

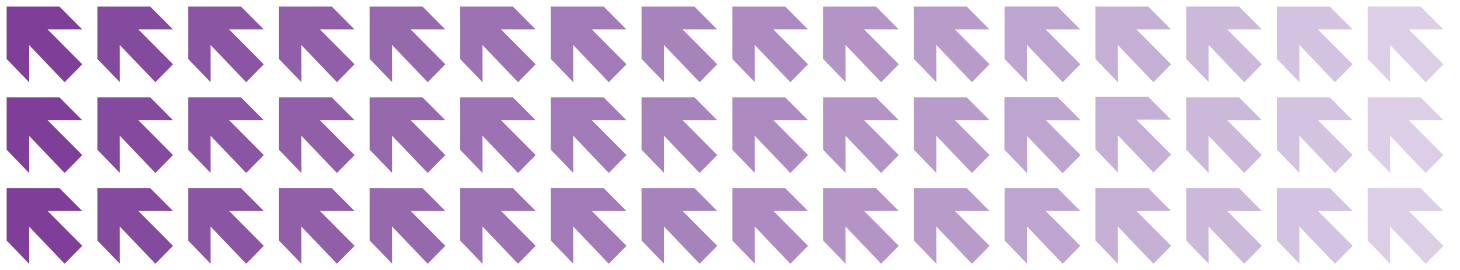


Government  
**Equalities** Office

Putting equality at the heart of government

# **EQUALITY ACT 2010: PUBLIC SECTOR EQUALITY DUTY WHAT DO I NEED TO KNOW? A QUICK START GUIDE FOR PUBLIC SECTOR ORGANISATIONS**





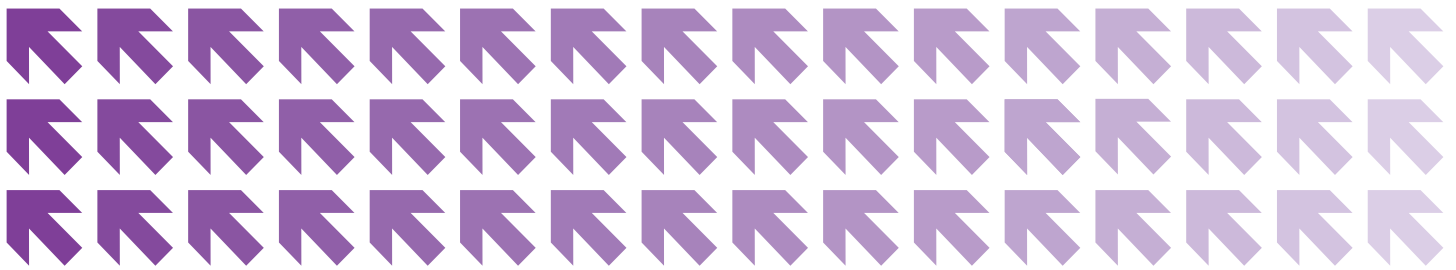
**This guidance was last updated on  
30 June 2011.**

## Introduction

The Equality Act 2010 (the Act) replaces the previous anti-discrimination laws with a single Act. It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with it. It also strengthens the law in important ways, to help tackle discrimination and inequality. The majority of the Act came into force on 1 October 2010.

This quick start guide is intended to help public sector organisations understand a key measure in the Act – the **public sector Equality Duty**, which came into force on 5 April 2011. The Equality Duty ensures that all public bodies play their part in making society fairer by tackling discrimination and providing equality of opportunity for all.

Sources of further information about the Equality Duty are listed at the end of the guide.



## What is the Equality Duty?

The Equality Duty is a duty on public bodies and others carrying out public functions.<sup>1</sup> It ensures that public bodies consider the needs of all individuals in their day to day work – in shaping policy, in delivering services, and in relation to their own employees.

The new Equality Duty supports good decision-making – it encourages public bodies to understand how different people will be affected by their activities so that policies and services are appropriate and accessible to all and meet different people's needs. By understanding the effect of their activities on different people, and how inclusive public services can support and open up people's opportunities, public bodies are better placed to deliver policies and services that are efficient and effective. The Equality Duty therefore helps public bodies to deliver the Government's overall objectives for public services.

