

**Explanatory Memorandum to the draft Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and draft Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011**

This Explanatory Memorandum has been prepared by the Department of Social Justice and Local Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

**Minister's Declaration**

In my view, the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the draft Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and draft Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 and I am satisfied that the benefits outweigh any costs.

**Carl Sargeant**  
**Minister for Social Justice and Local Government**

**7 March 2011**

## **PART 1**

### **1. Description**

The Equality Act 2010 introduces a new general public sector equality duty (the general duty) that will be brought into force by the UK Government in April 2011. The Act makes provision for the Welsh Ministers to be able to make regulations that impose specific public sector equality duties on “relevant Welsh public authorities” listed in Part 2 of Schedule 19 to the Act. The purpose of these new specific equality duties is to enable the better performance of the general duty by the public sector in Wales. The Act also confers power on the Welsh Ministers, with the consent of the UK Government, to amend the list of authorities in that Part of the Schedule.

The proposed duties have been developed to be proportionate in design, relevant to need, transparent in approach and tailored to guide relevant Welsh public authorities towards better performance of the general duty.

### **2. Matters of special interest to the Constitutional Affairs Committee**

The Act confers powers on the Welsh Ministers in relation to imposing specific duties on relevant Welsh authorities. This power is in section 153 of the Act.

The term “relevant Welsh authority” is defined in section 157(2) of the Act.

Before making regulations the Welsh Ministers must consult with the Commission for Equality and Human Rights (the Commission). Section 153(4) of the Act refers.

Section 151(2) gives the Welsh Ministers power, by order, with the consent of a Minister of the Crown (section 152(2)(a)) and after consulting the Commission (section 152(2)(b)), to amend Part 2 of Schedule 19 which specifies relevant Welsh authorities that are to be subject to the general duty and the specific public sector equality duties for Wales.

The Act also allows for the imposition of specific duties on “cross-border Welsh authorities” (defined in section 157(3)). Such authorities may be added to Schedule 19 by a Minister of the Crown by creating a new Part 4 in that Schedule (see section 154). The procedure enables the Welsh Ministers to be designated so that they can impose specific duties in relation to the devolved Welsh functions (see section 157(5)) of the cross-border authorities or instead provide for specific duties to be imposed by a Minister of the Crown only after consultation with the Welsh Ministers.

The UK Government are proposing to add four cross-border Welsh authorities to a new Part 4 of Schedule 19 to the Act. They are:

*“Cross-border Welsh Authorities*  
The Environment Agency – A

NHS Blood and Transplant – A  
NHS Business Services Authority – A  
NHS Patient Safety Agency – A”

In respect of each, the UK Government are proposing (with the Assembly Government’s agreement) that it will be for a Minister of the Crown to impose specific duties on such authorities in respect of its devolved Welsh functions as well as its other functions. "A" denotes that it is for the Minister of the Crown to set the specific duties for the devolved functions but must consult the Welsh Ministers first.

The draft regulations will be made under sections 153(2) and 207(4) of the Act. They are subject to affirmative procedure in the Assembly by virtue of section 209(6). The draft order will be made under section 151(2) of the Act and is also subject to affirmative procedure in the Assembly.

Both draft instruments are, therefore, subject to approval by resolution of the National Assembly for Wales.

### **3. Legislative background**

In February 2005, the United Kingdom Government set up the Discrimination Law Review to look at inconsistencies in the discrimination law framework and to consider how best to achieve clearer and more streamlined equality legislation that results in better outcomes for those who experience disadvantage. *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain* was published in June 2007. This was quickly followed by ‘*A Framework for a Fairer Future – the Equality Bill*’, and ‘*The Equality Bill – Government Response to the Consultation*’.

The resulting Equality Bill was announced in the Queen’s Speech on 3 December 2008 and was introduced into the UK Parliamentary process in April 2009. Following its successful passage through both the House of Commons and the House of Lords, the Equality Bill received Royal Assent in April 2010.

The Equality Act harmonises and in some cases extends existing discrimination law covering the 'protected characteristics' of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

It is intended to address the impact of recent case law which is generally seen as having weakened discrimination protection, and harmonise provisions defining indirect discrimination.

### **Key areas**

- Provides powers to extend age discrimination protection outside the workplace
- Clarifies protection against discrimination by association, for example in relation to a mother who cares for her disabled child
- Extends protection from discrimination on the grounds of gender reassignment to school pupils
- Extends discrimination protection in the terms of membership and benefits for private clubs and associations
- Creates a unified public sector duty, intended to promote equality in public policy and decision-making, existing provisions being extended to the protected characteristics of sexual orientation, age and religion or belief, and proposes a new public sector duty related to socio-economic inequalities
- Provides for legislation requiring that employers review gender pay differences within their organisations and publish the results
- Provides for changes to the way that individual claims are enforced, and gives employment tribunals wider powers to make recommendations for the collective benefit of employees
- Allows a UK Minister of the Crown to amend UK equality legislation to comply with European law without the need for primary legislation
- Extends the period for which all-women shortlists may be used for parliamentary and other elections until 2030 and allows parties to reserve places on shortlists of candidates for people on the grounds of race or disability.

The Act also provides definitions of: direct discrimination; discrimination arising from disability; indirect discrimination; harassment; and victimisation.

### **General Public Sector Equality Duty (the general duty)**

The Equality Act 2010 introduces a new general duty on the public sector. In the exercise of its functions, a public authority listed in Schedule 19 to the Act must have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to advance equality of opportunity between persons who share a relevant protected characteristic and persons that do not, involves having due regard in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic and are connected to that characteristic;

- Meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- 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.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it, involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

Meeting the requirements of these duties may involve treating some persons more favourably than others. That is not to be taken as permitting conduct that would otherwise be prohibited by or under the Act.

For Wales, the new general duty will apply to all authorities listed in Part 2 of Schedule 19 to the Equality Act 2010.

The Equality Act 2010 also requires that a person who is not a 'public authority' as defined in the Act (i.e. who does not appear in Schedule 19), but who exercises 'public functions' (defined in section 150(5)), must in the exercise of those functions, have due regard to the general duty unless otherwise exempt from the duty under Schedule 18 to the Act.

### **Specific public sector equality duties for Wales**

The Act confers powers on the Welsh Ministers in relation to the imposition of specific duties in respect of the public sector equality duty.

To enable better performance of the general duty by Welsh devolved public authorities, the Welsh Ministers have the power to impose specific public sector equality duties on relevant Welsh public authorities (as defined in section 157 of the Act).

## **4. Purpose and intended effect of the legislation**

### **The principles for developing specific public sector equality duties for Wales**

Whilst developing these proposed specific public sector equality duties, the Welsh Assembly Government's approach has been that unless it is satisfied that imposing the duties will enable better performance of the general duty by public authorities, regulations should not be made.

The duties have been designed to give sufficient flexibility to public authorities to use the procedures and processes which they may already have in place.

The development of the specific public sector equality duties has been guided by four principles. These were:

- **Use of evidence:** good robust evidence to understand the communities served and shape future actions;
- **Consultation and involvement:** so that the needs of the citizen can help shape the design and delivery of services that are fit for purpose, meet needs and deliver a positive outcome;
- **Transparency:** about how objectives have been set and reporting progress that takes place against objectives; and
- **Leadership:** strong leadership which sets a positive culture and climate within the public sector to use resources effectively to help successfully discharge their equality duties. The Welsh Assembly Government is keen to support public authorities in their delivery of better services to the citizens of Wales.

The draft specific public sector equality duties are consistent with these principles, and enshrine the best elements of the specific duties for race and disability currently in force in relation to devolved authorities in Wales, refocused on delivering positive outcomes for the citizens of Wales.

### **Relevant Welsh Public Authorities listed in Part 2 of Schedule 19**

The general duty in section 149 of the 2010 Act applies to relevant Welsh public authorities that are listed in Part 2 of Schedule 19 to the Act.

In exercising their functions, public authorities listed in Schedule 19 must have due regard to all the elements of the general duty.

The general duty applies also to persons who are not listed as public authorities but who exercise functions of a public nature. In this case the general duty only applies in relation to the exercise by them of their 'public' functions (unless exempted by the Act).

The authorities that are listed in Part 2 of Schedule 19, as amended by the Order, will also be subject to specific public sector equality duties imposed by the Welsh Ministers by virtue of the draft Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 under the power conferred on them by section 153(2) of the Act.

The draft Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 omits entries from the list of authorities currently specified in Part 2 of Schedule 19. The authorities omitted that exercise public functions will remain subject to the general duty in section 149(1) of the Act in the exercise of those functions, by virtue of section 149(2) of the Act. Article 2(c) of the draft Order amends Part 2 of Schedule 19 to include the authorities listed in that paragraph. Some authorities have been omitted because currently there are none in Wales.

The bodies that the Welsh Assembly Government has omitted from Part 2 of Schedule 19 to the Act are set out below;

- A Special Health Authority established under section 22 of that Act because there are no Wales only Special Health Authorities and the cross-border NHS Blood and Transplant and NHS Business Services Authorities are being added to Part 4 of Schedule 19
- Charter trustees constituted under section 246 of the Local Government Act 1972 for an area in Wales
- An internal drainage board which is continued in being by virtue of section 1 of the Land Drainage Act 1991 for an area in Wales
- A port health authority constituted by an order under section 2 of the Public Health (Control of Disease) Act 1984 for an area in Wales
- A joint authority established under Part 4 of the Local Government Act 1985 for an area in Wales
- A joint committee constituted in accordance with section 102(1)(b) of the Local Government Act 1972 for an area in Wales
- A joint board which is continued in being by virtue of section 263(1) of that Act for an area in Wales

The entry 'A county council, county borough council or community council in Wales' has been amended to 'A county council or county borough council for Wales. Community councils will not be listed in Part 2 of Schedule 19 and subject to the general and specific duties but will be subject to the general duty by virtue of section 149(2).

There are some devolved public authorities in Wales not currently included in Part 2 of Schedule 19 to the Act. The Welsh Ministers are proposing to seek the consent of the UK Government to add the following organisations to that Part of the Schedule.

For the National Health Service:

- The Board of Community Health Councils in Wales

For other educational bodies:

- 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

For other public authorities:

- The Auditor General for Wales or Archwilydd Cyffredinol Cymru

- The Public Service 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
- The Welsh Language Board or Bwrdd yr Iaith Gymraeg
- The Countryside Council for Wales or Cyngor Cefn Gwlad Cymru
- The Commissioner for Older People in Wales or Comisiynydd Pobl Hŷn Cymru
- The Children's Commissioner for Wales or Comisiynydd Plant Cymru

For the bodies listed that have a charitable status, the Charity Commission accept that the Public Sector Equality Duty is compatible with charitable status and that the duties imposed by the regulations made under section 153 cannot go beyond the purpose of enabling the public authority to better perform its duty under section 149(1). Accordingly, they consider that the duties imposed by the regulations do not compromise the charitable status of the relevant public authorities.

After due consideration it has been decided that the general and specific equality duties are to apply to all of the Counsel General's statutory functions. Therefore no change is to be made to Part 2 of Schedule 19 to the Act in this respect. This brings the position of the Counsel General in this respect into line with that of the Attorney General and the Lord Advocate in Scotland.

