

Technical Guidance on the Public Sector Equality Duty: Scotland

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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) (Scotland) Regulations 2012 as amended. This Technical Guidance explains the three needs 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. 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, www.equalityhumanrights.com.

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

Scope of the guidance

- 1.6 This guidance covers the public sector equality duty as set out in Part 11 of the Act. This guidance also covers the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended (the Regulations) which impose specific duties on certain public authorities listed in the Regulations.
- 1.7 Those parts of the guide which deal with the public sector equality duty in section 149 of the Act apply (subject to the exceptions set out in Appendix C) to all public authorities, and those discharging public functions, across Great Britain.

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 Boards, and named persons subject to the duty, for example Her Majesty’s Chief Inspector of Prisons for Scotland.

- 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.

¹ They are listed in The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended. See Chapter 6 of this guidance for more details.

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.

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 needs 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)(Scotland) Regulations 2012 as amended (the Regulations)

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

Appendices:

- What is meant by 'public authorities' and 'public functions'
- Prohibited conduct
- Exceptions
- Assessments
- Glossary
- Equality Act 2010 Schedule 19, as amended
- Specific duties regulations

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: www.equalityhumanrights.com

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: s.149(1)
- 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 needs 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 needs of the duty. A full consideration of each of the

needs is provided in Chapter 3.

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 those functions. This is explained further in Appendix A.³

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 s.149(1), (2) 'exercising a function'.

The courts have said that there is no scope for depriving 'function' of much of its ordinary meaning.⁵ 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 an education authority 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.

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. Appendix 6 to this guidance has a consolidated list of authorities in Schedule 19 as at 1 April 2014.

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.

- 2.6 The Court of Appeal in England 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.⁶ 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.⁷

Example — A local authority was challenged for failing to comply with the Disability Equality Duty⁸ 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.⁹

- 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.¹⁰ 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.¹¹

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

⁶ *Stuart Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, McCombe LJ at para 60.

⁷ *Pieretti v Enfield Borough Council* [2010] EWCA 1104, para 26 per Wilson LJ.

⁸ S.49A of the Disability Discrimination Act 1995, superseded by s.149 of the Act.

⁹ *Pieretti v Enfield Borough Council* [2010] EWCA 1104.

¹⁰ *Barnsley MBC v Norton* [2011] EWCA Civ 834, Lloyd LJ at para 15.

¹¹ *R. (on the application of D and S) v Manchester City Council* [2012] EWHC 17 (Admin), Ryder J at para 48.

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 5.40-5.42 on practical compliance).

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.¹² 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 the needs of the duty in its decision making about the particular girl's wish to wear the Kara once the issue arose.¹³

- 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: s.4
- age
 - disability

¹² 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.

¹³ *R. (Watkins-Singh) v Governors of Aberdare Girls' High School* [2008] EWHC 1865 (Admin).

- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

The first need 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 needs 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 need of the duty.

The first need 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 need 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.¹⁴

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

¹⁴ See s.28(1)(a), 32(1)(b), 84(1)(b), 90 of the Act.

October 2012.¹⁵ Prior to that date, for the protected characteristic of age, a body did not need to comply with the first need of the duty in relation to services and public functions (Part 3 of the Act). A body now needs to consider the first need in respect of age discrimination and harassment in services and public functions, subject to exceptions (see Appendix C).

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 need 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 s.149(6)

¹⁵ 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).

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.

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 involving 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 or council.

Exceptions

- 2.18 There are a small number of exceptions to the general equality duty. These are set out in Appendix C.

What does 'due regard' mean?

- 2.19 Bodies subject to the duty must have due regard to each of the three needs 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 needs in the general equality duty to the decision or function in question.¹⁶ 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 needs of the duty and so will need a higher degree of regard.

The three needs set out in 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 needs of the duty are likely to be relevant to an NHS Board'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 needs 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

¹⁶ 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'.

the other protected characteristics.

- 2.21 There are many cases in which the courts in England 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.

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 needs set out in the general equality duty. The six 'Brown principles' it set out¹⁷ have been accepted by courts in later cases.¹⁸ 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 needs 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

¹⁷ *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 at paras 90-96.

¹⁸ 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.

not specifically mentioned [s.149]¹⁹ 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.'

- 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

¹⁹ 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.

that are relevant for a public body in fulfilling its duty to have ‘due regard’ to the needs 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’.²⁰

How do the three needs 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 needs set out in s.149(1) in relation to each of the

²⁰ *R. (W) v Birmingham City Council* [2011] EWHC 944, Blake J at para 45.

relevant protected characteristics set out in s.149(7).

Some actions may support more than one of the needs 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 need of the duty to eliminate discrimination, harassment and other conduct prohibited by the Equality Act 2010 and the need to foster good relations.

Chapter 3 | The general equality duty needs

Introduction

3.1 This chapter explains what the Act and the courts say about each of the three general equality duty needs. As discussed in Chapter 2, a body subject to the duty must have due regard to each of the three needs 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.²¹

The three needs 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 3.1.**
- 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 3.2.**
- 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 3.3.**

²¹ *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 3.1: 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.²²

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 needs.²³ This would include existing policies or practices which have never been subject to 'due regard' consideration.

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 a 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.²⁴

²² *R. (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293, Arden LJ at para 274.

²³ *R. (W.) v Birmingham City Council* [2011] EWHC 1147, para 151 proposition iv.

²⁴ *G. v St Gregory's* [2011] EWHC 1452, Collins J at paras 44-45.

- 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 need 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.
- 3.6 As with all the needs 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’.²⁵

- 3.8 It will be easier to successfully defend the kind of claims referred to in para 3.7 if the person defending the claim 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 need of the general equality duty should enable a body subject to the duty to provide evidence of such consideration.

Discrimination or prohibited conduct by others

- 3.9 The provisions addressing harassment by third parties have been repealed.²⁶ 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, case law indicates that it is possible that a body subject to the duty could be found to be legally responsible for failing to take action in specific circumstances. These would arise where the relevant body has some degree of control over a situation where there is a continuing course of offensive conduct of which they are aware but do not take action to prevent its recurrence.²⁷

²⁵ *G. v St Gregory's* [2011] EWHC 1452, Collins J at para 42.

²⁶ Section 65, Enterprise and Regulatory Reform Act 2013.

²⁷ *Sheffield City Council v Norouzi* [2011] IRLR 897 (and see *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] IRLR 327).

Section 3.2: 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:
- 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 need 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 – s.149(3)
- remove or minimise disadvantages suffered by people who share a relevant protected characteristic that are connected to that characteristic. **See para 3.18.**
 - 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 – 3.27.**
 - 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.

- 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 paras 3.23 and 3.24.

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 elements.
- 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 need.

Case study —A Police Scotland division identifies from a local crime survey that gay men in their 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 division decides 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 s.149(6)

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.

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.

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 Board becomes aware that the ongoing long-term use of hormones increases the risk of breast

cancer for transsexual women aged 50-70. The Board 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.²⁸ The particular importance of meeting the different needs of disabled people is reflected throughout the Act, for example through the positive

²⁸ S.149(4) of the Act.

duty to make reasonable adjustments for disabled people.²⁹

- 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*,³⁰ 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.’

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

²⁹ S.20 of the Act.

³⁰ *Pieretti v Enfield Borough Council* [2010] EWCA 1104, Wilson LJ at para 34.

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.

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. (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 3.3 Fostering good relations

- 3.33 The Act says that fostering good relations involves having due regard, in particular, to the need to: s.149(5)
- a. tackle prejudice, and

- b. promote understanding.

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'.³¹
- 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
 - increase diversity in civic and political participation

³¹ 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', available from: <http://www.equalityni.org/archive/pdf/PromoteGdRel.pdf>

- (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
 - 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.

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 need 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.

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

- 4.2 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.

- 4.3 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.³² 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

- 4.4 The Statutory Code of Practice relating to Services, Public Functions and Associations and the Statutory 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

³² For more details see the Commission's Code of Practice on Services, Public Functions and Associations at para 10.27.

delivery of services tailored to the needs of people with a particular protected characteristic. This is particularly relevant to the second need 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.

Single-sex services

- 4.5 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.³³ 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 these 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

- 4.6 As part of complying with the general equality duty, relevant bodies could consider whether taking positive action is open to them and, if so, whether it would be appropriate to take that action.

When is positive action lawful?

³³ Schedule 3, para 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 13.54 onwards.

- 4.7 It will be lawful for a relevant body to take positive action where it reasonably thinks that people who share a protected characteristic: s.158
- 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.

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.

What action is lawful?

- 4.8 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:
- a. enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage
 - b. meeting those needs, or
 - c. 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.³⁴

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

³⁴ Specifically at para 10.7 of that Code.

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.

Chapter 5 | Complying with the general equality duty in practice

Introduction

- 5.1 Chapter 2 explains that to ‘have due regard’ to the three needs 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 to the functions of a body subject to the 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).

Listed authorities should also refer to Chapter 6

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 5.35-5.0)

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

See: Providing evidence of compliance (para 5.51 – 5.52).

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 5.53-5.62) Listed authorities should also refer to Chapter 6

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 to the functions of a body subject to the duty

- 5.5 A body subject to the duty must first decide the extent to which the needs in 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 needs in 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.³⁵ 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 needs 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 needs in the general equality duty will be highly relevant to these functions, because of their direct impact on the lives of individuals.

³⁵ *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.

- 5.11 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.
- 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 making³⁶ 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.³⁷

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

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

³⁶ *R. (Rahman) v. Birmingham City Council* [2011] EWHC 944 Blake J at para 35, sub para 3.

³⁷ For example, *Child Poverty Action Group v. Secretary of State for Work and Pensions* [2011] EWHC 2616 at para 76.

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.³⁸

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 involvement 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 outcomes
- monitor their progress against these outcomes.

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 needs of the duty have been identified as being relevant to a function (as described in para 5.9) in

³⁸ *R. (Lunt) v Liverpool City Council* [2009] EWHC 2356, Blake J at paras 43-45.

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 need 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
 - involving 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 involvement of equality groups and national data.³⁹

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

³⁹ A number of research reports, including 'Is Britain Fairer?', the Commission's recent equality review, are available at: <https://www.equalityhumanrights.com/en/our-work/publications-library>.

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.⁴⁰

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 involvement of disabled people, and should use this evidence to inform their decisions about accessibility issues.

Evidence gathering in practice

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

⁴⁰ *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.

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 involve 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 partnership decides to collect data on age in any future surveys it runs.
- A registered social landlord is publicly 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.

Involvement

5.27 This section explains why involvement 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 involvement will help a body subject to the duty to understand the actual or potential impacts of its policies and practices. The importance of involvement 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’.⁴¹

What does involvement mean?

- 5.29 Involvement 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 involve everyone, in every decision, all of the time. They should, therefore, take a proportionate approach to deciding whether and who to involve, and the extent of the exercise. Methods and degree of involvement should also be proportionate to the size and resources of the body and the significance of the issue

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.⁴²

⁴¹ *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.

⁴² In this case the Disability Equality Duty in s.49A of the Disability Discrimination Act 1995.

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.⁴³

- 5.31 Before deciding whether further involvement 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 involvement exercises, and where the gaps are.

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.

⁴³ *Barwick and anor v Bridgend County Borough Council* [2009] EWHC 1723, Bidder J at para 108.

- 5.32 If a body subject to the duty decides that it is going to consult members of the public as part of its involvement, 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.⁴⁴

Involvement in practice

- 5.33 In deciding how to carry out involvement in practice, a body subject to the general equality duty could ask itself:
1. Are there existing mechanisms in place and are they accessible to and used by people with different protected characteristics?
 2. Are people with certain protected characteristics currently under-represented?
 3. What steps could be taken to address any under-representation?
 4. Can it work with other bodies on any involvement exercises to maximise the use of resources and to reduce 'involvement fatigue'?
 5. How it will reflect the outcome of any involvement?
- 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
 - 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 involvement exercise to inform the development of a

⁴⁴ 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).

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.⁴⁵
- 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.