The Equality Duty is set out in section 149 of the Act.

### What has changed?

The new Equality Duty replaces the three previous public sector equality duties – for race, disability and gender. The new Equality Duty covers the following protected characteristics:

- age
- disability
- gender reassignment
- pregnancy and maternity

- race – this includes ethnic or national origins, colour or nationality
- religion or belief – this includes lack of belief
- sex
- sexual orientation

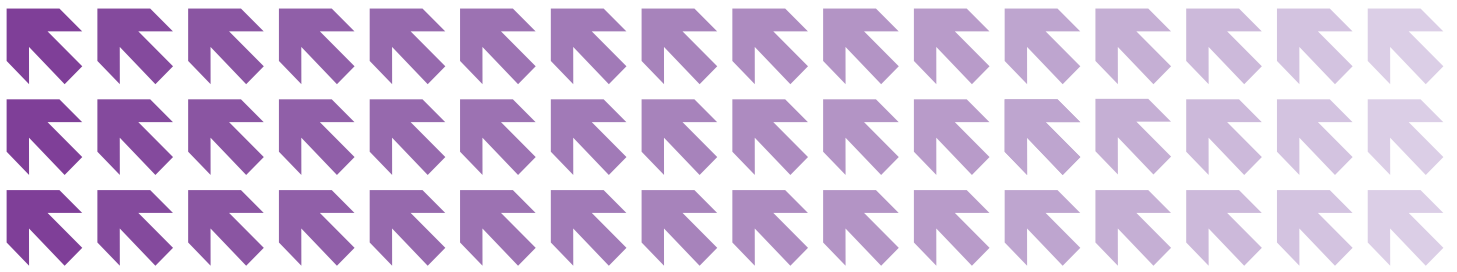
It also applies to marriage and civil partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination.

The new Equality Duty is designed to reduce bureaucracy while ensuring public bodies play their part in making society fairer by tackling discrimination and providing equality of opportunity for all.

## Who does the Equality Duty apply to?

The Equality Duty applies across Great Britain to public bodies listed in **Schedule 19** to the Act, and to other organisations when they are carrying out public functions.

<sup>1</sup> A public function is a function of a public nature for the purposes of the Human Rights Act 1998.



## The Equality Duty

The Equality Duty has three aims. It requires public bodies to have **due regard** to the need to:

- **eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act;
- **advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
- **foster good relations** between people who share a protected characteristic and people who do not share it.

Having **due regard** means consciously thinking about the three aims of the Equality Duty as part of the process of decision-making. This means that consideration of equality issues must influence the decisions reached by public bodies – such as in how they act as employers; how they develop, evaluate and review policy; how they design, deliver and evaluate services, and how they commission and procure from others.

Having due regard to the need to **advance equality of opportunity** involves considering the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics;
- meet the needs of people with protected characteristics; and
- encourage people with protected characteristics to participate in public life or in other activities where their participation is low.

**Fostering good relations** involves tackling prejudice and promoting understanding between people who share a protected characteristic and others.

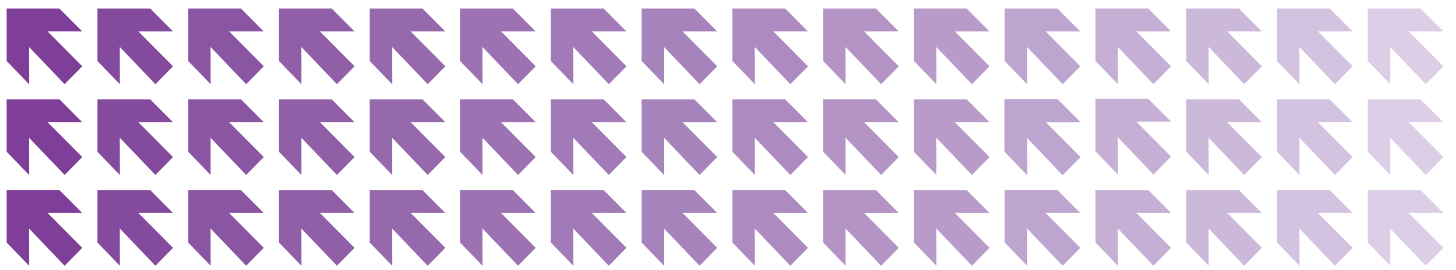
Complying with the Equality Duty may involve treating some people better than others, as far as this is allowed by discrimination law. For example, it may involve making use of an exception or the positive action provisions in order to provide a service in a way which is appropriate for people who share a protected characteristic – such as providing computer training to older people to help them access information and services.

