

2. Equality analysis and the equality duty: A guide for public authorities

Vol. 2 of 5

Equality Act 2010 guidance for English public bodies
(and non-devolved bodies in Scotland and Wales)



**Equality and
Human Rights
Commission**

Contents

1. Introduction	3
Context for this guide	3
Legal status of this guide.....	4
Aims of this guide	4
Who this guide is for.....	4
Content of this guide	5
2. What the duty requires on equality analysis	6
3. Introduction to equality analysis	8
What is equality analysis?	8
What should be analysed?	8
When should equality analysis be done?	9
What happens as a result of equality analysis?	10
4. Step-by-step guide	11
Step 1: Identifying who is responsible for the equality analysis.....	11
Step 2: Establishing relevance to equality.....	12
Step 3: Scoping your equality analysis.....	13
How do the aims of the policy relate to equality?	13
What aspects are relevant to equality?	14
Which protected groups and parts of the duty is it relevant to?	14
What equality information is available?	15
What are your information gaps?	15
Which groups could usefully be engaged?.....	15
Step 4: Analysing your equality information	16
Using your information to understand the effect on equality.....	16
The findings of your analysis.....	17
Documenting your analysis	18
Next steps	19
Step 5: Monitoring and review.....	20
Stage 6: Decision-making and publication	20
Decision-making.....	20
Publication.....	20
5. How to embed equality analysis into your organisation	22
Ensuring a consistent approach	22
Shared responsibility for policy-making	22
Consistent information.....	23
Engagement.....	23
Training	24
Internal governance.....	24
Key points to remember	26
Contact us	27

1. Introduction

Context for this guide

This guide is one of a series written by the Equality and Human Rights Commission (the Commission) to explain how public authorities can meet the requirements of the Equality Act 2010 (the Act). The Act brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty comes into force on 6 April 2011.

There are five guides giving advice on the equality duty:

1. *The essential guide to the public sector equality duty*
2. *Equality analysis and the equality duty*
3. *Engagement and the equality duty*
4. *Equality objectives and the equality duty*
5. *Equality information and the equality duty*

The essential guide provides the main overview of duty requirements. The other four documents provide additional practical advice and advice on best practice. Further information, including resources and a frequently asked questions section can be found on the equality duty section of the Commission's website: www.equalityhumanrights.com.

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

Equality and Human Rights Commission helpline – England
FREEPOST RRLL-GHUX-CTRX
Arndale House, Arndale Centre, Manchester, M4 3AQ
Telephone: 0845 604 6610
Textphone: 0845 604 6620
Fax: 0845 604 6630

Legal status of this guide

This guide is a practical explanation of what can be done to ensure authorities are meeting the equality duty. It does not have legal standing like the statutory Code of Practice on the public sector equality duty, which can be used as evidence in legal proceedings under the Act. This guide can of course be referred to, but courts do not have to take it into account when making a decision. We therefore recommend that public authorities use the Code as their key point of reference when seeking to clarify any legal issues. The Code is due to be published later in 2011.

Where there is an explicit legal requirement under the duty, it is indicated in this guide by the terms 'you must' or 'you are required to'. Other advice in this guide is clearly labelled as 'good practice' or as a recommendation, and is therefore not a legal requirement. Case law, however, has established certain principles on meeting the previous equality duties, and we have also indicated these by a reference to case law precedent or by explaining how certain steps may help you to comply with the duty or demonstrate compliance.

This guide is for public authorities in England and for those with non-devolved functions in Scotland and Wales. Separate codes and guidance on the equality duty will be available from the Commission for public authorities in Scotland and in Wales. These reflect the differences in the specific duties for Scotland and Wales.

This guide was last updated on 12 January 2011. Check our website: www.equalityhumanrights.com to see if it has been replaced by a more recent version.

Aims of this guide

The aim of this guide is to help public authorities subject to the equality duty to prepare for its implementation. The guide provides more detailed advice to supplement the information set out in the essential guide.

Who this guide is for

This guide has been developed primarily for those responsible for implementing the equality duty in public authorities subject to the duty, in particular those responsible for policy and decision-making, both at senior and operational level. This includes, for example, chief executives, senior managers, heads of education institutions and chief constables. It should also be read by relevant equality, business planning, procurement and human resources staff. It will also be helpful for staff involved in grant-making functions and for those who govern or scrutinise public authorities, like local councillors or board members.

The guide will also assist those who have an interest in the work of public authorities. This includes service users, voluntary sector bodies, trade unions, equality organisations and people with the protected characteristics (also referred to as

'protected groups'), as set out in the Act. The equality duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships, but not for all aspects of the duty.

We are planning to publish a guide for voluntary and community sector bodies in Spring/Summer 2011, as the duty has a wide range of implications for their work, such as when providing services, applying for public funding or assessing the performance of public authorities on equality.

