

Guidance

Technical guidance on the public sector equality duty: England

Contents

Foreword	9
Chapter 1: Introduction	10
The Equality Act 2010	10
Status of this guidance	10
Scope of the guidance	11
Human rights	11
Terms used in this technical guidance	12
How to use the guidance	12
Examples in the guidance	13
Further information	14
Chapter 2: Introduction to the public sector equality duty	15
What is the general equality duty?	15
To whom does the general equality duty apply?	16
When does the general equality duty apply?	16
How the duty applies to the protected characteristics	19
What is the purpose of the public sector equality duty?	21
Who benefits from the duty?	22
Legal responsibility	23
Exceptions	23
What does 'due regard' mean?	23
How much regard is 'due regard'?	24
How do the three aims in the general equality duty relate to each other?	27
Chapter 3: The general equality duty aims	28

Introduction.....	28
Section 1: Eliminating discrimination and other prohibited conduct	29
Section 2: Advancing equality of opportunity	32
Section 3: Fostering good relations	39
Chapter 4: Tools available to bodies subject to the duty to advance equality	41
Treating disabled people more favourably than people who are not disabled	42
Making use of exceptions in the Act	42
Positive action	43
Chapter 5: Complying with the general equality duty in practice	45
Introduction.....	45
Identifying the relevance of the general equality duty.....	46
Ensuring a sound evidence base.....	48
What sort of equality evidence will be needed?	50
Lack of evidence.....	51
Evidence gathering in practice.....	53
Engagement	53
What does engagement mean?.....	54
Engagement in practice	56
Ensuring due regard in decision making.....	57
Ensuring decision makers understand the duty	58
Ensuring sufficient equality evidence is taken into account throughout the decision-making process	59
Giving due weight to the equality aims in making decisions	61
Ensuring due regard through the use of guidance and criteria	63
Providing evidence of compliance	64

Meeting the duty in relation to other bodies	66
Commissioning and procurement	66
Auditing, inspecting and regulating others	68
Chapter 6: Complying with the specific duties.....	70
What the specific duties Regulations require	71
The aim of the specific duties	71
Publishing gender pay gap information.....	72
Gender Pay Gap Information.....	73
What information on the Gender Pay Gap should be published?	73
How should the information be gathered and reported?	74
When should the information be published?	75
The specific duty to publish Equality Information	75
What employee information should be published?	75
What information about other persons affected by policies and practices should be published?	76
Information gaps	77
Data Protection Act and confidentiality	78
When does equality information have to be published?	79
The specific duty to publish one or more equality objectives	79
Preparing equality objectives.....	79
When and how frequently should equality objectives be prepared and published?	81
Publishing Equality information and Objectives	82
Chapter 7: Enforcement.....	84
Introduction.....	84
The Commission's duties.....	84

Commission enforcement powers: the general duty	84
Failure to comply with a compliance notice	85
Commission enforcement powers: the specific duties	85
Judicial review	86
Annex 1: Public authorities and public functions	87
Public authority	87
Exercising public functions	87
Which functions are covered?	89
Annex 2: Prohibited conduct	90
Annex 3: Exceptions	92
Exceptions	92
Exception for certain bodies that exercise public functions.....	94
Annex 4: Assessments	96
Terms of reference	96
Representations	96
Provision of information: notice.....	97
Failure to comply with a notice	97
Conclusion of an assessment.....	98
Annex 5: Glossary.....	99
Advancing equality of opportunity	99
Age	99
Alternative formats.....	100
Assessing impact on equality	100
Bodies subject to the duty.....	100
Civil partnership.....	100

Commissioning	101
Compliance notice	101
Different needs	101
Direct discrimination	101
Disability	102
Disabled person.....	102
Disadvantage.....	102
Discrimination arising from disability.....	102
Discriminatory effect	102
Disproportionately low	103
Due regard.....	103
Duty to make reasonable adjustments.....	103
Eliminating discrimination	103
Encouraging participation	104
Engagement	104
Equality Act 2006.....	104
Equality Act 2010.....	104
Equality aims	105
Equality evidence	105
Equality information	105
Equality objectives	105
Equality outcome	105
Equality training	106
Fostering good relations	106
Function.....	106

Functions of a public nature.....	106
Gender.....	106
Gender Pay Gap Information.....	107
Gender reassignment	107
General duty	107
General equality duty.....	107
Good relations	107
Harassment	108
Impact.....	108
Impairment.....	108
Indirect discrimination	108
Judicial review	108
Listed authority	109
Marriage	109
Maternity.....	109
Minister of the Crown.....	109
Mitigation	109
Objective justification test	110
Objectively justified	110
Permissive exceptions.....	110
Positive action	110
Pregnancy and maternity.....	111
Procurement.....	111
Prohibited conduct.....	111
Proportionality.....	111

Protected characteristics	112
Public authority	112
Public functions	112
Public sector equality duty	112
Race	113
Reasonable adjustment	113
Regulations.....	113
Relevance.....	113
Relevant protected characteristics.....	113
Religion or belief	114
Section 23 agreement.....	114
Section 31 assessment.....	114
Service user(s)	114
Sex	115
Sexual orientation	115
Single-sex services.....	115
Specific duties	115
Stakeholders.....	115
Trans or transgender	116
Transsexual	116
Victimisation	116
Annex 6: Consolidated version of Schedule 19 of the Act as at 30 March 2020	117
Schedule 19.....	117
Annex 7: The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017	131

Citation, commencement and interpretation	131
Meaning of “employment”	132
Gender pay gap reporting	133
Publication of information	133
Equality objectives	134
Manner of publication	134
Monitor and the NHS Trust Development Authority	135
Amendment of Schedule 19 to the Act	135
Revocation, saving and transitional provision.....	135
Schedule 1	136
Schedule 2.....	145
Schedule 3.....	152
Explanatory note.....	154
Contacts.....	156

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 has a key role to play in bringing the Act to life. We are committed to our vision of a modern Britain where everyone is treated with dignity and respect, and we all have an equal chance to succeed.

That is why we are 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 Equality Act 2010, and replaces the race, disability and gender equality duties. It is supported by the specific duties contained in The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, which have replaced the Equality Act 2010 (Specific Duties) Regulations 2011.

This Technical Guidance has been updated to reflect the provisions of the new regulations, specifically the gender pay gap reporting requirements; it explains the three aims of the public sector equality duty, outlines the requirements of the Equality Act 2010 and the specific duty regulations and provides practical approaches to complying with the public sector equality duty. It also explains the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, which apply to some bodies which are not covered by the specific duties. 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 [our website](#)

Chapter 1: Introduction

The Equality Act 2010

- 1.1** 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’.
- 1.2** 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 2.9).

s.149

s.149(7)

Status of this guidance

- 1.3** 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**
- 1.4** This guidance is not a statutory Code issued under s.14 EA 2006. The guidance may be used as evidence in legal proceedings.
- 1.5** 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.

Kaur and Shah, R.
(on the application of) v. London Borough of Ealing and Anor [2008]
EWHC 2062 (Admin), para 22 per Moses LJ See also R(Brown) v
Secretary of State for Work & Pensions [2008] EWHC 3158 (Admin),
[2009] PTSR 1506 at [119-120]:

Scope of the guidance

- 1.6** This guidance covers the public sector equality duty as set out in Part 11 of the Act. Subject to the exceptions set out in Appendix 3, those parts of the guidance which deal with the public sector equality duty in s.149 of the Act apply to all public authorities, and those discharging public functions, across Great Britain.
- 1.7** This guidance also covers the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 ('the Regulations') which impose specific duties on certain public authorities listed in Schedules 1 and 2 to the Regulations.

Human rights

- 1.8** 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 Human Rights Act 1998 (HRA).

s.6 HRA

s.149(2) and 150(5)

- 1.9** Courts and tribunals have a duty to interpret primary legislation (including the Equality Act 2010) 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.

- 1.10** 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

- 1.11 Bodies subject to the duty:** The term ‘bodies subject to the duty’ is used in this guidance to refer to all legal persons subject to the public sector equality duty whether for all or just some of their functions. This includes organisations, for example NHS Trusts, and named persons subject to the duty, for example Her Majesty’s Chief Inspector of Prisons.

- 1.12 Listed authorities:** Some bodies subject to the general equality duty are also subject to specific equality duties which are intended to enable better performance of the general equality duty.¹ The term ‘listed authorities’ is used in this guidance to refer to these bodies. The specific equality duties are considered in Chapter 6 of this guidance.

Non listed authorities: those bodies which are subject to the general equality duty but are not subject to the specific equality duties in respect of gender pay gap information, who are not public authorities listed in Schedule 19, are nevertheless subject to the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (gender pay gap regulations) if they have 250 or more employees. The term “non listed authorities” is used in this guidance to refer to these bodies. The gender pay gap information regulations are considered in Chapter 6 of this guidance.

How to use the guidance

- 1.13** Bodies subject to the duty, including listed authorities, should read Chapters 1 to 5 and Chapter 7 of the guidance which relate to the general equality duty.

Listed authorities should in addition read Chapter 6 which relates to the specific equality duties.

¹ They are listed in Schedule 2 to the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017. See Chapter 6 of this guidance for more details.

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 Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (the Regulations) and who may be covered by the Equality Act (Gender Pay Gap Information) Regulations 2017

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

Appendices:

- Annex 1: What is meant by ‘public authorities’ and ‘public functions’
- Annex 2: Prohibited conduct
- Annex 3: Exceptions
- Annex 4: Assessments
- Annex 5: Glossary
- Annex 6: Equality Act 2010 Schedule 19, as amended
- Annex 7: The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017

Examples in the guidance

1.14 Two types of examples are used in this guidance. Examples which are in shaded boxes coloured blue are derived from actual court decisions and are used to illustrate how the courts have interpreted the legislation; these are titled ‘Example’. Examples in shaded boxes coloured red are examples of good practice; these are titled ‘Case study’. They are intended to do no more than 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

1.15 The Commission has published further non-statutory guidance which is available on the [Commission's website](#)

Chapter 2: Introduction to the public sector equality duty

- 2.1** 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.

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

What is the general equality duty?

- 2.2** 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:
- a.** eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
 - b.** advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
 - c.** foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In this guidance we refer to these as the three aims of the general equality duty.

Paragraphs 2.3 and 2.4 explain to which bodies and to which functions the duty applies.

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?

2.3 The general equality duty applies to public authorities listed in Schedule 19² to the Act in respect of all their functions, unless otherwise specified. It also applies to others who are not listed but exercise public functions, in respect of that function. This is explained further in Annex 1³

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.⁴

2.4 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?

2.5 The duty must be complied with when a body subject to it is ‘exercising a function’.

The courts have said that there is no scope for depriving ‘function’ of much of its ordinary meaning.⁵

² 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 Equality Act 2010 was passed. Annex 6 to this guidance has a consolidated list of authorities in Schedule 19 as at November 2020

³ 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.

⁴ R. (Brown) v. Secretary of State for Work and Pensions [2008] EWHC 3158 at para 78.

⁵ Pieretti v. Enfield Borough Council [2010] EWCA 1104, Wilson LJ at para 26.

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 budget⁶ to closing libraries⁷

s.149(1), (2)

- 2.6** 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.⁸ 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.⁹

⁶ R (on the application of KE and others) v Bristol City Council [2018] EWHC 2103 (Admin), [2018] ELR 502

⁷ 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)

⁸ Stuart Bracking and others v Secretary of State for Work and Pensions [2013] EWCA Civ 1345, McCombe LJ at para 60.

⁹ Pieretti v. Enfield Borough Council [2010] EWCA 1104, para 26 per Wilson LJ.

Example

A local authority was challenged for failing to comply with the Disability Equality Duty¹⁰ 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.¹¹

- 2.7** 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.¹² 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.¹³

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 5.38-5.39 on practical compliance).

¹⁰ S.49A of the Disability Discrimination Act 1995, superseded by s.149 of the Act.

¹¹ *Pieretti v. Enfield Borough Council* [2010] EWCA 1104.

¹² *Barnsley MBC v. Norton* [2011] EWCA Civ 834, Lloyd LJ at para 15.

¹³ *R. (on the application of D and S) v. Manchester City Council* [2012] EWHC 17 (Admin), Ryder J at para 48.

Example

A school had a uniform policy which permitted only one pair of plain ear studs and a wrist watch 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.¹⁴ 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 its aims in its decision making about the particular girl's wish to wear the Kara once the issue arose.¹⁵

- 2.8** 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

- 2.9** The Act sets out nine protected characteristics:

- age
- disability
- gender reassignment
- marriage and civil partnership

¹⁴ 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.

¹⁵ R. (Watkins-Singh) v. Governors of Aberdare Girls' High School [2008] EWHC 1865 (Admin).

- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

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.

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'.

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.

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.

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.

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.¹⁶

The provision banning age discrimination in services and public functions (under Part 3 of the Act) took effect on 1 October 2012.¹⁷ 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 3).

s.4

¹⁶ See s.28(1)(a), 32(1)(b), 84(1)(b), 90 of the Act.

¹⁷ 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). It is not unlawful in relation to schools (Part 6, Chapter 1).

What is the purpose of the public sector equality duty?

2.10 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.

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.

2.11 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.

2.12 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.

2.13 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.

Chapter 4 discusses the tools available in the Act to enable a body subject to the duty to advance equality.

s.149(6)

2.14 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
- a reduction in instances of discrimination and resulting claims.

Who benefits from the duty?

2.15 The duty potentially benefits everyone because it applies to characteristics common to everyone. For example, everyone has a race and a sexual orientation.

There are also some characteristics covered by the duty which will not apply to everyone, such as disability.

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.

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.

Case study

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 didn't 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.

2.16 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

2.17 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 Minister, a Chief Inspector, a group of Commissioners or a board, authority, commission, council or the governors of a school.

Exceptions

2.18 There are a small number of exceptions to the general equality duty. These are set out in Annex 3.

What does 'due regard' mean?

2.19 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.

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’?

2.20 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.¹⁸ The greater the relevance and potential impact, the higher the regard required by the duty.

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.

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 unlikely 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.

2.21 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.

¹⁸ 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’. In *Hotak v Southwark London Borough Council*; *Kanu v Southwark London Borough Council*; *Johnson v Solihull Metropolitan Borough Council* 2015 UKSC 30, 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 74]. In *R on the application of Simone v The Chancellor of the Exchequer and the Secretary of State for Education* [2019] EWHC 2609, 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.

