

The changing legal framework

This paper

1. This paper summarises the implications of equalities legislation for schools. It was last updated in March 2013.
2. The paper does not have official legal standing. It does, however, aim to reflect accurately the official advice and guidance so far published by the Department for Education (DfE), the Government Equalities Office (GEO) and the Equality and Human Rights Commission (EHRC), and the content of ministerial statements in the House of Commons in July 2011 and the House of Lords in September 2011. Also, it refers to guidance issued in 2011-12 by Ofsted and to sources of official statistics and training handouts. There are links to these various documents, statements, statistics and training handouts in paragraphs 53-80.
3. The contents of the paper are as follows:

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General introductory notes

Timescale and key dates

4. The requirements of the Equality Act were introduced gradually between October 2010 and April 2012. Schools and local authorities had to be aware of the following key dates:
 - April 2011: the **general duty** (see paragraphs 13–14 below) came into force
 - 31 January 2012: the **specific duty to publish information** came into force for local authorities
 - 6 April 2012: the **specific duty to publish information** came into force for schools (see paragraphs 30–32)
 - 6 April 2012: **the specific duty to publish measurable objectives** (see paragraphs 34–38) came into force for both local authorities and schools.

Brief history

5. The Bill that preceded the Act was published on 27 April 2009 and was the latest stage in the history of anti-discrimination legislation in the UK. Earlier stages had included the equal franchise acts of 1918 and 1928, the race relations acts of 1965, 1968 and 1976, the sex discrimination act of 1975, and the disability discrimination act of 1995. The Bill received royal assent on 8 April 2010. Throughout its passage through parliament, both in the House of Commons and in the House of Lords, the vast majority of the Bill received all-party support.

Aims of the legislation

6. The basic aim, as asserted in official guidance on the Home Office website (<http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/equality-duty?view=Binary>), is 'to support good decision-making by ensuring that public authorities understand how different people will be affected by their activities, so that services are appropriate and accessible to all, and meet different people's needs'.

Protected characteristics

7. The Act harmonises the various pieces of anti-discrimination law that were introduced piecemeal in Britain over the previous 45 years, and in this way it simplifies and streamlines them. It replaces about 116 different acts of parliament, regulations and codes of practice, and establishes nine strands, known in legal parlance as nine protected characteristics. In alphabetical order, but in some instances using slightly different terms from those which appear in the Act itself, these are to do with:
 - age (not applicable for services to children)
 - disability
 - ethnicity and race
 - gender
 - gender identity and transgender
 - marriage and civil partnership (not applicable for services to children)
 - pregnancy and maternity
 - religion and belief
 - sexual identity and orientation.

Scope

8. The Act covers all aspects of school life which are to do with how a school treats its pupils and prospective pupils, and their parents and carers; how it treats its employees; and how it interacts with members of the local community. Similarly it covers all aspects of a local authority's work. The protected characteristics of age and marriage/civil partnership apply to schools as employers, but not with regard to the treatment of pupils and prospective pupils.

A note on social class

9. The Act does not cover socio-economic circumstances (SEC) as a protected characteristic, for example differences in income, wealth, housing, occupation, local neighbourhood and educational qualifications. However, such inequalities are covered at length in a key publication issued in autumn 2010 by the Equality and Human Rights Commission entitled *How Fair is Britain?* (see paragraph 68 below for more information) and they received a very high profile in the equality impact assessment (EQUIA) issued by the Department for Education in connection with the Education Act 2011 (<http://media.education.gov.uk/assets/files/pdf/e/education%20bill%20equia.pdf>).
10. The explanatory notes issued to accompany the Education Bill 2011 stated that the new Ofsted framework, starting in January 2012 and revised slightly in September 2012, includes 'consideration of how well a school provides for different groups of pupils' and indicate in this connection that such groups include not only those which are connected with disability, ethnicity and gender but also those which are connected with low household income, as reflected by eligibility for free school meals and the pupil premium grant. In its March 2011 consultation document Ofsted stated:

Persistent low attainment makes it harder for young people to get jobs or access further and higher education, and can have a deep and damaging impact on families and communities. It is therefore important that schools reduce differences in attainment between groups in the school, including those between looked after children, pupils from different social and ethnic groups and between boys and girls. The new inspection framework will pay particular attention to such gaps in attainment and inspectors will look at what is being done to close them.
11. At the end of September 2011, when it published its new framework and evaluation schedule for inspections from January 2012 onwards, Ofsted re-stated its intention to consider the attainment and experience at school of children and young people from low-income backgrounds. At the same time it indicated it would be considering all the protected characteristics in the Equality Act, plus also a few others, not disability, ethnicity and gender only. In a document updated in August 2012, Ofsted indicated that 'when evaluating the achievement of pupils, inspectors consider how well ... pupils who are eligible for the pupil premium have achieved since joining the school' (paragraph 52 of *The Framework for School Inspection from September 2012*).