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.⁴⁶ They have also emphasised that, without evidence of ‘a

⁴⁵ See, for example, *R. (Watkins-Singh) v Governors of Aberdare Girls' High School* [2008] EWHC 1865 (Admin).

⁴⁶ *R. (Brown) v Secretary of State for Work and Pension and others* [2008] EWHC 3158, Aiken LJ at para 99.

structured attempt to focus on the details of equality issues', the decision maker is likely to be in difficulties if the decision is challenged.⁴⁷

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 means) 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 say 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.'⁴⁸

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
- ensure that the implications of the general equality duty are set out in reports or other papers for decision makers.⁴⁹

5.39 Training will be most useful if it involves people responsible

⁴⁷ *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).

⁴⁸ *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.

⁴⁹ 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.

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.⁵⁰

5.41 Bodies subject to the duty will want to ensure that equality

⁵⁰ *Stuart Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, McCombe LJ at para 26.

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 needs in 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.⁵¹

Giving due weight to the equality needs 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.⁵²

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.⁵³

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

⁵¹ *R. (Chavda) v Harrow London Borough Council* [2007] EWHC 3064 (Admin) Mackie J at para 40.

⁵² *R. (Boeyjo) v Barnet LBC* [2009] EWHC 3261, Jarman J at paras 56-57.

⁵³ *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.

always taken into account by a body subject to the duty as a mandatory relevant consideration.⁵⁴

- 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.⁵⁵
- 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.
- When considering the meaning of the previous Disability Equality Duty⁵⁶ in the case of *Pieretti*,⁵⁷ Wilson L J in the Court of Appeal in England 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.⁵⁸

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,

⁵⁴ *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.

⁵⁵ *R. (Hajrula) v London Councils* [2011] EWHC 448 (Admin) Calvert-Smith J at para 69.

⁵⁶ Specifically s.49A(i)(d) of the Disability Discrimination Act 1995.

⁵⁷ *Pieretti v London Borough of Enfield* [2010] EWCA Civ 1104.

⁵⁸ See paragraph 3.24 for more details of the *Pieretti* decision.

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 needs of the duty, they can help those making individual decisions to ensure they are having due regard.

Case study — An education authority produces guidance for head teachers 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 discharge.⁵⁹ 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.

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 needs 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

⁵⁹ *Stuart Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, McCombe LJ at para 60.

obviously difficult to conclude that there has been compliance'.⁶⁰

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 needs 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 need.

Listed authorities should also refer to Chapter 6 which explains obligations in the specific equality duties to publish assessments of impacts, and employment information.

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 directorate 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 needs of the duty with respect to other bodies.

⁶⁰ L (A Child), Re [2009] EWHC 458 (Admin) (12 March 2009) Black J at paras 121 and 123.

The following two sections deal briefly with two circumstances: Commissioning and procurement (5.54 - 5.61), and Audit, inspecting and regulating others (5.62). Listed authorities are subject to a specific duty on procurement. Further detail for listed authorities can be found in Chapter 6 at section 6.9.

Commissioning and procurement

- 5.54 This section explains how the general equality duty might apply to commissioning and procurement.
- 5.55 The terms commissioning and procurement are defined in the glossary.

Commissioning

- 5.56 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 needs of the duty and in particular the need to advance equality of opportunity, will almost always be relevant because commissioning is about meeting the needs of the public, including people with particular protected characteristics.

- 5.57 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.

- 5.58 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 needs in carrying out its procurement process. s.149(2)

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.

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 When a body subject to the duty decides that they need to procure from others, the requirement to have due regard needs to be taken into account alongside other relevant requirements, in particular those imposed by EU procurement rules.
- 5.60 The overarching EU Treaty principles of freedom of movement of workers, freedom of movement of goods, transparency, proportionality, fairness, equal treatment and non-discrimination 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 2004/18/EC prescribes how certain aspects of the procurement process must be carried out for contracts valued at or above EU thresholds subject to specified exceptions;⁶¹ it imposes specific requirements, criteria and restrictions with the aim of ensuring compliance

⁶¹ The Directive imposes more limited requirements when public authorities are purchasing certain services ('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.

with the above EU Treaty principles. The Public Contracts Regulations 2006 and The Public Contracts (Scotland) Regulations 2006, as amended, implement Directive 2004/18/EC in the UK.⁶²

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.

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 needs 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

⁶² The Utilities Contracts Directive 2004/17/EC is implemented in the UK by the Utilities Contracts Regulations 2006 and Utilities Contracts (Scotland) Regulations 2006.

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, and
- identify and disseminate best practice in respect of equality.

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

Section 6.1: Introduction

- 6.1

Chapters 2 to 5 set out what needs to be done to comply with the general equality duty.

To enable the better performance of that duty, The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended by The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015 and The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016 ('the Regulations') also impose specific duties.

This chapter explains what a listed authority or, in relation to Regulation 6A, a relevant listed authority, must do to comply with these specific duties.

In this chapter 'the general equality duty' means the duty of a listed authority to have, in the exercise of its functions, due regard to the needs mentioned in section 149(1)(a) to (c) of the Equality Act 2010, and 'the needs mentioned in the general equality duty' therefore refers to those particular needs.

There are separate regulations for England and for Wales which apply different specific duties and these are explained in the technical guidance applicable to those countries.

ss.153, 155 and 207

Who is covered by the specific duties?

- 6.2

The Schedule to the Regulations lists the authorities that are subject to the specific duties. An authority subject to the specific duties is referred to in the Regulations and in this chapter as a 'listed authority'.

Reg. 2, Sch.

The duty to publish information under Regulation 6A is applicable only to a 'relevant listed authority', which means any listed authority the members of which or the board of management of which, include at least one appointed member. This is subject to exceptions explained in more detail at section 6.6 below.

Reg. 6A

Partnerships

- 6.3 Listed authorities may be involved in partnerships in order to better deliver their services, for example, community planning partnerships. Where those partnerships do not have a separate legal identity in their own right, they will not be subject themselves to the general equality duty or specific duties. However, where a partner carries out a public function it will have to comply with the general equality duty and, if listed in the Schedule to the Regulations, the specific duties in relation to any public functions that it exercises in the partnership.

Specific duties

- 6.4 The specific duties are to:
- report progress on mainstreaming the general equality duty
 - publish equality outcomes and report progress
 - assess new or revised policies and practices
 - review existing policies and practices
 - gather, use and publish employee information
 - use and publish members information
 - publish gender pay gap information
 - publish an equal pay statement
 - consider award criteria and contract conditions in relation to public procurement.

Regs 3 –
11

A further duty is imposed on Scottish Ministers to publish proposals for activity to enable listed authorities to better perform the general equality duty.

- 6.5 References in the Regulations to a 'relevant protected

Reg. 2

characteristic’ means the characteristic of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

Section 6.2: Duty to report progress on mainstreaming the general equality duty

- | | | |
|-----|---|--------|
| 6.6 | A listed authority must publish a report on the progress it has made to ensure that its duty to have due regard to the needs mentioned in the general equality duty is integral to the exercise of its functions so as to better perform the duty. This is referred to in this guidance as the ‘mainstreaming report’. | Reg. 3 |
| 6.7 | Mainstreaming the general equality duty refers to the process of making the general equality duty an integral part of all of an authority’s relevant functions and practices by all staff at all levels, embedding it across policies, procedures and corporate systems and reflecting it in business planning and reporting cycles. | |
| 6.8 | The report must include a breakdown (for each year) of the employee information gathered under Regulation 6(1) and details of the progress it has made in gathering and using that information to enable it to better perform the general equality duty. Section 6.5 below provides further details of the employee information that must be published under Regulation 6(3). | |
| 6.9 | For relevant listed authorities, the report must also include certain information relating to their members as well as information on the steps taken, or to be taken, towards diversity amongst members. Section 6.6 below provides further details of the information that must be published under Regulation 6A. | |

- 6.10 Mainstreaming reports must be published at intervals of not more than two years from the publication of the previous report. A listed authority may choose to publish a mainstreaming report more frequently, say on an annual basis. For further information on publication requirements see section 6.10 below. Reg. 3(1)
- 6.11 In deciding on what other information to include in its mainstreaming report a listed authority should consider reporting on how the general equality duty has been embedded across all of its relevant policies and practices. This may include any internal procedures that are intended to ensure that it has, in the exercise of its functions, due regard to the needs mentioned in the general equality duty. To show that the steps it has taken are effective, the authority may wish to give examples of how these have helped to eliminate discrimination, advance equality of opportunity or foster good relations.

Case study — Having had due regard to the needs of the general equality duty in the exercise of its housing functions, a local authority decides to include in its mainstreaming report progress made on fostering good relations within the regional housing needs assessment which it has been carrying out in partnership with neighbouring local authorities.

Following work to bring together settled and Gypsy/Traveller communities, it is able to cite a 20 per cent reduction in complaints relating to unlawful encampments as evidence of progress made in fostering good relations.

- 6.12 A listed authority may also wish to:
- report on the arrangements it has put in place to involve groups of persons who share relevant protected characteristics and their representatives in relation to the exercise of its functions, and how this involvement is used to inform its performance of the equality duty
 - provide examples of how the various steps that it has taken

to integrate the general equality duty into the exercise of its functions will enable it to better understand and consider the needs mentioned in the general equality duty

- provide examples of circumstances in which it has changed the way in which it exercises, or proposes to exercise a function, as a result of the steps it has taken to ensure that the general equality duty is integral to the exercise of its functions. Chapter 5 outlines what a listed authority must do to comply with the general equality duty.

Case studies —

- A health authority reports on the development of a 'scrutiny and challenge' initiative within its corporate functions, with each functional head being asked to explain their own role and the progress towards equality made in their functional area to the internal 'equality champions' group, drawn from the various staff associations.
- As part of its professional development function, a scrutiny body reports on its progress on integrating equality into all the in-house training courses which are provided to employees. Each course focuses on the practical implications of equality for the role in question.
- A local authority puts procedures in place to assess the need for and the benefits of more flexible site provision which involve persons within Gypsy/Traveller or other settled communities who share a relevant protected characteristic. This enhances the authority's consideration of the needs mentioned in the general equality duty and results in the authority modifying the way in which it intended to exercise its functions so as to better address and respond to the needs of the communities.

Section 6.3: Duty to publish equality outcomes and report progress

- 6.13 A listed authority must: Reg. 4
- a. prepare and publish a set of equality outcomes at four-yearly intervals beginning with the date of publication of the previous set of outcomes
 - b. publish a report on progress made to achieve the equality outcomes two years after publishing their outcomes and at intervals of not more than two years from the publication of the previous report.
- 6.14 Each equality outcome within the set must specify a result that a listed authority aims to achieve in order to further one or more of the needs mentioned in the general equality duty, namely: Reg. 4(5)
- the need to eliminate discrimination and other conduct prohibited under that Act
 - the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not, and
 - the need to foster good relations between persons who share a relevant protected characteristic and persons who do not.
- 6.15 The result specified in the equality outcome should be one that can be achieved by the listed authority through the exercise of its functions.
- 6.16 An equality outcome may apply in relation to one or more of the needs mentioned in the general equality duty and, in relation to that need, to one or more protected characteristics.
- 6.17 In setting its outcomes, a listed authority must: Reg. 4(2)
- take reasonable steps to involve persons who share a relevant protected characteristic and any person which appears to the listed authority to represent the interests of those persons, and

- consider relevant evidence relating to persons who share a relevant protected characteristic.

Where there are different groups within a protected characteristic, a listed authority should take reasonable steps to involve people from those groups; for example, people from different age groups and people who share different kinds of disabilities.

- 6.18 After taking steps to involve such persons and having considered relevant evidence, a listed authority should identify outcomes which will, as a result of implementing and monitoring progress against those outcomes, further the needs mentioned in the general equality duty in the exercise of its functions.
- 6.19 In choosing a set of outcomes, a listed authority should consider selecting for publication those outcomes which are likely to be most effective in:
- a. furthering the needs mentioned in the general equality duty, and
 - b. generating information (through their implementation and monitoring) which will better inform the authority's consideration of those needs in the exercise of its functions.