Content of this guide

The guide sets out what the duty requires of public authorities with regard to equality analysis. It explains what equality analysis involves, and it provides a useful step-by-step guide. It also provides guidance on embedding equality analysis into your organisation.

2. What the duty requires on equality analysis

The essential guide to the public sector equality duty sets out the detailed requirements of the general and specific duties, as well as explaining who is covered. The box below sets out the requirements that specifically relate to equality analysis. Unless you are very familiar with the equality duty, you will probably want to read this guidance alongside the *essential guide*.

Public authorities covered only by the general equality duty: The general equality duty does not specify how public authorities should analyse the effect of their existing and new policies and practices on equality, but doing so is an important part of complying with the general equality duty. It is up to each organisation to choose the most effective approach for them. Cases on the meaning of the previous general equality duties make it clear that the analysis has to be undertaken before making the relevant policy decision, and include consideration as to whether any detrimental impact can be mitigated. A written record to demonstrate that due regard had been taken is also expected.

Public authorities also covered by the specific duties: Listed bodies must publish evidence of the analysis that they undertook to establish whether their policies or practices would further or have furthered the aims of the duty, details of the information that they considered and details of engagement undertaken when doing the analysis.

The change in terminology from ‘equality impact assessment’ to ‘analysis of the effects on equality’ is intended to focus more attention on the quality of the analysis and how it is used in decision-making, and less on the production of a document, which some may have taken to be an end in itself. Where organisations have an established method for reviewing policies to assess their impact on the aims of the previous duties, they may be able to continue to use this tool, although it would be advisable to review this to ensure that it works under the new equality duty.

The Equality Act usefully sets out further details on what elements of the general duty, such as advancing equality and fostering good relations, mean in practice. This is important, as in the past some authorities had misunderstood what this means. For example, some have interpreted the gender equality duty requirement to promote equality as needing them to take a ‘gender neutral’ approach, rather than to take steps to understand and take account of the different needs of men and women.

The equality duty now makes it clear that public authorities are expected to consider the need to remove or minimise disadvantage or to meet particular needs, such as through providing services for particular groups. Public authorities are also required to think about how to encourage participation in public life. The good relations duty,

which previously only applied to race, and in a slightly different way to disability, also now applies across all of the protected characteristics. In particular, public authorities must have due regard to the need to tackle prejudice and promote understanding between people who share a protected characteristic and those who do not.

You need to analyse the effect on equality for all of the protected characteristics, and all aims of the general equality duty, apart from in relation to marriage and civil partnership, where only the discrimination aim applies. Other exemptions to the application of the general equality duty are set out in the *Essential guide*.

3. Introduction to equality analysis

What is equality analysis?

Public authorities are responsible for making a wide range of decisions. This spans decisions about overarching policies and setting budgets to day-to-day decisions which affect specific individuals. Equality analysis is a way of considering the effect on different groups protected from discrimination by the Equality Act, such as people of different ages. There are two reasons for this. First, to consider if there are any unintended consequences for some groups, and second, to consider if the policy will be fully effective for all target groups. It involves using equality information, and the results of engagement with protected groups and others, to understand the actual effect or the potential effect of your functions, policies or decisions. It can help you to identify practical steps to tackle any negative effects or discrimination, to advance equality and to foster good relations.

Case law under the race, disability and gender equality duties established that equality impact assessments are an important way that public authorities can be sure that they are meeting their general duty legal obligations. It established that equality impact assessments should be clearly documented and that they are a useful means for demonstrating compliance to a Court.

Like the previous duties, the equality duty means taking a proportionate approach to equality analysis. This means taking an approach that is suitable to your size, resources and functions and to the importance of the policy to equality and good relations.

Under the new equality duty, public authorities are not required to follow any specific methodology or template to undertake equality analysis, but they need to be able to show that they have had due regard to the aims set out in the general equality duty. It is likely that you will be familiar with methods for equality impact assessment under the previous duties, so we recommend that you draw on that experience in meeting your equality analysis obligations.

What should be analysed?

In this guide we use the term 'policy' as shorthand for what needs to be analysed. Policy needs to be understood broadly to embrace the full range of your policies, practices, activities and decisions: essentially everything you do, whether it is formally written down or whether it is informal custom and practice. This includes your existing policies and any new policies under development.

You will also need to analyse the effect on equality of how a policy is implemented by your organisation when it has originally been developed outside of your organisation. This could mean a policy or strategy developed by a government

department or an executive agency, for example. This principle also applies when implementing a decision over which you have no direct control. For example, when implementing cuts to funding decided elsewhere, you will still be able to consider mitigating measures or alternative ways of doing things to minimise the impact on services and equality groups.

Remember that having due regard across all of your functions may also involve analysing the effect on equality of a number of decisions that are made together, for example when conducting a major review of services. This would mean ensuring that you have sufficient relevant information to understand the cumulative effect of all of these decisions.

