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Equality and
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Commission

Steps to meet the Public Sector Equality Duty in Wales

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Ready for publication

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How the PSED can help you

The Public Sector Equality Duty¹ (PSED) and the Welsh Specific Duties require² and enable schools and colleges to make decisions in a fair, transparent and accountable way, considering the needs and rights of different learners.

The PSED can be used to help you to understand how your work could and does impact on different groups of learners. When done well, embedding the PSED will help you to make fairer and more inclusive decisions – which, ultimately, results in better decisions when designing and implementing your assessment plans to provide Centre Determined Grades.

The Welsh Specific Duties require schools and colleges to assess the equality impact of your proposed assessment plans and appeals processes. Doing so will help you to meet the general equality duty, (see below), and is a legal requirement. An equality impact assessment must inform your decision-making. It must happen before you make and implement decisions. It cannot be retrospective or be undertaken near the end of the process.

The Equality and Human Rights Commission is the regulator of the PSED. The PSED should be understood to cover all proposed or current activities you carry out. We have developed this briefing to set out clear steps to help you in carrying out an Equality Impact Assessment of your assessment plans to provide Centre Determined Grades for GCSEs and A Levels. Similar considerations should be given during any review or appeal of the grades.

¹ Section 149 of the Equality Act 2010

² Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011

What is the Public Sector Equality Duty?

The Public Sector Equality Duty is part of the Equality Act (2010) and a legal requirement.

There is a general duty which requires schools and colleges (as well as other public bodies in Wales) to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010,
- Advance equality of opportunity between people who share a relevant protected characteristic and those who don't, and
- Foster good relations between people who share a relevant protected characteristic and those who don't.

The general duty covers the following protected characteristics; age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. You can find out more about [the protected characteristics via our short video](#).

The broad aim of the general equality duty is to integrate consideration of the advancement of equality, non-discrimination and fostering good relations into everything you do.

More detailed guidance on the PSED is available in our [website](#) and in our short video [Equality Law: What is the Public Sector Equality Duty?](#)

What is the specific duty to assess proposed new or revised policies?

The purpose of the specific duties is to help you in your performance of the general equality duty. There are a range of specific duties in Wales including setting equality objectives, engagement and assessing impact.

The specific duty to carry out an equality impact assessment (EIA) requires you to:

- Assess the impact of your assessment plans for 2021 while they are being developed and as they are implemented against the needs of the general equality duty.
- Consider relevant evidence relating to people who share a protected characteristic (including any evidence received from these groups).
- Take account of the results of any equality impact assessment in respect of your assessment plans.
- Publish, within a reasonable period, the results of the equality impact assessment. These could be shared with WJEC when they quality assure your plans and with learners and parents/carers awaiting GCSE and A level grades this year.

When an equality impact assessment (EIA) is required, it must be carried out before a decision is made on whether to apply or implement the proposed assessment plan.

The impact of the coronavirus on educational attainment.

We know the coronavirus pandemic has created gaps in education for most learners in Wales. These gaps threaten attainment at both primary and secondary level including GCSE / A level.

Research is showing that both inequalities in the home-learning environment and changes to grading systems risk exacerbating existing inequalities in education, leading to a disproportionately severe impact on some groups including boys, Black pupils, Gypsy, Roma and Traveller pupils, pupils who need support in education, and those who are socio-economically disadvantaged. This means that there is the potential for indirect discrimination, that is, the potential for some groups with protected characteristics to be disadvantaged by the assessments. The PSED requires you to have due regard for how you may eliminate this discrimination and advance equality of opportunity.

The decisions made in how you provide Centre Determined Grades will be particularly relevant to the need to eliminate discrimination and advance equality of opportunity.

Our reports [Is Wales Fairer? 2018](#) and [How coronavirus has impacted equality and human rights](#) provide further information on attainment gaps.

Five steps to undertaking an Equality Impact Assessment (EIA)

We understand the immense pressure that schools and colleges are under at the moment. Within this briefing we have set out 5 clear steps that schools and colleges are required to take. We would suggest these are taken at the earliest stage in the development of your assessment plans for providing Centre Determined Grades.

