

# EQUALITY IN NORTHERN IRELAND SCOTLAND AND WALES

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**This briefing outlines some of the different legislation and approach to equalities in the devolved nations Scotland and Wales and Northern Ireland**

## **Introduction**

In England, Scotland and Wales, the Equality Act 2010 brought together and harmonised equality legislation. Legislation in Northern Ireland is different and is principally from Section 75 of the Northern Ireland Act 1998.

Both Scotland and Wales have made positive use of having some equality functions devolved to the Scottish Parliament and Welsh Assembly respectively. The sections below illustrate how proactively using legislation and powers can make a difference to the progress of equality.

## **Scotland ([www.ucu.org.uk/scotland](http://www.ucu.org.uk/scotland))**

The power to legislate on equal opportunities is currently reserved to the UK Parliament. **The Scotland Act 2015** has been passed in the UK Parliament which will devolve equality to the Scottish Parliament. This includes the functions of employment tribunals and EAT and Scotland will be able to implement the 'socio-economic' duty on public authorities which has never been enforced through the Equality Act 2010. The duty requires public authorities to exercise their functions which will assist in reducing socio-economic disadvantage.

The Scotland Act 1998 gave the Scottish Parliament power to encourage equal opportunities and also the power to impose duties on Scottish public authorities and cross border public bodies operating in Scotland.

The Scottish Government is responsible for the majority of public services including local councils, education, housing, social work and the National Health Service.

The Scotland Act 1998 defines equal opportunities as:

"the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions".

The Scottish Government has designated equal opportunities as a key cross cutting issue and established the Equality Unit in the Government to take forward its work on equality. The Equality Strategy provides a framework for all Departments to tackle prejudice and discrimination and promote equal opportunities.

In 2013, the Scottish Government published a set of equality outcomes that it expects to make progress towards by 2017. The Equality Outcomes and Mainstreaming Report 2015 <http://www.gov.scot/Resource/0042/00421238.pdf> describes the activities that are underway around these outcomes and the progress that has been made to date. It also provides an update on how the Scottish Government is making progress on incorporating equality across its activities, both as a policy maker and as an employer.

## **Public Sector Equality Duty**

The Equality and Human Rights Commission have published a series of reports 'measuring up' :

<https://www.equalityhumanrights.com/en/search?text=measuring%20up%20%20>

These track the performance of all Scottish public bodies against their duties under the Equality Act 2010 (specific duties) (Scotland) Regulations 2012. Scottish listed authorities were required by The Equality Act (2010) (Specific Duties) (Scotland) Regulations 2012 (referred to as 'the duties') to publish the following information by 30 April 2015:

- A mainstreaming report;
- Annual employee information, with details of progress made in gathering and using the information to better meet the duty;
- A report on progress made towards achieving equality outcomes published in 2013;
- Gender pay gap information, for listed authorities with 150 employees or more.

In 2015 the Equality and Human Rights Commission published 'Is Scotland fairer'. In Scotland, the Scottish Human Rights Commission (SHRC) and Equality Human Rights Commission (EHRC) have a shared human rights remit. The EHRC covers human rights issues arising from matters reserved to the Westminster Parliament and the SHRC covers issues arising from devolved matters, unless it gives consent for the EHRC to handle them. In practice, the two Commissions work in partnership on a number of human rights issues.

**<https://www.equalityhumanrights.com/en/britain-fairer/scotland-fairer-introduction/scotland-fairer-report>**

### **Further information**

#### **The Equality Act (2010) (Specific Duties) (Scotland) Regulations 2012**

<http://www.legislation.gov.uk/sdsi/2012/9780111016718/contents>

#### **Public Authorities in Scotland - Who is covered by the Specific Duties?**

<http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland/public-authorities-scotland-who-covered-specific-duties>

#### **Non-Statutory Guidance for Scottish Listed Authorities**

<http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland/non-statutory-guidance-scottish-public-authorities>