Example

A local authority is making changes to four different policies. These are funding and delivering social care, day care, respite for carers and community transport. Small changes in each of these policies may disadvantage disabled people, but the cumulative effect of changes to these areas could have a significant effect on disabled people's participation in public life. The actual and potential effect on equality of all these proposals, and appropriate mitigating measures, will need to be considered to ensure that inequalities between different equality groups, particularly in this instance for disabled people, have been identified and do not continue or widen. This may include making a decision to spread the effects of the policy elsewhere to lessen the concentration in any one area.

Not all policies can be expected to benefit all groups equally, particularly if they are targeted at addressing particular problems affecting one protected group. (An example would be a policy to improve the access of learning disabled women to cancer screening services.) Policies like this, that are specifically designed to advance equality, will, however, also need to be analysed for their effect on equality across all the protected groups. This is because any one group is likely to have several protected characteristics within it. For example, a policy on tackling gender-based violence will need to analyse its potential effect on ethnic minority communities as well as gay and disabled people. An effective equality analysis will help to make sure that you are aware of any particular needs and the likely wider effects of implementing the policy.

When should equality analysis be done?

Equality analysis starts prior to policy development or at the early stages of a review. It is not a one-off exercise, it is ongoing and cyclical and it enables equality considerations to be taken into account before a decision is made.

Equality analysis of proposed policies will involve considering their likely or possible effects in advance of implementation. It will also involve monitoring what actually happens in practice. Waiting for information on the actual effects will risk leaving it too late for your equality analysis to be able to inform decision-making.

Equality analysis applies to existing as well as new and proposed policies. To make this task easier, you may want to draw up a timetable for analysing your existing policies and practices. This could be undertaken at a time when a review of the policy is already planned. It might also be useful to carry out this work if you are in receipt of critical audit or inspection reports, as it can help you to bring your equality practice up to the required standard.

Warning

A number of public authorities have carried out equality impact assessments at the end of the policy development process. In some cases this has resulted in legal challenge. Undertaking equality analysis at this stage can lead to several problems:

- The policy may still contain potentially discriminatory activity or adverse effects on particular groups.
- There may be an opportunity to advance equality that is missed, meaning that some groups do not benefit from the policy to the same extent as others do.
- Case precedent suggests you will be unlikely to be able to demonstrate that you had due regard to the aims of the duty at the point when decisions were being made. You may consequently be left open to compliance action by the Commission or legal action by others.¹

What happens as a result of equality analysis?

Equality analysis can point to the need to deliver your functions in a different way in order to meet the equality duty. Further advice on this is set out in the next section, in our step-by-step guide.

¹ See for example *R(C) v Secretary of State for Justice [2008] EWCA Civ 882* where the lack of a race equality impact assessment contributed to the decision to quash regulations.

4. Step-by-step guide

This section sets out a step-by-step guide to equality analysis. This is a suggested approach to help to meet your legal obligations, rather than a prescribed requirement under the equality duty. It is based, however, on the legal principles for compliance with the previous duties established by case law.

1. Identifying who is responsible for the equality analysis
2. Establishing relevance to equality
3. Scoping your equality analysis
4. Analysing your equality information
5. Monitoring and review
6. Decision-making and publication

Step 1: Identifying who is responsible for the equality analysis

Equality analysis is an integral part of policy development. It is most effective when it is integrated into day-to-day policy-making, business planning and other governance and corporate decision-making arrangements. This means that the person who is making the decision or advising the decision-maker about a policy needs to undertake the equality analysis, with appropriate assistance and support. This is not an administrative task, but a core part of policy-making. Policy-makers should aim to have an appropriate level of understanding and expertise. Training and support from more experienced colleagues can assist with this.

Where you have them, equality officers can have an important role in providing training and support for individuals who are undertaking equality analysis. They can also monitor quality standards and provide advice on whether or not your equality analysis has been sufficiently rigorous to meet the general equality duty. This could mean for example, signing off reports which document the analysis undertaken. It is, however, only advisable for them to undertake analysis of policies for which they are responsible, and not for all policies across the organisation. This is to ensure that proper ownership is maintained and to ensure that the results of the analysis are able to inform policy development. Outsourcing equality analysis to external agencies or consultants also creates risks to an organisation's ability to build their own expertise. If some elements of information analysis are outsourced, it is important to ensure that proper internal ownership by the decision-makers is maintained, as the organisation retains legal responsibility for the quality of the analysis and for any decision made as a result.

Undertaking equality analysis in partnership with other organisations has a number of benefits. It can avoid duplication of effort for public authorities and for stakeholders. Small organisations can pool resources and offer mutual support. You may find it beneficial to build on existing joint working such as local strategic

partnerships. This mechanism also provides a useful second opinion on the analysis and development of a policy.

