

GUIDANCE

# What Equality Law Means for You as an Education Provider in Wales

A Guide for Schools

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# Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain what you must do to meet the requirements of equality law. These guides will support the introduction of the Equality Act 2010. This Act brings together lots of different equality laws, many of which we have had for a long time. By doing this, the Act makes equality law simpler and easier to understand.

The guide gives advice on your responsibilities under equality law as someone who has pupils, students and parents who access the education services you provide. Where relevant, this guide also refers to your equality obligations as an employer and as a public body. We have used our best endeavours to ensure that the sections of this guide are free-standing to promote an understanding of the key obligations on schools under the Equality Act 2010 and the specific public sector equality duties that apply in Wales.

Some of the topics covered are complex and can be supplemented by further reading from further sources identified in Annex C

## Other guides and alternative formats

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We have also produced five separate series of guides which:

- explain what equality law means for you if you are providing services, carrying out public functions or running an association
- explain what equality law means for you if you are an employer
- explain what equality law means for individual people who are using services, and who want to know their rights to equality
- explain what equality law means for individual people who are working and who want to know their rights to equality, and
- explain what the equality law means for you if you are public authority.

If you require this guide in an alternative format and /or language please contact the Commission to discuss your needs.

## **Equality and Human Rights Commission Wales Office**

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## **The legal status of this guidance**

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This guidance applies to Wales. Although this guidance is non-statutory, following it may help you meet your duties under the Equality Act 2010.

This guide is based on equality law as it is at 1 October 2014. Any future changes in the law will be reflected in further editions.

# Section 1 |

## Introduction

### 1.1 The schools provisions of the Act

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This guidance deals with the schools provisions of the Equality Act 2010 which prohibit schools from discriminating against, harassing or victimising:

- prospective pupils
- pupils at the school
- in some limited circumstances, former pupils (this is explained in more detail in section 2).

Some equality obligations that arise from your role as an employer and a public body are covered in section 8.

Schools had obligations not to discriminate against people with a protected characteristic under previous equality legislation. The Equality Act 2010 provides a modern, single legal framework, and a clearer, more streamlined law that will be more effective at tackling disadvantage and discrimination. As the Equality Act 2010 harmonises the previous equality legislation, much of what is required of schools is already being carried out by them. The main new provisions in the Act are:

- new disability discrimination provisions:
  - direct disability discrimination
  - indirect disability discrimination
  - discrimination arising from disability
- new protected characteristics:
  - gender reassignment
  - pregnancy and maternity
- new positive action provisions
- questions procedure
- new single public sector equality duty.

As schools should already be aware, avoiding discrimination and promoting equality supports the agenda of improving attainment and progression for all pupils. Good education and skills are crucial for opening up opportunities and increasing the chance of a successful life. In addition, Estyn's Common Inspection Framework (from September 2010) provides that as part of Estyn's inspection 'ethos, equality and diversity' will be assessed. This means that if equality measures are not implemented effectively this will restrict the overall inspection grade.

As the Equality Act 2010 seeks to harmonise and bring together the previous equality legislation, schools will already be doing much of what is required. For example, Schedule 10 of the Act covers Accessibility for Disabled Pupils. This retains the former provisions requiring local authorities to prepare written accessibility strategies and schools to develop written accessibility plans setting out how they will increase disabled pupils' access to the school curriculum, improve the physical environment and improve the provision of information.

## **1.2 Maintained schools providing further education**

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Where a maintained school provides:

- part-time education for people (other than pupils) over compulsory school age, or
- full-time education for people who are 19 or over

they will also have obligations under the Equality Act as further education providers. These obligations are explained in more detail in section 7.

## **1.3 Who has legal obligations under the schools provisions?**

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All schools in Wales, irrespective of how they are funded or managed, have obligations under the Equality Act 2010.

Local authorities have obligations under the schools provisions where they are the responsible body for a school, for example if they are the admissions authority for a school.

Local authorities also have obligations as service providers and bodies carrying out public functions and there is separate guidance available on these obligations. See: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Further and higher education providers have obligations under the Act which are explained in separate guidance: What equality law means for you as an education provider: further and higher education, available at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Private early years' providers (such as private day nurseries, childminders, accredited childminder networks, pre-schools, playgroups and Sure Start Children's Centres) which provide childcare to pre-school children do not have obligations under the schools provisions but have obligations under the service provider provisions which are explained in separate guidance. See: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Schools have various obligations under the Act including as:

- employers (for foundation schools and independent schools the proprietor is the employer, for community schools, the Local Authority is the employer) these obligations are explained in separate guidance.
- bodies that carry out a public function (a governing body of a school maintained by the local authority) These obligations are explained in section 8 of this guidance.

## **1.4 Who is responsible for ensuring that a school does not breach the Equality Act 2010?**

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Ultimately, it is the responsible body of a school that is liable for any breaches of the Equality Act. The responsible body is usually the person or body responsible for the management of the school. For a school maintained by a local authority the responsible body is the local authority or the governing body. Which body is responsible will depend on how responsibilities are split between the local authority and the governing body. So if the local authority is the admissions authority for the school (which is normally the case for community schools) then they would be responsible in relation to any claim under the Act in relation to admissions. However, the governing body is likely to be the responsible body in relation to a claim about an exclusion. The responsible body for an independent school, a non-maintained special school or a foundation school is the proprietor. The responsible body for a pupil referral unit is the local authority.

Therefore the responsible body for a school is liable for the actions of its employees and agents of the school unless it can show that it took 'all reasonable steps' to prevent the discrimination, harassment or victimisation from taking place. This responsibility does not extend to cover the actions of pupils beyond the responsibility

a school already has for the actions of its pupils. In some circumstances an employee or agent of the school may be personally liable for acts of discrimination, harassment or victimisation. This is explained in more detail in section 2.

You may wish to review your policies, procedures and delegated functions to ensure that they are consistent with your responsibilities under the Equality Act 2010.

## 1.5 Who is protected?

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The Act protects pupils from discrimination and harassment based on ‘protected characteristics’.

The protected characteristics for the schools provisions are:

- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

Although age and marriage and civil partnership are listed in the Act as protected characteristics the Act does not provide protection against discrimination because of age or marriage and civil partnership in the schools provisions.

However, where a maintained school provides:

- part-time education for people (other than pupils) over compulsory school age, or
- full-time education for people who are 19 or over

Age is a protected characteristic in relation to further education provisions (please see section 7.1 for further details). Protected characteristics are explained in more detail in Annex A.

The categories of people covered by the schools provisions are:

- prospective pupils (in relation to admissions arrangements)
- pupils at the school (including those absent or temporarily excluded)

*Continued...*

- former pupils (if there is a continuing relationship based on them having been a pupil at the school).

## 1.6 What is unlawful discrimination?

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Unlawful discrimination is defined in the Act as:

- direct discrimination (including discrimination based on perception or association)
- indirect discrimination.
- discrimination arising from disability
- failure to make reasonable adjustments (for disabled people).

Discrimination is explained in more detail in section 2.

## 1.7 What else is unlawful under the Act?

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### Harassment

The Equality Act 2010 also prohibits schools from harassing:

- prospective pupils
- pupils at the school

In some limited circumstances, former pupils in relation to the following protected characteristics:

- disability
- race
- sex.

Harassment is defined as unwanted behaviour related to a protected characteristic, or which is of a sexual nature, that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

### Victimisation

The Equality Act 2010 also prohibits schools from victimising:

- prospective pupils
- pupils at the school
- in some limited circumstances, former pupils.

Schools must also not victimise parents who make complaints, although this is under Part 3, not Part 6.

Victimisation is defined in the Act as treating someone badly because they have done a 'protected act' (or because the school believes that a person has done or is going to do a protected act).

A 'protected act' is:

- making a claim or complaint of discrimination (under the Act)
- helping someone else to make a claim by giving evidence or information
- making an allegation that the school or someone else has breached the Act.
- doing anything else in connection with the Act.

There is also protection for pupils who are victimised because their parent or sibling has carried out a protected act.

Harassment and victimisation are explained in more detail in section 2.

## **1.8 Positive action**

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Pupils with protected characteristics may be disadvantaged for reasons to do with past or present discrimination. The Act contains provisions which enable schools to take action to tackle the particular disadvantage, different needs or disproportionately low participation of a particular pupil group, provided certain conditions are met.

These are known as the positive action provisions and allow (but do not require) schools to take proportionate action to address the disadvantage faced by particular groups of pupils. Such action could include targeted provision, resources or putting in place additional or bespoke provision to benefit a particular disadvantaged pupil group.

Positive action is intended to be a measure that will allow schools to provide additional benefits to some pupils to address disadvantage and is not the same as positive discrimination. Positive discrimination would be providing preferential treatment for a particular disadvantaged pupil group that exceeded the positive action conditions.

It is never unlawful to treat disabled pupils (or applicants) more favourably than non-disabled pupils (or applicants). That is, a school is permitted positive action in favour of disabled pupils (applicants).

## **1.9 Public sector duties**

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Maintained schools, including Pupil Referral Units, are public authorities and will be subject to the public sector equality duties. Complying with the equality duties will help such schools to meet their obligations under the schools provisions and vice versa.

Section 8 provides further information on how to comply with the public sector equality duties in relation to your role as an education provider, as an employer and as a public body.

### **1.10 Are there any exceptions to the schools provisions?**

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There are exceptions to enable single-sex schools to admit only pupils of one sex and for schools with a religious character to enable them to have admissions criteria which give preference to members of their own religion. This is explained in more detail in Section 3.

### **1.11 What happens if a pupil thinks a school has acted unlawfully?**

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A pupil who believes that they have been discriminated against, harassed or victimised by a school can make a claim under the Equality Act.

For all protected characteristics other than disability this would be a claim to a county court. If the claim is one of disability discrimination then where it is made varies depending on the type of claim. For a claim of disability discrimination it is usually the parent of the pupil rather than the pupil themselves who can make the claim. This is all explained in detail in section 6.

## Section 2 |

# Key concepts

### 2.1 What is discrimination?

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The Act consolidates existing law into a single legal framework and while many of the concepts of discrimination remain the same as in previous equality legislation there are some areas that were not previously covered. This section describes the various types of discrimination and how they apply to the schools provisions.

#### **Direct discrimination**

Direct discrimination occurs when you treat a pupil less favourably than you treat (or would treat) another pupil because of a protected characteristic. So a very basic example would be refusing to admit a child to a school as a pupil because of their race, for example because they are Roma.

It is not possible to justify direct discrimination, so it will always be unlawful. There are however exceptions to the schools provisions that allow, for example, single-sex schools to only admit pupils of one sex without this being unlawful direct discrimination.

In order for someone to show that they have been directly discriminated against, they must compare what has happened to them to the treatment a person without their protected characteristic is receiving or would receive. So a gay pupil cannot claim that excluding them for fighting is direct discrimination on grounds of sexual orientation unless they can show that a heterosexual or bisexual pupil would not be excluded for fighting. A pupil does not need to find an actual person to compare their treatment with but can rely on a hypothetical person if they can show there is evidence that such a person would be treated differently.

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There is no need for someone claiming direct discrimination because of racial segregation or pregnancy or maternity to find a person to compare themselves to:

- Racial segregation is deliberately separating people by race or colour or ethnic or national origin and will always be unlawful direct discrimination.
- To claim pregnancy or maternity discrimination a female pupil must show that she has been treated unfavourably because of her pregnancy or maternity (and does not have to compare her treatment to the treatment of someone who was not pregnant or a new mother).

It is not direct discrimination against a male pupil to offer a female pupil special treatment in connection with her pregnancy or childbirth.

It is not direct discrimination against a non-disabled pupil to treat a disabled pupil more favourably.

### **Examples—**

- Bethan is actively discouraged from undertaking a course in engineering by a teacher who tells her this is an unsuitable area of study for a female. This would be direct discrimination on the grounds of sex.
- Gethin has Asperger's Syndrome and can sometimes act in a disruptive manner in class. The school does not take disciplinary action, but uses agreed strategies to manage his behaviour. Loan, a non-disabled pupil who is also disruptive in class is punished for his behaviour. This difference in treatment would not be direct discrimination against Loan.

### **Discrimination based on association**

Direct discrimination also occurs when you treat a pupil less favourably because of their association with another person who has a protected characteristic (other than pregnancy and maternity).

This might occur when you treat a pupil less favourably because their sibling, parent, carer or friend has a protected characteristic.

### **Discrimination based on perception**

Direct discrimination also occurs when you treat a pupil less favourably because you mistakenly think that they have a protected characteristic.

## **Discrimination because of pregnancy and maternity**

It is discrimination to treat a woman (including a female pupil of any age) less favourably because she is or has been pregnant, has given birth in the last 26 weeks or is breastfeeding a baby who is 26 weeks or younger.

It is direct sex discrimination to treat a woman (including a female pupil of any age) less favourably because she is breastfeeding a child who is more than 26 weeks old.

## **Indirect discrimination**

Indirect discrimination occurs when you apply a provision, criterion or practice in the same way for all pupils or a particular pupil group, such as A level physics students, but this has the effect of putting pupils sharing a protected characteristic within the general student group at a particular disadvantage. It doesn't matter that you did not intend to disadvantage the pupils with a particular protected characteristic in this way. What does matter is whether your action does or would disadvantage such pupils compared with pupils who do not share that characteristic.

'Disadvantage' is not defined in the Act but a rule of thumb is that a reasonable person would consider that disadvantage has occurred. It can take many different forms, such as denial of an opportunity or choice, deterrence, rejection or exclusion.

'Provision', 'criterion' or 'practice' are not defined in the Act but can be interpreted widely and include:

- arrangements (for example, for deciding who to admit)
- the way that education, or access to any benefit, service or facility is offered or provided
- one-off decisions
- proposals or directions to do something in a particular way.

They may be written out formally or they may just have developed as the school worked out the best way of achieving what it wanted to do.

Indirect discrimination will occur if the following four conditions are met:

1. you apply (or would apply) the provision, criterion or practice equally to all relevant pupils, including a particular pupil with a protected characteristic, and
2. the provision, criterion or practice puts or would put pupils sharing a protected characteristic at a particular disadvantage compared to relevant pupils who do not share that characteristic, and

*Continued...*

3. the provision, criteria, practice or rule puts or would put the particular pupil at that disadvantage, and
4. you cannot show that the provision, criteria of practice is justified as a 'proportionate means of achieving a legitimate aim'.

**Example**—A school requires male pupils to wear a cap as part of the school uniform. Although this requirement is applied equally to all pupils, it has the effect of excluding Sikh boys whose religion requires them to wear a turban. This would be indirect discrimination based on religion and belief as it is unlikely that the school would be able to justify this action.

The approach is somewhat different where the protected characteristic is religion or belief: a claimant does not need to establish that others are also put at a particular disadvantage by a provision, criterion or practice; rather the question is whether the limitation on the claimant's right under the European Convention on Human Rights to manifest their religious beliefs is proportionate given the legitimate aims of the school. This is because protection of the right to manifest religion under the Convention does not require 'group disadvantage' to be shown.<sup>1</sup>

The fact, therefore, that only one pupil is disadvantaged by a ban on the wearing of an item of clothing does not mean that they will not have been subject to indirect discrimination if that item of clothing is an expression of a genuinely held religious or other belief.

### **What is a 'proportionate means of achieving a legitimate aim'?**

To be legitimate the aim of the provision, criterion or practice must be legal and non-discriminatory and represent a real objective consideration. In the context of school education, examples of legitimate aims might include:

- maintaining academic and other standards
- ensuring the health and safety and welfare of pupils.

Even if the aim is legitimate the means of achieving it must be proportionate.

Proportionate means 'appropriate and necessary', but 'necessary' does not mean

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<sup>1</sup> Mba v Mayor & Burgesses of the London Borough of Merton [2013] EWCA Civ 1562, and Eweida, Chaplin, Ladele & McFarlane v United Kingdom (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/1.

that the provision, criterion or practice is the only possible way of achieving the legitimate aim.

Although the financial cost of using a less discriminatory approach cannot, by itself, provide a justification, cost can be taken into account as part of the school's justification, if there are other good reasons for adopting the chosen practice.

The more serious the disadvantage caused by the discriminatory provision, criterion or practice, the more convincing the justification must be.

In a case involving disability, if you have not complied with your duty to make relevant reasonable adjustments it will be difficult for you to show that the treatment was proportionate.

### **Discrimination arising from disability**

Discrimination arising from disability occurs when you treat a disabled pupil unfavourably because of something connected with their disability and cannot justify such treatment.

Discrimination arising from disability is different from direct discrimination. Direct discrimination occurs because of the protected characteristic of disability. For discrimination arising from disability, the motive for the treatment does not matter; the question is whether the disabled pupil has been treated unfavourably because of something connected with their disability.

Discrimination arising from disability is also different from indirect discrimination. There is no need to show that other people have been affected alongside the individual disabled pupil or for the disabled pupil to compare themselves with anyone else.

Discrimination arising from disability will occur if the following three conditions are met:

- you treat a disabled pupil unfavourably, that is putting them at a disadvantage, even if this was not your intention, and
- this treatment is because of something connected with the disabled pupil's disability (which could be the result, effect or outcome of that disability) such as an inability to walk unaided or disability-related behaviour, and
- you cannot justify the treatment by showing that it is 'a proportionate means of achieving a legitimate aim'. This is explained above.

**Example**—Llinos has cerebral palsy and is a wheelchair user. She is told she will be unable to attend a school trip to a theatre putting on a production of a play she is currently studying in English, because the building is not wheelchair accessible. Llinos and her parents are aware that the play is also on at another local theatre which is accessible but the school does not investigate this option. This is likely to be discrimination arising from a disability.

### **Knowledge of disability**

The required knowledge is of the facts of the pupil's disability. A school does not also need to realise that those particular facts meet the legal definition of disability.

If your agent (someone who undertakes tasks on your behalf) or employee knows of a pupil's disability, you will not usually be able to claim that you do not know of the disability.

**Example**—Catrin tells the school secretary that she has diabetes and that she needs to carry biscuits to eat when her blood sugar levels fall. A teacher has no information about her disability and refuses to allow pupils to bring food into the classroom. Catrin has a hypoglycaemic attack. In this case, the school is unlikely to be able to argue that it did not know about her condition.

