



Equality Analysis

**Establishing Health Education England as a Non-Departmental
Public Body**

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1. Introduction

1.1 The Equality Act 2010

1. The general equality duty set out in the Equality Act 2010 requires public authorities, in the exercise of their functions, to have due regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - foster good relations between people who share a protected characteristic and those who do not.
2. The general equality duty does not specify how public authorities should analyse the effect of their existing and new policies and practices on equality, but doing so is an important part of complying with the general equality duty. It is up to each organisation to choose the most effective approach for them. The Department of Health uses Equality Analyses as the way of demonstrating how it is giving due regard to the equality duty.

2.2 The Scope of this Equality Analysis

3. This Equality Analysis assesses the equality implications of establishing Health Education England as a Non-Departmental Public Body. Draft clauses establishing HEE as an Executive NDPB have been developed as part of the draft Care and Support Bill.

2. Health Education England

2.1 Policy background

1. Health Education England (HEE) was established as a Special Health Authority (SpHA) in June 2012. It is responsible for providing national leadership and assurance for education and training in England, with a budget of almost £5 billion. Governing bodies of Local Education and Training Boards (LETBs) are being established as committees of the SpHA to plan, commission and quality assure education and training at a local level.

2.2 Objectives and Aims

2. Our aim is to establish HEE as a Non-Departmental Public Body (NDPB). This will mean that it is established as an independent and autonomous body as part of the stable health and social care system, with the overarching objective to secure an effective education and training system and a timely supply of health professionals to work in the NHS and public health.
3. The intended effects are to:
 - put HEE at arm's-length from Ministers on a stable, independent footing assured by parliamentary scrutiny;
 - give HEE a stronger basis to plan, commission and quality assure education and training across England;
 - strengthen public confidence by securing transparent decision-making processes for strategic workforce development;
 - give HEE independence so it can put the interests of the patients and users of the NHS and public health system first and be free from political interference; and
 - provide stability for the education and training system.
4. The Government signalled its desire to establish HEE as a NDPB when it published *Liberating the NHS: Developing the Healthcare Workforce – From Design to Delivery* in January 2012.¹ This document sets out the new policy framework for workforce planning and the education and training of the health workforce.

2.3 Who will be affected by the policy?

Staff in the HEE SpHA

5. As an NDPB, HEE's functions will not materially change from those it has as a SpHA. Following the proposed change, the new body will remain subject to equalities duties in the way it treats its staff and how it carries out its functions.

¹ <http://gp.dh.gov.uk/2012/02/24/liberating-the-nhs-developing-the-healthcare-workforce/>

6. Published in June 2012, a separate Equality Analysis has been developed to assess the equalities impacts of establishing HEE as a SpHA. This builds on wide ranging consultation in 2011 including two reports by the NHS Future Forum. Staff representatives have been consulted on the establishment of the SpHA, in accordance with Section 28(7) of the NHS Act 2006.
7. As a statutory body, listed under Schedule 19 of the Equality Act 2010 and schedule 1 of its regulations, HEE must be fully compliant with the public sector equality duty from the outset. To do this it must demonstrate due regard to the need to:
 - eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act;
 - advance equality of opportunity between groups who share a protected characteristic and those who do not share it; and
 - foster good relations between groups who share a protected characteristic and those who do not share it in the execution of its policies and functions.
8. A People Transition Policy (PTP) will be produced for the HEE SpHA and is expected to be published in the summer of 2012. This will set out how affected employees will be migrated from different sender organisations. Underpinned by the same principles as the HR Framework and HR Transition Framework, it sets out key principles in relation to best practice HR during this period of change and reform. The PTP has been developed in collaboration with and agreed by the HR Transition Partnership Forum comprising employers and union representatives from the NHS, DH and arm's-length bodies (ALBs). The HEE Board will monitor the implementation of the PTP in partnership with the Trades Unions via the HR Transition Partnership Forum.
9. HEE will have a Trades Union recognition agreement with the main unions representing staff working for HEE. HEE will work closely with the Social Partnership Forum and ensure effective engagement and communication on any policies and decisions.
10. Now that HEE has been established as a SpHA, it will publish an equality policy that sets out the culture and working practices the SpHA intends to develop to address equality, as well as how it will take forward its public duty under the Equality Act 2010. This policy will continue and evolve as HEE's status changes to an NDPB.