Step 2: Establishing relevance to equality

You need to ensure that all of your policies, **both current and proposed**, have given proper consideration to equality. To begin with, this means checking all of your policies for their relevance to equality issues.

If you have an established method for reviewing policies to identify their relevance to equality under the previous duties, it will be helpful to review this to ensure that it works under the new equality duty. This means checking that it covers all of the protected characteristics. It also means checking that it is appropriate for all arms of the general equality duty and, in particular, whether it needs to place greater emphasis on, for example, advancing equality or fostering good relations.

Examples of policies that may be important for equality include grant-making programmes and school admissions and exclusions policies. Other examples are changes to service delivery (including withdrawal or reduction of services), and recruitment or pay policies. Policies that set quality standards for others to follow may also be important for equality. At the other end of the scale are policies which are not relevant to equality, for example, a policy on when to check the temperature of fridges in a hospital.

Some policies may be more difficult to judge. For example, licensing arrangements for clubs may appear to affect all groups equally, but may have an impact on increasing the risks of violence targeted at protected groups and on the good relations aim of the duty. The following questions can help you to determine relevance, but this is not an exhaustive list:

- Does the policy affect service users, employees or the wider community, and therefore potentially have a significant effect in terms of equality? Remember that relevance of a policy will depend not only on the number of those affected but also by the significance of the effect on them.
- Is it a major policy, significantly affecting how functions are delivered in terms of equality?
- Will it have a significant effect on how other organisations operate in terms of equality? (for example, a government strategy, an inspection or a funding criterion).
- Does the policy relate to functions that previous engagement has identified as being important to particular protected groups?
- Does or could the policy affect different protected groups differently?
- Does it relate to an area with known inequalities (for example, access to public transport for disabled people, racist/homophobic bullying in schools).
- Does it relate to an area where equality objectives have been set by your organisation?

When you decide that a policy is not relevant to equality, you will need to document this, along with the reasons and the information that you used to make this decision. A simple statement of no relevance to equality without any supporting information is not likely to be sufficient, nor is a statement that no information is available. This is particularly important where you are not familiar with methods of equality analysis or with equality concerns, as you could inadvertently overlook issues that could indicate relevance to equality. This could leave you vulnerable to legal challenge.

Example:

In a legal case under the race equality duty (*R. Elias v Secretary of State for Defence 2006*), a policy covering eligibility for a non-statutory compensation scheme for those who were interned by the Japanese during World War II was challenged. It was argued that the policy breached the race equality duty as certain ethnic groups were unable to apply. The Ministry of Defence had failed to identify the policy's relevance to race equality, so a race equality impact assessment was not carried out. This meant that a discriminatory policy was implemented, ultimately leading to a successful legal challenge.

Publication of your decision about the relevance of your policies to equality, and the evidence and analysis used, will ensure openness and transparency, and enable people to understand the decisions you have taken. You could do this when you publish a draft policy for consultation. **If you are covered by the specific duties, you will have to provide this information along with the other equality analysis information that you publish.**

Step 3: Scoping your equality analysis

When you have decided that a policy is relevant to equality, scoping gives you an opportunity to establish basic systems that will be helpful for your equality analysis. Scoping involves looking at how the aims of the policy relate to equality and which aspects have particular importance to equality. It involves looking at which protected groups and which parts of the general equality duty it relates to. It includes looking at what evidence is available for your analysis, what the information gaps are, and establishing which stakeholders can usefully be engaged to support your analysis.

At this time it is useful to bring together the key people who are likely to be involved in developing and implementing the policy. This includes external organisations if a policy is being developed under partnership arrangements.

How do the aims of the policy relate to equality?

In order to do this you will need to have a clear understanding of the policy that is being developed or reviewed. Think about:

- What is the purpose of the policy?

- In what context will it operate?
- Who is it intended to benefit?
- What results are intended?
- Why is it needed?

At this early stage you can start to think about potential effects on protected groups. This could mean that you decide to change your overall policy aims in order to take better account of equality considerations.

Example

A public authority undertakes an equality analysis of its policy on staff leadership skills. The purpose of the policy is to ensure that all staff gain appropriate training. When it looks at the policy aims, it decides to amend the aims of the policy to include addressing the lack of women in senior management. It decides to implement targeted management training for women staff. This is lawful under the positive action provisions of the Equality Act 2010.

What aspects are relevant to equality?

Consider which aspects of the policy are most relevant to equality. This will help you to focus your attention on the most important areas, including the inter-relationship between policies. For example, when analysing a policy on succession planning, you could also consider the effect of training policies on equality, in order to gain a full understanding of any barriers or opportunities.

Example

In developing a new housing strategy, a local authority identifies the following areas as being particularly relevant to equality. As a result, it decides to focus its equality analysis on these areas:

- take-up of housing services
- satisfaction rates and number and type of complaints
- supported housing provision
- homelessness rates and causes
- choice-based lettings
- availability and management of adapted housing
- accessibility of office and internet-based information
- Gypsy and Irish Traveller site provision
- staff training.