A listed authority may wish to tackle the most significant inequalities in relation to which it, as an authority, can take action, based on the evidence gathered.

For example, an outcome could be set in relation to a particular need mentioned in the general equality duty and, in relation to that need, it may apply only to persons who share a particular relevant protected characteristic.

In deciding whether to address any such need, or in relation to that need a particular characteristic, the significance of an inequality should not be judged solely on the basis of the number of people affected. A listed authority should also consider whether fewer people are more severely affected.

Case study — A health authority recognises the particular combination of circumstances affecting the relatively small

and recently arrived Roma population in its area. This includes language and cultural barriers, low levels of literacy, overcrowded and below tolerable standard housing, restricted access to benefits and the expectation of exclusion. The resulting extreme levels of marginalisation require the introduction of new and very targeted health interventions. Accordingly it sets an equality outcome to improve the health of the Roma community in its area. One of the indicators it will use to measure this equality outcome is the rate of child immunisation which they seek to raise above the health board average for the general population. This equality outcome will assist the health authority to further the need to advance equality of opportunity for this group.

- 6.20 Where a listed authority publishes a set of equality outcomes which does not seek to further the needs mentioned in the general equality duty in relation to every relevant protected characteristic, the authority must publish its reasons for proceeding in this way. The reasons given should be based on relevant evidence. Reg. 4(3)
- 6.21 It should be possible to establish from evidence the extent to which a listed authority has achieved the result intended when setting an outcome and/or the extent to which this has addressed a need mentioned in the general equality duty, such as the need to advance equality of opportunity.

Case study — A health board recognises from a combination of data on local patients and information supplied by national studies that there is inequality of opportunity to enjoy good health between different communities living in its area. It sets an equality outcome to ‘improve the health of ethnic minority people in our area’ which it will measure by reference to a range of indicators of health, and of levels of uptake in health services. These indicators include, for example, the prevalence of obesity and of smoking within this population as well as the number of ethnic minority clients attending dietary advice and stop smoking clinics.

- 6.22 When setting an outcome a listed authority should bear in mind that the result to be achieved might relate to the number of people who share a particular protected characteristic affected by the authority's actions and/or to the quality of their experience.

Case study — A listed authority finds, in analysing its annual staff survey, that staff identifying as lesbian, gay, bisexual or transgender (LGBT) are less likely than other staff to rate both the organisation and their own managers as responsive to their needs. In order to advance equality of opportunity for its employees, the authority sets an outcome 'Our organisation is responsive to the needs of LGBT staff'. It intends to reduce the difference in staff experience within two years and will measure progress using the staff survey.

- 6.23 Where a listed authority wishes to include an outcome to tackle certain forms of indirect discrimination, it may wish to set a target to eliminate that particular disadvantage speedily.

Case study — A university requires students to attend certain courses full-time and does not provide these courses as a part-time option. It recognises that the absence of a part-time option would make it difficult for individuals who have childcare or other caring responsibilities to take these courses and that, as the majority of such individuals are women, this could constitute indirect sex discrimination. The university therefore sets an outcome to have all its courses more accessible to women and people in other groups with protected characteristics, such as disabled people. It sets a target that all of its courses should be available to part-time study for the start of the next academic year.

Involving persons who share a relevant protected characteristic

- 6.24 As indicated in paragraph 6.17 in preparing its set of equality outcomes, a listed authority must take reasonable steps to

Reg.
4(2)(a)

involve persons who share a relevant protected characteristic and any person which appears to the listed authority to represent the interests of those persons.

As stated in Chapter 5 above, involvement is a broad term intended to cover the whole range of ways in which listed authorities interact with stakeholders, including their service users and employees. Involvement is an ongoing process intended to assist listed authorities to identify issues and exchange views. It requires active engagement with stakeholders over a period of time. The extent to which steps must be taken to involve such persons, and the nature of that involvement, will depend on what is reasonable in all the circumstances and in particular on the size and resources of the authority and the relevance of the needs mentioned in the general equality duty to its functions.

- 6.25 To be effective, any such involvement should:
- be focused – the process should be clear about the purpose of the involvement
 - be inclusive – a broad range of persons with different relevant protected characteristics should, where reasonably practicable, be supported and included in the process
 - be proportionate – the approach taken should be commensurate with what is reasonable in the circumstances
 - be influential – involvement should inform the listed authority's preparation of its set of equality outcomes, and
 - be transparent – to encourage ongoing involvement by relevant persons, it is helpful to show that evidence provided previously was properly considered or taken into account.
- 6.26 It is important not to make stereotypical assumptions when deciding who to involve. Lesbian, gay and bisexual people, for example, will have as much to contribute in relation to regeneration or education as they do on sexual health or homophobic crime. Involvement should extend to positive issues, such as improving service provision, as well as covering negative ones, such as hate crime.

- 6.27 The requirement to appropriately consider the needs mentioned in the general equality duty should be incorporated into any existing monitoring mechanisms e.g. in relation to national performance standards, health and safety compliance, service delivery, absence management or those mechanisms used to measure customer or staff satisfaction. For example, questions designed to identify any potential problems that staff might be aware of in relation to discrimination, advancing equality, or good relations could be included in a staff survey.
- 6.28 As well as individuals, a listed authority must, in the preparation of its set of equality outcomes, also take reasonable steps to involve representative groups. Such groups can provide informed advice on the relevance and applicability of an outcome in relation to the needs of persons they represent. The involvement of individuals and representative groups does not have to happen separately and it may be helpful if all can be managed as part of the same process.

Case study — A health authority wants to improve its women's health services and increase the take up of these services by Muslim women, which it has identified are particularly under-represented in accessing its services. It establishes a new group to be involved in these developments, including women from a Muslim voluntary sector organisation and female Muslim staff and patients. It involves the group at the beginning of the planning process, to identify their needs and barriers to access, and later asks them what they think of its proposals to change services. The group are also involved in the design of a survey to be conducted following implementation of the refined proposals, to collect information on what Muslim women think about the changes and whether they are using services more. The group help the health authority to define an outcome of improving the health of Muslim women in the area and, as one of a range of indicators of improved health, sets a target of increasing service take up by Muslim women by 30 per

cent in two years.

- 6.29 It may also be helpful to use a variety of involvement methods to secure a full range of views and experiences.

Case study — To involve more people in contributing to its planning for thematic audits, a scrutiny body implements a number of participation opportunities, including online opportunities, single-sex and mixed focus groups run both in the day time and in the evening, and user panels hosted by arrangement with a number of local community centres.

- 6.30 The results of the involvement of persons who share a relevant protected characteristic and representative groups must be taken into account in identifying and prioritising a set of equality outcomes.

Considering relevant evidence

- 6.31 A listed authority must also consider relevant evidence relating to persons who share a relevant protected characteristic in preparing its equality outcomes. The paragraphs below describe the kind of evidence that is likely to be relevant in this context.
- 6.32 Where there appears to be insufficient evidence to establish whether or not action might be needed to further one or more of the needs mentioned in the general equality duty or to tackle inequalities in relation to a particular protected characteristic, a listed authority should consider taking steps to gather additional relevant evidence to provide it with an informed basis for setting its equality outcomes.
- 6.33 In some cases there will be existing information which can be disaggregated by protected characteristic. There may also be data at a national, regional or sectoral level. Where gaps exist, a listed authority should take reasonable steps to address them over time.
- 6.34 Both quantitative and qualitative evidence should be considered. Equality monitoring can provide a good source of

Reg.
4(2)(b)

quantitative data to establish the profile of people affected by an authority's function, for example in relation to service users, potential service users, students, staff, prisoners or tenants. It will also be important to identify, from within the total group of persons affected, any subgroups that share a protected characteristic and the impact of the exercise of a particular function on each subgroup, as compared to the impact on the remainder of the affected group.

- 6.35 An authority may also wish to consider qualitative evidence as this may identify impacts that are not revealed in quantitative analysis, especially if accurate numerical data is limited. Qualitative evidence can be gathered from a range of sources including:

- staff surveys
- customer surveys
- feedback from staff network groups
- analysis of complaints
- research.

Publishing subsequent sets of outcomes

- 6.36 A listed authority must publish a fresh set of equality outcomes within four years of publishing its last set of outcomes. For further information on publication requirements see section 6.10 below.
- 6.37 The publication of a subsequent set of equality outcomes may include some of the same outcomes as previously, some revised outcomes, completely new outcomes, or a combination of these, depending on the progress made by a listed authority. It may also be appropriate to publish revised or new equality outcomes earlier than every four years, for example if it becomes apparent to a listed authority that some outcomes have already been achieved whilst others are unachievable, for example because of changes to an authority's functions, changes in the law or shifts in an area's population.
- 6.38 As with the initial set of equality outcomes, a listed authority must take reasonable steps to involve persons who share a protected characteristic and any person which appears to the

Reg.
4(1)(b)

listed authority to represent the interests of those persons, and consider relevant evidence relating to persons with relevant protected characteristics in preparing a subsequent set of outcomes.

Reporting on equality outcomes

- 6.39 A listed authority is required to publish a report on its progress in achieving its equality outcomes, at intervals of not more than two years from the publication of its previous report. Reg. 4(4)
- 6.40 When preparing a set of outcomes a listed authority should consider this requirement, and should put in place appropriate mechanisms for measuring and reporting on progress. A listed authority may also wish to consider publishing how it intends to measure and report on progress when it publishes its set of equality outcomes. For further information on publication requirements see section 6.10 below.

Section 6.4: Duty to assess and review policies and practices

Reg. 5

- 6.41 To the extent necessary to fulfil its general equality duty, a listed authority must assess the impact of applying any proposed new or revised policy or practice against the needs mentioned in the general equality duty. Reg. 5(1), (5)
- A listed authority must therefore assess, where necessary, the impact of such proposed policies and practices directly against:
- the need to eliminate discrimination and other prohibited conduct
 - the need to advance equality of opportunity between persons who share a protected characteristic and those who do not share it, and
 - the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

A listed authority must also make appropriate arrangements to review and, where necessary, revise all of its policies or practices to ensure that in exercising its functions it complies with the general equality duty.

6.42 The phrase ‘policies and practices’ covers all the proposed or current activities which a listed authority carries out.

6.43 For proposed new or revised policies and practices, a listed authority must: Reg.5 (1)-(4)

- a. assess the impact of its proposed policies and practices against the needs mentioned in the general equality duty
- b. consider relevant evidence relating to persons who share a relevant protected characteristic including any evidence received in relation to the policy or practice from those persons
- c. take account of the results of any such assessment in making any revisions to that proposed policy or practice, and
- d. where a listed authority decides to apply a new or revised policy or practice, publish the results of any assessment of impact made in relation to that policy or practice within a reasonable period.

For this purpose, an authority’s proposed policies and practices includes proposed changes and revisions of its existing policies and practices.

Assessing impact: which policies and practices?

6.44 A listed authority must assess the impact of a proposed new or revised policy or practice where necessary to fulfil the general equality duty. Reg. 5(1)

Work carried out to identify the relevance of functions and to gather evidence (see Chapter 5) will assist in determining whether a proposed new or revised policy or practice is relevant to fulfilling the general equality duty.

6.45 If a listed authority is not sure whether it is necessary to assess a particular policy or practice in order to fulfil the general equality duty, it should carry out a screening exercise

to determine whether an assessment of impact is required.

Case study — A listed authority is reviewing its policy on treatments for fish diseases, in doing so it considers the policy and decides that it is not necessary to assess the policy in order to fulfil the general equality duty.

- 6.46 Any consideration by a listed authority as to whether or not it is necessary to assess the impact of applying a proposed new or revised policy or practice is not to be treated as an assessment of impact itself. Therefore the results of any such screening exercise do not need to be published under regulation 5(4). Reg. 5(6)
- 6.47 Where an assessment of the impact is required, the assessment should be sufficient to enable an authority to fulfil its duty to have due regard to the needs mentioned in the general equality duty.

Case study — A university is reviewing its ICT services policy which covers the provision of equipment and a Service Desk to support all the staff's ICT needs and provide services to students.

