

# A brief introduction to The Equality Act 2010

for Hertfordshire schools



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## Introduction: The Equality Act 2010

This document summarises the main elements covered by the Equality Act. It is intended as a basic overview of the requirements for schools. Links are provided to additional more detailed information.

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

The Equality Act 2010 is the single legal framework for tackling disadvantage and discrimination. The Act introduced a single Public Sector Equality Duty (PSED), which is sometimes referred to as the 'general duty'. It extends schools' equality duties to all the following protected characteristics:

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

\* *For adults only*

## The Public Sector Equality Duty (PSED)

The PSED (set out in section 149 of the Equality Act 2010) consists of three main elements. In carrying out their functions, public bodies, including all schools, are required to **have due regard to the need to:**

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

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

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

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

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

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

Of course there are other vulnerable pupils, such as young carers and children in poverty, who may also be subject to discrimination that are not covered under the Act. In addition to meeting the needs of the protected characteristics schools should take appropriate actions to remove barriers for other vulnerable learners.

## Additional Specific Duties

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

1. to **collect, analyse and publish** information about their progress in achieving the three aims of equality legislation at least every four years
2. to decide on certain **specific and measurable objectives** that they will pursue in striving to achieve the three aims, and publish these objectives. (new objectives can be set at any time but objectives must be changed at least every 4 years.)
3. to **engage and consult** with people who have a legitimate interest – including all staff (both teaching and administrative), all parents, carers, pupils, local groups, organisations and individuals as appropriate. This will include accessing the perspectives of the protected characteristic groups

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

While there is no longer a legal obligation to produce an 'equality scheme' (a policy that includes detailed data), schools must still publish information demonstrating how their policies and procedures are compliant with the equalities duties and how it is actively striving to improve equality and equity for all protected characteristics. Developing an equalities policy allows the school to show evidence of their compliance and provide clarity of expectations for staff, pupils and parents/carers. Information on compliance should be posted on the school website.

## Scope

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

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

## Disability

The definition of disability in the Equality Act 2010.

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

### **Office for Disability Issues, Equality Act 2010 Guidance**

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

The Special Educational Needs and Disability Code of Practice: 0-25 years provides information on relevant duties under the Equality Act 2010 for children and young people with disabilities.

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

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

School governing bodies and proprietors **must** also publish information about the arrangements for the admission of children and young people with disabilities, the steps taken to prevent them being treated less favourably and the facilities provided to assist access of disabled children.

**Useful related guidance:**

DfE 'Equality Act 2010: Advice for Schools'

[www.gov.uk/government/publications/equality-act-2010-advice-for-schools](http://www.gov.uk/government/publications/equality-act-2010-advice-for-schools)

Equality and Human Rights Commission (EHRC): Reasonable Adjustments for Disabled Pupils - Guidance for schools in England

DfE 'Special Educational Needs and Disability Code of Practice: 0-25 years' - statutory guidance

[www.gov.uk/government/publications/send-code-of-practice-0-to-25](http://www.gov.uk/government/publications/send-code-of-practice-0-to-25)

DfE guidance: Supporting pupils at school with medical conditions.

[www.gov.uk/government/publications/supporting-pupils-at-school-with-medical-conditions--3](http://www.gov.uk/government/publications/supporting-pupils-at-school-with-medical-conditions--3)

## Effective engagement with stakeholders

- Engagement will help you to understand key equality issues and define your priorities for action.
- Feedback on the different experiences of those within protected characteristic groups, amongst staff, pupils and parent/carers, should be gathered to inform equality action planning.
- Be mindful of diversity within protected groups and of multiple barriers that many people face.

## Setting objectives

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

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

For example: A school identifies from pupil voice feedback that there has been a significant increase in incidents of homophobia, biphobia and transphobia experienced by both LGBT+ and non-LGBT+ pupils. This is not reflected in the school's recording systems. The school sets an objective to take steps through staff training and the curriculum to improve levels of both reporting and recording of incidents. Feedback, particularly from LGBT+ pupil focus groups, will be gathered termly to secure evidence of improvement across one year.

## Equality Impact Assessments

There are times when schools will find it useful to undertake a formal impact assessment. This will particularly be the case when policy or procedure change may impact differentially on different protected characteristic groups. A format for this process is provided in an appendix to this guidance, but other formats can be readily found.

Equality impact assessing policies is an important and ongoing process and takes time to deliver. When reviewing policies, leadership teams and governors should ensure they have considered whether there are equality issues arising from the content or application of the policy. Adjustments to the policy and/or areas for development or change should be identified accordingly.

