

**Response from the Institute of Equality and Diversity Practitioners**

**Consultation on the public sector specific duties**

**“Equality Act 2010: The public sector Equality Duty: reducing bureaucracy”**

**Government Equalities Office, 17 March 2011**

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## Introduction

1. The Institute of Equality and Diversity Practitioners (IEDP) is the professional body of equality, diversity and human rights practitioners. It promotes excellence in equality, diversity and human rights professional practice. The IEDP is an independent membership body, run by practitioners for practitioners across the UK.
2. This is the formal response of the IEDP to the Policy Review Paper, “Equality Act 2010: The public sector Equality Duty: reducing bureaucracy” was published by the Government Equalities Office on 17 March 2011. To read the paper, go to <http://www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf>
3. The purpose of the Policy Review Paper [“the paper”] is to seek views on new draft regulations that will impose specific duties to support the performance of the new single general public sector Equality Duty, which comes into force on 5 April 2011. Government intends that the specific duties will come into force in July 2011.
4. The deadline for comments to the Government Equalities Office on the draft specific duties regulations is **21 April 2011**.
5. The IEDP has considered the detail of the paper and the draft regulations appended to it, called “Equality Act 2010 (Specific Duties) Regulations 2011”. The IEDP Board set out its response below.
6. The response reflects the views of IEDP member and non-member consultees who are equality, diversity and human rights practitioners, and of other consultees with an interest in equality law and practice.

## Evidence-based equality outcomes

7. The key differences between the proposed new draft regulations on public sector specific equality duties and those published on 12 January 2011 are discussed below. In the name of reducing bureaucracy, the Government proposes to remove 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
8. In our view, these are the very features that enable citizens to hold public bodies to account for delivering equality outcomes.

9. The Government's proposals for public sector specific equality duties will, in our view, roll back the gains made by all communities that enabled them to hold public bodies accountable under the legacy legislation for equality progress through the publication of community engagement practice; and equality analyses including the information considered. Done effectively, this is not unnecessary bureaucratic process. On the contrary, the publication of community engagement inputs and equality analyses are essential tools of local and national democratic accountability.
10. We note that the Government is interested in the delivery of equal treatment and equal opportunities for all. It is not clear how the delivery of equality outcomes will be evidenced by public bodies if they are not required to publish key aspects of decision-making. Without publication, how can all citizens and communities do the following:
- Know how public body equality objectives are shaped and outcomes achieved?
  - Know to what extent public bodies have taken their views into account?
  - Hold public bodies to account for delivering equality objectives?
  - Begin to identify equality gaps?
  - Put forward ideas that avoid unnecessary bureaucracy?
  - Suggest ways of achieving savings without losing quality?
11. For example, how will people with different needs related to hearing impairment know if their community is properly engaged by public bodies in setting objectives to meet their particular needs in service delivery and employment? How will public bodies be held accountable for making adequate service provision for vulnerable minority groups such as elderly lesbians and gay men? How will any community know if adequate service provision is made for their community when equality analyses are not available? How will anyone know what officials take into account when making decisions if evidence of engagement and considerations of due regard to the general equality duty are not published?
12. It is helpful to recall the great pain and hurt that was felt by many people in the Jewish and Muslim communities when, in 2006, DEFRA announced their decision to outlaw ritually slaughtered meat. When reaching their decision, the department failed to undertake an equality impact assessment. As a result of this failure, relations between communities were damaged.
13. There are many more examples of public bodies failing to engage with relevant communities or to assess the equality impacts of policies and practice on affected communities. Some of these failures have been subject to successful Judicial Reviews. Others have resulted in expensive changes to policy and practice, avoidable when official decisions are based on sound evidence.
14. Without publication, citizens and groups will have no alternative but to make huge numbers of Freedom of Information requests to all public bodies in order to see how decisions were made when they have equality impacts on communities. This will have considerable resource impacts on all public bodies, communities and citizens. In our view, as they are burdened by the duty to respond to individual

Freedom of Information requests, pressure on public bodies to provide evidence of engagement and considerations of due regard will increase if the requirement to publish the evidence is removed.

