

## **Equality Policy and Information**

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## Introduction: The Equality Act 2010

This Equalities Update aims to keep you abreast with prevailing legal requirements according to the Equality Act 2010, and convey as accurately as possible the official advice and guidance published by the Department for Education (DfE), the Equality and Human Rights Commission (EHRC) and the Government Equalities Office (GEO).

## The Equality Act 2010 consolidated and replaced anti-discrimination laws introduced over the previous 40 years.

The Equality Act 2010 is the single legal framework for tackling disadvantage and discrimination. The Act introduced a single Public Sector Equality Duty (PSED), which came into force in April 2011; replacing the separate duties on race, disability and gender. The PSED, sometimes referred to as the 'general duty', extends schools' equality duties to all protected characteristics:

- Race
- Disability
- Sex
- Age\*
- Religion or belief
- Sexual orientation
- Pregnancy and maternity
- Gender reassignment
- Marriage and Civil Partnership\*

\*For staff only

The PSED consists of three main elements. In carrying out their functions, public bodies are required to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

## The Act also introduced specific duties which require schools to:

- Publish annually information to demonstrate compliance with the Equality Act 2010
- Every four years set one or more specific measurable equality objectives that further the aims of the equality duty.

While there is no longer a legal obligation to produce an equality scheme, it is recommended that schools produce written evidence to demonstrate compliance with equality legislation. A policy allows the school to show compliance and is useful evidence to provide to Ofsted.

According to the Act, schools were required to publish their initial information and objectives for the first time no later than 6 April 2012.

Schools who have not refreshed their objectives will therefore be developing new objectives by April 2016.

## Scope

The Act covers all aspects of school life relating to how a school treats its pupils and prospective pupils, and their parents and carers; how it treats its employees; and how it treats members of the local community.

The protected characteristic of age applies to schools as employers, but not with regard to treatment of pupils and prospective pupils.

Schools also have obligations under the Equality Act 2010 as employers, bodies which carry out public functions and service providers; however these obligations are not covered in this document.

Schools have a general duty to promote equality and certain specific duties as summarised below.

All public bodies including all local authorities and all schools (including independent schools, academies, voluntary controlled, voluntary aided, free schools and other state-funded educational settings) are obliged to comply with the public sector equality duty.

The equality duty consists of a general equality duty with three main aims (set out in section 149 of the Equality Act 2010) and specific duties (set out in secondary legislation). The specific duties are designed to help public

authorities meet the general equality duty. Similar to the general duties which schools have already been discharging in relation to race, disability and gender those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

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

The three key terms in the public sector duty – ‘discrimination’, ‘equality of opportunity’ and ‘good relations’ – are explained briefly in the Act itself and explained in the practical implications for schools advice issued by the Department for Education (DfE) and the Equality and Human Rights Commission.

The principle underlying the concept of equality of opportunity is that treating people equally does not necessarily involve treating them the same. The legislation requires that account should be taken of people’s differing experiences, needs and histories, and of the differing challenges and barriers which they may face. The Act’s definition of equality of opportunity is complex in its legal terminology but is of substantial importance:

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

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic
- meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The Act also explains that ‘having due regard to the need to foster good relations’ involves, in particular, bearing in mind ‘the need to tackle prejudice and promote understanding’. This clearly has implications for the curriculum and organisation of schools, and for the duty of schools to promote community cohesion.

It is important to note that other vulnerable pupils such as young carers may be subject to discrimination. In addition to meeting the needs of the protected characteristics schools should take appropriate actions to protect other vulnerable learners.

## Specific duties to publish data, assess impact, set equality objectives and report progress at least annually

To fulfil the three aims of the general duty, schools have three sets of specific duties:

1. to collect, analyse and publish information about their progress in achieving the three aims of equality legislation.
2. to decide on certain specific and measurable objectives that they will pursue over the coming years to achieve the three aims, and publish these objectives and, when undertaking the first two sets of specific duties
3. to engage with people who have a legitimate interest – including all staff (both teaching and administrative), all parents, carers, pupils, local groups, organisations and individuals as appropriate.

The first of these duties was due for completion by 31 December 2011, and must be undertaken again no more than four years later. The second was due for completion by 6 April 2012, and similarly must be undertaken no more than four years later. Work on the third is ongoing.

The basic principle underlying the new specific duties is that of transparency. 'Our proposals,' the Government Equalities Office (GEO) has said, 'use the power of transparency to help public bodies to fulfil the aims of the Equality Duty to eliminate discrimination, advance equality of opportunity and foster good relations between different groups.'