2.4 Wider impacts

11. In 2010, the Equality and Human Rights Commission (EHRC) assessed the performance of a sample of SHAs in England in meeting their duties under the Equality Act 2010. The EHRC suggested that in order to meet the new equalities duties, future NHS organisations need to:
 - improve the quality of their equality information and ensure it is routinely used in policy development, commissioning and service delivery;

- make information more accessible, about both what they are doing and what they are achieving; and
- commission services based on needs assessments that cover all protected characteristics and move away from process-based objectives to ones that are outcome focused and measurable.

12. In developing HEE and the LETBs, it will be important that they:

- have equality at their heart and integrated into new arrangements;
- demonstrate performance through evidence and outcomes, including HEE overseeing LETBs in meeting their obligations in relation to performance on equality;
- have high level leadership to drive sustainable progress in meeting equalities duties; and
- set out clear policies and processes that consider equality outcomes and ensure continuing performance against the duties.

2.5 Impact of HEE and LETB functions

13. HEE will be an organisation that values and promotes equality and diversity in the way it conducts its business and the way it treats its staff. As an NHS organisation, it will have an important role in upholding the NHS Constitution and will expect staff to model these values and behaviours in the way it does its business.

14. Stakeholders who are affected by the work of HEE include the following groups:

- patients and the public;
- NHS and public health staff;
- students and trainees who are studying or training for a career in the NHS or public health system;
- organisations employing staff who will provide NHS and public health services; and
- organisations that have a role in the provision and quality assurance of education and training, eg professional regulators, medical Royal Colleges, universities.

15. In undertaking its functions, HEE has the potential to influence the way the future workforce is planned and developed. Excellent health and public health services depend on a highly skilled and educated workforce, working together with compassion and respect for people. In building a new framework for planning and developing the healthcare workforce, we want fairness to be at the heart of decision making. Our ambition is for everyone in the NHS to reach their full potential so that they can deliver excellent services and deliver better health outcomes for the public and patients. The needs of patients and service users should directly influence decisions in the education and training system so that we can improve the experience of everyone using the NHS and public health system.

16. We wish to widen participation by supporting diversity and equitable access to services, and education, training and development opportunities. This will require a system where talent flourishes free from discrimination with everyone having fair opportunities to progress.
17. The Secretary of State will publish an Education Outcomes Framework for the education and training system. This will set out the strategic outcomes and priorities at a national level for HEE and LETBs. It will reinforce the drive to ensure healthcare staff develop the right values and behaviours, and have the right education and training to provide person centred care. It will also seek to address variations in standards in education and training.

2.6 Governance and review

18. The overarching DH Transition Programme is responsible for equality assuring the individual transition programmes, of which HEE is one. The Transition Equality Assurance programme reports to the Department's Equalities and Human Rights Assurance Group, which assures the Department's compliance with its duties on behalf of the DH Management Board.
19. Reviews will take place at key points during the evolution of HEE, including when it takes on its full range of functions in April 2013 and whenever it becomes an NDPB.

3. Evidence

1. As an NDPB, HEE will be better placed to protect and promote the interests of patients and the public (including those in the protected groups). Very little evidence has been found showing what effect the change in status of HEE would have on individuals in the protected groups.