In *R. (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 out¹⁹ have been accepted by courts in later cases.²⁰ Those principles are that:

- 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]²¹ 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.’

¹⁹ *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 at paras 90-96.

²⁰ Including cases about the duty in s.149 of the Act. See, for example, *R. (on the application of Greenwich Community Law Centre) v. Greenwich London Borough Council* [2012] EWCA Civ 496.

²¹ 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.

- 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 (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].

2.22 In *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 that:

- 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.

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. The role of evidence in giving proper consideration to the aims of the equality duty is dealt with in Chapter 5 (see para 5.15 onwards).

2.23 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.

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’.²²

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

2.24 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).

Some actions may support more than one of the aims of the duty and so inter-relate.

Case study

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 Equality Act 2010 and the aim to foster good relations.

²² R. (W) v. Birmingham City Council [2011] EWHC 944, Blake J at para 45.

Chapter 3: The general equality duty aims

Introduction

3.1 This chapter explains what 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.

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.²³

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.**
- 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.**

²³ R. (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. (Baker) v. Secretary of State for Communities and Local Government [2008] EWCA Civ 141.

Section 1: Eliminating discrimination and other prohibited conduct

3.2 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.²⁴

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.

The duty requires relevant bodies to tackle the consequences of past decisions which failed to give due regard to the equality aims.²⁵ This would include existing policies or practices which have never been subject to ‘due regard’ consideration.

²⁴ R. (Elias) v. Secretary of State for Defence [2006] EWCA Civ 1293, Arden LJ at para 274.

²⁵ R. (W.) v. Birmingham City Council [2011] EWHC 1147, para 151 proposition iv.

Example

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.²⁶

- 3.3** 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.
- 3.4** 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.
- 3.5** 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.

²⁶ G. v. St Gregory's [2011] EWHC 1452, Collins J at paras 44-45.

- 3.6** 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

- 3.7** 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

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'.²⁷

²⁷ G. v. St Gregory's [2011] EWHC 1452, Collins J at para 42.

- 3.8** It will be easier to successfully defend the kind of claims referred to in paragraph 3.7 if the respondent is able to demonstrate that it 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.²⁸

Discrimination or prohibited conduct by others

- 3.9** The provisions addressing harassment by third parties have been repealed.²⁹ 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. 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

- 3.10** People who share a protected characteristic as compared with people who don't share that characteristic may be, through historic disadvantage or a failure to recognise and address their different needs:

²⁸ In *R(on the application of Elias) v Secretary of State for Defence*[2006] EWCA Civ 1293, a claim for breach of the race equality duty and indirect discrimination in relation to a benefits scheme, LJ Mummery said (132) when considering justification for indirect discrimination that if the exercise of formulating the criteria had been properly carried out with due regard to the potentially discriminatory effects (of requiring close links with the UK), there would probably have been brought into existence evidence in the form of data and reasons relevant to an informed choice of criteria, which might have had a lesser discriminatory impact (than the birth link criteria). The kind of evidential material which ought to be available for deciding the issue of justification does not exist, because the selection of the eligibility criteria by the Secretary of State was carried out without due regard to the race discrimination issue.

²⁹ Section 65, Enterprise and Regulatory Reform Act 2013.

- 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
- disproportionately concentrated in certain low-status occupations or grades.

This list is not exhaustive.

This second aim of the duty recognises that eliminating discrimination that is unlawful under the Act will not of itself address these issues.

- 3.11** 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 –
- a. remove or minimise disadvantages suffered by people who share a relevant protected characteristic that are connected to that characteristic. **See para 3.18.**
 - b. 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 3.19-3.37.**
 - c. 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 3.28-3.32.**

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

s.149(3)

- 3.12** 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.
- 3.13** 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 3.23.

The relevance of positive action measures to advancing equality of opportunity

- 3.14** 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.

- 3.15** 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.
- 3.16** 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.

Case study

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 disproportionately 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.

- 3.17** 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

- 3.18** 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.

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

Case study

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 an Islamic compliant fund in its range of investment fund choices.

(b) Meeting needs

- 3.19** People with certain protected characteristics may have needs that are different from others. 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.
- 3.20** 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.

Case study

An NHS trust becomes aware that the ongoing long-term use of hormones increases the risk of breast cancer for transsexual women aged 50-70. 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

- 3.21** 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.
- 3.22** The duty applies to meeting needs which arise within the scope of functions covered by the general equality duty.

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.

What a duty to have due regard to the ‘need to take steps’ means

3.23 The duty to have due regard to meet different needs is a duty to ‘have due regard to the **need to take steps**’ to meet different needs.

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.³⁰ 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.³¹

3.24 The previous disability equality duty, contained in s.49(A)(1) of the Disability Discrimination Act 1995, included a duty to ‘have due regard to the need to take steps to take account of a person's disability even where that involves treating disabled persons more favourably than other persons’.

When considering the meaning of this section in the case of Pieretti,³² Wilson LJ, in the Court of Appeal, said that for practical purposes he saw ‘little difference between a duty to “take due steps to take account” and the duty under section 149A(1)(d) to “have due regard to ... the need to take steps to take account.” If steps are not taken in circumstances which it would have been appropriate for them to be taken, i.e. in which they would have been due, I cannot see how the decision maker can successfully claim to have had due regard to the need to take them.’

³⁰ S.149(4) of the Act.

³¹ S.20 of the Act.

³² Pieretti v. Enfield Borough Council [2010] EWCA 1104, Wilson LJ at para 34.

Pieretti concerned a couple who had been evicted from their tenancy due to non-payment of rent and who 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, i.e. by making further inquiries.

The judgment is likely to be 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.

Only a court could decide if similar considerations apply in relation to other protected characteristics.

Meeting needs of disabled persons

- 3.25** As mentioned in para 3.23 the Act specifically says that the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 3.26** In relation to disability in particular, delivering equality of opportunity by meeting needs can sometimes in practice require additional services to be offered as an alternative alongside a 'mainstream' approach.
- 3.27** However, it would be unlawful discrimination to force a disabled person to use a separate 'disability-specific' service provided alongside a 'mainstream' service because they have a disability. Instead, any alternative service should be just that, i.e. an alternative which a disabled person can choose to use.

(c) Encouraging participation

- 3.28** 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.

Public life and other activities

- 3.29** ‘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.
- 3.30** 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. (Section 2, Chapter 5 discusses gathering equality evidence.)

Case study

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

- 3.31** 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.
- 3.32** 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

3.33 The Act says that fostering good relations involves having due regard, in particular, to the need to:

- a. tackle prejudice, and
- b. promote understanding.

s.149(5)

What does fostering good relations mean?

3.34 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.

3.35 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’.³³

3.36 The duty is to foster good relations between people with different protected characteristics. In practice this could mean fostering good relations between, for example, people with and without a visual impairment or between gay and straight people.

The aim of the duty to foster good relations

3.37 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 admitted prejudice between people with different protected characteristics
- increase understanding of, and reported respect for, difference

³³ This working definition is based on that developed by the Equality Commission of Northern Ireland: see ECNI's guide for public authorities: ‘Promoting good Relations’

- 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
- 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

- 3.38** 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.
- 3.39** 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.

Case study

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

- 4.1** The basic presumption under 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.
- 4.2** 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
- allowing positive action in limited circumstances.

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.

- 4.3** More detail about when the Act enables or requires people with certain protected characteristics to be treated differently from others can be found in the Statutory Code of Practice relating to Services, Public Functions and Associations and the Statutory Code of Practice on Employment. 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

4.4 S.149(4) of the Act states that the steps involved in meeting the needs of disabled persons include steps to take account of disabled persons' 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.

The Act contains a number of provisions allowing steps to be taken to take account of disabled persons' 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.³⁴ 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

4.5 The Statutory Code of Practice relating to Services, Public Functions and Associations and the Code of Practice on Employment provide details of exceptions to the general rule against direct discrimination in the Act.

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.

³⁴ For more details see the Commission's Code of Practice on Services, Public Functions and Associations at para 10.27.

Single-sex services

4.6 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.³⁵ 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 provisions to meet different needs of, or minimise disadvantage experienced by, one sex or another.

Case study

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

4.7 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?

It will be lawful for a relevant body to take positive action where it reasonably thinks that people who share a protected characteristic:

- a. experience a disadvantage connected to that characteristic; or
- b. have needs that are different from the needs of persons who do not share that characteristic; or
- c. have disproportionately low participation in an activity compared to those who do not share that protected characteristic.

³⁵ Schedule 3, paras 26 and 27 of the Act. This is explained in more detail in the Commission's Code of Practice on Services, Public Functions and Associations at para 13.51 onwards

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

What action is lawful?

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.

Positive action is not the same as positive discrimination, which is unlawful. The difference between the two is explained in the Code of Practice on Services, Public Functions and Associations.³⁶

Case study

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.

³⁶ Specifically at para 10.7 of that Code.

Chapter 5: Complying with the general equality duty in practice

Introduction

5.1 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.

5.2 A body subject to the duty will find the principles in section 2.21 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 those principles are:

- knowledge of the duty
- timeliness
- real consideration
- sufficient information
- non-delegable
- review, and
- evidence of consideration.

5.3 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.

5.4 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.

1. How will it assess the relevance of the duty to the functions it exercises?

See: Identifying the relevance of the general equality duty (paras 5.5-5.14)

2. How will it gather the information it needs to enable it to comply with the duty?

See: Ensuring a sound evidence base (paras 5.15-5.34)

3. How will it ensure that those exercising those functions understand their obligations under the duty?

4. How will it ensure that the duty is complied with both before and during any decision-making process?
5. 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 5.35-5.50)

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

See: Providing evidence of compliance (para 5.51-52).

Listed authorities should also refer to Chapter 6.

7. 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 5.53-5.64)

8. What review mechanisms will it put in place to ensure that compliance with the duty is continuing?

See: Ensuring a sound evidence base (at paras 5.15-5.18).

Identifying the relevance of the general equality duty

- 5.5** 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 para 2.5).
- 5.6** 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.

- 5.7** 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 it is not.³⁷ 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.
- 5.8** 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.
- 5.9** Assessing whether the general equality duty is relevant to a function will require some analysis and should be more than guess-work 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.
- 5.10** 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.
- 5.11** 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.
- 5.12** 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.
- 5.13** 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. If circumstances change and affect the relevant activity then the applicability of the duty may need to be considered again.

³⁷ 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.

- 5.14** 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.

Case study

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 ground 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

- 5.15** 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.
- 5.16** The courts have made clear the need to collate relevant information in order to have evidence-based decision making³⁸ 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.³⁹

³⁸ R. (Rahman) v. Birmingham City Council [2011] EWHC 944 Blake J at para 35, sub para 3. See also R (on the application of KE and Ors) v Bristol 2018] EWHC 2103 (Admin), HH J Cotter QC at 105."In my view this is a case where the Defendant was under a duty to acquire further information, including through consultation, in order to comply with the PSED, yet did not do so".

³⁹ For example, Child Poverty Action Group v. Secretary of State for Work and Pensions [2011] EWHC 2616 at para 76.

- 5.17** Adequate and accurate equality evidence, properly understood and analysed, is at the root of effective compliance with the general duty. Without it, a body subject to the duty would be unlikely to be able to have due regard to its aims.

Example

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 licence.

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 DDA.⁴⁰

- 5.18** 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
 - monitor their progress against these objectives.

⁴⁰ R. (Lunt) v. Liverpool City Council [2009] EWHC 2356, Blake J at paras 43-45.

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?

5.19 Where one or more aims of the duty have been identified as being relevant to a function (as described in para 5.9) 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.

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.

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 Equality and Human Rights Commission; local or national representative groups etc.

5.20 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.

Case study

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, and 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

- 5.21** 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.
- 5.22** 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.⁴¹

⁴¹ A number of research reports including "Is Britain Fairer" – The state of Equality and Human Rights 2018

Case study

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.

- 5.23** 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.⁴²

Case study

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.

- 5.24** 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.

⁴² Hurley and Moore, R. (on the application of) v. Secretary of State for Business, Innovation and Skills [2012] EWHC 201 (Admin), Elias LJ at para 90.

Evidence gathering in practice

5.25 In deciding what evidence to gather, a body subject to the duty could ask itself the following questions:

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

5.26 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 publically 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

5.27 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.

5.28 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.

The importance of engagement has been highlighted by case law, where the court, in finding a breach of the general 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’.⁴³

What does engagement mean?

5.29 Engagement 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.

5.30 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.

⁴³ R. (on the application of (1) Luton Borough Council and Nottingham City Council (2) Waltham Forest London Borough Council (3) Newham London Borough Council (4) Kent County Council (5) Sandwell Metropolitan Borough Council) v. the Secretary of State for Education [2011] EWHC 217 (Admin) Holman J. at para 114.

Example

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.⁴⁴

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.⁴⁵

5.31 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.

⁴⁴ In this case the Disability Equality Duty in s.49A of the Disability Discrimination Act 1995.

⁴⁵ *Barwick and anor v. Bridgend County Borough Council* [2009] EWHC 1723, Bidder J at para 108.

Case study

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.

- 5.32** 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.⁴⁶

Engagement in practice

- 5.33** 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 it will reflect the outcome of any engagement?

- 5.34** 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

⁴⁶ 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).

- 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
- 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

5.35 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.

5.36 A relevant body must comply with the duty for all types of decision 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.⁴⁷

5.37 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
- demonstrably takes this information fully into account throughout the decision-making process.

⁴⁷ See, for example, *R. (Watkins-Singh) v. Governors of Aberdare Girls' High School* [2008] EWHC 1865 (Admin).

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.⁴⁸ 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.⁴⁹

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.

The courts have also said that ‘It is certainly unreal to require a “comprehensive scrutiny” (whatever that may mean) at every moment throughout the [decision-making] process’. Precisely what consideration is due can and will vary from time to time during the process... [To have indicated that] a full Equality Impact Assessment will always suffice provided only that it is produced prior to the decision finally being made may be going too far.’⁵⁰

Ensuring decision makers understand the duty

5.38 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

⁴⁸ R. (Brown) v. Secretary of State for Work and Pension and others [2008] EWHC 3158, Aiken LJ at para 99.

⁴⁹ Stuart Bracking and others 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).

