
EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 149(1) of the Equality Act 2010 (“the Act”) provides that a public authority listed in Schedule 19 to the Act must in exercising its functions have due regard to the need to:

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

For the purpose of enabling the better performance of the duty under section 149(1) of the Act (referred to in this note as “the general duty”), the Welsh Ministers make these Regulations under the power given to them by section 153(2) of the Act. These Regulations impose duties on relevant Welsh authorities who are specified in Part 2 of Schedule 19 to the Act (“authorities”).

Regulation 3 requires authorities to publish objectives, which are referred to as “equality objectives”, which must be designed so as to enable the authority to better perform the general duty. If an authority does not publish an equality objective in respect of one or more of the protected characteristics it must publish its reasons for its decision not to do so. An equality objective with the purpose referred to in regulation 11(1) is to be ignored. Regulation 11(1) is in relation to equality objectives on gender pay difference. Therefore, for the purposes of regulation 3(3) an authority will, for example, have to give reasons if it does not publish an equality objective in respect of the protected characteristic of sex even if it has a gender pay objective in place.

Regulation 3(2) requires an authority to publish a statement which sets out the steps it has taken or intends to take in order to achieve each equality objective and the timescale for fulfilling each equality objective. An authority must also make appropriate arrangements to monitor its progress in order to fulfil each objective and to monitor the effectiveness of the steps it has taken in order to fulfil the equality objectives.

Regulation 4 requires an authority to comply with the engagement provisions in regulation 5 and have due regard to “relevant information” that it holds when considering and designing its equality objectives. “Relevant information” is defined in regulation 2 and means information that relates to compliance (or otherwise) by the authority with the general duty.

An authority must publish its equality objectives by no later than 2 April 2012. Thereafter an authority must review its equality objectives within four years from when they were first published and at least once every four years subsequently. Authorities may revise or remake equality objectives at any time. If an authority revises an objective without remaking it then it must publish the revision or the revised objective as soon as possible. If an authority revises or remakes an objective it must either amend the statement it is required to publish under regulation 3 or publish a new statement.

Regulation 5 requires that where an authority has to comply with engagement provisions under these Regulations it must involve those persons that the authority considers represent the interests of persons who share one or more of the protected characteristics and who have an interest in the way the authority carries out its functions. An authority may also involve or consult such other persons as it considers appropriate.

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

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

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

An authority holds relevant information if it is held by an authority, otherwise than on behalf of another person, or held by another person on behalf of the authority. In addition, information which is held by an authority on behalf of another person can also be relevant information that an authority holds. However this can only be the case if the person on whose behalf the information is held by the authority consents to the authority using the information for the purpose of the authority complying with the general duty and the duties under these Regulations or if it is not contrary to law to use the information and that it is reasonable to do so having regard to all the circumstances.

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

Regulation 8 requires an authority to make arrangements in order to assess the likely impact of proposed policies and practices on its ability to comply with the general duty, as well as the impact of any policy or practice that an authority has decided to review or any proposed revision to a policy or practice. There must be arrangements for publishing reports regarding these assessments where the assessment shows that there is likely to be a substantial impact on an authority's ability to comply with the general duty. When assessing such matters under regulation 8(1)(a) or (b) an authority must comply with the engagement provisions and have due regard to the relevant information. Also an authority must monitor the impact of its policies and practices on its ability to comply with the general duty.

Regulation 9 imposes duties in relation to training and the collection of employment information. It sets out what information an authority must collect each year and requires an authority to publish information it has collected. Such information may be set out in an authority's annual report. Regulation 9(5) and (6) make it clear that an authority cannot rely on the effect of regulation 9 to compel its employees or persons who may apply to the authority for employment to disclose, for example, that they are gay, straight or bisexual.

Regulation 10 requires an authority to make such arrangements as it considers appropriate for promoting amongst its employees knowledge and understanding of the general duty and of the duties in these Regulations. An authority should also identify and address any training needs of its employees in relation those duties.

Regulation 11 requires that when an authority is considering what its equality objectives should be, it must have due regard to the need, in respect of its employees, to have equality objectives that address the causes of any pay differences. Those pay differences are between the pay of any person or persons who have or share a protected characteristics and those who do not where the reason for the difference is or is reasonably likely to be for a reason that is related to the fact that the person (or persons) has (or share) a protected characteristic. “Gender pay difference” means any difference between the pay of a person or persons where the difference is or is reasonably likely to be for a reason that is related to the difference in gender. Where an authority has identified a “gender pay difference” and has not published an equality objective to address it, then the authority must publish reasons for its decisions not to publish such an objective.

Regulation 12 requires an authority to publish an action plan which sets out any policy it has relating to the need to address the causes of any gender pay difference and any gender pay equality objective published by the authority. The action plan must also set out, for example, any revisions to a gender pay equality objective and information in respect of gender pay objectives that it is required to publish by virtue of regulation 3(2)(a) such as how long the authority expects it will take to achieve in order to fulfil a gender pay objective.

Regulation 13 provides for all arrangements made under these Regulations to be kept under review.

Regulation 14 requires an authority to make a Strategic Equality Plan (SEP) no later than 2 April 2012. The SEP is intended to be a central vehicle to carry the various things these Regulations require so there can be a single point of access to the public. The SEP must contain a statement setting out a description of the authority, the authority’s equality objectives, details of the steps the authority has taken or intends to take in order to fulfil its objectives, how long it will take in order to fulfil its objectives, and details of arrangements it has made or intends to make to comply with these Regulations. The SEP can be revised or remade at any time.

Regulation 15 sets out provisions concerning the preparation, publication and review of a SEP. An authority must publish its SEP as soon as possible after it had been made or remade. If it has been revised without being remade, then the authority must publish the revisions. The SEP may be part of another published document. An authority must keep its SEP under review.

Regulation 16 requires an authority to publish a report in respect of each “reporting period”. “Reporting period” means the period 1 April to 31 March except in relation to the reporting period ending 31 March 2012 in which case reporting period means the period 6 April 2011 to 31 March 2012. The report must be published not later than the “relevant date” in the year following the year in which that reporting period ends. “The relevant date” means 31 March. The regulation sets out what the report must contain. The report may be part of another published document.

Regulation 17 requires the Welsh Ministers to publish reports that set out an overview of the progress made by authorities towards compliance with the general duty. The reports must also set out Welsh Ministers’ proposals for the coordination of action by authorities so as to bring about further progress towards compliance by those authorities with the general duty.

Regulation 18 makes provision about public procurement in instances where an authority is a contracting authority. Such authorities should have regard to whether award criteria should include considerations relevant to performance of the general duty. Also a contracting authority must have due regard as to whether any conditions imposed by them should include considerations relevant to performance of the general duty.

Regulation 19 states that where the Welsh Ministers, First Minister and Counsel General to the Welsh Assembly Government are subject to duties under these Regulations they may act jointly, for example, they may produce a single SEP for the Welsh Assembly Government.

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Regulation 20 states that nothing in these Regulations should be taken as to require an authority to publish information if doing so would constitute a breach of confidence actionable by a person or a breach of the Data Protection Act 1998. An authority is not required to publish any information that it would be entitled to refuse to produce in a court or tribunal in England or Wales, e.g. information subject to legal professional privilege. Apart from the above there are no other available exemptions from disclosure of the information.