Structure

12. In a nutshell, schools and local authorities have a) **a general duty** and b) **two specific duties**. Aspects of the general duty are summarised below in paragraphs 13–18 and the specific duties are summarised in paragraphs 34–38. Government publications and ministerial statements stress that the specific duties are not additional to the general duty, but are ways of supporting its implementation.

The general duty

Three needs or aims

13. Since 6 April 2011 all public bodies – including, of course, all local authorities and all schools and other state-funded educational settings, including academies – have been bound by what is known as **the public sector equality duty** (PSED – section 149 of the Act, and previously clause 148 of the Bill). Conceptually, this is modelled on a similar clause in the Race Relations Amendment Act 2000 and is also similar to the general duties which public bodies had in relation to disability from 2005 and gender from 2008. It has three components, known as three limbs, needs or aims. A public authority must, it says, have **'due regard'** (this crucially important concept is explained below in paragraph 15) to the following three needs:
- a) **eliminate discrimination**, harassment, victimisation and any other conduct that is prohibited by or under this Act
 - b) **advance equality of opportunity** between persons who share a relevant protected characteristic and persons who do not share it
 - c) **foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.
14. The three key terms in the public sector duty – **'discrimination'**, **'equality of opportunity'** and **'good relations'** – are explained briefly in the Act itself and the practical implications for schools are considered later in this paper. First, there are notes on the basic concept of due regard.

The concept of due regard

15. Case law relating to the concept of due regard is well summarised in *Equality Duty Toolkit*, published by the Trades Union Congress in autumn 2011 at <http://www.tuc.org.uk/equality/tuc-20159-f0.cfm>. The principles underlying the concept are sometimes known as the Brown principles, after the specific case which generated them. In brief, they are as follows:
- **Awareness**
A decision-maker who has to take decisions which do or might affect an equality group (for example, disabled people, or persons of a particular ethnic background or gender) must be made aware of their duty to have due regard to the three aims of the Act.
 - **Timeliness**
Due regard must be fulfilled before and at the time that a particular decision is being considered. Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision are not sufficient to discharge the duty.
 - **Rigour**
The duty must be exercised in substance, with rigour and with an open mind, and with conscious and deliberate attention to relevant evidence, including evidence derived from consultation with staff and service-users. Having due regard is not just a question of ticking boxes.
 - **Non-delegation**
The duty cannot be delegated.
 - **Continuing**
The duty is a continuing one – namely, it cannot be exercised once and for all, but on the contrary must continually be revisited and borne in mind.

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- **Record-keeping**

It is good practice to keep an adequate record showing that the equality duties have been actually considered and pondered. This disciplines decision-makers to undertake their equality duties conscientiously.

16. There is further information about the Brown principles of due regard at <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/guidance-and-codes-of-practice/using-the-equality-duties-to-make-fair-financial-decisions/relevant-case-law/>. They were formulated in the first instance in a case to do with disability equality, but were explicitly extended in February 2011 to ethnicity and gender in a judgement relating to the building schools for the future programme (BSF), <http://www.bailii.org/ew/cases/EWHC/Admin/2011/217.html>. The section of the judgement dealing with equalities legislation starts at paragraph 98. The Department for Education has explained the concept of due regard as follows:

Having due regard means that we need to think in advance about the potential implications of our decisions, seeking not just to eliminate negative outcomes but also thinking about potentially positive ones. We also need to be able to demonstrate – ideally proactively, or otherwise if challenged – that we actually have paid due regard to the duties.

One important way in which public bodies, and especially government departments, demonstrate that they have taken due regard is through equality analysis – analysing what we do and how we do it so that we are clear about the impact on equalities, and so that we take action as a result of our analysis in order to promote equality.

(Workbook on equality analysis, updated in December 2011 and revised again slightly in April 2012 – <http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0077522/equality-analyses-equias-workbook>)

The concept of equality of opportunity

17. The principle underlying the concept of equality of opportunity is that treating people equally (i.e. not discriminating) does not necessarily involve treating them all the same. On the contrary, 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 in the field of education as in other fields it is of substantial and far-reaching significance:

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:

a) **remove or minimise disadvantages** suffered by persons who share a relevant protected characteristic that are connected to that characteristic

b) **take steps to meet the different needs** of persons who share a relevant protected characteristic

c) **encourage participation** of persons who share a relevant protected characteristic in public life, or in any other activity in which their participation is disproportionately low.