The Assembly Government consulted on its proposal to add the Public Services Ombudsman for Wales to Part 2 of Schedule 19 to the Act to bring the Ombudsman within the scope of the general duty and the proposed specific duties. A case for exemption has been made by the Ombudsman. The Ombudsman proposed that his functions should be subject to the general duty in respect of his non case work functions only and that he should not be subject to the specific public sector equality duties in any respect. Careful consideration has been given to the Ombudsman's case for exemption and appropriate weight has been accorded to his response. However, the Assembly Government is not convinced that the application of the general and specific duties to the work of the Ombudsman would be an obstacle to the work of the Ombudsman. Therefore, no amendment has been made to the Assembly Government's proposal and the Ombudsman will be subject to both the general duty and the specific public sector equality duties in respect of all his functions.

#### **Welsh Cross-border Authorities listed in Part 4 of Schedule 19**

The UK Government's proposed Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order will insert a new Part 4 to Schedule 19 to the Act. Part 4 of Schedule 19 will set out cross border Welsh Authorities that have some functions that are devolved and some that are not devolved.

The specific public sector equality duties for Wales will not apply to the Welsh cross- border authorities that are to be listed in Part 4 of Schedule 19 even if those authorities exercise devolved functions in Wales. Welsh Ministers have agreed that these organisations will be subject to the specific public sector equality duties made by the UK Government. The Welsh Assembly Government felt it was appropriate that such a body should be subject to just one set of duties.

There are four cross-border Welsh authorities listed: the Environment Agency, NHS Blood and Transplant, the NHS Business Services Authority and the Student Loans Company Limited.

Listing these bodies in Schedule 19 serves two purposes:

- It makes clear that the body named is subject to the general duty. This is especially important if a particular body carries out a mixture of public and private functions, because it is possible in listing a body to specify that only some of its functions are covered by the duty - although that has not been the case in respect of these bodies.
- Secondly, a Minister of the Crown, when adding a person/body to Part 4 of Schedule 19 can specify whether, for example, specific duties are to be imposed on the devolved Welsh functions of the authority by the Welsh Ministers or by a Minister of the Crown. Such specific duties would be applied by regulations under section 153 of the Act, for the purpose of enabling the better performance of the duty imposed by section 149(1).

Welsh Ministers have agreed that Welsh cross-border authorities referred to above would be subject to the specific duties imposed by a UK Minister of the Crown and not those proposed by the Welsh Ministers. The UK Government's Order referred to above gives effect to this.

## **Enforcement**

Neither the general nor the specific public sector equality duties create rights for individuals to claim damages in the courts or in a tribunal if the duties are not fulfilled (section 156). If a person with sufficient interest considers that a public authority has failed to comply with the general duty then the public authority can be challenged by way of judicial review.

The Equality and Human Rights Commission, established by the Equality Act 2006, may consider how far a public authority has complied with these duties

under powers provided by the 2006 Act. The specific public sector equality duties may only be enforced by the Commission.

### **Specific public sector equality duties for Wales**

The focus of the specific public sector equality duties is to enable better performance of the general duty by the delivery of positive outcomes through evidenced based equality objectives. The objectives can only be developed with the engagement of the people affected by the objectives, and after relevant information has been collected and analysed.

These duties will come into force on 6 April 2011 and each authority's equality objectives will be publicised by 2 April 2012.

The provisions of the regulations are explained below:

#### **Draft Regulation 1: Title, commencement and application**

Draft regulation 1 sets out the title for the regulations as 'The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011'. Subject to the agreement of the National Assembly for Wales, the regulations will come into force on 6 April 2011.

These regulations only relate to Wales and apply to relevant Welsh authorities listed in Part 2 of Schedule 19 to the Equality Act.

#### **Draft Regulation 2: Interpretation**

A number of interpretations have been included to aid comprehension and improve clarity.

#### **Draft Regulation 3: Equality Objectives**

Public authorities will be required to publish objectives designed to enable them to better perform the general duty. These objectives are called 'equality objectives'.

The equality objectives are to be published no later than 2 April 2012. This date gives public authorities twelve months to develop their equality objectives.

An authority must also publish a statement, which sets out the steps it has taken or intends to take to achieve the equality objectives and a time frame for fulfilling each equality objective. This provides transparency to the process. Appropriate arrangements must also be put in place to monitor its progress in fulfilling each objective and to monitor the effectiveness of the steps it has taken to fulfil the equality objectives.

If a local authority sets a fairness objective under the Local Government (Wales) Measure 2009, it may also rely on that objective as an equality

objective under these regulations and include that objective in the statement of its equality objectives in its Strategic Equality Plan, if it considers that doing so meets its obligations under these regulations.

If an authority does not publish an equality objective in respect of one or more of the protected characteristics it must publish its reasons for its decision not to do so. This requires an authority to consider all protected characteristics when developing its objectives but where there is no basis for developing an objective in respect of one or more protected characteristics then it needs to provide an explanation for that decision.

In this context an equality objective for the purpose referred to in draft regulation 11(1) is to be ignored. Draft regulation 11(1) is in relation to equality objectives on pay difference. Therefore, for the purpose of regulation 3(3) an authority will, for example, have to give reasons if it does not publish an equality objective in respect of the protected characteristic of sex even if it has a gender pay objective in place.

The revised regulation has been redrafted to remove the reference to “one or more objectives” to avoid any inference that a single objective would be sufficient. It is intended that authorities will think carefully about how they can frame their objectives to help them comply with the general duty.

#### **Draft Regulation 4: Preparation and review of equality objectives**

Draft regulation 4 sets out the arrangements for developing equality objectives. When considering what its equality objectives should be an authority must comply with Regulation 5 on engagement and have due regard to relevant information that it holds.

When it has developed its objectives, having formed a firm evidence base and having involved and consulted people in accordance with the engagement provisions, an authority must publish its equality objectives no later than 2 April 2012. This means an authority has 12 months to complete the development work and publish its objectives.

There is no requirement under the regulations to continue with existing equality schemes during this period so an authority may wish to divert the available resource to the development of the equality objectives.

Once it has published its first equality objectives by 2 April 2012, further equality objectives can be published subsequently at any time as an authority considers appropriate.

A public authority must review its equality objectives within four years from when they were first published and at least once every four years subsequently. This is to ensure they remain relevant and up to date.

An authority is able to review any of its objectives at any time so that published objectives remain current and relevant. If it finds that an objective

is no longer current or relevant, an authority can revise or remake an equality objective at any time. When it does so, it must either publish the revision or publish the revised objective.

When the equality objective is revised or remade, an authority must also amend the statement or publish a new statement setting out the steps it has taken or intends to take to achieve the fulfilment of the objective and the time frame for fulfilling the objective as set out in draft regulation 3(2)(a).

### **Regulation 5: Engagement provisions**

The involvement of, and consultation with, people affected by the decisions taken by public authorities as they exercise their public functions is a fundamental principle within these specific duties. The development of strategic equality plans (draft regulation 14) and the objectives that are presented within the plans (draft regulation 3), and the assessment of the impact of any proposed or revised policies and practices of an authority (draft regulation 8), depend on effective engagement through involvement and consultation.

The draft regulations for consultation require an authority to comply with the engagement provisions (in regulation 5) in carrying out certain activities under the regulations. This means an authority:

- must involve people who represent the interests of people who share one or more of the protected characteristics and have an interest in the way that the authority carries out its functions,
- may involve such other people as the authority considers appropriate
- may consult such other people as the authority considers appropriate.

As a result of the views expressed during the consultation exercise, the regulations have been amended so that when reaching a decision, in the exercise of the discretion conferred, about who to involve or consult, an authority must have regard to the need to involve or consult (as the case may be) so far as is reasonably practicable to do so, people who share one or more of the protected characteristics and have an interest in the way the authority carries out its functions.

This will require public authorities to involve and consult those who share one or more of the protected characteristics, and not just those who represent their interests, in the development work around the duties e.g. they must have regard to the need to involve and consult children and young people where the issue concerns them not just an intermediary who represents their interests.

The reason why "reasonably practicable" is included is because a duty to consult and involve all such persons would be unworkable and there would be a legal risk created that any consultation or involvement could be flawed because a relevant Welsh authority did not consult or involve (as the case may be) every person with a protected characteristic.

The draft regulations enable relevant public authorities to consider including any specific group of people who share one or more of the protected characteristics as appropriate without specifying individual groups or organisations on the face of the regulations.

Engagement provisions apply to the following activities: considering and designing equality objectives (regulation 4(1)(a)); carrying out an assessment of whether there are things done or that could be done that contribute or would be likely to contribute to an authority complying with the general duty (regulation 7(5)(a)); carrying out an assessment of the likely impact of proposed policies and practices, of policies or practices that it has decided to review and any proposed revisions to those policies and practices on compliance with the general duty (regulation 8(3)(a)) and preparing, publishing or reviewing a Strategic Equality Plan (regulation 15(1)(a)).

### **Draft Regulation 6: Accessibility of published information**

We recognise that one of the main barriers to effective engagement and service delivery is the lack of accessible information. Draft regulation 6 will therefore require public authorities to take all reasonable steps to ensure that information that an authority is required by these regulations to publish, is accessible by persons who share one or more of the protected characteristics. In doing so, the transparency of the work and services provided by the public sector will be improved.

Draft Regulation 6 also requires that an authority must take all reasonable steps to ensure that any documents or information, that the authority is required by these Regulations to publish, shall be accessible by people who share one or more protected characteristics. This means that an authority must take into account all of a person's protected characteristics, not just one. If there are a range of steps that it would be reasonable for an authority to take to make the information accessible then it must take all of those steps.

### **Draft Regulation 7: Arrangements for collection etc of information about compliance with the general duty.**

Draft regulation 7 requires an authority to make arrangements to ensure that it identifies relevant information that it holds and identifies and collects relevant information that it does not hold about compliance with the general duty. It must also publish relevant information that it holds and which it is appropriate to publish.

This information is to be collected and used in the fulfilment of the duties within these regulations. The information will form an evidence base upon which the development of objectives (equality objectives and pay difference objectives) and the assessment for equality impacts of an authority's policies and practices can be rooted.

It is for an authority to consider what information it should collect and for what purpose. The regulations do not prescribe the process but by considering all relevant information authorities will need to look internally and externally and to engage with persons outside the authority in the process. The desired outcome is that the authority has the best evidence base to enable it to set meaningful objectives and carry out fully informed impact assessments.

Draft regulation 7(2) and 7(3) sets out the circumstances when an authority is regarded as holding relevant information. An authority holds relevant information if it is held by an authority, otherwise than on behalf of another person, or held by another person on behalf of the authority. In addition, information which is held by an authority on behalf of another person can also be relevant information that an authority holds. However this can only be the case if the person on whose behalf the information is held by the authority consents to the authority using the information for the purpose of the authority complying with the general duty and the duties under these regulations or if it is not contrary to law to use the information and that it is reasonable to do so having regard to all the circumstances.

Draft regulation 7(4) and 7(5) sets out that an authority must carry out an assessment in order to identify relevant information. The assessment should identify where there are things done by the authority that contribute to the authority complying (or otherwise) with the general duty and things that it could do that would be likely to contribute to compliance with the general duty. An authority must when carrying out such an assessment have due regard to any relevant information that it has already identified or collected and holds. An authority must also comply with the engagement provisions. An authority should look inside and outside of its organisation to find evidence (relevant information) that can be used, for example, in equality impact assessments.