It assesses the equality impact and decides that the ICT policy is likely to enable it to advance equality of opportunity and eliminate discrimination for the protected characteristic of disability. The equality impact assessment concludes that the policy is not likely to enable the university to further the needs mentioned in the equality duty for other protected characteristics, although it takes into account that the New and Expectant Mothers policy includes Risk Assessment guidelines for ICT equipment.

The equality impact assessment concludes that to ensure the elimination of discrimination, services must be able to continue to provide a wide range of adjustments required by disabled users and that to advance equality of opportunity, the university Disability Access and Staff Carer's groups should continue to be involved in the design and delivery of new services.

6.48 In order to determine the degree and depth of the impact assessment process which should take place in relation to any particular policy or practice, it may be helpful for a listed authority to establish criteria for the purposes of determining whether:

- the policy or practice is a major one in terms of scale or significance for the authority's activities, or
- there is a clear indication that, although the policy or practice is minor, it is likely to have a major impact upon persons who share a relevant protected characteristics in relation to one or more of the needs mentioned in the general equality duty. This is not a question merely of the numbers of people affected but of the degree of impact. A policy which has an extremely negative impact on a small number of people may be of greater relevance than one which has only a minor impact on a large number of people.

Assessing impact: when?

6.49 The duty to assess impact applies to a 'proposed' new or revised policy or practice. Therefore, where an assessment of the impact is required, that assessment must be carried out **before** a decision is made on whether to apply the policy or practice.

The duty also requires a listed authority to take account of the results of any such assessment in the development of the policy or practice to which it relates. Impact assessment should therefore not be seen as a static activity undertaken at a single point in time.

If a proposed new or revised policy or practice is modified (whether in response to the results of an impact assessment or not) consideration should be given as to whether the impact of the modified policy or practice needs to be reassessed against the needs mentioned in the equality duty (whether by adjusting the previous assessment to take account of the changes or starting afresh).

Case study — A local authority runs a public library service with four libraries in its area. Facing reduced budgets and aware of reduced numbers of users, it is considering several possible changes to the service including installing computers which could be used by library users, changing opening hours or providing a mobile library service. As it develops each option the authority is assessing costs/benefits, environmental impact and the extent to which the option is likely to enable it to eliminate discrimination, advance equality of opportunity and foster good relations for persons with protected characteristics, which includes the workforce as well as current and potential users. This enables it to arrive at a decision that will strike the best balance between the needs of the authority and those of users or potential users of library services.

Assessing impact: how?

- 6.50 There is no prescribed method for assessing the impact of a proposed new or revised policy or practice against the needs mentioned in the general equality duty. The process should however be designed to generate sufficient information to enable the authority to fully consider the needs mentioned in the general equality duty. The process should also be one that is suitable to the size, resources and functions of a listed authority and to the particular policy or practice under consideration.
- 6.51 In order to be rigorous, the assessment should involve:
- consideration of available equality evidence
 - consideration of the likely effect of the policy or practice on the authority's ability to give due regard to the needs mentioned in the equality duty
 - consideration of measures which might mitigate any adverse impact and alternative policies or practices which might better promote equality of opportunity or foster good relations.

Record keeping

- 6.52 It will be difficult for a listed authority to persuade a court that it has complied with the general equality duty in the absence of any written record explaining how its decision was reached. It is therefore important that a listed authority keeps an accurate, dated, written record of the steps it takes to assess the equality impact of a policy or practice. This would include the decisions as to the breadth and depth of the assessment they will carry out. If several people are involved in the assessment process then each should record their actions and decisions. This record provides the authority with a means to check that it is complying with its general equality duty and its impact assessment specific duty. It may also be useful if the listed authority's decision regarding a particular policy is challenged.

Considering relevant evidence

- 6.53 In assessing impact, a listed authority must consider relevant evidence relating to persons who share a relevant protected characteristic, including any such evidence received from those persons. Reg. 5(2)
- Where there are gaps in the evidence available, a listed authority may wish to consider carrying out further studies or analysis to generate additional information on the likely impact of the proposed policy or practice.
- 6.54 To improve the quality and availability of relevant evidence, listed authorities might wish to consider adapting their existing monitoring and information gathering arrangements to enable the impact of a policy or practice on persons who share a particular protected characteristic to be compared with other persons who do not share the characteristic.
- For example, a listed authority will need to have systems in place to comply with the duty to gather and use employee information. If the information is gathered in an appropriate way it should also enable a listed authority to assess the impact of its employment policies against the needs mentioned in the general equality duty.

Recent consultations, involvement activities and research may also be useful sources of information for the purpose of assessing the impact of a particular measure.

- 6.55 Where a listed authority does not have reliable quantitative or qualitative evidence, the authority may wish to gather or derive this data from other sources, for example national data. Where there are still gaps, it may need to consider other methods to gather evidence (see paragraphs 6.31-35 above).

A listed authority should seek sufficient evidence or estimates of the likely impact of a policy or practice to enable it to appropriately consider the policy or practice against the needs mentioned in the general equality duty. The steps taken here should be proportionate to the importance of the policy or practice and the likely significance for those with different protected characteristics.

A listed authority should ensure that it bases its assessment on objective evidence and does not rely on stereotypes or assumptions about particular protected characteristics. Good records should be kept of the evidence used to assess equality impact.

The results of an assessment of impact

- 6.56 A listed authority is required to take into account the results of any assessment of impact of a proposed new or revised policy or practice in the development of that policy or practice. Any assessment of impact should therefore inform any subsequent development of the policy or practice. See Chapter 5 on decision making. Reg. 5(4)
- 6.57 Where, for example, the assessment indicates that the proposed policy or practice could give rise to discrimination or other prohibited conduct, a listed authority would be expected to modify the policy or practice so that it does not put, or risk putting, the authority in breach of the Act.

Case study — A listed authority is introducing a policy to move its job advertising and recruitment fully to a web-based

system. As part of its policy development it assesses the impact against the needs mentioned in the general equality duty. This concludes that there is potential for unlawful discrimination if this policy is implemented as proposed because it is not fully conformant with accessibility standards and would be inaccessible to certain disabled people. As a result the authority ensures that reasonable adjustments are built into their recruitment processes.

6.58 Where the assessment indicates potential adverse impact in terms of advancing equality or fostering good relations then the listed authority will need to consider whether to:

- adopt the policy or practice as proposed
- modify it, or
- take any proportionate steps to mitigate any adverse impact.

Case study — A listed authority is considering withdrawing funding from a community project which supports children and families. It assesses the equality impact of this option and identifies that the project particularly supports families from the Chinese community. It recognises that withdrawing funding could potentially have an adverse effect on equality of opportunity for people with protected characteristics.

To mitigate this impact and ensure that the project's clients are able to continue to access support from the authority, the social work department sets up a series of 'meet the staff days' where clients meet with their supporters, using interpreters, to discuss how they can continue to access social work services.

In order to measure the success of this mitigation action the authority will use its monitoring of access to social work services. It plans to examine the service satisfaction of this client group over the next year.

Further detail on how a listed authority should go about complying with its duty to have due regard to the need to advance equality of opportunity and foster good relations can

be found in Chapter 3.

Publishing the results of assessments of impact

- 6.59 Where a listed authority assesses the impact of a new or revised policy or practice and then decides to apply the policy or practice, it must publish the results of the assessment within a reasonable period. Where there is a gap between the decision to apply the policy or practice and the implementation of that policy or practice a listed authority should ensure that the results of the assessment of impact are published as soon as possible after the date of the decision. For example, where a decision is taken to close a facility, like a nursery, several years hence, the results of any impact assessment should be published at the time that the decision is taken. Reg. 5(4)

Reviewing and revising policies and practices

- 6.60 A listed authority must make such arrangements as it considers appropriate to review and, where necessary, revise any existing policy or practice that it applies to ensure that, in exercising its functions, it complies with the general equality duty (i.e. to have due regard to the needs mentioned in the general equality duty). Reg. 5(5)
- 6.61 Work carried out to identify the relevance of functions and to gather evidence (see Chapters 3 and 5) may help an authority to make such arrangements.

Case study — A local authority draws up a proposed schedule for reviewing its existing policies. Involving people with protected characteristics helps it to consider this schedule and it prioritises the review of its existing policy on support for young people experiencing bullying and harassment as a result.

- 6.62 The requirements in relation to the review and revision of existing policies and practices are ongoing and apply equally to the operation of new and recently revised policies and

practices. A review of a newly implemented policy or practice should serve as a useful check on what was identified in the original assessments of impact that were carried out when the policy or practice was in development.

- 6.63 Where a listed authority has reviewed an existing policy or practice, it must revise that policy or practice if this is the only way to ensure that the authority complies with the general equality duty.

A listed authority might therefore wish to consider whether there are immediate steps that it can take in relation to the policy or practice to, for example, mitigate its effects on persons who share a particular protected characteristic before revising the policy or practice in question.

Case study — A health board reviews its policy on assisted conception and recognises that the current practice of applying the criteria of infertility as a basis for treatment may discriminate against lesbians.

It decides that it will revise the assisted conception policy and it plans to complete this revision within six months.

In the meantime, to mitigate any potential adverse effect upon lesbians or other clients with protected characteristics attempting to access the service, it refers all potential decisions on refusal of treatment for scrutiny by the panel tasked with carrying out the policy review.

Partnerships

- 6.64 A listed authority which works in partnership with one or more other listed authorities might wish to collaborate in assessing the impact of a policy or practice of the partnership. This should help to make sure there is consistency in relation to the assessment of the impact of the policy or practice in question between members of the partnership and should also reduce the burden on any single member of the partnership.
- 6.65 Where a national or supervisory body or ‘umbrella’ organisation is developing a policy in the expectation that the

policy will be adopted by one or more listed authorities, each authority should, where necessary, individually assess the impact before adopting the policy.

- 6.6 Where the body developing the broad policy is a listed authority then it will be expected to have assessed the impact of the policy before it promotes it to the bodies it oversees or supports.

Case study — The Scottish Government requires all local authorities to produce new Local Housing Strategies. It produces policy guidance to assist local authorities with this task. The production of this policy guidance is accompanied, and informed, by an equality impact assessment. The policy guidance also reminds housing providers that the production of their local strategy will also require equality impact assessment at the local level.

Section 6.5: Duty to gather and use employee information

- 6.67 A listed authority must take steps to gather information on: Reg. 6
- the composition of the authority's employees (if any), and
 - the recruitment, development and retention of persons as employees,
 - with respect to the number and relevant protected characteristics of such persons.

In this guidance this information is referred to as 'employee information'. Each listed authority must use its employee information to better perform the general equality duty.

- 6.68 The definition of employee includes persons under a contract of employment, a contract of apprenticeship or a contract personally to do work and persons in Crown employment. It also includes constables and cadets of police forces maintained under section 1 of the Police (Scotland) Act 1967. s.83

- 6.69 Many listed authorities will already collect some employee information. Existing arrangements for gathering information in relation to race, disability and sex may therefore be adapted to collect additional information in relation to the other protected characteristics. Reg. 6(1)(a)

Further guidance in relation to gathering statistical information on different protected characteristics in an employment context can be found in the Code of Practice on Employment at paragraphs 18.23 onwards and in Appendix B.

Recruitment, development and retention

- 6.70 A listed authority must also take steps to gather information in relation to recruitment, development and retention of staff with respect to protected characteristics. The information is needed to ensure that employers are able to ascertain the effect of their policies and practices on the recruitment, development and retention of persons (as employees) who have different protected characteristics. Generally this will involve collecting and analysing statistical data about the experiences of applicants and employees. Reg. 6(1)(b)

- 6.71 A listed authority will need to put appropriate information gathering arrangements in place. Existing arrangements used by a listed authority to measure staff satisfaction and employment practice more generally may be adapted for this purpose. For example, it may be helpful to add a question to a staff survey which is designed to identify any particular disadvantage that persons who share a relevant protected characteristic may face in the course of their employment, as compared to other employees.

Other measures which could be taken might include:

- sending out equal opportunities monitoring forms with application forms, and analysing the returns
- having exit questionnaires and analysing the results, and
- setting up a dedicated email address or other mechanism that allows staff to raise concerns about

development/retention.