### Taking account of disabled people's disabilities

The Equality Duty also explicitly recognises that disabled people's needs may be different from those of non-disabled people. Public bodies should therefore take account of disabled people's impairments when making decisions about policies or services. This might mean making reasonable adjustments or treating disabled people better than non-disabled people in order to meet their needs.

### Example

A university might decide to provide car parking spaces for disabled students so that those who cannot use public transport because of their impairment have equality of opportunity in access to courses. Although non-disabled students might also want a parking space, they will not suffer the same degree of disadvantage without one.



## Implementing the Equality Duty

Public bodies need to consciously think about the three aims of the Equality Duty as part of the process of decision-making. The Equality Duty will be one of a number of factors that need to be considered. The weight given to the Equality Duty, compared to the other factors, will depend on how much that function affects discrimination, equality of opportunity and good relations and the extent of any disadvantage that needs to be addressed.

The following principles, drawn from case law, explain what is essential in order for the Equality Duty to be fulfilled. Public bodies should ensure:

**Knowledge** – those who exercise the public body's functions need to be aware of the requirements of the Equality Duty. Compliance with the Equality Duty involves a conscious approach and state of mind.

**Timeliness** – the Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken.

**Real consideration** – consideration of the three aims of the Equality Duty must form an integral part of the decision-making process. The Equality Duty is not a matter of box-ticking; it must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.

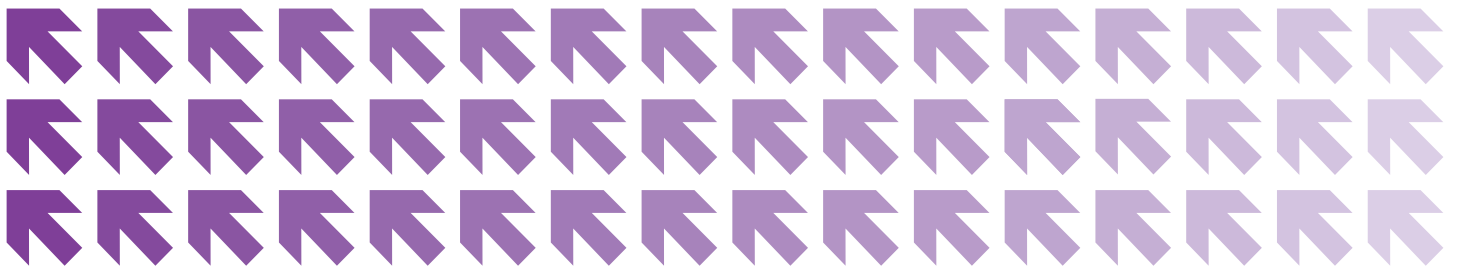
**Sufficient information** – the decision maker must consider what information he or she has and what further information may be needed in order to give proper consideration to the Equality Duty.

**No delegation** – public bodies are responsible for ensuring that any third parties which exercise functions on their behalf are capable of complying with the Equality Duty, are required to comply with it, and that they do so in practice. It is a duty that cannot be delegated.

**Review** – public bodies must have regard to the aims of the Equality Duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed. The Equality Duty is a continuing duty.