Information in relation to regulation 11(2) is also to be collected. This relates to identifying and collecting information about any difference between pay of any person(s) who have or shares one or more of the protected characteristics, and those who do not, and the causes of any pay differences.

By April 2012, the authority must have completed the assessment of relevant information upon which the equality objectives will have been based, and published the relevant information that it holds and which it considers appropriate to publish.

### **Draft Regulation 8: Impact and monitoring of policies and practices.**

Draft Regulation 8 requires an authority to make arrangements in order to assess the likely impact of proposed policies and practices on its ability to comply with the general duty, as well as the impact of any policy or practice that an authority has decided to review or any proposed revision to a policy or practice.

Public authorities will be required to:

- Assess the likely impact of the work they do for its effect on people who share the protected characteristics;
- As limited by regulation 8(1)(d) publish an assessment report setting out:
  - the purpose of the policy or practice being assessed whether that is a new policy or an existing policy that is being reviewed or revised;
  - a summary of the steps taken to assess the likely impact of the proposed or revised policy or practice;
  - a summary of the evidence (e.g. in the form of statistical data and research findings) considered as part of the assessment process;
  - the results of the assessment; and
  - any decisions taken following the assessment.

The regulation requires public authorities to have systems in place that ensure that they are able to assess the impact of the work they do on their employees and the people using the services they provide. The regulations do not prescribe what these arrangements should be.

Regulation 8 aims to provide a balance between a systematic approach to gathering evidence, assessing relevance to equality, and the potential impact that the policy and practice could have on people sharing the protected characteristics.

An authority must make arrangements to monitor the impact of its policies and practices on its ability to comply with the general duty. An authority must also have arrangements for publishing reports of assessments where the assessment shows that there is likely to be a substantial impact on an authority's ability to comply with the general duty.

Under this regulation, an authority must comply with the engagement provisions and have due regard to the relevant information.

### **Draft Regulation 9 and 10: Collection and reporting of employment information and training**

Public authorities in Wales have been at the forefront of promoting equality of opportunity and tackling discrimination for their employees and service users. Since the introduction of the equality duties, public authorities have developed systems to gather information about their workforce to help enable better performance of the duties.

The regulations retain most of the employer related duties within the existing duties, and extend them to include the protected characteristics as they are subject to the general public sector equality duty.

This means that public authorities will be required to make arrangements to collect employee data in respect of the number of people employed by the authority, recruitment, training, grievance and disciplinary procedures. Any

pay differences will also have to be reported by the public authority as it will be relevant information that is held by the public authority.

Collecting employee related data is necessary to enable a public authority to give consideration as to whether any of its practices are causing unintended discrimination. If the data collected suggests that discrimination is evident, then the authority should develop and publish an objective that seeks to remedy that cause of discrimination.

In addition, in respect of the protected characteristic of sex there is also a requirement to collect information on the number of people employed by the authority broken down by job, grade - but only where an authority operates a grade system in respect of its employees, pay, contract type (including, but not limited to permanent and fixed-term contracts); and working pattern (including, but not limited to full-time, part-time and other flexible working arrangements). This information is in support of the gender pay difference provision at draft regulation 11 and 12.

This employee related information must be reported by the 31 March of the year following the year that the reporting period ends. Public authorities may, if they choose, report this data within existing business reporting mechanisms.

In developing these duties, the need to protect the personal information of people working in public authorities is recognised. Nothing in the duties requires a public authority to publish this information if to do so would lead to a breach of confidence actionable by a person, or mean that the integrity of the provisions of the Data Protection Act 1998 would be undermined. Nor are public authorities required to publish legal advice that it receives. Regulation 9(5) and (6) makes it clear that authorities cannot rely upon the regulations to compel employees and prospective employees to disclose, for example, that they are gay, straight, bisexual.

Draft Regulation 7 imposes duties on authorities in relation to relevant information. Appropriate arrangements must be put in place by an authority to ensure that it identifies the relevant information that it holds and identifies and collects relevant information that it does not hold. Further information as to what the arrangements must contain is set out in regulation 11(2), which states that there must also be arrangements for identifying and collecting information about any difference between pay of any person (or persons) who has (or share) one or more of the protected characteristics and those who do not and the causes of such differences.

Draft Regulation 10 requires an authority to make arrangements for promoting knowledge and understanding of the general duty and the duties in the regulations amongst its employees. It must also use its performance management procedures (if any) to identify and address the training needs of its employees in relation to the duties. The purpose of the regulation is to increase knowledge and understanding to help embed and mainstream equality across the authority.

## **Draft Regulation 11 and 12: Pay and Action Plans**

When an authority is developing its equality objectives, using the evidence it has gathered through the collection of relevant information and collection of employment information, an authority must have due regard to the need to have equality objectives that address the causes of any pay difference between the pay of a person employed by an authority who has/shares a protected characteristic and those who do not, where the reason is or is reasonably likely to be related to the fact that the person has or shares the protected characteristic.

The provision covers all protected characteristics.

In the collection of relevant information set out in regulation 7, the arrangements extend to cover the arrangements for identifying and collecting information about any pay differences and the causes of any such pay difference.

From representations made during the consultation exercise, a provision has been added to the regulations which requires an authority where it has identified any gender pay difference and has not published an equality objective to address the causes of the pay difference, to publish reasons for its decision not to publish an objective. To provide additional focus on the gender pay issues raised during the consultation, the regulations require an authority to publish an action plan on gender pay difference which sets out:

- any policy it may have that relates to the need to address the causes of any gender pay difference,
- any gender pay equality objective published by it
- any revision to or any revised gender pay equality objective it is required to publish in accordance with regulation 4(6)
- information it is required to publish in accordance with regulation 3(2)(a) in respect of any gender pay objective; and
- any reasons it is required to publish in accordance with regulation 11(3)

This provides a mechanism for an authority to set out and publish all the required information on gender pay difference in one place ensuring transparency of intention and transparency of progress.

If an authority revises or remakes the gender pay difference objective, it must either amend the action plan or publish a new action plan. This ensures that the action plan is revised and updated to reflect any changes made to the objective and to keep it relevant.

## **Draft regulation 13: Review of arrangements**

An authority is required to keep the arrangements it has put in place in fulfilment of the regulations under review. It has the flexibility to revise or remake the arrangements at any time which ensures that the arrangements remain relevant and appropriate.

The arrangements referred to in regulation 13 are:

- regulation 3(2)(b): to monitor progress that it makes and the effectiveness of the steps that it takes towards achieving the fulfilment of its equality objectives;
- regulation 7(1): to identify relevant information that it holds, identify and collect relevant information that it does not hold and publish relevant information that it holds and which it considers appropriate to publish;
- regulation 8(1): to assess and monitor the impact and monitoring of policies and practices, and publish reports in respect of any assessment;
- regulation 10: to promote knowledge and understanding of the general duties and duties in the regulations amongst employees and to use the performance assessment procedures to identify and address the training needs of its employees in relation to the duties.

### **Draft regulation 14: Strategic Equality Plans**

An authority is required to make a Strategic Equality Plan no later than 2 April 2012.

The Strategic Equality Plan is the public facing statement of the objectives and arrangements considered by an authority necessary to enable better performance of the general public sector equality duty. It will help ensure public transparency to the arrangements under these regulations.

The regulations do not prescribe how the Strategic Equality Plans are published. Public authorities are able to make full use of the current business planning arrangements in place within their authority.

The regulations do require certain elements to be in a plan to ensure its effectiveness. The Strategic Equality Plan must contain a statement setting out:

- a description of the authority;
- its equality objectives;
- for each equality objective, the steps the authority has taken or intends to take to achieve the objective and the timeframe for achieving the objective;
- the arrangements it has made or intends to make to comply with the requirements set out in regulation 13 above – the arrangements to which the regulations apply.
- the authority's action plan in respect of regulation 12 – gender pay difference.

This is not an exhaustive list, and the Strategic Equality Plan may include any other elements that the authority may wish to include that are relevant to compliance with the general duty.

The Strategic Equality Plan can be revised or remade at any time to keep it relevant and up to date.

## **Draft Regulation 15: Preparation, publication and review of Strategic Equality Plans**

When an authority is making, remaking or revising a Strategic Equality Plan, the authority must comply with the engagement provisions and have due regard to relevant information that it holds.

As set out in regulation 14 the Strategic Equality Plan must be made no later than 2 April 2012. Upon the Strategic Equality Plan being made or remade, an authority must publish its Strategic Equality Plan as soon as possible after it is made or remade. If the Strategic Equality Plan is revised without remaking it then the revision or the Strategic Equality Plan as revised must be published as soon as possible after making the revisions.

There is no requirement to publish the Strategic Equality Plan as a stand alone document although an authority may do so if it wishes. The Strategic Equality Plan may be published as part of another published document or within a number of other published documents.

The Strategic Equality Plan, and any revision, must be kept under review to ensure it remains relevant. When reviewing the Strategic Equality Plan an authority must have due regard to relevant information that it holds and any other information that the authority considers would be likely to assist it in the review so that the Strategic Equality Plan reflects the most current information available.

## **Draft Regulation 16: Reports by relevant Welsh authorities on compliance with the general duty.**

The regulations for annual reporting by relevant Welsh public authorities requires the report to be published no later than the relevant date (31 March) following the year in which the reporting period ends e.g. reporting for the period 1 April 2013 to 31 March 2014 must be published no later than 31 March 2015.

The report must set out a number of progress statements arising from the regulations:

- the steps that the authority has taken to identify and collect relevant information;
- in respect of the information that it holds, how the authority has used the information for the purposes of complying with the general duty and the duties in the regulations;
- the reasons for not collecting any relevant information that it has identified but does not hold;
- progress made towards achieving the fulfilment of each of its equality objectives;
- a statement about the effectiveness of the arrangements for identifying and collecting relevant information, and the steps it has taken towards achieving the fulfilment of each of its objectives; and

- the information the authority is required to publish in relation to employment information (regulation 9(4)) unless the authority has already published that information.

An authority may if it wishes include any other matter that is relevant to compliance by the authority with the general duty and the duties in the regulations.

The report may be published as a standalone document, as part of another published document or within a number of other published documents – which ever is most appropriate for the authority.

The information will be reported annually and will form the basis for the Welsh Ministers' 'State of the Nation' Report set out in regulation 17.

### **Draft Regulation 17: Reports by Welsh Ministers on compliance with the general duty by relevant Welsh authorities**

Under the current specific equality duties relating to disability, the Welsh Ministers are also required to publish a report every three years. The report is about the implementation of the disability duty, and arrangements put in place to improve co-ordination across the public sector. The first report was published in December 2008 and the second report is due in December 2011. Work had started to prepare for the publication of this second Welsh Ministers' report. To ensure continuity, provision has been made in the regulations so that the Welsh Ministers will report in December 2011 on compliance by devolved authorities in Wales with the Disability Discrimination Act general duty (up to 5 April 2011) and thereafter with the general duty under the Equality Act 2010 but only so far as the protected characteristic of disability is concerned.

Recognising the more holistic approach to equality of outcome introduced by the Act, any future reporting on implementation of the new general public sector equality duty will extend to include all the protected characteristics covered by that duty.

It is acknowledged that time will be required to reshape some procedures to accommodate this, so following the second Welsh Ministers' report, the third Welsh Ministers' report will be on implementation of the general public sector equality duty across all of the protected characteristics.