- 6.72 In relation to ‘development’, steps could be taken to gather relevant information about training (such as who applies for training, who is offered training, and what types of training) and promotion (such as success rates of employees by protected characteristic).
‘Development’ can also cover performance reviews, workplace benefits and facilities, as well as treatment generally, including harassment, discrimination, and related grievance and disciplinary action.
- 6.73 In relation to ‘retention’, information could be collected about termination (such as redundancies, resignations, dismissals, end of fixed terms, etc).
- 6.74 Employers should analyse the information gathered to see if employees who share a relevant protected characteristic are being disadvantaged in any way as compared to all other employees.
- 6.75 A listed authority must take full account of its obligations under the Data Protection Act 1998 (DPA) when they gather, store, use or publish personal data and sensitive personal data.
Employee information is likely to be personal data for the purposes of the DPA and some information will be sensitive personal data.
If it is possible to identify an individual from published data (because of small numbers) this may be a breach of the DPA if it is published without consent or in breach of any of the other principles of the DPA. Reference should therefore be made to the DPA and the corresponding Code of Practice for further details.
Ensuring confidentiality is likely to be a particular issue when dealing with sensitive data or where the numbers of people with any characteristic are numerically low, potentially making it easier to identify individuals. This would include data in relation to sexual orientation, religion and belief and gender reassignment.
Anonymisation is the process of converting data into a form

Data
Protection
Act 1998

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.⁶³

A listed authority may wish to retain employee information in order to assist future analysis of trends or to evidence compliance with its equality duties. However a listed authority should take specific advice on the retention of this information in order to comply with its obligations under the DPA to keep personal data for no longer than is necessary.

Using employee information

- 6.76 A listed authority is required to use the employee information it gathers to better perform the general equality duty. Reg. 6(2)

If a statistical pattern becomes apparent (for example, a trend to adverse appraisals for disabled staff) it is essential to investigate the reason for this pattern.

This trend may for example be linked to a failure by the authority to ensure that disabled staff have the reasonable adjustments which they require to carry out their job. Investigation of the cause should enable action to be identified.

- 6.77 A listed authority could also use the analysis of its employee information to consider permitted forms of positive action. This allows employers to take certain action with the aim of enabling or encouraging persons who share a protected characteristic to:

- overcome or minimise a disadvantage connected to that characteristic
- meet any needs that are different from the needs of those who do not share that characteristic, or
- participate in an activity where their participation is disproportionately low.

Guidance concerning positive action can be found in the

⁶³ Information Commissioner's Office (2012), 'Anonymisation: managing data protection risk code of practice'. Available at: http://ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation

Code of Practice on Employment.

- 6.78 As stated at paragraph 6.8 above, a listed authority is required to publish its employee information in the mainstreaming report along with details of the progress it has made in gathering and using this information to better perform the general equality duty.

A listed authority is required to take steps to gather certain employee information and to use that information to better perform the general equality duty. Annual breakdowns of any such information gathered, along with details of progress in gathering and using the information, must be included in the mainstreaming report every two years, unless a listed authority chooses to publish a mainstreaming report more frequently.

Section 6.6: Duty to use member information

Gathering and using information

Reg 6A

- 6.79 The Scottish Ministers must, from time to time, take steps to gather information on the relevant protected characteristics of the members of a listed authority, or the members of the board of management of a listed authority. They must then provide the information gathered to that authority. When information is gathered will be a matter for the Scottish Ministers. However it will need to be at sufficiently regular intervals to allow listed authorities to use the information effectively.

- 6.80 A listed authority must then use the information provided to it to better perform the general equality duty.

Reg.6A(3)

- 6.81 Meeting the duty to use members information will, in particular assist listed authorities to meet their general equality duty to have due regard to the need to 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. For further information on meeting this duty see paragraph 3.28 – 3.32. S149(3)
- 6.82 A listed authority may want to use the information provided to it to consider permitted forms of positive action in relation to recruitment of members. This allows the listed authority to take certain action with the aim of enabling or encouraging persons who share a protected characteristic to:
- overcome or minimise a disadvantage connected to that characteristic
 - have any needs met that are different from the needs of those who do not share that characteristic, or
 - participate in an activity where their participation is disproportionately low.

Case study – an NHS Board realises that, although it serves a large Chinese community, there is no-one from that community on its Board. It creates a targeted publicity strategy and disseminates information about the vacancy to Chinese community groups, asking them to disseminate the information across their networks and giving them template wording to do so. It also holds information sessions about the work of the Board specifically targeted at the community and produces a short video about the application process in Chinese.

Guidance concerning positive action can be found in the Code of Practice on Employment.

Publication

- 6.83 The duty to publish information applies only to a “relevant listed authority”. A relevant listed authority is a listed authority the members of which, or the board of management of which, include at least one appointed member. Reg. 6A(3)

6.84 The following authorities are not relevant listed authorities:

- the Scottish Ministers
 - a council
 - a joint board
 - a licensing board
 - an education authority
 - an individual holder of a public office
-

Reg. 6A(5)

6.85 Relevant listed authorities must use their mainstreaming report to publish the number of men and women who have been members of the authority during the period covered by the report.

6.86 Those authorities must also publish in their mainstreaming report details of the way they have used and intend to use the information provided to them by the Scottish Ministers, to take steps to ensure there is diversity in the protected characteristics of their members.

6.87 A relevant listed authority must take full account of its obligations under the Data Protection Act 1998 (DPA) when it gathers, stores, uses or publishes personal data and sensitive personal data. Members' information is likely to be personal data for the purposes of the DPA and some information will be sensitive personal data. Further information on DPA obligations can be found at paragraph 6.7 above.

Section 6.7: Duty to publish gender pay gap information

6.88 A listed authority must publish gender pay gap information every two years. The information published must be based on the most recent data available for a date when the authority had at least 20 employees. There is no requirement to publish gender pay gap information if a listed authority did not have 20 employees either since the Regulations came into force or since publication was last due.

Reg. 7

6.89 Gender pay gap information is the percentage difference between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime). This should be produced as one set of comparative figures for the

whole workforce. All staff, including part-time and temporary employees, should be included.

Section 6.8: Duty to publish statements on equal pay, etc.

- 6.90 A listed authority must publish an equal pay statement every four years. The information published must be based on the most recent data available for a date when the authority had at least 20 employees. There is no requirement to publish an equal pay statement if a listed authority did not have 20 employees either since the Regulations came into force or since publication was last due. Reg. 8
Reg. 8(1)

- 6.91 An equal pay statement must specify: Reg. 8(2)
1. the authority's policy on equal pay among its employees between:
 - a. women and men
 - b. persons who are disabled and persons who are not
 - c. persons who fall into a minority racial group and persons who do not, and
 2. occupational segregation within its workforce, being the concentration of:
 - a. women and men
 - b. persons who are disabled and persons who are not, and
 - c. persons who fall into a minority racial group and persons who do not,
 in particular grades and in particular occupations.

'Racial group' is given the meaning in section 9 of the Act. However, the requirements to include information in relation to disability and racial group do not apply to the first statement.

Equal pay policy

- 6.92 As part of the equal pay statement a listed authority is required to include its policy on equal pay between women and men, persons who are disabled and persons who are not, and persons who belong to a minority racial group and Reg.
8(2)(a)

persons who do not.

In determining its equal pay policy an authority could consider causes of any pay inequality amongst its employees. An authority may also want to consult with its employees and trade unions.

Occupational segregation

- 6.93 A listed authority is also required to publish information on occupational segregation within its workforce, meaning the concentration of men and women, persons who are disabled and persons who are not, and those who fall into minority racial groups and those who do not, in particular grades and in particular occupations. Reg. 8(2)(b)

There are two types of occupational segregation:

- vertical occupational segregation where groups may be clustered at more junior levels within organizations, and
- horizontal occupational segregation where employees may work in stereotypical jobs or occupational sectors.

Both forms of segregation should be reported upon.

- 6.94 The requirements relating to equal pay policy and occupational segregation in terms of disability and minority racial group do not apply to the publication of the first equal pay statement by a listed authority. However, a listed authority should start preparing for the requirements in relation to these protected characteristics as soon as possible in order to be able to publish the full equal pay statement which will be required four years after the publication of their first equal pay statement.

Publishing further equal pay statements

- 6.95 A listed authority must publish equal pay statements every four years, unless the authority did not have 20 or more employees in the intervening period. Reg. 8(1)(b)
- 6.96 A listed authority may wish to revise its equal pay statement earlier than at four-yearly intervals and it may be appropriate to do so if there are any major developments in the

intervening period, for example the achievement of an equality outcome relating to equal pay.

Section 6.9: Duty to consider award criteria and conditions in relation to public procurement

6.97 A listed authority is only required to comply with Regulation 9(1) if: Reg. 9
Reg. 9(1)

- it is a contracting authority for the purposes of the Public Contracts (Scotland) Regulations 2012, and
- it proposes to enter into a relevant agreement (as defined by those regulations) on the basis of an offer which is the most economically advantageous.

An offer which is the 'most economically advantageous' is one offering best value for money based on whole life costs and the quality offered to meet user requirements. Regulation 9(1) does not therefore apply to contracts awarded on the basis of lowest price only.

Where a listed authority is required to comply with Regulation 9(1), it must have due regard to whether the award criteria should include considerations to enable it to better perform the general equality duty.

6.98 When assessing whether an offer is the most economically advantageous a listed authority will need to assess the bids it receives on the basis of pre-published award criteria. If a listed authority wishes to include award criteria which relate to its general equality duty, the award criteria must be linked to the subject matter of the contract.

Case study — A local authority procures residential care for older people in its area. It is aware of a report that states how older lesbian, gay, bisexual and trans (LGBT) people are facing discrimination in care homes. By setting an appropriate award criterion the local authority can assess what provisions the tenderers has made to meet the needs of LGBT service users when evaluating the bids it received.

6.99 A listed authority is only required to comply with Regulation 9(2) if: Reg. 9(2)

- it is a contracting authority for the purposes of the Public Contracts (Scotland) Regulations 2012, and
- it proposes to stipulate conditions relating to the performance of a 'relevant agreement' (as defined by those regulations).

Where a listed authority is required to comply with Regulation 9(2), it must have due regard to whether the conditions should include considerations to enable it to better perform the general equality duty.

6.100 A listed authority is only able fulfil this duty if:

- the intention to include equality related conditions is indicated in the Official Journal of the European Union notice and the contract documents, and
- the conditions are not discriminatory against providers from outside the UK.

Case study — A local authority has awarded a works contract for the construction of a new leisure centre. The works involve plumbing, carpentry, brick-laying, plastering and decorating. The local authority is aware that, in all these trades, women are under-represented.

It includes a condition in its contract that the contractor or sub-contractor must be able to demonstrate that as an employer it is actively taking steps to encourage women to take up apprenticeship, training and employment opportunities, under an existing scheme that is recognised by the local authority.

6.101 A listed authority is not subject to any requirement in relation to a relevant agreement if that requirement would not be related to and not proportionate to the subject matter of that agreement. If the needs mentioned in the general equality duty are therefore not relevant to the subject matter of the contract in question and if it is not proportionate to consider them given the subject matter of the contract then a listed authority will not be subject to any duty under Regulation 9 in Reg. 9(3)

respect of that contract.

Section 6.10: Duty to publish in a manner that is accessible, etc.

- 6.102 A listed authority is required to publish a report on progress on mainstreaming the general equality duty, equality outcomes and progress thereon, gender pay gap information and an equal pay statement at various points. The publication duty requires that a listed authority complies with these duties to publish in a manner that is accessible to the public and, as far as practicable, to employ an existing means of public performance reporting. Reg. 10
- 6.103 Many listed authorities already produce annual reports or report on their performance through other means. Where such mechanisms do not exist a listed authority is free to determine how best to publish the information required by the Regulations, as long as it does so in a manner that makes the information published accessible to the public.
- 6.104 A listed authority should consider how to publish the information in a manner that makes the information accessible to the whole community. This is likely to involve making it available, where appropriate, in accessible formats, such as Braille, audio CD, large print or Easy Read and making it available in a variety of languages.