18. It follows that the duty to have due regard for advancing equality of opportunity may entail engaging in **positive action**. There is an explanation of this concept at paragraphs 19–21 below.

Positive action

19. People with protected characteristics may be disadvantaged for social or economic reasons or for reasons to do with past or present discrimination. The Act contains provisions which enable schools and local authorities to take action to tackle such disadvantages and the needs arising from them, or to address disproportionately low participation in an educational activity by a particular group of pupils.
20. These are known as the positive action provisions and they permit schools to take proportionate action, if they wish, to address the disadvantages faced by particular groups. The DfE and EHRC have indicated that such measures could include targeted provision or resources, or putting in place additional or bespoke provision such as:
- special catch-up classes for Roma children
 - projects to engage with boys from a specific ethnic background
 - girls-only swimming lessons for Muslim pupils, taught by a female teacher
 - additional English language classes for pupils whose first language is not English
 - targeting the contents of publications such as advertisements, prospectuses and information leaflets.
21. Positive action of these kinds is not the same as positive discrimination. The latter is defined as involving preferential treatment which cannot be justified as proportionate. It is relevant in this connection to note that it is never unlawful to treat disabled people more favourably than non-disabled people.

Reasonable adjustments

22. The principles of equality of opportunity (paragraphs 17–18 above) and positive action (paragraphs 19–21) have some distinctive implications for disability equality, particularly in relation to the concept of **reasonable adjustment** and the provision of **auxiliary aids and services**. For schools, the duty to make reasonable adjustments has two aspects:
- If a provision, criterion or practice puts a disabled pupil at a disadvantage in comparison with other pupils, the school must take reasonable steps to remove or minimise the disadvantage.
 - A school must provide an auxiliary aid or service for a disabled pupil if this would alleviate a substantial disadvantage that the pupil faces in comparison with non-disabled pupils, and if it would be reasonable to do so.
23. The duty to provide auxiliary aids and services as part of the reasonable adjustment duty is a change for all schools and local authorities from September 2012. It is now obligatory to provide auxiliary aids and services if to do so would be reasonable. It is not a matter of discretion.
24. A decision to provide or not to provide an auxiliary aid or service depends on the specific context, and on the facts and circumstances of each individual case. A decision that would be reasonable at a large school, for example, might not be reasonable at a small one.

There is no legal definition for what constitutes an auxiliary aid or service. Case law, however, has established that the informal phrase 'things or persons which help' is an adequate explanation. Incidentally, many examples of auxiliary aids and services were seen at the Paralympics in London in summer 2012. Examples in schools include pieces of equipment such as induction loops, adaptive keyboards, infrared broadcast systems, videophones and special software, and the provision of a sign language interpreter, lip-speaker or deaf-blind communicator. Technical guidance for schools on such matters was published by the Equality and Human Rights Commission in October 2012 at

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/reasonable_adjustments_for_disabled_pupils_guidance_pdf.pdf. There is also useful though brief guidance on the concept of reasonableness at the EHRC website, <http://www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance/key-concepts/reasonable-adjustments/>. Amongst other things, a reasonable decision is one which is reached through the exercise of reason, and through rational and thoughtful deliberation.

25. In addition to considering reasonable adjustments for particular individual pupils currently on roll, schools must consider adjustments which may be needed in the future. For example, they should be prepared to produce large font papers for pupils with a visual impairment even if there are no such pupils currently on roll.
26. Factors which a school may consider when assessing the reasonableness of a possible adjustment include the financial resources required for it, and the time and trouble that will be involved; its likely effectiveness; its direct or indirect effect on other pupils; health and safety requirements; and whether aids have been made available through the special educational needs regime.
27. The duty to provide auxiliary aids and services reflects what is often known as the social model of disability, as distinct from the medical model. The social model sees disability as a social process, not as the characteristic of an individual: disability is seen as arising from an interaction between the impairment of an individual on the one hand and the flexibility – or inflexibility - of the environment on the other. According to the social model, someone who has an impairment becomes disabled when reasonable adjustments are not provided in relation to that impairment – they are disabled by society's failure to provide an adjustment or to remove barriers, not by the impairment itself. The term *disabled*, it has been said, should be seen as a verb not as an adjective.
28. Disability rights campaigners have frequently over the years used the slogan 'nothing about us without us' in order to stress that disabled people should be fully involved in decisions intended to assist them. Such decisions include, of course, the provision of auxiliary aids and services. There is no legal obligation to consult and involve disabled people in decisions which affect them, as there was, however, under the Disability Discrimination Act 1995. It continues to be good practice, however, to engage with and involve disabled people. Similarly engagement with other groups affected by inequality is good practice (see paragraphs 51–52 below).
29. In other jurisdictions, notably the United States and Canada, the concept of reasonable adjustment is subsumed under the concept of reasonable accommodation. The latter refers not only to disability equality matters but also to all the other strands and characteristics in equalities legislation. Although reasonable accommodation is not a legal concept in Britain under the Equality Act 2010 it is nevertheless a relevant and valuable ethical principle.

