



Equality Hub

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To: Government Ministers

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Dear Colleague,

Public Sector Equality Duty: advice on completing assessments and their publication

As we build back better from the COVID-19 pandemic, there is rightly increased attention on how we as Government ensure that fairness is at the heart of everything we do.

The legal obligation to have due regard to the Public Sector Equality Duty (the ‘duty’) under the Equality Act 2010 is an important part of this. I have received inquiries from several Ministers over the past year seeking clarification on how best to comply with this duty. I want to take the opportunity to clarify standard requirements and share best practice with Ministers across Government, to ensure that the duty is used as beneficially as possible to support decision making.

Responsibility for having due regard to the duty lies with individual departments, and I know this is taken very seriously across Government. Whilst recording the steps taken in seeking to meet the duty is an important way to demonstrate compliance with the duty, there is no legal requirement to publish duty assessment documentation (often referred to as equality impact assessments). As decision makers, we need to be able to meet our legal obligations under the duty, whilst also ensuring that anticipation of publication does not have a ‘chilling effect’ on the advice we receive.

It is important that officials have the confidence to share their honest assessment of the potential equality implications of policy decisions, so that Ministers can make decisions with the fullest information available to them. In turn, this will increase the likelihood of effective policies that stand the test of time and benefit communities across the UK.

Is recording compliance in a Public Sector Equality Duty assessment advisable?

The legal requirement in the Equality Act is simply to have “due regard” to the equality considerations specified in the legislation; no specific action is prescribed to demonstrate that due regard has been had. However, the courts (and the Equality and Human Rights Commission, which, as well as producing guidance on compliance with the duty, has powers to enforce it) have made clear that recording the steps taken by the decision maker (normally a Minister) in seeking to meet the duty is an important evidential element in demonstrating legal compliance. The duty is on the decision maker personally (it cannot be delegated) so the equality impacts must be drawn to the Minister’s attention.



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Should the assessment be in a standard form?

There is no legal requirement for a duty assessment to be recorded in a specific format (whether in the form of a standalone equality impact assessment, evaluating the impact of the change on each protected characteristic, or as an element of a broader submission, or otherwise). Departments will usually have their own assessment guidance and template and it is good policy practice to consult these to ensure that impacts are not overlooked.

The scope of the duty in the Act is very wide - it generally applies to the 'exercise of functions' by any public authority - and clearly some decisions falling within the duty's scope will have few if any equality implications. In such cases, a short note or simply a statement that the decision has been considered but has no equality impact, may be an adequate assessment. Where there are few equality impacts, a light-touch consideration of the duty would be appropriate.

Should the assessment be published / made publicly available?

As with Government policy and legal compliance documents generally, there is no assumption that duty assessments ought to be published or made publicly available as a matter of course.

Depending on legal advice in any particular case, duty assessments may need to be disclosed in certain circumstances, such as:

- in judicial review proceedings where there is a duty challenge. Disclosing an assessment in actual or threatened legal proceedings can help rebut a claim that the duty has not been complied with, or that the assessment has not been carried out adequately.
- in response to requests under the Freedom of Information Act 2000. Exemptions may apply subject to the public interest test.

There is no legal requirement to publish or disclose a duty assessment in any other circumstances, although departments may sometimes choose to do so in particular cases. The Government's Equality Hub, including the Government Equalities Office, does not routinely publish or disclose its assessments.

Departments will therefore need to decide on their own handling of duty assessments, but noting that:

- An assessment will almost certainly include statements of policy, and should be submitted to a Minister, who must see it as the decision maker, whether or not as part of a submission.
- As an assessment is a tool used in internal policy or decision making, its content or advice may change throughout the policy making process and in response to emerging evidence. Indeed, compliance with the duty is an ongoing legal obligation.

It would therefore seem sensible for Departments to treat a duty assessment, in terms of disclosure/publication, as they would treat the submission itself and/or "Official Sensitive" annexes to the submission. This is particularly the case before the decision has been finalised within Government and announced. Departments should consult their legal advisers in the first instance if they have any questions about the disclosure or publication of a duty assessment.



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Departmental lawyers have a range of resources at their disposal, including relevant contacts in the Government Legal Department's Equalities Centre of Excellence.

What equality issues should we take into account in assessing policy?

The assessment of the equality impact of new policies through the lens of the duty and legal compliance is only part of the broader decision-making process. When assessing equality impacts, departments should consider all the equality impacts of policies - this means considering the positive equality outcomes from policies, not just any potential negatives. For example, policies which promote economic growth, jobs and prosperity will benefit everyone – including those with different protected characteristics. Policies which promote integration and community cohesion will benefit good community relations. In that light, Government policies should seek to unite communities across class, colour and creed, rather than atomising society based on protected characteristics, while recognising and addressing the different needs of certain groups.

It is important that the true equality impacts of a decision are presented to the decision-maker. However, it is also important to remember that difference in treatment or outcome is not necessarily discrimination. In considering mitigation of any negative impact of the policy on a protected group, it is important to consider whether the particular protected characteristic is the cause of that statistical difference. The duty encompasses a duty of inquiry and it is important that the decision-maker is properly informed of the equality impacts of the decision. In some instances where protected characteristics will not be relevant to a Government policy, there will understandably be an absence of data on any relationship between the policy and those with particular protected characteristics.

Finally, the Hayward Review of the duty (2012-13) found evidence of public bodies adopting blanket approaches to issues such as procurement and data collection on diversity, and it is likely that this still happens. Complying with the duty should not lead to disproportionate burdens on the public sector or their private sector or voluntary sector contractors. The cost of disproportionate burdens ultimately falls on the taxpayer.

I hope this is helpful.

Yours sincerely,

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