15. The general and specific duties of the Disability Discrimination Act 2005 and amended Sex Discrimination Act 1975 meant that equality considerations became increasingly central to public sector decision-making.
16. Even so, some public bodies did not learn how to consult or engage effectively with communities affected by policy and practice or make use of the information provided by myriad organisations such as Age UK, Stonewall, Runnymede Trust, Rota, Nacro and Inquest.
17. Many equality and diversity practitioners remember how few local authorities exercised due regard between 1978 and 2002, although required to do so by Section 71 of the Race Relations Act 1976. During that time, the authorities faced almost no consequences for failing to meet their general duty to promote race equality. The Stephen Lawrence Inquiry Report by Sir William Macpherson, published in 1999, led to the amendment of Section 71. The report's recommendations ensured that the statutory duty was extended to many more public bodies through the implementation of the general and specific duties of the Race Relations Amendment Act 2000. Significantly, public bodies were required to demonstrate, through published evidence, that due regard had been satisfied.
18. In our view, the Government's proposals to remove the specific duty to publish will return citizens to the days before the Race Relations Act 1976 was strengthened, leaving it open to public bodies to decide what is in the best interest of communities. In the name of lessening bureaucracy, the proposals ignore the good practice by the majority of public bodies that has come out of Stephen Lawrence's tragic death.
19. In our view, the removal of the requirement to publish information will increase friction between those with particular protected characteristics and those without such characteristics. The Government's proposals may instead foster ignorance, prejudice and misconceptions about the facts regarding inequality as public bodies become less transparent and accountable.

## **Top down targets**

20. The paper make a number of references to top down targets, paragraph 3; 8; 11(b) 13; 16. However, no examples of such targets are provided to illustrate when or where this has occurred.
21. Many equality and diversity practitioners work with public sector frontline managers and other employees on the means of providing fairness and equality evidence for services and employment. Practitioners have not reported to the IEDP any examples of 'top down' targets. On the contrary, practitioners report

that equality targets result from effective consultation and engagement with citizens and employees.

22. The IEDP knows that leadership and accountability means that senior managers approved their organisations' equality work programmes. We also know that they sometimes failed to deliver the equality outcomes published in their work programmes. Nevertheless, the specific duties of legacy equality legislation meant that, through evidence-based publication, public bodies could be held directly accountable to citizens and employees for achieving the explicit aims, objectives and targets set out in equality work programmes.

## **Benefits of publication**

23. As happened before the general and specific duties of the legacy legislation were introduced, officials who make decisions will only ever have partial information if they fail to tap into the knowledge and creativity of all citizens, including those in marginalised communities.
24. It may be criticised as bureaucratic process to demonstrate transparency and inclusiveness through publication but this is a key part of the strategy to achieve equality within and between all communities. If the results of community engagement and considerations of due regard are not published, citizens in all communities will be denied the opportunity to understand why particular decisions are made; and to identify any unintended direct and indirect discrimination that may result from the decisions.
25. The financial and community relations costs of un-doing decisions that have unlawful discriminatory impacts can be limited by publishing the results of community engagement and considerations of due regard, giving citizens an early opportunity of making positive interventions.
26. During its short history, the IEDP has trained and advised public body practitioners on effective means of engaging with communities and providing evidence of due regard to equality considerations. We know about many examples of good equality practice. For example, the Department for Work and Pensions has done excellent work with a wide range of disabled people so that policies and practices do not exclude or marginalise. Similarly, the Crown Prosecution Service and many police forces have reduced fears and anxieties about using relevant justice services by working closely with communities affected by hate crimes. Without the facility to scrutinise published engagement practice and equality analyses, how might any interested person know that due regard has been exercised?
27. The proposal are directly contrary to statements in, and aims of, the Government's published Equality Strategy: The proposed removal of the requirement to publish equality analysis of decisions is directly contrary to the Government's whole approach to equality set out in 'Building a Fairer Britain'. The role of government outlined in BAFB is based on transparency enabling challenge, as a purported alternative to prescribed action – 'promoting equality

through transparency' (p6; p8; p9). P23 sets out that to 'make it happen' the government will 'lead by example and empower citizens and communities with the information they need to hold services to account'. This states that "Underpinning our work on fairness is our commitment to transparency and devolving power to the public. Through transparency, the public will be able to hold those delivering public services to account." Theresa May herself states in her foreword that "We will ensure accountability by shining the light of transparency on organisations, allowing their performance to be challenged and acting as a driver for change." 'Transparency' is identified as one of the government equality strategy's five related, supporting principles. It therefore directly follows that removing requirements that enable transparency:

- Will not ensure accountability, and will mean the public are not able to hold those delivering public services to account.
- Will undermine the other principles of the government's approach (such as 'supporting social action' and 'devolving power to people').
- Will mean that the government is promoting neither prescribed action, nor transparency of decisions enabling challenge; in effect that it is promoting a culture of unaccountability, and inaction on equality.

