



Government
Equalities Office

Putting equality at the heart of government

EQUALITY ACT 2010:

The public sector Equality Duty: reducing
bureaucracy

Policy review paper

17 March 2011

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Introduction

1. The purpose of this policy review paper is to seek views on new draft regulations imposing specific duties to support better performance of the public sector Equality Duty.
2. The Equality Act 2010 contains a new integrated Equality Duty on all public bodies which brings together the existing duties on race, gender and disability and extends to cover gender reassignment in full, age, religion or belief and sexual orientation. The general duty set out in the Act requires public bodies, and others who exercise public functions, to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations between people who share a protected characteristic and those who do not share it. The Act provides a power to make regulations imposing specific duties on public bodies to support better performance of the general duty.
3. The Government is committed to reducing burdens and bureaucracy on public bodies, moving away from a process-driven approach to a focus on transparency in order to free up public bodies to do what is appropriate in their circumstances, to take responsibility for their own performance, and to be held to account by the public. This means a shift in approach – a focus on performance, not process.
4. Following publication of draft specific duties regulations on 12 January 2011, we have looked again and think there is room to do more to strip out unnecessary process requirements and to make public bodies truly transparent and accountable to the public for their performance on equality. We have developed the new draft regulations at page 8 of this document after further consideration of the outcome of the public consultation on specific duties last year and the wider policy objective of ensuring that public bodies consider equality when carrying out their functions without imposing unnecessary burdens and bureaucracy.
5. The new single, general Equality Duty will come into force on 5 April 2011. We want to ensure that the specific duties which support it are effective and deliver real transparency and democratic accountability. For the period from 5 April until the new specific duties are in place, public bodies will still need to comply with the general Equality Duty. In doing so, they will be able to refer to the Equality and Human Rights Commission's guidance and draft statutory Code of Practice. We intend to bring the specific duties into force in July 2011.
6. Comments on the draft regulations at the end of this document are sought by **21 April 2011.**

Reducing bureaucracy and delivering equality improvements

7. The purpose of the public sector Equality Duty is to promote equality for all. The Duty makes sure that all our public bodies play their part in delivering equal treatment and equal opportunity, to help us achieve a strong economy and a fair society. We want the Duty to achieve real changes in people's lives and experiences. The specific duties will ensure that public bodies are accountable for delivering on the Equality Duty by requiring them to be transparent about their own staff and the public services that they deliver, so giving the public the information they need to hold them to account.

8. Up to now, specific duties under the existing public sector equality duties were used to prescribe processes public bodies must undertake, in the hope that this would deliver equality improvements on the ground. Public bodies were held to account for whether they followed the right processes, not whether in following those processes they delivered real equality improvements. The approach the Government now wants to take on the specific duties turns this on its head – it means that public bodies will be held to account – through greater transparency and challenge from the public - for the equality improvements they deliver, not the processes they go through. This is what will ultimately deliver on the aims of the Equality Duty – to eliminate discrimination, advance equality of opportunity and foster good relations for public sector workers and service users, not to ensure that public bodies comply with bureaucratic processes.

Summary of the new draft regulations

9. The revised draft regulations will require public bodies to:

- publish equality objectives every four years;
- publish information annually to demonstrate their compliance with the general Equality Duty;
- in particular publish information relating to their employees (for bodies with 150 or more staff) and others affected by their policies and practices (such as service users).

10. All information must be published in a way that is accessible to the public.

Background

11. In August 2010, the Coalition Government consulted¹ on draft specific duties, based on four key objectives:

- (a) *Improving transparency*: through requiring public bodies to publish data on their impact on equality and transparent information on their staff and pay.
- (b) *Devolving power*: liberating public bodies from top-down targets and allowing them to identify and work towards achieving their own priorities.
- (c) *Focusing on measurable results*: to reduce the time public bodies spend fulfilling repetitive or unproductive processes and instead focus on what works.
- (d) *Enabling the public to exercise greater choice*: more freely available data will enable people to compare the performance of public bodies and hold them to account.

12. On 12 January 2011, the Government published its response² to the consultation, which included revised draft regulations taking account of the responses received.

¹ Equality Act 2010: The public sector Equality Duty – Promoting equality through transparency – A consultation

² Equality Act 2010: The public sector Equality Duty - Promoting equality through transparency - Summary of responses to the consultation

Details of the new approach

13. The Government has looked again at the specific duties and their relationship both to the general duty and to guidance and the statutory Code of Practice. In doing so, the aim has been to ensure that equality considerations are appropriately factored into the policies and practices of public bodies, while at the same time minimising the risk that public bodies would feel compelled to do more than is needed, by following arduous and ineffective bureaucratic processes which go against the Government's drive to free the public sector from unnecessary process requirements and top-down targets. The Government is interested in the delivery of equal treatment and equal opportunities for all, not the performance of processes that support it.

