



The Public Sector Equality Duty: Reducing Bureaucracy

Consultation by the Government Equalities Office

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Understanding and supporting
women and their organisations

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About the Women’s Resource Centre

The Women’s Resource Centre (WRC) is a charity which supports women’s organisations to be more effective and sustainable. We provide training, information, resources and one-to-one support on a range of organisational development issues. We also lobby decision makers on behalf of the women’s not-for-profit sector for improved representation and funding.

Our members work in a wide range of fields including health, violence against women, employment, education, rights and equality, the criminal justice system and the environment. They deliver services to and campaign on behalf of some of the most marginalised communities of women.

There are over ten thousand people working or volunteering for our members who support almost half a million individuals each year.

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About this consultation

As part of the forthcoming Public Sector Equality Duty (s149 Equality Act 2010, the General Duty) the Government Equalities Office (GEO) is currently consulting on proposals for the draft regulations to impose Specific Duties on certain public bodies, such as Local Authorities, Government Departments, the Police and the NHS. The purpose of the Specific Duties is to ensure better performance of the General Duty to eliminate discrimination, advance equality of opportunity and foster good relations between individuals and communities.

The Government previously consulted on the Specific Duties Aug-Nov 2010 and produced draft duties in Jan 2011. However, the Government has recently amended these draft duties in order to further the aim of reducing burdens on public bodies and moving away from a process-driven approach to a focus on performance. The new draft duties are intended to free up public bodies to do what is appropriate in their circumstances and to enable the public to hold public bodies to account. The draft specific duties relating to the Public Sector Equality Duty differ significantly from the previous legislation and will require public authorities to:

- **Set one or more Equality Objectives** that are specific and measurable. There is **no requirement for public bodies to set objectives on each of the protected characteristics nor for each of the three aims** of the Equality Duty; objectives can be set according to the priority issues for that organisation and where need is identified.
- **Publish information to demonstrate its compliance with the General Duty, including information relating to persons who share a relevant protected characteristic.**
- **Ensure that the information published is accessible.**
- There is a large amount of discretion in relation to how to meet obligations under the General Duty and there are no prescribed processes. The emphasis is on outcomes as opposed to process. However, **there is no duty for public authorities to fulfil their objectives** after they have been set (despite the duty to review every 4 years).
- Under the existing Gender Equality Duty, public authorities must prepare a Gender Equality Scheme, gather and use information, consult stakeholders, assess impact, implement the actions set out, report and review the scheme – these **measures have been removed under the new Specific Duties.**

Response

General comments

We are concerned that the term 'equality' appears to have become synonymous with 'bureaucracy' instead of a way of addressing the needs of individuals and communities for the benefit of all. The inclusion of the equalities law on the recent 'Red Tape Challenge' website is an example of this attitude. If the Government wants to achieve its goals for every individual to have the opportunity to thrive, it must take equalities seriously as a concept, acknowledge the undeniable benefits that promoting equality and fairness brings and combat the systematic discrimination that people with protected characteristics face in their daily lives. To quote a previous commentator, the aim of 'treating fellow human beings with respect and dignity, allowing them fair chances to be all that they can be' and unleashing people's full potential must be taken seriously and respected. If achieving these aims is not always convenient, then that is a small sacrifice to make. The courts and legal system are more than capable of ensuring that these rights are not abused by frivolous or vindictive claims. The only world where such legislation is not needed is a world where discrimination does not happen. If individuals, organisations, and businesses are worried about the supposed 'burdens' associated with ensuring that people are treated fairly, then perhaps they should examine their own desire to hang onto the right to be unfair and discriminatory. No-one who treats people appropriately should be worried about this legislation.

This legislation is about safeguarding the needs of those who face discrimination and structural barriers to achieving their potential in life. It protects everyone in society from being treated unfairly. It is the responsibility of the Government to ensure that the importance of this legislation is promoted, rather than misinterpreted. The legislation is currently being watered down, making it difficult for public authorities to be held to account in relation to their duty to promote equality and making it easier for them to not fully address the impact of their practices and policies. This could have a potentially devastating impact on the lives of the most marginalised people whose needs are not fully understood and whose voices are not heard.

Regression of existing duties

It is WRC's position that the regulations do not go far enough in ensuring achievement of the General Duty.

The government wishes to empower the public to hold public authorities to account and scrutinise their equalities data. However, the proposed Specific Duties are regressive and fail to impose duties upon public bodies that would ensure that the public has the tools and mechanisms with which to hold public authorities to account.

The existing specific duties relating to the Gender Equality Duty were designed to create balance between process and outcomes and address the problem of other equality duties that were considered too process driven. WRC recommends these duties as an exemplary approach.