Fostering good relations

30. The Act 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, particularly in relation to spiritual, moral, social and cultural development (SMSC), and for the duty of schools to promote community cohesion.

Also it has clear implications for schools' policies and procedures for dealing with prejudice-related bullying. There is fuller discussion of this topic at <http://www.insted.co.uk/prejudice-related-bullying.pdf>.

Equality impact assessments and analysis

31. In recent years, in certain quarters, an equality impact assessment has tended to be a rather mechanistic and unhelpful process, not – as was originally intended – a way of showing due regard. The coalition government is therefore not encouraging the use of the term. However, it is still the case that public bodies must rigorously analyse and assess their policies and practices, particularly when considering a new development or decision. Accordingly, the government prefers the term *analysis* to the term *assessment*. In the House of Lords on 6 September 2011 the government spokesperson, Baroness Verma, made this wholly clear. She said:

Case law on the previous duties, which is still relevant, provides useful guidance as to what is required to comply with the equality duty. In brief, public bodies must ensure that they have the right information to hand about equality issues to make informed choices and decisions and to ensure that this is rigorously considered before and at the time decisions are taken.

Case law has also made clear that in some cases it will be necessary to consult relevant parties likely to be affected by a decision, such as local disability groups and women's groups. In order to demonstrate their compliance with the equality duty, public bodies will generally need to publish information about what they have concluded will be the effect of their activities on people with different protected characteristics and the information they considered in making their decisions, including those they have consulted and involved.

The regulations give public bodies flexibility to publish the information that they believe best demonstrates their compliance with the equality duty and which is most useful to their staff and service users in holding them to account for their performance on equality.

This means that public bodies will be able to publish the information that is right for their particular circumstances. What is right for a small school will be different from what is right for the Department for Education.

32. The DfE's reference (quoted in paragraph 16 above) to thinking about maximising potentially positive outcomes, as distinct from just avoiding negative ones, is particularly important in this context. In essence, the DfE states that conducting an equality analysis of a proposed policy involves asking two questions, each accompanied by a follow-up question. These are:

1) Could this policy, or does this policy, have a negative impact on one or more of the dimensions of equality – could it increase inequalities that already exist?

If so, how can we change or modify it, or minimise its impact, or justify it?

2) Could this policy, or does this policy, have a positive impact on equality, by reducing and removing inequalities and barriers that already exist?

If so, how can we maximise this potential?

33. In a speech to the Confederation of British Industry (CBI) on 19 November 2012 (<http://www.number10.gov.uk/news/speech-to-cbi/>) the prime minister confirmed formally that government departments in England will no longer be producing documents entitled equality impact assessments. The duty to have due regard for

equalities, however, of course continues. For example, the DfE's commitment to taking equality issues into account (see paragraph 16) in all its policy-making has not changed.