Section 6.11: Duty of the Scottish Ministers to publish proposals to enable better performance

- 6.105 Under the Regulations, the Scottish Ministers are subject to the same specific duties as other listed authorities. Reg. 12
- In addition, the Scottish Ministers are required to publish proposals for activity to enable a listed authority to better perform the general equality duty.
- These proposals must be published at intervals of not more than four years.

- 6.106 Scottish Ministers must publish a report on progress in relation to the published proposals for activity two years after they publish proposals and then at intervals of not more than four years.
- 6.107 The Scottish Ministers should consider publishing their proposals for activity after listed authorities publish their equality outcomes. This will allow Scottish Ministers to take an overview of what listed authorities are trying to achieve through their equality outcomes, which will reflect local and sectoral issues, before deciding what action could be taken at a national level to enable listed authorities to better perform the general equality duty.

As part of this process Scottish Ministers may wish to review current national evidence, to involve relevant stakeholders, and to identify key strategic areas where assistance is likely to be required.

- 6.108 Scottish Ministers must publish a report on progress in relation to the activity not later than every four years.
- Ministers will already have access to some information which will provide the necessary evidence of progress in some areas.
- Ministers are likely to find it easier to produce regular reports if equality is built into evaluation strategies.

As well as analysing progress, the report should identify persistent barriers to progress and proposed measures to overcome these. It is likely to also identify areas of good practice.

- 6.109 The progress report, alongside other equality evidence including a listed authority's progress report on their equality outcomes, will inform the development of the next set of proposals for activity at each interval of four years or less.

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 and
10 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 Appendix D 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 | s.32(2) |
|-----|---|---------|

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'.

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.

s.32(3)

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 Court of Session.

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 Court of Session 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 Sheriff Court for an order requiring the person to comply.

s.32(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 equality duty, its actions, or failure to act, can be challenged by means of a claim to the Court of Session 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 needs 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)⁶⁴
- Birmingham City Council (decision to restrict access to care services to those with 'critical' needs).⁶⁵

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 equality duty. s.32(11)

⁶⁴ *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).

⁶⁵ *R. (W.) v Birmingham City Council* [2011] EWHC 944.

Appendix A | 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 Appendix F 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.⁶⁶

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.

⁶⁶ 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).

Appendix B | 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.

Appendix C | Exceptions

Exceptions

C.1 The Act includes three types of exceptions from the general equality duty: Sch.18

1. certain functions to which the general equality duty does not apply
2. certain bodies, not specified in Schedule 19, that exercise public functions but which are not subject to the general equality duty
3. 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.

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: Sch. 18,
para 1

- 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 residential establishments pursuant to section 26(1)(b) of the Children (Scotland) Act 1995.

C.4 For the purpose of (a) and (b) 'schools' includes schools

managed by education authorities, independent schools and grant aided schools.

- C.5 Pupils in relation to Scotland have the same meaning given in s.135(1) of the Education (Scotland) Act 1980.

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:
- a. age
 - b. religion or belief, or
 - c. 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:
- a. the Immigration Acts (excluding sections 28A to 28K of the Immigration Act 1971 so far as they relate to criminal offences)
 - b. the British Nationality Act 1981
 - c. the British Nationality (Falkland Islands) Act 1983
 - d. the British Nationality (Hong Kong) Act 1990
 - e. the Hong Kong (War Wives and Widows) Act 1996
 - f. the British Nationality (Hong Kong) Act 1997
 - g. the Special Immigration Appeals Commission Act 1997, or
 - h. a provision made under section 2(2) of the European Communities Act 1972, or of Community law, which relates to the subject matter of an enactment within paragraphs (a) to (g).

Exception for certain bodies that exercise public functions

- | | | |
|-----|---|---|
| C.9 | The general equality duty does not apply to the following bodies: | Sch.18,
para 4 (1)
and (2)
and
s.149(2) |
| | 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 | |
| | b. a part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters. | |

Exception for certain public functions⁶⁷

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

⁶⁷ 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.

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.

Appendix D | Assessments

Terms of reference

- | | | |
|-----|--|--------------------------|
| D.1 | Before conducting an assessment, the Commission must: | Sch.2, para 4
EA 2006 |
| | a. prepare terms of reference | |
| | b. give the person under consideration notice of the proposed terms of reference | |
| | c. give that person an opportunity to make representations about the proposed terms of reference | |
| | d. consider any representations made, and | |
| | e. publish the terms of reference once settled. | |

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. | Sch.2, para 8
EA 2006 |
| | When representations are made, the Commission must consider them. However, it can, where it thinks it appropriate, refuse to consider representations— | |
| | a. made neither by nor on behalf of a person specified in the terms of reference, or | |
| | b. 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).

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.

Provision of information: notice

D.3	<p>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,</p> <ul style="list-style-type: none"> • 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 Court of Session, 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
	<p>Anyone who receives such a notice can apply to the Sheriff Court 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.</p>	Sch.2, para 11 EA 2006
	<p>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.</p>	Sch.2, para 14 EA 2006

Failure to comply with a notice

D.4	<p>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</p>	Sch.2, para 12 EA 2006
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comply with the notice, it may apply to the Sheriff Court for an order requiring a person to take such steps as may be specified in the order to comply with the notice.

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

Sch.2,
para 13
EA 2006

that persons commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

Appendix E | 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 needs: 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
- b. (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 evidence and the results of any involvement 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: <i>Assessing impact and the public sector equality duty: A guide for public authorities (Scotland)</i> , please see www.equalityhumanrights.com . The importance of understanding the impact of your policies, practices or decisions is discussed in Chapter 3 and paras 5.44-5.50 of this guidance. Listed authorities are under a specific duty to assess the impact of applying any proposed new or revised policy or practice against the needs mentioned in the general equality duty, to the extent necessary to fulfil its general equality duty. This is explained further in section 6.4 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 5.56-5.58 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 needs in exercising its functions. The courts have given guidance on what due regard means. Due regard is explained at paras 2.19-2.23 of this guidance.
Duty to make reasonable adjustments	Where a disabled person is 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 needs: 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.
Employee	Information showing the number and relevant protected

information	characteristics of a listed authority's employees in relation to the composition of the workforce and recruitment, development and retention. A listed authority must take steps to gather and use employee information to enable it to better perform its general equality duty. This is explained further in section 6.5 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.
Equality Act 2006	This legislation made provision for the establishment of the Equality and Human Rights Commission ('the Commission') and the dissolution of the three legacy Commissions for Disability, Race and Gender Equality. It sets out the Commission'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 evidence	The information that you hold (or will collect) about people with protected characteristics, and the impact of your decisions and policies on them. Listed authorities must consider 'relevant evidence' relating to persons who share a relevant protected characteristic when setting equality outcomes. This is explained further in paras 6.31 – 6.35 .
Equality needs	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 needs'. 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, Eliminating discrimination, and Fostering good relations.
Equality outcome	The result that a listed authority aims to achieve through the

	exercise of its functions in order to further one or more of the needs of the general equality duty. A listed authority must prepare and publish a set of equality outcomes at least every four years. This is explained further in section 6.3 of this guidance.
Equal Pay Statement	An equal pay statement must specify a listed authority's policy on equal pay among its employees in relation to gender, race and disability and specify occupational segregation within its workforce. A listed authority must publish an equal pay statement every four years. This is explained further in section 6.8 .
Equality training	Training on equality law and effective equality practice.
Fostering good relations	The third of the equality needs: 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 paras 2.5-2.8 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	The percentage difference between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime). A listed authority must publish gender pay gap information every two years. This is explained further in section 6.7 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

	<p>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.</p>
General duty	See General equality duty .
General equality duty	<p>The duty on a public authority when carrying out its functions to have due regard to the three equality needs. The duty also applies to other bodies when carrying out public functions. Chapter 2 of this guidance explains what the general equality duty is.</p>
Good relations	See Fostering good relations .
Harassment	<p>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.</p>
Impact	<p>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.</p>
Impairment	<p>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.</p>
Indirect discrimination	<p>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.</p>
Involvement	<p>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. Involvement is explained in paras 5.29-5.34 of this guidance. In preparing its set of equality outcomes, a listed</p>

authority must take reasonable steps to involve persons who share a relevant protected characteristic and any person which appears to the listed authority to represent the interests of those persons. This is explained further in **paras 6.24-30**.

Judicial review

A procedure by which the Court of Session 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 authorities are listed in the Schedule to the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended which are at Appendix G 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.

Occupational segregation

The concentration of men and women, persons who are disabled and persons who are not, and those who fall into minority ethnic groups and those who do not, in particular

	grades and in particular occupations. A listed authority must publish information on occupational segregation in its equal pay statement. This is explained further in paras 6.93-94 .
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 4.4-4.5 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 and procurement is explained at paras 5.59-5.61 of this guidance. When proposing to enter into relevant public contracts, listed authorities are required to have due regard to whether the award criteria and performance conditions should include considerations to enable it to better perform the general

	equality duty. This is explained further in section 6.9 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 Appendix B 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 1 April 2014 is at Appendix F 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 Appendix A 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 needs 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. In Scotland the specific duties are set out in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended by the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015 and the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016. Different specific duties apply to bodies in England and Wales.
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	The terms 'trans people' and 'transgender people' are both often used as umbrella terms for people whose gender identity

and/or gender expression differs from their birth sex, including transsexual people, transvestite/cross-dressing people androgynous/polygender people, and others who define as gender variant. See also Gender reassignment.

Transgender

An umbrella term for people whose gender identity and/or gender expression differs from their birth sex. They may or may not seek to undergo gender reassignment hormonal treatment/surgery. Often used interchangeably with trans. See also Gender reassignment.

Transsexual

A person who intends to undergo, is undergoing or has undergone gender reassignment (which may or may not involve hormone therapy or surgery). Transsexual people have the protected characteristic of gender reassignment under the Equality Act 2010. 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.

Appendix F | Consolidated version of Schedule 19 of the Act as at 1 April 2014

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).

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.
- The Olympic Delivery Authority.

Health, social care and social security

- The National Health Services Commissioning Board, a clinical commissioning group established under section 14D of the National Health Service Act 2006.
- The Care Quality Commission.
- 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 that Act.

- 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.

Industry, business, finance, etc.

- The Advisory, Conciliation and Arbitration Service.
- The Bank of England, in respect of its public functions.
- The Civil Aviation Authority.
- The Competition and Markets Authority.
- The Comptroller and Auditor General.
- The Financial Conduct Authority.
- The National Audit Office.⁶⁸
- The Office of Budget Responsibility.
- The Office of Communications.
- The Payment Systems Regulator established under [section 40](#) of the Financial Services (Banking Reform) Act 2013.
- The Prudential Regulation Authority.

Local government

- 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 and Emergency Planning Authority.

⁶⁸ From 1 April 2012 this means the National Audit Office established by section 20 of the Budget Responsibility and National Audit Act 2011: Article 2 of The Budget Responsibility and National Audit Act 2011 (Consequential Amendments) Order 2012.

- 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.
- 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 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.
- The Audit Commission for Local Authorities and the National Health Service in England.
- A Local Commissioner in England as defined by section 23(3) of the Local Government Act 1974(7), in respect of—
 - a. the Commissioner's functions under sections 29(6A) and 34G(6) of that Act(8), and section 210(5) of the Apprenticeships, Skills, Children and Learning Act 2009(9), and
 - b. the Commissioner's public procurement functions (as defined in section 155(3) of this Act).
- The Standards Board for England.

Other 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).
- The Higher Education Funding Council for England.
- A local authority with respect to the pupil referral units it establishes and maintains by virtue of section 19 of the Education Act 1996(10).
- The proprietor of a City Technology College, a City College for Technology or 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 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.

- 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 the Police Reform and Social Responsibility Act 2011.
- 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 Authorised Public Accountants, in respect of its public functions.
- The Association of Certified Chartered Accountants, in respect of its public functions.
- The Association of International 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 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 Health and Safety Executive.
- 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.