As the Welsh Ministers report is a review of compliance by relevant Welsh authorities with the general duty, it will need to reflect all the reports from the relevant Welsh authorities for the reporting period. Time for compiling the Welsh Ministers' report has been considered and it is estimated that 9 months would be a sufficient timescale for collating, analysing and reporting out on progress. This results in a time lag of 21 months from the close of any reporting period – 12 months for the relevant Welsh authorities to produce their final report for the reporting period and a further 9 months for the reports to be collated and analysed and the Welsh Ministers' report to be published.

As an example, for the four year reporting period April 2011 to 31 March 2015, the latest date for reports from relevant Welsh authorities for 2014/15 will be 31 March 2016; an additional 9 months to collate and analyse the information, and to report out takes the time line to 31 December 2016.

The reporting broadly aligns to the four year election cycle of the National Assembly for Wales. The period May 2011 to May 2015 will be reported out no later than 31 December 2016.

The third Welsh Ministers’ report will cover implementation of the general public sector equality duty during the fourth National Assembly for Wales. It will provide an opportunity for the Welsh Ministers to set out a forward look for improving implementation of the equality duty for what will be close to a term of the National Assembly for Wales. An interim progress report for the reporting period will be published no later than 31 December 2014. Further reports will be published every four years with an interim report every two years.

The following table is included as way of an illustration of the reporting timescales.

**Illustration of Reporting Schedule as proposed in the draft Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011**

Year	10/ 11	11/ 12	12/ 13	13/ 14	14/ 15	15/ 16	16/ 17	17/ 18	18/ 19	19/ 20	20/ 21	21/ 22	22/ 23	23/ 24	24/ 25	25/ 26	26/ 27
Assembly Term		Assembly Term 4				Assembly Term 5				Assembly Term 6				Assembly Term 7			
Reporting Year for RWA		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
Reporting Out by RWA			1	2	3	4	1	2	3	4	1	2	3	4	1	2	3 etc
Reporting out by Welsh Ministers		*Dec 2011					Dec 2016				Dec 2020				Dec 2024		

To note:

- Each year runs April to March
- Assumes each Relevant Welsh Authority (RWA) will report out by the latest possible date under the regulations i.e. 31 March of the year following the end of the reporting period.
- Assumes 9 months for collating all contributions and drafting
- \*denotes – Disability Duty only

The existing duty on the Welsh Ministers to report on compliance with the disability duty under the Disability Discrimination Act will cease to exist when the new Public Sector Equality Duty comes into force in April 2011. The Welsh Assembly Government’s intention, however, is that there should be a report in December 2011 on the progress made by devolved authorities in Wales towards compliance with that duty. However given that from April 2011 the new Public Sector Equality Duty will apply, the December 2011 report will

catch any progress made under the Public Sector Equality Duty so far as relating to disability. In this way the December 2011 report will give an overview, as far as disability is concerned, of compliance with the duties applying to disability since the last Welsh Ministers report in December 2008.

There will be a reporting gap in the reporting against the disability duty. A provision has been included in the revised regulations that require reporting on disability to cover the period from 2 December 2008 to 5 April 2011. Under the current legislation (DDA) the report would be made in respect of disability by 1 Dec 2011. When the general duty in the Equality Act 2010 comes into force the existing duty will fall away. The regulations require there must be a report by 31 December 2011 and that it must contain the information that would have been included in the report under the DDA had it continued to exist but in respect of the period from Dec 2008 up to the date the DDA duty falls away. The report must also contain information on progress in complying with the general duty under the Equality Act 2010 (in respect of disability only) between that date and the date of the report.

### **Draft Regulation 18: Public procurement**

Public sector procurement in Wales accounts for £4.3bn of public expenditure annually. This presents an opportunity to effect change not only across the public, but also the private sector.

This was recognised in 2005 when the then Commission for Racial Equality published guidance about how public authorities could meet the requirements placed on them under the general race equality duty. The duty will help public authorities use public procurement to contribute to delivery of their equality objectives and compliance with the general public sector equality duty.

Where a listed authority that is a contracting authority as defined by the EU Public Service Directive is entering into a relevant agreement on the basis of an offer that is the most economically advantageous, it must have due regard to whether the award criteria should include considerations relevant to its performance of the general duty. Also a contracting authority must have due regard as to whether any conditions imposed by them should include considerations relevant to performance of the general duty.

### **Draft Regulation 19: Compliance with duties by Welsh Ministers**

Where the Welsh Ministers, First Minister and Counsel General to the Welsh Assembly Government are subject to duties under the Regulations they may act jointly, for example, they may produce a single Strategic Equality Plan for the Welsh Assembly Government.

### **Draft Regulation 20: Disclosure of Information**

Nothing in the Regulations should be taken as to require an authority to publish information if doing so would constitute a breach of confidence actionable by a person or a breach of the Data Protection Act 1998. An

authority is not required to publish any information that it would be entitled to refuse to produce in a court or tribunal in England or Wales, e.g. information subject to legal professional privilege. Apart from the above there are no other available exemptions from disclosure of the information.

## **5. Consultation**

The details of the listening exercise carried out in 2009 and the consultation undertaken on the draft regulations in 2010 are included in the Regulatory Impact Assessment.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **The Equality Act 2010**

Section 149(1) sets out the public sector equality duty (the general duty) as introduced by the Westminster Parliament and requires public authorities to have due regard, when exercising their functions, to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

### **The Equality Act 2010 (Specification of Relevant Welsh Authorities) (Wales) Order 2011**

The Equality Act 2010 (Specification of Relevant Welsh Authorities) (Wales) Order 2011 amends Part 2 of Schedule 19 to the Act to amend the list of relevant Welsh authorities which are subject to the general duty at section 149(1).

Section 151(2) of the Act confers a power on Welsh Ministers that they may by Order amend Part 2 of Schedule 19. Before making the Order, section 152(2)(a) requires Welsh Ministers to obtain the consent of a Minister of the Crown, after consulting the Equality and Human Rights Commission. The instrument is subject to the affirmative procedure.

Part 2 of the Act already contains a list of relevant Welsh authorities. The Order adds to and omits from the existing list of authorities. Listing Welsh public authorities in Part 2 of Schedule 19 allows Welsh Ministers to impose specific duties on that authority and makes clear that an authority is subject to section 149(1) of the Act for all of its functions unless expressly excluded.

The proposed list of relevant Welsh authorities for inclusion in Part 2 of Schedule 19 was consulted on between 21 September and 17 December 2010. The consultation document can be found at:

[www.wales.gov.uk/consultations/equality/equalityact2010/?lang=en](http://www.wales.gov.uk/consultations/equality/equalityact2010/?lang=en)

In accordance with section 152(2)(a) Welsh Ministers have received the consent of the Minister of the Crown before making the Order.

In accordance with section 152(2)(b) Welsh Ministers have consulted with the Equality and Human Rights Commission.

The general duty is set out in the UK Government's Regulatory Impact Assessment for the Equality Act 2010 which is set out at:

## **The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011**

The draft Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, subject to the approval of the National Assembly for Wales, will be made by Welsh Ministers in exercise of their powers conferred by section 153(2), section 155(1)(b) and section 207 of the Equality Act. The instrument is subject to the affirmative procedure.

The regulations impose specific public sector equality duties (specific duties) on relevant Welsh authorities listed in Part 2 of Schedule 19 in order to enable better performance by those authorities of the general duty.

In accordance with section 153(4) Welsh Ministers have consulted with the Equality and Human Rights Commission.

The regulations, if approved, will apply from 6 April 2011. The following table summarises the timings of activities set out within the regulations:

<b>Regulation</b>	<b>Subject</b>	<b>Timing</b>
<b>Regulation 3</b>	Equality objectives	To be published no later than 2 April 2012
<b>Regulation 4</b>	Preparation and review etc of equality objectives	Objectives to be published no later than 2 April 2012 and subsequently as appropriate  Reviews to be undertaken no later than the end of the period of four years beginning with the date the objective was published  Subsequently at intervals not later than the end of a period of four years from the date of the last review
<b>Regulation 5</b>	Engagement provisions	Not applicable
<b>Regulation 6</b>	Accessibility of published information	Not applicable
<b>Regulation 7</b>	Arrangements for the collection etc of information about	Assessment of relevant information to be

	compliance with the general duty	published no later than 2 April 2012
<b>Regulation 8</b>	Impact and monitoring of policies and practices	Not applicable
<b>Regulation 9</b>	Collection of employment information and training	Publish the information collected by 31 March of the year following the year that the reporting period ends
<b>Regulation 10</b>	Promotion of knowledge and training	Not applicable
<b>Regulation 11 and 12</b>	Pay and action plans	<p>Publish reasons for a decision not to publish an objective where a gender pay difference has been identified and an equality objective to address the causes of that difference has not been published.</p> <p>Publish an action plan. The Strategic Equality Plan (regulation 14 must contain a statement setting out the action plan.</p>
<b>Regulation 13</b>	Review etc of arrangements	Not applicable
<b>Regulation 14</b>	Strategic Equality Plans	To be made no later than 2 April 2012
<b>Regulation 15</b>	Preparation, publication and reviews of Strategic Equality Plans	<p>To be made no later than 2 April 2012</p> <p>To be published as soon as possible after it has been made.</p>
<b>Regulation 16</b>	Reports by relevant Welsh authorities on compliance with the general duty	Reports to be published not later than the relevant date (31 March) in the year following the

		<p>year in which that reporting period ends.</p> <p>First year reporting period is 6 April 2011 to 31 March 2012</p> <p>Thereafter reporting period is 1 April to 31 March</p>
<b>Regulation 17</b>	Reports by Welsh Ministers on compliance with the general duty etc by relevant Welsh authorities	<p>Welsh Ministers Report on compliance by authorities with general duties in respect of disability not later than 31 December 2011</p> <p>Thereafter reporting compliance by authorities with the general duty across all protected characteristics not later than 31 December 2016 with an Interim report. The first interim report is to be published not later than 31 December 2014.</p> <p>Reporting, and interim reporting will be every fourth year thereafter.</p>
<b>Regulation 18</b>	Public procurement	Not applicable
<b>Regulation 19</b>	Compliance with duties by Welsh Ministers etc	Not applicable
<b>Regulation 20</b>	Disclosure of information	Not applicable

The specific duties aim to enable better performance by relevant Welsh authorities of the general duty and will help those authorities to demonstrate their compliance with the general duty. The duties provide a legislative framework for setting out and delivering against evidenced based, outcome focused equality objectives in support of improving outcomes for the citizens of Wales. The duties will provide transparency so that the citizens of Wales can review progress through the range of publication and reporting requirements.

## Rationale for Government Intervention

There are currently three separate general public sector equality duties for race, disability and gender. Each duty and the specific duties made to support them have placed slightly different requirements on public authorities, which have led to burdens on public authorities and have made it more difficult to effectively identify and tackle discrimination.

In relation to devolved matters in Wales, disability and race duties are supported by specific public sector duties. The requirements placed on public authorities vary for the different duties. For example, the race duty has a number of process requirements which are not required under the disability duty i.e. there are numerous requirements around ethnic monitoring at every stage of the recruitment and employment process, and a requirement to publish this information.

