

The public sector equality duty: specific duties for Wales

Implications for higher education institutions



Equality Challenge Unit

Contents

The equality duty	2
Creating an evidence base	5
Engagement: involving and consulting people	8
Assessing the impact of HEI policies	10
Pay difference objectives	12
Equality objectives	13
Strategic equality plan	14
Reporting on compliance with the duty	15
Embedding and mainstreaming equality across an HEI	17
Further resources	18

The Equality Act 2010 replaces previous anti-discrimination law, consolidating it into a single act. The majority of the Act came into force on 1 October 2010 and introduced new measures which have direct implications for higher education institutions (HEIs).

The **public sector equality duty** came into force on 5 April 2011, replacing the previous equality duties for race, disability and gender. The public sector equality duty is underpinned by specific duties. In Wales these were commenced on 6 April 2011. Welsh HEIs, and the Higher Education Funding Council for Wales (HEFCW), are covered by the equality duty.

This briefing should be read in conjunction with ECU's briefing *Equality Act 2010: implications for higher education institutions* (see Further resources).

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Advancing equality and
diversity in higher education

The equality duty

The equality duty consists of a **general duty**, with three main aims (set out in section 149 of the Equality Act 2010); and **specific duties** (set out in the secondary legislation that accompanies the Act). The specific duties are intended to assist public bodies to meet the general duty.

The equality duty covers the following protected characteristics that are recognised within the Equality Act:

- = age
- = disability
- = gender reassignment
- = pregnancy and maternity
- = race – this includes ethnic or national origin, colour or nationality
- = religion or belief – this includes lack of belief
- = sex
- = sexual orientation

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

The Equality and Human Rights Commission (EHRC) is responsible for **assessing compliance** with and **enforcing** the equality duty. It has powers to issue compliance notices to HEIs that fail to comply with the duty and can apply to the courts for an order requiring compliance. The general duty (see below) can also be enforced by judicial review. This can be sought by the EHRC or any individual or group of people with sufficient interest.

General duty

The general duty has three aims.

It requires HEIs to have **due regard** to the need to:

- = eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- = advance equality of opportunity between people from different groups – this involves considering the need to:
 - remove or minimise disadvantages suffered by people due to their protected characteristics
 - meet the needs of people with protected characteristics
 - encourage people with protected characteristics to participate in public life or in other activities where their participation is low



- = foster good relations between people from different groups – this involves tackling prejudice and promoting understanding between people from different groups

In order to demonstrate due regard, institutions must consider the three aims of the general duty when making decisions as employers and education and service providers; for example, when:

- = developing, evaluating and reviewing policies
- = designing, delivering and evaluating services, including education provisions
- = commissioning and procuring services from others

To comply with the general duty, institutions may treat some people more favourably than others, as far as this is allowed by UK and European anti-discrimination law. The general duty also explicitly recognises that disabled people's requirements may be different from those of non-disabled people. HEIs are required to take account of disabled people's impairments and must make reasonable adjustments for disabled people.

To reduce the likelihood of discrimination occurring against students because they are pregnant or have recently given birth, an HEI introduces a policy on supporting students during pregnancy and maternity. It provides training for staff in academic and pastoral roles to ensure effective implementation of the policy.

To encourage more women into engineering and advance equality of opportunity between men and women, an HEI reviews its marketing materials and ensures that female staff are present at open days. It also develops a programme for girls in local schools aimed at attracting them into engineering and provides mentoring to successful female applicants throughout their course.

www.athenaswan.org.uk/html/athena-swan

A member of staff who has transitioned to their preferred gender reports support from their immediate colleagues but mixed attitudes from other staff members. With the aim of fostering good relations, the HEI makes links with a local trans organisation and with its input develops an awareness-raising campaign and materials for use in staff training.

Specific duties

The general duty is underpinned by specific duties. These specific duties commenced on April 6 2011, and replace the previous specific duties for race and disability.

The focus of the specific duties is to deliver positive outcomes through evidence based equality objectives, developed with the engagement of the people affected by the objectives, and after relevant information has been collected and analysed. There are further duties for Welsh ministers to report compliance with the general duty.