⁵⁰ R. (on the application of Bailey and Ors) v. London Borough of Brent Council and Ors [2011] EWCA Civ 1586. Davies LJ at para 104.

- ensure that the implications of the general equality duty are set out in reports or other papers for decision makers.⁵¹

5.39 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.

Case study

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

5.40 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.⁵²

⁵¹ See, for example, *R. (on the application of Bailey and Ors) v. London Borough of Brent Council and Ors* [2011] EWCA Civ 1586, Davies LJ at para 93.

⁵² *Stuart Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, McCombe LJ at para 26.

5.41 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.

5.42 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 Act
- 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.

Example

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 the 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.⁵³

Giving due weight to the equality aims in making decisions

5.43 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 courts have rejected the argument that such a challenge will only succeed if the absence of due regard is shown to be irrational.⁵⁴

⁵³ R. (Chavda) v. Harrow London Borough Council [2007] EWHC 3064 (Admin) Mackie J at para 40.

⁵⁴ R. (Boeyjo) v. Barnet LBC [2009] EWHC 3261, Jarman J at paras 56-57.

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.⁵⁵

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.

5.44 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.

5.45 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.⁵⁶
- 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.⁵⁷
- However even if the number of people affected by a particular decision may be small, for example a decision which affects transsexual 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.

⁵⁵ Hurley and Moore, R. (on the application of) v. Secretary of State for Business, Innovation and Skills [2012] EWHC 201 (Admin). Elias LJ at para 78.

⁵⁶ R. (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.

⁵⁷ R. (Hajrula) v. London Councils [2011] EWHC 448 (Admin) Calvert-Smith J at para 69.

- When considering the meaning of the previous Disability Equality Duty⁵⁸ in the case of Pieretti,⁵⁹ Wilson L J in the Court of Appeal said that for practical purposes he saw ‘little difference between a duty to “take due steps to take account” and the duty under section 49A(1)(d) to “have due regard to ... the need to take steps to take account”’. Where that judgement is relevant, and steps are not taken in circumstances in which it would have been appropriate for them to be taken, i.e. in which they would have been due, a decision maker cannot successfully claim to have had due regard to the need to take them.⁶⁰

Ensuring due regard through the use of guidance and criteria

- 5.46** 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.
- 5.47** 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.
- 5.48** 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.

⁵⁸ Specifically s.49A(i)(d) of the Disability Discrimination Act 1995.

⁵⁹ Pieretti v. London Borough of Enfield [2010] EWCA Civ 1104.

⁶⁰ See paragraph 3.24 for more details of the Pieretti decision.

Case study

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.

5.49 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.

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

5.50 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

5.51 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.⁶¹ 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.

Other than listed authorities, bodies subject to the duty are not required to publish information on how they have complied with the duty.

⁶¹ *Stuart Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, McCombe LJ at para 60.

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.

Example

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'.⁶²

5.52 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
- 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.

⁶² L (A Child), Re [2009] EWHC 458 (Admin) (12 March 2009) Black J at paras 121 and 123.

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

5.53 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
- organisations to which it grants aid.

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.

The following two sections deal briefly with two circumstances:

Commissioning and procurement (paras 5.54–5.61), and Audit, inspecting and regulating others (paras 5.62–5.64).

Commissioning and procurement

5.54 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

5.55 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.

5.56 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.

- 5.57** 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.

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.

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)

- 5.58** 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

- 5.59** Authorities are required by the Public Services (Social Value) Act 2012, before procuring certain services, to consider how the services they propose to procure "might improve the economic, social and environmental well-being" of the area in which the services are to be provided (section 1(3), Public Services (Social Value) Act 2012).
- 5.60** In addition, the overarching EU Treaty principles of the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency between tenderers apply to public bodies in all EU Member States in their procurement of works, goods or services. These principles apply to contracts of cross-border interest, irrespective of the contract value.

5.61 The Public Contracts Directive 2014/24/EU prescribes how certain aspects of the procurement process must be carried out for contracts valued at or above EU thresholds subject to specified exceptions and dependent upon whether the body is listed as being subject to the procurement provisions by the implementing regulations;⁶³ it imposes specific requirements, criteria and restrictions with the aim of ensuring compliance with the above EU Treaty principles.

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 in to 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.

Auditing, inspecting and regulating others

5.62 For some bodies, their public functions will primarily involve interaction with others, for example through auditing, inspecting, or regulating other bodies' activities.

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.

⁶³ The Directive imposes more limited requirements when public authorities are purchasing certain services which are now subject to a "light touch" regime – these are ('Part B services') including catering, recruitment, security, health services, social services, recreational, cultural and sporting services – Directive Annex IIB, Regulations Schedule 2 Part B. Equality is likely to be highly relevant to many of the Part B services; with a more relaxed regime there is potentially wider scope to apply equality considerations to the procurement of such services. The EU Treaty principles, however, apply fully to Part B services.

5.63 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.

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).

5.64 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.

Case study

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

- 6.1** The Act enables a Minister of the Crown to make regulations imposing further duties on a public authority in Part 1 of Schedule 19 of the Act for the purpose of enabling the better performance by the authority of the general equality duty. In this chapter these are referred to as the **specific duties**. A Minister of the Crown can also impose specific duties on cross-border Welsh and Scottish bodies listed in Part 4 of Schedule 19 in certain circumstances. The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 ('the Regulations'), which impose specific duties on certain public authorities listed in Schedule 2 to the Regulations, were made in September 2017. These can be found in Annex 7. The Regulations replaced similar regulations which had been made in 2011 (the 2011 Regulations) and which were in force up until 30 March 2017. This chapter explains what the regulations say, what public authorities are subject to them and what those public authorities must do to comply with them.
- 6.2** All the public authorities that are listed in Schedule 2 of the Regulations must comply with the specific duties. A Minister of the Crown may make an order to amend the lists of bodies subject to the specific duties.⁶⁴ In this chapter, bodies subject to the specific duties are referred to as **listed authorities**.
- 6.3** In addition, the Act enables a Minister of the Crown to make regulations imposing duties on relevant employers to publish annual information relating to pay. The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (the gender pay gap regulations) were made on 6 February 2017 and came into force on 6 April 2017. They contain similar obligations to those in the specific duty regulations referred to above and throughout this chapter.

⁶⁴ Annex 7 shows amendments up to and including November 2020. Monitor and the NHS Trust Development Authority may jointly comply with the obligations imposed by the Regulations as if they were a single public authority Regulation 7 of the Equality Act 2010 (specific Duties and Public Authorities) Regulations 2017 (SI 2017/353):

- 6.4** The gender pay gap regulations broadly cover the private sector and impose similar obligations upon them as the specific duty Regulations. If such a body is subject to the gender pay regulations, they should consult the [ACAS guidance or the Government's guidance](#)

What the specific duties Regulations require

- 6.5** There are three sets of requirements in the specific duties:
- The first set⁶⁵ requires certain listed authorities to publish gender pay gap information on their employees
 - The second set⁶⁶ requires certain listed authorities to publish information to demonstrate their compliance with the general equality duty ('equality information').
 - The third⁶⁷ requires the preparation and publication of one or more equality objectives which it thinks it should achieve to do any of the things mentioned in the general equality duty ('equality objectives')

The aim of the specific duties

- 6.6** The specific duties are intended to assist listed authorities in complying with the general equality duty. They require listed authorities to be transparent about how they are responding to the general equality duty, for example by demonstrating through the publication of information that they have sufficient information to understand the effect of their work.
- 6.7** A listed authority must comply with both the specific duties and the general equality duty. A court may take into account a failure to comply with the specific duties, for example a failure to set one or more equality objectives, in deciding whether a listed authority has complied with the general equality duty.

⁶⁵ Regulation 3 of the Equality Act 2010 (specific Duties and Public Authorities) Regulations 2017 (SI 2017/353: See Annex 7

⁶⁶ Regulation 4 of the Equality Act 2010 (specific Duties and Public Authorities) Regulations 2017 (SI 2017/353: See Annex 7

⁶⁷ Regulation 5 of the Equality Act 2010 (specific Duties and Public Authorities) Regulations 2017 (SI 2017/353: See Annex 7.

- 6.8** Where the equality information published by a listed authority to comply with the specific duties does not adequately demonstrate how it has had due regard to the three aims of the general equality duty, the listed authority may leave itself open to be challenged by its staff, service users or others affected by how the authority carries out its functions. For example, if a listed authority publishes no information about one or more of the aims of the duty, publishes no information in relation to one or more of the relevant protected characteristics, or publishes no information in relation to one or more of its relevant functions, where applicable.

Publishing gender pay gap information

- 6.9** A listed authority must publish its gender pay gap information, where applicable to it, on its website in a manner that is accessible to all its employees and to the public; and for a period of at least three years beginning with the date of publication⁶⁸. This information also has to be published on the website that has been designated for this purpose by the Secretary of State⁶⁹. It can be found at [our website](#).
Data can be viewed at [our website](#).
- 6.10** Information relating to the armed forces may be published by a government department on its behalf and may be published on that department's website.
- 6.11** A listed authority may decide to publish its gender pay gap information in additional formats on its website; and may wish to consider publishing this information in conjunction with its equality information and equality objectives.

⁶⁸ Regulation 15 of the Equality Act (Specific Duties and Public Authorities) Regulations 2017: See Annex 7

⁶⁹ Schedule 1 Para 14 to the Equality Act (Specific Duties and Public Authorities) Regulations 2017: See Annex 7

Gender Pay Gap Information

- 6.12** Publishing and monitoring pay gaps will help employers to understand the reasons for any gap and to consider whether they need to develop action plans to tackle the causes of any such gap. For example, if women are mainly at lower-paid levels in the organisation, a listed authority might want to develop a positive action plan to remove any barriers preventing women from progressing to more senior roles.
- 6.13** Continuing to publish and monitor the gender pay gap, in line with the regulations, will help listed authorities to monitor how effective their actions are in reducing it.
- 6.14** It is good practice for authorities to explain to their employees why they are collecting information on the gender pay gap: what information they are collecting and how it will be obtained (e.g. from HR and payroll); who employees can talk to in the organisation about the gender pay gap (e.g. line manager, HR); what authorities will do with the information that is gathered; and where employees can obtain further information about the gender pay gap.

What information on the Gender Pay Gap should be published?

- 6.15** There is a specific requirement for those authorities which are listed in Schedule 2 to the Regulations and which have 250 or more employees to publish their gender pay gap information. The information that must be published is the following:⁷⁰
- The difference between the mean hourly rate of male full pay relevant employees and that of female full pay relevant employees
 - The difference between the median hourly rate of pay of male full pay relevant employees and that of female full pay relevant employees
 - The difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees
 - The difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees

⁷⁰ Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, Regulation 3, Schedule 1, para 1 and 2

- The proportions of male and female relevant employees who were paid bonus pay, and
- The proportions of male and female full pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands.

6.16 There are two situations in which a listed public authority is not required to include data relating to a relevant employee:

- Where the employee is employed under a contract personally to do work, and
- The listed authority does not have and it is not reasonably practicable for the public authority to obtain the data.

How should the information be gathered and reported?

6.17 Schedule 1 to the Regulations sets out exactly how the gender pay gap information must be gathered and differences are calculate in median and mean hourly rates of pay, mean and medium bonus pay, proportion of male and female employees who were paid bonus pay, as well as the proportion of male and female employees according to quartile pay bands, all of which must be expressed in order for a listed authority to comply with the reporting duty. There must be no deviation.

6.18 Schedule 1 paragraph 1 sets out the meaning of different terms used in the regulations, such as “bonus pay”, “hourly rate of pay”, “ordinary pay” and “pay period” and these must be used in complying with the regulations.

6.19 Listed authorities will need to ensure that they consult Schedule 1 to the regulations for full details of the terms used, how information should be collected, and to ensure that their processes for gathering information allow them to collect it based on the regulations’ requirements.

6.20 Though there is no duty for any explanation to be published alongside their gender pay gap information, listed authorities may wish to provide a narrative which explains if, for example, certain figures are skewed, or whether they have already determined to take action in respect of a particular area where a pay gap has been identified. Listed authorities may also wish to draw up a specific action plan to tackle the pay gaps that emerge from the information published, instead of or in addition to having an equality objective related to equal pay

When should the information be published?

6.21 The information gathered should be published within the period of 12 months beginning within the snapshot date. For listed authorities, the snapshot date is 31 March each year. This means that the deadline for reporting is 30 March each year, from 2017 onwards.⁷¹

The specific duty to publish Equality Information

6.22 The specific duties regulations specify that the published information that a listed authority must provide includes, in particular, in addition to the gender pay gap information, information relating to persons who share a protected characteristic who are:

- its employees (for listed authorities who employ 150 or more staff)
- other persons affected by its policies and practices (for example, service users).

What employee information should be published?

6.23 For those authorities listed in Schedule 2 with 150 or more employees, there is a specific requirement (in addition to the gender pay gap reporting requirement) to publish information relating to the protected characteristics of the authority's employees.⁷²

To demonstrate compliance, listed authorities should aim to be transparent about the sufficiency of their information.

6.24 With this aim in mind, the types of information that they could publish include:

⁷¹ Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 Regulation Schedule 1 paragraph 2

⁷² Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 Regulation 4

- The profile of staff at different grades, levels and rates of pay, including any patterns of occupational segregation and part-time work (this would be in addition to gender pay gap information provision, and consider the pay gaps in relation to all the protected characteristics).
- The profile of staff at different stages of the employment relationship, including recruitment, training, promotion, and leavers, and the numbers of complaints of discrimination and other prohibited conduct.
- Details of, and feedback from, any engagement exercises with staff or trade unions.
- Any records of how it has had due regard in making workforce decisions, including any assessments of impact undertaken and the evidence used.

What information about other persons affected by policies and practices should be published?

- 6.25** Listed authorities will need to decide for themselves what information they should publish, remembering that the purpose is to demonstrate their compliance with the general equality duty. This is likely to vary according to the size of the authority and relevance of the three aims of the general duty to a listed authority's functions.
- 6.26** The equality information published should be sufficient to enable those accessing it to reasonably assess how a listed authority has complied with the general equality duty, and enable them to hold the listed authority to account, if necessary.
- 6.27** Case law emphasises that to have due regard a body subject to the duty must have sufficient information (see para 5.16). To demonstrate compliance with the duty, listed authorities will, therefore want to aim to publish equality information based on evidence that is as robust as possible.
- 6.28** Types of information that listed authorities could publish to demonstrate compliance include:
- Records kept of how it has had due regard in making decisions, including any analysis undertaken and the evidence used.
 - Relevant performance information, especially those relating to outcomes, for example information about levels of educational attainment for boys and girls, health outcomes for people from different ethnic minorities, or reported incidences of disability-related harassment.
 - Access to and satisfaction with services, including complaints.