Transparency means public bodies being open about the information on which they base their decisions, about what they are seeking to achieve and about their results.' Publication of data must be done in a way that is open and freely available to third parties, for example community groups and equality campaigners.

## Disability

The definition of disability has been redefined in the Equality Act 2010.

*"A person has a disability for the purposes of the Act if he or she has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities (S6(1))."*

Office for Disability Issues, Equality Act 2010 Guidance

Many children and young people who have special educational needs (SEN) may have a disability under the Equality Act 2010. The Equality Act 2010 and part 3 of the Children and Families Act 2014 interact in a number of important ways. They share a common focus on removing barriers to learning and requiring different agencies to work together.

The new special educational needs and disability code of practice: 0-25 years provides information on relevant duties under the Equality Act 2010 for children and young people with disabilities. Schools must have regard to this from 1 September 2014.

The Equality Act 2010 sets out the legal obligations that schools have towards disabled children and young people in addition to the PSED and specific duties for schools:

- They must not directly or indirectly discriminate against, harass or victimise disabled children and young people
- They must not discriminate for a reason arising in consequence of a child or young person's disability
- They must make reasonable adjustments, including the provision of auxiliary aids and services, to make sure that disabled children and young people are not at a substantial disadvantage compared with their peers
- Schools must publish accessibility plans setting out how they plan to increase access for disabled pupils to the curriculum, the physical environment and to information

School governing bodies and proprietors must also publish information about the arrangements for the admission of disabled children, the steps taken to prevent them being treated less favourably and the facilities provided to assist access of disabled children. This could be brought together with the information required in the SEN information report.

## Useful related guidance:

Equality Act 2010: Advice for Schools: non-statutory advice from the DfE

Reasonable adjustments for disabled pupils (2012) – technical guidance from the Equality and Human Rights Commission

Special educational needs and disability code of practice: 0-25 years - statutory guidance from the DfE

Supporting pupils at school with medical conditions (2014): statutory advice from the DfE

## Effective engagement with stakeholders

- Engagement will help you to understand key equality issues and define your priorities for action.
- Be mindful of diversity within protected groups and of multiple barriers that many people face.

## Setting objectives

Equality objectives published in April 2012 should be based on sound evidence and reflect SMART principles (Specific, Measurable, Achievable, Realistic and Timed).

For example: A school identifies that boys are underachieving academically in the key subjects of English, Maths and Science. Average scores show that 72 per cent of girls are achieving the expected grades, while the figure for boys is 48 per cent. The school decides to set an objective to improve this figure over a four year period to 65 per cent of boys reaching the required grade.

## Equality Impact Assessments

The previous requirement to have detailed written impact assessment is no longer in place. However, schools will find it helpful to undertake some level of impact.

Equality impact assessing all of our policies is an important process and takes time to deliver. In reviewing policies, leadership teams and governors should continue to consider whether there are equalities issues arising from the content or application of the policy. Adjustments to the policy and/or areas for development or change should be identified accordingly.

The public sector equality duty requires that equality considerations are integrated into all functions and policies. It means that all staff will need to understand the requirements and implications, and share responsibility for their implementation.

In view of the setting objectives cycle, we have included summary notes on EIA at the end of this paper to assist with your policy reviews and decisions.

## Ofsted inspections: Equality issues

Equality issues impact on the Ofsted school inspection judgements under section 5 of the Education Act 2005 (as amended). In particular, the following excerpts from the “School Inspection Handbook” and “Inspecting Safeguarding in Maintained and Academies” guidance demonstrate the equality issues considered in inspections:

Overall effectiveness: the quality of the education provided by in the school:

“Before making the final judgement on the overall effectiveness, inspectors must also evaluate: the effectiveness and impact of the provision for pupils’ spiritual, moral, social and cultural development the extent to which the education provided by the school meets the needs of the range of pupils at the school and in particular the needs of: pupils who have a disability for the purposes of the Equality Act 2010 pupils who have special educational needs.”

The new ‘Special educational needs and disability code of practice 0 to 25 years’ gives detailed guidance on the impact of Equality Act 2010 in providing service to meet the needs of children with special needs and disability.

Inspection is primarily about evaluating how well individual pupils benefit from the education provided by their school. It is important to test the school’s response to individual needs by observing how well it helps all pupils to make progress and fulfil their potential. It may be relevant to pay particular attention to the achievement of:

“disabled pupils and those who have special educational needs  
those with protected characteristics, including Gypsy, Roma and Traveller children, as defined by the Equality Act 2010

boys

girls

the highest and lowest attainers disadvantaged pupils, including:

- looked after children
- pupils known to be eligible for free school meals – a school is unlikely to be judged outstanding if these pupils are not making at least good progress those attending alternative provision.”