#### **Measuring Up?**

<http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland/scotland-public-sector-equality-duty-projects/monitoring-and-enforcement>

### **Wales ([www.ucu.org.uk/wales](http://www.ucu.org.uk/wales))**

Equality and human rights have been woven into the Welsh devolution settlement since the establishment of the National Assembly for Wales in 1999. The Assembly has a unique legal obligation to have due regard to the principle that there should be equality of opportunity for all. Equality and fairness are at the core of the Welsh Government's founding legislation. Section 77(1) of the Government of Wales Act 2006 requires Welsh Ministers to make arrangements with a view to securing that their functions are exercised with due regard to the principle that there should be equality of opportunity for all people.

The Equality Act 2010 gives Wales the responsibility of determining the public sector equality duty specific duties for Wales. These are substantially different to those in England, including an obligation to carry out equality impact assessments and to assess and act upon gender pay differences. The public sector duties are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and came into force in April 2011.

The Regulations place duties on the devolved public sector, including Welsh Government, covering equality impact assessments, publishing and reviewing Strategic Equality Plans, engagement, pay differences, procurement, reporting arrangements and equality and employment information.

In 2014 the UK Government confirmed its intention to devolve full legislative competence for the PSED and it has also agreed to devolve the socio-economic duty to the Assembly.

This statutory duty is strengthened by the Programme for Government which is firmly committed to creating a 'fair society free from discrimination, harassment and victimisation with cohesive and inclusive communities'. It represents a real commitment to delivery, measured by the impact Government is actually having on people's lives.

The Welsh Government currently publishes an annual report on the progress being made towards outcomes set out in the Programme for Government [http://www.assembly.wales/NAfW%20Documents/Annual\\_Equality\\_Report%20\\_Summ ary\\_PDF.pdf](http://www.assembly.wales/NAfW%20Documents/Annual_Equality_Report%20_Summ ary_PDF.pdf) and the actions being taken by the Welsh Government. The most recent report covering the actions taken in 2013-14 was published in June 2014.

The Welsh Government also publishes an annual report <http://www.assembly.wales/laid%20documents/gen-ld10467/gen-ld10467-e.pdf> on equality encompassing its annual statutory reporting duties under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and Government of Wales Act 2006. To provide a fuller and richer picture of progress, in October 2013 the EHRC commissioned NatCen Social Research (NatCen), an independent and non-politically aligned research organisation, to conduct a review. The purpose of the review was to assess progress in relation to the requirements of the duty, highlight successful outcomes and identify any barriers to implementation.

The value of the Welsh PSED was described, by participating organisations in the NatCen report, in the following ways:

- It raised the profile of the equality agenda.
- It provided a clear structure and focus for equality work.
- It promoted cultures of inclusivity, fairness and respect.
- The Welsh specific duties were valued by listed and non-listed bodies for providing clarity about what needed to be done to implement the PSED.

- All participating organisations could provide at least one example of evidence demonstrating progress related to the PSED. More typically organisations could give more than one example.
- The Welsh specific equality duties have helped to bring separate initiatives together in a single action plan leading to an increase in momentum.
- Progress has been made in putting systems in place for comprehensive and consolidated data gathering on protected characteristics of service users.
- There has been an increase in engagement with people from protected groups leading to a greater understanding of service needs.
- The PSED and specific equality duties have changed the focus of delivery to encourage the allocation of resources to where they are needed most.

There has been significant work to embed effective equality impact assessments (EIAs) across public sector organisations. Public sector bodies have reviewed and developed their processes to make them more user-friendly, more evidence based and more proportionate. It has helped organisations to understand and respond to the views and needs of protected groups.

## **Gender Pay Gap**

The NatCen review stated some organisations had moved beyond equal pay audits and had begun to address the reasons for pay differences with a focus on gender. In universities the EHRC did note that some progress had been made but the pace was slow.