- Any quantitative and qualitative research undertaken, for example patient surveys and focus groups.
- Details of, and feedback from, any engagement exercises.

6.29 Whilst authorities with between 150 and 249 employees do not have to report on the gender pay gap in their employment information, it is good practice for them to consider doing so to ensure that they can have due regard to the need to promote sex equality and the need to eliminate discrimination.

Information gaps

- 6.30** Listed authorities are likely to find that not every category of information about service users and employees is relevant for all protected characteristics and that sometimes, despite its relevance, they do not have sufficient information. Where this is the case, the listed authority will need to consider what steps it can take to address these information gaps.
- 6.31** Where a listed authority establishes that it has gaps in its evidence base and has plans to fill these, it may also be useful to publish information about what steps it is taking to aid transparency and avoid unnecessary challenge.

Case study

A local authority has sufficient information about which people from different protected characteristics access its services. This enables it to understand the impact of these services in relation to the first two aims of the general equality duty. It already routinely collects this information and decides to publish it in response to its specific duties. It decides, however, that it does not have sufficient information to fully understand the impact of these services on good relations and that it needs to gather further information to meet the general equality duty. It also decides to publish its intention to do this, so demonstrating how it will ensure that it can have due regard.

Data Protection Act and confidentiality

- 6.32** When deciding what equality information to publish, a listed authority will need to take account of the Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR), and in particular to ensure that no individuals can be identified from any published equality information without their express consent.
- 6.33** Ensuring confidentiality is likely to be a particular issue when dealing with sensitive data or where the numbers of people with that any characteristic are low, potentially making it easier to identify individuals. This would include data in relation to sexual orientation, religion and belief and gender reassignment.
- 6.34** 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.⁷³

⁷³ Information Commissioner's Office, *Anonymisation: managing data protection risk code of practice*, November 2012.

When does equality information have to be published?

- 6.35** Equality information must have been published by listed authorities no later than 30 March 2018 and subsequently at least annually from the date of the last publication.⁷⁴
- 6.36** Listed authorities can, if they choose, publish their equality information more frequently.

The specific duty to publish one or more equality objectives

- 6.37** Listed authorities are required to prepare and publish one or more objectives which they think they should achieve to do any of the things mentioned in paragraphs (a) to (c) of subsection (1) of s.149 of the Act. Any objective published must be specific and measurable.⁷⁵

Preparing equality objectives

- 6.38** A listed authority must have at least one equality objective. There is no upper limit, but it will need to adopt a proportionate approach, depending on the relevance of its functions and their size.
- 6.39** To consider properly its choice of published objectives, a listed authority should have sufficient evidence of the impact of its policies, practices and functions on people with different protected characteristics. This will enable the authority to have a clear understanding of the equality issues it faces. Listed authorities will need to prioritise which of these equality issues are the most pressing and so should form the subject matter of equality objectives.

⁷⁴ Regulation 4(2) of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017. See Annex 7.

⁷⁵ Regulation 5(1) of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017. See Annex 7

- 6.40** 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. It will still have to comply with all the requirements of the general duty, regardless of whether it has set objectives in respect of all of the relevant protected characteristics.
- 6.41** Equality objectives should specify measurable outcomes that a listed authority wishes to achieve in delivering services or exercising functions, including (where applicable) those of an employer. Such objectives are likely to relate not only to whether or not a proportionate number of people with particular characteristics are using a service or are in a workforce but also to the quality of their experience; for example, an increase in the proportion of disabled people living in homes which are suitable for their needs, or an improvement in morale for staff with different protected characteristics, as measured by a staff survey. Equality objectives could also relate to reducing disadvantage experienced by people who share a relevant protected characteristic, for example unnecessary police stop and search activity or school exclusions.
- 6.42** To be specific, an equality objective should state clearly, for both the listed authority and its stakeholders, the outcome the authority seeks to achieve. This outcome should relate to one or more of the aims of the general equality duty. Objectives ‘to improve community relations’ or ‘to have a more diverse workforce’ are too generic, would not be specific and so would mean that a listed authority was failing to comply with its specific duties. An example of a more specific equality objective is for a hospital to increase, from its current baseline, the proportion of over 55s reported as being treated with dignity and respect by 35 per cent over a four-year period.
- 6.43** To be measurable, at least some aspect of the desired outcome should be either directly or indirectly quantifiable. This is necessary so that the authority, its employees and members of the public can objectively assess whether specified objectives have been achieved. When publishing its equality objectives, it is good practice for listed authorities to set out how it intends to measure progress against its equality objectives. There is no requirement for a listed authority to meet its equality objectives, however, it is good practice for listed authorities to publish an assessment of the progress it has made for each objective, using the indicators it has identified.

Case study

An organisation is concerned about a recent report that warns of large pay disparities between men and women in its sector. The organisation identifies through its gender pay gap information reporting that there is a gender pay differential in its bonus payments:

- Women earn 82p for every £1 that men earn when comparing median bonus pay. Their median bonus pay is 17.8% lower than men's.
- When comparing mean bonus pay, women's mean bonus pay is 27.5% lower than men's.
- Who received bonus pay: 16% of women; 9% of men.

The organisation publishes an overarching equality objective clearly on its website 'to reduce the difference between men and women in mean bonus pay by 20% within 3 years'. It also publishes the steps it will take to achieve this, by:

- reviewing its bonus schemes within 6 months to identify the key elements of the system to ascertain whether there is a built in gender bias and to revise; and to update the schemes so that they are gender neutral
- apply the revised scheme to all jobs within two years
- Reviewing any job segregation - reasons why the different sexes are concentrated in these jobs, and producing a review with action points for eliminating any segregation and its impact upon pay within 2 years

On its website, the authority explains that it will measure progress by publishing how much the mean bonus pay gap reduces each year, from its baseline of 27.5%.

When and how frequently should equality objectives be prepared and published?

- 6.44** The regulations state that objectives should have been published not later than 30 March 2018 for all listed authorities and subsequently that listed authorities must publish further equality objectives not later than four years after publication of the preceding objectives.⁷⁶

However, if a listed authority has within the four years prior to 30 March 2018 published equality objectives in compliance with regulation 3(1) of the 2011 Regulations it does not have to publish its objectives by 30 March 2018 and it must instead publish its next objectives, and further objectives, no later than four years after publication of the preceding objectives.

- 6.45** Listed authorities can, if they choose, revise and publish objectives more regularly than every four years. This is good practice and can help to ensure the objectives remain up to date and relevant. A review of progress against the preceding objectives is likely to be helpful to a listed authority's selection of its subsequent objectives.
- 6.46** In any event it is advisable for listed authorities to keep objectives, and progress towards achieving objectives, under frequent review in order to ensure that appropriate progress is being made. Equality objectives, and progress towards achieving them, are likely to be key indicators by which the public assesses the performance of public authorities.

Publishing Equality information and Objectives

- 6.47** A listed authority must publish its equality information and equality objectives in a manner which is accessible to the public and may publish this information within another published document.⁷⁷
- 6.48** Publishing equality information and objectives on a listed authority's website is likely to be the most straightforward way of demonstrating compliance and it can do this in conjunction with its gender pay gap information where applicable. An authority must, however, take particular care to ensure that it complies with its duties regarding reasonable adjustments that any websites are accessible to disabled people, and any printed information is available in alternative formats and different languages, where this is reasonable.

⁷⁶ Regulations 5(2) and 9(2) of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017: See Annex 7

⁷⁷ Regulation 6 (1) of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017: See Annex 7

Authorities are also likely to be subject to the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018/952, which require websites (broadly) to be accessible from at the latest 23 September 2018. Further details can be found at [our website](#)

- 6.49** Accessibility also requires listed authorities to publish gender pay gap information, equality information and equality objectives in a way that is easily understood by the public (and in respect of gender pay gap information, by its employees), and so it may be useful to provide some context to the published gender pay gap information, equality information and objectives.

Case studies

A police force publishes data that shows an increase in gay and lesbian staff who are reporting that they have been subject to harassment in the workplace. However, the police force has recently revised their workplace harassment policy which has led to a dramatic increase in levels of staff confidence to report incidents. Publishing this contextual information will enable the data to be properly understood.

The evidence which a school has collected causes it to identify a number of equality issues which it is facing. It needs to prioritise which of these issues are the most pressing and on which it needs to prepare and publish equality objectives. To do this, it puts a 'shortlist' to its Board of Governors, school council and PTA. Publishing the feedback from this engagement exercise will enable the public to understand why one particular equality issue has been prioritised over another and should help to prevent the school being questioned over its choice of equality objectives.

- 6.50** After the initial publication of equality information, it is also likely to be helpful for listed authorities to highlight any key trends in evidence to make equality information more accessible to the public.

Chapter 7: Enforcement

Introduction

- 7.1** 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.
- 7.2** The Commission is an independent statutory agency which was established under the Equality Act 2006.

The Commission's duties

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

Ss.8 EA 2006

Commission enforcement powers: the general duty

Assessment

- 7.4** 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 4 for more details.

s.31 EA 2006

Compliance notice

- 7.5** 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)

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.

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(3)

Failure to comply with a compliance notice

7.6 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)

Commission enforcement powers: the specific duties

7.7 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

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), (9)

Judicial review

7.8 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.

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 which preceded the public sector equality duty. For example:

- The Department for Education (decision to end the Building Schools for the Future programme)⁷⁸
- Birmingham City Council (decision to restrict access to care services to those with 'critical' needs).⁷⁹

7.9 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)

⁷⁸ R. (on the application of (1) Luton Borough Council and Nottingham City Council (2) Waltham Forest London Borough Council (3) Newham London Borough Council (4) Kent County Council (5) Sandwell Metropolitan Borough Council) v. the Secretary of State for Education [2011] EWHC 217 (Admin).

⁷⁹ R. (W.) v. Birmingham City Council [2011] EWHC 944.

Annex 1: Public authorities and public functions

A.1 The general equality duty applies to two kinds of bodies:

- public authorities (s.149(1))
- bodies that are not 'public authorities' but who carry out 'public functions' (s.149(2)).

Public authority

A.2 For purposes of the general equality duty, the Act defines a **public authority** as a person specified in Schedule 19 of the Act.

A.3 Annex 6 includes the full list of bodies currently specified (individually or generically) in Schedule 19 as at 1 April 2014.

A.4 The Act enables a Minister of the Crown, the Welsh Ministers and the Scottish Ministers power by order to amend Schedule 19, with obligations to consult the Equality and Human Rights 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).

A.5 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

A.6 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.

A.7 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.

s.150(5)

- A.8** 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.
- A.9** 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.
- A.10** Whether or not an organisation is exercising a function of a public nature will ultimately be a matter for the courts.
- A.11** 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, or
 - 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
 - it is exercising coercive powers devolved from the state.⁸⁰

⁸⁰ The leading cases on this issue are *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v. Wallbank & Anor* [2003] UKHL 37 (26 June 2003) and *London & Quadrant Housing Trust v Weaver, R. (On the application of)* [2009] EWCA Civ 587 (18 June 2009).

Which functions are covered?

Public authorities

A.12 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

A.13 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 Human Rights Act and so covered by the duty.

Annex 2: Prohibited conduct

B.1 The following types of conduct are prohibited under the Act 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 persons

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 maternity equality clause

s.73

- Breach of 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

s.111

- Aiding contraventions.

s.112

- B.2** More detailed information on these forms of prohibited conduct and examples in practice can be found in the Statutory Codes of Practice on Employment and Services, Public Functions and Associations.

Annex 3: Exceptions

Exceptions

C.1 The Act includes three types of exceptions from the general equality duty:

- certain functions to which the general equality duty does not apply
- certain bodies, not specified in Schedule 19, that exercise public functions but which are not subject to the general equality duty
- 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

C.2 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

C.3 The general equality duty as it relates to the protected characteristic of age does not apply to the exercise of the following functions:

- a. the provision of education to pupils in schools
- b. the provision of benefits, facilities or services to pupils in schools
- c. the provision of accommodation, benefits, facilities or services in community homes pursuant to s.53(1) Children Act 1989
- d. 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) 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)

C.4 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.

- C.5** In relation to England and Wales, ‘pupils’ have the same meaning as that given in s.3(1) of the Education Act 1996.

Exclusion of judicial functions

- C.6** The general equality duty does not apply to the exercise of:
- a judicial function, and
 - 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

- C.7** 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:

- age
- religion or belief, or
- race where race means **nationality** or **ethnic** or **national origins** (this exception does not apply to **colour**).

Sch.18, para 2

- C.8** For this purpose ‘immigration and nationality functions’ means functions exercisable by virtue of –
- the Immigration Acts (excluding sections 28A to 28K of the Immigration Act 1971 so far as they relate to criminal offences)
 - the British Nationality Act 1981
 - the British Nationality (Falkland Islands) Act 1983
 - the British Nationality (Hong Kong) Act 1990
 - the Hong Kong (War Wives and Widows) Act 1996
 - the British Nationality (Hong Kong) Act 1997
 - the Special Immigration Appeals Commission Act 1997, or
 - a provision made under section 2(2) of the European Communities Act 1972, or from 31 December 2020, IP completion day (the date on which the UK is no longer subject to EU rules), which forms part of retained EU law by virtue of section 2(2)(a), 3 or 4 of the European Union (Withdrawal) Act 2018, and relates to the subject matter of an enactment within paragraphs (a) to (g) above.

Exception for certain bodies that exercise public functions

- C.9** The general equality duty does not apply to the following bodies:
- a. the House of Commons
 - b. the House of Lords
 - c. the Scottish Parliament
 - d. the National Assembly for Wales
 - e. the General Synod of the Church of England
 - f. the Security Service
 - g. the Secret Intelligence Service
 - h. the Government Communications Headquarters
 - i. 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 functions⁸¹

- C.10** 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:
- a. a function in connection with proceedings in the House of Commons or the House of Lords
 - b. a function in connection with proceedings in the Scottish Parliament (other than a function of the Scottish Parliamentary Corporate Body)
 - c. a function in connection with proceedings in the National Assembly for Wales (other than a function of the Assembly Commission).