28. There is no equality analysis/equality impact assessment of the policy review paper. It was published on 17.3.2011 when the race, disability and gender specific duties equality duties applied, yet it included no reference to an equality analysis/equality impact assessment of the proposed policy changes. In the context of a proposal to dispense with statutory specific duties, the failure of the Government Equalities Office to assess the equality impacts of the policy review appears to pre-judge its outcome and to flout the equality law.

29. The IEDP refers the Government Equalities Office to the judgement in Brown which states that public authorities must demonstrate they have paid due regard to their equality obligations, showing that they have assessed the impact of their proposed policies on equality. The Court also set out some **general principles** about the steps a public authority should take to comply with the duty to give due regard to the relevant equality needs. These include that:

- When a public authority makes decisions that do or might affect an equality group, it must be made aware of its duty to have due regard to the equality goals in the equality duties. An incomplete or erroneous appreciation of these duties will mean that due regard has not been paid.
- The due regard must be exercised with rigour and with an open mind. It is not a question of "ticking boxes". The duty has to be integrated within the discharge of the public functions of the authority. It involves a conscious and deliberate approach to policy-making and needs to be thorough enough to show that due regard has been paid before any decision is made.
- If the public authority has not specifically mentioned the relevant general equality duty when carrying out a particular function, this does not mean that

the duty to have due regard has not been performed. However, it is good practice for the policy itself or the public authority, to make reference to the duty and any code or other non-statutory guidance. This will reduce the chance of someone successfully arguing that due regard has not been paid to equality considerations. This is also likely to enable a public authority to ensure that factors relevant to equality are taken into account when developing a policy.

- It is good practice for public authorities to keep an adequate record showing that they had actually considered their equality duties and considered relevant questions. Appropriate record keeping encourages transparency and will discipline those carrying out the relevant function to undertake their disability equality duties conscientiously. If records are not kept, it will be difficult evidentially, for a public authority to persuade a court that it has fulfilled its general equality duty.

This case illustrates the scope of the evidence required to comply with the general equality duty. It states that public authorities must be able to evidence how they have factored equality into their decision making process, going beyond good intentions to delivering equality of outcomes. Nevertheless, our experience suggests that public authorities find it helpful to have clear regulations setting out what the Government expects e.g. by way of stakeholder engagement, equality analysis and how this will be communicated to all those affected by decisions. Clear regulations will reinforce the Government's commitment to delivering equal treatment and equal opportunities for all, minimise the prospect of lengthy and expensive judicial reviews as well as ensuring consistency and delivery of Parliament's intentions.

30. In the interests of democratic accountability and transparency, and to avoid the bureaucracy associated with Freedom of Information requests, the IEDP calls on the Government not to proceed with the proposals outlined in its Policy Review Paper, "Equality Act 2010: The public sector Equality Duty: reducing bureaucracy".

**Please note:** The IEDP has attached an equality analysis at Appendix 1 of this document as an example of the transparency that we believe is good practice. The analysis is a concrete example of the accountability that public authorities including the Government Equalities Office are, by law, obliged to demonstrate.

## Signed

Linda Bellos, IEDP Chair  
Juliette Brown, Board Member  
Paul Carswell, Board Member  
Terri Connor, Board Member  
Kate Hinton, Board Member  
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Samuel Budu

Vincent Bryce

Ewan Kennedy

Beverly Mason

Doug Lewins

Marlene Ellis

Ila Gocoldas

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Heather Ross

John Phippard

Yasmin Ahmed, Hyde Housing Group

Paul Roberts, LGBT Consortium

Sardar Aftab Khan, Awaz (Cumbria)

Wendy Kenyon, Manchester Metropolitan University

# Appendix 1: Equality Analysis of the Proposed Review

## Analysis of the equality impacts of:

The Policy Review Paper, “Equality Act 2010: The public sector Equality Duty: reducing bureaucracy”, Government Equalities Office, 17 March 2011.

