

Equality Bill

Advancing equality across the public sector in Wales

Introduction

When the Equality Bill becomes law, it will introduce a new general public sector duty which will bring consistency across all the equality strands. It will go further than a duty for the promotion of the elimination of discrimination. It will require public authorities to have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and to foster good relations.

Advancing equality and fostering good relations is consistent with our equality and human rights agenda in Wales. A sound basis for this work has been, and continues to be, making a reality of our commitment to have due regard to promote equality of opportunity for all people in Wales as set out in the Government of Wales Act.

This has led to the development of a distinctive equality and human rights approach in Wales. Policies, strategies and programmes developed in Wales have been designed to meet the needs of specific groups in Wales. There are many examples of this distinctive approach to policy development:

Wales was the first government in the United Kingdom to offer eye health examinations by optometrists to people from BME communities at higher risk of eye disease; the availability of free swimming for young and older people; free bus travel for people aged 60 and over and the continuing development of our Communities First programme to improve the life opportunities of people living in our less advantaged communities.

In 2004, the Welsh Assembly Government adopted the United Nations Convention on the Rights of the Child (UNCRC) as the basis of all policy making for children and young people – making our agenda for children rights agenda rather than a welfare based agenda. Inclusion and participation of young people and indeed all people in Wales is intrinsic to our approach to policy making.

Although discrimination law in itself is not a function that is devolved to Wales, many of the levers for making a difference to the people of Wales lie with the Welsh Assembly Government. We recognise that promoting equality is key to securing the best possible life chances for people in Wales and that promoting equality can help us to achieve our wider policy aims such as eradicating child poverty.

The Welsh Assembly Government recognises that gender inequalities in employment persist, and that this contributes to child and family poverty. We intend to build on the work we have already done through our Equal Pay campaign. One of the ways to do this could be through the development of a specific duty which will contribute to narrowing the pay gap still further.

It is important, however, that any new specific equality duties imposed by Welsh Ministers on public authorities in Wales add value to the policy objectives we want to achieve. This is why this listening exercise is being undertaken. We need your input to ensure that any specific duties that are developed in Wales are focused on the right priorities, deliver improved outcomes for people, and result in a better experience for citizens when accessing the services delivered by public authorities in Wales.

Equality Bill

Advancing equality across the public sector in Wales

Developing specific equality duties

Any specific duties created by the Welsh Assembly Government should, we believe, be flexible and proportionate. They should focus on outcomes for citizens, rather than encouraging public authorities to focus on processes. Duties should be:

- **Flexible** - so public authorities only take action which is necessary and productive; and
- **Proportionate** - depending on the function and size of the public authority. For example, expectations placed on a small primary school will be different to a large local council and reflect their size and resources.

The development of the specific equality duties will be guided by four principles. These are in line with the Welsh Assembly Government's *Making the Connections* strategy.

The principles are:

Use of evidence: good robust evidence to understand the communities served and shape future actions;

Consultation and involvement: so that the needs of the citizen can be help shape the design and delivery of services that are fit for purpose, meet needs and deliver a positive outcome;

Transparency: about how objectives have been set and reporting progress takes place against objectives and priority equality areas; and

Leadership: strong leadership which sets a positive culture and climate within the public sector to use resources effectively to help successfully discharge their equality duties. The Welsh Assembly Government is keen to support public authorities in their delivery of better services to the citizens of Wales.

Priority areas for specific equality duties

In considering the framing and scope of any specific equality duties that should be developed in Wales, we have given thought to some key areas of activity where there is potential to explore how we can work together on our Welsh equality agenda:

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

Equality Bill

Advancing equality across the public sector in Wales

We welcome an exploration and discussion of how we might build on existing good work or develop proposals. We would welcome your ideas about any other areas we should be considering for specific duties.

How can we use the opportunity offered by specific duties to advance equality and make a real difference for our citizens?

Setting equality objectives

Advancement of equality relies on an effective evidence base and the Welsh Assembly Government and its partners are building this through continued research and evaluation. Focusing on outcomes and a positive experience for the citizen is paramount.

All public authorities will continue to have due regard to all the equality strands as part of the general duty; but that would not preclude a focus at a particular period on a particular strand where evidence demonstrates particular action is needed. Indeed, the use of evidence to enable prioritisation is vital to ensure that needs are met.

Public authorities should also be given the flexibility to set equality objectives in the context of local and national priorities.

The approach adopted in developing objectives should be proportionate to the scale of the organisation. A small primary school, for instance, may wish to focus on a particular strand where a need has been identified.