The table below summarises how the current duties compare:

	<b>Publication of Scheme</b>	<b>Preparation of Scheme</b>	<b>Content of Scheme</b>	<b>Other duties</b>
<b>Race</b>	Race Equality Scheme; revise after three years; review every three years	No duty to consult or involve	Identify functions relevant to duty; arrangements for impact assessment, monitoring, publishing results, ensuring public access, training staff	Duty on employers to monitor staff and applicants by reference to racial group, duty on educational bodies to have equality policy statement and to monitor staff and applicants by reference to racial group.
<b>Disability</b>	Disability Equality Scheme; revise after three years; review every three years	Duty to involve disabled persons in development	Statement on involvement of disabled persons, methods for impact assessment, steps for fulfilling duty, arrangements for gathering and using information	Within three years take the steps identified for fulfilling the duty and put into effect arrangements for gathering and using information unless unreasonable or

				impracticable in all the circumstances; report annually; duty on Secretary of State to report on progress
<b>Gender – not applicable to Wales</b>	Gender Equality Scheme; revise after three years; review every three years	Duty to consult employees, service users and others and to take relevant information into account	Sets out overall objectives for compliance with duty including consideration of gender pay gap, sets out actions taken or intended for gathering and using relevant information, for conducting impact assessments, for consultation and for achieving the objectives	Put actions set out in the scheme into effect within three years unless unreasonable or impracticable in all the circumstances; publish annually a report summarising the actions taken towards achieving the objectives

The Equality Act 2010 replaces the three separate public sector equality duties with a new single duty, retains the ‘due regard’ formulation and extends the scope to cover sexual orientation, age, religion or belief, pregnancy and maternity and gender reassignment and marriage and civil partnerships. It also provides the powers to make supporting specific duties in secondary legislation.

As detailed in the regulatory impact assessment for the Public Sector Equality Duty published by the UK Government<sup>1</sup>, the specific duties set out in regulations will underpin the general duty and help public bodies in better performance of the general duty. This will place specific requirements on ‘listed’ public bodies. The previous three separate duties i.e. for race, disability and gender<sup>2</sup> adopted a similar approach but the various requirements and timescales vary for the different duties. As an example the race duty has a number of process requirements which are not required under the disability duties. The single public sector general duty will also mean one set of specific duties. Under section 153(2) of the Equality Act 2010 Welsh

<sup>1</sup> [www.equalities.gov.uk/equality\\_bill.aspx](http://www.equalities.gov.uk/equality_bill.aspx)

<sup>2</sup> The gender specific duties are not applicable in Wales

Ministers have the power, by regulations, to impose specific duties on relevant Welsh authorities (as defined in section 157 of the Act). The list (which is to be amended by the draft Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011) is set out in Part 2 of Schedule 19 to the Act.

### **Purpose and intended effect**

The regulatory impact assessment<sup>1</sup> carried out on the general duty by the UK Government set out that the intended effects of the duty were:

- to shift the focus from the prohibition of discrimination to a more positive approach of promoting equality of opportunity so discrimination is prevented from occurring in the first place;
- to ensure that the race, disability and gender equality duties which each had slightly different features were brought together into a single streamlined approach.
- To help public authorities to respond to their equality obligations more efficiently.
- To provide a single effective, strategic lever for addressing discrimination and disadvantage.
- To take a proactive approach to addressing discrimination and disadvantage because of age, gender reassignment, sexual orientation and religion or belief ( as well as race, gender and disability).
- In respect of the specific duties for England, to minimise formal procedures and concentrate on outcomes for service users and employees of public authorities, focusing on the necessary and proportionate actions and reporting on their impact. It was noted that a separate impact assessment would be required for any specific duties for England being made through secondary legislation.

The Draft Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 contain the Welsh Ministers' proposed specific duties for Wales.

In this respect, the intended effects of these regulations are to:

- to rationalise procedures for relevant Welsh authorities in Wales;
- to reduce the complexity associated with the current specific equality duties framework;
- to provide a legislative framework across relevant Welsh authorities which provides a consistent and unified approach towards compliance with the general duty;

The policy objectives are:

- to support relevant Welsh authorities in the better performance of the general duty;
- to be flexible and proportionate so relevant Welsh authorities only take action which is necessary and productive
- to be sufficiently prescriptive to help relevant Welsh authorities achieve better performance of the new general duty;

- to encourage the use of robust evidence to understand the communities served;
- to require consultation and involvement so that the needs of the citizen can help shape the design and delivery of services that are fit for purpose, meet needs and deliver positive outcomes;
- to be transparent about how objectives are set and reporting progress;
- to develop strong leadership which sets a positive culture and climate within the public sector to use resources effectively to help successfully discharge the equality duties.

It is intended that the regulations will only apply to relevant Welsh authorities listed in Part 2 of Schedule to the Act, but other public authorities in Wales may wish to voluntarily adopt the framework to support their work on equality. Evidence from the consultation exercise suggests that some non devolved public bodies who are not subject to the specific duties for Wales wish to consider making an internal decision as to whether they will voluntarily adopt what they cite as a 'progressive approach'.

## **Policy Options**

Four options have been considered in this impact assessment in respect of introducing specific duties for Wales and are as follows:

- Option 1: No specific public sector equality duties for Wales (Do nothing option)
- Option 2: Keep the existing specific duties for race and disability (maintain the status quo).
- Option 3: Introduce a unified set of new specific public sector equality duties which extend across all the protected characteristics but which were broadly aligned with those originally proposed by the UK Government.
- Option 4: Introduce a unified set of new specific public sector equality duties which extend across all the protected characteristics specifically developed to meet the needs of the citizens of Wales (Chosen option)

The sector affected by these options is the public sector but only in relation to relevant Welsh authorities as defined in section 157 of the Equality Act 2010. There is no impact on the private/business sector or the third sector.

## **Costs and Benefits**

### **Option 1: No specific public sector equality duties for Wales imposed (Do nothing option)**

#### **Purpose of option 1**

Option 1 would see the removal of the existing specific equality duties so there was no legislative requirement or financial burden on relevant Welsh authorities. Public bodies in Wales would be subject to section 149(1) of the Equality Act and as such would be required to comply with the statutory

obligation. There would be no prescription about how this should be achieved. Public authorities would develop their own interpretation on how best to comply with the general duty. Policies and practices, and delivery of services would become inconsistent across Wales. The needs and views of equality groups and communities may not be adequately reflected in the development of such policies and practices or in the delivery of the services.

### **Costs of option 1**

This is the 'do nothing' option. With option 1 the existing duties would fall away in April 2011 and dis-applying the existing specific duties would result in cost savings being realised over time.

There would be a cost associated with an authority having to comply with the general duty and in demonstrating its compliance against the general duty. The costs would vary across the authorities and any challenge to their ability to comply with the general duty would be brought forward by the Equality and Human Rights Commission under the enforcement powers or via a challenge through judicial review.

### **Benefits of option 1**

The benefits of this option are limited. There are clearly benefits associated with reducing the compliance costs on an authority but inequality, discrimination and exclusion have negative impacts on health, wellbeing, educational attainment and employment opportunities and any failure to address these issues will see financial consequence appearing elsewhere. Any deterioration in the health, wellbeing, educational attainment or employment opportunities for the citizens of Wales will have costs associated with any remedial interventions or services to address the problem.

There is also a benefit for an authority of not having prescription in the way they satisfy compliance under section 149(1). It allows flexibility to develop processes and practices that best meet the needs of the organisation. There is flexibility to respond to the needs of the citizens and to their employees as an authority considers appropriate.

However under option 1 public authorities would not consistently design policies in a way which meets the needs of diverse communities and tackles disadvantage without the duties providing direction. This could result in poorer and less-efficient public services.

The Equality Duty, and the design of the specific duties to support it, are designed to expose, and make public bodies consider, hidden discrimination, systematic barriers. Without the legal framework there is a risk that these issues might not come to light or get tackled.

It could be argued that the removal of duties to tackle inequality, discrimination and exclusion will undermine the progress that has been made

to date and would be a regressive step. Public authorities may not be ready for the legislative imperative to be removed entirely which could undermine the progress that has been made to date.

The option not to impose specific duties has not been taken forward.

## **Option 2: Keep the existing specific duties for race and disability (maintain the status quo).**

### **Purpose of option 2**

Option 2 would see the existing duties on devolved public authorities in Wales being retained. The requirements of the existing public sector equality duties in respect of disability and race would be set up as the new specific public sector equality duties in Wales under the Equality Act 2010. The relevant Welsh public authorities would continue to comply with the two different sets of regulations, and work with the varying requirements and timescales in respect of race and disability. The gender specific duties would remain not applicable in Wales.

### **Costs of Option 2**

This is a do minimum option and reflects the status quo. There would be no additional cost of administering this option and relevant Welsh authorities would continue to incur the costs associated with the existing specific duties in respect of disability and race.

### **Benefits of Option 2**

This option does not provide a set of specific duties that address the general duty which applies in relation to all relevant protected characteristics and as such it is not a viable option.

The benefits of this option are minimal. The relevant Welsh authorities would continue to administer the differing requirements of the two existing duties. The authority would have processes and systems in place to support and would continue to work with the different regulatory requirements.

Gender specific duties would continue to be not applicable in Wales and the other relevant protected characteristics as defined by section 149(7) of the Equality Act 2010 would not be covered namely age, gender reassignment, pregnancy and maternity, religion and belief, sexual orientation, and marriage and civil partnerships.

It could be argued that limiting the duties to race and disability would not align with the spirit of the Equality Act 2010 which takes a more holistic approach to equality and extends across all relevant protected characteristics. The ability to tackle inequality, discrimination and exclusion would not be progressed across all protected characteristics and would be seen as creating a hierarchy

of equality which undermines the progress to date and inhibits future advancement of equality of opportunity.

Option 2 does not require new regulations. Relevant Welsh authorities already have systems/mechanisms in place to comply with the duties. Public bodies will not, therefore, be required to devote resources to complying with the duties nor will they have to incur familiarisation costs.

Relevant Welsh authorities will remain subject to the existing sets of regulations, which have different requirements, timescales, and reporting mechanisms. The existing specific duties for race and disability are prescriptive and cumbersome. Compliance with the existing duties incurs significant costs.

Restricting the specific duties to disability and race would not cover the additional protected characteristics protected by anti-discrimination legislation.

**Option 3: Introduce a unified set of new specific public sector equality duties which extend across all the protected characteristics but which were broadly aligned with those originally proposed by the UK Government.**

### **Purpose of option 3**

Option 3 would see a unified set of new duties which extend across all the protected characteristics. It would replace the two different sets of complex regulations in respect of race and disability and establish an integrated and cohesive approach to compliance with the general duty by all relevant Welsh authorities. The regulations would be broadly aligned with those proposed by the UK Government.

The current duties proposed by the UK Government for England are not prescriptive in nature. The relevant Welsh authorities would refer to non statutory guidance produced by the Equality and Human Rights Commission for advice on how to comply with the general duty.

### **Costs of Option 3**

The UK Government consulted on the proposed specific equality duties for England, entitled 'Equality Act 2010: The public sector Equality Duty – promoting equality through transparency'. The consultation closed on 10 November 2010.

The costs for this option would be broadly in line with those proposed by the UK government during their consultation on the proposed equality duties for England. The cost analysis as set out in the UK Government's regulatory impact assessment has been applied for the purposes of this option. To estimate the costs of the new specific duties the UK Government has used the regulatory impact assessment undertaken for the current gender equality

duty as a base model, but re-estimated the costs taking into account new information available through the research conducted by Schneider-Ross and discussions with public sector bodies and their equality partners.