Available online at

<http://www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf>

## Introduction

This equality analysis presents the view of the Institute of Equality and Diversity Practitioners (IEDP) with respect to the Government Equalities Office’s proposals in its Policy Review Paper. The Government Equalities Office itself appears to have failed in its duty to conduct such an analysis, which means it has presented no evidence of how its proposals will affect, either positively or adversely, the individual citizens or equality groups affected by them. Neither does the Government Equalities Office say how any adverse impacts will be mitigated.

The format for producing this assessment is taken from materials developed by members of the IEDP. Each section acts as a prompt to show the evidence, including views of consultees, that was taken into account when we reached our decision to oppose the Government Equalities Office proposals.

We believe that an assessment report may be presented as the completed form. Alternatively, the information may be used to write a narrative report. Either way, the equality impact assessment/analysis process ensures transparency in decision-making. This is in contrast to relying upon mere assertions that we have engaged in consultation and considered all relevant information.

## Stage 1: Aims and objectives

### Introduction to Stage 1

This stage of the equality impact assessment sets out the aims and objectives of the policy, which is to (state briefly here what the policy is about).

### 1. Title of function (strategy, policy, practice etc.)

Reduction of evidence base for specific duties: (S149) of the Equality Act 2010, as set out in the Policy Review Paper, "Equality Act 2010: The public sector Equality Duty: reducing bureaucracy", Government Equalities Office, 17 March 2011.

## **2. Date started, implemented or changed**

Government Equalities Office consultation during March-April 2011; proposals scheduled for implementation in the near future.

## **3. Owner(s) of function, i.e. those responsible (include any outside bodies and contractors)**

Government Equalities Office

## **4. Purpose of function**

The Government Equalities Office states that the purpose of changing the evidence base of the public sector specific duties to show due regard is to do the following:

- Reduce bureaucracy.

## **5. Which equality groups are likely to be affected by the function?**

All people in all equality groups are likely to be adversely affected by the proposal since they will have to make further enquiries, including through Freedom of Information requests, about evidence of due regard from public authorities.

## **6. How does the policy fit with wider objectives?**

The IEDP's view is that the proposals, whilst claiming to reduce bureaucracy, will actually have the opposite effect. They remove guidance to officials on how they should demonstrate evidence of 'due regard' in ways that are transparent and accountable to all citizens.

Public authorities that are subject to the public sector equality duty must, in the exercise of their functions, 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;
- foster good relations between people who share a protected characteristic and those who do not.

For the text of Section 149 of the Equality Act 2010 [public sector equality duty – ‘due regard’], go to:

<http://www.legislation.gov.uk/ukpga/2010/15/section/149?view=plain>

#### **7. Who implements it? e.g. local managers, Human Resources, contractor etc.**

All public authorities and organisations contracted to provide services on their behalf.

#### **Stage 2: Data collection (surveys, statistical databases, consultation results, publications etc.)**

##### **Introduction to Stage 2**

This stage of the equality impact assessment reviews the data resources used to inform the assessment.

#### **8. List data sources initially used, including data collected by other agencies.**

- Race Relations (Amendment) Act 2000; Statutory Code of Practice on the duty to promote race equality
- Disability Discrimination Act 1995 & 2005; and related statutory codes of practice
- Sex Discrimination Act 1975; and the Gender Equality Duty Code of Practice
- Equality Act 2006
- The Equality Act 2010; and related statutory codes of practice
- Policy Review Paper, “Equality Act 2010: The public sector Equality Duty: reducing bureaucracy” was published by the Government Equalities Office on 17.3. 2011
- Judicial Review - Building Schools for the Future: R (Luton BC, Nottingham CC, Waltham Forest LBC, Newham LBC, Kent CC and Sandwell MBC) v Secretary of State for Education [2011]
- Judicial Review: R (on the application of Brown) v Secretary of State for Work & Pensions [2008]

#### **9. List data sources drawn upon later and used in this assessment.**

There is a significant paucity of data in the Policy Review Paper. The Government Equalities Office asserts that specific duties are prescriptive process; and that accountability is for delivering the process not real improvements in equality outcomes. These assertions are not backed by any supporting data.

The relevant section of the Paper states:

“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.”