### Demonstrating compliance with the Equality Duty

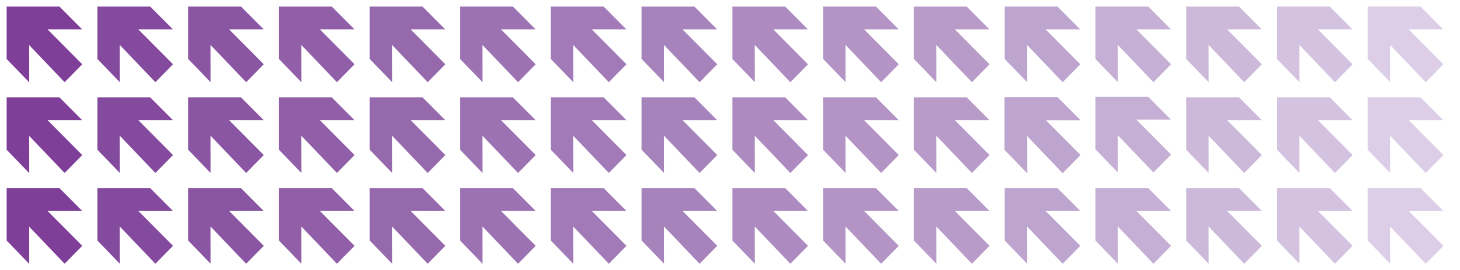
There is no explicit requirement to refer to the Equality Duty in recording the process of consideration but it is good practice to do so. Keeping a record of how decisions were reached will help public bodies demonstrate that they considered the aims of the Equality Duty.



## Who needs to be involved?

**It is important for people throughout public bodies to be aware of the Equality Duty. These include:**

- Board members – in how they set strategic direction, review performance and ensure good governance of the organisation.
- Senior managers – in how they oversee the design, delivery, quality and effectiveness of the organisation's functions.
- Equality and diversity staff – in how they raise awareness and build capacity about the Equality Duty within the organisation and how they support staff to deliver on their responsibilities.
- Human resources staff – in how they build equality considerations in employment policies and procedures.
- Policy makers – in how they build equality considerations in all stages of the policy making process including review and evaluation.
- Communications staff – in how they ensure equality information is available and accessible.
- Analysts – in how they support the organisation to understand the effect of its policies and practices on equality.
- Front line staff – in how they use equality considerations in the delivery of services to the public.
- Procurement and commissioning staff – in how they build equality considerations in the organisation's relationships with suppliers.



## The Equality Duty in practice

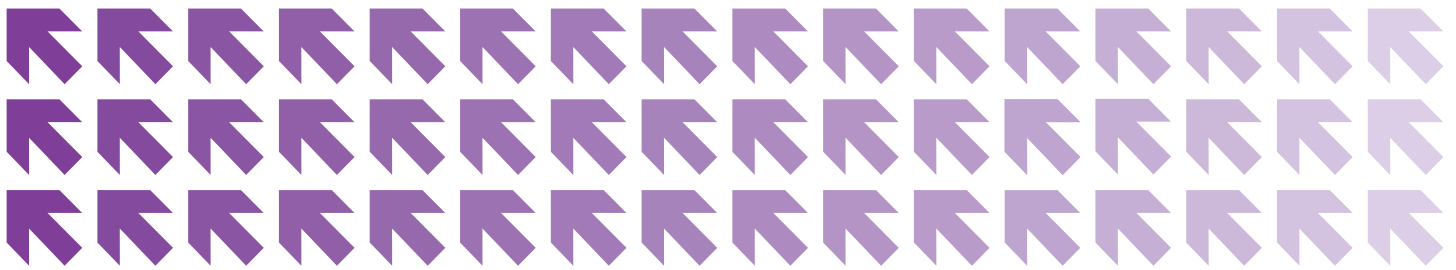
The Equality Duty ensures that public bodies consider the needs of all individuals in their day to day work. The following examples show how the Equality Duty could help public bodies contribute to making society fairer by tackling discrimination and providing equality of opportunity for all.