Specific duties

Summary

34. To help them have due regard for the three needs in the general duty (paragraph 13 above) the Equality Act requires schools and local authorities:
 - **to publish information** about their service users and any inequalities amongst them, and about the measures they have put in place to meet the general duty
 - **to prepare and publish specific and measurable objectives** which they will pursue over the coming years to meet the general duty.
35. The Government Equalities Office carried out two substantial consultation exercises in 2010-11 about what the specific duties under the Equality Act should be. Section 8 of the official explanatory memorandum about the duties (http://www.legislation.gov.uk/uksi/2011/2260/pdfs/uksiem_20112260_en.pdf) contains a very helpful and informative account of the consultations. The legal document setting out the requirements themselves can be found at <http://www.legislation.gov.uk/uksi/2011/2260/contents/made>.
36. There is further information and guidance in the explanatory memorandum mentioned above, and it is also well worth reading the speeches by government ministers when the regulations were introduced in the House of Commons and the House of Lords. The speech in the [House of Commons](#) was made by Lynne Featherstone MP on 11 July 2011 and the one in the [House of Lords](#), cited above at paragraph 17, was made by Baroness Verma on 6 September. Both speeches were followed by queries, questions and criticisms from the opposition benches, and the ministers' responses to these were additionally indicative of the government's thinking and intentions.
37. The first of the two specific duties had to be completed by local authorities by 31 January 2012, and has to be undertaken thereafter at least annually. In the case of schools, the first duty had to be completed by 6 April 2012 and thereafter annually. The second duty had to be completed by both local authorities and schools by 6 April 2012, and has to be undertaken again no more than four years later. The government stated that the gap for local authorities between publishing information on 31 January 2012 and publishing objectives by 6 April was in order to 'give people at least two clear months in which to review the data that has been published, and engage with and influence public bodies, from an informed perspective, about what their equality objectives should be'.
38. For schools, the Department for Education published in September 2012 an updated version of its non-statutory document entitled *Equality Act 2010: advice for school leaders, school staff, governing bodies and local authorities*. Amongst other things, this shows the DfE's understanding of how in practice schools might fulfil the specific duties. It is published at <http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010>

The duty to publish information

39. 'Public bodies must ensure that they have the right information to hand about equality issues,' said the government spokesperson quoted above at paragraph 17, 'to make informed choices and decisions and to ensure that this is rigorously considered before and at the time decisions are taken.' She stressed that 'the regulations give public bodies flexibility to publish the information that they believe best demonstrates their compliance with the equality duty and which is most useful

to their staff and service users in holding them to account for their performance on equality. This means that public bodies will be able to publish the information that is right for their particular circumstances.’ She added that the government has, though, two stipulations. The one of these affects only public bodies with 150 or more employees and is therefore not relevant to primary schools, and to only very few secondary schools.

40. The other stipulation, however, is relevant for all schools: ‘Public bodies must include information relating to people who share a relevant protected characteristic who are affected by their policies and practices - their service users.’ Ofsted has indicated it would be reasonable to expect that schools will accordingly need to publish information such as the following:
- the composition of the school population broken down by year group, ethnicity and gender, and by proficiency in English
 - the composition of the school population broken down by types of impairment and special educational need
 - differences in attainment, participation and take-up connected with disability, ethnicity and gender, and with proficiency in English
41. In addition, Ofsted indicates it would be reasonable to expect that a school will list some of the principal things it does that show it has due regard for equalities (<http://www.ofsted.gov.uk/resources/briefings-and-information-for-use-during-inspections-of-maintained-schools-and-academies-january-2013>). The overall purpose of providing such information, as summarised by the equality and Human Rights Commission in its technical guidance published in January 2013, is ‘to enable those accessing it to reasonably assess how a listed authority [for example, a school] has complied with the general equality duty’.

The duty to publish objectives

42. The explanatory memorandum accompanying the specific duties regulations contains the following indications of what is required. Objectives should:
- clearly illustrate the real equality improvements that the public body intends to deliver over the course of the business cycle
 - focus on the key inequalities that the body is in a position to affect, as highlighted in its published information
 - identify achievable, measurable improvements
43. The memorandum cites the following example: ‘If a local authority’s data shows that very few older people access a service from which they might benefit, the authority might set an objective to increase the rate of take-up by a certain percentage within a specified period, to ensure that such services genuinely advance equality of opportunity for all.’ Similarly specific and measurable objectives can be readily formulated for schools.
44. The requirement to publish equality objectives, the memorandum explains, will ‘help to ensure that the public and the voluntary and community sector organisations understand the key inequalities that public bodies are focusing on tackling and can track progress against these’.
45. So far as is appropriate, objectives should reflect SMART principles – they should be not only **s**pecific and **m**easurable, as required explicitly by regulations, but also **a**chievable, **r**elevant and **t**ime-bound.
46. The letter of the law specifies that a single objective is sufficient. However, if a school or local authority were to decide on only one objective it would probably be

open to legal challenge on the grounds that it had not shown due regard – the key idea in legislation that is defined above at paragraph 15.