### **Relevance of reasonable adjustments**

By acting quickly to identify and put in place reasonable adjustments for disabled pupils, you can often avoid discrimination arising from disability, although there may be cases where an adjustment is unrelated to the unfavourable treatment in question.

If you fail to make an appropriate reasonable adjustment, it is likely to be very difficult for you to argue that unfavourable treatment is justified.

### **Reasonable adjustments**

You should be familiar with the reasonable adjustments duty as this was first introduced under the Disability Discrimination Act 1995. The reasonable adjustments duty under the Equality Act operates slightly differently and has been extended to cover the provision by a school of auxiliary aids and services. The object of the duty is the same: to avoid as far as possible by reasonable means, the disadvantage

which a disabled pupil experiences because of their disability. EHRC guidance on the extension of reasonable adjustments duty is available at:  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

This duty sits alongside your duties and those of local authorities under Part 4 of the Education Act 1996. In some cases the support a disabled pupil may receive under the special educational needs framework may mean that they do not suffer a substantial disadvantage (see below) and so there is no need for additional reasonable adjustments to be made for them. In other cases disabled pupils may require reasonable adjustments in addition to the special educational provision they are receiving. There are also disabled pupils who do not have special educational needs but still require reasonable adjustments to be made for them. The level of support a pupil is receiving under Part 4 of the Education Act 1996 is one of the factors to be taken into account when you consider what it would be reasonable for you to have to do.

### **What is the reasonable adjustments duty?**

You are required to take reasonable steps to avoid substantial disadvantage where a provision, criterion or practice puts disabled pupils at a substantial disadvantage.

You owe this duty to existing pupils, applicants and, in limited circumstances, to disabled former pupils in relation to the following areas:

- deciding who is offered admission as a pupil
- the provision of education
- access to any benefit, service or facility.

The duty does not require you to make reasonable adjustments to avoid the disadvantage caused by physical features as this is covered by the planning duties.

You cannot justify a failure to make a reasonable adjustment; where the duty arises, the issue will be whether or not to make the adjustment is 'reasonable' and this is an objective question for the tribunals to ultimately determine.

The duty is an anticipatory and continuing one that you owe to disabled pupils generally, regardless of whether you know that a particular pupil is disabled or whether you currently have any disabled pupils. You should not wait until an individual disabled pupil approaches you before you consider how to meet the duty. Instead you should plan ahead for the reasonable adjustments you may need to make, regardless of whether you currently have any disabled pupils. By anticipating the need for an adjustment you will be best placed to help disabled pupils who come

to your school. You are not expected to anticipate the needs of every prospective pupil but you are required to think about and take reasonable and proportionate steps to overcome barriers that may impede pupils with different kinds of disabilities. For example, while it may be appropriate for you to provide large print for a pupil with a visual impairment, you would not be expected to have Braille devices standing ready.

### **What is a substantial disadvantage?**

A disadvantage that is more than minor or trivial is called a 'substantial disadvantage'. The level of disadvantage created by a lack of reasonable adjustments is measured in comparison with what the position would be if the disabled pupil in question did not have a disability.

You will need to take into account a number of factors when considering whether or not the disadvantage is substantial such as:

- the time and effort that might need to be expended by a disabled child
- the inconvenience, indignity or discomfort a disabled child might suffer
- the loss of opportunity, or the diminished progress a disabled child might make in comparison with his or her peers who are not disabled.

**Example**—Rhian is deaf. She is advised by the work experience coordinator that it would be better for her to remain at school rather than go on work experience as it might be 'too difficult' for her to manage. The school does not take any steps to help Rhian find a placement and she misses the opportunity taken by the rest of her classmates. This would be a substantial disadvantage.

### **The duty to change a provision, criterion or practice**

These terms are not defined but in general they relate to how the education and other benefits, facilities and services are provided and cover all of your arrangements, policies, procedures and activities.

Where a provision, criterion or practice places disabled pupils at a substantial disadvantage in accessing education and any benefit, facility or service, you must take such steps as it is reasonable to take in all the circumstances to ensure the provision, criterion or practice no longer has such an effect. This might mean waiving a criterion or abandoning a practice altogether but often will involve just an

extension of the flexibility and individual approach that most schools already show to their pupils.

**Example**—A school has been allocated three places for students to represent the school at a national youth conference on the environment. The school decides to hold a debate on the topic to select the three pupils who will attend the conference. This places Rhys, who has a nervous system disorder at a significant disadvantage as he has trouble communicating verbally. The school modifies the criteria to enable Rhys to submit his views and ideas on the issue in writing. This is likely to be a reasonable adjustment to the school's practice.

### **When is it reasonable for a school to have to make adjustments?**

A useful starting point when determining what a reasonable adjustment might be is to consider how to ensure that disabled pupils can be involved in every aspect of school life. Often effective and practical adjustments involve little or no cost or disruption.

#### **Examples—**

- A teacher always addresses the class facing forward to ensure that a pupil with hearing difficulties is able to lip-read. This is an example of a simple reasonable adjustment.
- A primary school introduces a playground buddy system and a friendship bench which creates a supportive and friendly place for disabled pupils during breaks. This is an example of an effective but easy reasonable adjustment.

Where disabled pupils are placed at a substantial disadvantage by a provision, criterion or practice or the absence of an auxiliary aid, you must consider whether any reasonable adjustment can be made to overcome that disadvantage.

You should not expect disabled pupils to suggest adjustments but if they do you should consider whether those adjustments would help to overcome the disadvantage and whether the suggestions are reasonable. It is good practice for schools to work with pupils and their parents in determining what reasonable adjustments can be made.

## 2.2 Harassment

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There are three types of harassment which are unlawful under the Equality Act:

- Harassment related to a relevant protected characteristic.
- Sexual harassment.
- Less favourable treatment of a pupil because they submit to or reject sexual harassment or harassment related to sex.

The relevant protected characteristics for the schools provisions are:

- disability
- race
- sex

Pregnancy and maternity are not protected directly under the harassment provisions, however, unwanted behaviour (as described below) will amount to harassment related to sex.

The harassment provisions do not explicitly apply to the protected characteristics of gender reassignment, sexual orientation or religion or belief in relation to schools. However, where unwanted conduct related to any of these protected characteristics results in a pupil suffering disadvantage that would constitute direct discrimination.

### **Harassment related to a protected characteristic**

Harassment occurs when you engage in unwanted behaviour which is related to a relevant protected characteristic and which has the purpose or effect of:

- violating a pupil's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for the pupil.

The word 'unwanted' means 'unwelcome' or 'uninvited'. It is not necessary for the pupil to say that they object to the behaviour for it to be unwanted.

In this context 'related to' has a broad meaning and includes situations where the pupil who is on the receiving end of the unwanted behaviour does not have the protected characteristic himself or herself, provided there is a connection between the behaviour and a protected characteristic. This would also include situations where the pupil is associated with someone who has a protected characteristic, or is wrongly perceived as having a particular protected characteristic.

**Example**—A pupil from an Irish Traveller background overhears a teacher making racial slurs about Gypsy and Traveller people stating their site should be shut down and they were ‘trouble’. This would constitute harassment related to a protected characteristic (race).

The definition of harassment as described above does not apply to the protected characteristics of gender reassignment, sexual orientation or religion or belief in relation to schools. However, where unwanted conduct related to any of these protected characteristics results in a pupil suffering disadvantage that would constitute direct discrimination.

**Example**—During a PSE (personal and social education) lesson, a teacher describes homosexuality as ‘unnatural’ and ‘depraved’ and states he will only be covering heterosexual relationships in the lesson. A bisexual pupil in the class is upset and offended by these comments. This may be unlawful direct discrimination on the grounds of sexual orientation.

## Sexual harassment

Sexual harassment occurs when you engage in unwanted behaviour which is of a sexual nature and which has the purpose or effect of:

- violating a pupil’s dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for the pupil.

‘Of a sexual nature’ can cover verbal, non-verbal or physical conduct including unwelcome sexual advances, inappropriate touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings, or sending emails with material of a sexual nature.

**Example**—Lowri is a sixth form female pupil. She is asked intimate questions about her personal life and subjected to sexual innuendos by her teacher. This would be sexual harassment.

## Less favourable treatment of a pupil because they submit to or reject sexual harassment or harassment related to sex

It is unlawful to treat a pupil less favourably because they either submit to, or reject, sexual harassment or harassment related to their sex.

### 2.3 Victimisation

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Victimisation is defined in the Act as treating someone badly because they have done a 'protected act' (or because the school believes that a person has done or is going to do a protected act).

There are additional victimisation provisions for schools which extend the protection to pupils who are victimised because their parent or sibling has carried out a protected act.

A 'protected act' is:

- making a claim or complaint of discrimination (under the Act)
- helping someone else to make a claim by giving evidence or information
- making an allegation that the school or someone else has breached the Act
- doing anything else in connection with the Act.

If you do treat a pupil less favourably because they have taken such action then this will be unlawful victimisation. There must be a link between what the pupil (or parent or sibling) did and your treatment of them.

The less favourable treatment does not need to be linked to a protected characteristic.

**Example**—A teacher shouts at Delyth because he thinks she intends to support Lowri's sexual harassment claim. This would amount to victimisation.

#### Who is not protected?

A pupil who in bad faith gives false information or evidence (that is, that they knew was false) or makes an allegation that was false and given in bad faith would not be protected against victimisation. The original complaint/claim would not be affected providing it was not made in bad faith.

**Example**—Dafydd, a pupil at an independent school with a grudge against his teacher knowingly gives false evidence in another pupil’s discrimination claim against the school. Dafydd is subsequently excluded from the school for supporting the claim. This treatment could not amount to victimisation because his evidence was untrue and given in bad faith.

### **Victimisation for actions of parents or siblings**

You must not treat a pupil less favourably because of something their parent(s) or sibling has done in relation to the making of a complaint of discrimination.

A parent of a pupil complains to the school that her daughter is suffering sex discrimination by not being allowed to participate in a metalwork class. If the daughter is treated less favourably as a result of the complaint this would be unlawful victimisation.

This applies to a child in relation to whom the parent(s) were making a complaint and also to any other children who are pupils at the school. This also applies if a parent supports a teacher’s complaint against the school under Part 5 of the Act.

If the information or evidence was false and given in bad faith (that is, the parent/sibling knew it was false) or the allegation was false and given in bad faith then this protection for the pupil will still apply, provided that the pupil did not act in bad faith.

**Example**—Geraint makes a complaint against his school claiming that he has suffered discrimination by a member of staff because of his sexual orientation. Geraint’s younger brother Aled, at the same school, is protected against any less favourable treatment by the school because of this complaint, even if it is later found out that Geraint was not acting in good faith.

There must be a link between what the parent(s) or their child has done and you treating the child/sibling badly.

The child who is being treated badly does not need to have any of the protected characteristics.

The fact that a complaint/claim is not upheld does not mean that it was made in bad faith.

## 2.4 Obligations to former pupils

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Even after a person has left your school you must not discriminate against them or harass or victimise them. This only applies if the discrimination or harassment arises out of and is closely connected to their previous relationship with you and would have been unlawful if they were still a pupil. For example, if an ex-pupil asks for a reference from the school it would be unlawful for the reference to be unflattering because of a protected characteristic of the ex-pupil, or because they at one time brought or supported a discrimination complaint against the school.

This obligation to former pupils would include the duty to make reasonable adjustments for disabled former pupils if they continue to be at a substantial disadvantage in comparison to former pupils without a disability. This obligation only applies if the substantial disadvantage arises out of and is closely connected with them having been a pupil.

**Example**—A school sends an annual newsletter to former pupils and one former pupil who has a visual impairment requests that it is sent to him by email rather than in hard copy. The school does not provide him with an electronic copy. This is likely to be an unlawful failure to make a reasonable adjustment.

If someone believes that they are being discriminated against after they have stopped studying with you, they can take the same steps to have things put right as if they were still a pupil. These steps are explained in Section 6.

## 2.5 When are you responsible for what other people do?

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### Liability for employees, agents and others

As an employer you are legally responsible for acts of discrimination, harassment and victimisation carried out by your employees in the course of employment or by people who take action for you (agents).

It does not matter whether you knew about or approved of those acts.

However, if you can show that you took all reasonable steps to prevent your employees or agents from acting unlawfully, you will not be held legally responsible.

It is important that you take steps to make sure your employees and agents understand that they must not discriminate against pupils, or harass them or victimise them, and that they understand your duties in relation to making reasonable adjustments for disabled pupils.

### **Personal liability of your employees and agents**

An employee (of a school) is personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment, whether or not the employer is also liable. However, an employee is not personally liable in relation to disability discrimination in schools.

For example, a teaching assistant racially discriminated against a pupil. The school is able to show that it took all reasonable steps to prevent the harassment and therefore was not liable. The pupil can still make a claim of discrimination against the teaching assistant.

However, if this was a case of discrimination on the grounds of disability, the pupil would not be able to make a claim against the teaching assistant because the personal liability provisions do not cover disability discrimination in schools. If the relationship is one of a person paying for someone else to take action for them and someone taking action for them (their 'agent') rather than employer and employee, the agent is personally responsible in the same circumstances.

Employees or agents will still be responsible for their acts of discrimination, harassment or victimisation even if they did not know their actions were against the law.

But there is an exception to this. An employee or agent will not be responsible if their employer or principal has told them that there is nothing wrong with what they are doing and he or she reasonably believes this to be true.

It is a criminal offence, punishable by a fine of up to £5,000, for an employer or principal to make a false statement in order to try to get an employee or agent to carry out an unlawful act.

Usually a school will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent. However, case law indicates that it is possible that the school could be found to be legally responsible for failing to take action where it becomes aware of a continuing course of offensive conduct and has some degree of control over the situation, but does not take action to prevent its recurrence.

## **Instructing and causing discrimination**

As a school you must not instruct, cause or induce someone to discriminate against, harass or victimise another person, or to attempt to do so.

Both the person who receives the instruction and the intended victim will have a claim against whoever gave the instructions. This applies whether or not the instruction is carried out, provided the recipient or intended victim suffers loss or harm as a result.

It only applies where the person giving the instruction is in a legal relationship with the person receiving the instruction such as employer and employee or agent and principal.

Employment Tribunals will deal with complaints from an employee or agent who has received the instructions and the victim can make a claim in the same way as they would for any other claim under the Act. So if you instruct a member of staff to discriminate against a pupil on grounds of their sex then the member of staff can make a claim to an Employment Tribunal and the pupil can make a claim to a county court.

The Equality and Human Rights Commission can also take action for unlawful instructions to discriminate.

## **Aiding contraventions**

It is unlawful for you to help someone else carry out an act which you know is unlawful under the Equality Act.

However, if the person giving assistance has been told by the person he or she assists that the act is lawful and he or she reasonably believes this to be true, he or she will not be legally responsible.

It is a criminal offence, punishable by a fine of (currently) up to £5,000, to make a false statement in order to get another person's help to carry out an unlawful act under the Equality Act.

# Section 3 |

## Admissions

### 3.1 Introduction

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You must not discriminate against a person in relation to admission to your school. It is the 'responsible body' of a school that is responsible for ensuring there is no discrimination in relation to admissions. This varies depending on the type of school as set out in Annex B.

### 3.2 What does the Act say?

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You must not discriminate against, or victimise a person:

- in the arrangements that you make for deciding who is offered admission as a pupil
- as to the terms on which you offer to admit the person as a pupil
- by not admitting the person as a pupil.

You must not harass a person who has applied for admission as a pupil.

If you are a single-sex school there are exceptions for admissions to enable you to restrict admission to pupils of one sex. If you are a school with a religious character there is an exception for admissions to enable you to have admissions criteria which give preference to members of your own religion. This is explained in more detail in section 3.7.

### 3.3 How this fits in with other legal obligations on schools in relation to admissions

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Nothing in the Equality Act 2010 requires you or the admissions authority for a school to act in a way which is inconsistent with other legal obligations relating to

schools admissions.<sup>2</sup> In fact, following the School Admissions Code<sup>3</sup> and any other government guidance is likely to reduce the risk of you discriminating unlawfully under the Equality Act in relation to admissions.

The admissions authorities for maintained schools must comply with the School Admissions Code produced by the Welsh Government which sets out the law relating to school admissions ([www.wales.gov.uk](http://www.wales.gov.uk)).

### **3.4 You must not discriminate in the arrangements you make for deciding who is offered admission as a pupil to your school**

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#### **What does this mean?**

This covers everything you do in relation to admission arrangements including:

- information about the school and application process
- admissions criteria
- entrance exams and interviews.

#### **How do I avoid discriminating in my admission arrangements?**

Information about you as a school and how to apply for admission should not discriminate by suggesting that applications from people with certain protected characteristics would not be welcome, as this would be direct discrimination.

**Example**—A school whose catchment area is inhabited predominantly by people for whom Bengali is a first language produces its prospectus only in English. This may suggest that only pupils for whom English is a first language are welcome at the school. If this resulted in Bengali parents not applying to the school, this is likely to be unlawful discrimination.

In relation to disabled people you should ensure that the information and application process is accessible to disabled people and make reasonable adjustments as necessary.

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<sup>2</sup> For further information on admissions please go to <http://www.governorswales.org.uk/law/>.

<sup>3</sup> See: <http://wales.gov.uk/docs/dcells/publications/090721SchoolAdmissionsCodeEN.pdf>; Note in particular paragraph 2.26 of the Code which deals with over subscription criteria.

## **Admissions criteria**

Although the use of admissions criteria is permitted you must ensure that the criteria you use do not discriminate, either directly or indirectly, against anyone with a protected characteristic.

Having criteria which exclude people with a particular protected characteristic will be direct discrimination. Direct discrimination is always unlawful.

Indirect discrimination may occur if admissions criteria exclude a greater proportion of pupils from particular categories unless you can show that your criteria are a proportionate means of achieving a legitimate aim.

You should also ensure that disabled people are not discriminated against because of something arising in consequence of their disability, unless you can show it is a proportionate means of achieving a legitimate aim.

Reviewing your admissions criteria regularly will help you to ensure that they do not inadvertently exclude people with a particular characteristic.

You will need to have arrangements in place to deal with the reasonable adjustment needs of disabled candidates.

Examples of discriminatory criteria might include:

- fixed proportions of boys or girls in a co-educational school
- catchment areas that disproportionately exclude pupils from particular groups, unless it can be justified (for example, on nearness to the school)
- applying factors to one racial group which are not applied to another racial group
- using different cut-off points in attainment scores for girls and boys and children of
- different faiths setting or nationalities.

