

### INTRODUCTION

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The Equality Act 2010 combines previous equality legislation in England, Scotland and Wales and includes a new Public Sector Equality Duty which replaces the separate duties covering race, disability and gender. The new duty combines the previous public sector equality duties into one duty *and* extends the areas of discrimination covered.

The previous Public Sector Equality Duties were:

- the Race Equality Duty which came into force in May 2002
- the Disability Equality Duty which came into force in December 2006
- the Gender Equality Duty which came into force in April 2007.

Following the introduction of these duties public authorities became legally obliged to promote equality of opportunity and eliminate discrimination for service users and staff, rather than waiting for individuals to complain.

To extend the areas of equality covered and combine them into one duty, the new duty covers a series of “protected characteristics”. People who share these characteristics are regarded as being members of certain “protected groups”. The protected characteristics are:

- race
- disability
- pregnancy and maternity
- age
- religion or belief
- sex
- sexual orientation
- gender reassignment

The duty also covers marriage and civil partnership, but only for certain parts of the duty. The new duty requires public sector employers (and their contractors) to consider employees and service users in all the protected groups.

The new equality duty is broken down into two separate parts: a “general” equality duty and the “specific” equality duties. The general duty came into force on the 6<sup>th</sup> April 2011, and it was originally planned that the specific duties would come into force on the same day.

However, the coalition government announced that the draft regulations on the specific duties for England were to be revised and consequently the specific duties did not come into force until 10 September 2011. In Wales, specific duties came into force on the original planned date of 6 April 2011. In Scotland, an extensive consultation took place on the specific duties before legislation came into force on 27 May 2012.

## THE GENERAL DUTY

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The general equality duty means that public sector employers must give “due regard” to the need to:

1. Stop unlawful discrimination, harassment and victimisation
2. Promote equality of opportunity between people who share a protected characteristic and those who do not.
3. Foster good relations between people who share a protected characteristic and those who do not.

The third of these three aspects of the general equality duty is new and could have important implications in the workplace. It's important for UNISON reps to highlight the introduction of the duty for employers to foster good relations in this way

Public authorities also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status. Only point 1 of the general duty set out above applies to this characteristic but the others do not.

Giving “due regard” means that a public authority have to give consideration (and show that they have given consideration) to the impact that a decision or change in policy has on groups that share a protected characteristics. For example, if an employer were to introduce a new pay structure at a local level they have an obligation to mitigate any disproportionately negative impact that this would have on one of the protected groups. In order to proceed with any change in policy which leads to an adverse affect for a protected group, they would need to have a solid, objective and reasonable justification for going ahead.

### Equality Schemes

One of the disappointing aspects of the new legislation is that public sector organisations will no longer be specifically required to publish an equality scheme. Previously, they were required to publish a document which showed how they were planning to promote equality on the grounds of race, disability and gender.

## WHO DOES THE GENERAL DUTY APPLY TO?

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Under the new act the general equality duty applies to named organisations listed in the Equality Act itself. This includes most public sector employers such as healthcare trusts, local councils, schools, police forces and government departments. It is also important to understand that these bodies cannot outsource their responsibilities to meet the general duty. For example an NHS Trust which has outsourced its hospital cleaning services to a private company is still responsible for ensuring that the general duty is complied with. If the duty is breached, either in relation to its staff or service users, then the NHS Trust could be subject to enforcement action.

The general duty also applies to contractors who are in the process of “exercising public functions.” That means private companies, charities and other voluntary organisations delivering public services must also give due regard to the three objectives of the general duty when delivering services. For example, if a private company is managing staff in the revenue and benefits office of a local authority, that private company must also comply with the general duty in relation to that activity.

## Public Sector Equality Duty Factsheet

So when a service is contracted out *both* the contractor *and* the public authority that commissioned the service have to give due regard to the three principles of the General Duty.

The bodies that are subject to the general duty are listed in Schedule 19 of the Equality Act 2010, which can be found [here](#). In addition, any organisation which carries out a public function is subject to the general duty. In this situation, the duty will only apply to the organisation's public functions, not to any private functions it carries out.

### THE SPECIFIC EQUALITY DUTIES

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The specific duties that came into effect in England in September 2011 set out the following two main requirements on listed authorities.