[http://www.equalities.gov.uk/news/specific\\_duties\\_consultation.aspx](http://www.equalities.gov.uk/news/specific_duties_consultation.aspx)

### **Costs to relevant Welsh authorities: Year one costs**

The UK Government's regulatory impact assessment indicates that one off costs of the new requirement will arise from an equality/personnel manager spending time to familiarise themselves with the new legislation.

They estimate, based on the time estimate used to calculate the familiarisation costs for the general Equality Duty, that public bodies such as health bodies, general bodies (such as the fire service), local authorities and government departments would spend between 1.5 days and 2 days familiarising themselves with the new duties. Based on Government Equality Office calculations they expect a one-off cost to the public sector of familiarising with the new specific duties to be in the region of £7m to £9m.

<b>Year one costs of the new duties</b>		
	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (539)</b>	£143,329	£191,105
<b>Other Authorities (2894)</b>	£247,102	£658,939
<b>Education Institutions (23,453)</b>	£6,236,520	£8,315,360
<b>Local Authorities (388)</b>	£103,175	£137,567
<b>Central Government (70)</b>	£18,614	£24,819
<b>Total (27344)</b>	<b>£6,748,740</b>	<b>£9,327,789</b>

To set this in the Welsh context the year one costs would be as follows.

Based on the numbers of relevant Welsh authorities (90 relevant Welsh authorities) proposed during the consultation the costs are estimated as:

<b>Year one costs of the new duties</b>		
	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (12)</b>	£3,191	£4255
<b>Other Authorities (11)</b>	£939	£2505
<b>Education Institutions (39)</b>	£10,371	£13,827
<b>Local Authorities (28)</b>	£7,445	£9,927
<b>Government (1)</b>	£266	£355
<b>Total (91)</b>	<b>£22,212</b>	<b>£30,869</b>

Based on the revised list of relevant Welsh authorities following the consultation for the costs are estimated as:

<b>Year one costs of the new duties</b>
---

	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (19)</b>	£5052	£6736
<b>Other Authorities (11)</b>	£939	£2505
<b>Education Institutions (1721)</b>	£457,648	£610,181
<b>Local Authorities (28)</b>	£7,445	£9,927
<b>Central Government (1)</b>	£266	£355
<b>Total ( 1780)</b>	<b>£471,350</b>	<b>£629,704</b>

### **Costs to relevant Welsh authorities: Recurring Costs**

There are also implementation costs with Option 3 arising from the duties. These are detailed in the regulatory impact assessment prepared by the UK Government and are not restated here.

The details can be found at:

[www.equalities.gov.uk/news/specific\\_duties\\_consultation.aspx](http://www.equalities.gov.uk/news/specific_duties_consultation.aspx)

The table below shows the total recurring costs of the specific duties summarised by main authority type for England:

<b>Recurring costs of the new duties</b>		
	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (539)</b>	£831,754	£1,032,963
<b>Other Authorities (2894)</b>	£1,203,910	£3,066,758
<b>Education Institutions (23,453)</b>	£16,950,241	£21,107,921
<b>Local Authorities (388)</b>	£3,464,641	£3,808,559
<b>Central Government (70)</b>	£747,113	£792,114
<b>Total (27344)</b>	<b>£23,197,658</b>	<b>£29,808,315</b>

Source: Calculations based on ASHE 2009

To set this in the Welsh context the recurring costs would be as follows:

Based on the numbers of relevant Welsh authorities (90 relevant Welsh authorities) proposed during the consultation the estimate of costs is:

<b>Recurring costs of the new duties</b>		
	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (12)</b>	£18,518	£22,997
<b>Other Authorities (11)</b>	£4,576	£11,657
<b>Education Institutions (39)</b>	£28,186	£35,100
<b>Local Authorities (28)</b>	£250,025	£274,844
<b>Government (1)</b>	£10,673	£11,316
<b>Total (91)</b>	<b>£311,978</b>	<b>£355,914</b>

Based on the revised list of relevant Welsh authorities following the consultation the estimate of costs is:

<b>Recurring costs of the new duties</b>		
	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (19)</b>	£29,320	£33,412
<b>Other Authorities (11)</b>	£4,576	£11,657
<b>Education Institutions (1721)</b>	£1,243,818	£1,548,900
<b>Local Authorities (28)</b>	£250,025	£274,844
<b>Central Government (1)</b>	£10,673	£11,316
<b>Total ( 1780)</b>	<b>£1,538,412</b>	<b>£1,880,129</b>

The current specific duties already impose ongoing costs to all public bodies. The new integrated equality duty is intended to be outcome focussed and proportionate, avoiding unnecessary burdens on public bodies and reflecting more closely what can be reasonably expected from smaller public bodies. The UK Government considered that the new specific duties will impose smaller ongoing costs on public bodies, creating an annual saving for them. This is detailed in their regulatory impact assessment and not restated here.

The details can be found at:

[www.equalities.gov.uk/news/specific\\_duties\\_consultation.aspx](http://www.equalities.gov.uk/news/specific_duties_consultation.aspx)

It should be noted that in their response to the UK Government's consultation on the proposed new duties as outlined in option 3, the Equality and Human Rights Commission advised that they did not intend commenting on the regulatory impact assessment since the lack of clarity in the regulations made it difficult to do so in meaningful way.

### **Benefits of Option 3**

The benefits of option 3 are that relevant Welsh authorities would have considerable flexibility in determining the way in which they could ensure compliance with the general duty. The regulations would contain minimal prescription and the detail would be set out in non statutory guidance.

Option 3 replaces the existing regulations which impose different, and fairly burdensome, requirements, which have to be met at different times, with one set of unified regulations for all protected characteristics. The approach is relatively light touch and is aligned with those proposed for England by the UK Government. Research from Schneider-Ross which was commissioned by the UK Government suggests that the requirements to produce equality schemes under the existing duties are considered a significant burden, and public bodies routinely ask external contractors to draw up their equality schemes. Once published these schemes are rarely used but the cost to the public sector of producing the current schemes for race, disability and gender is substantial.

The UK Government's proposals are to have the duties more outcome focused which removes bureaucratic requirements and ensures that public authorities focus on achieving improved equality outcomes. These will be more effective in furthering the policy objectives of achieving equality outcomes than the existing requirement to produce equality schemes, in which a public body must describe the processes they will follow in order to comply with the duties.

The proposals do not set targets for public bodies, but require them to consider the information which should lead them to be transparent about the impact they are seeking to achieve. The proposals also encourage public bodies to address equality considerations as part of their core business, rather than as a separate and additional burden.

The proposals will still impose a regulatory burden, even though it will be substantially reduced compared with the cost of complying with the existing regulations.

The UK Government conducted a public consultation in 2009 that resulted in a policy statement being published in January 2010 about the shape of the specific duties being proposed for public authorities in England.

The initial proposals issued by the Welsh Assembly Government in July 2009 as the basis for engagement as part of the Listening Exercise were based on the initial proposals put forward by the UK Government. Representations made to the Listening Exercise indicated that differences of approach in a number of key areas would need to be considered for any duties to be applied in Wales.

Whilst there was recognition that the duties needed to be rebalanced between the process driven approach of the former duties and the need to deliver positive equality outcomes, feedback received from stakeholders in Wales indicated a preference to retain equality impact assessments, and 'equality schemes' as it was considered that systematic processes help ensure positive equality outcomes are achieved.

Following the feedback from the Listening Exercise, the approach set out in option 3 evolved into an option where the proposals were further developed to better meet the needs of the citizens of Wales (Option 4).

On 10 November 2010, the Equality and Human Rights Commission published its response to the UK Government's consultation on the proposed specific equality duties for England, entitled 'Equality Act 2010: The public sector Equality Duty – promoting equality through transparency'. The response highlighted that in order for the proposed regulations to be unambiguous, to set out consistent and measureable standards and to drive improved outcomes they need to be clarified and strengthened by:

- Specifying in detail the data which a public body is required to publish, in what level of detail and when this should be published, with explicit

reference to publishing data on gender pay and service users' experiences;

- Clarifying the nature, extent and timing of the obligation to engage people by defining the term 'engagement'; specifically requiring public bodies to engage interested parties in assessing impact and developing any necessary mitigation plan; and in setting their objectives and developing and monitoring their action plans;
- Clarifying that there is an obligation to assess impact, to either mitigate any adverse impact or justify a failure to do so, and to involve affected groups in the development of mitigation plans. Specifically requiring impact assessments to be published at the time they are carried out.
- Clarifying that the objectives a public body selects must be a proportionate response to the evidence across the full scope of the duty and not limited to a minimum of one objective;
- Creating additional mechanisms of accountability by providing a means by which public bodies that fail to address persistent equality gaps can be challenged;
- Requiring public bodies to take action to meet their objectives;
- Specifying the obligation to publish progress against objectives on an annual basis;
- Clarifying that action should be taken to address discrimination and close any gender pay gap;
- Requiring public bodies, when procuring goods, works and services, to consider including within award criteria, and contract conditions considerations relevant to equality, where proportionate and relevant;
- Creating a mechanism to ensure transparency around the action to central Government;
- Requiring public bodies to make information, such as equality data relating to employment, accessible and widely disseminated.

The Equality and Human Rights Commission's full response can be found at : [www.equalityhumanrights.com/legal-and-policy/consultation-responses/response-to-equality-act-2010-the-public-sector-equality-duty-promoting-equality-through-transparency/](http://www.equalityhumanrights.com/legal-and-policy/consultation-responses/response-to-equality-act-2010-the-public-sector-equality-duty-promoting-equality-through-transparency/)

Whilst initially considered as a potential way forward, Option 3 was not taken forward. It formed the basis for the provisional work on the proposed specific equality duties for Wales but evolved through the Listening Exercise and the consultation exercise into Option 4 (see below).

**Option 4: Introduce a unified set of new specific public sector equality duties which extend across all the protected characteristics specifically developed to meet the needs of the citizens of Wales (Chosen option)**

#### **Purpose of Option 4**

Option 4 would see a unified set of new duties which extend across all the protected characteristics. It would replace the two different sets of regulations in respect of race and disability and establish an integrated and cohesive

approach to compliance with the general duty by all relevant Welsh authorities.

The duties would address the complexity and bureaucracy associated with having two different duties, be less process driven and come together in support of evidence based, outcome focused equality objectives.

The duties would be informed and developed through consultation and involvement with those affected by, and those responsible for, delivering the proposed new duties to ensure they best met the needs of the citizens of Wales in terms of being relevant and appropriate.

Relevant Welsh authorities would have the flexibility to decide how best to comply with the duties when considering the particular circumstances of their organisation but a degree of prescription would be contained within the regulations to assist public authorities in demonstrating compliance with the general duty. The duties would, wherever possible, utilise the existing processes and systems in place within the authority.

The duties would extend across all the protected characteristics to align with the new Equality Act 2010 and as such would impose a regulatory pressure on a relevant Welsh authority. The administration of a unified approach across all the protected characteristics would be less of a regulatory burden than administering different sets of regulations. It is acknowledged that the duties do include one aspect that does not follow the unified approach – in respect of gender pay difference.

#### **Costs of option 4**

The costs for option 4 have been estimated using a similar approach put forward by the Government Equalities Office.