Quality of leadership in and management of the school:

“Inspectors should consider how well leadership and management ensure that the curriculum:

promotes tolerance of and respect for people of all faiths (or those of no faith), races, genders, ages, disability and sexual orientations (and other groups with protected characteristics) through the effective spiritual, moral, social and cultural development of pupils, including through the extent to which schools engage their pupils in extra-curricular activity and volunteering within their local community”

“Inspectors should consider whether governors:

ensure that they and the school promote tolerance of and respect for people of all faiths (or those of no faith), races, genders, ages, disability and sexual orientations (and other groups with protected characteristics) and support and help, through their words, actions and influence within the school and more widely in the community, to prepare children and young people positively for life in modern Britain”

“Inspectors should be mindful of a school’s obligations under the Equalities Act 2010 and, in particular, the protected characteristics. Where a school chooses, in exceptional circumstances, to segregate lessons, assemblies and other activities on the basis of, for example, gender or disability, there must be good educational reasons for doing so. The school will need to justify these reasons for example on the basis of improved achievement for all pupils. It is important for inspectors to explore the educational reasons for any segregation and to talk to pupils about it.”

The school leadership may be judged inadequate if:

“Leaders and governors, through their words, actions or influence, undermine the promotion of tolerance of and respect for people of all faiths (or those of no faith) races, genders, ages, disability and sexual orientations (and other groups with protected characteristics) and so do not support and help prepare pupils positively for life in modern Britain. “

(School inspection handbook, January 2015)

## The behaviour and safety of pupils at the school:

In the safeguarding guidance, Ofsted states that safeguarding is ‘protecting children from maltreatment’ and ‘ensuring that children are growing up in circumstances consistent with provision of safe and effective care.’ Safeguarding issues are therefore equality issues.

“Safeguarding can involve a range of potential issues such as:

- bullying, including cyberbullying (by text message, on social networking sites, and so on) and prejudice-based bullying
- racist, disability, and homophobic or transphobic abuse
- radicalisation and extremist behaviour
- child sexual exploitation
- sexting
- substance misuse
- issues that may be specific to a local area or population, for example gang activity and youth violence
- particular issues affecting children including domestic violence, sexual exploitation, female genital mutilation and forced marriage.”

(Inspecting safeguarding in maintained schools and academies, January 2015)

Achievement of pupils at the school:

“Inspectors must take account of the learning and progress across the year groups of different groups of pupils currently on the roll of the school, including disabled pupils, those who have special educational needs, disadvantaged pupils and the most able.”

## Useful actions to take

- Review what information and objectives you have and develop a timetable for filling in the gaps. This is particularly important for the protected groups.
- Continue to maintain good practice and keep abreast of developments incorporating necessary changes into equality schemes, policies and procedures.
- Equality schemes have proved to be an effective tool for schools to draw up equality policies and practice (however there will no longer be a requirement that schools and local authorities should draw up equality schemes). Maintaining an equality policy and continuing to identify action for progressive improvements under each of the strands as necessary, whether in the school plan or in an equalities action plan, that will contribute strongly to evidence on inclusion monitored by Ofsted. It will also provide the school with a strong defence in the event of a legal challenge from any stakeholder.
- Access regular training for your school to ensure that the new statutory requirements are being fulfilled and embedded.
- Engage parents/carers and other interested stakeholders by communicating new information which will ‘foster good relationships’ and ensure ‘transparency’.
- Ensure governors consider the Equality Act legislation and guidance at meetings.
- Ensure SMSC and activities promoting British values are highlighted and published.

## **NHESC will ensure that;**

- Equality targets are set and an action plan is in place
- Equality information is published
- Governors have received training and understand their responsibilities and the actions required
- Staff have received training and understand their responsibilities, recording incidents involving protected characteristics
- Staff are developing a curriculum that is fully inclusive of all protected characteristics
- SMSC activities are promoting British values

It is important to note that other vulnerable pupils in school, such as young carers, may be subjected to discrimination. In addition to meeting the needs of the protected characteristics, schools must take appropriate actions to protect these vulnerable learners.