## **Selective schools**

If you are a partially selective school, such as one with a specialism, you can select up to 10 per cent of pupils on the basis of aptitude in prescribed subjects.

If you are an independent school, you can select pupils based on your own criteria which can include academic ability.

If you are a selective school, you are not discriminating by applying these forms of selection to disabled children who apply but you still have a duty to make reasonable

adjustments. This is explained in more detail below under the heading 'permitted forms of selection'.

As a selective school you must apply the selective criteria consistently to everyone who applies.

**Example**— A selective school imposes a higher pass mark for applicants from an ethnic minority background, or to girls. This would be direct race or sex discrimination.

Local authorities also have a duty to ensure that there are sufficient places available for all girls and boys who meet the pass mark for selective schools.

### **Entrance exams**

If you are a selective school (as described above) you may use entrance exams or assessments (such as the 11+) to select your intake.

These tests, assessments or auditions must be objective and must not discriminate against applicants on grounds of any of the protected characteristics.

Tests and assessments must be accessible to children with disabilities and you must comply with your duty to make reasonable adjustments for disabled people who are being assessed. This may mean making reasonable adjustments to the assessment process such as making the test material available in an adapted format, allowing extra time or providing a scribe, depending on the individual needs of the child (see section 3.7).

## **3.5 You must not place terms on a person's admission to your school which are discriminatory**

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### **What does this mean?**

Although most schools do not place terms on a person's admission, some do and, while in some situations it may be appropriate to place terms on a person's admission (such as the payment of fees if you are an independent school), these terms should not be discriminatory.

### **How do I avoid discriminating in relation to admission terms?**

You should ensure that you do not offer admission to a person with a protected characteristic on terms which are less favourable than those which are or would be offered to someone without the protected characteristic.

Examples of discriminatory terms may include:

- charging higher fees for boys than girls
- only allowing disabled pupils to attend on a part-time basis when other pupils are allowed to attend on a full-time basis.

**Example**—Gareth is gay. He is offered a place at an independent school on the condition that he hides his sexual orientation and pretends that he is straight (heterosexual). This would be unlawful sexual orientation discrimination.

### **3.6 You must not refuse to admit a person as a pupil for discriminatory reasons**

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#### **What does this mean?**

Refusing to admit a person because of a protected characteristic is unlawful. If you are a single-sex school there are exceptions for admissions to enable you to restrict admission to pupils of one sex. If you are a school with a religious character there is an exception for admissions to enable you to have admissions criteria which give preference to members of your own religion. This is explained in more detail in section 3.7.

#### **How do I avoid discriminating in relation to admission decisions?**

If your admissions criteria are non-discriminatory (see section 3.5 above) and you follow them then you are unlikely to refuse admission to a person for a discriminatory reason. Those making admissions decisions should be aware of the school's obligations under the Equality Act 2010 and take care not to make assumptions about applicants that may lead to unlawful discrimination. Any refusal to admit an applicant should be for a legitimate reason set out in the admissions criteria and not for any other reason.

Discriminatory reasons may include:

- refusing to admit a disabled pupil with behavioural difficulties because you are concerned that they will be disruptive
- refusing to admit a child for whom English is a second language.

**Example**—The admissions tutor for an independent school interviews Lois, an applicant who has cerebral palsy which makes her speech unclear. The tutor assumes that Lois also has learning difficulties and refuses to admit her as he thinks she will be unable to cope with the highly academic environment of the school. This would be unlawful disability discrimination.

### 3.7 Exceptions

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#### Admission to single-sex schools

As a single-sex school you are permitted to admit pupils of only one sex and this would not constitute sex discrimination. This applies if you are a single-sex school that admits pupils of the opposite sex on an exceptional basis or admits them in comparatively small numbers only to particular courses or classes. This also applies if you are a mixed-sex school which has single-sex boarding. There are special transitional provisions if you are a single-sex school that ceases to be a single-sex school and turns co-educational.

This means that if you are a school which admits only boys you are not discriminating unlawfully against girls. And even if the daughters of certain staff members at the boys' school are allowed to attend, you are still regarded as a single-sex school and are not discriminating unlawfully against girls by not admitting any girls other than daughters of staff.

If you are a boys' school which admits some girls to the Sixth Form, or which lets girls attend for a particular GCSE course not offered at their own school you are still regarded as a single-sex school. You are not discriminating unlawfully if you refuse to admit girls to classes and other courses other than the particular ones for which you have made an exception.

**Example**— A boys' school which takes the decision to admit girls exceptionally to A level science classes is not discriminating unlawfully if it refuses to admit them to A level media studies or maths classes.

In the example above the school would be acting unlawfully if it did not allow the female pupils access to the school library on the same terms as boys.

These exceptions only apply to admissions and do not apply to the provision of education, or access to benefit, facility or service or exclusion.

So if as a single-sex school you do admit some pupils of the opposite sex, you must not discriminate against them in the provision of education, or access to any benefit, facility or service or by excluding them.

If you are a co-educational school which only offers boarding to one sex you are not acting unlawfully by not offering boarding to both sexes. So if you are a mixed-sex school which has facilities for female boarders you can lawfully state in your prospectus that boys cannot be accepted as boarders.

### **Schools with a religious character**

If you are designated as a school with a religious character you are exempt from the requirement not to discriminate on grounds of religion or belief in relation to admissions. This means that you may have admissions criteria which give preference to members of your own religion. If you are a maintained school with a religious character you must still comply with the School Admissions Code and therefore the criteria are only used to determine who is admitted if you are oversubscribed. In practice this might mean that you are unable to impose religious criteria if you are not oversubscribed, or you might be able to select all of your pupils on religious grounds if you are heavily oversubscribed.

This exception does not allow you to discriminate on any other of the prohibited grounds, such as sex, race or sexual orientation.

**Example**—A Muslim school may give priority to Muslim pupils when choosing between applicants for admission. However, the school may not discriminate between pupils based on other protected characteristics, such as by refusing to admit a child of the school's own faith because she is of African origin or a lesbian.

### **Disabled pupils and selection on academic ability or aptitude**

If you are a selective school selecting on the basis of academic ability or aptitude as described in section 3.4, it is not unlawful for you to apply the same selection criteria to disabled children who apply for admission.

**Permitted forms of selection are** selection by ability and aptitude in accordance with the School Standards and Framework Act 1998 as set out in section 3.4.

So if a child with learning difficulties fails your entrance exam you can lawfully reject their application for admission even though the reason they failed the exam is because they are disabled.

However, you must comply with your duty to make reasonable adjustments which may include making adjustments to the assessment process, for example, providing the exam paper in large font for a visually impaired pupil, or allowing rest breaks for a pupil with ME.

The permitted form of selection exception does not allow you to refuse admission to any disabled child, it just allows you to refuse admission to a child whose disability prevents them from meeting the academic level required for entry to the school.

## Section 4 |

# Providing education and access to any benefit, service or facility

### 4.1 Introduction

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You must not discriminate against a pupil at your school in the provision of education or access to any benefit, facility or service. It is the 'responsible body' of a school that is responsible for ensuring there is no discrimination in relation to education or access to any benefit, facility or service. Any reference to 'school' in this section means 'responsible body of a school'.

### 4.2 What does the Act say?

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You must not discriminate against, or victimise a pupil:

- in the way you provide education for the pupil
- in the way you afford the pupil access to a benefit, facility or service
- by not providing education for the pupil
- by not affording the pupil access to a benefit, facility or service
- by subjecting the pupil to any other detriment.

You must not harass a pupil.

### 4.3 What is covered?

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Your duty to pupils covers everything that you provide for pupils and goes beyond just the formal education you provide. It covers all school activities such as extra-curricular and leisure activities, afterschool and homework clubs, sports activities and school trips, as well as school facilities such as libraries and IT facilities.

## 4.4 What is not covered?

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### Curriculum content

These obligations do not apply to anything done in connection with the content of the curriculum. This means that you are not restricted in the range of issues, ideas and materials you use in your syllabus and can expose pupils to thoughts and ideas of all kinds, however controversial. Even if the content of the curriculum causes offence to pupils with certain protected characteristics, this will not make it unlawful unless it is delivered in a way which results in harassment or subjects pupils to discrimination or other detriment.

**Example**—A school curriculum includes teaching of evolution in science lessons. This would not be religious discrimination against a pupil whose religious beliefs include creationism. Although Jewish pupils may find studying the holocaust very upsetting it is not unlawful for a school to cover this topic.

### Activities which take place on school premises but are provided by someone else (who is not acting as an agent for the school)

If school premises are used by other organisations to run activities or provide services which are not connected with the school then you would not be responsible for the activities or services provided, although you may have obligations towards members of the public who use your premises or facilities in these circumstances.

**Example**—A holiday club uses a primary school's premises during school holidays. The holiday club is run by a private company not connected with the school. The primary school is not responsible for the actions of the holiday club. The holiday club will have obligations under the Act as a service provider.

## 4.5 How do I avoid discriminating in the provision of education (and benefits, services and facilities)?

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Regular reviews of your practices, policies and procedures will help to ensure that there is no discrimination against pupils with a protected characteristic.

Effective staff training is a useful tool in ensuring that all your staff are fully aware of the requirements of the Act and the implications of this for your education provision and delivery. This should help you to avoid unlawful discrimination.

Treating a pupil less favourably because of a protected characteristic, such as not allowing them to participate in a particular activity which other pupils are allowed to participate in is likely to be direct discrimination which is always unlawful.

**Example**—A sixth form secondary school pupil who is undergoing gender reassignment is told the school won't put him forward for a volunteering opportunity at a local community centre because staff at the centre may be 'uncomfortable' with his transitioning. This is likely to be direct discrimination because of gender reassignment.

Indirect discrimination can occur without you intending it to but this does not prevent it from being unlawful. Indirect discrimination can occur when your policies, criteria and practices inadvertently result in pupils with a particular characteristic being treated worse than other pupils.

**Examples**—

- A school which has a number of Muslim pupils does not provide Halal food in its canteen which results in the Muslim pupils being unable to have school lunches. This is likely to be unlawful indirect religion or belief discrimination as the school is unlikely to be able to justify this action.
- A school with a significant proportion of Jewish pupils arranges extra-curricular drama sessions on a Saturday morning. This is likely to result in indirect religion or belief discrimination unless the school can justify holding the sessions at a time when Jewish pupils may not be able to attend.

Indirect discrimination can only be justified if the policy, criterion or practice is a proportionate means of achieving a legitimate aim. For example, the same school (in the second example, above) arranges school sports matches for Saturday morning as this is when the local school league matches are played, this is likely to be a proportionate means of achieving a legitimate aim and therefore lawful.

Discrimination arising from a pupil's disability can also occur inadvertently if you treat a disabled pupil badly because of something arising in consequence of their disability and cannot justify this as a proportionate means of achieving a legitimate aim.

**Example**—A school won't allow Dylan, who is HIV positive, to take part in physical education lessons as they fear that if he is injured he will be a risk to other pupils. As the reason for the treatment is based on general assumptions rather than a specific risk assessment the school is unlikely to be able to justify the treatment. This is likely to be unlawful disability discrimination.

You need to have arrangements in place to ensure you deal with the reasonable adjustment needs of your disabled pupils.

If your school is a maintained school the equality duties will help to ensure that all your school activities are non-discriminatory. For example, you should already be carrying out equality impact assessments under race, disability and gender equality duties and these will provide a useful platform on which to meet your legal responsibilities under the Act towards people with a range of protected characteristics (please see section 8 for more details).

### **Curriculum delivery**

The way in which the curriculum is delivered is covered by the Act so you must ensure issues are taught in a way that does not subject pupils to discrimination. In addition, what is taught in the curriculum is crucial to tackling key inequalities for pupils including gender stereotyping, preventing bullying and raising attainment for certain groups.

#### **Examples—**

- A teacher of A level English uses discussions about the *The Taming of the Shrew* to make derogatory generalisations about the inferiority of women, in a way which makes the girls in the class feel undermined and that they are being treated less favourably than the boys in relation to the English curriculum. This is likely to be unlawful sex discrimination.
- A school reviews the subjects it covers in PSHE and ensures they include equality and diversity including gender equality and non-violent, respectful relationships between boys and girls, women and men. This is good practice.

Teaching staff should be encouraged to think about the way they deliver their teaching to ensure that they do not inadvertently discriminate against pupils.

### **Examples—**

- Requiring pregnant schoolgirls to attend parenting classes at the local college at the same time as science GCSE classes would be unlawful direct discrimination on the grounds of pregnancy and maternity.
- Offering the classes at a different time so that prospective parents, both girls and boys, could attend science and parenting classes would be good practice and help the school to avoid unlawful discrimination.

### **Academic options**

Indirect discrimination may occur when pupils with particular protected characteristics are discouraged from taking part in academic opportunities or from studying certain subjects, or certain opportunities are promoted to some pupils but not others.

**Example—**To assist pupils in making GCSE subject choices a school arranges careers talks. A talk on careers in engineering is presented to boys and a talk on careers in nursing is given to girls. Setting up gender segregated careers talks which has the effect of preventing pupils of either sex to attend either talk is likely to be unlawful indirect sex discrimination.

Making assumptions about a person's ability to excel in a subject due to a protected characteristic could lead to unlawful discrimination.

### **School trips**

School trips, including field trips and residential trips are often an important part of school life for pupils. You should seek to ensure that any trips that you arrange do not discriminate against any of your pupils. However, in some limited cases it may be impossible to make a school trip accessible for all pupils and the learning needs of other pupils should be part of the decision making process. Cancelling the trip because a disabled pupil can't attend where it puts other pupils at a disadvantage may not be the best or only decision.

**Example**—A school plans a trip to a natural history museum. Nerys has Down's syndrome. She is excluded from the trip as the school believes she will not be able to participate in the activities provided by the museum for school groups. This is likely to be unlawful direct disability discrimination.

Forward planning will assist you in arranging trips which all pupils are able to participate in. Offering a range of different trips and activities may also help to ensure no pupils are excluded from taking part.

Arranging residential trips that coincide with religious festivals or holidays might prevent pupils from certain religions being able to attend and result in indirect discrimination.

The risk assessments that you carry out in relation to school trips should include a consideration of the reasonable adjustment needs of disabled pupils and it is good practice to seek ways of including rather than excluding such pupils on trips.

**Example**—As part of their risk assessment for a school trip to an outdoor activity centre, school staff visit the centre and speak with staff to decide what reasonable adjustments are needed for disabled pupils to fully participate on the trip. Some pupils have mobility issues so hoists are provided for these pupils for rock-climbing activities. Support staff attend the trip to assist pupils with higher level needs and all staff receive medical training. This is an example of making reasonable adjustments for disabled pupils and demonstrates a good practice approach to inclusion.

### **Identity - based bullying**

As a school you have legal duties to your pupils in relation to bullying and you must ensure that you treat all bullying on the grounds of a protected characteristic with the same emphasis as any other form of bullying.

**Example**—Steffan is a sixth form pupil. He is bullied for being bisexual and although he reports the bullying to a teacher no action is taken as the teacher believes that it is just a bit of banter and he deserves 'some teasing' if he is going to say he is bisexual. This is likely to be direct sexual orientation discrimination.

## School uniform

It is important that you ensure that your school uniform policies do not discriminate against pupils with a protected characteristic. If you are a maintained school you should be reviewing your uniform policies and dress codes both to ensure they do not have the effect of unlawfully discriminating against pupils with a protected characteristic and to comply with your equality duties.<sup>3</sup> You should consider making exceptions to your standard policies for certain pupils but also ensure that you are not setting different rules for different categories of pupils that might be discriminatory – for example requiring girls to wear clothing that is much more expensive than that for boys.

Examples of policies that might be discriminatory are:

- a general rule of no head gear in school which requires a Sikh pupil to remove his turban
- not making reasonable adjustments to school uniform requirements for disabled pupils who require them, for example, not allowing a disabled child who is allergic to the regulation nylon trousers to wear cotton ones
- requiring pupils to dress (or not to dress) in a way that conflicts with a genuine religious requirement of their religion or belief.

## Work experience / placements

Pupils should be given the same opportunities for work experience and placements and assumptions shouldn't be made about what would suit pupils with particular protected characteristics; for example, assuming that only boys would be interested in placements involving bricklaying or car maintenance or that only girls would be interested in hairdressing.

Although you are unlikely to be held to be responsible for any discrimination which occurs while a pupil is on work experience, putting in place effective communication with work experience providers and supporting pupils while they are on placement will help to reduce the chances of discrimination during work experience.

## Assessments and exams

As well as public exams such as GCSEs, which are set by external bodies, you will be assessing pupils regularly using a variety of methods. Reviewing your

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<sup>4</sup> Note Welsh Government guidance on School Uniforms; in particular, section 2: [wales.gov.uk/topics/educationandskills/publications/guidance/uniform/?lang=en](http://wales.gov.uk/topics/educationandskills/publications/guidance/uniform/?lang=en).

assessment methods will help you to ensure that you do not discriminate when assessing pupils. Assuming a uniformity in pupils' cultural, linguistic, religious or lifestyle experiences could result in you indirectly discriminating against pupils from particular racial groups.

You may need to make reasonable adjustments during assessment for disabled pupils such as extra time or rest breaks, or to the assessment method such as allowing a disabled pupil to submit their work in an accessible format.

In determining what is reasonable you should bear in mind the need to :-

- minimize the extent to which disabled pupils are disadvantaged because of their disabilities;
- ensure that the assessment gives a reliable indication of the knowledge , skills and understanding of the pupil concerned
- Maintain public confidence in the assessment

### **Behaviour and discipline**

Reviewing behaviour and discipline policies regularly will help you to ensure that they do not inadvertently discriminate. Thinking about the reasons behind a pupil's behaviour may help you to identify instances of bullying or disability-related behaviour. Section 5 deals with exclusions from school

## **4.6 Religion and Belief Exceptions**

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### **Collective worship**

Acts of worship and other religious observance organised by you are not covered by the provisions prohibiting religious discrimination whether or not it is part of the curriculum.

This means that you (even if you are not a school with a religious character) can carry out collective worship of a broadly Christian nature (as maintained schools are required to under other legislation) without this being unlawful under the Equality Act.