Organisations may prefer to continue to present their equality objectives in a published equality scheme. There are many other options available that merit further consideration, such as:

- The development of equality and diversity quality marks that seek to recognise notable practice and achievement of objectives;
- Equality statements of intent that seek to recognise an issue with a pledge to respond to that issue in a certain way by a certain time;
- Equality manifestos – setting out the strategic vision for the organisation in terms of outcome focused objectives.

How best can public authorities publish equality objectives, based on relevant evidence and set out the steps they intend to achieve?

Consultation and Involvement

Effective consultation and involvement is a key part of making sure we deliver the right services to citizens. Public authorities should be required to take reasonable steps to consult and involve representatives of employees, service users and other relevant groups.

Equality Bill

Advancing equality across the public sector in Wales

There should be a particular focus on engaging groups and individuals representing the protected characteristics. Public authorities should also recognise that people are individuals who face multiple disadvantages and have differing needs.

How could public authorities involve people in the setting of equality objectives in the design of policies and delivery of services?

Assessing impact

Using Equality Impact Assessment can support the delivery of good quality citizen centred services. When used correctly, it helps policy makers and service deliverers keep a clear line of sight on why the policy or service is needed, who needs it, how it will promote equality and how it is going to be delivered to the service user. They are useful in the process of gathering equality data to set objectives for the promotion of equality through policy making and service delivery.

The Welsh Assembly Government has developed an Inclusive Policy Making model. The emphasis is to help policy makers open a dialogue with equality groups as early as possible in the policy development stage.

As part of this exercise we want to hear from you about whether we should maintain the requirement for impact assessment to aid policy making and service delivery in delivering equality. We also want to hear your views on how we can make sure that such assessments can be proportionate and outcome focused.

Reporting progress against equality objectives

Reporting progress against objectives can help people both outside and inside an organisation to have confidence that the authority is delivering what they have said they intended to achieve. Even when objectives are long term, effective reporting can give confidence that the trend is towards improvement.

It may also be appropriate to require public authorities to report the employment rates or service user rates for **all** strands (although some may well do so voluntarily). But there are difficulties in this respect:

- a) because of practical difficulties in getting the data for some of the newer strands, such as sexual orientation or religion or belief from national or employer data sets,
- b) for some strands, employment rates may not be a very useful indicator of progress – for instance, the number of transsexual employees is less helpful in understanding progress on transgender equality than other factors, such as specific schemes to meet different needs.

Equality Bill

Advancing equality across the public sector in Wales

Additionally it may be disproportionate to require small public bodies to meet reporting requirements. It may be more appropriate for small units to be covered by the reporting of the larger public sector organisation – such as schools reporting through their local authorities.

What should the reporting requirements include? (For example, Gender Pay Gap figures, Black and Minority Ethnic (BME) employment rates, Disabled People's employment rate?)

How do we build on this, potentially including other equality strands?

If introduced, should this reporting requirement be placed on authorities of a certain size – perhaps 150 employees?

Gender pay and job segregation

Despite the trend of a narrowing gender pay gap, the position in Wales remains unacceptable. Research commissioned by the Welsh Assembly Government illustrates that contributory factors extend beyond addressing pay systems.

There is evidence that employment practice continues to contribute to the gender pay gap, and that this is resulting in an adverse impact on family and child poverty.

Research shows that the causes of unequal pay are complex. The main contributors to the 'gender pay gap' are gender segregation in the labour market in all its forms, and childcare/ flexible working barriers. ¹ From a review of employment data in local authorities in Wales) (Parken et al 2009) it is clear that a significant factor is the system of contracts i.e. women have a disproportionate amount of part time and casual contracts.

Pay discrimination, for example, in comparing 'like for like' or equal value jobs, may play a lesser role. Equal Pay Reviews, which are resource intensive and expensive, may not, therefore, make as significant a contribution to reducing the overall gender pay gap within a public authority as equal pay audits which would involve a wider analysis of gendered employment patterns and workplace barriers.

Options that have been identified as contributing to potentially closing the pay gap are:

- a duty that requires audit and analysis of segregation by occupation, pay, grading, and contract type (for example, employers would need to justify disproportionately hiring women on part time, casual low hours or fixed term contracts); or
- a duty that requires employers to take action to address occupational segregation.

Equality Bill

Advancing equality across the public sector in Wales

We welcome your views as to what you believe to be the most important factors that should be considered in addressing the gender pay gap.

How could these factors be used to construct a specific duty?