**10. For planning purposes, list areas where more quantitative or qualitative data are needed on particular equality groups.**

The Policy Review Paper has failed to provide evidence of cases where “the process was seen as more important than the evidence of due regard being exercised.”

The IEDP has seen examples of equality impact assessments in which boxes are ticked and this is considered sufficient to be called an assessment. This has never been a recommended methodology. In fact, the “Statutory Code of Practice on the Duty to promote race equality” specifically recommends that staff should be trained in connection with the duties imposed by section 71(1) of the Race Relations Act and the Statutory Order 2001.

As equality and diversity practitioners, we know of few instances where public authorities have provided proportionate, relevant training to their staff. Accordingly, it is not surprising that few authorities undertake adequate assessments; or understand how or why they should be doing so. In so far as the law required strengthening, it is not served by the Government Equalities Office proposals to remove the requirement to provide specific and detailed evidence of demonstrating ‘due regard’.

### **Stage 3: Assess the likely impact of the options being considered on equality groups**

#### **Introduction to Stage 3**

An equality impact assessment analyses whether or not the policy options may have a differential impact on any equality groups that are affected by changes to functions that result from policy development. You may be assessing internal policy affecting only staff, or policy that affects service users and others. The equality impacts may be positive or adverse. The policy impacts must be identified as far as possible at this stage of policy development.

Highlight positive equality impacts here, in stage 3. Highlight adverse equality impacts in stage 4.

The assessment should make recommendations to maximise positive impacts and mitigate any adverse impacts identified. If unlawful equality impacts are identified, highlight these in stage 4 and recommend immediate policy changes.

#### **11. Outline the likely impact of the policy on each equality group affected. Describe the likely impact on each one.**

Based on our extensive expertise, the IEDP believes that the proposals set out in the Policy Review Paper are highly likely to have significant adverse equality impacts on individuals and groups with protected characteristics. However, we do not have the resources required to undertake detailed research into the outcomes that are likely to result if the Government's proposals are implemented.

Surprisingly, despite its statutory duty to do so, the Government Equalities Office has not published its own analysis of the equality impacts of its proposals on individuals or groups with protected characteristics. It may have discussed the proposals with organisations that represent the views of some sections of communities. However, there are risks with such an approach for all public authorities, including the Government Equalities Office.

The Office would need to satisfy itself that its consultative groups reflect the wide range of views and priorities of all communities, and of minority groups within communities. For example, Stonewall does not represent the views and experiences of trans people, even though they are part of the LGBT community. Groups such as Imaan, Rukus and the Gay Traveller Support Group, represent the views and experiences of minority ethnic LGBT people. Regard is one of the groups that represents the views and experiences of disabled LGBT people. There are many local disability groups across the UK.

#### **12. Outline what you think may be the impact of the function on each equality group affected.**

Without the transparency of publishing sufficient information to demonstrate compliance, many public authorities will not be able to show that they have shown due regard in ways that are proportionate and relevant for each equality group with protected characteristics that are affected by any policy or service.

The IEDP would have fewer concerns about the level of knowledge and awareness amongst those responsible for doing equality analyses if all officials received relevant training on inclusive consultation and how to assess equality impacts.

The IEDP is concerned that the absence of transparency and accountability likely to result from the implementation of the proposals may lead to a failure to meet the general duty 149(1)(c), which is to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

<b>13. If the function is likely to impact on disabled people, how are they involved in developing the strategy, policy, practice etc.?</b>
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The Government Equalities Office has failed to publish any of the evidence of its involvement of disabled people in developing the proposals presented in the Policy Review Paper.

However, the IEDP believes that, if implemented, the proposals in Policy Review Paper are likely to have significant adverse equality impacts on disabled people.

Organisations such as RADAR, which represents 11 million people living with ill-health, injury or disability, have consistently called for inclusion in developing strategies, policy and practice so that they are fit for purpose.