14. The key differences of the new draft regulations from those published on 12 January are discussed below. In brief, they are the removal of requirements on public bodies to publish details of the:

- engagement they have undertaken when determining their policies;
- engagement they have undertaken when determining their equality objectives;
- equality analysis they have undertaken in reaching their policy decisions; and
- information they considered when undertaking such analysis.

15. The new regulations also omit the regulation which gave the Secretary of State a power to specify certain matters which public bodies must consider.

16. The reason we are proposing these changes is because we want to shift the focus of public bodies onto the delivery of equality improvements for their staff and service users, rather than have them focusing their efforts on bureaucratic processes. We are therefore confident that these changes will have a positive effect on the delivery of equality improvements for all the protected characteristics covered by the Equality Act 2010. We have considered each of the changes carefully and are satisfied that none of them will have a negative effect on equality for any of the protected characteristics.

17. We believe that public bodies should take responsibility for how they go about responding to their obligations. Challenge from the public will be the key means of holding public bodies to account for their performance on equality. We are developing tools and mechanisms to support organisations and individuals to challenge public bodies effectively to ensure they publish the right information and deliver the rights results, with a particular focus on addressing the barriers facing some disabled people.

Lighter-touch transparency requirement

18. The new draft regulations:

- Change the wording from: “*Publish sufficient information to demonstrate its compliance...*” to “*Publish information to demonstrate its compliance...*”;
- Remove the requirement to publish evidence of the analysis a public body undertook to establish whether its policies and practices had furthered the aims set out in section 149(1) of the Act, and remove the requirement to publish details of the information it considered when it undertook the analysis;
- Remove the requirement to publish details of the engagement the public authority undertook with persons whom it considered to have an interest in furthering the aims set out in section 149(1) of the Act, and details of the engagement it undertook when developing its equality objectives

19. Under the requirements of the general duty to have “*due regard*” to the matters set out in the Act, 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 and considering the effect of what they do on the whole community. Information to help public bodies comply with the duties and understand what constitutes good practice will be delivered through guidance, not regulation.

Equality objectives

20. The new draft regulations:

- amend the requirement from “*Public authorities must prepare and publish objectives*” to “*Public authorities must prepare and publish one or more objectives*”
- remove the requirement to set out how progress will be measured.

21. In response to the August 2010 consultation, some respondents were concerned that a reference to one or more objectives could infer that setting a single objective would be sufficient to meet the duty, so the Government removed reference to “one or more” from the draft regulations published on 12 January. On considering the matter further, the Government recognises that in taking a proportionate approach which takes account of the size and role of the public authority and its current equality performance, in some circumstances a single objective could be appropriate.

22. Under the 12 January draft regulations, there was no set number of objectives that public bodies would be required to have. The same is true of the new draft regulations.

23. A requirement on public bodies to describe the process of how they will measure progress against their objectives will not contribute to the delivery of equality improvements, so we have removed it.

Matters specified by a Minister of the Crown

24. The new draft regulations:

- Remove the requirement for public authorities to consider such matters as may be specified by a Minister of the Crown in a written statement to Parliament.

25. Some respondents to the August 2010 consultation thought that this provision could be invoked if it became necessary to highlight significant national equality issues.

26. We have been clear that equality considerations for public bodies will vary according to their nature and role. Priorities are best set by public bodies locally, not by Ministers centrally. Other issues that this provision could be used for (e.g. standards for the publication of data) can be dealt with through guidance.

Conclusion and next steps

27. We are committed to developing a set of specific duties that are flexible, proportionate and light-touch, and which support delivery of equal treatment and equality of opportunity for all. The new draft regulations achieve this by lightening, or taking away, some unnecessarily prescriptive requirements, such as the need to publish evidence of analysis or the need to publish details of engagement.

28. We are keen to get the balance right between appropriate regulation to help meet the equality duty and public bodies being held to account by the public and users for their record on improving equality.

29. Following the conclusion of this process of seeking views on the new draft regulations, the Government will consider the responses received and whether any changes to the regulations at page 8 of this document are necessary. It will then lay draft regulations before Parliament for approval by resolution of each House.

How to submit views

30. If you have a query about this document or wish to comment on the draft regulations please contact:

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The draft regulations

DRAFT STATUTORY INSTRUMENTS

2011 No. 0000

EQUALITY

The Equality Act 2010 (Specific Duties) Regulations 2011

Made - - - - ***

Coming into force - - ***

These Regulations are made in exercise of the powers conferred by sections 153(1), 154(2) and 207(4) of the Equality Act 2010⁽³⁾.

The Secretary of State has consulted the Commission for Equality and Human Rights in accordance with sections 153(4) and 154(4) of that Act.