The EHRC has published their report 'Is Wales Fairer?' in 2015, [http://www.equalityhumanrights.com/sites/default/files/publication\\_pdf/Is\\_Wales\\_Fairer\\_2015\\_eng\\_web\\_32pager.pdf](http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Is_Wales_Fairer_2015_eng_web_32pager.pdf)

This provides the very latest analysis of the greatest equality challenges facing Wales and will support public authorities to set new equality objectives by 2016.

The Assembly has also legislated on equality and human rights requirements in relations to Welsh public services. For example, the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 recognises the importance of workplace policies to promote wellbeing. UCU Wales has produced a domestic abuse policy negotiating pack: [https://www.ucu.org.uk/media/6694/UCU-Wales-domestic-abuse-policy-negotiating-pack-Jun-14/pdf/ucuwales\\_domesticabuse\\_negpack\\_jun14.pdf](https://www.ucu.org.uk/media/6694/UCU-Wales-domestic-abuse-policy-negotiating-pack-Jun-14/pdf/ucuwales_domesticabuse_negpack_jun14.pdf)

In 2014, the Welsh Government and the EHRC signed a concordat to strengthen the promotion and regulation of equality and human rights across Wales. Specific actions have included:

- Inquiry into the deaths in detention of adults with mental health conditions and the recommendations have been taken forward by health, police and prison services.
- Development of guidance for Welsh employers on how to address under-representation of particular faith groups in the Welsh workforce.

## **Northern Ireland ([www.ucu.org.uk/ni](http://www.ucu.org.uk/ni))**

In general the legislation that applies in Northern Ireland is different to that for the rest of the UK, although many of the provisions that apply in the rest of the UK have been reflected in the legal framework in Northern Ireland via secondary legislation.

**The Northern Ireland Act 1998** established the devolved Northern Ireland Assembly. Anti-discrimination legislation is devolved in Northern Ireland (in Wales and Scotland this is still be devolved to this level) so the Northern Ireland Assembly is responsible for passing or amending anti-discrimination legislation.

The main legislation is:

- age: Employment Equality (Age) Regulations (Northern Ireland) 2006
- disability: Disability Discrimination Act 1995 (DDA) and the Disability Discrimination (Northern Ireland) Order 2006 (DDO)
- race: Race Relations (Northern Ireland) Order 1997
- religion and belief or political opinion: Fair Employment and Treatment (Northern Ireland) Order 1998
- sex: (including gender reassignment, marriage and civil partnerships, and maternity and pregnancy) Sex Discrimination (Northern Ireland) Order 1976, Equal Pay Act (Northern Ireland) 1970
- sexual orientation: Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003
- Fair employment and Treatment (Northern Ireland) Order 1998; religion and belief or political opinion.

## Equality Commission for Northern Ireland

Sections 73 and 74 of the Northern Ireland Act established the Equality Commission for Northern Ireland. [www.equalityni.org](http://www.equalityni.org)

### The public sector equality duty

Section 75 of the Northern Ireland Act 1998 places public authorities, including HEIs, under a duty to have due regard to the need to promote equality of opportunity between:

- people of different religious beliefs, political opinions, racial groups, ages, marital statuses or sexual orientations
- men and women generally
- people with and without a disability
- people with and without dependants

Section 76 of the Northern Ireland Act 1998 requires public authorities not to discriminate and promote good relations on grounds of religious belief, political opinion and racial group when carrying out functions relating to Northern Ireland (in the rest of the UK this aspect of the duty applies also to other protected characteristics with the exception of marital or civil partnership status).

Each public authority must prepare an equality scheme which outlines how it proposes to fulfil the statutory duties over a five year period. This involves screening the equality impact of all existing and proposed policies and conducting equality impact assessments in order to promote equality of opportunity.

The Fair Employment and Treatment (NI) Order 1998 requires all employers who employ more than ten employees in Northern Ireland to register with the Equality Commission, and provide a monitoring return each year.