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

⁸¹ This exception does not apply to functions in connection with parliamentary proceedings carried out by public bodies listed in Schedule 19 of the Act; for example a Minister or government department (other than the Security Service, the Secret Intelligence Service or the Government Communications headquarters). See *R (Staff Side of the Police Negotiating Board) v Secretary of State for Work and Pensions* [2011] EWHC 3175 (Admin) at paras 110-112. See also *R on the application of Ahmed Adiatu and Independent Workers Union of Great Britain* [2020] EWHC 1445 (admin) at 213 – 228 – courts have a role through s.149 in reviewing the process followed by a government department before laying a statutory instrument before Parliament

Power to amend exceptions

C.11 A Minister of the Crown may add to, vary or remove the exceptions in Schedule 19 to the Act, with some restrictions:

- the exclusion of judicial functions must remain
- the exception from the general equality duty for certain bodies may not be amended in relation to bodies (a) to (e) in para 1.8 above
- the exception from the general equality duty of functions in para 1.9 above must not be amended
- any amendment must not reduce the extent to which the exclusion of judicial functions or the exception from the general duty of certain bodies and certain functions applies.

Annex 4: Assessments

Terms of reference

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

Sch.2, para 4 EA 2006

Representations

- D.2** 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

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.

When representations are made, the Commission must consider them. However, it can, where it thinks it appropriate, refuse to consider representations—

- made neither by nor on behalf of a person specified in the terms of reference, or
- 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

D.3 During the course of an assessment, the Commission can give a notice to a person to provide information or documents in his 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,

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

D.4 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,

- a. fails to comply with a notice
- b. falsifies anything provided or produced in accordance with a notice, or
- c. makes a false statement in giving oral evidence in accordance with a notice
- d. that persons 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

D.5 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 5: Glossary

This Glossary gives short definitions of the key terms used in this Technical 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 the Commission's Statutory Code of Practice on Employment and to the Commission's Statutory Code of Practice on Services, public functions and associations. 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 don't (s.149(1)(b) of the Equality Act 2010). S.149(3) of the Equality Act 2010 says that having due regard to advancing equality of opportunity involves having due regard, in particular, to the need to:

- a. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- b. 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
- c. 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 paras 3.10 – 3.32 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 Equality Act 2010. It is explained more fully in paras 2.1 – 2.7 of the Employment Code.

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 your equality information and the results of any engagement to understand the impact (or potential impact) of your 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 you could achieve the same aim in a way which reduces the adverse impact, or which does not disadvantage people with that characteristic. Assessing impact is explained more fully in the Commission's non-statutory guidance: [Meeting the Equality Duty in Policy and Decision Making](#). The importance of understanding the impact of it is discussed in Chapter 3 and paras 5.40 – 5.45 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 functions below). To whom the duty applies is explained at para 2.3 – 2.4 of this guidance.

Civil partnership

Legal recognition of a same-sex couple's relationship. Civil partners must be treated the same as married couples. 'Marriage and civil partnership' is one of the nine protected characteristics in the Equality Act 2010. It is explained more fully in paras 2.31 – 2.34 of the Employment Code.

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 5.55 – 5.58 of this guidance.

Compliance notice

Under s.32 Equality Act 2006 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 – 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 3.19 – 3.27 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 and Chapter 4 of the Services Code.

Disability

A person has a disability if s/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 Equality Act 2010. It is explained in paras 2.8 – 2.20 and Appendix 1 of the Employment Code and paras 2.5 – 2.16 and the Appendix to the Services Code.

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 para 3.18 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 and Chapter 6 of the Services Code.

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 para 2.19 – 2.23 of this guidance.

Duty to make reasonable adjustments

Where a disabled person is at (or in a non-employment context, disabled persons 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 (i) changing provisions, criteria or practices, (ii) altering, removing or providing a reasonable alternative means of avoiding physical features, and (iii) providing auxiliary aids. This is explained in Chapter 6 of the Employment Code and Chapter 7 of the Services Code.

Eliminating discrimination

The first of the equality aims: to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010 (s.149(1)(a) of the Equality Act 2010). Eliminating discrimination is explained in paras 3.2 – 3.9 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 3.28 – 3.32 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 5.29 – 5.34 of this guidance.

Equality Act 2006

This legislation made provision for the establishment of the Equality and Human Rights Commission ('EHRC') and the dissolution of the three legacy Commissions for Disability, Race and Gender Equality. It sets out the EHRC's powers and responsibilities (these were not repealed by the Equality Act 2010).

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 Equality Act 2010 and are explained in para 2.2 and Chapter 3 of this guidance. See also: Advancing equality of opportunity, Eliminating discrimination, and Fostering good relations.

Equality evidence

The information that you hold (or will collect) about people with protected characteristics, and the impact of your 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 Equality Act 2010). S.149(5) Equality Act 2010 states that having due regard to the need to foster good relations between people who have a particular protected characteristic and those who don't have it involves, in particular, having due regard to the need to tackle prejudice and promote understanding. Fostering good relations is explained at paras 3.33 – 3.39 of this guidance.

Function

The full range of a body's activities, duties and powers. This is explained at para 2.5 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 trans, transgender, transsexual. 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 Equality Act 2010. It is one of the nine protected characteristics under the Equality Act 2010 and is explained in paras 2.21 – 2.30 of the Employment Code and paras 2.17 – 2.27 of the Services Code.

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 and Chapter 8 of the Services Code.

Impact

This term refers to 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 Equality Act 2010. 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 and Chapter 5 of the Services Code.

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 7.8 – 7.9 of this guidance.

Listed authority

A public authority required to comply with the specific duties. These are listed in Schedule 2 of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 which are at Annex 7 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 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 Equality Act 2010. It is explained in paras 2.31 – 2.34 of the Employment Code.

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 and Chapter 13 of the Services Code. Their relevance to the general equality duty is explained at paras 4.3 – 4.4 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 and Chapter 10 of the Services Code. Its relevance to the general equality duty is explained at paras 3.14 – 3.17 and Chapter 4 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 Equality Act 2010. It is explained in para 2.35 and Chapter 8 of the Employment Code and paras 2.28 and 4.34 – 4.38 of the Services Code.

Procurement

Is the term used in relation to the range of goods and services a body requires and delivers. It includes 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 commissioning is explained at paras 5.54 – 5.61 of this guidance.

Prohibited conduct

Conduct prohibited by the Equality Act 2010. Eliminating discrimination (see above) relates to such conduct. Conduct prohibited by the Equality Act 2010 is listed in Annex 2 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 Equality Act 2010. 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 2.9 of this guidance. The protected characteristics are explained in detail in Chapter 2 of the Employment Code and Chapter 2 of the Services Code.

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 Equality Act 2010. See also Bodies subject to the duty (above). Schedule 19 has been amended since the Equality Act 2010 came into force. The list as at Annex 6 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 Equality Act 2010 defines a public function as a function that is of a public nature for the purposes of the Human Rights Act 1998. To whom the general equality duty applies is explained at paras 2.3-2.4 of this guidance. Public functions are explained in Annex 1 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 Equality Act 2010 and is explained more fully in paras 2.36 – 2.49 of the Employment Code and paras 2.29 – 2.42 of the Services Code.

Reasonable adjustment

See Duty to make reasonable adjustments.

Regulations

Secondary legislation made under an Act of Parliament (or European legislation) 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 – 5.14 of this guidance.

Relevant protected characteristics

The eight protected characteristics in S.149(7) of the Equality Act 2010. 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 Equality Act 2010 and is explained more fully in paras 2.50 – 2.61 of the Employment Code and paras 2.43 – 2.54 of the Services Code.

Section 23 agreement

The Commission can enter into a formal agreement with an organisation under section 23 of the Equality Act 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 Equality Act 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 Equality Act 2010 and is explained more fully in paras 2.62 – 2.63 of the Employment Code and paras 2.55 – 2.57 of the Services Code.

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 Equality Act 2010 and is explained more fully in paras 2.64 – 2.68 of the Employment Code and paras 2.58 – 2.62 of the Services Code.

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 – 13.56 of the Services Code.

Specific duties

S.153 of the Equality Act 2010 allows specific duties to be imposed on Listed Authorities to enable better performance by those authorities of the general equality duty. For England and cross-border authorities the specific duties are set out in the Equality Act 2010 (Statutory Duties and Public Authorities) Regulations 2017. Different specific duties apply to bodies in Wales 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.

Trans or transgender

A trans or transgender person is someone who feels that their sex as recorded at birth does not match their gender identity. 'Transgender' or 'trans' may include someone who does not identify as male or female (non-binary) or is exploring their gender identity. Both 'transgender' and 'trans' cover many different identities, but 'trans' can be perceived as broader, and therefore more inclusive, than transgender.

Transsexual

The term used in the Equality Act 2010 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 i.e. bringing proceedings under the Equality Act 2010; giving evidence or information in connection with proceedings under the Equality Act 2010; doing any other thing for the purposes or in connection with the Equality Act 2010; making an allegation that a person has contravened the Equality Act 2010. Victimisation (including the meaning of 'protected act') is explained in Chapter 9 of the Employment Code and Chapter 9 of the Services Code.

Annex 6: Consolidated version of Schedule 19 of the Act as at 30 March 2020

Schedule 19

PART 1

PUBLIC AUTHORITIES: GENERAL

Ministers of the Crown and government departments

A Minister of the Crown.

A government department other than the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

Armed forces

Any of the armed forces other than any part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

Broadcasting

The British Broadcasting Corporation ("BBC"), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003); and the reference to the BBC includes a reference to a body corporate which—

- (a) is a wholly owned subsidiary of the BBC,
- (b) is not operated with a view to generating a profit, and
- (c) undertakes activities primarily in order to promote the BBC's public purposes.

The Channel Four Television Corporation, except in respect of—

- (a) functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003), and

(b) the function of carrying on the activities referred to in section 199 of that Act.

The Welsh Authority (as defined by section 56(1) of the Broadcasting Act 1990), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003).

Citizens' rights

The Independent Monitoring Authority for the Citizens' Rights Agreements.

Civil liberties

The Commission for Equality and Human Rights.

The Information Commissioner.

Court services and legal services.

The Children and Family Court Advisory and Support Service.

The Judicial Appointments Commission.

The Legal Services Board.

Criminal justice

Her Majesty's Chief Inspector of Constabulary.

Her Majesty's Chief Inspector of the Crown Prosecution Service.

Her Majesty's Chief Inspector of Prisons.

Her Majesty's Chief Inspector of Probation for England and Wales.

The Parole Board for England and Wales.

A probation trust established by an order made under section 5(1) of the Offender Management Act 2007.

The Youth Justice Board for England and Wales.

Environment, housing and development

The Homes and Communities Agency.

Natural England.

Health, social care and social security

The National Health Service Commissioning Board.

A clinical commissioning group established under section 14D of the National Health Service Act 2006.

The Care Quality Commission.

The Health Research Authority.

Health Education England.

The Health Service Commissioner for England, in respect of—

- (a) the Commissioner's functions set out in paragraph 11 of Schedule 1 to the Health Service Commissioners Act 1993; and
- (b) the Commissioner's public procurement functions (as defined in section 155(3) of this Act).

Monitor.

An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006.

An NHS trust established under section 25 of the National Health Service Act 2006.

A Special Health Authority established under section 28 of that Act other than NHS Blood and Transplant and the NHS Business Services Authority.

The National Institute for Health and Care Excellence.

The Health and Social Care Information Centre.

The National Data Guardian for Health and Social Care.

Industry, business, finance etc.

The Advisory, Conciliation and Arbitration Service.

The Bank of England (including the Bank in its capacity as the Prudential Regulation Authority), in respect of its public functions.

The Board of the Pension Protection Fund.

The Civil Aviation Authority.

The Coal Authority.

The Comptroller and Auditor General.

The Construction Industry Training Board.

The Engineering Construction Industry Training Board.

The Financial Conduct Authority.

The Money and Pensions Service.

The National Audit Office.

The Nuclear Decommissioning Authority.

The Office for Budget Responsibility.

The Office of Communications.

The Office of Tax Simplification.

The Oil and Gas Authority.

The Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.

United Kingdom Research and Innovation.

Local and regional public bodies

A county council, district council or parish council in England.

A parish meeting constituted under section 13 of the Local Government Act 1972.

Charter trustees constituted under section 246 of that Act for an area in England.

The Greater London Authority.

A London borough council.

The Common Council of the City of London in its capacity as a local authority or port health authority.

The Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in that person's capacity as a local authority.

The London Fire Commissioner.

Transport for London.

A Mayoral development corporation.

The Council of the Isles of Scilly.

The Broads Authority established by section 1 of the Norfolk and Suffolk Broads Act 1988.

A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in England.

A fire and rescue authority created by an order under section 4A of that Act.

An internal drainage board which is continued in being by virtue of section 1 of the Land Drainage Act 1991 for an area in England.

A National Park authority established by an order under section 63 of the Environment Act 1995 for an area in England.

A Passenger Transport Executive for an integrated transport area in England (within the meaning of Part 2 of the Transport Act 1968).

A port health authority constituted by an order under section 2 of the Public Health (Control of Disease) Act 1984 for an area in England.

A waste disposal authority established by virtue of an order under section 10(1) of the Local Government Act 1985.

A joint authority established under Part 4 of that Act for an area in England (including, by virtue of section 77(9) of the Local Transport Act 2008, an Integrated Transport Authority established under Part 5 of that Act of 2008).

A sub-national transport body established under section 102E of the Local Transport Act 2008.

A body corporate established pursuant to an order under section 67 of the Local Government Act 1985.

A joint committee constituted in accordance with section 102(1)(b) of the Local Government Act 1972 for an area in England.

A joint board which is continued in being by virtue of section 263(1) of that Act for an area in England.

A Local Commissioner in England as defined by section 23(3) of the Local Government Act 1974, in respect of—

- (a) the Commissioner's functions under sections 29(6A) and 34G(6) of that Act¹⁰, and section 210(5) of the Apprenticeships, Skills, Children and Learning Act 2009; and
- (b) the Commissioner's public procurement functions (as defined in section 155(3) of this Act).