### **Example**

A police authority, when reviewing its policy on hate crime, finds that 68% of all hate crime reported is described as being homophobic. The police authority takes account of the extremely high occurrence of hate crime on the local LGB population in drawing up and implementing its new policy addressing hate crime.

### **Example**

When reviewing the services it provides, a public transport service provider finds that Sunday services are often used by people going to religious services. Reducing the Sunday service would therefore affect the ability of people belonging to certain religious groups to attend those services. The transport service provider considers this evidence along with any other relevant factors, such as the cost of providing the service, when arriving at its conclusions following the review.



## Common misunderstandings about the Equality Duty

Under the previous public sector equality duties (for race, disability and gender), public bodies sometimes took unnecessary, inappropriate, disproportionate or counter-productive action in the name of equality.

The new Equality Duty should be applied in such a way as to reverse the overly-bureaucratic and burdensome approach often used under the previous duties, so that the focus is on performance, not process.

**X** **The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment<sup>2</sup>.** Nor is there is any practical need to conduct one. Compliance with the Equality Duty involves consciously thinking about the three aims of the Equality Duty as part of the process of decision-making. That will entail understanding the potential effects of the organisation's activities on different people, but there is no prescribed process for doing this. Keeping a simple record of how decisions were reached will help public bodies show how they considered the Equality Duty. Producing an Equality Impact Assessment after a decision has been reached will not achieve compliance with the Equality Duty.

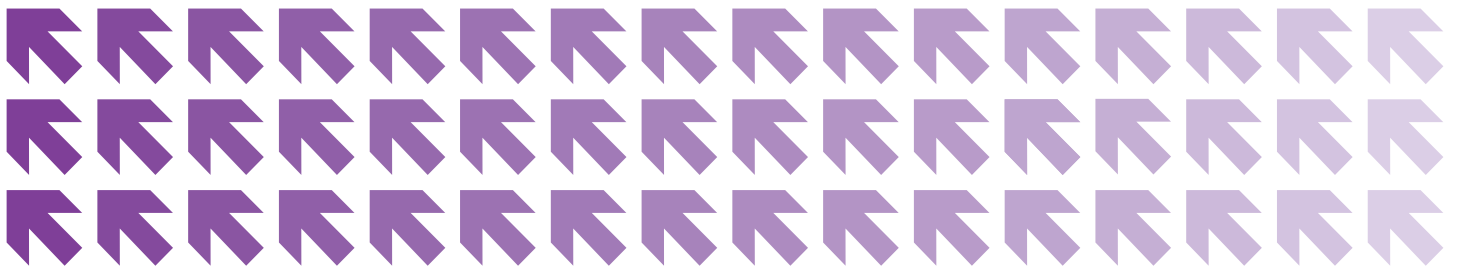
**X** **The Equality Duty does not mean that public bodies have to examine equality issues where they are not relevant to the matter in hand.** Where it is clear from initial consideration that a policy will not have any effect on equality for any of the protected characteristics, no further analysis or action is necessary. For example, if a public body is conducting a review in relation to an issue which has no implications for equality – such as an evaluation of the effect of coastal pollution on marine life – undertaking a formal consultation or analysis addressing equality issues where it is evident that the Equality Duty is not relevant would be pointless and is not required.

**X** **The Equality Duty does not require public bodies to take disproportionate action on equality.** Public bodies should take a proportionate approach when complying with the Equality Duty – in practice, this means giving greater consideration to the Equality Duty where a function or policy has the potential to have a substantial effect on discrimination or equality of opportunity for the public or the public body's employees, and less consideration where the potential effect on equality is slight.

For example, a public body might decide to translate a leaflet about a key public service into a few commonly spoken minority languages, in order to ensure people from particular ethnic minority communities have access to the service.

2 The specific duties which apply to relevant Welsh public bodies contain a requirement to make arrangements for assessing the likely impact of their activities on their ability to comply with the Equality Duty.





But translating all of its public information into the 300 languages regularly spoken in London would be a disproportionate response to the Equality Duty.