47. There is no longer a requirement that schools and local authorities should draw up equality policies and schemes. Nor are they required, as was proposed by the previous government, to take into account national priorities determined by the Secretary of State. It is still be good practice, however, to draw up and publish a statement of overall policy and principles showing the basis on which objectives are chosen, and to be mindful of national, regional and local priorities. Publishing a policy statement is one way (though only one way) of showing due regard. So is being aware of national priorities.
48. In relation to national priorities, there is a useful overview in Chapter 10 of *How Fair is Britain?*, published by the Equality and Human Rights Commission in autumn 2010. The chapter is summarised at <http://www.equalityhumanrights.com/key-projects/triennial-review/online-summary/education/>. The full text is at http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_ch10.pdf. There is also a useful overview in *Children and Equality - equality evidence relating to children and young people in England* by Lisa Davis: http://www.childrenscommissioner.gov.uk/content/publications/content_566

Transparency and accountability

49. The basic principle underlying the new specific duties is that of transparency. 'Our proposals,' the Government Equalities Office (GEO) states, 'use the power of transparency to help public bodies to fulfil the aims of the Equality Duty to eliminate discrimination, advance equality of opportunity and foster good relations between different groups. This means that public bodies will be judged by citizens on the basis of clear information about the equality results they achieve, rather than on whether they have completed a tick-box list of processes. 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.'
50. Publication of information and objectives must be done in a way that is open and freely available to third parties, for example community groups and equality campaigners. 'This will give the public a powerful tool to hold organisations to account,' the GEO continues, 'and enable third parties to analyse, interrogate and manipulate the data so it is easier for citizens to use.' The information is likely to come from a range of sources, including raw data, routine monitoring data, surveys of attitudes and perceptions, and statistics collected by external bodies. It is in accordance the key concepts of transparency and accountability that the specific duties have been established. This is emphasised in a summary currently (January 2013) on the GEO website (<http://www.homeoffice.gov.uk/equalities/equality-act/equality-duty/>)

The specific duties help public bodies perform the Equality Duty better. They do this by requiring public bodies to be transparent about how they are responding to the Equality Duty – requiring them to publish relevant, proportionate information showing compliance with the Equality Duty, and to set equality objectives.

The Government believes that public bodies should be accountable to their service users. Publishing information about decision-making and the equality data which underpins those decisions will open public bodies up to informed public scrutiny. It will give the public the information they need to challenge public bodies and hold them to account for their performance on equality.

Moreover, knowing that such information will be published will help to focus the minds of decision-makers on giving proper consideration to equality issues.

Engagement, consultation and involvement

51. The duty to have due regard (see paragraphs 15–16) means that it is good practice, when considering equality issues, for schools to engage with people who have a legitimate interest – including staff (both teaching and administrative), parents, carers and pupils, and local groups, organisations and individuals as appropriate. This point was emphasised in the speech by Baroness Verma cited above at paragraph 31.
52. The same point was emphasised in a document issued by the Government Equalities Office on 17 March 2011. 'Under the requirements of the general duty to have due regard,' it said, 'public bodies will need to understand the effect of their policies and practices on equality – this will involve looking at evidence, **engaging with people, staff, service users and others** [emphasis added], and considering the effect of what they do on the whole community'. The explanatory memorandum accompanying the specific duties regulations states: 'The specific duties will require a public authority to publish information to demonstrate its compliance with the duty. This is likely to include details of the analysis it undertook and the information on which it was based. It is also likely to **include details of any engagement or consultation that it undertook** [emphasis added] in complying with the duty.'

Further information and guidance

The law and legal principles

53. For an academic and authoritative account of legal history since the 1960s, see 'The New Single Equality Act in Britain' by Bob Hepple QC, *The Equality Rights Review*, volume 5, 2010:
<http://www.equalrightstrust.org/ertdocumentbank/bob%20hepple.pdf>
54. There is a full list of significant case law in the period 2008–12, with hyperlinks to the texts of the actual court judgements, on the website of the Equality and Diversity Forum at <http://www.edf.org.uk/blog/?p=17719>. There is a useful discussion for specialist lawyers at <http://www.jordanspubliclaw.co.uk/articles/exploring-the-equality-act-2010>.
55. Case law up to 2011 is well summarised in *Equality Duty Toolkit*, published by the Trades Union Congress in autumn 2011 at <http://www.tuc.org.uk/equality/tuc-20159-f0.cfm>
56. The explanatory memorandum accompanying the Equality Act regulations on specific duties includes a useful brief summary of government thinking, and (see section 8 in particular) how it developed in 2010–11:
http://www.legislation.gov.uk/uksi/2011/2260/pdfs/uksiem_20112260_en.pdf
57. Ministerial statements in 2011 in the House of Commons and the House of Lords contained authoritative indications of the government's intentions:
 - Lynn Featherstone MP -
<http://www.publications.parliament.uk/pa/cm/cmtoday/cmstand/output/deleg/dg02110711-01.htm>
 - Baroness Verma -
<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110906-0001.htm>
58. In January 2013 the Equality and Human Rights Commission published *Technical Guidance on the Public Sector Equality Duty*. There are slightly different separate versions for England, Scotland and Wales. Links to them are at