Which protected groups and parts of the duty is it relevant to?

It will be helpful to check the policy to see which parts of the general equality duty and which protected groups it is relevant to, in order that you can plan and prioritise your equality analysis more effectively. It will also help you to monitor and evaluate

the actual effect of the policy following implementation and to take action if it is not having the desired effects.

What equality information is available?

It is important that you have appropriate and reliable information about the different protected groups that the policy is likely to affect. Modern public services are shaped by evidence-based policy-making and equality analysis methods will help you collect, analyse and present evidence about equality in a consistent and easily accessible way. Remember that perfect evidence may not always be needed to identify important effects on equality.

The information that will be most useful will depend on the nature of the policy, but you may find that information from service users is particularly useful. It will tell you who is using your services, what their experiences are and what the outcomes are for them. The following information may also be useful:

- Comparisons with similar policies in other departments or authorities to help you identify relevant equality issues.
- Analysis of enquiries or complaints from the public to help you understand the needs or experiences of different groups.
- Recommendations from inspections or audits to help you identify any concerns about equality matters from regulators.
- Information about the local community, including census findings to help you establish the numbers of protected groups in your area.
- Recent research from a range of national, regional and local sources to help you identify relevant equality issues.
- Results of engagement activities or surveys to help you understand the needs or experiences of different groups.
- Information from protected groups and other agencies, such as equality organisations and voluntary or community organisations providing services to the public to help you understand the needs or experiences of different groups.

What are your information gaps?

If you do not have equality information about a particular policy or about some protected groups, consider whether you need to take steps to fill in your information gaps. This could mean undertaking short studies or surveys, or further engagement. If it is not possible to collect this in time to inform your analysis, consider how you can increase your understanding in the short term before undertaking more robust research at a later date. This could mean, for example meeting with stakeholders. Remember that the information that you collect at a later date will be valuable for your monitoring and review work.

Which groups could usefully be engaged?

The information and insights that you can gain from engagement with stakeholders will help you to understand the actual or potential effects of your policy on equality.

Depending on the policy that is being analysed, consider engaging with employees, service users and/or equality organisations. Trade unions are especially relevant for information on employment. You can also use recent engagement and research activities as a starting point, for example on a related policy or strategy. You can also use documentation resulting from other equality analysis that your organisation (or others) have undertaken. The Commission's guide on *Engagement and the equality duty* provides further advice on this matter.

Step 4: Analysing your equality information

Evidence-based policy-makers ask themselves a simple question – what will happen, or not happen, if we do things this way? Equality analysis is a central part of this, by asking you to think about what would happen in relation to equality and good relations.

Remember that equality analysis is not simply about identifying and removing negative effects or discrimination, but it is also an opportunity to identify ways to advance equality of opportunity and to foster good relations.

Using your information to understand the effect on equality

It is useful to bring together all of your equality information in order to make a judgement about what the likely effect of the policy will be on equality, and whether you need to make any changes to the policy. Be wary of general conclusions – it is not acceptable to simply conclude that a policy will universally benefit all service users, and therefore the protected groups will automatically benefit, without having evidence to support that conclusion.

Understanding the effect on equality will be easier for existing policies. For new policies, you will need to evaluate the proposal against all the information assembled, and make a reasonable and informed judgement about whether the policy is likely to have positive or negative consequences for particular groups. You will also want to consider how you can tackle wider inequalities which your organisation is not solely or mainly responsible for causing, but which you can play an important role in addressing.

Example

A school can have a positive impact on closing the gender pay gap by helping girls and boys consider non-traditional career choices.

Consider what questions you will need to ask, in order to understand the effect of the policy on equality. For some policies, the relevant questions will be obvious. For example, when reviewing a recruitment policy for disability equality, it would be useful to establish how many disabled people have applied for posts, how many were appointed, at what grades and on what salaries. Other associated information may also be useful, for example the length of time people stay in an organisation and the reason they leave.

Example

A university identified these questions for understanding the effect of its broadcast commissioning strategy on ethnic minority groups:

1. Will our programme information attract a diverse audience?
2. Are the programmes reaching a diverse audience?
3. Are we satisfied that contractors are legally compliant?
4. Are presenters and programme participants sufficiently diverse?
5. What proportion of ethnic minority students register with us after a broadcast?

You may find it useful to ask yourself the following questions:

- Could the policy outcomes differ between protected groups?
- What are the key findings of your engagement?
- Is there different take-up of services by different groups?
- Could the policy affect different groups disproportionately?
- If there is a greater effect on one group, is that consistent with the policy aims?
- Has the policy delivered practical benefits for protected groups?
- Does the policy miss opportunities to advance equality and foster good relations, including, for example, participation in public life?
- Could the policy disadvantage people from a particular group?
- Could any part of the policy discriminate unlawfully?
- Are there other policies that need to change to support the effectiveness of the policy under consideration?