Public Sector Procurement

Public sector procurement can be a key driver for change in the promotion of equality of opportunity for citizens in Wales. The Welsh Assembly Government has demonstrated its leadership in this area through the progressive approach being developed for public procurement by Value Wales.

Public procurement in Wales accounts for £5bn of public expenditure annually. This provides public authorities with an opportunity to effect change and encourage the promotion of equality in the provision of what are just as much public services as those delivered by public sector employees. However the complexity of developing an effective specific public sector equality duty that will deliver real outcomes cannot be underestimated.

Should public authorities be subject to a specific equality duty that seeks to reinforce the progressive approach being promoted by Value Wales?

How Inspection supports the equality agenda

The Equality and Human Rights Commission is the equality regulatory and enforcement body in Wales. There are a number of other inspection and regulatory bodies, such as the Care and Social Services Inspectorate Wales, Healthcare Inspectorate Wales, Estyn and the Wales Audit Office.

These are public authorities in their own right and as such specific equality duties could be imposed on these bodies in respect of being public sector employers. More importantly however, is the functions that these bodies carry out on behalf of Welsh Ministers in terms of inspection and regulation in the sector within which they operate: social services and social care, health, education and local government.

Consideration is being given to how the sharing of information can best be achieved. One solution could be that an agreement between the inspectorates, Wales Audit Office and the Commission on procedures to share information. Any such agreement should be focused on equality information and data that illustrates the citizen's experience of service delivery, rather than assessment of procedures and process.

What role can inspectorates play in securing equality outcomes for citizens?

Reporting by Welsh Ministers

Welsh Ministers have been required to publish an annual equality report to the National Assembly for Wales for the past ten years. Whilst always seeking to improve the content of the reports, they have provided a valuable and positive contribution to the emerging equality agenda in Wales.

Equality Bill

Advancing equality across the public sector in Wales

From its inception, the Welsh Assembly Government has been committed to openness and transparency. Equality reporting by Welsh Ministers is integral to this approach and is a natural extension of these principles. A specific equality duty about continued equality reporting by Welsh Ministers would have the effect of ensuring that equality remains at the heart of government activity in Wales. Reporting must be meaningful and timed in a co-ordinated manner. We want to consider options on how equality reporting by the Welsh Ministers can be improved.

How can we ensure that equality reporting by Ministers is meaningful and provides a genuine opportunity for a discussion on progress on equality in Wales?

Next steps

In this paper, we have sought to outline some thinking around the specific equality duties that Welsh Ministers could have the power to impose on public authorities in Wales. This listening exercise will help inform the development of these duties and views and suggestions will be welcomed.

Throughout this document there are a series of questions that will help us frame the specific equality duties that can be imposed by Welsh Ministers. These are intended to be prompts, and should not limit ideas and opinions on wider or different priorities.

Responses to these questions can be sent to:

The Welsh Ministers Listening Exercise
Specific Equality Duties in Wales
The Welsh Assembly Government
Equality Diversity and Inclusion Division
Cathays Park
Cardiff CF10 3NQ
e-mail edid@wales.gsi.gov.uk

Telephone 029 20 825761

Responses will need to be returned by no later than Monday 16th November.

During the listening exercise, we will be using a variety of networks representing key stakeholders to gather opinions and suggestions. For example, we will work with our partners in the Equality and Human Rights Commission in Wales; the Welsh Local Government Association, the Wales Council for Voluntary Action and equality groups in the Third Sector.

A series of focused forums will be organised during this period that will bring together people with equality experience. Delegates will be drawn from the academic, voluntary and statutory sectors. The purpose of these groups will be to fully explore the options for specific duties across the range of themes outlined in this discussion paper, and to assess the potential for duties in these areas to deliver positive equality outcomes.

Equality Bill

Advancing equality across the public sector in Wales

Views on priorities for specific equality duties are welcomed will be welcomed. When they have been gathered and considered, we will publish a summary of the responses. This will be followed by a public consultation on the detailed proposals for specific duties. It is anticipated that this will take place early in 2010.

The Welsh Assembly Government will publish a summary of responses following completion of the consultation process or publish all responses. In any case, your response and all other responses to the consultation, may be disclosed on request.

The Welsh Assembly Government can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Welsh Assembly Government in this case. The right of access to information includes information provided in response to a consultation. The Welsh Assembly Government cannot automatically treat information supplied to it in response to a consultation as confidential.

However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential. Usually, the name and address (or part of the address) of its author are published along with the response, as this gives credibility to the consultation exercise.