1. Collect equality evidence (information about learners with protected characteristics due to be assessed)
2. Assess the potential impact by considering whether the equality evidence indicates potential differential impact on each protected characteristic group or provides an opportunity to improve equality in an area, by asking:
 - Does the proposed assessment plan contribute to advancing equality of opportunity?

- Does the proposed assessment plan eliminate discrimination?
3. Take account of the results of the EIA in developing the proposal for your assessment plan; this may mean adapting the plan to reduce the disadvantage.
 4. Document and publish the results of the assessment including any changes that were made as a result of the EIA.
 5. Monitor the actual impact of the assessment plan and disaggregate results by protected characteristics

Below is further information to assist you in undertaking each of these steps.

Step one – Collect equality evidence including involvement of protected characteristic groups

Equality evidence can include internal information, external research or national data. Our reports [Is Wales Fairer? 2018](#) and [How coronavirus has impacted equality and human rights](#) can help in providing you with key equality evidence. You will have data specific to your school which includes information about learners protected characteristics.

Where there are gaps in evidence for particular groups you should seek to consult and involve equality groups, communities and individuals to understand their experiences and needs, and any disadvantages and barriers they face in their lives.

Engagement with equality groups, communities and individuals is an important part of conducting equality impact assessments. There is also a separate specific duty on engagement and we have developed [guidance](#) on this. Where there are gaps in the evidence you must engage with these stakeholder groups.

Relevance and proportionality are key and the extent of evidence gathering, and involvement should be proportionate to the size and resources in your school or college.

Given the time scales for putting together your assessment plans, you may be limited in how much engagement you can carry out. As a minimum you should provide sufficient information about your assessment plan to those affected by it, allow them some time to respond and then to consider their responses. .

In the longer term, you should consider including fuller engagement in your plans to monitor and review the impact of your assessment plan.

Step two – Assess impact

Once relevant evidence has been collected it needs to be applied to your assessment plan for providing Centre Determined Grades as it is being developed. A judgement needs to be made at each stage of the development process as to what the likely effect will be and whether changes are needed.

You must assess the impact of your proposals against the needs of the general duty for each relevant equality group.

In considering how your proposal contributes to **advancing equality of opportunity** you should consider whether it will help you to:

- Remove or minimise disadvantage
- Meet the needs of different groups
- Encourage increased participation of particular groups
- Take account of disabled people's impairments.

In considering whether your proposal **eliminates discrimination** you should consider whether there is evidence to indicate that your proposal:

- May result in less favourable treatment for particular groups,
- May give rise to indirect discrimination, harassment or victimisation
- May lead to discrimination arising from disability
- Builds in reasonable adjustments where these may be needed.

Given we know there are attainment gaps for particular groups and there has been a differential learning loss from the pandemic, it will be insufficient to make a simple statement that your proposal will not disproportionately adversely affect anyone, and therefore people with protected characteristics will automatically benefit. Specific steps may be required to address existing disadvantage, meet different needs or accommodate difference and diversity.

Taking into account disabled people's impairments and reasonable adjustments as part of the public sector equality duty is anticipating the needs of disabled people in general and is wider than the specific access arrangements or special measures that are usually applied by WJEC. For example requiring attendance at a physical assessment, may be difficult for those with mobility issues or mental health conditions and so adjustments may be needed.

Step three – Taking account of the results of the assessment in developing the proposal

Having considered potential impact, you should be in a position to make an informed judgement on what should be done to further develop your assessment plan.

There may be no major change required if the assessment has not identified any potential for discrimination or adverse impact, and all opportunities to advance equality have been taken.

However, your proposal may need to be adjusted to remove barriers or disadvantages for particular equality groups, to better advance equality. It may be possible to remove or change a particular aspect of your proposed assessment plan or to introduce additional measures to reduce or mitigate any risk of potential negative impact.