The RADAR Manifesto calls for:

- An intensive campaign to raise awareness amongst disabled people of the 2010 Equality Act, the Human Rights Act 1998 and the UN Convention on the Rights of People with Disabilities.
- Stronger and more effective enforcement of anti-discrimination legislation.
- Access to free legal support for disabled people to challenge discrimination and human rights breaches.
- A review of the enforcement of anti-discrimination legislation, resulting in action to remove the barriers for disabled people.
- A training programme for the judiciary and legal professionals about the Equality Act 2010, including understanding of the distinct nature of disability discrimination law and the experiences of disabled people.
- Monitoring of the implementation of the 2010 Equality Act, and take action where it is not delivering positive outcomes for disabled people.
- Speedy regulation for effective and enforceable specific duties – covering action planning, involvement of disabled people, impact assessment in a transparent and accountable way.
- Full implementation and monitoring of the public sector equality duty, and tackling failure to comply with the duty.

- Collate and promote positive outcomes of DDA and HRA cases.
- Action to identify and address the need for legislative change in order to bring domestic legislation and practice in line with the UN Disability Convention – working with disabled people and their representative organisations.
- Withdrawal of the reservations and interpretative declaration to the UN Disability Convention.
- A duty on local authorities to jointly develop and implement action to address bullying and violence against disabled people, in partnership with local user-led organisations (who are funded to do this work).
- A national register of incidents and outcomes.

#### **14. If there are positive impacts, explain what these are.**

The IEDP sees no evidence of positive equality impacts arising from the proposals set out in the Policy Review Paper.

#### **Stage 4: Mitigating adverse impact**

##### **Introduction to Stage 4**

This stage of the equality impact assessment identifies the potential for adverse impact on any equality group. Recommendations are made to mitigate any identified adverse impacts.

If unlawful equality impacts are identified, these are highlighted in section 18, with recommendations for immediate policy changes.

The protected characteristics considered for equality groups are as follows:

- age
- disability
- gender reassignment
- marriage or civil partnership status
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

#### **15. What actions can you take to mitigate any adverse impact?**

The IEDP believes that the most effective action the Government can take to mitigate adverse equality impacts is to withdraw in full the proposals set out in the Policy Review Paper.



The Policy Review Paper is not accompanied by an analysis of the possible adverse equality impacts on any protected characteristic. The Government Equalities Office, therefore, appears to be breaching its statutory duty to demonstrate due regard.

As with other public authorities that are subject to the public sector equality duty, the Government Equalities Office must, in the exercise of its functions, 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;
- foster good relations between people who share a protected characteristic and those who do not.

The IEDP is aware that the Government is keen on bringing forward its proposals in line with published deadlines. As indicated, however, insufficient evidence has been presented to demonstrate that there will be any positive equality impacts.

Policies and services must be transparent. The decisions made about their provision must be accountable. This can only be achieved if public authorities publish their consultation outcomes and equality analyses/equality impact assessments as they do now, including information about those consulted. If this is not done, how will majority and minority communities know who was consulted by any public authority on the many equality issues they face? How can they be satisfied that consultation is properly representative? How can they satisfy themselves that policies, services and practices are fair and inclusive? How can they challenge real or perceived unfairness?

Our experience leads us to conclude that many people with protected characteristics will again be excluded from adequate consultation on issues that affect them. For example, people with particular disabilities, minority ethnic groups and the small community organisations who represent them may not be heard even when service reviews have significant equality impacts on lives and choices.

Overall, the IEDP believes that the situation prevailing before the Race Relations (Amendment) Act 2000 came into force will prevail again as unaccountable public authorities will consistently fail to consult with excluded 'hard to reach' or 'hard to hear' voices.

Far from reducing bureaucracy, we believe that public authorities and private companies, charities and others contracted to deliver public sector services, will be at a significant disadvantage in demonstrating due regard. Consequently, they may be subject to increased numbers of legal challenges including judicial reviews. Public authorities are also highly likely to experience an increased number of Freedom of Information requests.

**16. Do you need to consider an alternative policy or practice? If yes, briefly describe what needs to be done.**

We believe that the Government should consider an alternative policy which will reduce bureaucracy rather than increase it. This would include providing training and guidance on how to consult, how to analyse equality impacts and how to show that the general duty is being met.

**Stage 5: Formal consultation**

**Introduction to Stage 5**

Consultation is an essential part of an equality impact assessment. This should take place in a proportionate way with equality groups affected by the policy.

Consultation is especially important where the policy has effects on equality groups and where adverse impacts may result from the policy. Equality groups affected should be involved in identifying ways of mitigating adverse impact during the lifetime of the policy.