The Secretary of State has consulted the Welsh Ministers in accordance with section 154(3) of that Act so far as these Regulations apply to cross-border Welsh authorities.

A draft of these Regulations was laid before and approved by a resolution of each House of Parliament in accordance with section 208(8) of that Act.

The Secretary of State, in exercise of those powers, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Equality Act 2010 (Specific Duties) Regulations 2011.

(2) These Regulations come into force on [***] 2011.

(3) In these Regulations—

“the Act” means the Equality Act 2010; and

“public authority” means a public authority listed in the Schedule to these Regulations.

⁽³⁾ 2010 c. 15.

Equality objectives

2.—(1) Each public authority must prepare and publish one or more objectives it thinks it should achieve to do any of the things mentioned in paragraphs (a) to (c) of subsection (1) of section 149 of the Act—

- (a) not later than 6th April 2012; and
- (b) subsequently at intervals of not greater than four years beginning with the date of last publication.

(2) An objective published by a public authority in compliance with paragraph (1) must be specific and measurable.

Publication of information

3.—(1) Each public authority must publish information to demonstrate its compliance with the duty imposed by section 149(1) of the Act—

- (a) not later than 31st December 2011; and
- (b) subsequently at intervals of not greater than one year beginning with the date of last publication.

(2) In complying with paragraph (1) a public authority's published information must include, in particular, information relating to persons who share a relevant protected characteristic who are—

- (a) its employees,
- (b) other persons affected by its policies and practices.

(3) Paragraph (2)(a) does not apply to a public authority with fewer than 150 employees.

Publication

4.—(1) Each public authority must publish the information referred to in regulations 2 and 3 in such a manner that the information is accessible to the public.

(2) A public authority may comply with a duty to publish imposed by regulations 2 or 3 by publishing the information within another published document.

Date

Name
Secretary of State for the Home Department

SCHEDULE

Regulation 1(3)

Armed forces

Any of the armed forces other than any part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

Broadcasting

The British Broadcasting Corporation (“BBC”), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003⁽⁴⁾); and the reference to the BBC includes a reference to a body corporate which—

- (a) is a wholly owned subsidiary of the BBC,
- (b) is not operated with a view to generating a profit, and
- (c) undertakes activities primarily in order to promote the BBC’s public purposes.

The Channel Four Television Corporation, except in respect of—

- (a) functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003), and
- (b) the function of carrying on the activities referred to in section 199 of that Act⁽⁵⁾.

The Welsh Authority (as defined by section 56(1) of the Broadcasting Act 1990⁽⁶⁾), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003).

Civil liberties

The Commission for Equality and Human Rights.

The Information Commissioner.

Court services and legal services

The Children and Family Court Advisory and Support Service.

The Judicial Appointments Commission.

The Legal Services Board.

The Legal Services Commission.

Criminal justice

Her Majesty’s Chief Inspector of Constabulary.

Her Majesty’s Chief Inspector of the Crown Prosecution Service.

Her Majesty’s Chief Inspector of Prisons.

⁽⁴⁾ 2003 c. 21.

⁽⁵⁾ Section 199 was amended by the Digital Economy Act 2010 (c. 24), section 22(2).

⁽⁶⁾ 1990 c. 42. Section 56(1) was amended by the Communications Act 2003, Schedule 19(1).

Her Majesty's Chief Inspector of Probation for England and Wales.

The Parole Board for England and Wales.

A probation trust established by an order made under section 5(1) of the Offender Management Act 2007⁽⁷⁾.

The Youth Justice Board for England and Wales.

Environment, housing and development

The Environment Agency.

The Homes and Communities Agency.

Natural England.

The Office for Tenants and Social Landlords.

The Olympic Delivery Authority.

Health, social care and social security

The Care Quality Commission.

The Child Maintenance and Enforcement Commission.

The Independent Regulator of NHS Foundation Trusts.

NHS Blood and Transplant.

The NHS Business Services Authority.

An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006⁽⁸⁾.

An NHS trust established under section 25 of that Act.

A Primary Care Trust established under section 18 of that Act, or continued in existence by virtue of that section.

A Special Health Authority established under section 28 of that Act other than NHS Blood and Transplant and the NHS Business Services Authority.

A Strategic Health Authority established under section 13 of that Act, or continued in existence by virtue of that section.

Industry, business, finance etc.

The Advisory, Conciliation and Arbitration Service.

The Bank of England, in respect of its public functions.

The Civil Aviation Authority.

The Financial Services Authority.

⁽⁷⁾ 2007 c. 21.

⁽⁸⁾ 2006 c. 41.

The National Audit Office.

The Office of Communications.

Local government

The Audit Commission for Local Authorities and the National Health Service in England.

A body corporate established pursuant to an order under section 67 of the Local Government Act 1985⁽⁹⁾.

The Common Council of the City of London in its capacity as a local authority or port health authority.

