

GUIDANCE

Equality Information and the Equality Duty

A Guide for Listed Public Authorities
in Wales

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1 | Context for this guide

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) brought together and replaced the previous anti-discrimination laws with a single Act. The majority of the Act came into force on 1 October 2010.

The Act includes a **public sector equality duty** (the 'general duty') . 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

Continued...

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 general duty covers the following protected characteristics:

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

It applies to marriage and civil partnership, but only in respect of the requirement to eliminate discrimination in employment.

The phrase 'protected group' is sometimes used 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 (who may be covered by the English specific duties).

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 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 and the Equality Duty*
4. *Assessing Impact and the Equality Duty*
5. *Equality Information and the Equality Duty*
6. *Employment Information, Pay Differences and Staff Training and the Equality Duty*
7. *Procurement and the Equality Duty*
8. *Annual Reporting, Publishing and Ministerial Duties and the Equality Duty*

2.2 | Who is the guidance aimed at?

The 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 that it 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 | Equality information

3.1 | What the specific duties require on equality information

A listed body in Wales must:

- make appropriate arrangements to ensure that it periodically identifies relevant information it holds, and identifies and collects information that it does not have
- 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
- publish relevant information that it holds, unless it would be inappropriate to do so (e.g. if it would breach the Data Protection or other legislation). This had to be done for the first time by 2 April 2012 and it must be reviewed periodically.

As part of the process of identifying relevant information, an authority will need to assess how its work and activities may help in fulfilling the three aims of the general duty.

In assessing how it carries out its activities in line with the general duty, an authority must fulfil the engagement obligations and have due regard to other relevant information. This had to be done for the first time by 2 April 2012 and it needs to be reviewed periodically.

As part of its specific duties on annual reporting, a listed body is required to publish its reasons for not collecting relevant information that it has identified, but does not hold.

Listed bodies must collect and publish detailed information on the profile of its employees (see **Employment information** below).

4 | Purpose of equality information

The specific duties on relevant information enable a listed authority to embed equality-related evidence into its work. Collecting and using relevant information will be critical in meeting the general and specific duties. The desired outcome is that a listed body has the best evidence to enable it to set meaningful objectives and carry out fully informed impact assessments.

Publishing this information helps to make policy development more transparent and to explain how and why decisions are made. This will be particularly useful when making difficult resource decisions.

It will also enable the Commission and other interested parties to gauge a listed body's performance on equality.

The information needed to inform decisions under the duty will vary widely between different sectors and organisations. It is for a listed body to decide exactly what information will help meet the general duty. This will depend on factors such as the nature and size of the organisation.

5 | When must relevant information be used?

The specific duties require a listed body to have due regard to relevant information at certain points, namely:

- when preparing and publishing equality objectives
- when assessing policies and practices for their impact on people with protected characteristics
- when making or revising its Strategic Equality Plan; and
- when assessing its work and activities in relation to fulfilling the three aims of the general duty.

6 | Developing information

6.1 | Existing relevant information

A listed body must make appropriate arrangements to identify the information it currently holds which is relevant to meeting the three aims of the general duty. Relevant information may be held by another organisation as well as within the listed body itself.

As part of the arrangements to identify relevant information, an authority will need to assess how what it does (its work and activities) may help in fulfilling the three aims of the general duty. Listed bodies were required to do this for the first time by 2 April 2012. They are required to involve people who represent the interests of people with protected characteristics.

A listed body must publish the reasons for not collecting relevant information it has identified, but does not hold.

The duties give a wide description of when a listed body is holding relevant information. In addition to the information the authority holds itself, the description includes:

- relevant information held by another person/organisation on behalf of the listed body
- relevant information held by a listed body on behalf of another person/organisation where either:
 - that person has consented to the listed body using the information to help it meet the general and specific duties, or
 - it would be lawful and reasonable for the listed body to use the information to help it meet the duties.

6.2 | Sources of information

Useful evidence may include:

- quantitative research and statistics e.g. Census and surveys
- qualitative research e.g. focus groups
- administrative data
- service user monitoring information
- workforce monitoring information
- service user feedback and complaints, e.g. satisfaction surveys
- information on those who are not using services as well as those who are.