**17. Describe the methods of consultation used (focus groups, questionnaires etc.)**

The IEDP is aware that, whilst the Government recommends a three-month period of public consultation, only six weeks has been allowed in this instance.

The IEDP has consulted with at least 450 equality and diversity practitioners across the UK. We prepared a draft response to the Policy Review Paper and consulted with member practitioners on the draft response. We also consulted with non-member practitioners through the IEDP's LinkedIn Group. The responses from consultees have been incorporated into the formal response.

**18. Describe how you have attempted to include hard-to-reach/hear groups within equality groups.**

The IEDP sent out briefings and proposals on 31.3.2011. We consulted by telephone and email with a number of relevant umbrella organisations such as the Fawcett Society, Stonewall, The Runnymede Trust, ROTA, RADAR, LGBT Consortium. We held two public consultation meetings on 11.4.2011. The outcome of these events is shown at section 29 of this assessment.

**19. Give the titles of each consultation event, their dates and locality, and expected coverage (local, regional or national).**

Morning and afternoon consultation events held at the Princess Dianna Memorial Trust, County Hall, Westminster, 11<sup>th</sup> April 2011.

## **Stage 6: Analyse impact and finalise policy**

### **Introduction to Stage 6**

This stage of the equality impact assessment summarises the views expressed by consultees and how these are incorporated in the policy.

Without feedback, consultees may feel that their contributions are not valued. This stage helps to direct the consultation and feedback process.

It is important to understand the role of publishing the assessment results. The assessment is a valuable means of showing due regard to advancing equality and delivering equality outcomes. The assessment process and its results also help to build the confidence of those communities affected by the policy, allowing the authority to demonstrate a robust approach to delivering its equality outcomes.

### **20. Where the views of individual members of the public or groups of consultees must be rejected, give the reasons for each rejection.**

We did not receive reject any views submitted to us. All views received were in support of the response.

### **21. State the date and means by which feedback to consultees was given.**

Direct feedback was given by email, IEDP website publication and through the IEDP LinkedIn Group.

### **22. Say how you have adjusted the policy or practice in light of consultation. Be explicit about the actions recommended to mitigate any adverse impact.**

We incorporated all comments received.

### **23. Say when, where and in what formats the policy is published.**

The formal response to the Policy Review Paper will be submitted to the Government Equalities Office by its deadline of 21.4.2011. It will be uploaded to the website of the IEDP together with this assessment. Copies of the final document were sent to all respondents on 19.4.2011.

**24. Say where the results of this equality impact assessment will be published. This is part of providing the audit trail of 'due regard' being exercised.**

Publication is on the IEDP's website.

## **Stage 7: Monitoring and review**

### **Introduction to Stage 7**

The authority must monitor the equality outcomes of its policies to ensure they do not result in unintended unlawful discrimination. The assessment should be used in a strategic way, as part of a performance monitoring cycle that includes reviewing the impacts of the policy over its lifetime. This is important since policy is not static and new impacts may be identified at a future time.

**25. Describe how the different aspects of the monitoring arrangements will be conducted (e.g. quarterly internal scrutiny and annual external scrutiny).**

The IEDP intends to monitor the Government's proposals on the specific duties of the public sector duties and will report findings regularly to our members.

**26. Describe how, where and when you will publish the outcomes of the monitoring.**

The IEDP will publish information on its website and notify members via its newsletter.

## **Stage 8: Governance**

### **Introduction to Stage 8**

Monitoring the equality outcomes of policy enables the impacts of the policy to be kept under review during its lifetime. This stage of the assessment sets out the process for internal scrutiny of the policy's equality outcomes.

This stage also contains monitoring questions that should be completed at agreed intervals in the performance monitoring cycle. The questions help to maintain an audit trail that demonstrates due regard to advancing equality and delivering equality outcomes.

**27. Describe how, and when, issues raised during the equality impact assessment process will be reported to the Senior Board (e.g. general resource issues or issues related to commissioning new research etc.)**

The subject of this impact assessment relates exclusively to Government actions. The IEDP is, however, an interested party with a professional interest in advancing equality, diversity and human rights for all. We will continue to scrutinise all material which emanates from the Government Equalities Office regarding equality issues.

**28. Describe how, and at what intervals, the Senior Board will be involved in overseeing monitoring outcomes.**

The extent to which Ministers comply with their duties under Schedule 19 of the Equality Act 2010 will be the subject of our continued scrutiny.