Research published by the Government Equalities Office conducted by Schneider Ross in June 2009 concluded that whilst there is a minority of organisations, particularly those that are smaller and have more limited resources, that find legislation overly burdensome, the majority do not.

The UK Government used costs associated with the implementation of the current gender duty as the base model<sup>3</sup> but re-estimated given the research findings of Schneider Ross. The total one off costs to public bodies implementing the gender duty was estimated to be between £35.8m and £56.1m. About 70% of the costs were estimated as being on educational institutions.

The assessment of revised one off costs is based on the premise that the new requirement will require a degree of familiarisation by equality managers or other personnel within an authority who will require time to familiarise

---

<sup>3</sup> Proposal for a public duty to promote gender equality, DTI, February 2005.

themselves with the detail of the new requirements and the implications for the authority.

The UK Government has also stated that the familiarisation with the new requirements for England would take between 1.5 and 2.5 weeks, with larger organisations expecting to take between 14 weeks and 33 weeks to implement the new duties.

It is also suggested that half of public authorities in England have moved to develop Single Equality Schemes and therefore only half would need to introduce new processes and systems to comply with the new duties.

It is therefore assumed for the purposes of this cost analysis that the costs associated with the duty would be based on half of the authorities at the hourly rate of an equality manager in the Annual Survey of Hours and Earnings 2009 up-rated by 21% to include non labour costs, standard for the purpose of impact assessments.

The Impact Assessment by the UK Government uses the following as the basis for its calculations:

Public Authority Personnel Officer (one assumed for each authority). Hourly wage = £20.93, uplifted at 21% to allow for non labour costs = £24.33 per hour. This figure is based on the 2009 ASHE data.

The Impact Assessment by the Scottish Government uses the following as the basis for its calculations

Equality Manager (ASHE code 1135 – one assumed for each authority. Hourly wage =£25.24, uplifted at 21% to allow for non labour costs = £30.55 per hour.

Admin Assistant (ASHE code 41 – one assumed for each authority. Hourly wage =£10.92, uplifted at 21% to allow for non labour costs = £13.21 per hour.

The Impact Assessment by the Scottish Government can be found at:

<http://www.legislation.gov.uk/sdsi/2011/9780111012215/contents>

<http://www.legislation.gov.uk/sdsi/2011/9780111012208/contents>

The revised estimate of one-off costs ranges between £21m - £33m in year one. Again 70% of the costs are apportioned against educational establishments.

The proposed specific public sector equality duties for Wales, whilst flexible and proportionate, are more prescriptive than those originally proposed for England and therefore it is anticipated that the implementation will require the

full twelve months to allow the necessary arrangements to be put in place and for developments such as the development of objectives, to take effect.

In supporting the cost analysis, a number of assumptions have been made in assessing the likely costs that may need to be met by relevant Welsh authorities in year one.

- Understanding the new requirements from the regulations will take approximately 5 days
- Existing systems in place to gather employee related data required by the current specific equality duty for race will need to be reconfigured to enable the data to be disaggregated by the new protected characteristics – estimated to take 5 days
- A relevant Welsh authority will require time to assess its work in relation to its performance of the general equality duty – estimated as 50 days Identifying information held by an authority and information held externally to support the development of objectives – estimated as 50 days.

The proposals that were consulted on between September and December 2010 set out that 90 relevant Welsh authorities would be subject to the specific public sector equality duties for Wales. These comprised:

<b>Sector</b>	<b>Number</b>
Health Services bodies	12
Local Government	28
Education	39
Other bodies including AGSB and Inspectorates	11

The table below illustrates the number of relevant Welsh authorities on which it is intended to apply the specific public sector equality duties for Wales, post consultation.

<b>Sector</b>	<b>Number</b>	<b>Total</b>
Welsh Ministers	Welsh Assembly Government	1
Health Services Bodies	7 Local Health Boards 3 NHS Trusts 8 Community Health Councils Board of the Community Health Councils in Wales	19
Local Government	22 County / County Borough Councils 3 Fire and Rescue Authorities 3 National Park Authorities	28
Education	223 Local Authority Secondary Schools 1462 Local Authority Primary Schools 12 Universities and Higher Education Colleges 21 Further Education Colleges Higher Education Funding Council for	1721

	Wales General Teaching Council for Wales Her Majesty's Chief Inspector of Education and Training in Wales	
Other bodies including Assembly Government Sponsored Bodies and Inspectorates	Auditor General for Wales Public Services Ombudsman for Wales Care Council for Wales Arts Council for Wales National Museum of Wales National Library of Wales Sports Council for Wales Welsh Language Board Countryside Council for Wales Commissioner for Older People Children's Commissioner	11
<b>TOTAL</b>		<b>1780</b>

In considering the potential year one costs of introducing the new equality duties, Welsh Assembly Government officials asked public authorities to provide information about the resources currently deployed on developing and managing the current schemes for race and disability. It is on this basis that the lower impact costs shown below have been assessed.

Based on the responses received, the following conclusions have been reached:

- On average, local government organisations have two members of staff dedicated to equality work within the authority;
- The estimates provided for dedicated staff resources deployed on development and management only of current schemes ranged from 300 hours to 649 hours annually, and
- NHS employee related data is collected centrally on behalf of NHS organisations in Wales.

It is also noted that some relevant Welsh authorities have adopted a single equality scheme approach to the current duties, whilst others have maintained separate schemes for disability and race.

### **Year one costs to relevant Welsh authorities**

It was estimated at the time of the public consultation on the proposals that the costs in year one of the new specific public sector equality duties coming into force are as follows. The costs are based on the information provided by the relevant public sector organisations. Where this has not been available, estimates have been used.

Based on the numbers of relevant Welsh authorities (90 relevant Welsh authorities) proposed during the consultation for inclusion in Part 2 of Schedule 19:

<b>Year one costs of the new duties</b>
---

	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (12)</b>	<b>-£2,000</b>	£534,000
<b>Other Authorities (11)</b>	£244,000	£489,000
<b>Education Institutions (39)</b>	£867,000	£1,735,000
<b>Local Authorities (28)</b>	£0.0	£1,246,000
<b>Total (90)</b>	£1,109,000	£4,004,000

The above costs are based on twelve months activity for an Public Authority Personnel Officer (Code 1135) and Administrative support (code 4113) based on mean annual pay (gross) within ASHE 2009<sup>4</sup>.

The original cost estimate for one off costs show that the regulations have the potential to cost relevant Welsh authorities (excluding governing bodies of school) a total of between £1m and £4m.

The original proposal was to exclude smaller public authorities from the specific public sector equality duties as it was considered that imposing these duties on smaller public authorities would be disproportionate when compared to their size and function. The revised regulations now apply to governing bodies of schools.

In 2009/10 there were 223 secondary schools and 1462 primary schools maintained by local authorities in Wales. Taken together, more than 3400 (full time equivalent) clerical support (including library assistants) were employed in these schools<sup>5</sup>. Based on the Annual Statement of Hourly Earnings published by the Office of National Statistics in 2009, the mean annual salary for a school secretary (4213) is £15,345. The UK Government estimates that schools would spend up to a week reporting on progress against objectives and a further 2.5 days assessing the impact of their key policies and initiatives. It is assumed that including the requirement to comply with the specific duties will equate to between 5 days activity in each school (low estimate) and 7.5 days activity in each school (high estimate). The estimated cost is £587,000 to £880,454.

Based on the revised list of relevant Welsh authorities following the consultation the cost estimate is as follows:

<b>Year one costs of the new duties</b>		
	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (19)</b>	£0.00	£845,500
<b>Other Authorities (11)</b>	£244,000	£489,000
<b>Education Institutions (39)</b>	£867,000	£1,735,000
<b>Governing bodies of schools (1685)</b>	£587,000	£880,454
<b>Local Authorities (28)</b>	£0.00	£1,246,000

<sup>4</sup> ASHE – Annual Statement of Earnings 2009, ONS

<sup>5</sup> Welsh Assembly Government statistics 2009/10 schools bulletin

<b>Total ( 1780)</b>	<b>£1,698,000</b>	<b>£5,195,954</b>
----------------------	-------------------	-------------------

In year one there will be some implementation and familiarisation costs. The amount of time spent by a relevant Welsh authority will vary depending on the size of the authority. Whilst smaller authorities may spend less time on implementation and familiarisation, the overall time spent by the organisation may have a disproportionate impact.

Under the draft regulations there is no statutory requirement to continue with existing schemes for the first twelve months so resources can be focused in readiness for the new 'Strategic Equality Plan. The lower cost projection is based on current resources being used to introduce the new duties.

If all public authorities decide to continue with existing schemes whilst introducing the new duties, then costs could potentially rise to the higher figure quoted in year one.

Year one costs will not apply to all relevant public authorities because some have already extended their current equality schemes to cover all equality strands. The research conducted by Schneider Ross on behalf of the Government Equalities Office reported that around half of the respondents had already started to publish combined schemes going beyond current legislation to include all equality strands. In Wales it is noted that some public authorities have taken this approach and have adopted a single scheme approach to the current duties whilst others have maintained separate schemes for disability and race. The Year one costs therefore represent half of the relevant Welsh authorities subject to the specific public sector equality duties.

### **Recurring costs**

There will be ongoing costs to relevant Welsh Authorities in relation to compliance with the regulations in year 2 and in future years. This will include reporting on progress against objectives, reviewing, revising or remaking their objectives, and assessing and monitoring equality impacts on new policies and practices and existing ones that are subject to review or revision. Authorities will also be required to collect and analyse equality data in terms of employment, training and service delivery. Some may choose to employ other methods such as research and surveys to help monitor and review equality objectives.

In Wales the current specific duties for race and disability apply. The duties in respect of gender are not applied. The preferred approach is to retain systematic processes across the relevant Welsh authorities to improve transparency and consistency of approach. It is intended that in this way the specific duties will help public authorities improve performance of the general equality duty in a meaningful way.

The removal of the requirement to comply with separate duties for race and disability offers savings to the authority subject to the new duties. It is acknowledged that applying the specific equality duties to all protected

characteristics could incur some additional costs for relevant Welsh authorities.

In year one, it is proposed that relevant Welsh authorities will undertake an assessment of the authorities compliance with the general duty and gather other information that will enable it to develop equality objectives. These will be presented in Strategic Equality Plans along with statements about arrangements that have been put in place, or are proposed to be put in place to fulfil those objectives. It is also acknowledged that extending the duties to include smaller public authorities such as governing bodies of schools will incur additional costs on these smaller bodies.

Information supplied by public authorities indicates that on average 2.5 full time equivalent members of staff in larger public authorities are dedicated to management of the current duties and equality schemes.

Additional support services such as training, public engagement and communication resources are also used by authorities but it is difficult to estimate the quantum of these resources supporting equality activities as many public authorities have sought to mainstream equality into their day to day business operations.

On this basis, subject to any reworking of business processes required in year one and that suitable flexibility is built into the proposed duties enabling current working practices to be used for public engagement and reporting, it is anticipated that any year on year costs to public authorities in fulfilling the duties will be marginal.

One area that may incur additional recurrent costs is the requirement to undertake impact assessments – on new policies and practices and on existing policies and practices which are subject to review or revision. The UK Government estimates that NHS bodies will undertake approximately 20 assessments annually, each taking about one day to complete. At the lower end of the estimate, it is estimated that educational institutions will assess the impact of key policies five times each year, each taking half a day to complete.