Step four - Document decisions and publish results of the assessment

It is good practice to keep records showing how you have given due regard to the needs of the general equality duty. It is particularly important to keep records showing your reasoning where decisions to take no action have been made despite equality being highly relevant to the decision in question. You may need them if an appeal raises issues about discrimination or to defend a legal challenge.

You will be responsible for collecting evidence to demonstrate you have met the general equality duty.

We would expect you to publish the results of your equality impact assessment as soon as possible. The results must be published ‘within a reasonable period’ of implementation.’

The results of your equality impact assessment should include both consideration of relevant equality evidence and any changes that were made as a consequence of the considerations. This should be referenced in your decision-making record.

Publishing the results of assessment will increase transparency and accountability. It could be shared with the WJEC as part of their quality assurance process.

Step five – monitor the actual impact of your decisions on centre determined grades

The actual impact of your assessment plan will only be known once it has been introduced and implemented. Therefore, systems to enable monitoring and review of the actual impact of your assessment plan will form an important part of your equality impact assessment processes and should be clearly set out and understood by everyone involved. It will be vital that there is an equality focus within your performance and improvement processes.

Steps to meet the Public Sector Equality Duty in Wales

The general equality duty is still applicable to the ongoing operation of your assessment plans, even where they have been subject to an Equality Impact Assessment. You need to be able to satisfy yourself on an ongoing basis that you are continuing to meet each of the needs of the general equality duty.

Decision-makers have due regard to equality

Embedding equality into your assessment plan must be considered fully by decision makers including Head Teachers and Governors.

Head Teachers and Governors have a scrutiny role in determining whether the Equality Impact Assessment has been robust enough, and gives them sufficient information. You need to ensure you are satisfied that you:

- Understand the relevance of the equality duty to the decisions you are making
- Have sufficient information on the potential impact of the decision on people with different protected characteristics. If not you will need to decide if further research or consultation is necessary.
- Have considered whether action can be taken to mitigate any identified potential adverse impact of the proposed policy.
- Have considered whether action can be taken to enable the proposed policy to advance equality of opportunity.

Getting further help

Most Local Authorities have an Equality Officer or equivalent role who should be able to provide advice in carrying out an Equality Impact Assessment.

The Commission has a range of more [detailed guidance on the PSED](#) including a specific one on [assessing impact](#). This guidance includes a step-by-step guide to assessing the impact of policies on your ability to comply with the general equality duty. We also have guidance on [What equality law means for you as an education provider in Wales: Schools](#).

More information about the Equality and Human Rights Commission can be found at www.equalityhumanrights.com

Frequently Asked Questions

Are schools and colleges in Wales covered by the PSED?

Yes. Maintained Schools (including primary, secondary and special schools) and Colleges are listed in Part 2 of Schedule 19 of the Equality Act 2010 which means that they are legally required to comply with the general public sector equality duty and Welsh specific duties. Independent schools are not listed in the Equality Act or the Regulations as public authorities, and so they are not bound by the specific duties. They are also not bound by the general duty unless they are exercising a public function, in which case the general duty will only apply to the exercise of that function.

Does the process for producing centre determined grades need to comply with the PSED?

Our guidance sets out that the extent to which proposed or revised policies must be assessed for equality impact depends on the relevance of the policy to particular equality groups and the potential impact of it on them. Given the impact of the assessment plans and the processes centres need to implement to produce centre determined grades, you must ensure it complies with the PSED.

Do centres have to carry out an Equality Impact Assessment of Centre Determined Grades on an individual basis, subject level or centre level?

The public sector equality duty does not apply on an individual basis.

As there may be different issues for different subjects, an equality impact assessment should be carried out for each subject area. However, a proportionate approach is key. For example, some impacts will apply across a number of subjects or across the whole school, therefore a school may include these across all subjects or may group subjects together when assessing impact.

Schools must monitor the impact of their assessment plans on outcomes for learners. This will mean recording and analysing learner grading data by protected characteristic.

Should the PSED be part of the internal performance and improvement processes?