A combined authority established by an order made under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009.

An economic prosperity board established by an order made under section 88(1) of the Local Democracy, Economic Development and Construction Act 2009.

An urban development corporation established by an order made under section 135 of the Local Government, Planning and Land Act 1980.

Educational bodies

The governing body of an educational establishment maintained by an English local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

The governing body of an institution in England within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992).

The governing body of an institution in England within the higher education sector (within the meaning of section 91(5) of that Act).

A local authority with respect to the pupil referral units it establishes and maintains by virtue of section 19 of the Education Act 1996.

The National Citizen Service Trust.

The Office for Students.

The proprietor of a City Technology College, a City College for Technology of the Arts, or an Academy.

Parliamentary and devolved bodies

The National Assembly for Wales Commission (Comisiwn Cynulliad Cenedlaethol Cymru).

The Parliamentary Commissioner for Administration, in respect of—

- (a) the Commissioner's functions set out in section 3(1) and (1A) of the Parliamentary Commissioner Act 1967; and

(b) the Commissioner's public procurement functions (as defined in section 155(3) of this Act).

The Scottish Parliamentary Corporate Body.

Police

The British Transport Police Force.

A chief constable of a police force maintained under section 2 of the Police Act 1996.

The Chief Inspector of the UK Border Agency.

The Civil Nuclear Police Authority.

The College of Policing.

The Commissioner of Police for the City of London.

The Commissioner of Police of the Metropolis.

The Common Council of the City of London in its capacity as a police authority.

The Director General of the Independent Office for Police Conduct.

The Independent Office for Police Conduct.

A police and crime commissioner established under section 1 of the Police Reform and Social Responsibility Act 2011.

The Mayor's Office for Policing and Crime established under section 3 of that Act.

A Port Police Force established under an order made under section 14 of the Harbours Act 1964.

The Port Police Force established under Part 10 of the Port of London Act 1968.

A Port Police Force established under section 79 of the Harbours, Docks and Piers Clauses Act 1847.

Regulators

The Association of Chartered Certified Accountants, in respect of its public functions.

The Chartered Institute of Patent Attorneys, in respect of its public functions.

The Council for Licensed Conveyancers, in respect of its public functions.

The Disclosure and Barring Service.

The Gambling Commission.

The Gangmasters and Labour Abuse Authority.

The General Chiropractic Council, in respect of its public functions.

The General Council of the Bar, in respect of its public functions.

The General Dental Council, in respect of its public functions.

The General Medical Council, in respect of its public functions.

The General Optical Council, in respect of its public functions.

The General Osteopathic Council, in respect of its public functions.

The General Pharmaceutical Council, in respect of its public functions.

The Health and Care Professions Council, in respect of its public functions.

The Health and Safety Executive.

The Independent Monitor appointed under section 119B of the Police Act 1997.

The Insolvency Practitioners Association, in respect of its public functions.

The Institute of Chartered Accountants in England and Wales, in respect of its public functions.

The Institute of Legal Executives, in respect of its public functions.

The Institute of Trade Mark Attorneys, in respect of its public functions.

The Law Society of England and Wales, in respect of its public functions.

The Nursing and Midwifery Council, in respect of its public functions.

The Office of the Immigration Services Commissioner.

The Office for Nuclear Regulation.

The Pensions Regulator.

The Security Industry Authority.

Social Work England.

Transport

High Speed Two (HS2) Limited.

Highways England Company Limited.

Network Rail Limited.

PART 2

PUBLIC AUTHORITIES: RELEVANT WELSH AUTHORITIES

The Welsh Ministers.

The First Minister for Wales.

The Counsel General to the Welsh Government.

A subsidiary of the Welsh Ministers (within the meaning given by section 134(4) of the Government of Wales Act 2006).

National Health Service

A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

An NHS trust established under section 18 of that Act.

A Community Health Council in Wales.

The Board of Community Health Councils in Wales or Bwrdd Cyngorau Iechyd Cymuned Cymru.

Local government

A county council or county borough council in Wales.

A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in Wales.

A National Park authority established by an order under section 63 of the Environment Act 1995 for an area in Wales.

Other educational bodies

The governing body of an educational establishment maintained by a Welsh local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

The governing body of an institution in Wales within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992).

The governing body of an institution in Wales within the higher education sector (within the meaning of section 91(5) of that Act).

The Higher Education Funding Council for Wales or Cyngor Cyllido Addysg Uwch Cymru.

The General Teaching Council for Wales or Cyngor Addysgu Cyffredinol Cymru.

Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.

Qualifications Wales.

Other public authorities

The Welsh Revenue Authority or Awdurdod Cyllid Cymru.

The Auditor General for Wales or Archwilydd Cyffredinol Cymru.

The Public Services Ombudsman for Wales or Ombwdsmon Gwasanaethau Cyhoeddus Cymru.

Social Care Wales or Gofal Cymdeithasol Cymru.

The Arts Council for Wales or Cyngor Celfyddydau Cymru.

The National Museum of Wales or Amgueddfa Genedlaethol Cymru.

The National Library of Wales or Llyfrgell Genedlaethol Cymru.

The Sports Council for Wales or Cyngor Chwaraeon Cymru.

Comisiynydd y Gymraeg (The Welsh Language Commissioner).

The Commissioner for Older People in Wales or Comisiynydd Pobl Hŷn Cymru.

The Children's Commissioner for Wales or Comisiynydd Plant Cymru.

The Wales Audit Office or Swyddfa Archwilio Cymru.

PART 3

PUBLIC AUTHORITIES: RELEVANT SCOTTISH AUTHORITIES

Scottish Administration

An office-holder in the Scottish Administration (within the meaning given by section 126(7)(a) of the Scotland Act 1998).

National Health Service

A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.

A Special Health Board constituted under that section.

Local government

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

A community council established under section 51 of the Local Government (Scotland) Act 1973.

A joint board within the meaning of section 235(1) of that Act.

A licensing board established under section 5 of the Licensing (Scotland) Act 2005, or continued in being by virtue of that section.

A National Park authority established by a designation order made under section 6 of the National Parks (Scotland) Act 2000.

Scottish Enterprise and Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990.

Other educational bodies

An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980).

The managers of a grant-aided school (within the meaning of that section).

The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992).

In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.

The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992).

Police and Fire

The Scottish Police Authority.

The chief constable of the Police Service of Scotland.

The Scottish Fire and Rescue Service.

The Chief Officer of the Scottish Fire and Rescue Service.

Other bodies and offices added on 6th April 2011

Accounts Commission for Scotland.

Audit Scotland.

Board of Trustees of the National Galleries of Scotland.

Board of Trustees of the National Museums of Scotland.

Board of Trustees of the Royal Botanic Garden, Edinburgh.

Bòrd na Gàidhlig.

A chief officer of a community justice authority.

Commissioner for Children and Young People in Scotland.

Commission for Ethical Standards in Public Life in Scotland.

The Common Services Agency for the Scottish Health Service.

A community justice authority.

Creative Scotland.

The Crofters Commission.

The General Teaching Council for Scotland.

Healthcare Improvement Scotland

Learning and Teaching Scotland.

The Mental Welfare Commission for Scotland.

The Police Investigations and Review Commissioner.

Quality Meat Scotland.

A regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005.

Risk Management Authority.

Royal Commission on the Ancient and Historical Monuments of Scotland.

Scottish Children's Reporter Administration.

Scottish Commission for Human Rights.

The Scottish Criminal Cases Review Commission.

Scottish Environment Protection Agency.

Scottish Further and Higher Education Funding Council.

Scottish Futures Trust Ltd.

Scottish Information Commissioner.

The Scottish Legal Aid Board.

The Scottish Legal Complaints Commission.

Scottish Natural Heritage.

Scottish Public Services Ombudsman.

Scottish Qualifications Authority.

The Scottish Road Works Commissioner.

The Scottish Social Services Council.

The Scottish Sports Council.

Scottish Water.

Skills Development Scotland.

Social Care and Social Work Improvement Scotland.

The Standards Commission for Scotland.

The National Library of Scotland.

VisitScotland.

A Water Customer Consultation Panel.

The Water Industry Commission for Scotland.

Other bodies and offices added on 5th March 2012

Children's Hearings Scotland.

The National Convener of Children's Hearings Scotland.

Other bodies added on 1st April 2015

Historic Environment Scotland.

An integration joint board established by order under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014.

A regional board (within the meaning of section 35(1) of the Further and Higher Education (Scotland) Act 2005).

Other body added on 28th June 2018

ILF Scotland.

PART 4

PUBLIC AUTHORITIES: CROSS-BORDER AUTHORITIES

The Environment Agency — D

The Natural Resources Body for Wales — A

NHS Blood and Transplant — D

The NHS Business Services Authority — D

The Student Loans Company Limited — D

Annex 7: The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017

These Regulations are made in exercise of the powers conferred by sections 151(1), 153(1), 154(2) and 207(4) of the Equality Act 2010(a).⁸²

The Secretary of State has consulted the Commission for Equality and Human Rights in accordance with sections 152(1), 153(4) and 154(4) of that Act; and the Welsh Ministers in accordance with section 152(1) and 154(3) of that Act so far as these Regulations relate to relevant Welsh authorities and cross-border Welsh authorities.

In accordance with section 151(8) of that Act, the Secretary of State considers that the extension of the application of section 149 relates to persons by whom a public function is exercisable.

In accordance with section 208(2) and (4), (5)(f) and (8) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of those powers, makes the following Regulations:

Citation, commencement and interpretation

- 1 —(1) These Regulations may be cited as the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 and come into force on 31st March 2017.

(2) In these Regulations—

⁸² (a) 2010c.15

“the Act” means the Equality Act 2010;

“the 1996 Act” means the Employment Rights Act 1996**(b)**⁸³;

“the 2011 Regulations” means the Equality Act 2010 (Specific Duties) Regulations 2011**(c)**⁸⁴;

“employment” and related expressions have the meaning given in regulation 2;

“English local authority” has the same meaning as in section 162 of the Education and Inspections Act 2006 **(a)**⁸⁵

“maintained school” has the same meaning as in section 20(7) of the School Standards and Framework Act 1998**(b)**⁸⁶.

Meaning of “employment”

2 —(1) In these Regulations, “employment” means—

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work, and

(b) Crown employment (within the meaning of section 191(3) of the 1996 Act**(c)**⁸⁷).

(2) Section 191(4) of the 1996 Act**(d)**⁸⁸ applies for the purposes of these Regulations as it applies for the purposes set out in that subsection.

(3) For the purposes of these Regulations, an employee of an English local authority at a maintained school is to be treated as an employee of the governing body of that school.

⁸³ (b) 1996 c. 18

⁸⁴ (c) S.I. 2011/2260

⁸⁵ (a) 2006 c. 40. There are amendments to section 162, not relevant here.

⁸⁶ (b) 1998. C31. Section 20 was amended by S.I 2010/1158. There are further amendments to the section, not relevant here.

⁸⁷ (c) 1996.c18

⁸⁸ (d) Section 191(4) was amended by paragraph 34(2) and (3) of Schedule 1, and paragraph 1 of Schedule 2, to the Employment Relations Act 2004 (c. 24).

- (4) These Regulations apply to service in the armed forces as they apply to employment by, (or in the case of Crown employment, under or for the purposes of) a public authority, and for that purpose, references to terms of employment, or to a contract of employment, are to be read as including references to terms of service.
- (5) For the purposes of these Regulations, the holding, otherwise than under a contract of employment, of the office of constable, or of an appointment as a police cadet, is to be treated as employment by the relevant officer (and for that purpose, references to terms of employment, or to a contract of employment, are to be read as including references to terms of service).
- (6) In paragraph (4)—
- (a) “constable” does not include a special constable;
 - (b) “police cadet” means a person appointed to undergo training with a view to becoming a constable;
 - (c) “relevant officer” means—
 - i. in relation to a member of a police force or a police cadet appointed for a police area, the chief officer of police;
 - ii. in relation to any other person holding the office of constable or an appointment as a police cadet, the person who has the direction and control of the body of constables or cadets in question.

Gender pay gap reporting

- 3 Schedule 1 to these Regulations (which imposes obligations on public authorities to publish gender pay gap information relating to employees) has effect.

Publication of information

- 4 —(1) Each public authority listed in Schedule 2 to these Regulations must publish information to demonstrate its compliance with the duty imposed by section 149(1) of the Act.
- (2) The public authority must publish the information required by paragraph (1)—
- (a) not later than 30th March 2018; and
 - (b) subsequently at intervals of not greater than one year beginning with the date of last publication.

(3) The information a public authority publishes in compliance with paragraph (1) must include, in particular, information relating to persons who share a relevant protected characteristic who are—

- (a) its employees;
- (b) other persons affected by its policies and practices.

(4) Paragraph (3)(a) does not apply to a public authority with fewer than 150 employees.

Equality objectives

5 —(1) Each public authority listed in Schedule 2 to these Regulations must prepare and publish one or more objectives it thinks it should achieve to do any of the things mentioned in paragraphs (a) to (c) of section 149(1) of the Act.

(2) The objectives must be published—

- (a) not later than 30th March 2018 (subject to regulation 9(2)); and (b) subsequently at intervals of not greater than four years beginning with the date of last publication.

(3) An objective published by a public authority in compliance with paragraph (1) must be specific and measurable.

Manner of publication

6 —(1) The requirements in regulations 4 and 5 to publish information are requirements to publish the information in a manner that is accessible to the public.

(2) A public authority may comply with the requirements to publish information in regulation 4 or 5 by publishing the information within another published document.

Monitor and the NHS Trust Development Authority

- 7 Monitor^(a)⁸⁹ and the NHS Trust Development Authority^(b)⁹⁰ may jointly comply with the obligations imposed by these Regulations as if they were a single public authority.

Amendment of Schedule 19 to the Act

- 8 Schedule 3 to these Regulations (which amends Parts 1 and 2 of Schedule 19 to the Act) has effect.