Part 2: Public authorities – relevant Welsh authorities

Welsh Assembly Government, etc.

- The Welsh Ministers.
- The First Minister for Wales.
- The Counsel General to the Welsh Assembly 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.

Other public authorities

- The Auditor General for Wales or Archwilydd Cyffredinol Cymru.
- The Public Services Ombudsman for Wales or Ombwdsmon Gwasanaethau Cyhoeddus Cymru.
- The Care Council for Wales or Cyngor Gofal 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

- 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 5 March 2012

- Children's Hearings Scotland.
- The National Convener of Children's Hearings Scotland.

Part 4: Public authorities – cross-border authorities

Cross-border Welsh 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

Appendix G | The specific duty regulations

S C O T T I S H

S T A T U T O R Y I N S T R U M E N T S

2012 No. 162 EQUALITY**The Equality Act 2010 (Specific Duties) (Scotland)
Regulations 2012***Made* - - - -*23rd May 2012**Coming into force* - -*27th May 2012*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 153(3), 155(1)(c) and (2), and 207(4) of the Equality Act 2010^(a) and all other powers enabling them to do so.

In accordance with section 153(4) of that Act, they have consulted the Commission for Equality and Human Rights.

In accordance with section 210 of that Act^(b), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and come into force on 27th May 2012.

Interpretation

2. In these Regulations—

“the Act” means the Equality Act 2010;

“employee” is to be construed in accordance with section 83 of the Act except that it is also to include a constable (including a chief constable) and a police cadet of a police force maintained under section 1 of the Police (Scotland) Act 1967^(c);

“listed authority” means a public authority listed in the Schedule to these Regulations^(d);

“relevant protected characteristic” is to be construed in accordance with section 149(7) of the Act; and

“the equality duty” means the duty of the listed authority to have, in the exercise of its functions, due regard to the needs mentioned in section 149(1) of the Act.

^(a) 2010 c.15.

^(b) Section 210 was modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

^(c) 1967 c.77; section 1 was amended by the Local Government (Scotland) Act 1973 (c.65), section 146(2) and the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 71(2).

^(d) The Schedule lists those public authorities specified in Part 3 of Schedule 19 to the Equality Act 2010 which are made subject to the specific duties in these Regulations. Part 3 of that Schedule was amended by S.S.I. 2011/233 and 2012/55.

Duty to report progress on mainstreaming the equality duty

3. A listed authority must publish a report on the progress it has made to make the equality duty integral to the exercise of its functions so as to better perform that duty—

- (a) not later than 30th April 2013; and
- (b) subsequently, at intervals of not more than 2 years, beginning with the date on which it last published a report under this regulation.

Duty to publish equality outcomes and report progress

4.—(1) A listed authority must publish a set of equality outcomes which it considers will enable it to better perform the equality duty—

- (a) not later than 30th April 2013; and
- (b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a set of equality outcomes under this paragraph.

(2) In preparing a set of equality outcomes under paragraph (1), a listed authority must—

- (a) take reasonable steps to involve persons who share a relevant protected characteristic and any person who appears to the authority to represent the interests of those persons; and
- (b) consider relevant evidence relating to persons who share a relevant protected characteristic.

(3) If a set of equality outcomes published by a listed authority does not seek to further the needs mentioned in section 149(1) of the Act in relation to every relevant protected characteristic, the authority must publish its reasons for proceeding in this way.

(4) A listed authority must publish a report on the progress made to achieve the equality outcomes published by it under paragraph (1)—

- (a) not later than 30th April 2015; and
- (b) subsequently, at intervals of not more than 2 years, beginning with the date on which it last published a report under this paragraph.

(5) In this regulation, “equality outcome” means a result that the listed authority aims to achieve in order to further one or more of the needs mentioned in section 149(1) of the Act.

Duty to assess and review policies and practices

5.—(1) A listed authority must, where and to the extent necessary to fulfil the equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs mentioned in section 149(1) of the Act.

(2) In making the assessment, a listed authority must consider relevant evidence relating to persons who share a relevant protected characteristic (including any received from those persons).

(3) A listed authority must, in developing a policy or practice, take account of the results of any assessment made by it under paragraph (1) in respect of that policy or practice.

(4) A listed authority must publish, within a reasonable period, the results of any assessment made by it under paragraph (1) in respect of a policy or practice that it decides to apply.

(5) A listed authority must make such arrangements as it considers appropriate to review and, where necessary, revise any policy or practice that it applies in the exercise of its functions to ensure that, in exercising those functions, it complies with the equality duty.

(6) For the purposes of this regulation, any consideration by a listed authority as to whether or not it is necessary to assess the impact of applying a proposed new or revised policy or practice under paragraph (1) is not to be treated as an assessment of its impact.

Duty to gather and use employee information

- 6.**—(1) A listed authority must take steps to gather information on—
- (a) the composition of the authority’s employees (if any); and
 - (b) the recruitment, development and retention of persons as employees of the authority,
- with respect to, in each year, the number and relevant protected characteristics of such persons.
- (2) The authority must use this information to better perform the equality duty.
- (3) A report published by the listed authority in accordance with regulation 3 must include—
- (a) an annual breakdown of information gathered by it in accordance with paragraph (1) which has not been published previously in such a report; and
 - (b) details of the progress that the authority has made in gathering and using that information to enable it to better perform the equality duty.

Duty to publish gender pay gap information

- 7.**—(1) A listed authority must publish information on the percentage difference among its employees between men’s average hourly pay (excluding overtime) and women’s average hourly pay (excluding overtime).
- (2) The information is to be published no later than 30th April in—
- (a) 2013; and
 - (b) each second year after that.
- (3) The information published must be based on the most recent data available for a date when the authority had at least 150 employees.
- (4) No publication is necessary if, throughout the period since these Regulations came into force or since publication was last due, the authority did not have 150 or more employees at any point.
- (5) The Scottish Ministers must review from time to time whether the figure of “150” in paragraphs (3) and (4) should be amended.

Duty to publish statements on equal pay, etc.

- 8.**—(1) A listed authority must publish a statement containing the information specified in paragraph (2) no later than 30th April in—
- (a) 2013; and
 - (b) each fourth year after that.
- (2) The statement must specify—
- (a) the authority’s policy on equal pay among its employees between—
 - (i) men and women;
 - (ii) persons who are disabled and persons who are not; and
 - (iii) persons who fall into a minority racial group and persons who do not; and
 - (b) occupational segregation among its employees, being the concentration of—
 - (i) men and women;
 - (ii) persons who are disabled and persons who are not; and
 - (iii) persons who fall into a minority racial group and persons who do not,

in particular grades and in particular occupations.
- (3) The information published must be based on the most recent data available for a date when the authority had at least 150 employees.

(4) No publication is necessary if, throughout the period since these Regulations came into force or since publication was last due, the authority did not have 150 or more employees at any point.

(5) Paragraphs (2)(a)(ii) and (iii) and (2)(b)(ii) and (iii) apply only in relation to the second and subsequent statements published by a listed authority under paragraph (1).

(6) In paragraph (2), “racial group” is to be construed in accordance with section 9 of the Act.

(7) The Scottish Ministers must review from time to time whether the matters specified in paragraph (2) and the figure of “150” in paragraphs (3) and (4) should be amended.

Duty to consider award criteria and conditions in relation to public procurement

9.—(1) Where a listed authority is a contracting authority and proposes to enter into a relevant agreement on the basis of an offer which is the most economically advantageous, it must have due regard to whether the award criteria should include considerations to enable it to better perform the equality duty.

(2) Where a listed authority is a contracting authority and proposes to stipulate conditions relating to the performance of a relevant agreement, it must have due regard to whether the conditions should include considerations to enable it to better perform the equality duty.

(3) Nothing in this regulation imposes any requirement on a listed authority where in all the circumstances such a requirement would not be related to and proportionate to the subject matter of the proposed agreement.

(4) In this regulation—

“contracting authority”, “framework agreement” and “public contract” have the same meaning as in the Public Contracts (Scotland) Regulations 2012^(a); and

“relevant agreement” means a public contract or a framework agreement that is regulated by the Public Contracts (Scotland) Regulations 2012.

Duty to publish in a manner that is accessible, etc.

10.—(1) A listed authority must comply with its duty to publish under regulations 3, 4, 7 and 8 in a manner that makes the information published accessible to the public.

(2) A listed authority must, so far as practicable, comply with its duty to publish under regulations 3, 4, 7 and 8 by employing an existing means of public performance reporting.

Duty to consider other matters

11. In carrying out its duties under these Regulations, a listed authority may be required to consider such matters as may be specified from time to time by the Scottish Ministers.

Duty of the Scottish Ministers to publish proposals to enable better performance

12.—(1) The Scottish Ministers must publish proposals for activity to enable a listed authority to better perform the equality duty—

(a) not later than 31st December 2013; and

(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published proposals under this paragraph.

(2) The Scottish Ministers must publish a report on progress in relation to the activity—

(a) not later than 31st December 2015; and

(a) S.S.I. 2012/88.

- (b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a report under this paragraph.

St Andrew's House,
Edinburgh
23rd May 2012

SCHEDULE

Regulation 2

List of public authorities

Scottish Administration

The Scottish Ministers.

Keeper of the Records of Scotland. Keeper
of the Registers of Scotland.

Registrar General of Births, Deaths and Marriages for Scotland.

Scottish Court Service.

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 joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973.

A joint fire and rescue board constituted by a scheme under section 2(1) of the Fire (Scotland) Act 2005.

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) which is a fundable body (within the meaning of section 6(2) of the Further and Higher Education (Scotland) Act 2005).

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) which is a fundable body (within the meaning of section 6(2) of the Further and Higher Education (Scotland) Act 2005).

Police

A police authority established under section 2 of the Police (Scotland) Act 1967.

Other bodies and offices

Accounts Commission for Scotland.

Audit Scotland.

Board of Trustees for the National Galleries of Scotland.

Board of Trustees of the National Museums of Scotland.

Bòrd na Gàidhlig.

A Chief Constable of a police force maintained under section 1 of the Police (Scotland) Act 1967.

A chief officer of a community justice authority.

A Chief Officer of a relevant authority appointed under section 7 of the Fire (Scotland) Act 2005.

Commissioner for Children and Young People in Scotland.

The Common Services Agency for the Scottish Health Service.

A community justice authority.

Creative Scotland.

Healthcare Improvement Scotland.

The Mental Welfare Commission for Scotland.

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

Scottish Children's Reporter Administration.

The Scottish Criminal Cases Review Commission.

Scottish Environment Protection Agency.

Scottish Further and Higher Education Funding Council

The Scottish Legal Aid Board.

Scottish Natural Heritage. Scottish

Qualifications Authority.

The Scottish Social Services Council.

The Scottish Sports Council.

Scottish Water.

Skills Development Scotland.

Social Care and Social Work Improvement Scotland.

The Trustees of the National Library of Scotland.

VisitScotland.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose duties on a public authority listed in the Schedule (“listed authority”) for the purpose of enabling the better performance by the listed authority of the duty imposed by section 149(1) of the Equality Act 2010 (“the equality duty”).

Regulation 3 requires a listed authority to report, at least every 2 years, on the progress made to make the equality duty integral to the exercise of its functions so as to better perform that duty.

Regulation 4 requires a listed authority to publish a set of equality outcomes which it considers will enable it to better perform the equality duty (by, for example, enabling the authority to take account of the extent to which progress towards achieving those outcomes has helped to meet the needs mentioned in section 149(1) of the Equality Act 2010) at least every 4 years, and to report on the progress it has made to achieve these outcomes at least every 2 years.

Regulation 5 requires a listed authority to assess, where and to the extent necessary to fulfil the equality duty, the impact of applying a proposed new or revised policy or practice against the needs mentioned in section 149(1) of the Equality Act 2010. Any consideration as to whether or not it is necessary to assess the impact of a policy or practice for these purposes is not to be treated as an assessment of impact. Paragraphs (2) to (4) do not therefore apply in relation to, for example, an initial screening exercise to establish whether or not an assessment is required. Where an assessment is made and the authority decides to apply the policy or practice to which it relates, the authority must publish the results of that assessment within a reasonable period. A listed authority must also make arrangements to review any policy or practice that it applies to ensure that, in exercising its functions, it complies with the equality duty.