Ensuring you have met the PSED will be key to your internal performance and improvement process. It will be important that this includes an overview of outcomes by the protected characteristics of your learners. Key to this will be considering if there is a disproportionate impact on any equality groups. If there is you should consider what steps you can take to eliminate any disparities.

Who should centres engage with when carrying out their equality impact assessment?

In deciding who may represent the interests of protected groups, you may want to include:

- former, current and potential pupils
- former and current staff
- governors
- equality groups
- trade unions
- third sector and equality organisations
- the wider community.

You must consider the need to capture first-hand the views of people with one or more protected characteristic. You do not need to engage with every protected group on every decision. You will need to decide how relevant the policy or decision is for a particular protected group before deciding on whether or how to engage with them.

Can we partner with other centres to carry out engagement?

It may be helpful to work with other centres to carry out engagement activities. This can save time and resources for you and can avoid overloading stakeholders.

What methods of engagement can we use?

Our [engagement guidance](#) provides information on different methods of engagement. However the key points for engagement are that you clearly explain how your assessment plan works, allow time for people to respond and then take into account what their responses. You may use different engagement methods for different people if there is a good reason to do so.

Can we use existing structures for engagement?

Some common existing structures include school councils, service user forums, staff networks, trade unions and local area networks. Existing structures can be useful where time is short, and to help avoid stakeholder overload, but it is important to check that membership is relevant to the matter being reviewed i.e. that there is adequate participation of affected people.

Do centres need to incorporate the EIA/equalities approach for centre determined grades into their strategic equality plan/objectives etc?

You do not have to but you may revise your equality objectives at any stage. If as part of your review of your assessment process, you identify a significant inequality which you can address, then you should include that as an objective. If you do so, you must publish the new objective or revision and reflect any changes in your published statement about the timescale and steps for meeting your objectives.

Equality objectives should be clearly set out in Strategic Equality Plans. The purpose of a Strategic Equality Plan is to document the steps you are taking to fulfil your specific duties.

Given the significance of your approach for centre determined grades you could develop this into an equality objective and include within your strategic equality plan.

We have further [guidance on Equality objectives and Strategic Equality Plans](#).

Glossary

[What is direct and indirect discrimination?](#)

[What is harassment and victimisation?](#)

Direct discrimination

This refers to less favourable treatment against an individual because of that person's protected characteristic.

Equality

Equality is about ensuring that every individual has an equal opportunity to make the most of their lives and talents, and believing that no one should have poorer life chances because of where, what or whom they were born, or because of other characteristics. Equality recognises that historically, certain groups of people with particular characteristics e.g. those of certain races, disabled people, women and gays and lesbians, have experienced discrimination.

Harassment

Unwanted conduct related to a protected characteristic that has the purpose or effect of violating a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. It may also involve unwanted conduct of a sexual nature or be related to gender reassignment or sex. The conduct can either be a serious one-off event or be a 'course of conduct', i.e. it happens on a number of occasions.

Indirect discrimination

This is when a provision, criterion or practice is applied in a way that creates disproportionate disadvantage for a person with a protected characteristic as compared to those who do not share that characteristic, and this is not a proportionate means of achieving a legitimate aim.

Protected characteristics

These are the grounds upon which discrimination is unlawful. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Reasonable Adjustment

The duty on schools to make reasonable adjustments requires schools to take positive steps to ensure that disabled pupils can fully participate in education provided by the school, and that they can enjoy the other benefits, facilities and services which schools provide for pupils. This duty goes beyond simply avoiding discrimination, and requires schools to anticipate the needs of potential pupils for reasonable adjustments, as well as recognising that a disabled pupil's needs may change over time.

Victimisation

Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Equality Act 2010; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act.

Contacts

This publication and related equality and human rights resources are available from [our website](#).

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. We welcome your feedback.

For information on accessing one of our publications in an alternative format, please contact: correspondence@equalityhumanrights.com.

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EASS

For advice, information or guidance on equality, discrimination or human rights issues, please contact the [Equality Advisory and Support Service](#), a free and independent service.

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 19:00 (Monday to Friday)

10:00 to 14:00 (Saturday)

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