For larger authorities, these estimates would appear optimistic. In an 18 month period, the Welsh Assembly Government published 24 assessment reports for screening and detailed assessments on its policies and practices. This is likely to increase given the duties require impact assessments to be undertaken on substantial decisions that are taken in relation to all proposed policies and practices, revisions to existing policies and practices and any policy or practice that is being reviewed. The effort to undertake any assessment should be proportionate to the decision being taken or the policy or practice being assessed. An average of 1 day per assessment as suggested by the GEO would appear appropriate.

To reflect the additional requirements associated with option 4 but reflecting the cost savings as a result of the dis-application of the current equality duties

and the retention of staff involved in equality issues, the figures set out in Option 3 above have been uplifted by 10 days of effort for larger authorities and 2.5 day for smaller authorities per annum. This uplift has been applied but recognising that the costs are difficult to quantify as many public authorities have sought to mainstream equality into their day to day business operations.

Based on the numbers of relevant Welsh authorities (90 relevant Welsh authorities) proposed during the consultation the estimate of costs is:

<b>Recurring costs of the new duties</b>		
	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (12)</b>	£39,650	£44,129
<b>Other Authorities (11)</b>	£23,952	£31,033
<b>Education Institutions (39)</b>	£96,884	£103,798
<b>Local Authorities (28)</b>	£299,346	£324,165
<b>Government (1)</b>	£12,434	£13,077
<b>Total (91)</b>	<b>£472,266</b>	<b>£516,202</b>

Based on the revised list of relevant Welsh authorities following the consultation the estimate of costs is:

<b>Recurring costs of the new duties</b>		
	<b>Low estimate</b>	<b>High estimate</b>
<b>NHS Bodies (19)</b>	£62,788	£66,881
<b>Other Authorities (11)</b>	£23,952	£31,033
<b>Education Institutions (1721)</b>	£1,576,531	£1,881,643
<b>Local Authorities (28)</b>	£299,346	£324,165
<b>Central Government (1)</b>	£12,434	£13,077
<b>Total ( 1780)</b>	<b>£1,975,051</b>	<b>£2,316,799</b>

Option 4 is the preferred option, but option 3 is the lower cost option. In respect of recurring costs, option 4 does have the potential to be cost saving when compared to the current position although not to the same extent as option 3. Option 3 costs as referenced above can be offset by cost savings as a result of not having to undertake the current duties so there is also the potential for option 4 to be cost saving in net terms although not to the same extent as option 3.

#### **Benefits of Option 4**

There are a number of benefits of option 4. A single approach will be more efficient since it introduces a uniform set of requirements across all protected characteristics.

It also enables relevant public authorities to rationalise their procedures in respect of race and disability and to reduce the complexity associated with the

current arrangements. It supports a consistent and unified approach towards compliance with the general duty;

The duties are designed to be flexible and proportionate so public authorities only take action which is necessary and productive. A degree of prescription has been incorporated to provide the necessary direction to help authorities achieve better performance of the new general duty without leaving that to guidance alone, but relevant public authorities have the flexibility to interpret and implement the provisions as best suits the organisation.

The requirement for relevant public authorities to collect and analyse robust evidence ensures that equality initiatives are taken forward when they are based on firm and relevant facts and can deliver tangible positive outcomes.

The requirement for consultation and involvement ensures that the needs of the citizen helps shape the design and delivery of services that are fit for purpose, meets needs and delivers positive outcome.

The Regulations and Order have been developed with the concept of engagement at the core. The Listening exercise in 2009 was conducted through engagement to raise awareness about, and develop options for the shape of the new duties in Wales. The consultation in 2010 built on the findings from the Listening Exercise and further shaped and reformed the detailed provisions now contained within the regulations. The benefit of option 4 is that the unified set of new specific public sector equality duties for Wales which extend across all the protected characteristics is being brought forward based on a two year process of evidence gathering through active consultation and involvement, reflecting the views and opinions of stakeholders and partners expressed over that period.

There are additional costs with option 4 over that of option 3 and it is a judgement rather than an evidenced based assessment that the additional cost of option 4 is justified by the additional benefits. Option 4 provides greater consistency in the way the equality duties are enacted in Wales and they have been developed in consultation with relevant public authorities.

The additional costs with both option 3 and option 4 relate to the retention of governing bodies in Part 2 of Schedule 19. Whilst governing bodies of an educational establishment maintained by a Welsh local authority is set out in the Equality Act 2010 (Part 2 of Schedule 19), the consultation document proposed the removal of governing bodies from the list. The representations made during the consultation engagement events and the consultation responses support their retention and as such the revised regulations now require governing bodies of schools to be subject to the specific duties for Wales. The cost of retaining governing bodies is included in option 3 and option 4 but it is acknowledged that the bodies in question have not been involved in the consultation – the original proposal being that they be removed.

## **Consultation**

In order to inform these duties, a 'Listening Exercise' was formally announced by the Minister for Social Justice and Local Government on 27 July 2009 to help people consider how the new duties could work. Some initial thoughts were set out in *Advancing equality across the public sector in Wales* about what these new specific duties developed by the Welsh Assembly Government should look like.

In considering the framing and scope of any specific equality duties that should be developed in Wales, some key areas of activity were suggested where there is potential to better advance equality of opportunity in Wales:

- Setting equality objectives
- Consultation and Involvement
- Assessing impact
- Reporting progress against objectives
- Gender pay and job segregation
- Public Sector Procurement
- How inspection supports the equality agenda; and
- Reporting by the Welsh Ministers

The Listening Exercise was circulated to equality groups and networks across Wales. During the listening exercise, officials of the Welsh Assembly Government attended a series of organised workshops, forums and other events to raise awareness and discuss the development and opportunities that could result from these new duties. Equality organisations received funding from the Welsh Assembly Government and the Equality and Human Rights Commission in Wales to capture views from organisations representing equality groups in Wales.

The Welsh Assembly Government received more than 60 responses and contributions from a range of organisations and individuals during the listening exercise. A consensus opinion was that:

- The principles about the duties were appropriate and their application should be proportionate to the size and function of the public authority and its function.
- The duties should allow public authorities a degree of flexibility to determine local priorities as long as they contribute to national objectives.
- The setting of equality objectives was broadly supported.
- The positive attitude towards involvement within current disability regulations should be extended to the other protected characteristics.
- Equality Impact Assessment has been a positive approach for most organisations and that any duty should continue to require assessments to be undertaken and published.
- Public authorities must be required to collect data about people sharing the protected characteristics to inform the development of meaningful objectives.

- There was no consensus about the size of organisation on which these requirements should be placed.
- Most agreed that gender pay gap reporting should be included.
- There was support for the need to include procurement in the specific duties.
- Inspectorates should play a more significant role in advancing equality.
- Annual reporting by Welsh Ministers was preferential and that reporting should focus on outcomes both positive and negative to improve transparency.

Initial proposals about what should be included in these duties were presented for public consultation in July 2009, and can be viewed on the website at: [www.wales.gov.uk/topics/equality/equalityact10/](http://www.wales.gov.uk/topics/equality/equalityact10/).

The 'Listening Exercise' that followed was conducted throughout the Autumn, ending on 16 November 2009. A summary report of the representations made during that exercise can be viewed by visiting our website also at [www.wales.gov.uk/topics/equality/equalityact10/](http://www.wales.gov.uk/topics/equality/equalityact10/).

On 29 July 2010, the Minister for Social Justice and Local Government approved the drafting of regulations and orders required to impose specific public sector equality duties on listed devolved public authorities in Wales. On 21 September 2010, the Minister announced a twelve week public consultation on the draft Regulations being proposed that will introduce the new duties.

Since the work to develop specific public sector equality duties was started, the Welsh Assembly Government has said that the specific duties should be:

- **Flexible** - so public authorities only take action which is necessary and productive; and
- **Proportionate** - depending on the function and size of the public authority.

The development of the specific equality duties should be guided by four principles. These are:

- **Use of evidence:** good robust evidence to understand the communities served and shape future actions;
- **Consultation and involvement:** so that the needs of the citizen can help shape the design and delivery of services that are fit for purpose, meet needs and deliver a positive outcome;
- **Transparency:** about how objectives have been set and reporting progress takes place against objectives; and
- **Leadership:** strong leadership which sets a positive culture and climate within the public sector to use resources effectively to help successfully discharge their equality duties. The Welsh Assembly Government is keen to support public authorities in their delivery of better services to the citizens of Wales.

Following the announcement of the consultation during a plenary debate on 21 September 2010, the consultation document and regulations were made available on the Welsh Assembly Government website entitled 'Equality Act 2010: Performance of the Public Sector Equality Duties in Wales'.

The proposals are available on the website at :

[www.wales.gov.uk/consultations/equality/equalityact2010/?lang=en](http://www.wales.gov.uk/consultations/equality/equalityact2010/?lang=en)

An online discussion forum was also made available to encourage debate and provide a means for people to publish their views on the consultation. The consultation document was also sent electronically to third and public sector groups and organisations across Wales. It was also available in Welsh and Audio Format.

Officials of the Welsh Assembly Government attended a series of organised workshops, forums and other events to raise awareness and to discuss the consultation in greater detail. These events included:

- Equality and Human Rights Commission Equality Exchange regional events in Swansea, Rhyl and Cardiff.
- Equality and Human Rights Commission Third Sector events in Rhyl and Cardiff.
- Joint Welsh Local Government Association / NHS Centre for Equality and Human Rights events in North / Mid and South Wales.
- Mid Wales Equality Network Group in Aberystwyth
- Presentations were given to the Stonewall Workplace Conference and to the Faith Communities Forum; and
- Meetings were held with the Public Service Ombudsman for Wales, the Children's Commissioner for Wales and the Older Peoples Commissioner for Wales.

Introduced on 21 September 2010 in Plenary, the consultation concluded on 17 December 2010 having received 80 formal contributions from stakeholders in the public and Third Sectors.

A summary report reflecting the views of the stakeholders including the public and third sector organisations that contributed to the consultation has been published to the Welsh Assembly Government website at:

[www.wales.gov.uk/consultations/equality/equalityact2010/?lang=en](http://www.wales.gov.uk/consultations/equality/equalityact2010/?lang=en)

Under the Equality Act the Welsh Assembly Government can develop and impose specific equality duties that support this new general public sector equality duty. It is important, however, that any new specific equality duties add value to the policy objectives to be achieved. This is why the listening exercise was undertaken in 2009, and a further consultation undertaken between September and December 2010. The involvement of our partners in the public and Third Sectors has been key to ensuring that any specific duties that are developed in Wales are focused on the right priorities, deliver

improved outcomes for people and result in a better experience for citizens when accessing the services delivered by public authorities in Wales.

### Competition Assessment

The competition filter test has been applied and has shown that there are no competition concerns.

There are no market implications associated with these provisions and, therefore, no risk of detrimental effect on competition.

The competition filter test	
Question	
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

### Post Implementation Review

The implementation of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 will be closely monitored in a number of ways. The annual reports by relevant Welsh authorities on compliance with the general duty will provide an insight into the progress made by each authority. The Welsh Ministers' four yearly report, with its interim progress report, will provide a

'state of the nation' overview of the position of progress across all relevant Welsh authorities.

An evaluation will be carried out at the end of the first five years following introduction to assess how effectively the regulations have been implemented by relevant public authorities. The review will inform any future revisions of the regulations.