The Equality Act does not require you to provide opportunities for separate worship for the different religions and beliefs represented among your pupils.

You are free to organise or to participate in ceremonies and festivals celebrating any faith, such as Christmas, Diwali, Chanukah or Eid, without being subject to claims of religious discrimination against children of other religions or of none.

Parents can remove their children from collective worship and sixth form pupils can choose to withdraw themselves.

### **Schools with a religious character**

As a school designated with a religious character you are exempt from the requirement not to discriminate on grounds of religion or belief in relation to admissions and in the provision of education and in access to any benefit, facility or service. The Act does not inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to expose pupils to thoughts and ideas of all kinds. This means that as a school with a religious character you do not have to make special provision for pupils of a different faith or incorporate aspects of their faith into your curriculum.

However, the Act provides that you must not discriminate on any of the other prohibited grounds and you must teach the curriculum in such a way which does not subject pupils to discrimination on any other of the prohibited grounds. Nor can you discriminate on religious grounds by excluding a pupil or subjecting them to any other detriment.

If you convey your beliefs in a way that involves haranguing or berating a particular pupil or group of pupils then this would be unacceptable in any circumstances and would constitute unlawful discrimination.

### **Examples—**

- A teacher at a Church of Wales school tells pupils that homosexuality is ‘wrong’ and that gay and lesbian people will ‘burn in hell’ unless they are ‘cured of the disease’. A gay pupil in the class is deeply offended and intimidated by this hostile and degrading language. This may be unlawful direct discrimination on the grounds of sexual orientation.
- A Jewish school which provides spiritual instruction or pastoral care from a rabbi is not discriminating unlawfully by not making equivalent provision for pupils from other religious faiths.
- A Roman Catholic school which organises a visit for pupils to Lourdes is not discriminating unlawfully by not arranging a trip to Mecca for two Muslim pupils at the school.

A school with a religious character would be acting unlawfully if it sought to penalise or exclude a pupil because he or she had renounced the faith of the school or joined a different religion or denomination.

## Section 5 |

# Exclusion from school

### 5.1 Introduction

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You must not discriminate against or victimise a pupil by excluding them (either temporarily or permanently) from your school.

### 5.2 What does the Act say?

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You must not discriminate against a pupil by excluding the pupil from the school. You must not victimise a pupil by excluding the pupil from the school.

### 5.3 How this fits in with other legal obligations on schools in relation to exclusions from school

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Nothing in the Equality Act 2010 requires you to act in a way which is inconsistent with other legal obligations relating to exclusions from school. In fact, following the exclusion guidance and any other government guidance is likely to reduce the risk of you discriminating in relation to exclusions.

**Maintained schools (including Pupil Referral Units)** must comply with Guidance on Exclusion from Schools and Pupil Referral Units produced by the Welsh Government and available from their website ([www.wales.gov.uk](http://www.wales.gov.uk)). The exclusions guidance makes it clear that pupils should only be excluded from school as a last resort and that exclusions should only be made on the grounds of a pupil's behaviour. Nothing in the Act conflicts with this guidance.

**Independent schools** do not have to follow the exclusions guidance from the Welsh Government. However, they must comply with the Equality Act and must not discriminate against pupils by excluding them or subjecting them to any other detriment. Their exclusions policies must not be discriminatory.

## 5.4 You must not discriminate against a pupil by excluding them from school

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### What does this mean?

This does not mean that you cannot exclude a pupil with a protected characteristic and there may of course be occasions when it is appropriate to exclude a pupil with a protected characteristic.

**Example**—Two pupils are caught fighting, one who is a boy is excluded, and the other who is a girl is not excluded. This would be unlawful sex discrimination. However, if the school could show that the reason the boy was excluded was that this was the third time he had been in trouble for fighting and it was the first time the girl had been fighting they would be able to justify the difference in treatment.

However, it does mean that you must not exclude a pupil because of their protected characteristic.

### Examples—

- An independent school finds out that a pupil has been diagnosed as autistic and immediately excludes him. This would be unlawful direct disability discrimination.
- A Catholic school excludes a pupil who has turned away from the Catholic faith and declared himself an atheist. This would be unlawful direct religion or belief discrimination.
- Also pupils with a protected characteristic must not be excluded for behaviour that pupils without the protected characteristic would not be excluded for.

It also means that the procedures you use for deciding what punishment a pupil will receive and for investigating incidents must not discriminate against pupils with a particular protected characteristic.

**Example**—As part of their procedures for investigating and deciding on a punishment, a school arranges for parents or guardians of pupils to come into the school and discuss a course of action with the head teacher. In cases where

parents cooperate with the head teacher and are shown to be committed to assisting the pupil to manage their behaviour it is less likely that the pupil will face exclusion.

This procedure may indirectly discriminate against the Gypsy and Traveller pupil whose parents may be less likely to come to the school to speak with the head teacher as they face a range of barriers including a lack of confidence in speaking to school staff and a level of mistrust based on a perception that they are not valued by the school community.

The school reviews their procedures and puts specific measures in place to assist Gypsy and Traveller parents, including an outreach programme with a dedicated member of staff to build trust with the parents so they can get more involved in the school community and their child's education. This is good practice which can help avoid indirect discrimination.

Excluding a disabled pupil for behaviour which arises as a consequence of their disability is likely to result in unlawful disability discrimination unless you can show that the exclusion was a proportionate means of achieving a legitimate aim.

**Example**—Hedd, a pupil with ADHD is excluded for his behaviour including refusing to sit at his desk, distracting other pupils by talking and running around during classes. Hedd has been cautioned previously and the school does not see any other option than to exclude him. This is likely to be unlawful discrimination as he was excluded for behaviour which is related to his disability. It is unlikely to be a proportionate means of achieving a legitimate aim as no other efforts were made to support Hedd to manage his behaviour.

In addition you have a duty to disabled pupils to make reasonable adjustments to your procedures if needed. This might include:

- disregarding behaviour which is a direct consequence of their disability
- making reasonable adjustments to manage such behaviour
- considering alternative, more appropriate punishments, and
- ensuring that a disabled pupil is able to present their case fully where their disability might hinder this.

**Example**—Guto, a pupil with Tourette syndrome involuntarily yells out and sometimes swears in class as a result of his disability. This behaviour is disregarded by the school and he is not punished when this occurs.

In the above example, the school puts an inclusion strategy in place for the pupil with ADHD. This includes providing a support worker, implementing specific behaviour management techniques, and using positive discipline and reward methods. When any behaviour that is related to the pupil's disability does occur, the teacher does not punish him but rather uses one of the agreed strategies to manage it effectively. These reasonable adjustments assist the pupil in managing his behaviour and improve his educational outcomes.

**Examples—**

- Nia has learning difficulties and sometimes becomes disruptive in the classroom. As part of the school's differentiated behaviour management strategy she is given time out of class to work with her support worker and positive rewards on a daily basis for good behaviour rather than punitive punishments such as detention.
- A school wishes to speak with Huw, who has autism, to find out why he acted aggressively towards other pupils. Huw finds unfamiliar situations very stressful which has a negative effect on his communication. In order for Huw to be enabled to best explain his actions, the school works with his support worker so he is prepared for the meeting, and the meeting is held in a familiar space.

## **5.5 How do I avoid discriminating in relation to exclusions from school?**

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Reviewing your behaviour and exclusions policies regularly will help you to ensure that they do not inadvertently discriminate against pupils with a particular protected characteristic by including factors that would make it more likely that pupils with that particular protected characteristic would be disciplined or excluded than those without.

Indirect discrimination may occur if behaviour or exclusions policies result in a greater proportion of pupils with protected characteristics being disciplined or excluded.

**Example**—A school’s blanket exclusion policy of ‘three strikes and you’re out’ is found to be indirectly discriminating against Gypsy and Traveller pupils. Pupils from these communities are facing extreme levels of racially motivated bullying and are retaliating to the bullying which in turn was not being adequately investigated. The blanket exclusion policy was reviewed and incidents investigated on a case-by-case basis.

If your exclusions and behaviour policies are non-discriminatory (and you take into account your duty to make reasonable adjustments to your policies and procedures for disabled pupils) then you are less likely to exclude a pupil for a discriminatory reason. Those making decisions about discipline and exclusions should be aware of the school’s obligations under the Equality Act and take care not to make assumptions that may lead to unlawful discrimination.

If you are a maintained school the equality duties will assist you in trying to ensure that your policies and procedures do not discriminate against pupils.

**Example**—Under the equality duties, a maintained school carries out regular monitoring and evaluation of its data on exclusions for pupils with protected characteristics, and finds that a disproportionately high number of pupils who are either temporarily or permanently excluded are black boys and pupils with a learning difficulty. The school behaviour and discipline policies are prioritised for an equality impact assessment (EIA) which uncovers that certain aspects of the policy are discriminating against these pupils. This includes a lack of a differentiated behaviour policy for those on the autistic spectrum and with moderate learning difficulties, and a lack of awareness and training of teachers in relation to how to support black boys in the classroom. Following the EIA, a new policy is developed, with an action plan and training for staff, and a whole school behaviour and discipline strategy is implemented.

## Section 6 |

# Dispute resolution and enforcement

### 6.1 Introduction

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This section explains what happens if someone makes a complaint against you and what legal action they can take. It also explains what action may be taken to put right any discrimination, harassment or victimisation that is found to have taken place.

### 6.2 Resolving disputes

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It is usually in everyone's best interests to attempt to resolve disputes without the need for legal action. In many instances the pupil (or their parent acting on their behalf) who believes you have discriminated unlawfully against them will approach you before commencing legal proceedings. You are likely to have a complaints procedure which should be able to deal with complaints of discrimination, harassment and victimisation. The governing bodies of maintained schools are required under s.29 (1) of the Education Act 2002 to have a complaints procedure to deal with all complaints relating to the school.

It is good practice to make pupils and parents aware of your complaints procedure and to ensure it is accessible to everyone, for example, by making it available in different languages or formats if appropriate.

Defending a claim can be lengthy, expensive and draining, and it can have a damaging impact on your reputation. It is likely to be in everyone's interest to try to put things right before a claim is brought. However, you will want to decide whether the person making the complaint has cause for complaint or not.

Consider the information given in this guide. You will need to make a realistic assessment about whether what you or your staff and agents have done (or failed to do) amounts to discrimination, harassment or victimisation. You may need to

conduct an investigation into the complaint in order to form this view. You may need to get legal advice on this.

You must make reasonable adjustments to any internal complaints procedures to prevent disabled people from being placed at a substantial disadvantage in comparison with people who are not disabled. Failure to do so will itself amount to unlawful discrimination.

Although, as stated above, it is good practice to try to resolve disputes internally wherever possible, there are occasions where this will not be practical or appropriate, or a parent or pupil wants to pursue legal action rather than trying to resolve the dispute. There is no legal requirement to go through a complaints procedure first.

The Welsh Ministers can give directions, using powers under the Education Act 1996, to require a maintained school or non-maintained special school to comply with its obligations under the Equality Act. This enables the Welsh Ministers to require a school to stop a discriminatory practice or policy even if no complaint has been brought by an individual pupil or prospective pupil.

The questions procedure (explained in section 6.5 below) may in fact resolve a dispute without the need for further action.

### **6.3 Conciliation / mediation**

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If the matter cannot be resolved through your internal complaints procedure then there are various mediation and conciliation services that might assist you in resolving the dispute.

#### **Local authority dispute resolution services**

Local authorities (LAs) must have in place independent disagreement resolution services to deal with disputes between disabled children and schools in relation to alleged discrimination under the schools provisions of the Act. This is in addition to the independent disagreement services to deal with disputes between parents and schools and to deal with disputes between pupils and schools in relation to special educational needs disputes.

*Continued...*

## Independent advocacy services

Local authorities must put in place independent advocacy services which a disabled child or the case friend of a disabled child can be referred to on request. These services should provide advice and assistance, including representation, to a disabled child who is either making, intending to make or considering making a claim of disability discrimination under the schools provisions of the Act or is taking part in or intending to take part in dispute resolution arrangements

## 6.4 Where claims are made

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If the matter isn't resolved through internal complaints procedures or mediation then a pupil (or their parent) may decide to take a legal claim against you. Where the pupil (or parent) makes a claim depends on the type of discrimination (harassment or victimisation) which they allege has taken place.

If the claim is in relation to any of the protected characteristics other than disability it will be made to a county court. More details about claims to a county court are provided in section 6.6.

Disability discrimination claims are made according to the following table:

Claims about permanent exclusions from schools maintained by LAs, including community schools, voluntary-aided and voluntary-controlled schools and foundation schools	Education Appeal Panels
Admission decisions for schools maintained by LAs, including community schools, voluntary-aided and voluntary- controlled schools and foundation schools	Education Appeal Panels
All other claims (including all claims against independent schools)	Special Educational Needs Tribunal for Wales

More details about disability discrimination claims are provided in section 6.8.

## 6.5 The general principles that apply to discrimination cases brought in a court, tribunal or appeal panel

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### Obtaining information ('the questions procedure')

The questions procedure was abolished on 6 April 2014. It will continue to apply to complaints about breaches of the Act that happened before 6 April 2014. It will remain good practice for a pupil (or his or her parent on his or her behalf) who thinks that they may have been unlawfully discriminated against, harassed or victimised to seek relevant information before issuing a formal claim. This may prevent the complaint escalating to a formal claim.

The Government Equalities Office has issued a good practice guide on asking and responding to questions about discrimination in the provision of services and public functions including education services.

The guide can be found at [www.gov.uk/government/publications/asking-and-responding-to-questions-of-discrimination-in-the-provision-of-goods-and-services-and-public-functions](http://www.gov.uk/government/publications/asking-and-responding-to-questions-of-discrimination-in-the-provision-of-goods-and-services-and-public-functions).

If someone thinks they may have been discriminated against, harassed or victimised because of a protected characteristic, they can try to obtain information from you to help them decide if they have a valid claim or not.

There is a set form to help a person seeking such information (see [www.homeoffice.gov.uk/equalities](http://www.homeoffice.gov.uk/equalities)), but their questions will still count even if they do not use the form, so long as they use the same questions.

If this happens to you, you should reply to the request. You are not legally required to reply, or to answer the questions, but it may harm your case if you do not. Follow the instructions in the form.

The questions and the answers can form part of the evidence if the case goes to court or tribunal.

If you do not respond to the questionnaire within eight weeks, then the court or tribunal can take that into account when making a judgment. The court or tribunal can also take into account answers which are evasive or unclear, except where the failure to respond is because answering differently might prejudice a criminal matter.

## 6.6 Claims brought in the county court

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All claims except those which relate to disability discrimination are made in a county court. You can find more information about procedures in the county court at:

[www.hmcourts-service.gov.uk/](http://www.hmcourts-service.gov.uk/)

### Who can make a claim?

Anyone can make a claim to a county court if they believe that you have discriminated against, harassed or victimised them. A person who does not have mental capacity, or who is under 18 will have to make a claim through a 'litigation friend' who is an adult appointed to conduct the claim on their behalf (often, but not always, their parent).

### Time limits

A claim must normally be started within six months of the alleged discrimination. Where there has been a continuing process of discrimination taking place over a period of time, the six months begins at the date of the last discriminatory act. Courts have the discretion to consider a claim brought outside the six-month period if they consider that it is fair to do so.

### Remedies

A county court can:

- Declare that you have unlawfully discriminated against, harassed or victimised the person making the claim, or declare that no unlawful discrimination, harassment or victimisation has taken place.
- Impose an injunction requiring you to do something (such as admit the child as a pupil) or to prevent you from repeating any discriminatory act in the future.
- Order you to pay compensation including compensation for injury to feelings.
- Order you to pay interest on any compensation.
- Order either party to pay costs.

## 6.7 Disability discrimination Tribunal claims

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### What claims can the Tribunal hear?

Disability discrimination claims against schools are heard by the Special Educational Needs Tribunal for Wales, except for claims about:

- maintained school admissions decisions (these are heard by admission appeal panels which are covered later in section 6.8), or permanent exclusions from maintained schools (these are heard by exclusion appeal panels which are covered later in section 6.9).
- All disability discrimination claims against independent schools are heard by the Special Educational Needs Tribunal for Wales.

### Time limits

Claims must be made within six months of the alleged discrimination. Where there has been a continuing process of discrimination taking place over a period of time, the six months begins at the date of the last discriminatory act.

The Tribunal can (but does not have to) consider a claim which is out of time.

The Tribunal regulations set the timescale for the processing and hearing of claims including the deadline for sending in further information or evidence. This information is available from the Tribunal website and in guidance produced by the Tribunal (see: [www.sentw.gov.uk](http://www.sentw.gov.uk)).

### What can the Tribunal order?

The Tribunal may make any order it thinks appropriate in that individual case, often with the intention of trying to remedy the damage done to the disabled person and reduce any future disadvantage.

The Tribunal cannot order the payment of compensation but can order you to apologise to a pupil, to carry out staff training and/or to change your policies and procedures.

### Who can make a claim?

The parents of a disabled child can make a claim that their child has been discriminated against.

In Wales there is now provision for a child to make a disability discrimination claim to the Tribunal in their own right. This new right is initially being tested in two pilot

schemes in Wrexham and in Carmarthenshire. At the end of the pilot schemes it is anticipated that children and young people across Wales will have the same right to bring a claim.

## **6.8 Disability discrimination claims against admission decisions of maintained schools in Wales**

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### **Admission appeal panels**

Admission appeal panels are independent appeal panels set up (by the admissions authority for the school) to hear appeals against admissions decisions for maintained schools. They also deal with disability discrimination claims in relation to admissions decisions for maintained schools.

They cannot deal with discrimination claims in relation to any other protected characteristics; these are dealt with by the courts (see section 6.6).

They cannot hear disability discrimination claims about admission decisions of independent schools; these are heard by Tribunals (see section 6.7).

They cannot hear disability discrimination claims about admissions arrangements or about terms being placed on a person's admission; these are heard by Tribunals (see section 6.7).

### **Time limits**

The appeals are organised by admission authorities following admission decisions, who are responsible for the timetable for the appeals. Parents are advised of the time limits and procedure at the same time as they are advised of the admissions decision.