The scope of discrimination

In identifying whether a proposed policy may discriminate unlawfully, consider the scope of discrimination as set out in the Equality Act 2010. As well as direct and indirect discrimination (including because of pregnancy and maternity' or marriage and civil partnership), prohibited acts include (but are not limited to) harassment, victimisation and failure to make a reasonable adjustment.

The findings of your analysis

Having considered the potential or actual effect of your policy on equality, you should be in a position to make an informed judgement about what should be done with your policy. There are four main steps that you can take:

1. **No major change** – Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination and that you have taken all appropriate opportunities to advance equality and foster good relations between groups. If this conclusion is reached, remember to document the reasons for this and the information that you used to make this decision. It is also useful to have your analysis quality checked, by staff trained or experienced in equality matters. Bring evidence of your analysis to the

attention of the decision-maker if this is not the person who analysed the policy.

2. **Adjust the policy** – This involves taking steps to remove barriers or to better advance equality. It can mean introducing measures to mitigate the potential effect. Remember that it is lawful under the Equality Act to treat people differently in some circumstances, for example taking positive action or putting in place single-sex provision where there is a need for it. It is both lawful and a requirement of the general equality duty to consider if there is a need to treat disabled people differently, including more favourable treatment where necessary.
3. **Continue the policy** – This means adopting your proposals, despite any adverse effect or missed opportunities to advance equality, provided you have satisfied yourself that it does not unlawfully discriminate. In cases where you believe discrimination is not unlawful because it is objectively justified, it is particularly important that you record what the objective justification is for continuing the policy, and how you reached this decision.
4. **Stop and remove the policy** – If there are adverse effects that are not justified and cannot be mitigated, you will want to consider stopping the policy altogether. If a policy shows unlawful discrimination it *must* be removed or changed. For guidance on what is unlawful discrimination, refer to the Commission’s guidance and Codes of Practice on the employment, goods and services and equal pay elements of the Equality Act, which are available on our website.

You may wish to develop an action plan at this stage in order to help you to implement your decisions.

Documenting your analysis

Documenting your analysis is important to ensure that the general and specific duties are being met. It was held in *R (Kaur and Shah) v London Borough of Ealing* that:

‘The process of assessments should be recorded... records contribute to transparency. They serve to demonstrate that a genuine assessment has been carried out at a formative stage. They further tend to have the beneficial effect of disciplining the policy-maker to undertake the conscientious assessment of the future impact of [his/her] proposed policy.’²

² *R (Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2026 (Admin).

You may want to document some or all of the following areas. There is no legal requirement to put this information into one document, but you may find that it is helpful to put it into a standard format to improve communication and transparency.

- The person responsible for the policy
- The aims of the policy
- The key people that are involved, for example decision-makers, staff implementing it
- Relevance of the policy to the different arms of the duty and the different protected groups
- What equality information is available, including any evidence from your engagement.
- What information gaps exist
- What engagement has been done regarding this policy, and the results of this
- What the actual or likely effect of the policy is, regarding the arms of the general equality duty and the protected groups
- What steps you will take in response to the findings of your analysis
- How you will review the actual effect of the policy after implementation
- The timescale for implementation
- Sign off of the equality analysis by a responsible officer and a member of senior management.

Public authorities listed as subject to the specific duties are required to publish their analysis, details of the information taken into account and the engagement undertaken. Given that this applies across the organisation, you are likely to find it easier and less resource intensive to have a structured way of documenting and publishing your equality analysis that links into your wider publication of both policy and equality information.

Next steps

After you have decided on your next course of action, consider providing documentation about your equality analysis when undertaking engagement about the policy, and invite views on your findings.

Decisions may involve careful balancing between different interests, based on your evidence and engagement either during policy development or at this stage. For example, if the analysis suggests the needs of two groups are in conflict, you will need to find an appropriate balance for these groups and for the policy in question. Where a policy justifiably benefits certain groups, steps may also be needed to counter any resentment amongst other groups or inaccurate perceptions of 'favourable treatment'. This might involve some communication work. The key point is to make sure the conclusions you reach can be explained.

Step 5: Monitoring and review

Your equality analysis, and any engagement associated with it, will have helped you to anticipate and address the policy's likely effects on different groups. However, the actual effect of the policy will only be known once it has been introduced. You may find that you need to revise the policy if negative effects do occur. Area demographics can change, leading to different needs, alternative provision can become available or new options to reduce an adverse effect could become apparent. **Equality analysis is an ongoing process that does not end once a policy has been agreed or implemented.**

You may find it helpful to plan and to document when the policy will be reviewed and also to consider, as part of the development of the policy, how you will be able to determine whether or not it is having its intended effects. This does not mean repeating the equality analysis, but using the experience gained through implementation to check the findings and to make any necessary adjustments. Consider:

- How you will measure the effects of the policy
- When the policy will be reviewed and what could trigger an early revision.
- Who will be responsible for monitoring and review
- What type of information is needed for monitoring and how often it will be analysed
- How to engage stakeholders in implementation, monitoring and review.