In carrying out monitoring and surveys, it may be helpful to use standard questions from the 2011 Census or other ONS questions e.g. on ethnicity. Using standard questions throughout an organisation will assist in analysing and comparing data.

Questionnaires or surveys should be accompanied with information about how the data will be stored, how it will be used and who can access it. If information can be linked to an individual it may only be stored with their written permission, which may be given on a monitoring form. Further information on data protection can be found on the Information Commissioner's Office's website: www.ico.gov.uk/for_organisations/data_protection.aspx.

Relevant national reports will be useful. Sources include:

- Office for National Statistics, including the Census and the Labour Force Survey
- Welsh Government statistics and data
- Equality and Human Rights Commission
- Third sector organisations, many of which hold useful information on groups of people sharing protected characteristics.

Listed bodies may find it useful to pool information with other public authorities by sector or area (for example, within Local Service Boards).

6.3 | Workforce information

Listed bodies are required to collect information in respect of their staff by protected characteristic. They must also report on a regular basis on how policies and practices affect staff with different protected characteristics. Guide 6 on Employment information and pay differences contains more information on this.

A listed body cannot rely on the specific duties to require any employee or applicant to provide any information in relation to her/his protected characteristics. However, it is in an authority's interest to collect information that is as complete and accurate as possible so that it may have a fuller profile of its staff base and be in a position to make better informed decisions to drive forward the aims of the general duty. Authorities should therefore 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.

7 | Addressing gaps

In identifying the information it currently holds a listed body is likely to identify areas of its work where it holds insufficient relevant information on particular protected characteristics, outcomes, levels of access and so on.

If a listed body finds it does not have sufficient information, it will need to address the gaps both from within its own organisation and from others.

8 | Review

A listed body must periodically review its arrangements for identifying and collecting relevant information.

9 | Monitoring sensitive information

For some protected characteristics, equality monitoring is not yet commonplace or it raises particular issues. Further information about workforce monitoring can be found in Appendix 2 to the Equality Act 2010 Employment Code, which also has relevance for service monitoring.

Appendix A contains guidance on gathering information in relation to the various protected characteristics.

10 | Publication

10.1 | Where and what to publish

The specific duties require a listed body to publish relevant information it holds and which it considers appropriate to publish. When publishing assessments of impact on protected characteristics, there is a requirement to publish a summary of the information used.

Listed bodies should publish the action they are taking to address any information gaps and who is responsible for doing this.

It may be helpful to publish all the equality information in one place, where it is easily accessible for both internal and external use. If part of a wider report, it will be helpful to clearly signpost the equality information and make it available on a website.

10.2 | Accessibility

Authorities must take all reasonable steps to publish information in accessible formats (e.g. for people with visual impairments, with different languages, etc). Useful guidance on website accessibility and a BSI standard for website commissioners is available on the website of the Website Accessibility Initiative.

See also Guide 8 in this series: Annual reporting, publishing and Ministerial duties.

11 | Confidentiality

When deciding what equality information to publish, you will need to take account of the Data Protection Act 1998, and in particular to ensure that no individuals can be identified from any published equality information without their express consent.

Ensuring confidentiality is likely to be a particular issue when you are dealing with sensitive data or where the numbers of people with any characteristic are numerically low, potentially making it easier to identify individuals; for example, data relating to sexual orientation, religion and belief and gender reassignment.

Anonymisation is the process of converting data into a form where identification of individuals is unlikely to take place. The Information Commissioner's Office has published a code of practice on the anonymisation of personal data and the disclosure of data once it has been anonymised.¹

¹ ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation

Appendix A |

Advice for public authorities on gathering equality information

People are likely to be far more willing to answer questions on identity if they are clear in what way the information will be used and the benefit to themselves and others.

A.1 | Disability

The extent to which you disaggregate information will depend on the relevance of the issue to equality and good relations, and the size of your organisation. You need to bear in mind, however, that simply disaggregating information in terms of whether people are disabled or not, will not give you a clear picture of your disabled workforce or service users, since it will not reflect different impairment types.

