authority's employment.

All of the information above must be presented for each of the separate protected groups. The exception to this requirement is the data on job, grade, pay, contract type and working pattern, which must be broken down only in relation to women and men.

An authority may use its annual report to publish this employment information.

An authority cannot require any employee or applicant to provide any information in relation to their protected characteristics.

4. Employment information on gender

As with the other protected characteristics, a listed body must publish the required employment information on gender giving a snapshot of its employee profile at 31 March each year.

The information requirements in relation to gender go further than other protected characteristics in the detail of what is published. A listed body must publish a

breakdown of the number of female and male employees by job, grade, pay, contract type and working pattern. This should give a clear indication of how jobs are distributed throughout an authority and at what levels. This will help not only to identify gender pay differences, but other gender equality issues such as occupational segregation.

5. The purpose of collecting workforce data

Authorities should use the information they collect to embed equality-related evidence into their employment policies and practices. Collecting, using and publishing equality information relating to the workforce will help to:

- understand the effect of policies, practices and decisions on staff with different protected characteristics and to plan more effectively
- identify where there is a risk of discrimination and identify action to remedy this
- identify possible steps to further advance equality or foster good relations
- identify key equality issues for the organisation
- identify whether the workforce reflects the community it serves
- develop equality objectives and measure progress
- make practices more transparent and help to explain how and why decisions are taken
- demonstrate to the public an authority's equality achievements as an employer
- demonstrate to public sector regulators and inspectorates that an authority understands its staff composition and is monitoring its performance
- benchmark performance against similar organisations nationally or locally

A listed body cannot rely on the specific duties to require employees or applicants to provide any information in relation to their protected characteristics. However, it is in an authority's interest to collect information that is as complete and accurate as possible so it has a fuller profile of its staff.

Authorities should take steps to explain why they are collecting the equality information and how it will be used, and give appropriate reassurance on issues of confidentiality.

6. Pay differences

6.1 What the duty requires on pay differences

A listed body in Wales must:

- when drawing up equality objectives have due regard to the need to have objectives that address the causes of any difference in pay between employees who are from any protected group and those who are not, if it appears reasonably likely that the reason for the difference is related to the fact that those employees share a protected characteristic
- make appropriate arrangements to identify and collect information about differences in pay, and the causes of any such differences, between employees who have a protected characteristic and those who do not. This information must be published as appropriate.

Gender pay differences

A listed body in Wales must:

- publish an equality objective in relation to addressing any gender pay difference identified or publish reasons why it has not done so
- publish an action plan in respect of gender pay setting out:
 - any policy it has that relates to the need to address the causes of any **gender** pay difference
 - any gender pay equality objective it has published (including any revisions). Where it has identified a gender pay difference amongst its staff, but has not published an equality objective to address the causes of that pay difference, the action plan must set out the reasons for not doing so
 - a statement about the steps it has taken or intends to take to fulfil its gender pay objective and how long it expects to take.

7. Overview on pay differences

The specific duties in respect of pay differences are aimed at achieving:

- better and more equitable pay outcomes for all protected groups
- encouraging transparency on any differences in pay for people who have a protected characteristic and those who do not
- specifically prompting actions to address pay gaps between men and women.

A listed body is required to have due regard to the need to have equality objectives to address the causes of any pay differences in respect of all protected characteristics. To be in a position to make this judgement effectively, it will be useful for a listed body to have systems in place to enable it to look at how people with any protected characteristic are distributed throughout the organisation.

8. Gender pay difference

The duty to address pay differences goes further in relation to gender than the other protected characteristics. Where a listed body has identified a pay difference related to gender and has not published an equality objective to address the causes of this, it must publish its reasons for not doing so.

A listed body is required to publish a gender pay action plan. This is where an authority sets out its reasons for the decision not to publish an equality objective on gender pay where a gender pay difference has been identified.

The action plan also requires an authority to present any policies in relation to the need to address the causes of gender pay differences.

9. Analysing pay differences

In considering pay differences under the specific duties, listed bodies will need to analyse relevant payroll records to capture the broad nature of pay. Total earnings may include not only basic pay, but additions such as overtime earnings, shift rates, performance bonuses, commission, or any other payments.

If there are any pay differences for employees from protected groups doing jobs which involve similar levels of effort, skills, knowledge and responsibility, a listed body should find out why these exist. It may find, for example, that starting pay is not always the same, or that

part-time workers are paid less per hour than full-time workers.

Different levels of effort, skills, knowledge and responsibility can justify pay differences between jobs. Differences in pay should be based on the specific requirements of the jobs and the real circumstances in which they are done.

An authority should be able to identify objective evidence-based reasons for pay differences between employees who do jobs involving similar levels of effort, skill, knowledge and responsibility.

10. Equal pay

The Equality Act 2010 is the current legislative source on equal pay for the protected characteristic of gender. It requires that women and men are paid on equally favourable terms where they are employed on 'like work' or 'work rated as equivalent' or 'work of equal value'.

The specific duties on pay differences are not intended to replace an authority's obligations on equal pay under the Equality Act 2010 to address pay differences between men and women, but to supplement them. The specific duties should help identify opportunities to address the causes of pay differences which are not addressed by pay reviews.

These issues may include job segregation (where men and women or other groups dominate in one occupation or at one level within an organisation); working patterns, such as part-time or compressed hours; promotion; the gender impact of family and caring roles and other stereotyping; starting salary negotiation and training opportunities.

More information on equal pay is available on the Commission's website and particularly in the Statutory Code of Practice on Equal Pay:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/>

11. Staff training

11.1 What the duty requires on staff training

A listed body in Wales must make appropriate arrangements to:

- promote knowledge and understanding of the general duty and specific duties amongst its employees
- use any performance assessment procedures to identify and address training needs of employees in relation to the duties.

It is important for people throughout public bodies to be aware of the general and specific duties so that when relevant it is considered in their work. A listed body should ensure its equality objectives are effectively communicated to relevant staff and reflected in their work as appropriate.

Examples may include:

- **Board members** – in how they set strategic direction, review performance and ensure good governance of the organisation.
- **Senior managers** – in how they oversee the design, delivery, quality and effectiveness of the organisation's functions.
- **Equality and diversity staff** – in how they raise awareness and build capacity on the general and specific duties within the organisation and how they support staff to deliver on their responsibilities.
- **Human resources staff** – in how they build equality considerations in employment policies and procedures.
- **Policy makers** – in how they build equality considerations in all stages of the policy making process including review and evaluation.
- **Communications staff** – in how they ensure equality information is available and accessible.
- **Analysts** – in how they support the organisation to understand the effect of its policies and practices on equality.
- **Frontline staff** – in how they meet the needs of people from protected groups.
- **Procurement and commissioning staff** – in how they build equality considerations in the organisation's relationships with suppliers.

A listed body should consider:

- embedding equality awareness and the principles of the general and specific duties into induction training
- building equality issues into specific and professional training events
- making available alternative learning methods such as CD training modules, distance learning packages, staff mentoring or coaching

The specific duty is not just to provide training but requires promotion of understanding. Listed bodies should therefore consider developing means to be able to demonstrate that training has led to an understanding of the duties. This may involve consideration of equality-related objectives within systems of individual staff appraisal and cyclical review of appropriate training needs.

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