The Council of the Isles of Scilly.

A county council or district council in England.

A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004⁽¹⁰⁾, or a scheme to which section 4 of that Act applies, for an area in England.

The Greater London Authority.

A joint committee constituted in accordance with section 102(1)(b) of the Local Government Act 1972⁽¹¹⁾ for an area in England.

A London borough council.

The London Development Agency.

The London Fire and Emergency Planning Authority.

A National Park authority established by an order under section 63 of the Environment Act 1995⁽¹²⁾ for an area in England.

A Passenger Transport Executive for an integrated transport area in England (within the meaning of Part 2 of the Transport Act 1968⁽¹³⁾).

A regional development agency established by the Regional Development Agencies Act 1998⁽¹⁴⁾ (other than the London Development Agency).

The Standards Board for England.

Transport for London.

Ministers of the Crown and government departments

A government department other than the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

A Minister of the Crown.

⁽⁹⁾ 1985 c. 51.

⁽¹⁰⁾ 2004 c. 2. Section 2 has been amended by the Local Government and Public Involvement in Health Act 2007 (c. 28), Schedule 1, Part 2, paragraph 22(1) and (2).

⁽¹¹⁾ 1972 c. 70.

⁽¹²⁾ 1995 c. 25.

⁽¹³⁾ 1968 c. 73.

⁽¹⁴⁾ 1998 c. 45.

Other educational bodies

The governing body of an educational establishment maintained by an English local authority (within the meaning of section 162 of the Education and Inspections Act 2006⁽¹⁵⁾).

The governing body of an institution in England within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992⁽¹⁶⁾).

The governing body of an institution in England within the higher education sector (within the meaning of section 91(5) of that Act).

The Higher Education Funding Council for England.

A local authority with respect to the pupil referral units it establishes and maintains by virtue of section 19 of the Education Act 1996⁽¹⁷⁾.

The proprietor of a City Technology College, City College for Technology or the Arts, or an Academy.

The Student Loans Company Limited.

Parliamentary and devolved bodies

The National Assembly for Wales Commission (Comisiwn Cynulliad Cenedlaethol Cymru).

The Scottish Parliamentary Corporate Body.

Police

The British Transport Police Force.

A chief constable of a police force maintained under section 2 of the Police Act 1996⁽¹⁸⁾.

The Chief Inspector of the UK Border Agency.

The Civil Nuclear Police Authority.

The Commissioner of Police for the City of London.

The Commissioner of Police of the Metropolis.

The Common Council of the City of London in its capacity as a police authority.

The Independent Police Complaints Commission.

The Metropolitan Police Authority established under section 5B of the Police Act 1996⁽¹⁹⁾.

A police authority established under section 3 of that Act.

⁽¹⁵⁾ 2006 c. 40.

⁽¹⁶⁾ 1992 c.13.

⁽¹⁷⁾ 1996 c. 56. Section 19 was amended by the Children, Schools and Families Act 2010 (c. 26), section 3, Schedule 3, Part 1, paragraph 1 and Schedule 4, Part 1; the Education and Inspections Act 2006 (c. 40), section 101; the Education Act 1997 (c. 44), section 47(2) to (4), Schedule 8; and S.I. 2010/1158 and 2007/1507.

⁽¹⁸⁾ 1996 c. 16.

⁽¹⁹⁾ Section 5B was inserted by section 310(1) of the Greater London Authority Act 1999 (c. 29).

The Serious Organised Crime Agency.

Regulators

The General Council of the Bar, in respect of its public functions.

The Health and Safety Executive.

The Law Society of England and Wales, in respect of its public functions.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose duties on public authorities listed in the Schedule to these Regulations. The purpose of the duties is to ensure better performance by the public authorities concerned of their duty to have due regard to the matters set out in section 149(1) of the Equality Act 2010 (c. 15) (“the Act”).

Regulation 2 requires public authorities listed in the Schedule to prepare and publish one or more objectives they think they should achieve to do any of the things mentioned in paragraphs (a) to (c) of subsection (1) of section 149 of the Act not later than 6th April 2012 and subsequently at intervals of not greater than four years beginning with the date of last publication.

Regulation 3 requires public authorities listed in the Schedule to publish information demonstrating their compliance with the duty imposed by section 149(1) of the Act not later than 31st December 2011 and subsequently at intervals of not greater than one year beginning with the date of last publication.

Regulation 4 allows the information to be published as part of another document and requires that the information must be published in such a manner that the information is accessible to the public.

The instrument has no impact on the costs of business, charities or voluntary bodies. A full impact assessment of the effect that this instrument will have on the costs of the public sector is available from www.equalities.gov.uk and is published along with the Explanatory Memorandum on www.legislation.gov.uk.

We will consider requests for alternative accessible formats of this document. Please contact us at:

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