### **What can the panel order?**

An admissions appeal panel can overturn the decision and order you to admit the child. [The admission appeal panel must either uphold or reject an appeal. It cannot uphold an appeal subject to conditions. An appeal panel's decision that a child should be admitted to a school is binding on (i) the local authority or the governing body by whom or on whose behalf the decision under appeal was made, and (ii) the governing body of a community or voluntary controlled school at which the panel determines that a place should be offered to the child in question.]

### **Who can make a claim?**

The parent of a disabled child can appeal the decision (and make a claim of disability discrimination).

In the case of a decision about sixth form education a young person and/or their parent has a right of appeal (and therefore the right to make a claim of disability discrimination) against the decision.

### **Procedure**

The rules and procedures for admission appeal panels are set out in detail in the Schools Admission Appeals Code produced by the Welsh Government and available from their website ([www.wales.gov.uk](http://www.wales.gov.uk)).

## **6.9 Disability discrimination claims against permanent exclusions from maintained schools**

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### **Independent Appeal Panels (for exclusion)**

Independent Appeal Panels (IAPs) are panels set up by local authorities to hear appeals against permanent exclusions from maintained schools, including Pupil Referral Units. They also deal with disability discrimination claims in relation to permanent exclusion from maintained schools, short stay schools and Pupil Referral Units.

They cannot deal with discrimination claims in relation to any other protected characteristics; these are dealt with by the courts (see section 6.6).

They cannot hear disability discrimination claims in relation to permanent exclusion from an independent school; these are heard by Tribunal (see section 6.7).

They cannot hear disability discrimination claims about fixed-term exclusions; these are heard by the Tribunal (see section 6.7).

### **Time limits**

The claim is made as part of the appeal against the permanent exclusion and therefore is made at the same time.

The deadline is 15 school days from receiving the decision of the Governing Body's Discipline Committee confirming the exclusion.

The IAP hearing must take place no later than the 15th school day after the day the appeal was lodged.

### **What can the panel order?**

An IAP can:

- uphold the exclusion
- overturn the exclusion and direct that the pupil is to be reinstated, or
- overturn the exclusion but not order reinstatement. This would happen if the panel felt that for exceptional or practical reasons it would not be appropriate for the child to return to that particular school.

### **Who can make a claim?**

The parent of a disabled child can appeal (and make a claim of disability discrimination) against the permanent exclusion of their child from a maintained school or Pupil Referral Unit.

A disabled pupil who was 11 years old (or older) at the start of the school year can appeal and make a claim.

### **Procedure**

The rules and procedure for IAPs are set out in Part 4 of Guidance on Exclusion from Schools and Pupil Referral Units produced by the Welsh Government and available from their website ([www.wales.gov.uk](http://www.wales.gov.uk)).

## Section 7 |

# Schools providing further education

### 7.1 Introduction

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As a school providing courses of further education you must not discriminate against, harass or victimise a person who is enrolled on a course or seeks enrolment on a course.

Unlike your obligations to your pupils, your obligations to people enrolled on FE courses include the protected characteristic of age.

**Example**—A school offers a further education course in plumbing but restricts it to people aged under 55. This would be unlawful age discrimination unless the school could show it was a proportionate means of achieving a legitimate aim. (Unlike the other protected characteristics, direct age discrimination is open to justification in this way.)

### 7.2 What does the Act say?

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You must not discriminate against or victimise a person:

- in the arrangements you make for deciding who is enrolled on the course
- as to the terms on which you offer to enrol a person on the course
- by not accepting a person's application for enrolment
- in the services you provide or offer to provide to a person enrolled on a course.

You must not harass a person who:

- seeks enrolment on a course
- is enrolled on a course
- is a user of services you provide in relation to the course. Harassment in this context covers all protected characteristics.

## 7.3 What does this mean?

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If you are a maintained school providing further education which is:

- part-time education for people (other than pupils) over compulsory school age, or
- full-time education for people who are 19 or over

you must not discriminate, harass or victimise in relation to this further education.

Everything you do in relation to providing further education is covered by these obligations, including any information about the courses, enrolment, teaching and learning, and other services offered to people on the courses.

## Section 8 |

# The Public Sector Equality Duty

### 8.1 Introduction

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The Public Sector Equality Duty includes both a **‘general duty’** and additional **‘specific duties’** that apply to public bodies, including schools. The general duty is found under section 149 of the Equality Act and the specific duties are found in regulations made by the Welsh Government under the Equality Act.

This section looks at how you can comply with the Public Sector Equality Duty. Complying with the Public Sector Equality Duty is required by law.

For the purposes of this guidance, when referring to “school” or “you” we are primarily referring to the responsible body of a school. As a result, it is you the responsible body that must comply with the Public Sector Equality Duty. You are the decision-making body of the school and equality considerations (including full access to equality information and an oversight of impact assessments) must form an active part of your decision-making process.

Further information about responsible bodies of schools can be found in Annex B.

#### **The general duty**

You have a general duty when carrying out your functions to have due regard to the need to:

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

The protected characteristics are set out in Annex A. However, schools do not have to consider the protected characteristic of age when providing education to pupils or

when providing benefits, facilities or services to them. You do not therefore have to consider advancing equality of opportunity between pupils of different ages, nor do you have to consider how to foster good relations between pupils of different ages. This is a narrow exception that only applies in relation to age. You will still need to have due regard to the general duty in respect of each of the other protected characteristics.

Also, the exception only applies in relation to educating pupils and providing services to them. The exception does not apply in relation to your other functions, for example, you must consider the protected characteristic of age when acting in your capacity as an employer.

### **Due regard**

Due regard is regard that is appropriate in all the circumstances. You are required to consciously think about the three aims of the general duty as part of your decision-making process. It is you, as the decision-making body, that must have due regard.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- remove or minimise disadvantages suffered by persons due to their protected characteristics
- take steps to meet the needs of persons with protected characteristics where those needs are different from the needs of others
- 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 involves having due regard, in particular, to the need to:

- tackle prejudice, and
- promote understanding.

### **How do you fulfil the duty to have due regard?**

Six essential principles have developed that help explain how the general duty can be fulfilled.

- **Knowledge** – you need to be aware of the requirements of the general duty  
Compliance with the general duty involves a conscious approach and state of mind.

- **Timeliness** – the general duty must be complied with before and at the time that a particular policy is under consideration or a decision is taken – that is, in the development of policy options and in making a final decision. You cannot satisfy the general duty by justifying a decision after it has been taken.
- **Real consideration** – consideration of the three aims of the general duty must form an integral part of your decision-making process. The general duty is not a matter of box-ticking; it must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- **Sufficient information** – you must consider what information you have and what further information may be needed in order to give proper consideration to the general duty.
- **No delegation** – you are responsible for ensuring that any third parties which exercise functions on your behalf are capable of complying with the general duty, are required to comply with it, and that they do so in practice. It is a duty that you cannot delegate.
- **Review** – you must have regard to the aims of the general duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed. The general duty is a continuing duty.

### The specific duties

The specific duties in the **Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (the Regulations)** enable public bodies in Wales, including schools, to achieve better performance of the general duty. The Regulations seek to do this by focusing on achieving improved equality outcomes. Complying with the specific duties is not therefore simply about administrative processes and procedures – it is about generating positive equality outcomes.

When complying with the specific duties, you must consider the three aims of the general duty at all times. Therefore, a complete and thorough understanding of the general duty is vital to complying with the specific duties.

Four guiding principles shape the specific duties:

- **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 equality objectives have been set and reporting the progress of those equality objectives.
- **Leadership:** strong leadership which sets a positive culture and climate within the Welsh public sector to use resources effectively to help successfully discharge equality duties.

This section will cover the following specific duties:

- 8.2** Equality objectives and Strategic Equality Plans
- 8.3** Engagement
- 8.4** Assessing impact
- 8.5** Equality information
- 8.6** Employment information, pay differences and staff training
- 8.7** Procurement
- 8.8** Annual reporting and publishing.

### **What is appropriate?**

Many of the specific duties require you to make certain decisions as you consider 'appropriate'. What is appropriate will depend on the individual circumstances (including those of your school) but you must always consider the general duty. As a matter of good practice, you should also consider the four guiding principles set out above when deciding what is appropriate.

You must also act according to the usual principles of public law, i.e., you must act in a reasonable and proportionate manner, taking into account relevant considerations.

## **8.2 Equality objectives and Strategic Equality Plans**

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### **What the duty requires on equality objectives**

You must:

- prepare and publish equality objectives by 2 April 2012
- publish objectives that help you perform the general duty. If your school does not have an objective for each protected characteristic – in addition to any objective to address pay differences – you must publish reasons why not
- publish a statement setting out the steps you have taken or intend to take to meet the objectives and how long you expect to take to meet each objective

- make appropriate arrangements to monitor progress towards meeting your objectives and to monitor the effectiveness of your approach
- give appropriate consideration to relevant equality information you hold when considering what your equality objectives should be.

### **Objectives on pay difference**

You must:

- have due regard to the need to have objectives to address the causes of any pay differences that seem reasonably likely to be related to any of the protected characteristics
- publish an equality objective to address any gender pay gap identified or else publish reasons why you have not done so.

Even when you publish an equality objective to address pay differences in relation to any protected characteristic, you must still have due regard to the need to have other equality objectives in relation to that protected characteristic. If you publish no other such objective, you will need to explain why not.

### **Review and revision of objectives**

You must review all equality objectives at least once every four years.

You may revise or remake your equality objectives at any stage. If you do so, you must publish the new objective or revision and reflect any changes in your published statement about the timescale and steps for meeting your objectives. If a change is made to an equality objective on gender pay, it will need to be reflected in your gender pay action plan (see section 8.6).

### **Setting effective equality objectives will be critical in meeting the duty and in working towards improved outcomes for all the protected groups**

It is important to have a clear overview and understanding of the major issues facing the protected groups. Objectives should be developed on the basis of a consideration of your school's work and activities, including teaching, employment and policy development. This analysis should be informed by the steps already taken to meet other specific duties, including engagement, gathering and analysing information and assessing impact.

You must consider how your work and activities contribute or may contribute to meeting the general duty. Engagement will be particularly critical in providing a firm evidence base to consider these issues. This will be a key opportunity to gather

information about which areas of your work may be of interest to people with particular protected characteristics.

### **Using information, engagement and assessment of impact**

Due regard must be given to relevant information when setting or revising equality objectives. An important part of that relevant information will come from engagement with protected groups. Engagement should take place early enough to influence the setting of priorities.

Relevant information also includes the findings of assessments of impact on protected groups (whether published or not).

Other useful sources of information may include the Office for National Statistics, the Welsh Government and third sector organisations. The Commission has a range of useful evidence on its website.

### **Developing objectives**

You must set an equality objective in relation to each of the protected groups or publish your reasons for not doing so. It will be helpful to ask the following questions in relation to each of the protected groups:

- Have all three aims of the general duty been considered in relation to the protected groups?
- Is there a focus on the key issues affecting the different protected groups and the steps that can most effectively address disadvantage experienced by them?

You must identify:

- the steps you are taking or intend to take to achieve each of the objectives how long you expect to take to fulfil each objective, and
- how you will monitor progress towards each objective.

Objectives should focus on better equality outcomes. Specific improvements in outcomes for pupils and employees should be identified, specifying clearly how these will be achieved.

Many of the barriers facing protected groups are long-standing and entrenched and it will take some time to fully address these. To achieve long-term fundamental change it may be necessary to maintain the same objective for a significant period.

To achieve the aims of the general duty, the objectives need to focus on the most significant equality issues and be sufficiently wide in scope. In order to meet the

duty, the objectives must be based on adequate information and proper engagement.

A key purpose of setting equality objectives is to drive better outcomes for people with protected characteristics. It is important that care is taken to ensure that objectives are drafted to be specific, measurable, realistic and achievable within a clear timeframe.

### **Proportionality**

Having due regard to the aims of the general duty involves taking a proportionate approach, and this should apply to how your school sets its objectives. You may need to prioritise so that you can focus your efforts and use resources most effectively.

### **Publication**

You must publish your objectives by 2 April 2012. Objectives should be kept under regular review and must be reviewed at least every 4 years, but you can review them at any time. Indeed if it is identified through monitoring that an objective is not delivering as anticipated, it may be necessary to change it.

**Example**—Your school works in partnership with a voluntary ethnic youth support team in order to provide additional support for ethnic minority pupils who are underachieving. The ethnic youth support team loses funding and ceases to work in the area. This would require a review of the relevant equality objective and removal of references to working in partnership with the support team. You then decide to direct your resources towards establishing out of school hours learning for the ethnic minority pupils who are underachieving and reflect this in a new equality objective.

As well as publishing your objectives you must publish a statement setting out:

- the steps you have taken, or intend to take, to meet your objectives, and
- how long it will take to meet each objective.

You are required to publish the progress made towards fulfilling the objectives in an annual report.

**Example**—Following engagement and collection of relevant information, you publish an equality objective setting out the equality outcomes to be achieved in respect of the protected characteristic of disability. Engagement and identifying relevant information will not only inform you of what your equality objectives should aim to achieve, but also the steps needed to fulfil those equality objectives. This could include raising awareness among staff and pupils; changing the physical structure of buildings; purchasing specialist equipment and training staff on how to use the equipment, all of which must be specifically reflected in the statement. Engagement and identifying relevant information will also help inform you as to the timescales you should adopt in fulfilling your equality objectives, which must then be included in the published statement of steps to be taken.

### **Measuring progress**

In order to be able to publish the progress you have made in meeting your objectives, you will need to be clear about what progress/success will look like, how it will be measured and how it will be reported.

Keeping progress under review will help in identifying where there is insufficient progress, and whether and how you may need to revise your approach. Engaging with protected groups and other interested stakeholders will be very useful in this process, as it will help you keep abreast of the main issues and concerns.

Qualitative as well as quantitative evidence may be used to gauge progress and measure outcomes. You are likely to hold some of this information e.g. pupil and staff surveys, analysis of complaint letters and feedback forms.

### **Strategic Equality Plans**

You must have drawn up a Strategic Equality Plan by 2 April 2012.

This Strategic Equality Plan will have included:

- a description of the school
- your equality objectives (including pay objectives)
- the steps taken or intended to be taken to meet the objectives and in what timescale
- your arrangements to monitor progress on meeting equality objectives and the effectiveness of the steps taken to meet those objectives

- your arrangements to identify and collect relevant equality information. This includes information gathered from engaging with protected groups about how the work of your school may relate to the general duty. It also includes any information about pay differences related to a protected characteristic and the causes of these differences
- your arrangements for publishing relevant equality information that you hold and which you consider appropriate to publish
- your arrangements for:
  - assessing the likely impact on protected groups of any policies and practices that you are proposing, reviewing or revising
  - monitoring their actual and ongoing impact
  - publishing reports where an assessment shows a substantial impact (or likely impact) on your ability to meet the general duty
- details of how you will promote knowledge and understanding of the general and specific duties among employees
- an action plan relating to gender pay objectives.

It is open for you to include in your Strategic Equality Plan any other information relevant to meeting your general duty.

In preparing and revising a Strategic Equality Plan you are required to engage appropriately and have due regard to relevant equality information.

### **What is the purpose of the Strategic Equality Plan**

The purpose of a Strategic Equality Plan is to document the steps you are taking to fulfil your specific duties.

The Strategic Equality Plan can usefully reflect a number of elements of the specific duties. For example, you are required to publish reasons for not having an equality objective in relation to a protected characteristic. It may be helpful to include those reasons as part of the Strategic Equality Plan. It may also be useful to include an outline of your approach to engaging with relevant stakeholders. This would clarify who has been involved or consulted and may highlight opportunities for relevant people to engage in future.

## 8.3 Engagement

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### What the duty requires on engagement

**You must** involve people who you consider represent one or more of the protected groups and who have an interest in how your school carries out its functions.

**You may** consult and involve other people that you consider appropriate. In reaching the decision as to who is appropriate, you must consider the need to involve or consult people from one or more of the protected groups who have an interest in the way you carry out your functions, where it is reasonably practicable to do so.

This engagement must take place in relation to:

- setting equality objectives
- preparing and reviewing a Strategic Equality Plan
- identifying how your school's work and activities may contribute to meeting the general duty
- assessing the likely impact on protected groups of any policies or practices being proposed or reviewed.

### What is engagement

Engagement means involving certain people (as a requirement) and consulting certain people (as appropriate). The distinction between involvement and consultation may not always be clear cut.

Consultation is often understood to be a formal exercise to gather views.

Involvement indicates active participation of stakeholders – an open dialogue where those involved have a demonstrable influence on the decision-making process and any resulting decision.

Effective engagement will involve a sustained process of collaboration between your school and people with an interest in your work.

### Effective engagement

Effective engagement is:

- well-structured and focused
- adequately resourced and accessible
- influential and transparent
- respectful of confidentiality.

When you consult, you should adhere to the following overarching obligations:

- consultation must be at a time when proposals are at a formative stage
- you must give sufficient reasons for your proposals to allow consultees to understand them and respond to them properly
- consultees must be given sufficient time for responses to be made and considered
- responses must be conscientiously taken into account in finalising the decision.

### **Who to engage**

In deciding who may represent the interests of protected groups and have an interest in the way you carry out your functions, you may want to include:

- former, current and potential pupils
- former and current staff
- governors
- equality groups
- trade unions
- third sector and equality organisations
- the wider community.

You must consider the need to capture first-hand the views of people with one or more protected characteristic.

You do not need to engage with every protected group on every decision. You will need to decide how relevant the policy or decision is for a particular protected group before deciding on whether or how to engage with them.

You will need to be able to show that meaningful engagement has taken place. You should be careful not to make assumptions when deciding who to engage. For example, persons who share the protected characteristic of disability may be as interested in school sports days and residential school trips as they are in access and health issues.

It may be useful for local authorities to help co-ordinate the engagement activities of schools as this can prevent duplication of work and save time and resources.

### **When to engage**

The specific duties require you to engage when:

- setting equality objectives

- preparing and reviewing a Strategic Equality Plan
- assessing how your school's work and activities may contribute to meeting the general duty
- assessing the likely impact on protected groups of any policies or practices being proposed or reviewed.

### **Benefits of engagement**

Engagement will help improve outcomes, for example by:

- identifying particular needs, patterns of disadvantage and poor relations between groups
- understanding the reasons for disadvantage, low participation rates and poor relations
- designing initiatives to meet needs and overcome barriers
- determining priorities
- analysing the impact of initiatives on protected groups
- monitoring and evaluating initiatives, policies and programmes.