HEIs must therefore monitor employees, job applicants, appointees, leavers, promotees and apprentices by community background, sex, whether they are working more or less than 16 hours a week and by job. At least every three years, those employers required to monitor must also complete a review, generally referred to as an **article 55 review**, of composition and employment practices for the purposes of determining whether members of the Protestant and the Roman Catholic communities are enjoying fair participation in employment. This obligation applies regardless of whether the employer is in the public, private or voluntary sector.

## Disability equality

The definition of **disability** is different in Northern Ireland from the rest of the UK. In Northern Ireland, an impairment only constitutes a disability if it affects one of the following day-to-day activities:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- perception of the risk of physical danger

The requirement that a disability must relate to one of these activities has been removed in legislation for the rest of the UK under the Equality Act 2010.

## Differences between the Equality Act 2010 (England, Scotland and Wales) and Northern Ireland legislation

### Information based on publication by Equality Challenge Unit

<http://www.ecu.ac.uk/publications/anti-discrimination-law-in-northern-ireland/>

- In the Equality Act 2010 there is a provision that significantly restricts the scope for employers to ask job applicants disability or health-related questions or issue pre-employment health questionnaires. There is no such provision in Northern Ireland.
- The Equality Act 2010 places a duty on larger private sector employers to publish gender pay gap information and paves the way for similar duties to be placed on public sector employers. There is no Northern Ireland equivalent, other than the more general monitoring obligations under **section 75** of the Northern Ireland Act.
- The Equality Act 2010 contains a section which prohibits employers from using 'pay secrecy' clauses to bar employees from discussing their pay with colleagues. There is no equivalent provision in anti-discrimination legislation in Northern Ireland.



- The Equality Act 2010 makes explicit that the less favourable treatment of a woman because she is breastfeeding is prohibited. Although there is no specific prohibition in Northern Ireland, similar protection may be afforded through the Sex Discrimination (Northern Ireland) Order 1976.
- Case law has determined that the definition of **racial group** used in the rest of the UK is broad enough to protect traveller communities in a range of circumstances. However, in Northern Ireland the protection of the Irish Traveller community is more explicitly stated within the legislation itself (Race Relations (NI) Order 1997).
- In the Equality Act 2010 the positive action provisions are expanded to create the potential for employers to take account of an under-representation in tie-break situations during staff recruitment and promotion. This means that where, for example, two job applicants are equally qualified for a position, an employer may be able to select the person who is a member of an under-represented group. No similar tie-break provisions exist in Northern Ireland.
- In Northern Ireland the positive or affirmative action provisions are, in many ways, inconsistent between different protected characteristics. The positive action provisions in the Equality Act 2010 for the rest of the UK are more consistent across different protected characteristics.
- In Northern Ireland, under the Fair Employment and Treatment (NI) Order 1998 political opinion is explicitly protected as a ground on which discrimination should not take place. In the rest of the UK, discrimination is prohibited on grounds of religion or belief which could cover political philosophies such as socialism or Marxism.

## Education

The Equality Commission in Northern Ireland has just published a new assessment of the experiences of people in education across all the equality grounds in Northern Ireland. The statement highlights areas where there are educational challenges and how these impact on vulnerable children.

Many children in Northern Ireland continue to experience persistent inequalities because of barriers which are linked to disability, gender, religion and other equality grounds. These inequalities are lifelong and impact upon the whole education journey. See more at: <http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Education/Research-investigations/Key-inequalities-education#sthash.Pq6rqN1a.dpuf>

Key findings are:

- Males have persistently lower levels of attainment than females throughout primary and post-primary education;
- Protestants have persistently lower levels of attainment than Catholics at GCSE and A-Level, and that gap has widened in recent years;
- There are fewer male school leavers entering higher education than females and this has an impact on the make-up of the graduate workforce;
- Minority ethnic school leavers are more than twice as likely to enter unemployment as their white peers;
- Many schools are not effectively tackling racist bullying.

**Please send any comments or information about equality in the devolved nations and Northern Ireland to [hcarr@ucu.org.uk](mailto:hcarr@ucu.org.uk)**