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>. The document is a clear though technical guide to legal principles and concepts, and there are useful definitions, explanations and discussions of concepts such as due regard, equality of opportunity, fostering good relations, and measurable objectives. Legal principles and concepts are valuably illustrated through brief case studies relating to real events and rulings, and through hypothetical examples. It is likely to be invaluable for lawyers, advocates and human resources specialists, and also to be of interest and value for the general reader.

Ofsted and Estyn

59. Ofsted's equality objectives are within its equality scheme at <http://www.ofsted.gov.uk/resources/single-equality-scheme-2010-13>, Estyn's are within its strategic equality plan, which can be readily found by using internet search facilities.
60. Ofsted's briefing on inspecting equalities can be found through <http://www.ofsted.gov.uk/resources/briefings-and-information-for-use-during-inspections-of-maintained-schools-and-academies-january-2011>. There are verbatim quotations from Ofsted's briefing in the training exercise for schools at <http://www.insted.co.uk/equality-principles-and-priorities.pdf>.
61. Estyn has issued valuable guidance on addressing socio-economic inequality and therefore, by implication, on practical ways of using the pupil premium.

Department for Education

62. In October 2012 the DfE updated its guidance on the Equality Act for school leaders:
<http://media.education.gov.uk/assets/files/pdf/e/dfe%20equality%20act%20guidance%20oct%202012.pdf>
63. The DfE's equality objectives were published in late May 2012 at <http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/b00202789/equality-commitments/equality-objectives-2012>
64. As mentioned in paragraph 68 below, the DfE has published a useful list of statistical reports containing data relevant to equalities.
65. The DfE's workbook on equality impact analysis (EQUIA) was updated in autumn 2011, and again in April and June 2012:
<http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0077522/equality-analyses-equias-workbook>
66. There are links to reports on equality impact analysis at <http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0063621/equality-analyses-from-may-10>

Key statistics

67. As part of its compliance with the Equality Act specific duties the Office of the Children's Commissioner for England has published a useful and authoritative summary of equality issues affecting children and young people: *Children and Equality - equality evidence relating to children and young people in England* by Lisa Davis: http://www.childrenscommissioner.gov.uk/content/publications/content_566
68. It is similarly in accordance with its duty to publish equality information that the Department for Education has provided a list of the research and statistics reports which it uses when making and evaluating policy, and the list conveniently includes hyperlinks. It is at <http://media.education.gov.uk/assets/files/doc/e/equality%20act%20statistical%20>

[and%20research%20evidence%20and%20the%20work%20of%20the%20departme
nt.doc.](#)

69. There is a useful overview in Chapter 10 of *How Fair is Britain?*, published by the Equality and Human Rights Commission in autumn 2010. The chapter is summarised at <http://www.equalityhumanrights.com/key-projects/triennial-review/online-summary/education/>. The full text is at http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_ch10.pdf.

Guidance on disability equality issues, particularly the reasonable adjustments duty since 1 September 2012

70. There is helpful guidance on the new legal requirements regarding auxiliary aids and services at the following sites:

Equality and Human Rights Commission

<http://www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance/key-concepts/reasonable-adjustments/>

and

[http://www.equalityhumanrights.com/uploaded_files/EqualityAct/reasonable adjust
ments for disabled pupils guidance pdf.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/reasonable_adjustments_for_disabled_pupils_guidance_pdf.pdf)

Independent Parental Special Education Advice

<http://www.ipsea.org.uk/news/hot-topics/schools-required-to-provide-aids-and-services-to-disabled-pupils-from-1-september-2012.aspx.aspx>

See also <http://www.ipsea.org.uk/AssetLibrary/News/aidsandservices.pdf>

Optimus Education

<http://www.optimus-education.com/equality-act-new-auxiliary-aids-duty-applies-schools-1st-september>

Veale Wasbrough Vizards

[http://www.vwv.co.uk/site/briefing/briefingsdetail/PR_IET_Auxiliary_aid_and_servi
ces_Jun12.html](http://www.vwv.co.uk/site/briefing/briefingsdetail/PR_IET_Auxiliary_aid_and_services_Jun12.html)