Revocation, saving and transitional provision

- 9 —(1) The 2011 Regulations are revoked (subject to paragraph (3)).
- (2) Where a public authority has, within the period of four years ending with 30th March 2018, published equality objectives in compliance with regulation 3(1) of the 2011 Regulations—
- (a) regulation 5(2)(a) does not apply; and
 - (b) regulation 5(2)(b) is to be read as if—
 - i. the word “subsequently” were omitted, and
 - ii. the “date of last publication” referred to the date of last publication under regulation 3 of the 2011 Regulations.
- (3) Where—
- (a) immediately before the commencement date a public authority is required by regulation 2 of the 2011 Regulations to publish the information referred to in paragraph (1) of that regulation,
 - (b) that information is required to be published on or before 6 April 2017, and
 - (c) the information is not published before the commencement date in a form and manner that complies with regulations 2 and 4 of those Regulations,

⁸⁹ (a) Monitor is a body corporate previously called the Independent Regulator of NHS Trusts, renamed Monitor by section 61 of the Health and Social Care Act 2012 (c. 7).

⁹⁰ (b) The NHS Trust Development Authority is a Special Health Authority established under section 28 of the National Health Service Act 2006 (c. 41).

regulations 2 and 4 are to continue to have effect on and after the commencement date in so far as they relate to the publication of that information by that authority.

Schedule 1

Regulation 3

Gender pay gap reporting

1. —(1) In this Schedule—

“bonus pay” has the meaning given in paragraph 4;

“full-pay relevant employee” means a relevant employee who is not, during the relevant pay period, being paid at a reduced rate or nil as a result of the employee being on leave;

“hourly rate of pay” has the meaning given in paragraph 6;

“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003⁹¹;

“leave” includes—

- (a) annual leave;
- (b) maternity, paternity, adoption, parental or shared parental leave;
- (c) sick leave; and
- (d) special leave;

“ordinary pay” has the meaning given in paragraph 3;

“pay period” has the meaning given in paragraph 5(1); “piecework” means work in respect of which an employee is entitled to be paid by reference to a number of pieces made or processed, or a number of tasks performed, instead of by reference to a period of time worked;

“relevant employee” means a person who is employed by, (or in the case of Crown employment, under or for the purposes of) the relevant public authority on the snapshot date;

“relevant pay period” has the meaning given in paragraph 5(2);

“relevant public authority” means a public authority listed in Schedule 2 to these Regulations which has 250 or more employees on the snapshot date;

“snapshot date” means the 31st March in the year to which the information required by paragraph 2 relates.

⁹¹ (a) 2003 c. 1. 5

(2) For the purposes of this Schedule, the amount of an employee's ordinary pay or bonus pay is to be calculated before deductions made at source (for example deductions in relation to income tax).

Duty to publish annual information relating to pay

2. —(1) A relevant public authority must publish, for 2017 and each subsequent year, the following information—
 - (a) the difference between the mean hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see paragraph 8);
 - (b) the difference between the median hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see paragraph 9);
 - (c) the difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees (see paragraph 10);
 - (d) the difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees (see paragraph 11);
 - (e) the proportions of male and female relevant employees who were paid bonus pay (see paragraph 12); and
 - (f) the proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands (see paragraph 13).
- (2) The relevant public authority must publish the information required by sub-paragraph (1) within the period of 12 months beginning with the snapshot date.
- (3) In compiling the information required by sub-paragraph (1), a relevant public authority is not required to include data relating to a relevant employee if—
 - (a) the employee is employed under a contract personally to do work, and
 - (b) the public authority does not have, and it is not reasonably practicable for the public authority to obtain, the data.

Meaning of “ordinary pay”

3. —(1) In this Schedule, “ordinary pay” means (subject to sub-paragraph (2))—
 - (a) basic pay;
 - (b) allowances;
 - (c) pay for piecework;
 - (d) pay for leave; and
 - (e) shift premium pay.

(2) “Ordinary pay” does not include—

- (a) remuneration referable to overtime;
- (b) remuneration referable to redundancy or termination of employment;
- (c) remuneration in lieu of leave; or
- (d) remuneration provided otherwise than in money.

(3) In sub-paragraph (1)—

(a) “allowances” includes any sum paid with respect to—

- i. any duty of the employee, such as a duty in connection with the role of fire or bomb warden, that is ancillary to the main duties of the employee’s employment;
- ii. the location of the employment in a particular area;
- iii. the purchase, lease or maintenance of a vehicle;
- iv. the recruitment and retention of an employee; or
- v. the purchase, lease or maintenance of an item;

but excludes any payment to reimburse expenditure wholly and necessarily incurred by the employee in the course of his or her employment;

(b) “shift premium pay” means the difference between basic pay and any higher rate paid by the public authority for work during different times of the day or night.

Meaning of “bonus pay”

4. —(1) In this Schedule, “bonus pay” means (subject to sub-paragraph (2)) any remuneration that—

- (a) is in the form of money, vouchers, securities, securities options or interests in securities, and
- (b) relates to profit sharing, productivity, performance, incentive or commission.

(2) “Bonus pay” does not include—

- (a) ordinary pay;
- (b) remuneration referable to overtime; or
- (c) remuneration referable to redundancy or termination of employment.

(3) For the purpose of sub-paragraph (1), remuneration in the form of securities, securities options and interests in securities, is to be treated as paid to the employee at the time, and in the amounts in respect of which, the securities, securities options and interests in securities give rise to (or would give rise to, if the employee were an employee for the purposes of Part 2 of ITEPA 2003 (employment income))—

- (a) any taxable earnings within the meaning of section 10(2) of ITEPA 2003⁹²; or
- (b) any taxable specific income within the meaning of section 10(3) of ITEPA 2003⁹³.

(4) In this paragraph “securities”, “securities options” and “interests in securities” have the same meaning as in section 420 of ITEPA 2003⁹⁴.

Meaning of the “pay period” and the “relevant pay period”

5. —(1) In this Schedule, “pay period”, in relation to a relevant employee, means—
- (a) the period in respect of which the relevant public authority pays the employee basic pay, whether weekly, fortnightly, monthly or any other period, or
 - (b) if the relevant public authority does not pay the employee basic pay, the period in respect of which the public authority most frequently pays the employee one of the elements of ordinary pay mentioned in paragraph 3(1)(b) to (e).
- (2) In this Schedule, the “relevant pay period” means the pay period within which the snapshot date falls.

Meaning of “hourly rate of pay”

6. —(1) The “hourly rate of pay” in relation to a relevant employee, is to be determined as follows—

Step 1

Identify all amounts of ordinary pay and bonus pay paid to the employee during the relevant pay period.

Step 2

Where an amount identified under Step 1 is an amount of ordinary pay, exclude any amount that would normally fall to be paid in a different pay period.

Step 3

⁹² (a) Section 10(2) was amended by paragraph 4(2) of Schedule 7 to the Finance Act 2008 (c. 9)

⁹³ (b) Section 10(3) was amended by paragraph 6(2) of Schedule 2 to the Finance Act 2011 (c. 11).

⁹⁴ (c) 2003 c. 1. Section 420 was substituted by paragraph 2(1) of Schedule 22 to the Finance Act 2003 (c. 14).

Where an amount identified under Step 1 is an amount of bonus pay, and is paid in respect of a period (“the bonus period”) which is not the same length as the relevant pay period, divide the amount by the length of the bonus period (in days) and multiply it by the length of the relevant pay period (in days).

Step 4

Add together the amounts identified under Step 1 (as adjusted, where necessary, under Steps 2 and 3).

Step 5

Multiply the amount found under Step 4 by the appropriate multiplier (see sub-paragraphs (2) and (3)).

Step 6

Divide the amount found under Step 5 by the number of working hours in a week for that employee (see paragraph 7).

(2) In this paragraph, “the appropriate multiplier” means 7 divided by the number of days in the relevant pay period.

(3) In determining for the purposes of this paragraph the number of days in the relevant pay period or bonus period where those periods are (or are determined by reference to) a month or a year—

- (a) a month is treated as having 30.44 days;
- (b) a year is treated as having 365.25 days.

Employee’s working hours in a week

7. —(1) The number of working hours in a week for a relevant employee, for the purposes of Step 6 in paragraph 6, is to be determined as follows.

(2) Subject to sub-paragraph (6), where an employee has normal working hours that do not differ from week to week or over a longer period, the number of working hours in a week for a relevant employee is the number of the normal working hours in a week for that employee under the employee’s contract of employment, or terms of employment, in force on the snapshot date.

(3) Subject to sub-paragraph (6), where the employee has no normal working hours, or the number of the normal working hours differs from week to week or over a longer period, the number of working hours in a week for the employee is—

- (a) the average number of working hours calculated by dividing by twelve the total number of the employee’s working hours during the period of twelve weeks ending with the last complete week of the relevant pay period, or

- (b) where the employee has not been at work for a sufficient period, or for some other reason the public authority is not reasonably able to make the calculation under paragraph (a), a number which fairly represents the number of working hours in a week having regard to such of the considerations specified in sub-paragraph (5) as are appropriate in the circumstances.
- (4) In calculating the average number of working hours for the purposes of sub-paragraph (3)(a), no account is to be taken of a week in which no hours were worked by the employee, and hours worked in earlier weeks must be brought in so as to bring up to twelve the number of weeks of which account is taken.
- (5) The considerations referred to in sub-paragraph (3)(b) are—
 - (a) the average number of working hours in a week which the employee could expect under the employee's contract of employment, or terms of employment; and
 - (b) the average number of working hours of other employees engaged in comparable employment with the same public authority.
- (6) Where the employee is paid on the basis of piecework, the number of working hours in a week for the employee is the number of hours of output work for that employee in the week during the relevant pay period within which the snapshot date falls, determined in accordance with Chapter 4 of Part 5 of the National Minimum Wage Regulations 2015(a)⁹⁵. (7) In its application by virtue of sub-paragraph (6), Chapter 4 of Part 5 of the National Minimum Wage Regulations 2015 has effect as if—
 - (a) references to a worker were references to an employee, and
 - (b) references to a pay reference period were references to a week.
- (8) In this paragraph, "working hours"—
 - (a) includes hours when an employee is available, and required to be available, at or near a place of work for the purposes of working unless the employee is at home, and
 - (b) excludes any hours for which an employee is entitled to overtime pay.
- (9) In sub-paragraph (8), hours when an employee is "available" only includes hours when the employee is awake for the purposes of working, even if an employee by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping.

⁹⁵ (a) S.I. 2015/621.

Difference in mean hourly rate of pay

8. The difference between the mean hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees must be expressed as a percentage of the mean hourly rate of pay of male full-pay relevant employees and is to be determined as follows—

$$(A-B)/A \times 100$$

where—

A is the mean hourly rate of pay of all male full-pay relevant employees; and

B is the mean hourly rate of pay of all female full-pay relevant employees.

Difference in median hourly rate of pay

9. The difference between the median hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees must be expressed as a percentage of the median pay of male full-pay relevant employees and is to be determined as follows—

$$(A-B)/A \times 100$$

where—

A is the median hourly rate of pay of all male full-pay relevant employees; and

B is the median hourly rate of pay of all female full-pay relevant employees.

Difference in mean bonus pay

- 10.—(1) The difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees must be expressed as a percentage of the mean bonus pay paid to male relevant employees and is to be determined as follows—

$$(A-B)/A \times 100$$

where—

A is the mean bonus pay paid during the relevant period to male relevant employees who were paid bonus pay during that period; and

B is the mean bonus pay paid during the relevant period to female relevant employees who were paid bonus pay during that period.

(2) In this paragraph, “the relevant period” means the period of 12 months ending with the snapshot date.

Difference in median bonus pay

- 11.—(1) The difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees must be expressed as a percentage of the median bonus pay paid to male relevant employees and is to be determined as follows—

$$(A-B)/A \times 100$$

where—

A is the median bonus pay paid during the relevant period to male relevant employees who were paid bonus pay during that period; and

B is the median bonus pay paid during the relevant period to female relevant employees who were paid bonus pay during that period.

(2) In this paragraph, “the relevant period” means the period of 12 months ending with the snapshot date.

Proportion of male and female employees who were paid bonus pay

12.—(1) The proportion of male relevant employees who were paid bonus pay must be expressed as a percentage of male relevant employees and as is to be determined as follows—

$(A/B) \times 100$

where—

A is the number of male relevant employees who were paid bonus pay during the relevant period; and

B is the number of male relevant employees.

(2) The proportion of female relevant employees who were paid bonus pay must be expressed as a percentage of female relevant employees and is to be determined as follows—

$(A/B) \times 100$

where—

A is the number of female relevant employees who were paid bonus pay during the relevant period; and

B is the number of female relevant employees.

(3) In this paragraph, “the relevant period” means the period of 12 months ending with the snapshot date.

Proportion of male and female employees according to quartile pay bands

13.—(1) The proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands is to be determined as follows.

Step 1

Determine the hourly rate of pay for each full-pay relevant employee and then rank those employees in order from lowest paid to highest paid.

Step 2

Divide the employees, as ranked under Step 1, into four sections, each comprising (so far as possible) an equal number of employees, to determine the lower, lower middle, upper middle and upper quartile pay bands.

Step 3

The proportion of male full-pay relevant employees within each quartile pay band must be expressed as a percentage of the full-pay relevant employees within that band as follows—

$$(A/B) \times 100$$

where—

A is the number of male full-pay relevant employees in a quartile pay band;
and

B is the number of full-pay relevant employees in that quartile pay band.

Step 4

The proportion of female full-pay relevant employees within each quartile pay band must be expressed as a percentage of the full-pay relevant employees within that band as follows—

$$(A/B) \times 100$$

where—

A is the number of female full-pay relevant employees in a quartile pay band;
and

B is the number of full-pay relevant employees in that quartile pay band.

(2) Where employees receiving the same hourly rate of pay fall within more than one quartile pay band, the public authority must (so far as possible) ensure that, when ranking the employees under Step 1, the relative proportion of male and female employees receiving that rate of pay is the same in each of those pay bands.

Manner of publication

14.—(1) The requirement in paragraph 2(1) to publish information is a requirement that that information be published on the public authority's website—

- (a) in a manner that is accessible to all its employees and to the public; and
- (b) for a period of at least three years beginning with the date of publication.

(2) A relevant public authority must also publish the information required by paragraph 2(1) on a website designated for that purpose by the Secretary of State.

(3) Where the relevant public authority comprises one of the armed forces, the information required by paragraph 2(1) may be published by a government department on its behalf.

(4) Where a government department publishes information by virtue of sub-paragraph (3), the reference in sub-paragraph (1) to the public authority's website is to be read as a reference to that government department's website.