**Example**—You learn of current research in bullying and decide to revise your anti-bullying policy. This includes an assessment of the impact of that policy on your compliance with the general duty which then triggers the duty to engage with appropriate persons. The assessment of the anti-bullying policy raises new concerns regarding the bullying of Roma Gypsy pupils at your school. You must involve such persons as you consider represent the interests of Roma Gypsy pupils and have an interest in the way your school carries out its functions. This may include the family of the Roma Gypsy pupils. You may also involve or consult such other persons as you consider appropriate. This may include the traveller education service. You may also include former Roma Gypsy pupils to garner their views of the appropriateness of the anti-bullying policy.

### **How to engage**

The Commission recommends that you implement a range of engagement methods to ensure they are accessible and effective in reaching an appropriate range of relevant protected groups.

Common methods of engagement include:

- review groups and focus groups
- representative groups
- school councils
- online engagement.

The First Minister of Wales has endorsed a document entitled the ‘National principles for public engagement for public service organisations in Wales’. This document can be found at: [www.participationcymru.org.uk/advice-support/national-principlesfor-public-engagement-in-wales](http://www.participationcymru.org.uk/advice-support/national-principlesfor-public-engagement-in-wales).

A range of case studies of how engagement methods have been used with different protected groups is available on the Commission’s website:

[www.equalityhumanrights.com](http://www.equalityhumanrights.com).

## 8.4 Assessing impact

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### What the duty requires on assessing for impact

You must:

- assess the likely impact of proposed policies and practices on your ability to comply with the general duty
- assess the impact of any policy which is being reviewed and of any proposed revision
- publish reports of the assessments where they show a substantial impact (or likely substantial impact) on your school’s ability to meet the general duty
- monitor the impact of policies and practices on your ability to meet that duty.

Reports on assessments must set out in particular:

- the purpose of the policy or practice (or revision) that has been assessed
- a summary of the steps you have taken to carry out the assessment (including relevant engagement)
- a summary of the information you have taken into account in the assessment
- the results of the assessment
- any decisions taken in relation to those results.

In addition, when assessing for impact on protected groups, you must:

- comply with the engagement provisions
- have due regard to the relevant information you hold.

### **What is assessing impact?**

The requirement to assess impact means that schools must consider relevant evidence in order to understand the likely or actual effect of policies and practices on protected groups.

This includes:

- ensuring the policy or practice does not unlawfully discriminate
- identifying any adverse impacts on protected groups
- considering how the policy or practice could better advance equality of opportunity
- considering whether the policy will affect relations between different groups.

Having considered this, you must have 'due regard' (i.e. give appropriate weight) to the results of such assessments. This requires you to consider taking action to address any issues identified, such as addressing negative impacts, where possible.

**Example**—The catchment area of a school changes so as to include a Bangladeshi community. The school is aware from national inspectorate reports of potential issues around the attainment of Bangladeshi pupils. The school decides to assess its policy of promoting positive role models in order to address any negative attitudes towards school and to raise expectations of what pupils can achieve.

### **What needs to be assessed for impact on protected groups?**

The specific duties require schools to assess the impact of 'policies and practices'. This is a very broad term and potentially covers every aspect of your school's activities and functions. Policies and practices may in particular restrict access to education or the quality of education delivered or the quality of the work environment.

This does not mean that everything you do will need to be assessed for its impact on protected groups. You will need to judge how a particular policy or practice may be relevant to meeting the general duty and act proportionately. You will be helped in this task by having due regard to relevant information you have identified. This will include

information gathered through engagement with protected groups in meeting the requirement to assess how your work and activities contribute to the general duty.

### **When to assess impact**

Assessing the impact on protected groups should be integral to the development and review of policies from the outset.

It is important to monitor the actual impact of a policy as it is implemented, and revisit the assessment of impact on protected groups as part of any review.

**Example**—Your secondary school monitors the information it gathers from primary schools during the transition of pupils from primary to secondary school. The findings suggest that there is a lack of early planning involved in the transition of pupils with specific needs and the school decides to formally assess its policy on transitional arrangements. That formal assessment triggers the duty to engage with appropriate persons and leads to the remaking of equality objectives to secure adequate forward planning that allows a smooth transition for pupils from primary to secondary school.

### **Who should assess impact?**

It is good practise to ensure that whoever is carrying out an assessment of impact:

- has a detailed understanding of the policy area
- is in a position to ensure that changes can be made where required
- has the support and leadership of school governors.

Having a team involved in assessing the impact on protected groups can help to bring a range of experience and expertise to the process. It may be helpful to have someone with designated responsibility for recording and developing the assessment.

Often, the individuals involved in an assessment may not have extensive expertise in equality. Specialist equality staff have an important role in supporting less experienced staff to undertake the work of assessing impact. Ideally, assessing the impact will be undertaken by your staff rather than consultants or external agencies, as this will enable you to build your own expertise.

## **Reporting on assessments**

Where it is clear from the assessment that the likely impact on your ability to meet the general duty is substantial then you must publish a report.

## **Using relevant information**

You are required to use relevant information when assessing the impact on protected groups of a policy or practice being proposed or reviewed.

It will be important to ensure that all staff carrying out assessments have an overview of the type of information held by your school, and if relevant any gaps in that information.

## **Engagement when assessing impact**

The specific duties require you to engage as part of assessing the impact on protected groups. This will help you to understand better the impact of proposals on different groups.

## **Staff training and leadership**

It is important to train staff on assessing impact. This should be appropriate to the particular responsibilities of the staff, to their area of work, and to your chosen method for assessing impact.

It is important that senior decision makers receive adequate briefing. This should equip them for scrutiny to ensure that equality is properly considered within the school, and that the assessments influence decision-making at all levels.

For further guidance on assessing impact see: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## **8.5 Relevant Information**

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### **What the specific duties require on equality information**

You must:

- make appropriate arrangements to ensure that you periodically identify relevant information you hold, and identify and collect information that you do not have
- make appropriate arrangements to identify and collect information about differences in pay, and the causes of any such differences, between employees who have a protected characteristic and those who do not

- publish relevant information that you hold, unless it would be inappropriate to do so if it would breach the Data Protection or other legislation). This information must be published by 2 April 2012 and reviewed periodically.

As part of the process of identifying relevant information, you will need to assess how your work and activities may help in fulfilling the three aims of the general duty.

In assessing how you carry out your activities in line with the general duty, you must fulfil the engagement obligations and have due regard to other relevant information. This assessment must be undertaken by 2 April 2012 and reviewed periodically.

As part of your specific duties on annual reporting, you are required to publish reasons for not collecting any relevant information that you have identified, but do not hold.

You must collect and publish detailed information on the profile of your employees.

**Example**—You want to identify relevant information. You create a template that you circulate to the different departments of your school to ascertain what relevant information you hold. You then assess the completed templates. You supplement this with an invitation to a meeting bringing together parents and current and former pupils. The meeting is well planned and facilitated, outlining the nature of the Public Sector Equality Duty and your school's equality obligations. You explore a range of experiences in the context of all your functions including teaching, pupil support, catering, transport and community partnerships etc. Contributions are captured and fed back to the participants. The information is used among other things in developing equality objectives and prioritising appropriate engagement. You undertake a similar exercise with your staff.

### **Purpose of equality information**

The specific duties on relevant information enable you to embed equality-related evidence into the work of your school. Collecting and using relevant information will be critical in meeting the general and specific duties. The desired outcome is that you have the best evidence to enable you to set meaningful objectives and carry out fully informed impact assessments.

Publishing this information helps to make policy development more transparent and helps explain how and why decisions are made. This will be particularly useful when making difficult resource decisions.

It will also enable the Commission and other interested parties to gauge your performance on equality.

### **When must relevant information be used?**

The specific duties require you to have due regard to relevant information at certain points, namely:

- when preparing and publishing equality objectives
  
- when assessing policies and practices for their impact on protected groups
- when making or revising a Strategic Equality Plan
- when assessing your work and activities in relation to fulfilling the three aims of the general duty.

### **Existing relevant information**

You must make appropriate arrangements to identify the information you currently hold which is relevant to meeting the three aims of the general duty.

As part of the arrangements to identify relevant information, you will need to assess how your work and activities may help in fulfilling the three aims of the general duty. You are specifically required to undertake this assessment by 2 April 2012 and are required to involve people who represent the interests of protected groups.

The duties give a wide description of when you are deemed to be holding relevant information. In addition to the information you hold yourself, the description includes:

- relevant information held by another person/organisation on behalf of your school
- relevant information held by your school on behalf of another person/ organisation where either:
  - that person has consented to your school using the information to help your school meet the general and specific duties, or
  - it would be lawful and reasonable for you to use the information to help it meet the duties.

### **Sources of information**

Useful evidence may include:

- quantitative research and statistics e.g. Census and surveys
- qualitative research e.g. focus and review groups
- administrative data
- pupil monitoring information
- staff monitoring information
- pupil and staff feedback and complaints, e.g. satisfaction surveys
- information on those who are not participating fully with your school as well as those who are.

**Example**—You realise that you have not received feedback forms or questionnaires from parents with visual impairments. You should take action to ensure that you provide feedback forms and questionnaires in suitable formats allowing those parents to provide feedback and raise concerns.

In carrying out monitoring and surveys, it may be helpful to use standard questions from 2011 Census or other ONS questions e.g. on ethnicity. Using standard questions will assist in analysing and comparing data.

Questionnaires or surveys should be accompanied with information about how the data will be stored, how it will be used and who can access it. If information can be linked to an individual it may only be stored with their written permission, which may be given on a monitoring form. Further information on data protection can be found on the Information Commissioner's Office's website: [www.ico.gov.uk/for\\_organisations/data\\_protection.aspx](http://www.ico.gov.uk/for_organisations/data_protection.aspx).

Relevant national reports will be useful. Sources include:

- Office for National Statistics, including the Census and the Labour Force Survey
- Welsh Government statistics and data
- Equality and Human Rights Commission, including the *Triennial Review: How fair is Britain, How fair is Wales?* and *An Anatomy of Economic inequality in Wales*.
- Third sector organisations, many of which hold useful information on protected groups.

## **Workforce information**

You are required to collect information in respect of your staff by protected group. You must also report on a regular basis on how policies and practices affect staff from protected groups.

You cannot rely on the specific duties to require any employee or applicant to provide any information in relation to her/his protected characteristics. However, it is in your interest to collect information that is as complete and accurate as possible so that you have a fuller profile of your staff base and be in a position to make better informed decisions to drive forward the aims of the general duty. You should therefore take steps to explain why you are collecting the equality information and how it will be used, and give appropriate reassurance on issues of confidentiality.

## **Addressing gaps**

In identifying the information you currently hold, you are likely to identify areas of work where you hold insufficient relevant information on particular protected groups, outcomes, levels of access and so on. If you do not have sufficient information, you will need to address the gaps.

## **Review**

You must periodically review your arrangements for identifying and collecting relevant information.

## **Monitoring sensitive information**

For some protected groups equality monitoring is not yet commonplace or it raises particular issues. Further information about workforce monitoring can be found in Appendix 2 to the Equality Act 2010 Employment Code, which also has relevance for service monitoring: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Appendix A contains guidance on gathering information in relation to protected groups.

## **Publication: Where and what to publish**

The specific duties require you to publish relevant information you hold and which you consider appropriate to publish. When publishing the assessments of impact on protected groups, there is a requirement to publish a summary of the information used.

You should publish the action you are taking to address any information gaps and who is responsible for doing this. It may be helpful to publish all the equality information in one place, where it is easily accessible for both internal and external use. If part of a wider report, it will be helpful to clearly signpost the equality information and make it available on a website.

### **Confidentiality**

It is important to ensure the requirements of the Data Protection Act 1998 being met, protecting pupil and employee rights to confidentiality.

For further advice on gathering equality information see 'Equality information: A guide for listed public authorities in Wales' at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com) and the Equality Act 2010 Employment Code: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## **8.6 Employment information, pay differences and staff training**

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### **What the duty requires on employment information**

The people employed directly by you, as the responsible body for the school, may include cleaners, grounds staff and counsellors.

**You must** collect and publish on an annual basis the number of:

- people employed by you on 31 March each year by protected characteristic
- men and women employed, broken down by:
  - job
  - grade (where grading system in place)
  - pay
  - contract type (including permanent and fixed term contracts)
  - working pattern (including full time, part time and other flexible working patterns)
- people who have applied for jobs with you over the last year
- employees who have applied to change position within your school, identifying how many were successful in their application and how many were not
- employees who have applied for training and how many succeeded in their application
- employees who completed the training

- employees involved in grievance procedures either as complainant or as a person against whom a complaint was made
- employees subject to disciplinary procedures
- employees who have left your employment.

All of the information above must be presented for each of the separate protected groups. The exception to this requirement is the data on job, grade, pay, contract type and working pattern, which must be broken down only in relation to women and men.

### **Employment information on gender**

As with the other protected characteristics, you must publish the required employment information on gender giving a snapshot of your employee profile at 31 March each year.

The information requirements in relation to gender go further than other protected characteristics in the detail of what is published. You must publish a breakdown of the number of female and male employees by job, grade, pay, contract type and working pattern. This should give a clear indication of how jobs are distributed throughout your school and at what levels. This will help not only to identify gender pay differences, but other gender equality issues such as occupational segregation.

### **The purpose of collecting workforce information**

You should use the information you collect to embed equality-related evidence into your employment policies and practices. Collecting, using and publishing equality information relating to the workforce will help to:

- understand the effect of policies, practices and decisions on staff with different protected characteristics and to plan more effectively
- identify where there is a risk of discrimination and identify action to remedy this
- identify possible steps to further advance equality or foster good relations
- identify key equality issues for your school
- identify whether the workforce reflects the community around you
- develop equality objectives and measure progress
- make practices more transparent and help to explain how and why decisions are taken
- demonstrate your equality achievements as an employer

*Continued...*

- demonstrate to inspectorates and regulators that you understand your staff composition and that you are monitoring performance
- benchmark performance against other schools nationally or locally.

You cannot rely on the specific duties to require employees or applicants to provide any information in relation to their protected characteristics. However, it is in your interest to collect information that is as complete and accurate as possible so you have a fuller profile of your staff.

You should take steps to explain why you are collecting the equality information and how it will be used, and give appropriate reassurance on issues of confidentiality.

### **What the duty requires on pay differences**

#### **You must:**

- when drawing up equality objectives have due regard to the need to have objectives that address the causes of any difference in pay between employees who are from any protected group and those who are not, if it appears reasonably likely that the reason for the difference is related to the fact that those employees share a protected characteristic
- make appropriate arrangements to identify and collect information about differences in pay, and the causes of any such differences, between employees who have a protected characteristic and those who do not. This information must be published as appropriate.

### **Gender pay differences**

#### **You must:**

- publish an equality objective in relation to addressing any gender pay difference identified or publish reasons why you have not done so
- publish an action plan in respect of gender pay setting out:
  - any policy you have that relates to the need to address the causes of any gender pay difference
  - any gender pay equality objective you have published (including any revisions). Where you identified a gender pay difference among your staff, but have not published an equality objective to address the causes of that pay difference, the action plan must set out the reasons for not doing so
  - a statement about the steps you have taken or intend to take to fulfil your gender pay objective and how long you expect it to take.

## Overview on pay differences

The specific duties in respect of pay differences are aimed at:

- achieving better and more equitable pay outcomes for all protected groups
- encouraging transparency on any differences in pay for people who have a protected characteristic and those who do not
- specifically prompting actions to address pay gaps between men and women.

You are required to have due regard to the need to have equality objectives to address the causes of any pay differences in respect of all protected characteristics. To be in a position to make this judgement effectively, it will be useful for you to have systems in place to enable you to look at how people with any protected characteristic are distributed throughout the organisation.

## Gender pay difference

The duty to address pay differences goes further in relation to gender than the other protected characteristics. Where you have identified a pay difference related to gender and you have not published an equality objective to address the causes of this, you must publish your reasons for not doing so in a gender pay action plan. The action plan also requires you to present any policies in relation to the need to address the causes of gender pay differences.

## Analysing pay differences

In considering pay differences under the specific duties, you will need to analyse relevant payroll records to capture the broad nature of pay.

If there are any pay differences for employees from protected groups doing jobs which involve similar levels of effort, skills, knowledge and responsibility, you should find out why these differences exist. You may find, for example, that starting pay is not always the same, or that part-time workers are paid less per hour than full-time workers.

Different levels of effort, skills, knowledge and responsibility can justify pay differences between jobs. Differences in pay should be based on the specific requirements of the jobs and the real circumstances in which they are done.

You should be able to identify objective evidence-based reasons for pay differences between employees who do jobs involving similar levels of effort, skill, knowledge and responsibility.

## Equal pay

The Equality Act requires that women and men are paid on equally favourable terms where they are employed on 'like work' or 'work rated as equivalent' or 'work of equal value'. The specific duties should help identify opportunities to address the causes of pay differences which are not addressed by pay reviews.

Such causes may include job segregation (where men and women or other groups dominate in one occupation or at one level within your school); working patterns; promotion; the gender impact of family and caring roles and other stereotyping; starting salary negotiation and training opportunities.

More information on equal pay is available on the Commission's website and particularly in the Statutory Code of Practice on Equal Pay:  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## What the duty requires on staff training

**You must** make appropriate arrangements to:

- promote knowledge and understanding of the general duty and specific duties among your employees
- use any performance assessment procedures to identify and address training needs of employees in relation to the duties.

## Staff training

It is important for people throughout your school to be aware of the general and specific duties so that when relevant it is considered in their work. You should ensure your equality objectives are effectively communicated to relevant staff and reflected in their work as appropriate.

Examples may include:

- **Teaching staff** – in how they oversee the design, delivery, quality and effectiveness of delivering education.
- **School governors** – in how they set strategic direction, review performance and ensure good governance of your school.
- **Equality and diversity staff** – in how they raise awareness and build capacity on the general and specific duties within the school and how they support staff to deliver on their responsibilities.

*Continued...*

- **Human resources staff** – in how they build equality considerations in employment policies and procedures.

You should consider:

- embedding equality awareness and the principles of the general and specific duties into induction training
- building equality issues into specific and professional training events
- making available alternative learning methods such as CD training modules, distance learning packages, staff mentoring or coaching.