Stage 6: Decision-making and publication

Decision-making

Equality analysis is an ongoing process which follows the policy development and review cycle. Nevertheless, there will be a stage prior to policy adoption where the equality analysis is considered 'complete' in the sense that it is sufficiently robust and detailed to properly inform decision-making. At this stage we recommend that a senior manager/board member signs off the analysis, including how it has been used to inform the policy and support decision-making.

In order to have due regard to the equality aims in the general equality duty, your decision-making should be based on a clear understanding of the effects on equality. This means that the person who ultimately decides on the policy has to be fully aware of the findings and have due regard to them in making decisions.

Publication

Under the specific duties, equality information published by listed bodies must include evidence of analysis undertaken to establish whether their policies and practices would further (or have) furthered the aims of the general equality duty. We

recommend that you publish information on your equality analysis alongside the policy or decision that it is part of.

As well as this, you are likely to want to make information on your equality analysis available externally at various points of policy development, to an extent and in a manner that is proportionate. This will often mean publishing information on your analysis before the policy is finalised, thereby enabling people to engage with you on your findings. Planning this in from the start will help you ensure your approach is effective as well as proportionate.

For example, documentation about equality analysis of a national decision with potential effects on a number of protected groups is likely to be published at various stages of policy development. However, a school that is proposing changes to its school uniform policy may find it sufficient simply to include the findings of the equality analysis alongside the information that is sent out to parents and other interested parties.

5. How to embed equality analysis into your organisation

Ensuring a consistent approach

Equality analysis is most effective when it is viewed as a core part of your organisational decision-making. Individual policy-makers will therefore benefit from support, as well as from having a clear approach to using equality analysis in their day-to-day work. This will help ensure that your organisation knows what is expected and is able to demonstrate that it is having due regard to equality.

There is no prescribed template or methodology for undertaking equality analysis. Developing your own method as an organisation will help you to take a consistent and proportionate approach. The important thing is that the method you choose works for you and enables you to meet your legal obligations. If you develop a standard methodology, check it against available guidance and consider engaging with stakeholders on your approach. You may also find it helpful to seek peer support from a relevant partner organisation, sharing thoughts on effective approaches.

A good method:

- is integrated into mainstream policy development
- is focused on the equality goals and identifies necessary actions
- is supported by training
- enables analysis and decisions to be fully documented
- documents decisions not to undertake detailed equality analysis and records reasons why
- includes methods relevant to different stages of policy development
- uses open questions, with examples as 'prompts'
- requires collection and use of detailed information, for example service data and results of engagement
- ensures engagement is in place to inform the analysis
- includes sign-off by those with authority in the organisation
- ensures analysis is explicitly used in decisions on the policy
- enables the development and documentation of actions to monitor the actual effect of the policy
- is regularly reviewed against the outcomes of what it has produced.

Shared responsibility for policy-making

Many organisations implement policies that were developed elsewhere. This is often the case for executive agencies of government departments. If the policy originates

with you, but you do not implement it, take steps to ensure that you meet your duties as the policy is implemented by other public authorities.

If you implement a policy which was developed elsewhere, check that you understand and take account of the effects on equality of the decisions that you have made during implementation. This is particularly the case where policies are intended to have a positive effect, which is often very reliant on how they are implemented. We therefore advise organisations who work together or share areas of responsibility to check that their methods for equality analysis are fully integrated. This helps to avoid duplication of effort, clarifies areas of responsibility and supports information sharing.

Example

The Commission undertook an assessment of the Department for Work and Pension's (the department) performance on the race, gender and disability duties. This had implications for Jobcentre Plus. We recommended that Jobcentre Plus:

- Builds a more seamless integration between the equality impact assessment work carried out by the department and themselves, so that work done at each level (national, regional or district) adds value and avoids duplication of effort and paperwork.

Consistent information

The specific duties require listed authorities to publish information relating to their compliance with the general equality duty, including the information used in equality analysis. Although tailored information collection will be needed for some equality analysis, it is much more efficient to collect equality information across your organisation as part of mainstream information collection and analysis. Establishing a reliable information resource that policy-makers can draw on and contribute to is an effective way of achieving this.

Tips for small organisations

Smaller organisations could consider identifying someone to collect equality information when it becomes available, or pooling resources with other organisations to develop a shared database of evidence that is not sensitive or confidential, such as research reports or population statistics.

Remember to take account of your legal obligations regarding data protection and other relevant areas. The Commission's guidance on *Equality information and the equality duty* provides further advice on these matters.