- 1) Publication of information to demonstrate compliance with the general equality duty. The initial deadline for publication was set for 31 January 2012, followed by at least annual publication thereafter. Schools and pupil referral units were given a slightly longer deadline of 6 April 2012.

This information had to include material relating to employees who share a protected characteristic or people affected by its policies and practices.

Public authorities with fewer than 150 employees are exempt from the requirement to publish information on their employees.

- 2) Publication of one or more objectives to further any of the aims of the general equality duty by 6 April 2012, with revised statements on objectives due at least every four years thereafter. The objectives must be specific, measurable and accessible to the public.

The specific duties that came into effect in Wales in April 2011 set out the following main requirements on listed authorities:

- Publish equality objectives to meet general duty by April 2012 and review thereafter at least every four years;
- Assess the impact of proposed policies and practices on meeting the general duty;
- Collect and publish annual data on the number of employees by protected characteristic;
- Publish an equality objective to address any gender pay difference;
- Draw up a strategic equality plan by April 2012;
- Publish an annual equality report by 31 March each year.

The specific duties that came into effect in Scotland in May 2012 set out the following main requirements on listed authorities:

- Assess and review policies and practices in light of the general equality duty;
- Gather and use employee information to advance the general equality duty;
- Consider award criteria and conditions in relation to procurement;
- By April 2013 publish a report on mainstreaming the general equality duty, equality outcomes, gender pay gap information and a statement on occupational segregation;
- Two years after first reporting, publish a further report on mainstreaming, progress toward achieving equality outcomes and gender pay gap information.

## Public Sector Equality Duty Factsheet

It was a matter of considerable disappointment to UNISON that the specific duties did explicitly not require public authorities to carry out an Equality Impact Assessment (EIA) prior to making changes to procedures, policies and practices. EIAs have enabled the public, trade unions and under-represented groups, to scrutinise and influence public authorities. They have also become simple to operate, widely accepted and defined by the courts and have helped drive improvements in public policy.

Therefore, branches should continue to press for EIAs whenever possible as still the best way of ensuring compliance with the General Duty when changes are made (material on developing EIAs can be found in guidance at <http://www.unison.org.uk/equality/duties.asp> )

### ENFORCEMENT

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The table below outlines the statutory powers the Equality and Human Rights Commission (EHRC) has to enforce the Equality Duty.

#### EHRC statutory powers to enforce the duties

- Undertaking assessments under section 31 of the Equality Act 2006, to assess to what extent a body has complied with the equality duty.
- Issue compliance notices in respect of a failure to comply with the general equality duty or the specific duties. These notices require public authorities to provide information about how they will comply with the general or specific duties, including what steps they will take.
- Intervene in legal proceedings related to the duty by providing the Court with expert advice to help the Court reach its decision.
- Enter into a formal agreement with an organisation under section 23 of the Equality Act 2006 if the EHRC believes that the organisation has breached an equality duty. A section 23 agreement usually includes developing and implementing an action plan to address any breach and prevent future breaches, while requiring reports on progress in meeting the action plan.

If a public authority doesn't comply with the general equality duty, its actions or failure to act can be challenged through an application to the High Court for judicial review. An application could be made by a person or group of people with an interest in the matter, or by the Commission.

If branches are concerned that employers are not meeting their obligations under the Public Sector Equality Duty they should refer to UNISON's *Equality Duties Protocol* at [http://www.unison.org.uk/equality/pages\\_view.asp?did=11350](http://www.unison.org.uk/equality/pages_view.asp?did=11350)

## FURTHER INFORMATION

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### **Equalities and Human Rights Commission advice**

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/>

### **More detailed UNISON guidance on negotiating around the Public Sector Equality Duties**

<http://www.unison.org.uk/equality/duties.asp>

### **Full text of the Equality Act 2010:**

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

### **Legislation on Specific Duties in England**

<http://www.legislation.gov.uk/uksi/2011/2260/contents/made>

### **Legislation on Specific Duties in Wales**

[http://www.legislation.gov.uk/wsi/2011/1064/pdfs/wsi\\_20111064\\_mi.pdf](http://www.legislation.gov.uk/wsi/2011/1064/pdfs/wsi_20111064_mi.pdf)

### **Legislation on Specific Duties in Scotland**

<http://www.legislation.gov.uk/ssi/2012/162/contents/made>