To meet the specific duties Welsh HEIs will need to:

- = create an evidence base relevant to their functions
- = engage staff, students and other people
- = assess the impact of policies and practices
- = develop pay difference objectives
- = develop equality objectives
- = report on compliance with the duty
- = embed equality into all functions

The specific duties can be found in full here:

www.legislation.gov.uk/wsi/2011/1064/pdfs/wsi_20111064_mi.pdf



Creating an evidence base

HEIs will need to develop an evidence base of equality information to support positive outcomes relevant to their institution.

The evidence base will be used to:

- = assess the equality impacts of HEIs policies and practices (**regulation 8**)
- = inform the development of equality objectives (**regulation 4**)

The evidence base should include employment and other relevant equality information (including pay information). HEIs must make arrangements to collect and publish information in an accessible format (**regulation 6**).

Employment information

HEIs must collect employment information for all the protected characteristics (**regulation 9**).

This must include information on:

- = the number of people employed on 31 March
- = recruitment (including applicants and those who have changed positions)
- = leavers
- = training
- = grievance
- = disciplinary procedures

For the protected characteristic of **sex** HEIs must also disaggregate the number of people employed on 31 March by:

- = job
- = grade
- = pay
- = contract type (including, but not limited to, permanent and fixed-term contracts)
- = working pattern (including, but not limited to, full-time, part-time and other flexible working arrangements)

HEIs must not compel employees and prospective employees to disclose information, and must not publish information if to do so would legally breach confidence or the Data Protection Act 1998 (**regulation 20**).

HEIs must make arrangements to publish the information it collects **annually** and must first publish this information by 31 March 2013 (see [Reporting on compliance](#)).

Where HEIs are not already collecting information on a particular protected characteristic, or where disclosure is low, ECU recommends that institutions seek to develop a safe and supportive environment through comprehensively demonstrating a commitment to equality. Developing trust encourages staff to disclose protected characteristics.

- = ECU (2010) *Advancing LGB equality: improving the experience of lesbian, gay and bisexual staff and students in higher education*
www.ecu.ac.uk/publications/advancing-lgb-equality
- = ECU (2010) *Student pregnancy and maternity: implications for higher education institutions*
www.ecu.ac.uk/publications/student-pregnancy-and-maternity
- = ECU (2010) *Trans staff and students in higher education: revised 2010*
www.ecu.ac.uk/publications/trans-staff-and-students-in-he-revised
- = ECU (2009) *Developing staff disclosure: a guide to collecting and using equality data*
www.ecu.ac.uk/publications/developing-staff-disclosure

Assessment of relevant equality information

HEIs must complete and publish an **assessment** of what further **relevant equality information** they should collect to meet the equality duty (**regulation 7**).

To decide what is relevant to their institution, HEIs must:

- = look internally at the information they already hold, and what they do not hold
- = look externally at national evidence and other research
- = undertake engagement with relevant persons (**regulation 5**)

Relevant equality information will include **pay information** (**regulation 11**) and information around **students**, for example information submitted to the Higher Education Statistical Agency (HESA) and student surveys.



ECU recommends that HEIs collect information on student:

- = admissions (including applicants and outcomes)
- = progress (including transfers and non-completion)
- = take-up of work placements and targeted programmes
- = grievances
- = attainment

The first of these assessments, **along with the relevant information**, should be published by 2 April 2012 (**regulation 7**). Any subsequent assessments should be published in an HEI's annual report on their compliance with the duty (see [Reporting on compliance](#)).

ECU recommends that HEIs use national evidence to enable comparison and provide context, as this may help to identify long-standing inequalities. It is useful to involve colleagues responsible for holding and analysing information in this process.

- = ECU (2010) *Equality in higher education: statistical report 2010*
www.ecu.ac.uk/publications/equality-in-he-stats-10
- = HESA provides an online data management tool for institutions called heidi. This allows users to manipulate data to create detailed reports across a range of criteria
www.ecu.ac.uk/our-projects/heidi-equality

An institution routinely monitored the age, race, disability and gender of its staff and students but not gender identity, pregnancy and maternity status, sexual orientation or religion and belief. The institution engaged with staff and students to discuss how it should collect data across all the protected characteristics and to develop questions to trial before integrating these into their data collection systems. The HEI produced a timeline detailing how and when it would fill in the gaps in its data, and how it would supplement this with other information. Alongside any data requests, the HEI provided reasons for collection and how the data would be used.

Engagement: involving and consulting people

Engagement covers the range of ways in which HEIs interact with staff and students beyond service provision, education and employment.