Engagement

Reviewing the results of engagement can be an important part of equality analysis. You will find it easier to achieve this if you have in place a coordinated and consistent approach to engagement across the range of your activities which can

then also support and inform your equality analysis. A co-ordinated approach can enable you to use the results of previous engagement in policy development, avoiding duplication and helping to build confidence among stakeholders, as they can see that their feedback is being acted on. The Commission's guide on *Engagement and the equality duty* provides further advice on this.

Training

Case law has established that meeting the general equality duty requires 'a deliberate approach and a conscious state of mind'.³ This means taking steps to help your staff, decision-makers and contractors understand the duty, including their own obligations. It will be more effective if your training is appropriate to the responsibilities of your staff, if it is tailored to your own approach to equality analysis and if it is built into the mainstream training you provide to staff and, where you have them, councillors, board members or governors.

Good training will look at what equality analysis is, why it is needed and how it can be done. Remember that the aim of training for those with a governance role is to equip them for their scrutiny role on equality, and to embed equality analysis into decision-making at all levels. Training can also be delivered for new staff and contractors, and refresher briefings for existing staff and decision-makers can be useful.

Internal governance

It will be beneficial if you have internal systems in place to be able to quality check your equality analysis. These will need to be proportionate to your organisation's size and resources, and supported at senior levels. A range of methods have been used by public authorities to do this. Some have introduced a standing agenda item for their board on equality analysis and the duties more broadly. Others have convened an internal working group with representation across departments, chaired by a member of the senior management team, to monitor progress on the equality duty, including equality analysis.

Some organisations have ensured that relevant policies are only signed off when it is clear that effective equality analysis has been undertaken. Others have carried out spot checks on samples of equality analysis to assess quality and to provide feedback. Some organisations have introduced a 'critical friends' panel of local senior-level experts, including people drawn from local equality organisations, to provide a robust challenge to staff on their equality analysis. Some larger public authorities have employed an equality officer to advise on and co-ordinate work on this area. Many organisations of all sizes and types have recognised that equality work is best led from the chief executive's department, business planning team, or equivalent central function, rather than from the human resources team. This is to ensure equality analysis and work on the duty is given an appropriate priority across all the functions of the organisation and is put at the heart of decision-making.

³ *R (Brown) v Secretary of State for Work & Pensions [2008] EWHC 3158 (Admin)*.

Some smaller organisations have identified an existing senior member of staff and provided them with specialist training, which they can cascade throughout the organisation.

Key points to remember

- Equality analysis is an integral part of policy development and review, informing policy as it develops. If integrated well, equality analysis will be a tool for improved decision-making and it should not mean unnecessary additional activity.
- The objective is not to complete a specific form or template, but to understand the effects of a policy on equality and any actions needed as a result.
- The time and effort involved should be in proportion to the importance of the policy to equality and good relations.
- Equality analysis involves looking for what steps could be taken to advance equality as well as eliminate discrimination, including any action to meet the needs of those affected or to remove or minimise disadvantage.
- Without good evidence, good equality analysis will be difficult to achieve. A lack of information is never an excuse for not analysing the effect on equality, as some evidence will almost always be available. Where it isn't available, take steps to gather it.
- The insights from engagement with employees, service users, trade unions and others affected are important evidence for your equality analysis.
- Document your equality analysis. If you are covered by the specific duties, aim to publish it at the earliest available opportunity.
- Evaluate the effectiveness of your approach to equality analysis and consider any lessons to be fed back into your organisation's practice.

Contact us

The Equality and Human Rights Commission aims to reduce inequality, eliminate discrimination and harassment, strengthen good relations between people, and promote and protect human rights.

You can find out more or get in touch with us via our website at: www.equalityhumanrights.com or by contacting our helpline below. If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs.

Equality and Human Rights Commission helpline – England

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

8am–6pm, Monday to Friday

Equality and Human Rights Commission helpline – Scotland

Telephone: 0845 604 55 10

Textphone: 0845 604 5520

Fax: 0845 604 5530

8am–6pm, Monday to Friday

Equality and Human Rights Commission helpline – Wales

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

8am–6pm, Monday to Friday

www.equalityhumanrights.com

© Equality and Human Rights Commission

Published January 2011

ISBN 978 1 84206 339 2

This guide is one of a series written by the Equality and Human Rights Commission to explain your responsibilities under the public sector equality duty in England (and non-devolved bodies in Scotland and Wales).

The five guides in this series are:

1. The essential guide to the public sector equality duty
2. Equality analysis and the equality duty: A guide for public authorities
3. Engagement and the equality duty: A guide for public authorities
4. Equality objectives and the equality duty: A guide for public authorities
5. Equality information and the equality duty: A guide for public authorities

If you would like a copy of any of these guides or require this guide in an alternative format, please call our helpline on **0845 604 6610**, textphone **0845 604 6620** Monday to Friday 8am to 6pm or see our website **www.equalityhumanrights.com**.