The duty is not just to provide training but requires promotion of understanding. You should therefore consider developing means to be able to demonstrate that training has led to an understanding of the duties. This may involve consideration of equality related objectives within systems of individual staff appraisal and cyclical review of appropriate training needs.

## 8.7 Procurement

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### What is procurement?

Many public authorities contract with external organisations in the private and third sectors for the provision of works, goods or services. For the purposes of this guide, 'procurement' is the contractual process by which a public authority agrees for another to carry out works and/or to provide goods and/or services on its behalf.

Whenever the responsible body of a school takes part in the procurement of goods or services, it will be subject to the specific duty relating to procurement.

### European context

Public procurement is subject to principles of European law that aim to ensure fairness between suppliers from the UK and other member states. These principles include freedom of movement of workers and goods, transparency, proportionality and equal treatment between tenderers.

These principles apply to contracts of all values. In addition, UK Regulations that implement European Directives on public procurement set out certain limitations that apply in relation to contracts above certain threshold values. Schools will need to be aware of this context and will need to consider how to further equality in a way that is consistent with EU procurement rules.

## **What the duty requires on procurement**

When procuring works, goods or services from other organisations on the basis of a **relevant agreement, you must:**

- have due regard to whether it would be appropriate for the award criteria for that contract to include considerations to help meet the general duty
- have due regard to whether it would be appropriate to stipulate conditions relating to the performance of the contract to help meet the three aims of the general duty.

### **Relevant agreements:**

The specific duty on procurement only applies to contractual arrangements that are 'relevant agreements', which in this context means either the award of a 'public contract' or the conclusion of a 'framework agreement'.

Procurement rules regulate arrangements that are on or above specified EU thresholds.

### **Proportionality**

When spending public money, you must have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. Equality considerations will be more relevant to some services, goods or works than others.

### **Overview of the procurement requirements**

You remain responsible for meeting the general duty even where relevant works or services are contracted out to an external supplier. It is important to build equality considerations into procurement processes.

Public authorities will need to have 'due regard' at all stages of the procurement process to the need to advance equality. For example:

- advertising and selecting who to invite to tender
- drafting the invitation to tender and evaluation criteria
- drafting contract specifications and conditions
- monitoring, managing and enforcing contracts.

You will need to assess your procurement policies and strategies to consider whether they adequately meet the aims of the duty. Policies and strategies should cover planning and carrying out procurement and the subsequent management and enforcement of contracts. A useful tool to assist organisations in developing their

procurement policies and strategies is the Sustainable Procurement Assessment Framework (SPAF), which covers equality and includes action plans for improvement.

### **Assessing relevance**

Fulfilling the other specific duties on impact assessment, collection and analysis of relevant information and engagement will help you to identify those contracts most relevant to equality and meeting the general duty.

It is particularly important to determine at the planning stage how promotion of equality may be built into an individual procurement. This will shape the equality content of the specification and/or contract conditions and will influence the weight given to equality considerations in selecting tenderers and in tender evaluation.

Engaging with potential suppliers can help them to understand equality related requirements. You must have due regard to the need to encourage a diverse supplier base, including third sector organisations and organisations classed as supported businesses. (More information on this and a wide range of procurement matters is available at the National Procurement Website: [www.sell2wales.co.uk](http://www.sell2wales.co.uk).)

A tool for assessing relevance is the Sustainable Risk Assessment template, which considers the social, economic and environmental impacts of specific procurements. This tool covers equality considerations.

### **Transparency in specifications**

The specification is a formal description of what you are seeking to purchase. Where you have determined that equality considerations are relevant to the works, goods or services, the specification should state as clearly as possible what you require as outcomes or inputs from the successful contractor.

You may specify in tender documentation a requirement for contractors to demonstrate how the goods, service or works will meet the needs of protected groups. The contractor could be required to monitor and report on how it is meeting these outcomes.

A tender specification may set out what information you will require the contractor to gather on your behalf so that you may meet your obligations on collecting relevant information.

## **Advertising widely**

In order to encourage a more inclusive supply base, particularly to include smaller organisations, all major public bodies in Wales have endorsed Opening Doors: the Charter for SME-friendly Procurement. A key commitment in this charter is that contracts should be advertised as widely as possible and that contracts worth more than £25,000 should be advertised on the Sell2Wales website.

## **Selecting who to invite to tender**

Procurement may involve a selection stage during which you assess and select potential suppliers to tender for a particular contract. It is permissible to include relevant equality criteria at this stage as long as this is made clear in the advertisement and the criteria are relevant to the contract.

Where equality is strongly relevant to a contract, it may be proportionate to include a requirement in selection criteria that potential suppliers demonstrate their 'equality track record', in other words their experience of, and capacity to, advance equality within the context of a relevant contract.

You may exercise discretion to exclude a prospective tenderer if they have been found by a court or tribunal to have breached equality law, and if they are unable to provide evidence of how they have taken remedial steps to prevent this from occurring again in the future. However, any such decision to exclude would need to be proportionate and you may wish to seek legal advice in these circumstances.

A Supplier Qualification Information Database (SQuID) is being developed in Wales as an online tool. SQuID aims to simplify and standardise the pre-qualification process for companies wishing to bid for public sector contracts. It includes a section on equality, helping public bodies to choose appropriate selection questions.

## **Award criteria**

You must set out the detailed award criteria you intend to use to assess the value for money of competing bids. These should be stated at an early stage so that potential suppliers know the criteria against which their bids will be assessed. For contracts subject to EU procurement directives, the award criteria must be set out in full in the contract notice.

Value for money is generally accepted to be the optimum combination of whole-life costs and quality to meet the user's requirements. Value for money in this context usually equates to the most economically advantageous tender for the public authority as set out in EU Directives.

Public procurement rules list examples of criteria that may be used to identify which tender would be most economically advantageous. Although not explicitly listed, equality may still be relevant. For example, equality issues may have an impact on the 'quality' of a service or works, which is a listed criterion.

The weight you give to equality as an evaluation criterion (if any) should be proportionate to the importance of equality issues within the specification as a whole.

The sell2wales website offers further information on promoting equality through procurement. This includes the Welsh Government's Community Benefits Guidance, which has been developed to ensure public procurement in Wales maximises its opportunity to benefit local communities.

### **Contract conditions**

Conditions relating to equality issues are permissible where relevant and compatible with EC requirements. You should consider including contract conditions that require the contractor to take all reasonable steps to ensure that staff, suppliers and subcontractors achieve what is required under the Equality Act.

Where equality considerations are highly relevant to procurement, you could consider additional conditions. These may include, for example, a requirement to monitor workforce composition or rates of pay.

### **Monitoring contract performance**

The ultimate test of the success of meeting the general duty in any procurement process is the actual performance of the contract. There will be little gain in incorporating equality obligations in the specification and/or contract conditions if you fail to adopt effective mechanisms to ensure these obligations are being met.

You will need to take steps to monitor the actual performance of the contract. An authority retains responsibility for the general duty and will need to act promptly if it becomes aware of poor or non-performance regarding the equality requirements of a contract.

### **Training**

You are required to make appropriate arrangements to promote knowledge and understanding of the general and specific duties amongst your employees and to identify and address staff training needs. This may include targeted training for staff involved in procurement processes.

## 8.8 Annual reporting and publishing

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### Annual reporting

**You must** publish an annual report by 31 March each year. The annual equality report must specifically set out:

- the steps you have taken to identify and collect relevant information
- how you have used this information in meeting the three aims of the general duty
- any reasons for not collecting relevant information
- a statement on the effectiveness of your arrangements for identifying and collecting relevant information
- progress towards fulfilling each of your equality objectives
- a statement on the effectiveness of the steps that you have taken to fulfil each of your equality objectives
- specified employment information, including information on training and pay (unless you have already published this information elsewhere).

You may include in your annual reports any other matter you feel is relevant to meeting the general duty and the specific duties.

### Publishing

You must publish in an accessible format:

- an annual equality report
- a Strategic Equality Plan (and any revisions)
- equality objectives including accompanying statements regarding timescales and actions to be taken
- your reasons for deciding not to publish an equality objective in respect of one or more protected characteristic. This must be done even where you have published an equality objective to address the causes of any pay difference related to that protected characteristic
- your reasons for deciding not to publish an equality objective to address the causes of gender pay difference if you have identified a difference in pay between men and women
- an action plan to address gender pay difference
- reports of your assessments of impact on protected groups of proposed policies and practices and any reviews of existing policies and practices, where the impact is substantial. Reports must include:

- the purpose of the proposed policy or practice
- a summary of the steps taken in carrying out the assessment
- a summary of the information taken into account in the assessment
- the results of the assessment
- any decision taken
- specified employment information, including information on training and pay (this may be published as part of the annual equality report)
- any relevant equality information (that you hold and which you consider appropriate to publish).

You may publish your annual report or Strategic Equality Plan separately or within other documents.

### When to publish

- **Equality objectives:** You must publish your equality objectives by 2 April 2012. You may revise an equality objective at any time, but must publish the new version (or revisions) as soon as possible after making any changes.
- **Strategic Equality Plan:** You must make a Strategic Equality Plan by 2 April 2012 and publish it as soon as possible after it is made. You may revise a Strategic Equality Plan at any time, but must publish the new version (or revisions) as soon as possible after making any changes.
- **Equality information:** You are required to make appropriate arrangements to ensure you periodically:
  - identify relevant information you hold
  - identify and collect relevant information you do not hold
  - publish relevant information you hold, unless it would be inappropriate to do so.

This information must be published by 2 April 2012 and reviewed periodically. The information will include an assessment of things done by your school that could contribute to meeting the general duty.

- **Employment information:** An annual report may include the specified employment information in respect of employees and applicants as of 31 March each year. If the annual report does not contain that information, it will need to be published in other documentation on an annual basis.

**Annual equality reports** must be published by 31 March each year.

Where you have decided not to publish an equality objective in respect of one or more protected characteristic you must publish your reasons for that decision. You must publish your equality objectives in your Strategic Equality Plan. You could include your reasons for not publishing an equality objective in respect of one or more protected characteristic as part of your Strategic Equality Plan.

The first annual report will cover the period from 6 April 2011 to 31 March 2012. The deadline for publishing the first annual report is 31 March 2013. You may find it helpful to report in line with your usual reporting cycle rather than waiting until the following 31 March to report separately. This would have the benefit of providing a more mainstreamed and up to date account of progress on equality.

## **Review**

You must review:

- your equality objectives at least every four years
- your Strategic Equality Plan and any revisions. This must be done with due regard to relevant information held by you and to any other information that you consider would be likely to help in the review.

As a result of the review process you may choose to revise your arrangements, objectives or Strategic Equality Plans. If you do so, you must again publish these changes as soon as possible and in an accessible way.

**You must** keep under review your arrangements for:

- monitoring the effectiveness of your steps and your progress towards fulfilling your equality objectives
- identifying, collecting and publishing relevant information
- assessing the impact of policies and practices being proposed or reviewed
- monitoring the impact of policies and practices
- promoting knowledge and understanding of the general and specific equality duties, using any performance assessment procedures to identify and address related training needs

## **Accessibility**

**You must** take all reasonable steps to ensure that any document or information you are required to publish to meet your general or specific equality duties is published in a form that is accessible to people from protected groups.

As part of your arrangements for promoting knowledge and understanding of staff in relation to the equality duties, you should consider raising awareness of issues around accessibility. Staff will need to plan ahead in their publishing timetable to ensure that they can factor in the additional time it takes to have information prepared in alternative languages and accessible formats.

The Equality Act requires schools to make reasonable adjustments so that disabled people are not put at a substantial disadvantage. This includes taking reasonable steps to ensure that information is provided in an accessible format. The specific duty on accessibility partly builds on this anti-discrimination provision for disabled people, but applies to all relevant protected characteristics.

For example, you will need to consider not only formats such as Easy Read (primarily for people with learning disabilities), but also a range of community languages including British Sign Language. Where information is published on a website care will need to be taken to ensure that it is accessible to those with visual or other impairments. Information should be logically and consistently located and straightforward to find via a search facility.

Since people within some protected groups are less likely to have access to the internet, listed authorities will need to publish key information in print or other formats (such as Braille or Audio CD).

## 8.9 Consolidating example

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You learn from the Welsh Government's Schools-based Counselling Facts and Figures report that the overwhelming majority of school counselling is provided to pupils from white ethnic backgrounds. You understand that **you have a specific duty to monitor the impact of policies and practices on your ability to comply with the general duty**, therefore you decide to monitor your pupil counselling programme.

You find that your counselling programme raises similar concerns that counselling is being provided predominantly to pupils from white ethnic backgrounds. You therefore decide to formally **review the policy and assess its impact** on your school's ability to comply with the general duty. You particularly wish to explore whether you may be able to change your current approach to help advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not (i.e. the second arm of the general duty).

As soon as you decide to assess the impact of the policy, you have a duty to have due regard to relevant information that you hold and a duty to engage with appropriate persons.

You are also aware of the duty to make arrangements as appropriate to identify information that you hold. Therefore, you create a template that is distributed to your staff and your counsellors, requesting feedback on how pupils' queries relating to counselling are handled and how awareness surrounding counselling is promoted. Mindful of the need to limit access to sensitive information, you arrange for your counselling staff to review all logged information and reports relating to counselling and assess the information according to each protected characteristic (as far as you can do so).

Your school has a diverse mix of pupils from non-white ethnic backgrounds. Your analysis of relevant information alongside the national data raises issues particularly in relation to the protected characteristics of race and religion.

When carrying out engagement, you have a duty to involve persons you consider represent the interests of persons who share one or more of those protected characteristics and have an interest in the way that your school works.

You are aware of two other schools in your locality with a similar pupil mix to your own school and you work with them in responding to the national findings. Together, you and the other schools meet with NSPCC Cymru/Wales and the British Association for Counselling and Psychotherapy. You also consider your discretion to involve and consult with persons who share one or more of the protected characteristics so you arrange discussions with a number of former pupils from non-white ethnic backgrounds who you know to be active in the local community. You are mindful that, as far as is practicable, those pupils include a suitable mix of gender, ethnicity and other protected characteristics.

You ensure that the engagement is:

- well-structured and focused
- adequately resourced and accessible
- influential and transparent
- respectful of confidentiality.

The engagement is successful and identifies a pattern of disadvantage experienced by non-white ethnic pupils that is linked to issues that can often be addressed through counselling, for example, issues such as anxiety and academic pressure.

Your discussion groups feel that these issues lead to disadvantages such as low self-esteem, negative thought patterns and underachievement.

You design a new equality objective in respect of the protected characteristics of race and religion, to achieve greater take-up of counselling services by pupils with those protected characteristics and who are in need of counselling. This equality objective therefore sets out the equality outcomes to be achieved and the realisation of those outcomes will lead to better performance of the general duty.

You also set out the steps you intend to take in order to achieve the new equality objectives. For example, the engagement exercise stressed the importance of raising awareness of the wide range of issues that may be discussed with a school counsellor, providing counselling at flexible times, assurances of a non-judgemental approach and removing any stigma attached to counselling, building up trust with pupils and giving reassurances that all counselling sessions remain confidential.

You also make enquiries with the BACP about the availability of counsellors from various ethnic and religious backgrounds because former pupils suggested that this could increase take-up among pupils. You provide information that reflects all of the above on your website and information boards and during assembly, so that pupils can absorb the information freely.

You also ask your school counsellors to provide basic **training to staff** so that they can appropriately deal with any requests for counselling from pupils.

You publish your new equality objectives in a revised Strategic Equality Plan, along with the steps you intend to take to fulfil the objectives. The Strategic Equality Plan also includes the arrangements you have in place to monitor the effectiveness of the steps you have taken, for example, analysing the take-up of counselling services to see whether it is addressing the original imbalance.

You also **publish a report of the assessment of the original counselling policy**, including information such as the purpose of the policy, a summary of how the assessment was carried out and the information taken into consideration, the results of the assessment and the decision taken to design new equality objectives.

When revising your Strategic Equality Plan, you have due regard to relevant information and engage with appropriate persons once again. This provides you with another opportunity to consolidate the steps that you are required to take and remind you to consider whether any new information has become available.

You also take the opportunity to review how you systematically collect intelligence from your counselling provision, so that common issues are readily identified and

inform your work towards the equality duties. You are mindful that the approach to collecting this information must be done with great sensitivity and in light of the constraints of confidentiality.

Your annual report also contains a summary of the progress you are making towards achieving your equality objectives, how you have identified and used relevant information and how effective you have been in using that information and how effective you have been in fulfilling the equality objectives.

During your initial review of counselling logs and reports, you considered each of the protected characteristics and discovered that there was no significant imbalance with regards to other protected characteristics such as gender, disability, pregnancy and sexuality. You found that take-up of counselling among pupils with such protected characteristics was proportionate and balanced. Therefore, because the policy did not have a substantial impact on pupils within those protected groups, there is no duty to publish the assessment undertaken but you decide to include this information in an annual report in any case to help demonstrate transparency, leadership and good practice.

You ensure that all of the information is published in an accessible format, which may include alternative formats and languages other than Welsh or English.

You also decide to turn your attention to the counselling available to your staff and promoting the availability of such counselling opportunities. Take-up increases and you learn that staff have concerns relating to unequal pay.

You understand that you have a specific duty to have due regard to the need to have equality objectives that address the causes of any differences between the pay of employees who share one or more of the protected characteristics and those who do not, where the difference is related to the employee's protected characteristic, or it appears to be reasonably likely to you that the difference is related to the employee's protected characteristic.

After engagement and having due regard to relevant information, you design an equality objective to ensure that any such pay differences are eliminated.

You publish an action plan, setting out your policy on addressing such pay differences, the objectives themselves and a statement of the steps to achieve the objectives in the expected timescale.

## Annex A |

# Protected characteristics

The protected characteristics for the schools provisions are:

- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

Although age and marriage and civil partnership are listed in the Act as protected characteristics, the Act does not provide protection against discrimination because of age or marriage and civil partnership in the schools' provisions.

### **Disability**

A person is a disabled person (someone who has the protected characteristic of disability) if they have a physical and/or mental impairment which has what the law calls 'a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'.

There is no need for a person to have a medically diagnosed cause for their impairment; what matters is the effect of the impairment not the cause.