If you would prefer for your response not to be published, or to be published but not attributed, please include an explanation in your response. We cannot guarantee to do as you ask, but will do so if we can. You should also be aware that there may be circumstances in which the Welsh Assembly Government will be required to communicate information to third parties on request, in order to comply with its statutory obligations. This includes its obligations under the Data Protection Act 1998, the Freedom of Information Act 2000, and the Environmental Information Regulation 1992. For further information about the Code of Practice in dealing with requests for access to information it holds please visit our website:
www.information.wales.gov.uk

Equality Bill

Advancing equality across the public sector in Wales

ANNEX A

THE CURRENT SPECIFIC DUTIES

Equality schemes

The existing specific duties in Wales require public authorities to publish an equality scheme in relation to race and disability. The purpose of these equality schemes is to set out how public authorities intend to fulfil their general and specific duties. As part of their respective schemes public authorities are required to state their arrangements for assessing the impact or likely impact of policies and practices on the protected group and, under the race equality duty, to arrange for monitoring or information gathering on protected groups. Public authorities are required to publish revised equality schemes after 3 years and to review schemes at 3-year intervals thereafter.

Consultation and monitoring

The specific race duties require public authorities to identify functions relevant to the general duty, set out arrangements for assessing, consulting on and monitoring the equality impact of proposed policies, publish consultation results and ensure public access to information and services. There is also a duty, unique to the specific race duties, to include in the Race Equality Scheme arrangements for training staff in connection with the duty. However, there is no requirement to consult or involve relevant persons in drawing up a Race Equality Scheme. Employers above a certain size are required to monitor staff by reference to racial groups. Specified educational bodies are subject to distinct race duties which require them to prepare and publish a written statement of their policy for promoting race equality including arrangements for impact assessment and monitoring by reference to different racial groups.

The specific disability duties require a listed authority when developing its Disability Equality Scheme to involve disabled people who appear to it to have an interest in the way it carries out its functions. This goes beyond the duty to consult when preparing a scheme. Disability Equality Schemes have to state how disabled persons were involved in their development and set out the public authority's methods for impact assessment of policies and practices on disabled persons, the steps it proposes to take to fulfil its public sector duties and its arrangements for gathering and using information to assist its performance of the duties. A listed authority has to implement these steps within three years unless it is unreasonable or impracticable to do so.

Reporting progress

The disability duty also includes a specific duty on the Secretaries of State of listed government departments to publish a report in relation to each of its public functions on the progress towards equality of opportunity for disabled persons and proposals for further progress. This duty is unique to the disability duty.

Equality Bill

Advancing equality across the public sector in Wales

The table below summarises how the current duties compare:

	Publication of Scheme	Preparation of Scheme	Content of Scheme	Other duties
Race	Race Equality Scheme; revise after 3 years; review every 3 years	No duty to consult or involve	Identify functions relevant to duty; arrangements for impact assessment, monitoring, publishing results, ensuring public access, training staff	Duty on employers to monitor staff and applicants by reference to racial group, duty on educational bodies to have equality policy statement and to monitor staff and applicants by reference to racial group.
Disability	Disability Equality Scheme; revise after 3 years; review every 3 years	Duty to involve disabled persons in development	Statement on involvement of disabled persons, methods for impact assessment, steps for fulfilling duty, arrangements for gathering and using information	Within 3 years take the steps identified for fulfilling the duty and put into effect arrangements for gathering and using information unless unreasonable or impracticable in all the circumstances; report annually ; duty on Secretary of State to report on progress
Gender – not applicable to Wales	Gender Equality Scheme; revise after 3 years; review every 3 years	Duty to consult employees, service users and others and to take relevant information into account	Sets out overall objectives for compliance with duty including consideration of gender pay gap, sets out actions taken or intended for gathering and using relevant information, for conducting impact assessments, for consultation and for achieving the objectives	Put actions set out in the scheme into effect within 3 years unless unreasonable or impracticable in all the circumstances; publish annually a report summarising the actions taken towards achieving the objectives

Equality Bill

Advancing equality across the public sector in Wales

EQUALITY, THE EQUALITY BILL AND THE PROCUREMENT OF GOODS AND SERVICES BY PUBLIC AUTHORITIES IN WALES

The UK Government's response to the consultation on "Framework for a Fairer Future – the Equality Bill" (June 2007) said that:

"£160 billion is spent by the public sector on private sector contracts every year. The Equality Duty will require public bodies to give due regard to the need to tackle discrimination and promote equality through their purchasing functions."

and went on to say:

"We will work with the Office for Government Commerce and others to develop ways of improving how public bodies use their purchasing power to support the delivery of equality outcomes. Government will....consult with stakeholders in developing these options".