3.1 Sources reviewed for evidence

2. In conducting its analysis, the Department has considered evidence from the following sources.

Implementation of Developing the Healthcare Workforce Equality Analysis [Internet]. 2012 [cited 2012 June 28]. Available from: <http://transparency.dh.gov.uk/2012/05/18/ia-no-8008/>

Equality Act 2010 (Section 149; Public Sector Equality Duty) [Internet] 2012. [cited 2012 June 28]. Available from <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

The NHS Constitution for England [Internet] 2012. [cited 2012 June 28]. Available from: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113613

Arms Length Bodies HR Framework – 28th July 2011 [Internet] 2011. [cited 2012 June 28]. Available from: http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_128782.pdf

Office for Disability Issues. [Internet] 2012 [cited 2012 June 28]. Available from: <http://odi.dwp.gov.uk/index.php>

Office for National Statistics Labour Force Survey [Internet] 2012 [cited 2012 June 28]. Available from: <http://www.esds.ac.uk/government/lfs/>

Local Area Labour Markets: Statistical Indicators April 2011. [Internet] 2011 [cited 2012 June 28] Available from: <http://www.ons.gov.uk/ons/search/index.html?pageSize=50&newquery=Annual+Local+Area+Labour+Force+Survey%2C+>

Stonewall. [Internet]. 2012 [cited 2012 June 28]. Available from: http://www.stonewall.org.uk/at_home/sexual_orientation_faqs/2694.asp

Barriers to employers in developing lesbian, gay, bisexual and transgender friendly workplaces. [Internet] 2012 [cited June 28]. Available from: <http://www.homeoffice.gov.uk/publications/equalities/research/LGBT-barriers-equality-workplace/LGBT-equality-workplace?view=Binary>

ONS Integrated Household Survey, 2010. [Internet] 2010 [cited June 28]. Available from: <http://www.guardian.co.uk/news/datablog/2010/sep/23/gay-britain-ons#data>

Equality and Human Rights Commission briefing paper, Religion or Belief, 2011. [Internet] 2011 [cited June 28]. Available from:
http://www.equalityhumanrights.com/uploaded_files/publications/religion_or_belief_briefing_paper.pdf

Employment Tribunal and EAT statistics, 2010-2011. [Internet] 2011 [cited June 28]. Available from:
<http://www.justice.gov.uk/downloads/statistics/mojstats/employment-trib-stats-april-march-2010-11.pdf>

Equality and Human Rights commission policy report: Beyond Tolerance, 2009. [Internet] 2009 [cited June 28]. Available from:
http://www.equalityhumanrights.com/uploaded_files/research/beyond_tolerance.pdf

Equality and Human Rights commission Research report 22: Older people inside and outside the labour market - a review. [Internet] 2012 [cited June 28]. Available from:
<http://www.equalityhumanrights.com/key-projects/just-ageing/older-people-research/>

Greater Expectations, Summary Report into EOCs investigation into pregnancy discrimination, 2005. [Internet] 2005 [cited June 28]. Available from:
http://www.equalityhumanrights.com/uploaded_files/eoc_pregnancygfi_summary_report.pdf

Facts about Carers, Carers UK. [Internet] 2009 [cited June 28]. Available from:
<http://www.carersuk.org/professionals/resources/briefings/item/404-facts-about-carers-2009>

Facts about Carers Policy briefing, Carers UK, June 2009. [Internet] 2009 [cited June 28] Available from:
<http://www.carersuk.org/professionals/resources/briefings/item/404-facts-about-carers-2009>

National Minimum Wage: LPC Report. London: The Stationery Office. Low Pay Commission, 2009

3.2 Impact on each of the protected groups

3. We have considered the impact that the policy proposal to establish HEE as a NDPB may have on each of the protected groups:
 - disability;
 - sex;
 - race;
 - age;
 - gender reassignment (including transgender);
 - sexual orientation;
 - religion or belief;
 - pregnancy and maternity; and
 - carers.