Engagement may be a one-off event or repeated over a period of time. It may be formal or informal. It may be focused on a specific issue or on education provision, service delivery or workforce issues more broadly.

Institutions must **engage with people** when:

- = considering and designing equality objectives (**regulation 4**)
- = carrying out an assessment of relevant equality information (**regulation 7**)
- = assessing the equality impacts of HEIs policies and practices (**regulation 8**)
- = preparing, publishing or reviewing a strategic equality plan (**regulation 15**)

Engagement includes **involvement** and **consultation**. HEIs must involve people who represent the interests of those who share one or more of the protected characteristics and have an interest in the way the HEI carries out its functions (**regulation 5**).

An HEI may also involve or consult with other people, as they consider appropriate. In making a decision on who else to engage, an HEI must have regard to the need to involve or consult people with one or more protected characteristic where it is reasonably practicable to do so.

Institutions will need to consider a number of contextual factors, such as accessibility, location and timing, to maximise engagement. Methods that are effective in one institution may not be in another, in part due to differences in the context.

ECU and the Higher Education Academy (HEA) have produced guidance on the range of ways HEIs can engage with students.

- = ECU and HEA (2010) *Strategic approaches to disabled student engagement*
www.ecu.ac.uk/publications/strategic-approaches-to-disabled-student-engagement



An institution conducts an assessment of its admissions form for part-time applicants to determine whether the diversity of applicants is representative of the region. In relation to the proportion of disabled people in the local area, the number of part-time applications from disabled people is low. The HEI works with disabled students and local groups that represent and support disabled people to find out whether the application form poses a potential barrier to disabled applicants and how it can be improved. The HEI also issues a questionnaire to first year disabled students to find out how they think the institution could improve the application process.

The institution finds that its application form may discourage disabled applicants and changes are made to its design to improve accessibility. A point of contact for alternative formats is now listed on the form and the institution briefs staff to effectively respond to requests for alternative formats. Changes are made to the questions that relate to disability to encourage disclosure and improve the quality of information gathered.

Assessing the impact of HEI policies

HEIs must assess the likely impact of proposed and reviewed policies and practices on its ability to comply with the general duty (**regulation 8**).

This will involve assessing the impact on people who share protected characteristics. The regulations do not prescribe what these arrangements should be. HEIs can be flexible in their approach, as different types of policies and practices may require different approaches.

Where a particular policy or practice is found to have a discriminatory impact on a protected group, HEIs can explore alternative policies or practices or justify their actions within the constraints of the law. ECU recommends that HEIs record and justify actions and decisions taken during the assessment. Justification will be needed if a legal challenge is made.

HEIs must **publish reports of assessments** where the assessment shows that there is likely to be a **substantial impact** on its ability to comply with the general duty (**regulation 8**).

The reports must set out:

- = the purpose of the policy or practice being assessed
- = a summary of the steps taken to assess the likely impact
- = a summary of the evidence (for example, in the form of statistical data and research findings) considered as part of the assessment process
- = the results of the assessment
- = any decisions taken following the assessment

The regulations do not specify when to publish reports of assessments. ECU recommends that the findings from and actions taken as a result of assessments are published as soon as possible. In addition, HEIs should consider making information available during the process of the assessment to enable relevant people to effectively engage with the assessment and ensure it influences how things are done.

- = ECU (2010) *Equality in admissions: Equality impact assessments in higher education*
www.ecu.ac.uk/publications/equality-in-admissions
- = ECU (2010) *Equality in restructuring and redundancy: Equality impact assessments in higher education*
www.ecu.ac.uk/publications/equality-in-restructuring-and-redundancy



Following a rise in complaints through its academic grievance procedures an HEI undertakes a review. Through this, the HEI identifies whether the issues raised by students are being handled effectively before they become formal grievances. The review also establishes common issues and themes. The HEI analyses grievances in relation to the student cycle, courses of study and whether they study on a full- or part-time basis. An equality assessment is an integral element of the review.

The institution identifies a number of equality reasons for grievances, such as a failure to make a reasonable adjustment for a disabled student and not taking mitigating circumstances relating to pregnancy into consideration. In addition, data on those raising a grievance was analysed by protected characteristics over a five year period. The HEI finds that it receives more grievances from women than men and that black and minority ethnic students are more likely to cite an equality reason for their grievance than white students. The most common complaint is the failure of a tutor or course director to take the issue seriously, which many of the students feel is because of their ethnicity.