The following issues are of particular concern:

- There is no obligation to set objectives for each equality strand, and as such there will no longer be obligations to set objectives relating to gender. This could have a potentially devastating impact on the ability to achieve gender equality goals and will mean important issues won't be addressed, such as Violence Against Women and Girls, women and girls access to services that meet their needs, and women's representation in decision making. There is an existing lack of awareness and understanding of the importance of women's only services, and of gender issues in general, which has resulted in women's organisations being expected to provide services to men regardless of whether this is appropriate. Without the obligation to set gender objectives and conduct gendered impact assessments, the power to hold public bodies to account will significantly weaken.¹
- The lack of any duty to engage equality groups is of concern. The equality groups are best placed to understand their needs and it must be ensured that they are involved in decisions that will affect them. At present, women and women's organisations are marginalised and lack sufficient influence, despite a breadth of knowledge and expertise and a willingness to be involved in decision making. There is a danger that this situation will worsen without a duty to engage.
- In order to identify need and set objectives, public authorities need to ensure that they are well informed. Public authorities must be compelled to gather appropriate data and publish information on the data they have relied on. This data should be disaggregated by each of the equality groups. Public authorities must not be able to simply rely on the data that is already available, which may be limited or unreliable.

¹ On the difficulties women's organisations already face in relation to influencing local decision making: http://www.wrc.org.uk/includes/documents/cm_docs/2010/w/1_wrc_power_and_prejudice_final.pdf

- To be outcomes focused, clear objectives must be set and worked towards. The duty to set objectives under the draft legislation is too vague and should be strengthened to include the duty to take a proportionate approach to the number and nature of objectives. This would ensure that organisations are unable to set too few and too limited objectives.
- The Specific Duties are not action focused enough and could be much stronger. There are no requirements to take measures to actually achieve these objectives and equality outcomes more generally (in comparison to the Gender Equality Specific duties, which require public authorities to publish a Gender Equality Scheme and implement the actions set out in the scheme). As such, there is a missed opportunity to empower people to hold public bodies to account. In practice, the proposed approach would allow organisations to do nothing to work towards the objectives they have set out. This is not consistent with an outcomes focused approach.
- It must be ensured that data is published before decisions are made so that the public is able to scrutinise this data and become involved in decision making while it is happening.
- The data needs to be accessible. Raw, unanalysed data will be of no use to the public wishing to hold public bodies to account – the public must have an understanding of the reasoning and analysis of public bodies in order to engage meaningfully with public bodies on these issues. For this reason, the public must have access to data regarding public bodies' assessments of the impact of their policies and practices.

Process

Robust and thorough processes are necessary for the achievement of equalities outcomes and if the prescribed processes are abolished as per the draft specific duties, it is far less likely that outcomes will be achieved. The Government must support public authorities to develop processes and support equalities organisations to scrutinise these processes. It must be ensured that public authorities understand their duties, their importance and the positive impact that promoting equalities makes on their own organisations.

The Gender Equality Duty and its Specific Duties have been invaluable tools for individuals and communities to ensure that gender inequality is being adequately addressed. Public authorities have been held to account due to their failure to follow the processes prescribed. Removing the procedural element of the duties will significantly reduce the public's ability to hold public authorities to account. Scrutinising Gender Equality Schemes and Equality Impact Assessments and challenging procedure have been the most effective methods of ensuring public authorities are accountable to the public.

Concluding Remarks

The proposed changes to the Specific Duties are weak on setting and fulfilling outcomes, weak on accountability, and fail to set down measures that would lead to real and tangible outcomes for public authorities.

The Government's previous consultation document (Aug-Nov 2010) contains a Regulatory Impact Assessment (Annex 6), which considers the impact of three possible options relating to the specific equality duties, as follows:

1. keeping the status quo of three separate duties
2. removing the existing three public sector duties and not replacing them – no legislative framework, and
3. replacing the existing duties with hands-off and outcome focused duties

The Government's proposed specific duties weaken the duties to such an extent that the outcomes listed under 'cons' in their own impact assessment are likely to occur:

Pros

- *There will be no regulation/s, and this will result in reduced burdens on the public bodies in the context of financial constraints/austerity.*

Cons:

- *Public bodies will not consistently design policies in a way which meets the needs of diverse communities and tackles disadvantage without the prompt of the Duty. This will result in poorer and less efficient public services*
- *Public bodies may put too much emphasis on the immediate inconvenience of considering equality objectives and not enough on the longer-term indirect benefits obtained by achieving improved public services for all equality groups*
- *The Equality Duty, and the design of the specific duties to support it, are designed to expose, and make public bodies consider, hidden discrimination, systematic barriers. Without the legal framework there is a risk that these issues might not come to light or get tackled*
- *Public bodies are not yet ready for the legislative imperative to be removed entirely as this would undermine progress that has been made to date'*