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

## Useful actions to take

- Review what information and objectives you have and develop a timetable for filling in the gaps. This is particularly important for the protected groups.
- Continue to maintain good practice and keep abreast of developments incorporating necessary changes into equality policies and procedures.
- As stated above, equality schemes are no longer required. An equality policy is not a requirement but allows the school to evidence its procedures and priority for delivering equalities. It should be updated to reflect system and policy changes as equalities develops across the school. Actions needed for further development can be fed into the school's equality objectives, which would best be included in the wider school plan. These documents will contribute strongly to evidence on inclusion that is monitored by Ofsted.
- Access regular training for your school to ensure that staff understand their duties under the Equality Act 2010 and are equipped to progress equalities steadily throughout the school.
- Engage parents/carers and other interested stakeholders by communicating new information which will 'foster good relationships' and ensure 'transparency'.
- Ensure governors consider the Equality Act legislation and guidance at meetings.
- Ensure SMSC and activities promoting British values are highlighted and published.

Please ensure that the following actions are undertaken:

Action	Review date
Equality targets are set and an action plan is in place	
Equality information is published	
Governors have received training and understand their responsibilities and the actions required	
Staff have received training and understand their responsibilities, including the need to record all prejudice related incidents	
Staff are developing a curriculum that is fully inclusive of all protected characteristics	
SMSC activities are promoting British values	

## Equalities Impact Assessment (EIA)

An Equality Impact Assessment is a systematic method of measuring and recording the effect of school policies, initiatives or changes on the protected characteristics found in the workforce, pupil population and in the community.

Equality Impact assessments are highly recommended when making changes and developments that will impact differentially on different groups among the protected characteristics.

Impact assessment can be used to:

- review existing policies, functions and procedures
- assess proposed or new policies
- assess the degree of success of the implementation of equality action plan

The specific aim of impact assessment is to:

- anticipate any adverse impacts
- amend the school's policies and procedures to resolve adverse impacts
- identify positive outcomes in order to build on them. The following are some common methods which may be considered in undertaking impact assessment:
  - gather necessary information, data and evidence regarding the current situation
  - analyse information to identify any gaps and actions needed
  - review current practice, complaints or feedback from stake holders
  - gather and analyse parent/carer or student panel discussions
  - ensure the collection, disaggregation and use of stakeholder consultation, through surveys and questionnaires; interviews and focus groups

Ensure the ongoing school policy review process contains questions enabling school leaders and governors or trustees to interrogate policies effectively regarding equality issues.

The questions below may help. You may want to apply all the questions for each protected characteristic in turn.

- What is the policy trying to achieve and who will benefit? Does the policy have a positive approach to difference? Does it recognise, mention, include provisions for the different characteristics?
- Does this policy have, or is it likely to have, a high/medium/low impact on equality issues?

- Is due regard given to the specific needs and experiences of the protected characteristics? Is there adverse impact on any of the protected characteristics?
- Does this policy help to reduce and remove any inequalities that currently exist – whether in school experience or outcomes? How is this measured? What do our results show?
- Is this policy based on involvement of and consultation with pupils, staff, parents or carers or other stakeholders from the different protected characteristics?
- What arrangements should we make for monitoring and evaluating the policy and its impact as part of regular reviews?

For the impact assessment process to be effective, it must be systematic, proactive and explicit to ensure all protected characteristic groups are reviewed. The outcome should be an equalities improvement plan that addresses adverse impact on protected characteristics. These outcomes may also inform the next set of objectives you set for your school.

## Next Steps

- Incorporate appropriate changes to remove identified disadvantage and/or discrimination or to overcome societal barriers.
- Update the equality policy and/or other affected policy/ies. Action plan based on the new priorities.
- Publish the information and celebrate successes.
- Continue with ongoing monitoring and review.
- Consider the need for updating staff training.



## Herts for Learning will help your school with:

- Auditing equality practice through an 'Equality Review'
- Drawing up or reviewing equality policy
- Embedding equality practice
- Promoting equality, diversity and inclusion
- Dealing with prejudice related incidents or allegations of discrimination
- Providing bespoke training for leaders, governors/ trustees and staff addressing issues of equality

For further information and support, please contact the Herts for Learning Wellbeing team at [wellbeing@hertsforlearning.co.uk](mailto:wellbeing@hertsforlearning.co.uk) or call **01438 544464**