The HEI discusses the findings with tutors and course directors, highlighting the types of grievances for different groups and encouraging self-reflection on how the tutors and course directors support students. The institution offers training for tutors and course directors on the theme of unconscious bias.

As sufficient information was not available on all protected characteristics, the institution commits to closely monitor grievances by sexual orientation, religion and belief, gender identity and pregnancy and maternity.

Pay difference objectives

HEIs must have due regard to the need to have **equality objectives** that address the causes of any **pay difference**.

HEIs must collect employee data in respect of **pay differences** and the **causes of the differences for all the protected characteristics (regulation 11)**. This information should be considered part of the relevant equality information requirements (see *Assessment of relevant equality information*).

If the information suggests there is a pay difference relating to a protected characteristic, HEIs must have due regard to the need to have **equality objectives** that address the causes of any **pay difference**.

- = ECU (2010) *Promoting equality in pay: a practical resource for conducting equal pay reviews in higher education*
www.ecu.ac.uk/publications/promoting-equality-in-pay

HEIs must publish an action plan on **gender pay difference (regulation 11)**. The action plan must be published by April 2012, and be included in the **strategic equality plan** (see next section).

The action plan must set out:

- = any policy it may have that relates to the need to address the causes of any gender pay difference
- = any gender pay equality objective
- = any revision to or any revised gender pay equality objective
- = equality information relating to gender pay objective
- = any reasons for gender pay gap

If an HEI has identified any **gender pay difference** and has not published an equality objective to address the causes of the pay difference, it must publish reasons for the decision not to publish an objective.



Equality objectives

HEIs must pay due regard to their **evidence base** and **engagement activities** to develop **equality objectives** (regulation 4).

Equality objectives must demonstrate how an HEI is furthering the general duty (**regulation 3**). HEIs' equality objectives should aim to achieve positive outcomes in relation to employment, education and service delivery.

An HEI **must consider all protected characteristics when developing objectives** even if they have already set an objective relating to pay difference that covers that particular protected characteristic (**regulation 3**). Where an HEI does not publish an objective in respect of one or more protected characteristics then it **must provide an explanation of that decision** (**regulation 3**).

ECU recommends that senior management is involved at an early stage in the development of equality objectives to demonstrate institutional commitment and ensure that objectives are aligned with the HEI's strategic priorities and business planning and reporting processes.

An HEI has an objective to invest in the development of existing staff talent. On the basis of published information it identifies that it loses most staff following breaks in employment. Through engagement with staff it develops an equality objective to retain and develop talent in middle management. It sets targets to:

- = improve the retention of women following maternity leave by 5%
- = improve the return-to-work rate of disabled staff who have a long-term health condition by 5%

The institution introduces a mentoring scheme for women and designs a leadership development programme for disabled staff. It commits to progressing and evaluating the success of these initiatives over a four year period. The HEI reports progress on the objectives to the governing body on an annual basis.

Strategic equality plan

There is no requirement under the regulations to continue with existing equality schemes. However, an HEI is required to publish a **strategic equality plan** no later than **2 April 2012** (**regulation 14**).

- The **strategic equality plan** must contain a statement setting out:
- = a **description** of the HEI
 - = its **equality objectives**
 - = the **steps** the authority has taken or intends to take to achieve each equality objective, the **timeframe** for achieving each objective and how the authority intends to monitor the progress and effectiveness of the steps (**regulation 14**)
 - = the authority's **action plan** in respect of **gender pay difference** (**regulation 11**)
 - = arrangements to identify and publish relevant equality information (**regulation 7**)
 - = arrangements to assess the impact of policies and practices (**regulation 8**)
 - = arrangements to promote understanding and knowledge of the general duty among employees and training needs in relation to the specific duties (**regulation 10**)

When an HEI is **making, remaking or revising** a strategic equality plan, they must engage with people and have due regard to relevant information that it holds (**regulation 15**).

The **strategic equality plan** may be published as part of another published document or within a number of other published documents (**regulation 15**).



Reporting on compliance with the duty

HEIs must publish an annual report (**regulation 16**). The first report must be published no later than **31 March 2013**, covering the period 6 April 2011 to 31 March 2012.