## **Additional information**

**School Equality Scheme:** a Toolkit for schools, 2012 (sent to schools in 2012)

For information on LGBT and homophobia;

<http://www.thegrid.org.uk/learning/hwb/bullying/prejudice/index.shtml#homophobia>

A useful summary of the principal implications for schools:

<https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

Also in May 2014 the Department published extensive notes on legal definitions and implications, entitled Equality Act 2010: advice for school leaders, school staff, governing bodies and local authorities.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/315587/Equality\\_Act\\_Advice\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315587/Equality_Act_Advice_Final.pdf)

Detailed guidance on the employment provisions of the Act can be found at:

[www.acas.org.uk/index.aspx?articleid=3017](http://www.acas.org.uk/index.aspx?articleid=3017)

The statutory code of practice on employment at: [www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice](http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice)

There is general advice and guidance available from the Equality and Human Rights Commission (EHRC) in five clearly-written documents:

- The essential guide to the public sector equality duty
- Equality analysis and the equality duty
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

The National Association of Headteachers (NAHT) has published Quick Guide to the Equality Act 2010 at: [www.naht.org.uk/welcome/resources/key-topics/equal-opportunities/quick-guide-to-the-equality-act-2010/](http://www.naht.org.uk/welcome/resources/key-topics/equal-opportunities/quick-guide-to-the-equality-act-2010/)

<http://www.equalityhumanrights.com/key-projects/triennial-review/on-line-summary/education/>.  
The full text is at [http://www.equalityhuman-rights.com/uploaded\\_files/triennial\\_review/how\\_fair\\_is\\_britain\\_ch10.pdf](http://www.equalityhuman-rights.com/uploaded_files/triennial_review/how_fair_is_britain_ch10.pdf)

### **Highly recommended reading and resource**

To support curriculum planning and school improvement planning, there are many practical suggestions and ideas in 'Holding Together – equalities, difference and cohesion' -

Robin Richardson, published by Derbyshire County Council and Trentham Books

ISBN:978-1-85856-453-1

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Appendix: Impact assessment summary

(For a detailed discussion please refer to our previous updates on impact assessment or contact the Adviser, Equality)

### **Equalities Impact Assessment (EIA)**

An Equality Impact Assessment is a systematic method of measuring and re-cording the effect of school policies, initiatives or changes on the protected characteristics found in the workforce, school population and in the community. Equality Impact assessments are not required by law but they 'are a way of facilitating and evidencing compliance with the Public Sector Equality Duty.'

Impact assessment can be used to:

- review existing policies, functions and procedures as part of an audit process
- assess proposed or new policies
- assess the degree of success of the implementation of equality scheme action plan

The specific aim of impact assessment is to:

- anticipate any adverse impacts
- amend the school's policies and procedures to resolve adverse impacts
- identify positive outcomes in order to build on them

The following are some common methods which may be considered in undertaking impact assessment:

- gathering necessary information, data and evidence regarding the current situation
- analysing the information to identify gaps and identify actions needed
- observing current practice, complaints or feedback from stake holders
- using parent or student panel discussions
- consultation with stake holders through, surveys and questionnaires; interviews and focus groups

Ensure the school policy review process contains questions enabling you to interrogate the policy effectively regarding equality issues.

The questions below may help, you may want to ask all the questions for each protected characteristic in turn

- What is the policy trying to achieve and who will benefit? Does the policy have a positive approach to difference? Does it recognise, mention, include provisions for the different characteristics?
- Does this policy have, or is it likely to have, a high/medium/low impact on equality issues?
- Is due regard given to the specific needs and experiences of the protected characteristics? Is there adverse impact on any of the protected characteristics?
- Does this policy help to reduce and remove any inequalities that currently exist – whether in school experience or outcomes? How is this measured? What do our results show?
- Is this policy based on involvement of and consultation with pupils, staff, parents or carers or other stakeholders from the different protected characteristics?
- What arrangements should we make for monitoring and evaluating the policy and its impact as part of regular reviews?

For the impact assessment process to be effective, it must be systematic, proactive and explicit and ensure therefore that the equalities issues of all groups within the whole school community are addressed in day-to-day school activity.

**The outcome should be an equalities improvement plan** that addresses adverse impact on protected characteristics. These outcomes may also inform the next set of objectives you set for your school.

### **Next Steps**

- Incorporate appropriate changes to remove identified disadvantage and discrimination
- Update the Equality Scheme and action plan based on the new priorities.
- Publish the information and celebrate successes
- Build a monitoring and review into the review process

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uk

- Auditing equality practice
- Drawing up single equality scheme
- Embedding equality practice
- Promoting equality, diversity and inclusion
- Dealing with incidents of discrimination
- Bespoke CPD training for addressing issues of equality