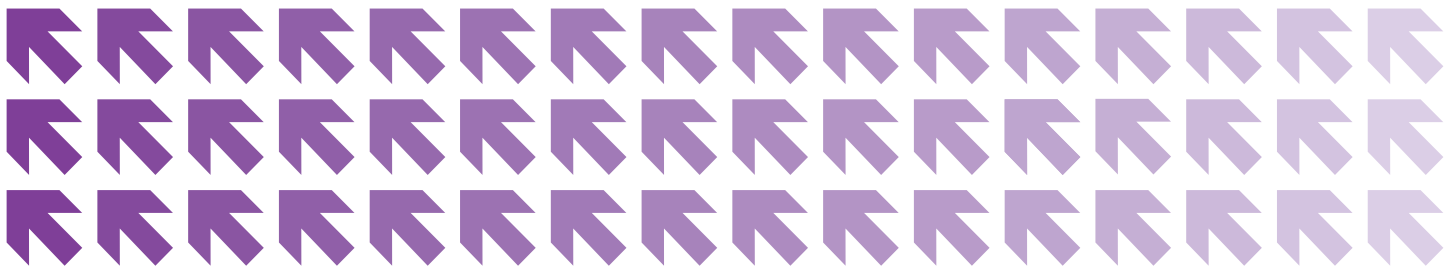
**X** **The Equality Duty does not require public bodies to treat everyone the same.** Rather, it requires public bodies to think about people's different needs and how these can be met. So the Equality Duty does not prevent public bodies providing women-only services – for example, for female victims of sexual violence or domestic violence. Indeed, such services may be necessary in order to ensure women have access to the services they need.

**X** **The Equality Duty does not require public bodies to treat all religions as being equal or to treat all religious festivals equally.** For example, a public body displaying a Christmas tree every year in its reception area would not be a breach of the Equality Duty.

**X** **The Equality Duty does not require public bodies to make services homogeneous or to try to remove or ignore differences between people.** So, for example, it does not mean that a public body must stop providing age-appropriate services for people of different ages, or that it can no longer commission some services to be provided by different faith organisations. Faith organisations are sometimes well-placed to deliver services which meet the particular needs of their community.

## Enforcement

The Equality and Human Rights Commission is responsible for assessing compliance with and enforcing the Equality Duty. It has powers to issue compliance notices to public bodies that have failed to comply and can apply to the courts for an order requiring compliance. The Equality Duty can also be enforced by judicial review. This can be done by the Commission or any individual or group of people with an interest.



## Specific Duties

Section 153 of the Act gives Ministers powers to impose specific duties on certain public bodies to enable them to perform the Equality Duty more effectively.

Draft regulations were laid before Parliament on 27 June 2011, which would require public bodies to:

- publish information to demonstrate their compliance with the Equality Duty, at least annually; and
- set equality objectives, at least every four years

The new draft specific duties will reduce burdens and bureaucracy on public bodies, moving away from a process-driven approach to a focus on transparency. This will free them up to do what is appropriate in their circumstances, to take responsibility for their own performance, and to be held to account by the public, shifting the approach to focus on performance, not process.

The Government Equalities Office and the Equality and Human Rights Commission will each be producing guidance on the specific duties.

The specific duties applying to relevant Welsh public bodies came into force on 6 April 2011. Further information can be found at [www.assemblywales.org](http://www.assemblywales.org). The specific duties applying to relevant Scottish public bodies are currently being considered by the Scottish Government.

## Further sources of information

The Equality and Human Rights Commission is the statutory body established to help eliminate discrimination and reduce inequality. It will produce a statutory Code of Practice on the Equality Duty later in 2011, explaining the law in more detail. It will also produce practical guidance on how public bodies can comply with the Equality Duty and achieve good practice:

**[www.equalityhumanrights.com](http://www.equalityhumanrights.com)  
0845 604 6610**

General information about the Government's equality strategy and legislation is available from the Home Office at:

**[www.homeoffice.gov.uk/equalities/](http://www.homeoffice.gov.uk/equalities/)  
020 7035 4848**