In relation to physical impairment:

- Conditions that affect the body such as arthritis, hearing or sight impairment (unless this is correctable by glasses or contact lenses), diabetes, asthma, epilepsy, conditions such as HIV infection, cancer and multiple sclerosis, as well as loss of limbs or the use of limbs are covered.
  - HIV infection, cancer and multiple sclerosis are covered from the point of diagnosis.

- Severe disfigurement (such as scarring) is covered even if it has no physical impact on the person with the disfigurement, provided the long-term requirement is met (see below).
- People who are registered as blind or partially sighted, or who are certified as being blind or partially sighted by a consultant ophthalmologist, are automatically treated as disabled under the Act.
- Mental impairment includes conditions such as dyslexia and autism as well as learning disabilities such as Down's syndrome and mental health conditions such as depression and schizophrenia.

The other tests to apply to decide if someone has the protected characteristic of disability are:

- The length the effect of the condition has lasted or will continue: it must be long term.
- 'Long term' means that an impairment is likely to last for the rest of the person's life,
- or has lasted at least 12 months or where the total period for which it lasts is likely to be at least 12 months. If the person no longer has the condition but it is likely to recur or if the person no longer has the condition, they will be considered to be a disabled person.
- Whether the effect of the impairment is to make it more difficult and/or time-consuming for a person to carry out an activity compared to someone who does not have the impairment, and this causes more than minor or trivial inconvenience.
- If the activities that are made more difficult are 'normal day-to-day activities' at work or at home.
- Whether the condition has this impact without taking into account the effect of any medication the person is taking or any aids or assistance or adaptations they have, like a wheelchair, walking stick, assistance dog or special software on their computer. The exception to this is the wearing of glasses or contact lenses where it is the effect while the person is wearing the glasses or contact lenses, which is taken into account.

**Example**—Someone who has ADHD might be considered to have a disability even if their medication controls their condition so well that they rarely experience any symptoms, if without the medication the ADHD would have long-term adverse effects.

Progressive conditions and those with fluctuating or recurring effects are included, such as depression, provided they meet the test of having a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

### **Gender reassignment**

Gender reassignment is a personal process (rather than a medical process) which involves a person expressing their gender in a way that differs from or is inconsistent with the physical sex they were born with.

This personal process may include undergoing medical procedures or, as is more likely for school pupils, it may simply include choosing to dress in a different way as part of the personal process of change.

A person will be protected because of gender reassignment where they:

- make their intention known to someone – it does not matter who this is, whether it is someone at school or at home or someone like a doctor. Once they have proposed to undergo gender reassignment they are protected, even if they take no further steps or they decide to stop later on. They do not have to have reached an irrevocable decision that they will undergo gender reassignment, but as soon as there is a manifestation of this intention they are protected.
- start or continue to dress, behave or live (full-time or part-time) according to the gender they identify with as a person
- undergo treatment related to gender reassignment, such as surgery or hormone therapy, or
- have received gender recognition under the Gender Recognition Act 2004.

It does not matter which of these applies to a person for them to be protected because of the characteristic of gender reassignment.

This guidance uses the term 'transsexual person' to refer to someone who has the protected characteristic of gender reassignment.

## **Pregnancy and maternity**

The Act lists pregnancy and maternity as a protected characteristic. Pregnancy and maternity discrimination is covered in Section 2.

## **Race**

Race means a person's:

- colour, and/or
- nationality (including citizenship), and/or
- ethnic or national origin

A racial group is composed of people who have or share a colour, nationality or ethnic or national origins.

A person has the protected characteristic of race if they belong to a particular racial group, such as 'British people'.

Racial groups can comprise two or more racial groups such as 'British Asians'.

## **Religion or belief**

The protected characteristic of religion or belief includes any religion and any religious or philosophical belief. It also includes a lack of any such religion or belief.

A religion need not be mainstream or well known to gain protection as a religion. It must, though, be identifiable and have a clear structure and belief system.

Denominations or sects within religions may be considered a religion. Cults and new religious movements may also be considered religions or beliefs.

Belief means any religious or philosophical belief and includes a lack of belief.

'Religious belief' goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same religion.

A belief which is not a religious belief may be a philosophical belief, such as humanism or atheism.

A belief need not include faith or worship of a god or gods, but must affect how a person lives their life or perceives the world.

For a belief to be protected by the Equality Act:

- It must be genuinely held.
- It must be a belief and not an opinion or viewpoint based on information available at the moment.

- It must be a belief as to a weighty and substantial aspect of human life and behaviour.
- It must attain a certain level of cogency, seriousness, cohesion and importance.
- It must be worthy of respect in a democratic society.
- It must be compatible with human dignity and not conflict with the fundamental rights of others.

## **Sex**

A person's sex refers to the fact that they are male or female. In relation to a group of people, it refers to either men or women or to either boys or girls.

## **Sexual orientation**

Sexual orientation means the attraction a person feels towards one sex or another (or both), which determines who they form intimate relationships with or are attracted to.

- Some people are only attracted to those of the same sex (lesbians and gay men).
- Some people are attracted to people of both sexes (bisexual people).
- Some people are only attracted to the opposite sex (heterosexual people).

Everyone is protected from being treated worse because of sexual orientation, whether they are bisexual, gay, lesbian or heterosexual.

Sexual orientation discrimination also covers discrimination connected with manifestations of that sexual orientation.

# Annex B |

## Responsible bodies for schools

Type of school	Responsible body
Independent schools in Wales	The proprietor
Non-maintained special schools	The proprietor
Maintained schools	The governing body or the local authority
Pupil Referral Units	The local authority
Foundation schools	The proprietor

Remember that the Public Sector Equality Duty is a duty imposed on the responsible body. See section 8.1 for further information on how the duty applies to you as the responsible body of your school.

## Annex C |

# Further sources of information

Schools may find the following websites useful when seeking to understand and meet their responsibilities to promote equality and diversity and tackle discrimination.

Please note that some of the government websites contain a disclaimer reflecting the recent change of administration. However, the information contained within continues to reflect the current legal position.

### **Equality and Human Rights Commission**

The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

All publications are also available to download and order in a variety of formats from our website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### **Acas – The Independent Advisory, Conciliation and Arbitration Service**

Acas aims to improve organisations and working life through better employment relations. It provides impartial advice, training, information and a range of problem resolution services.

- Telephone: 0845 747 4747
- Website: [www.acas.org.uk](http://www.acas.org.uk)

### **The Alliance for Inclusive Education (Allfie)**

Allfie is a national network led by disabled people to promote inclusive education for all students. It provides a range of resources and training for educators and parents.

- Telephone: 020 7737 6030
- Email: [info@allfie.org.uk](mailto:info@allfie.org.uk)
- Website: [www.allfie.org.uk](http://www.allfie.org.uk)

### **Association of College and School Leaders (ACSL)**

The ACSL is the professional association and trade union for secondary school and college leaders.

- Telephone: 0116 299 1122
- Email: [info@ascl.org.uk](mailto:info@ascl.org.uk)
- Website: [www.ascl.org.uk](http://www.ascl.org.uk)

### **Black Training & Enterprise Group (BTEG)**

BTEG is a national charity set up to support and provide a voice for black and minority ethnic training providers. It also runs the Centre for Educational Success which aims to raise and improve the educational attainment of children and young people from black and ethnic minority backgrounds.

- Telephone: 020 7843 6110
- Email: [info@bteg.co.uk](mailto:info@bteg.co.uk)
- Website: [www.bteg.co.uk](http://www.bteg.co.uk)

### **British Humanist Association (BHA)**

The BHA is a national charity supporting and representing non-religious people who seek to lead ethical lives. They carry out a range of activities including campaigns, lobbying and briefing government. They also provide information to schools to support education about humanism, and on the inclusion of non-religious pupils and their parents in schools and colleges.

- Telephone: 020 7079 3580
- Email: [info@humanism.org.uk](mailto:info@humanism.org.uk)
- Website: [www.humanism.org.uk](http://www.humanism.org.uk)

### **Catholic Education Service (CES)**

The CES negotiates, on behalf of all bishops, with government and other national bodies on legal, administrative and religious education matters in order to promote and safeguard Catholic interests in education and contribute to Christian perspectives within educational debate at national level.

- Telephone: 020 7901 1900
- Email: [general@cesew.org.uk](mailto:general@cesew.org.uk)
- Website: [www.cesew.org.uk](http://www.cesew.org.uk)

## **Changing Faces**

Changing Faces is a UK charity that supports and represents people who have disfigurements of the face or body from any cause. They offer expert advice, resources and training programmes in education to enable teachers to understand and respond to the challenges facing children and young people with disfigurements.

- Telephone: 0845 4500 275
- Email: [info@changingfaces.org.uk](mailto:info@changingfaces.org.uk)
- Website: [www.changingfaces.org.uk](http://www.changingfaces.org.uk)

## **Citizens Advice**

The Citizens Advice service helps people resolve their legal, money and other problems by providing free, independent and confidential advice, and by campaigning and influencing policymakers.

- Telephone: 020 7833 2181 (admin only, no advice available on this number)
- Website: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

## **The Council for Disabled Children (CDC)**

The Council for Disabled Children provides an information service to parents and professionals on the needs of disabled pre-school children, pupils and students.

- Telephone: 020 7843 1900
- Email: [cdc@ncb.org.uk](mailto:cdc@ncb.org.uk)
- Website: [www.ncb.org.uk/cdc](http://www.ncb.org.uk/cdc)

## **Department for Education**

Information on the main standards schools are required to follow, as well as guidance on complex issues.

- Website: [www.education.gov.uk](http://www.education.gov.uk)

## **Directgov**

Directgov is the UK government's digital service for people in England and Wales. It delivers information and practical advice about public services, bringing them all together in one place.

- Website: [www.direct.gov.uk](http://www.direct.gov.uk)

## Education unions

A comprehensive list of education unions can be found at:

[www.teachernet.gov.uk/professionaldevelopment/professionalassociations/unions/](http://www.teachernet.gov.uk/professionaldevelopment/professionalassociations/unions/)

## Estyn

Estyn is the education and training inspectorate for Wales.

- Telephone: 029 2044 6446
- Email: [enquiries@estyn.gov.uk](mailto:enquiries@estyn.gov.uk)
- Website: [www.estyn.gov.uk](http://www.estyn.gov.uk)

## Fawcett Society

Fawcett is the UK's leading campaign for equality between women and men. They campaign on women's representation in politics and public life; pay, pensions and poverty; valuing caring work, and the treatment of women in the justice system.

- Telephone: 020 7253 2598
- Website: [www.fawcettsociety.org.uk](http://www.fawcettsociety.org.uk)

## Gender Identity Research and Education Society (GIRES)

GIRES provides a wide range of information and training for trans people, their families and professionals, including a Home Office-funded toolkit for education professionals to combat transphobic bullying.

- Telephone: 01372 801 554
- Email: [info@gires.org.uk](mailto:info@gires.org.uk)
- Website: [www.gires.org.uk](http://www.gires.org.uk)

## General Teaching Council for Wales (GTCW)

The GTCW is the statutory self-regulating professional body for the teaching profession in Wales. It contributes to improving the standards of teaching and quality of learning, and maintains and improves standards of professional conduct among teachers.

- Telephone: 029 2055 0350
- Email: [information@gtcw.org.uk](mailto:information@gtcw.org.uk)
- Website: [www.gtcw.org.uk](http://www.gtcw.org.uk)

## **Governors Wales**

Governors Wales provides up-to-date information, advice, guidance and support on all school governance issues.

- Telephone: 029 2073 1546
- Helpline: 0845 602 0100
- Email: [contact@governorswales.org.uk](mailto:contact@governorswales.org.uk)
- Website: [www.governorswales.org.uk](http://www.governorswales.org.uk)

## **Independent Schools Inspectorate (ISI)**

ISI is responsible for inspecting independent schools.

- Telephone: 020 7600 0100
- Email: [info@isi.net](mailto:info@isi.net)
- Website: [www.isi.net](http://www.isi.net)

## **Irish Travellers Movement in Britain (ITMB)**

The ITMB seeks to raise the profile of Irish Travellers in Britain and increase their say in decision-making processes and forums. The ITMB seeks to challenge discrimination and develop national policies that ensure the inclusion of Irish Travellers in all levels of society.

- Telephone: 020 7607 2002
- Email: [info@irishtraveller.org.uk](mailto:info@irishtraveller.org.uk)
- Website: [www.irishtraveller.org.uk](http://www.irishtraveller.org.uk)

## **The Muslim Council of Britain (MCB)**

The MCB is a charity set up to promote cooperation, consensus and unity on Muslim affairs in the UK. It aims to promote greater and more effective participation from the Muslim community at all levels of the education system. The MCB undertakes campaigning and lobbying and provides advice on educational issues affecting Muslim pupils and students.

- Telephone: 0845 262 6786
- Email: [admin@mcb.org.uk](mailto:admin@mcb.org.uk)
- Website: [www.mcb.org.uk](http://www.mcb.org.uk)

### **National Aids Trust (NAT)**

The NAT is the UK's leading charity dedicated to transforming society's response to HIV. It has produced a practical resource for teachers providing suggestions on how to integrate learning about HIV into the national curriculum for different subjects within key stages 3 and 4.

- Telephone: 020 7814 6767
- Email: [info@nat.org.uk](mailto:info@nat.org.uk)
- Website: [www.nat.org.uk](http://www.nat.org.uk)

### **National Children's Bureau (NCB)**

NCB is the leading national charity which supports children, young people and families, and those who work with them. They carry out campaigning, policy, research and practice development to reduce inequalities in childhood and to advance the wellbeing of all children and young people, across every aspect of their lives.

- Telephone: 020 7843 6000
- Email: [enquiries@ncb.org.uk](mailto:enquiries@ncb.org.uk)
- Website: [www.ncb.org.uk](http://www.ncb.org.uk)

### **Royal National Institute of Blind People (RNIB)**

RNIB is the UK's leading charity offering information, support and advice to almost 2 million people with sight loss. They campaign to eliminate avoidable sight loss and support research into sight loss and eye health issues.

- Telephone: 020 7388 1266
- Email: [helpline@rnib.org.uk](mailto:helpline@rnib.org.uk)
- Website: [www.rnib.org.uk](http://www.rnib.org.uk)

### **Runnymede**

Runnymede is the UK's leading independent race equality think tank. Their work in education covers race equality policy which is brought together through the Transitions Programme and includes analysis of school choice, cohesion, segregation, achievement and exclusions from school, and support for schools to include greater ethnic diversity in the school curriculum which includes a range of curriculum-based resources.

*Continued...*

- Telephone: 020 7377 9222
- Email: [info@runnymedetrust.org](mailto:info@runnymedetrust.org)
- Website: [www.runnymedetrust.org](http://www.runnymedetrust.org)

### **Schools Out**

Schools Out is an organisation providing information and training on LGBT issues for students and professionals. It has a toolkit which can be used to combat homophobia in schools.

- Email: [secretary@schools-out.org.uk](mailto:secretary@schools-out.org.uk)
- Website: [www.schools-out.org.uk](http://www.schools-out.org.uk)

### **Scope**

Scope is a charity that supports disabled people and their families, and works to ensure high- quality education and support for all children and young people with cerebral palsy and complex needs. Scope has produced a range of training materials to encourage inclusion in all educational settings.

- Telephone: 0808 800 3333
- Email: [response@scope.org.uk](mailto:response@scope.org.uk)
- Website: [www.scope.org.uk](http://www.scope.org.uk)

### **Stonewall**

Stonewall is the UK's leading lesbian, gay and bisexual charity and carries out campaigning, lobbying and research work as well as providing a free information service for individuals, organisations and employers. It offers a range of resources including information for primary and secondary school teachers, youth workers, parents, local authorities and young people on homophobic bullying.

- Telephone: 0800 050 2020
- Email: [info@stonewall.org.uk](mailto:info@stonewall.org.uk)
- Website: [www.stonewall.org.uk](http://www.stonewall.org.uk)

### **Teachernet**

Resources and guidance for teachers on a range of issues.

- Website: [www.teachernet.gov.uk](http://www.teachernet.gov.uk)

## **Training and Development Agency for Schools (TDA)**

The TDA provides a range of advice and guidance for schools on standards and how to support and develop staff.

- Telephone: 0845 6000 991 (For English speakers)
- Telephone: 0845 6000 992 (For Welsh speakers)
- Minicom: 0117 915 8161
- Website: [www.tda.gov.uk](http://www.tda.gov.uk)

## **Womankind Worldwide**

Womankind Worldwide is a UK charity set up to protect and improve the status of women. It runs a programme of work for secondary school students and teachers in the UK called Challenging Violence, Changing Lives. This includes lesson plans for PSE and citizenship lessons for key stages 3 and 4, giving step-by-step guidance to teachers about gender stereotypes, sexual bullying and healthy non-violent relationships.

- Telephone: 020 7549 0360
- Email: [info@womankind.org.uk](mailto:info@womankind.org.uk)
- Website: [www.womankind.org.uk](http://www.womankind.org.uk)

## **Young People's Learning Agency (YPLA)**

The YPLA is one of the successor agencies to the Learning and Skills Council. It provides financial support to young learners; funds academies, general FE and sixth form colleges, and other 16-19 providers; and supports local authorities to commission suitable education and training opportunities for all 16-19-year-olds.

- Telephone: 0845 337 2000
- Email: [enquiries@ypla.gov.uk](mailto:enquiries@ypla.gov.uk)
- Website: [www.ypla.gov.uk](http://www.ypla.gov.uk)

## **YWCA**

YWCA is the UK's leading charity working with disadvantaged young women in England and Wales. They carry out campaigns, research and policy development including in the area of education and skills.

- Telephone: 01865 304200
- Email: [info@ywca.org.uk](mailto:info@ywca.org.uk)
- Website: [www.ywca.org.uk](http://www.ywca.org.uk)

Please note: These organisations are those which the Commission is aware of as being relevant contacts for inclusion in this guidance. It is not a definitive list. Please contact us if you know of other organisations which should also be included.

# Contacts

This publication and related equality and human rights resources are available from the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

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

Website [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)

10:00 to 14:00 (Saturday)

Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com). The Commission welcomes your feedback.

## Alternative formats

This guide is available as a PDF file and as a Microsoft Word file in English and Welsh from [www.equalityhumanrights.com](http://www.equalityhumanrights.com). For information on accessing a Commission publication in an alternative format, please contact: [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com)

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