



## **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 Equality Duty helps schools to focus on key issues of concern and how to improve pupil outcomes which is also central to the OFSTED inspection framework.

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 Equality Act 2010 (Specific Duties) Regulations 2011**

The Government introduced new specific duties set out in **The Equality Act 2010 (Specific Duties) Regulations 2011** ("the 2011 Regulations"), which came into force on 10<sup>th</sup> September 2011. The Explanatory Note to the 2011 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 2011 Regulations:

- Require public authorities to publish information to demonstrate their compliance with the duty imposed by **Section 149(1)**. **For schools that information should have first been 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 should have first been 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 and the Equality & Human Rights Commission 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 2011 Regulations.

The Equality & Human Rights Commission have also issued the following listed guidance on the Public Sector Equality Duty (designed to be read in conjunction with Chapter 5 of the DfE guidance) which can be found on their website: <http://www.equalityhumanrights.com>:

1. Public Sector Equality Duty
2. Equality Act Codes of Practice and Technical Guidance on Employment, Services and Equal Pay

The Equality & Human Rights Commission's guidance gives useful technical guidance and case examples of how the Public Sector Equality Duty can help schools address issues in relation to attainment (attaining goals in relation to minimising performance gaps between groups of pupils), participation in school activities, ensuring pupils engage effectively in learning, effectively dealing with bullying, improving careers and progression and school policy on exclusions. The Equality & Human Rights Commission is the regulator with responsibility for enforcing the Public Sector Equality Duty and has a range of legal enforcement powers including issuing compliance notices compelling a school to take certain action to remedy a breach of duty. The Commission can also enter into a binding statutory agreement with the school but aims to achieve compliance with the equality duty by informal action and cooperation.

The advice given in the guidance is not prescriptive and in setting equality objectives *"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"*.

Some of the relevant points in the guidance documents include:

- 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 chose to do so but must ensure this does not conflict with the laws relating to 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, publishing minutes of Governors' meetings, publishing information gleaned from tracking of attainment, lesson observation and speaking to pupils, teachers and parents;
- 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.
- Schools that choose not to publish an equality objective in respect of any protected characteristic will not be free to ignore that protected characteristic in the exercise of its functions. It will still need to comply with all the requirements of the general duty, regardless of whether it has set objectives in respect of all of the relevant protected characteristics.
- The equality objective set by the school must be specific and measurable. Therefore, it must set out what it is the school is seeking to achieve and the desired outcome should be capable of being quantified.
- The school will decide how best to publish its equality information so that it is widely accessible to the public; a generally accepted method is to publish the information on the school's website or include it in the school's annual report. In all cases, the school must take care to ensure that the information, when published, complies with its duties regarding reasonable adjustments so that it is accessible to disabled people and non-English speakers, for example (where this is reasonable).
- When deciding what information to publish the school should have regard to the Data Protection Act 1998 to ensure that no individuals can be identified from any published equality information (unless express consent has been obtained prior to publication).
- Publication of information in future years should include evidence of the steps being taken and progress made towards meeting the equality objectives already set.



These guidance documents give 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”*.

## **Gender Pay Gap Reporting - The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017**

The government has recently published **The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (“2017 Regulations”)**, which extend the duty to publish statutory calculations every year showing how large the pay gap is between their male and female employees to public sector employers with 250 or more employees. These 2017 Regulations come into force on the 31 March 2017. This extends the existing public sector equality duties in England noted above.

The basic obligations of organisations to whom these 2017 regulations will apply include the following:

### **Who will it apply to?**

- This new duty will apply to organisations in the education sector that employ over 250 employees including:
  - the governing bodies of voluntary aided schools and
  - the proprietors of academies (academy trust companies). Proprietor is the person or body of persons responsible for the management of the school: the meaning given by section 579(1) of the Education Act 1996
  - employers in the higher and further education sectors
- This will apply only to public authorities in England and certain cross-border authorities and non-devolved authorities operating across Great Britain.
- The obligation is introduced as part of the existing public sector equality duty and sits alongside the existing duty for public bodies operating in England with 150 or more employees to publish information on the diversity of their workforce, in order to show how they are complying with the public sector equality duty.

### **What information must be published annually?**

- the difference between the mean hourly rate of pay of relevant male employees and that of relevant female employees



- the difference between the median hourly rate of pay of relevant male employees and that of relevant female employees
- the difference between the mean bonus pay paid to relevant male employees and that paid to relevant female employees
- the difference between the median bonus pay paid to relevant male employees and that paid to relevant female employees
- the proportions of relevant male and female employees who were paid bonus pay in the relevant 12 month period
- the proportions of relevant male and female employees in four notional quartile pay bands.

### **Whose information needs to be published?**

- The 2017 Regulations use the broad definition of “Employee” from the Equality Act 2010. This is significant as the information therefore should include employees and workers within the organisation, as well as some self-employed people. Agency workers are included, but should be counted by the agency providing them.

### **What is the snapshot date?**

- The snapshot date is the date on which this pay information is required. **The first 'snapshot' date to be covered, will be 30 March 2017,**
- **An employer must comply with the 2017 regulations for any year where they have a 'headcount' of 250 or more employees on 31 March**

### **When should the information be published**

- **The first pay reports will have to be published not later than 30 March 2018,** based on hourly pay rates as at 31 March 2017 and bonuses paid between 1 April 2016 and 31 March 2017 and to publish equality objectives at four-yearly intervals.

### **Where should the information be published?**

- Employers will need to publish their pay data on their website in a manner that will be accessible to employees and the public for at least three years.

### **Failure to comply**

- There is no specific enforcement mechanism, but the data must also be submitted to the Secretary of State. Public sector employers who do not comply with their new duties risk adverse publicity and reputational damage. In addition, the Equality and Human Rights Commission will be charged with monitoring compliance by public bodies and will be able take enforcement action through the courts if necessary



## **Explanation of calculations**

- Employers have the option to provide a narrative with their calculations. This is an opportunity to generally explain the reasons for the results and give details about actions that are being taken to reduce or eliminate the gender pay gap. For many organisations the explanation and the positive statements about how the gap is being closed, will be very important.

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