4. Given that the draft legislation is aimed at amending the status of the existing body, and because it does not, in itself, involve any reorganisation and the functions of HEE as a NDPB will not differ from those of the SpHA, the Department does not anticipate that there will be a material impact on any of the protected groups as a result of the policy.
5. As an employer, HEE will ensure that staff can access flexible working opportunities, and will consider any adjustments that need to be made to its premises to improve accessibility or request specialist equipment to enable staff to work effectively.
6. Guidance will be issued to those responsible for panels recruiting senior managers and board members on building equality and diversity into HEE selection processes. Corporate responsibility for equality and diversity will be written into the job descriptions and persons specifications of all director level roles.
7. Once HEE has collected baseline data on the workforce, it will ensure policies are developed and put in place to promote equality and diversity and allow for monitoring with regard to the protected characteristics.
8. A separate Equality Analysis of implementing the *Liberating the NHS: Developing the Healthcare Workforce - From Design to Delivery*² considers separately the development of HEE as a Special Health Authority and its functions, and commits HEE to agree and publish equality objectives that need to be achieved in order for the SpHA to fulfil its public sector duty.

3.3 Impact on elimination of discrimination, harassment and victimisation, advancing equality of opportunity and promoting good relations between groups

9. We have considered how the proposal to establish HEE as a NDPB impacts on elimination of discrimination, harassment and victimisation, the advancement of equality of opportunity, and the promotion of good relations between groups.
10. Given that the legislation is aimed at amending the status of the existing body, and because it does not, in itself, involve any reorganisation and the functions of HEE as a NDPB will not differ from those of the SpHA, the Department does not anticipate that there will be a material impact on any of the protected groups as a result of the policy.

3.4 Engagement and involvement

11. The education and training reforms have been subject to a full public consultation in line with Cabinet Office best practice.

² <http://gp.dh.gov.uk/2012/02/24/liberating-the-nhs-developing-the-healthcare-workforce/>

12. In developing its policies for education and training, the Department has consulted widely with stakeholders affected by changes to the education and training system, including representatives of patients and users of services, staff and their trades unions representatives and bodies with a role in the provision and quality assurance of education and training.
13. In addition to the public consultation run by the DH in 2011, two reviews have been conducted by the NHS Future Forum on education and training.
14. The HEE transition team will continue to engage those staff affected by the establishment of HEE as a SpHA.
15. This Equality Analysis accompanies draft clauses to establish HEE as a NDPB, which are being published for pre-legislative scrutiny. Stakeholder engagement will continue throughout the pre-legislative scrutiny process, with the opportunity to comment on the Equality Analyses. Any further comments and evidence will be considered as part of this process and the Analyses will be updated when legislation is introduced to Parliament.

Summary of Analysis

4.1 Overall impact

1. Based on the evidence and the fact that the policy is about changing HEE's status rather than changing its functions, the Department does not anticipate an impact on any of the protected groups as a result of the policy. The Department considers that the added independence conferred by the creation of HEE as a NDPB will assist it to fulfil its core functions to plan, commission and quality assure the delivery of education and training.

4.2 Action planning for improvement

2. HEE will undertake the following actions:
 - identify relevant actions from the Equality Analysis of the Health and Social Care Act 2012 and EHRC report *The Public Sector Equality Duty: A way forward for the health sector*;
 - agree and implement a programme to develop and embed equality objectives;
 - publish information and data to demonstrate SpHA compliance with the public sector equality duty; and
 - identify responsible leads for equality in HEE and LETBs.
3. Stakeholder engagement will continue throughout the pre-legislative scrutiny process, with the opportunity to comment on the Equality Analyses. Any further comments and evidence will be considered as part of this process and the Analyses will be updated when legislation is introduced to Parliament

For the record

Name of person who carried out this assessment:

Jonathan Firth, Workforce Education Policy, External Relations Directorate

Date assessment completed:

3rd May 2012

Name of responsible Director/Director General:

Jamie Rentoul, Director of Workforce Development, External Relations Directorate

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