Schedule 2

Regulation 4(1)

Public authorities required to publish information

Armed Forces

Any of the armed forces other than any part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

Broadcasting

The British Broadcasting Corporation ("BBC"), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003⁹⁶); and the reference to the BBC includes a reference to a body corporate which—

- (a) is a wholly owned subsidiary of the BBC,
- (b) is not operated with a view to generating a profit, and
- (c) undertakes activities primarily in order to promote the BBC's public purposes.

The Channel Four Television Corporation, except in respect of—

- (a) functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003), and
- (b) the function of carrying on the activities referred to in section 199 of that Act⁹⁷.

⁹⁶ (a) 2003 c. 21

⁹⁷ (b) Section 199 was amended by section 22(2) of the Digital Economy Act 2010 (c. 24).

The Welsh Authority (as defined by section 56(1) of the Broadcasting Act 1990(c)⁹⁸), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003).

Civil liberties

The Commission for Equality and Human Rights.

The Information Commissioner.

Court services and legal services

The Children and Family Court Advisory and Support Service.

The Judicial Appointments Commission.

The Legal Services Board.

Criminal justice

The Criminal Cases Review Commission.

Her Majesty's Chief Inspector of Constabulary.

Her Majesty's Chief Inspector of the Crown Prosecution Service.

Her Majesty's Chief Inspector of Prisons.

Her Majesty's Chief Inspector of Probation for England and Wales.

The Parole Board for England and Wales

A probation trust established by an order made under section 5(1) of the Offender Management Act 2007(a)⁹⁹.

The Youth Justice Board for England and Wales.

⁹⁸ (c) 1990 c. 42. Section 56(1) was amended by Schedule 19(1) of the Communications Act 2003 (c. 21).

⁹⁹ (a) 2007 c. 21.

Education

The governing body of an educational establishment maintained by an English local authority (within the meaning of section 162 of the Education and Inspections Act 2006**(b)**¹⁰⁰).

The governing body of an institution in England within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992**(c)**¹⁰¹).

The governing body of an institution in England within the higher education sector (within the meaning of section 91(5) of that Act)**(d)**¹⁰².

The Higher Education Funding Council for England.

A local authority in England with respect to the pupil referral units it establishes and maintains by virtue of section 19 of the Education Act 1996**(e)**¹⁰³.

The proprietor of a City Technology College, City College for Technology of the Arts, or an Academy.

The Student Loans Company Limited.

Environment, housing and development

The Environment Agency

The Homes and Communities Agency.

Natural England.

¹⁰⁰ (b) 2006 c. 40.

¹⁰¹ (c) 1992 c. 13. Section 91(3) was amended by paragraph 13(2) of Schedule 8 to the Apprenticeships, Skills, Learning and Children Act 2009 (c. 22).

¹⁰² (d) Section 91(5) was amended, in relation to Wales, by paragraph 4 of the Schedule to the Higher Education (Wales) Act 2015 (anaw. 1), which is not yet commenced.

¹⁰³ (e) 1996 c. 56. Section 19 was amended by section 3 of the Children, Schools and Families Act 2010 (c. 26). There are further, uncommenced, amendments to section 19 in paragraph 1 of Schedule 3, and paragraph 1 of Schedule 4 to that Act. Section 19 was also amended by section 101 of the Education and Inspections Act 2006; by section 47 of the Education Act 1997 (c. 44); and by S.I. 2010/1158 and 2007/1507.

Health, social care and social security

The Care Quality Commission.

A clinical commissioning group established under section 14D of the National Health Service Act 2006(f)¹⁰⁴.

Health Education England.

The Health Research Authority.

The Health and Social Care Information Centre.

Monitor.

An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006(g)¹⁰⁵.

An NHS trust established under section 25 of that Act.

The National Health Service Commissioning Board.

The National Institute for Health and Care Excellence.

A Special Health Authority established under section 28 of the National Health Service Act 2006(a)¹⁰⁶.

Industry, business, finance etc.

The Advisory, Conciliation and Arbitration Service.

The Bank of England, in respect of its public functions.

The Board of the Pension Protection Fund.

The Civil Aviation Authority.

The Coal Authority.

¹⁰⁴ (f) 2006 c. 41. Section 14D was inserted by section 25(1) of the Health and Social Care Act 2012 (c. 7).

¹⁰⁵ (g) Section 30 was amended by section 159(1) of the Health and Social Care Act 2012.

¹⁰⁶ (a) Section 28 was amended by paragraph 13 of Schedule 4 to the Health and Social Care Act 2012

The Construction Industry Training Board.

The Engineering Construction Industry Training Board.

The Financial Conduct Authority.

The National Audit Office.

The Nuclear Decommissioning Authority.

The Office for Budget Responsibility.

The Office of Communications.

The Oil and Gas Authority.

The Prudential Regulation Authority.

Local government

A body corporate established pursuant to an order under section 67 of the Local Government Act 1985**(b)**¹⁰⁷.

A combined authority established by an order made under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009**(c)**¹⁰⁸.

The Common Council of the City of London in its capacity as a local authority or port health authority.

The Council of the Isles of Scilly. A county council or district council in England.

An economic prosperity board established by an order made under section 88(1) of the Local Democracy, Economic Development and Construction Act 2009**(d)**¹⁰⁹.

A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in England.

¹⁰⁷ (b) 1985 c. 51.

¹⁰⁸ (c) 2009 c. 20. Section 103 was amended by sections 12(2) and 14(2) of the Cities, Local Government and Devolution Act 2016 (c. 1).

¹⁰⁹ (d) Section 88 was amended by section 11(2) of the Cities, Local Government and Devolution Act 2016.

The Greater London Authority.

A joint committee constituted in accordance with section 102(1)(b) of the Local Government Act 1972(a)¹¹⁰ for an area in England.

A London borough council.

The London Fire and Emergency Planning Authority.

A National Park authority established by an order under section 63 of the Environment Act 1995(b)¹¹¹ for an area in England.

A Passenger Transport Executive for an integrated transport area in England (within the meaning of Part 2 of the Transport Act 1968(c)¹¹²).

Transport for London.

Ministers of the Crown and government departments

A government department other than the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

A Minister of the Crown.

Parliamentary and devolved bodies

The National Assembly for Wales Commission (Comisiwn Cynulliad Cenedlaethol Cymru).

The Scottish Parliamentary Corporate Body.

Police

The British Transport Police Force.

A chief constable of a police force maintained under section 2 of the Police Act 1996.

The Chief Inspector of the UK Border Agency.

The Civil Nuclear Police Authority.

¹¹⁰ (a) 1972 c. 70. There are amendments to the section, not relevant here.

¹¹¹ (b) 1995 c. 25.

¹¹² (c) 1968 c. 73

The College of Policing.

The Commissioner of Police for the City of London.

The Commissioner of Police of the Metropolis.

The Common Council of the City of London in its capacity as a police authority.

The Independent Police Complaints Commission.

The Mayor's Office for Policing and Crime established under section 3 of the Police Reform and Social Responsibility Act 2011(d)¹¹³.

A police and crime commissioner established under section 1 of that Act.

Regulators

The Disclosure and Barring Service

The Gambling Commission.

The Gangmasters and Labour Abuse Authority.

The General Council of the Bar, in respect of its public functions.

The Health and Safety Executive.

The Law Society of England and Wales, in respect of its public functions.

The Office for Nuclear Regulation.

The Pensions Regulator.

The Security Industry Authority.

Transport

High Speed Two (HS2) Limited(a)¹¹⁴.

¹¹³ (d) 2011 c. 13.

¹¹⁴ (a) A company formed and registered under the Companies Acts with the registration number 06791686.

Highways England Company Limited**(b)**¹¹⁵.

Network Rail Limited**(c)**¹¹⁶.

Schedule 3

Regulation 8

Amendments to Schedule 19 of the Act

1. Part 1 of Schedule 19 to the Act (public authorities: general) is amended in accordance with paragraphs 2 to 6.

2. Under the heading “Industry, business, finance etc.”—

(a) omit “The Competition and Markets Authority.”;

(b) insert in the appropriate places—

““The Board of the Pension Protection Fund.”

“The Coal Authority.”

“The Construction Industry Training Board.”

“The Engineering Construction Industry Training Board.”

“The Nuclear Decommissioning Authority.”

“The Oil and Gas Authority.””

3. Under the heading “Local government”—

(a) omit “The Standards Board for England.”;

(b) insert at the end of the entries under that heading—

““A combined authority established by an order made under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009.”**(d)**¹¹⁷

“An economic prosperity board established by an order made under section 88(1) of the Local Democracy, Economic Development and Construction Act 2009.”

¹¹⁵ (b) A company formed and registered under the Companies Acts with the registration number 09346363.

¹¹⁶ (c) A company formed and registered under the Companies Acts with the registration number 04402220

¹¹⁷ (d) 2009 c. 20. There are amendments to the section, not relevant here.

“An urban development corporation established by an order made under section 135 of the Local Government, Planning and Land Act 1980.””(a)¹¹⁸

4. Under the heading “Other educational bodies”, for “The proprietor of a City Technology College, a City College for Technology or the Arts, or an Academy.”, substitute “The proprietor of a City Technology College, a City College for Technology of the Arts, or an Academy.”.

5. Under the heading “Regulators”—

(a) omit—

““The Association of Authorised Public Accountants, in respect of its public functions.”; and

“The Association of International Accountants, in respect of its public functions.”;”;

- (b) for “The Association of Certified Chartered Accountants, in respect of its public functions.”, substitute “The Association of Chartered Certified Accountants, in respect of its public functions.”;

- (c) insert in the appropriate places—

““The Disclosure and Barring Service.”

“The Gambling Commission.”

“The Gangmasters and Labour Abuse Authority.”

“The General Optical Council, in respect of its public functions.”

“The General Osteopathic Council, in respect of its public functions.”

“The General Pharmaceutical Council, in respect of its public functions.”

“The Health and Care Professions Council, in respect of its public functions.”

“The Independent Monitor appointed under section 119B of the Police Act 1997.””(b)¹¹⁹

“The Pensions Regulator.”

“The Security Industry Authority.””

6. After the entries for “Regulators”, insert—

“Transport

¹¹⁸ (a) 1980 c. 65. Section 135 was amended by section 179(4) of the Leasehold Reform, Housing and Urban Development Act (c. 28), and by section 167(2) and (3) of the Housing and Planning Act 2016 (c. 22).

¹¹⁹ (b) 1997 c. 50. Section 119B was added by section 28 of the Safeguarding Vulnerable Groups Act 2006 (c. 47) and amended by paragraph 111(4) of Schedule 9 and paragraph 1 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9); and by S.I. 2012/3006. There are further amendments to the section, not relevant here.

High Speed Two (HS2) Limited.

Highways England Company Limited.

Network Rail Limited.”.

7. Part 2 of Schedule 19 to the Act is amended in accordance with paragraphs 8 and 9.
8. Under the heading “Other public authorities”, for “The Care Council for Wales or Cyngor Gofal Cymru.”, substitute “Social Care Wales or Gofal Cymdeithasol Cymru.”¹²⁰
9. Until section 67(3) of the Regulation and Inspection of Social Care (Wales) Act 2016 comes fully into force, the reference to Social Care Wales or Gofal Cymdeithasol Cymru inserted by paragraph 8 has effect, to the extent that section 67(3) is not in force, as a reference to the Care Council for Wales or Cyngor Gofal Cymru.

Explanatory note

(This note is not part of the Regulations)

These Regulations impose specific duties, including gender pay gap reporting requirements, on the public authorities listed in Schedule 2 to the Regulations. The purpose of the duties is to enable the better performance by the authority of the public sector equality duty imposed by section 149(1) of the Equality Act 2010 (c. 15) (“the Act”). That section requires public authorities to have due regard, in the exercise of their functions, to specified equality aims.

Regulation 2 makes provision as to the meaning of “employment” and related expressions for the purposes of the Regulations.

Regulation 4 requires the public authorities listed in Schedule 2 to publish annual information to demonstrate compliance with the section 149(1) duty. Regulation 5 requires the same public authorities to publish equality objectives at four-yearly intervals. Regulation 6 sets out the way in which the information must be published. Regulations 4 and 5 both require the information to be first published not later than 30th March 2018.

¹²⁰ (c) The Care Council for Wales was renamed Social Care Wales by section 67 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw. 2). Section 67 was commenced for certain purposes only by S.I. 2016/713.

Regulation 7 enables two of the public authorities listed in Schedule 2, Monitor and the NHS Trust Development Authority, to jointly comply with the obligations imposed by the Regulations, as if they were a single public authority. This reflects arrangements by which the two statutory bodies are brought together in a single operational organisation called NHS Improvement.

The requirements in regulations 4 to 6 reproduce requirements in the Equality Act 2010 (Specific Duties) Regulations 2011 (“the 2011 Regulations”), which are revoked by regulation 9(1). Regulation 9(2) makes transitional provision, so that if public authorities have published equality objectives in compliance with the 2011 Regulations during the four years ending with 30th March 2018, they are not required to publish such objectives again until four years from the date of last publication under the 2011 Regulations. Regulation 9(3) makes a saving provision.

Regulation 3 and Schedule 1 impose new requirements for public authorities listed in Schedule 2 to the Regulations, if they have 250 or more employees, to publish information relating to the gender pay gap in their organisation. In particular, public authorities are required to publish the difference between the average hourly rate of pay paid to male and female employees; the difference between the average bonus paid to male and female employees; the proportions of male and of female employees who receive bonuses; and the relative proportions of male and female employees in each quartile pay band of the workforce.

Schedule 2 to the Regulations sets out the public authorities to which the obligations in these Regulations apply. This updates and consolidates the lists in Schedules 1 and 2 of the 2011 Regulations.

Schedule 3 to the Regulations amends Parts 1 and 2 of Schedule 19 to the Act (public authorities subject to the public sector equality duty).

This instrument has no impact on the costs of business, charities or voluntary bodies. No specific impact assessment has been carried out on the effect that this instrument will have on the costs of the public sector, but an impact assessment prepared for the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (which impose very similar gender pay gap reporting requirements) is published with the Explanatory Memorandum for that instrument on legislation.gov.uk. A hard copy of that full impact assessment can be obtained from the Government Equalities Office, Sanctuary Buildings, 20 Great Smith Street, SW1P 3BT.

Contacts

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