Relying on trust in relation to equalities is inadequate. The proposed regulations rely entirely on trust that public authorities will 'do the right thing' and carry out sufficient processes to ensure that equalities are adequately addressed. Under normal circumstances, this would be unlikely, however, in the context of a recession and funding cuts, it is highly improbable that public authorities will do anything other than the bare minimum in relation to their equality duties. Public authorities are likely to be asking 'what are our legal obligations?' and going further than this will not be a realistic possibility. The government should perhaps reflect on the amount of revenue it would expect to obtain if the same principles of trust and a lack of structure were applied to income tax! In effect, these regulations will ensure that equalities groups are short-changed in relation to furthering the general duty.

If equalities issues are to be taken seriously and if inequalities are to be adequately addressed, the following are required:

- legislative accountability
- prescribed processes, to be undertaken insofar as is reasonable (such as the requirement to carry out impact assessment – although the methods of carrying these out need not be prescribed)
- tools with which the public can challenge local authorities
- the duty to take a proportionate approach to setting objectives
- the duty to ensure that adequate data is collected
- a duty to engage with equalities groups
- a duty to actually achieve results

Without a legal framework such as this, the outcomes in relation to equalities are likely to be similar to those that would occur if the existing duties were removed completely. As they stand, the Specific Duties will fail in their main purpose of supporting achievement of the general duty's aims.

Recommendation: The regulations should be developed to ensure that the specific duties provide a framework for action and do not rely on trust that public authorities will simply 'do the right thing'. In times of austerity, it is important to ensure that the minimum that is legally required from public authorities is sufficient to ensure that equalities are adequately addressed.

Women's Organisations: Evidence and Research

Power and Prejudice: combating gender inequality through women's organisations WRC (2010)

http://www.wrc.org.uk/includes/documents/cm_docs/2010/w/wrc_power_and_prejudice_final.pdf

WRC's groundbreaking new report examines what helps - and what hinders - women's organisations in creating change at a local level. The research identifies the barriers facing women's organisations in being able to create these changes, presents learnings on what factors and what useful tools can help with local engagement and offers clear, practical solutions to both public bodies and women's organisations to improve this local engagement.

The project used a participatory action model, a social justice model of research that aims to empower those taking part in the research to act on improving conditions in their lives. In addition, the project was complemented by a literature review of existing research on the issue and a gender equality audit of local public bodies' policies

Not just bread, but roses, too: Funding to the women's voluntary and community sector in England 2004-07 WRC (2009)

http://www.wrc.org.uk/resources/wrcs_research_and_reports/not_just_bread_but_roses_too.aspx

This report maps women's organisations across all of the English regions. WRC have looked at areas organisations work in, equalities strands focused on and tracked income and expenditure data for 2004 to 2007. The report is divided into an England-wide overview and a comparison of the regions as well as appendices for each of the nine Government Office Regions in England.

The Impact of Commissioning and Procurement on the Women's Voluntary and Community Sector WRC (2008)

http://www.wrc.org.uk/includes/documents/cm_docs/2008/i/impact_of_commissioning_on_wvcs.pdf

This briefing discusses the impact on women's organisations of the current trend towards commissioning services. A special focus on the National Offender Management Service (NOMS) shows how commissioning can fail women and children by failing to account for their differing needs.

Why Women Only? WRC (2007)

http://www.wrc.org.uk/resources/wrcs_research_and_reports/why_women_only.aspx

This report aims to answer the question asked increasingly of many women's organisations by funders and the public: "Why are you women-only?" This timely report sets out why women-only services are still relevant and much in demand. The research also explores the far-reaching benefits of women-only services, the need for minority women to run their own specific services, the misunderstandings and undervaluation of women-only service provision, and the risks to the future survival of such services.

Where are women in LSPs? Oxfam, Urban Forum and WRC (2008)

http://www.wrc.org.uk/includes/documents/cm_docs/2008/w/womenlsp.pdf

Local Strategic Partnerships are key decision-making bodies at local level, controlling significant resources, and all public bodies now have legal obligations under the Gender Duty to actively promote gender equality. But this report, published by Urban Forum, Oxfam and the Women's Resource Centre, reveals that only a quarter of chairs of LSP Boards are women. The report also found that the voice of women's voluntary and community organisations is hardly heard at all. Fewer than 2 per cent of voluntary and community sector representatives on LSPs are women's organisations, despite making up 7 per cent of the voluntary and community sector.