Although it is usually unlawful to ask any job applicant about their disability or health until the applicant has been offered a job, you can ask questions about disability and health for:

- making reasonable adjustments for the application process
- equality monitoring purposes, kept separate from the application form.

You will find more details about the definition of disability in Appendix 1 of the Codes of Practice on the Equality Act 2010 for both services/function and for employment.

A.2 | Sexual orientation

Monitoring in relation to sexual orientation can be a new and sensitive issue for staff and for service users. It is important to make clear that it is not compulsory to answer questions on any aspect of identity. Evidence from public authorities suggests that

disclosure of sexual orientation increases over time, as organisations improve their systems and create a culture of trust.

For further advice on sexual orientation monitoring, please see Office of National Statistics guidance for the National Statistics harmonised question which relates to sexual identity: www.ons.gov.uk/about-statistics/measuring-equality/equality/sexual-identity-project/measuring-sexual-identity--an-evaluation-report.pdf

Some organisations think, however, that the way ONS asked the question may lead to under-reporting, particularly amongst older people.

You may also find 'Improving sexual orientation monitoring', a report published by the Commission, to be helpful. It explores the case for asking people about sexual orientation and the issues it raises, including how a question may be framed more effectively, the importance of anonymity and confidentiality, the questions that work and how the information collected can be used.

A.3 | Gender reassignment

The term 'gender reassignment' applies to the process of transitioning from one gender to another. The term used in the Equality Act 2010 to describe people who intend to transition, are transitioning or have transitioned is 'transsexual'. So, a person who intends to undergo, is undergoing or has undergone a process of gender reassignment (which may or may not involve hormone therapy or surgery) is a transsexual person, also referred to as a transgender person ('trans person').

Monitoring numbers of trans people is a very sensitive area and opinion continues to be divided on this issue. Many trans people have been bullied, harassed and marginalised, and could be very negatively affected by disclosure of their status. As an employer or service provider, public authorities have a duty to protect an individual's right to privacy. Without gathering some form of evidence, however, it may be difficult to monitor the impact of policies and practices on trans people or employment patterns such as recruitment, training, promotion or leaving rates.

Because many trans people have had negative experiences in the workplace and services, they may be reluctant to disclose or may not trust their employers or service providers fully. Monitoring may be conducted through a neutral organisation with expertise in this field under a guarantee of anonymity. If this is not possible, monitoring should take place within your usual monitoring arrangements, though it is

essential that public authorities ensure that individual trans people are not identifiable.

Gender Recognition Act 2004

Public authorities have a duty to protect an individual's right to privacy. You need to remember that the Gender Recognition Act 2004 provides that, where a person holds a gender recognition certificate, they must be treated according to their acquired gender and it is a criminal offence to disclose their status. A transsexual person may consent to you disclosing the information if they decide it is in their interests to do so. However, such consent must be explicit. It may not be assumed. You should not routinely ask transsexual staff or service users to produce their certificate as evidence of their legal gender.

A.4 | Children and young people

It is not always suitable for monitoring on sensitive issues to be undertaken in relation to young people. In this situation, remember that you can make use of national information or engagement to identify priority issues for children and young people. National trends may also be directly applicable to your context.

A.5 | Religion or belief

Monitoring religion and belief can be a sensitive issue. It should be emphasised that it is not compulsory to answer questions on religion or belief (or any protected characteristic).

There may also be an issue in interpreting information about someone's religion or belief because of the varying levels of commitment that people who identify themselves as belonging to a particular religion have. For instance, there may be significant differences between someone who may identify themselves as a Christian and a person for whom Christianity influences every aspect of their lives.

Remember that the duty also applies to those who have no belief, like atheists, and those who have non-religious philosophical beliefs, like humanists.

For more information, see the Equality Act 2010 Employment Code.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website www.equalityadvisoryservice.com

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)
10:00 to 14:00 (Saturday)

Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. The Commission welcomes your feedback.

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