



## **THE PUBLIC SECTOR EQUALITY DUTY IN ENGLAND**

### **Background**

**The Equality Act 2010** (“the Act”) introduced a single Public Sector Equality Duty which applies to all public authorities, including maintained schools and academies and which came into effect in April 2011. This new Public Sector Equality Duty replaces the three separate equality duties under the previous legislation to tackle discrimination and promote equality in relation to race, disability and gender.

The Public Sector Equality Duty consists of a general equality duty, which is set out in **Section 149 of the Equality Act 2010** and which came into effect on 5<sup>th</sup> April 2011, and specific duties which came into effect on 10<sup>th</sup> September 2011 in England and 6<sup>th</sup> April in Wales.

**Section 149(1)** imposes the Public Sector Equality Duty on those public bodies subject to it requiring them, in the exercise of their functions, to have due regard to three specified matters which are the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- (b) Advance equality of opportunity between persons who share a **relevant protected characteristic** and those who do not;
- (c) Foster good relations between persons who share a relevant **protected characteristic** and those who do not.

The matters referred to at (b) and (c) apply to the “relevant protected characteristics” which are set out in **Section 147(7)** of the Act as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. They do not therefore apply to the protected characteristic of marriage and civil partnership. Subsection (a) however applies to all protected characteristics.

The Act also explains what is meant by having “due regard” as follows:

- Removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- Taking steps to meet the needs of persons who share a relevant protected characteristic from the needs of persons who do not share it;
- Encouraging persons who share a relevant protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.



The Act further sets out that:

- Meeting different needs involves taking steps to take account of disabled persons' disabilities;
- Fostering good relations involves tackling prejudice and promoting understanding between those who share a relevant protected characteristic and those who do not;
- Compliance with the duties may involve treating some persons more favourably than others, although this is not to be taken as permitting conduct otherwise prohibited by the Act.

### **Specific Duties**

The Government introduced new specific duties set out in **The Equality Act 2010 (Specific Duties) Regulations 2011** ("the Regulations"), which came into force on 10<sup>th</sup> September 2011. The Explanatory Note to the Regulations states that the purpose of the duties it imposes is to ensure better performance by public authorities of their duties under **Section 149(1)** of the Act.

The Regulations:

- Require public authorities to publish information to demonstrate their compliance with the duty imposed by **Section 149(1)**. **For schools that information must be published not later than 6<sup>th</sup> April 2012** and subsequently at intervals no greater than one year beginning with the date of last publication;
- Require public authorities to prepare and publish one or more objectives that they think they should achieve to do any of the things mentioned in paragraphs (a) to (c) of Section 149(1) of the Act. **Objectives must be published by all public authorities no later than 6<sup>th</sup> April 2012** and subsequently at intervals of not greater than four years beginning with the date of last publication;
- Information must be published in such a manner that it is accessible to the public and allows the information to be published as part of another document.

### **DfE Guidance**

The DfE has published guidance on the Act which can be accessed via the following link:

<http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010>



Chapter 5 of that guidance document includes guidance in relation to the Public Sector Equality Duty. The guidance also includes what is stated to be practical guidance for schools as to what is expected of them under the specific duties regulations.

Some of the relevant points in the guidance include:

- The advice given in the guidance is not prescriptive and that schools have the freedom to meet the duties in ways appropriate to their own set of circumstances;
- The specific duties are meant to help public bodies fulfil their obligations and are designed to be flexible, light touch and proportionate rather than being a bureaucratic or “tick box” exercise;
- The emphasis is on transparency;
- Since the equality duty is proportionate the requirements of the duty will not be the same for a small primary school as they are for a large secondary school;
- Data about employees will not need to be published where a public authority has fewer than 150 employees. Should a school decide that making employee related statistics available will help demonstrate compliance with the general duty they may choose to do but must ensure this does not conflict with the principles of data protection;
- Schools will not be required to collect any statistical data they do not already collect routinely;
- Published information does not necessarily have to be statistical. It is suggested that other kinds of information can be used to show how the school is promoting equality, such as publishing its policies online, or publishing minutes of Governors’ meetings;
- Schools are no longer required to publish equality schemes but can choose to continue to do so, which they could expand to cover additional protected characteristics.

The guidance gives information about the kind of information which might be published to show how the three limbs of the duty are being addressed. Significantly when considering advancing equality of opportunity between people who share a protected characteristic and those who do not, reference is made to the fact that for some protected characteristics e.g. religion, and particularly sexual orientation, statistical data about pupils is less likely to be available and *“it may well not be considered appropriate to try to obtain it”*.



In relation to setting equality objectives the guidance states that:

- *“schools are free to choose the equality objectives that best suit their individual circumstances and contribute to the welfare of their pupils and the school community”.*
- Objectives are not intended to be burdensome or a tick box exercise;
- Objectives need to be specific and measurable;
- Publication of information in future years should include evidence of the steps being taken and progress made towards meeting the equality objectives already set.

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