**This equality analysis was completed by:**

Name:	Linda Bellos	Signature:	
Position:	Chair, IEDP	Date:	18.4.2011
Location:		Tel:	0844 4827 263

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**29. Outcome of consultation events**

The information below is the outcome of the consultation events held by the IEDP on 11.4.2011:

**IEDP Consultation on Public Sector Specific Duties**

11 April 2011, 10.30am – 12.30pm; 1.30pm – 3.30pm

**Participants**

<b>Facilitators</b>	<b>Meeting 1-Consultees</b>	<b>Meeting 2 - Consultees</b>
Linda Bellos	Mary-Ann Nossent	Sharon Hocking

Dianna Yach	Evelyn Phippard	Andrew Newman
	Ila Gocoldas	Hermant Mistry
	Marlene Ellis	Doug Lewins
	Samual Budu	Beverley Mason
		Ewan Kennedy

## Introduction

The Government Equalities Office published a Policy review paper: Equality Act 2010: The public sector Equality Duty: reducing bureaucracy on 17 March 2011. This review proposes to remove significant elements of the public sector specific duties in relation to the Equality Act 2010. The deadline for comments on this paper is Thursday 21 April 2011.

IEDP convened two consultation meetings on the Government's proposals for the public sector specific duties on 11 April 2011 at the Princess Diana Rooms, The County Hall, Westminster Bridge Road, London SE1 7PB, Meeting 1: 10:30 a.m. to 12.30 p.m; Meeting 2: 1.30 p.m. to 3.30 p.m.

The meetings aimed to gather the views of consultees on IEDP's draft response to the Government proposals and to incorporate these into the final version of IEDP's response.

The meetings began with a discussion of the background to the public sector equality duties and consultees' experiences of working with the duties. Following this, discussion focused on the Government's proposals concluding with suggestions for the way ahead which include:

- Campaigning through the media
- Networking with key stakeholders
- Ministerial questions
- Lobbying – MPs, Lords, public service employers, LGA, Confederation of NHS Employers, QCs, Law Lords
- Encouraging IEDP members and associates to sign the IEDP response and write their own submissions

## Key Issues arising from the Consultation

Below is a summary of key themes arising from both consultation meetings. Other suggestions have been included in the IEDP Response in paragraph 27 (see attached.)

Many good public authorities already have in place a robust method for carrying out equality impact assessments of their functions. The EIA process usually includes

arrangements for gathering and analysing data (quantitative and qualitative), stakeholder engagement, producing and publishing action plans, monitoring, reviewing and publishing reports on progress in a systematic way. These public authorities will likely be better able to evidence compliance with the stronger public sector equality duty by applying their equality impact assessment process to all protected characteristics in a systematic manner.

The Government wants to reduce red tape and bureaucracy. Consultees were concerned that the new specific duties could result in even more bureaucracy through increased freedom of information requests, sometimes covering similar or overlapping areas of concern, in the absence of a consistent process demonstrating equality of outcomes.

Given the stronger wording of the general duty, consultees were concerned that omission of a specific duty to engage with people affected by public functions could leave public authorities vulnerable to the challenge that they are not being proactive in tackling prejudice and promoting understanding of equality. This is a particular concern given the assumption in the Review Paper that equality is now embedded and there is no longer a need for Government to prescribe a method for delivering equality of outcomes (e.g. through equality analysis or EIA.) Consultees were concerned that this assumption appears to rely on the goodwill of a few committed individuals to drive equality and that this may undermine the overarching aim of the public sector duty which was to shift the onus from the individual to the institution to address the need for institutional change.

Consultees were concerned that the new specific duties will only come into force in December 2011 and not July as previously suggested. Some wondered whether this was a ploy to avoid judicial reviews related to cuts being brought within the timescale of three months!

There is a contradiction between the Government's stated aim to promote localism not central control. A key way for local people to shape public services is through active engagement. Yet this has now been abandoned as a key specific duty. Fears were expressed that this would mean a return to the "experts know best" or closed dialogue with apparent representatives of communities or community leaders!

EIAs were felt to be helpful in raising standards in performance e.g. academic standards. However, there are still differentials in performance linked to class and socio-economic status. Yet this is an aspect of the Equality Act that will not see the light of day.