UK Government steps in the area of equality and procurement

2. In June 2008, the Government set out how social outcomes can be delivered through public sector purchasing². In December 2008, OGC published guidance for public procurers, specifically on promoting equality through procurement³.

3. The OGC booklet offered constructive examples of good practice activity to help improve equality outcomes through procurement. For example, through better disseminating best practice and the development of a suite of support such as an Equality-through-Procurement Toolkit.]

4. In general terms, options including: to link equality outcomes directly to the stages of the procurement, for example at the Pre Qualification Questionnaire (PQQ) stage or in contract conditions, or:

- (i) to do it at one remove, for instance through the supporting toolkit and/or;
- (ii) the development of an Equality Kite Mark or Standard.

Value Wales Initiatives

5. Initiatives currently in place within Value Wales which promote equality of opportunity through the procurement process include:

- **Business Procurement Taskforce:** Chaired by Minister for Finance and Public Service Delivery, promotion of equality of opportunity for suppliers,

² 'Buy and make a Difference – How to address Social Issues in Public Procurement'.

³ 'Make Equality Count'.

Equality Bill

Advancing equality across the public sector in Wales

particularly Small & Medium Enterprises, to compete for public sector procurement opportunities.

- **Opening Doors Charter for SME Friendly Procurement:** The Opening Doors Charter, launched in 2006 sets out principles for both the public sector and SME sector aimed at facilitating engagement. Refreshed in May 2008 to include explicit reference to SMEs in their widest context – for the purposes of the Charter ‘SMEs’ are considered to be a ‘diverse group of businesses, ranging from sole traders to substantial, established firms – including start-ups, black and minority ethnic businesses (BMEs), voluntary and community organisations (VCOs), social enterprises and supported businesses’. The refreshed Charter includes an endorsement from the WCVA Chief Executive. All major public sector organisations across Wales have signed up to the principles.
- **All Wales Purchasing Code of Practice:** A ‘One Wales’ commitment. The Charter is the code’s cornerstone and is supported by the Procurement Route Planner, step by step guide through the procurement process, best practice advice and tools such as standardised procurement documentation.
- **The Sell2Wales national procurement portal** has advertised public sector procurement opportunities in excess of £6bn since its launch in 2004. Free for suppliers to register – over 31,000 to date – it sends them automatic email notifications of procurement opportunities which match the supplier’s profile.
- **Encouraging SME friendly procurement practices:** The Charter commits contracting authorities to ‘package large contracts into separate elements or make use of regional lots, if appropriate, to ensure that SMEs are not excluded from tendering’, to cut down on administration needed to tender, and to move towards a consistent all Wales approach to pre-qualification and standardised contract documentation.
- **Action Plan for engagement with Third Sector Organisations and Supported Businesses:** The European Procurement Regulations include a provision for public contracting authorities to reserve contracts for Supported Businesses. Value Wales has awarded the first reserved framework for the provision of IT recycling furniture and signage in the UK.
- **The Sustainable Risk Assessment (SRA) tool:** Applied to all WAG contracts over £25k in value. Issues included in the SRA include the need to review
- **Sustainable Procurement Training Programme “Making it Happen”:** Provides guidance and practical tools for those involved in procurement so that they can ensure that sustainability is a key issue in the procurement process. Value Wales is in the process of devising an Equality & Diversity in Procurement course, in conjunction with the Chartered Institute for Purchasing and Supply (CIPS), for use in the public service in Wales.

Equality Bill

Advancing equality across the public sector in Wales

Procurement and EU requirements

6. An issue which some have referred to as inhibiting the possibility of imposing specific duties anywhere in Great Britain which might relate to procurement is EU requirements. “Make Equality Count” does not substantiate that. It stresses the scope for incorporating equality considerations is largely to be found at the strategy creation, user involvement, planning and specification stages, with little to nothing thereafter beyond contract management to ensure conditions are complied with etc.

7. Some stakeholders have referred to the former Disability Rights Commission’s guidance in this area (“Procurement and the Disability Equality Duty” attached below), published in late 2006 (and still accessible on the new EHRC’s website).

These can be viewed at www.equalityandhumanrights.com

8. In particular, page 13 says that “public authorities should consider at planning stage whether there is scope for incorporating positive action obligations in any contract where the works, goods or services they propose to buy are highly relevant to the authority’s disability equality duty.” On page 17, the view of EU Public Procurement Rules as a barrier to promoting equality is specifically addressed, concluding with the sentence “It is quite clear that the requirement to pursue disability equality sits comfortably with the rules on public procurement.”