Regulation 6 requires a listed authority to take steps to gather information on the composition of its employees and on the recruitment, development and retention of individuals (including applicants who are not offered employment) with respect to their number and relevant protected characteristics. It also requires the listed authority to use this information to better perform the equality duty, and to publish a breakdown of information gathered and details of the progress made in gathering and using that information to better perform the equality duty.

Regulation 7 requires a listed authority with 150 or more employees to publish information on the gender pay gap within the authority.

Regulation 8 requires a listed authority with 150 or more employees to publish statements specifying its policy on equal pay and certain information on occupational segregation. The reference to a ‘minority racial group’ includes a minority ethnic group.

Regulation 9 requires a listed authority that is a contracting authority for the purposes of the Public Contracts (Scotland) Regulations 2012 to have regard to whether certain award criteria and conditions relating to the performance of a relevant agreement should include considerations that are relevant for the purposes of enabling the listed authority to better perform the equality duty.

Regulation 10 requires a listed authority to publish the information required by regulations 3, 4, 7 and 8 in a manner that makes the information accessible to the public and that employs, so far as practicable, existing arrangements for public performance reporting by the authority.

Regulation 11 provides that a listed authority may, in carrying out its duties under these Regulations, be required to consider such matters as may be specified by the Scottish Ministers.

Regulation 12 requires the Scottish Ministers to publish proposals for activity to enable a listed authority to better perform the equality duty and to report on progress at least every 4 years.

The Schedule lists the public authorities that are subject to duties under these Regulations.

SCOTTISH STATUTORY INSTRUMENTS

2015 No. 254

EQUALITY

The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015

<i>Made</i>	- - - -	<i>10th June 2015</i>
<i>Coming into force</i>	- -	<i>11th June 2015</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 153(3), 155(1)(c) and (2) and 207(4) of the Equality Act 2010^(a) and all other powers enabling them to do so.

In accordance with section 153(4) of that Act, the Scottish Ministers have consulted the Commission for Equality and Human Rights.

In accordance with section 210(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015 and come into force on the day after the day on which they are made.

Amendment of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

2. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012^(b) are amended as follows.

Regulation 2

3. In the definition of “listed authority” in regulation 2 (interpretation), after “listed in” insert “regulation 2A(1) of or”.

(a) 2010 c.15; Part 3 of Schedule 19 to the Equality Act 2010 makes provision relevant to the exercise of these powers and was relevantly amended by S.S.I. 2012/55 and S.S.I. 2015/83.

(b) S.S.I. 2012/162.

New regulation 2A**4. After regulation 2, insert—****“Further listed authorities**

2A.—(1) The following public authorities are, in addition to those listed in the Schedule, listed authorities—

- (a) Children’s Hearings Scotland;
- (b) Food Standards Scotland;
- (c) Historic Environment Scotland;
- (d) an integration joint board established by order under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014^(a);
- (e) a regional board (within the meaning of section 35(1) of the Further and Higher Education (Scotland) Act 2005^(b));
- (f) Revenue Scotland.

(2) These Regulations apply to the authorities listed in sub-paragraphs (a), (b) and (d) to (f) of paragraph (1) subject to the modifications set out in paragraphs (3) to (6).

(3) In regulation 3(a), for “2013” substitute “2016”.

(4) In regulation 4—

- (a) in paragraph (1)(a), for “2013” substitute “2016”; and
- (b) in paragraph (4)(a), for “2015” substitute “2018”.

(5) In regulation 7—

- (a) in paragraph (2)(a), for “2013” substitute “2016”; and
- (b) in paragraph (4), for “these Regulations” substitute “the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015”.

(6) In regulation 8—

- (a) in paragraph (1)(a), for “2013” substitute “2016”; and
- (b) in paragraph (4), for “these Regulations” substitute “the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015”.

(7) These Regulations apply to Historic Environment Scotland subject to—

- (a) the modifications set out in paragraphs (5)(b) and (6)(b) above; and
- (b) the modifications that—
 - (i) in each of regulations 3(a), 4(1)(a), 7(2)(a) and 8(1)(a), “2017” is to be substituted for “2013”; and
 - (ii) in regulation 4(4)(a), “2019” is to be substituted for “2015”.

Schedule

5.—(1) The amendment in paragraph (2) applies to the entries in the Schedule under the heading “Other educational bodies” which begin—

- (a) “The board of management”; and
- (b) “The governing body”.

^(a) 2014 asp 9.

^(b) 2005 asp 6; section 35(1) was relevantly amended by the Post-16 Education (Scotland) Act 2013 (asp 12), schedule, paragraph 8(23)(a)(iv).

(2) For “fundable body (within the meaning of section 6(2))”, substitute “post-16 education body (within the meaning of section 35(1))”.

St Andrew’s House,
Edinburgh
10th June 2015

ALEX NEIL
A member of the Scottish Government

EXPLANATORY NOTE

*(This note is not part of the
Regulations)*

These Regulations amend the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (“the 2012 Regulations”) by adding to the list of public authorities covered by those Regulations certain newly or recently created public authorities. The authorities added are listed at paragraph

(1) of the new regulation 2A being inserted in the 2012 Regulations by regulation 4 of these Regulations. The 2012 Regulations are also modified in their application to the new authorities so as to provide different dates by which certain duties have to be complied with.

In addition, regulation 5 of these Regulations makes minor amendments to two of the entries in the Schedule to the 2012 Regulations.

SCOTTISH STATUTORY INSTRUMENTS

2016 No. 159**EQUALITY**
**The Equality Act 2010 (Specific Duties) (Scotland) Amendment
Regulations 2016**

Made - - - - - *17th March 2016*

Coming into force - - - *18th March 2016*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 153(3) and 207(4) of the Equality Act 2010(a) and all other powers enabling them to do so.

In accordance with section 153(4) of that Act, the Scottish Ministers have consulted the Commission for Equality and Human Rights.

In accordance with section 210(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016 and come into force on the day after the day on which they are made.

Amendment of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

2. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012(b) are amended as follows.

Regulation 2A

3. In regulation 2A (further listed authorities)—

- (a) in paragraph (2), for “to (6)” substitute “and (4)”;
- (b) omit paragraphs (5) and (6); and

(a) 2010 c.15; Part 3 of Schedule 19 to the Equality Act 2010 makes provision relevant to the exercise of these powers and was amended by section 61(3) of the Police and Fire Reform (Scotland) Act 2012 (asp 8), S.S.I. 2011/233, S.S.I. 2012/55, S.S.I. 2013/170, S.I. 2013/602 and S.S.I. 2015/83.

(b) S.S.I. 2012/162, amended by S.S.I. 2015/254.

- (c) in paragraph (7)—
 - (i) omit sub-paragraph (a) and the word “and” immediately after it; and
 - (ii) in sub-paragraph (b)(i), for “, 4(1)(a), 7(2)(a) and 8(1)(a)” substitute “and 4(1)(a)”.

New regulation 6A

4. After regulation 6, insert—

“Use of member information

6A.—(1) The Scottish Ministers must from time to time take steps to—

- (a) gather information on the relevant protected characteristics of members of a listed authority; and
- (b) provide information gathered by them to the listed authority in question.

(2) A listed authority in receipt of information provided to it under paragraph (1) must use the information to better perform the equality duty.

(3) Each relevant listed authority is to include in any report published by it in accordance with regulation 3 details of—

- (a) the number of men and of women who have been members of the authority during the period covered by the report; and
- (b) the way in which—
 - (i) the information provided to it under paragraph (1) has been used; and
 - (ii) the authority proposes to use the information,
 in taking steps towards there being diversity amongst the authority’s members so far as relevant protected characteristics are concerned.

(4) Paragraph (3) does not apply in relation to a report published before 1st May 2016 by an authority listed in sub-paragraphs (a), (b) and (d) to (f) of regulation 2A(1).

(5) In paragraph (3), a “relevant listed authority” means any listed authority the members of which, or the board of management of which, include or includes at least one appointed member, but none of the following is a “relevant listed authority”—

- (a) the Scottish Ministers;
- (b) a council;
- (c) a joint board;
- (d) a licensing board;
- (e) an education authority;
- (f) an individual holder of a public office.

(6) Where a listed authority is not made up of members but has a board of management, paragraphs (1)(a) and (3) have effect as if a member of the board of management were a member of the authority.”.

Regulation 7

5. In regulation 7 (duty to publish gender pay gap information)—

- (a) in paragraph (1), after “must” insert “, in accordance with regulation 8A,”;
- (b) omit paragraphs (2), (4) and (5); and
- (c) in paragraph (3), for “150” substitute “20”.

Regulation 8

6. In regulation 8 (duty to publish statements on equal pay, etc.)—

- (a) in paragraph (1)—
 - (i) after “must”, insert “, in accordance with regulation 8A,”; and
 - (ii) omit the words after “paragraph (2)”;
- (b) in paragraph (3), for “150” substitute “20”;
- (c) omit paragraph (4);
- (d) in paragraph (5), for “paragraph (1)” substitute “this regulation”; and
- (e) in paragraph (7), omit “and the figure of “150” in paragraphs (3) and (4)”.

New regulation 8A

7. After regulation 8, insert—

“Publication under regulations 7 and 8

8A.—(1) Publication under regulations 7(1) and 8(1) is to take place no later than—

- (a) 30th April 2016 in the case of Food Standards Scotland;
- (b) 30th April 2017 in the case of Historic Environment Scotland or an authority listed in the Schedule;
- (c) 30th April 2018 in the case of an authority listed in sub-paragraphs (a) and (d) to (f) of regulation 2A(1).

(2) Publication is also to take place—

- (a) under regulation 7(1), no later than 30th April in each second year after the year specified in paragraph (1) in relation to the authority in question;
- (b) under regulation 8(1), no later than 30th April in each fourth year after the year specified in paragraph (1) in relation to the authority in question.

(3) An authority need not effect publication under regulations 7(1) and 8(1) by the end of a relevant period if, during that period, the authority has at no time had 20 or more employees.

(4) Each of the following is a “relevant period” for the purposes of paragraph (3)—

- (a) in relation to publication under regulation 7(1) by an authority listed in the Schedule, the period from 1st May 2015 to 30th April 2017;
- (b) in relation to publication under regulation 8(1) by an authority listed in the Schedule, the period from 1st May 2013 to 30th April 2017;
- (c) in relation to publication by Food Standards Scotland, the period from 11th June 2015 to 30th April 2016;
- (d) in relation to publication by Historic Environment Scotland, the period from 11th June 2015 to 30th April 2017;
- (e) in relation to publication by an authority listed in sub-paragraphs (a) and (d) to (f) of regulation 2A(1), the period from 11th June 2015 to 30th April 2018;
- (f) in relation to any listed authority, the period from the day after publication by that authority is due under paragraph (1) (ignoring paragraph (3)) to the day by which publication is next due under paragraph (2);

- (g) in relation to any listed authority, the period from the day after publication by that authority is due under paragraph (2) (ignoring paragraph (3)) to the day by which publication is next due under that paragraph.”.

St Andrew’s House,
Edinburgh
17th March 2016

ALEX NEIL
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (“the 2012 Regulations”).

A new regulation 6A is inserted into the 2012 Regulations. This requires the Scottish Ministers to gather information on the relevant protected characteristics of members of an authority listed for the purposes of those Regulations and to provide that information to the authority. An authority must use information received to better perform the equality duty set out in section 149(1) of the Equality Act 2010 and must set out certain relevant details in any report on progress on mainstreaming the equality duty (under regulation 3 of the 2012 Regulations).

These Regulations also insert a new regulation 8A into the 2012 Regulations. This sets out revised timescales for publishing gender pay gap information and statements on equal pay under regulations 7 and 8 of the 2012 Regulations. Whilst at present publication under those regulations is not required where an authority has under 150 employees, these Regulations require publication except where an authority has less than 20 employees.

Contacts

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

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

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