- The annual report must contain progress statements including:
- = the steps taken to identify and collect relevant information
 - = how the HEI has used the information
 - = the reasons for not collecting any relevant information that it has identified but does not hold
 - = the progress that HEI has made to fulfil each of its equality objectives
 - = a statement about the effectiveness of the arrangements for identifying and collecting relevant information and the steps taken to fulfil each of its equality objectives
 - = employment information (unless already done so)

The report may be published as a standalone document, as part of another published document or within a number of other published documents.

The first report must be published no later than 31 March 2013, covering the period 6 April 2011 to 31 March 2012. The second report should be published no later than the 31 March 2014 for the period 1 April 2012 to 31 March 2013.

Each report must be published no later than the 31 March following the year in which the reporting period ends. The reporting period runs from 1 April to 31 March each year.

Publishing requirement	Date
Employment information	No later than 31 March 2013, then no later than 31 March of the year following the year that the reporting period ends
Other relevant equality information, including pay information	No later than 2 April 2012, and then to ensure relevant equality objectives can be set and reviewed
Identification of relevant information, including pay information	No later than 2 April 2012, and then to ensure relevant equality objectives can be set and reviewed
Assessing the impact of policies and practices	From 5 April 2011
Strategic equality plan (including gender pay difference action plan)	No later than 2 April 2012, then review equality objectives at least every 4 years
Annual report on compliance with the duty	No later than 31 March 2013, then no later than 31 March of the year following the year that the reporting period ends

An HEI must take all reasonable steps to ensure all documents published are accessible (regulation 6).



Embedding and mainstreaming equality across an HEI

HEIs must ensure that staff **are aware and understand the general and specific duties (regulation 10)**. HEIs must also use their performance management procedures to **identify and address the training needs** of its employees in relation to the duties.

HEIs could consider what this means in particular for:

- = **governing bodies and vice-chancellors** to set strategic direction, review performance and ensure good governance of the organisation
- = **senior managers** to oversee the design, delivery, quality and effectiveness of the institution's functions, and to ensure the HEI has the capability and capacity to deliver on its equality responsibilities
- = **academic staff** to embed equality considerations in the design, delivery and assessment of courses and in academic support for students
- = **equality and diversity staff** to raise awareness about the equality duty within the institution and to support all staff to deliver on their responsibilities
- = **human resources staff** to embed equality considerations in employment policies and practices
- = **communications staff** to make sure equality messages are built into the HEI's communications strategy and that equality information is available and accessible
- = **analysts** to support the institution to understand the effects of its policies and practices on equality for different groups
- = **frontline staff** to embed equality considerations in the delivery of services to staff and students and in communications with alumni
- = **procurement staff** to build equality considerations into relevant agreements
- = **students** to understand how to proactively engage with and influence policies and practices
- = **visitors** to understand the protection afforded by the Equality Act, for example, in relation to harassment

HEIs also have legal obligations in relation to procurement (**regulation 18**). When an institution enters into a relevant agreement, it must have due regard to whether the award criteria should include considerations relevant to its performance of the general duty.

- = ECU (2009) *Handbook for student accommodation providers: support and guidance for equality and diversity*
www.ecu.ac.uk/publications/student-accommodation-providers-handbook

Further resources

- = ECU (2010) *Equality Act 2010: implications for higher education institutions*
www.ecu.ac.uk/publications/equality-act-2010
- = www.ecu.ac.uk/subjects/equality-act-2010
Information about the specific duties and institutions' responses
- = www.equalityhumanrights.com/wales
Guides on the equality duty and further explanation of the law
- = www.equalities.gov.uk
General information about the government's equality strategy and legislation
- = www.equalities.gov.uk/equality_bill.aspx
Details on progress towards implementing the provisions of the Act
- = www.data.gov.uk
Information on government guidelines for releasing data



Equality Challenge Unit works to further and support equality and diversity for staff and students in higher education across all four nations of the UK.

ECU works closely with colleges of higher education and universities to seek to ensure that staff and students are not unfairly excluded, marginalised or disadvantaged because of age, disability, gender identity, marital or civil partnership status, pregnancy or maternity status, race, religion or belief, sex, sexual orientation, or through any combination of these characteristics or other unfair treatment.

Providing a central source of expertise, research, advice and leadership, we support institutions in building a culture that provides equality of both opportunity and outcome, promotes good relations, values the benefits of diversity and provides a model of equality for the wider UK society.

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