Equality and Human Rights Commission

71. In November 2012 the Equality and Human Rights Commission finally published guidance for schools on meeting the general and specific needs of the Equality Act. It is clearly written and teacher-friendly in its explanations of legal concepts and principles, and valuably contains many practical and stimulating case studies to bring abstract ideas alive. It can be consulted at http://www.equalityhumanrights.com/uploaded_files/pdfs/public_sector_equality_duty_guidance_for_schools_in_england_final.pdf
72. In December 2012 the EHRC published a report on how public authorities in England have met their obligations to transparency by publishing information on equality. It revealed that only half of the public authorities assessed were responding fully to the requirements of the specific duty regulations to publish equality information relating to the diversity of their staff and of people who use their services. It includes information about performance across a range of sectors, sets out what good practice looks like, and includes recommendations for public authorities to help them improve their performance. The report is at [http://www.equalityhumanrights.com/uploaded_files/PSD/publishing_equality_infor
mation_final.pdf](http://www.equalityhumanrights.com/uploaded_files/PSD/publishing_equality_information_final.pdf)
73. In January 2013, as mentioned above (paragraph 58), the EHRC published *Technical Guidance on the Public Sector Equality Duty* at <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act->

[codes-of-practice-and-technical-guidance/](#). Legal principles and concepts are valuably illustrated through brief case studies relating to real events and court judgements, and through hypothetical examples.

74. In 2011 the EHRC published the results of substantial research commissioned from Ipsos Mori on how schools had so far responded to the duties which had been required since 2002 for race and ethnicity, since 2006 for disability and since 2007 for gender. The Equality Duties and Schools by Graham Bukowski and co-authors (EHRC research report 70) can be downloaded from http://www.equalityhumanrights.com/uploaded_files/research/rr70_equality_duties_and_schools.pdf.

Guidance for voluntary and community organisations

75. The Act's specific duties are based in part on the principle that schools and other public bodies should be held to account by local community and voluntary groups and organisations, and by trades unions, campaigners, parents and carers. For such groups and individuals there is excellent guidance on how to approach and relate to public bodies in a document entitled **Equality Duty Support Package for the Voluntary Sector**, published on the website of the Equality and Diversity Forum on 3 October 2012 at <http://www.edf.org.uk/blog/?p=17736>.

Equality and Diversity Forum

76. The Equality and Diversity Forum (EDF) is a national network of organisations concerned with equality and human rights. About 30 organisations have full membership status and a further 60 have observer status. The forum has created a special and very substantial one-stop shop on its website for information and guidance about the public sector equality duty, and this can be accessed at <http://www.edf.org.uk/blog/?cat=79>. There are sub-sections entitled what the law says, guidance, case law, research and reports, the equality duty in practice, and the equality duty in parliament.

Guidance specifically for headteachers

77. There is a brief but clear and helpful summary of the specific duties required by the Equality Act at the website of the National Association of Headteachers (NAHT) – <http://www.naht.org.uk/welcome/advice/advice-home/equality/schedule-of-equality-information-and-objectives/>.
78. There is also reliable, brief and clear guidance for headteachers and other senior staff on the Sec Ed website, published in January 2013. Amongst other things, it includes valuable advice on the construction and writing of measurable objectives. Written by Bill Bolloten, it is at http://www.headteacher-update.com/cgi-bin/go.pl/article/article.html?uid=96128;type_uid=79;section=Features.

Review of the public sector equality duty

79. In May 2011 the government announced that it would conduct a review of how the public sector equality duty (PSED) is working. A steering group was in due course set up and this is expected to report by the end of June 2013. Some of the implications for schools are outlined at <http://www.insted.co.uk/psed-review.pdf>. More generally, there is substantial information in a document published in February 2013 by the Trades Union Congress at http://www.tuc.org.uk/tucfiles/534/TUC_Briefing_Review_of_the_Equality_Duty_Feb2013.pdf.

Training handouts

80. On the website of the Insted consultancy there are various materials designed for inservice training sessions and continuing professional development (CPD):

A quiz for thought

<http://www.insted.co.uk/quiz-for-thought.pdf>

Twelve key figures

<http://www.insted.co.uk/twelve-key-figures.pdf>

A rough guide for the perplexed

<http://www.insted.co.uk/rough-guide.pdf>

Equality Act 2010 - a quiz

<http://www.insted.co.uk/millionaire-quiz.pdf>

A picture for the mind's eye - the three aims of legislation

<http://www.insted.co.uk/picture-for-minds-eye.pdf>

Equality principles and priorities

<http://www.insted.co.uk/equality-principles-and-priorities.pdf>
