

# **Equality Act 2010: The public sector Equality Duty: reducing bureaucracy - Policy review paper**

**Joint Submission from the Disability Charities Consortium - 11<sup>th</sup> of April 2011**

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## **About us**

The Disability Charities Consortium (DCC) is an informal coalition of seven disability charities: Leonard Cheshire Disability, Mencap, Mind, RADAR, RNIB, RNID and Scope. We work on issues of joint concern, including disability discrimination legislation. Given the strong concerns about the Government's apparent change of direction with regards to equality legislation, we have joined forces with other disability organisations to write this submission. These are Inclusion London, Changing Faces, NDCS, and The Guide Dogs for the Blind Association.

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## **1. Background / context of the policy review**

The Disability Charities Consortium (DCC) was very surprised by the policy review, following the publication of draft regulations in January, which we welcomed. We have not seen any new evidence that explains the Government's change of direction. We agreed, as did clearly the GEO, that these achieved an appropriate balance between regulations to help meet the equality duty and public bodies being held to account by the public. We do not understand what new information the Government is expecting to gather through the policy review that justifies the view that the duties are burdensome.

We are very concerned that the Government is being led by an overriding desire to reduce regulations rather than paying heed to the views and experiences of disabled people and their representative organisations and a significant number of public authorities who have expressed support for strong specific duties.

The policy review follows an extensive consultation process that the Government undertook (ending November 2010), setting out its proposed approach for the new specific duties. We contributed extensively to that consultation and welcomed some of the changes that resulted from that it, which addressed some important gaps and areas of ambiguity in the way in which the specific duties had been initially drafted. We anticipated that the specific duties would be laid before Parliament and come into force at the same time at the general duty, without any delays.

This earlier consultation itself followed a consultation in 2009 by the former Labour government. Therefore there has been considerable consultation on the future of the specific duties and ample opportunity for government to understand and avail itself of the views and expertise of disability equality organisations and other equality and anti-discrimination organisations.

We do not believe that there is compelling evidence to support the case for further revising the draft regulations. The policy review also comes at a very late stage, after guidance has been produced by the Equality and Human Rights Commission to reflect what were previously assumed to represent the final draft specific duties. Due to the late announcement of these changes, it means that there is now an inevitable gap between the extended consultation period for the specific duties and the general duty which came into force on April the 5th.

Although public bodies will still have to comply with the general duty, the absence of specific duties will create uncertainty for public bodies about how to go about meeting their obligations. There is a real danger that these delays will undermine good practice that public bodies have developed under the current duties, and lead to a retrograde step in terms of progress made towards achieving greater equality for disabled people. DCC and others call on the Government to return to the specific duties published in January and implement them as soon as possible, in order to avoid prolonged uncertainty for public bodies and disabled people.

## **2. General comments and main points**

**The Government has consistently stressed its commitment to greater accountability to the public. In particular, we agree with the need to ensure that the specific duties are ‘effective and deliver real transparency and democratic accountability’<sup>1</sup>.** However, removing precisely those elements of the specific duties that enable disabled people to hold public bodies to account for progress made will have the opposite effect. The requirements that have existed until now for public bodies to publish equality analysis and information on the engagement that they have undertaken are key tools of accountability. Removing these will render public bodies less transparent and therefore will be contrary to the government’s stated aim.

**The revised specific duties are not fit for purpose, as they fail to deliver their main objective to ensure the better performance of the general duty by public bodies.** We do not believe that the revised wording for the specific duties is precise enough to give sufficient clarity to public bodies on what would be required of them. On a number of occasions, the policy review fails to differentiate between ambiguity and flexibility. The Government should steer clear of making ambiguous regulations, which would only result in a greater level of confusion for public bodies and inevitably litigation. This would undermine the role of the specific duties to guide public bodies in complying with the general duty.

**As the proposed specific duties are less robust than the initial ones, there is a potential that this will leave public bodies open to**

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<sup>1</sup> Government Equalities Office (2011), Equality Act 2010: The public sector Equality Duty: reducing bureaucracy – policy review paper, <http://www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf>

**challenges of breaches of the general duty.** Public bodies will still face potential judicial review proceedings if they fail to comply with the general duty. Failing to make these requirements explicit in the regulations means that public bodies may not see the need to actively engage with disabled people or assess the equality impact of their policies. The specific duties play an important role in ensuring that public bodies take a forward looking positive approach to advancing disability equality, which not only results in better outcomes for disabled people but also reduces the likelihood of costly legal action. Instead, the revised duties promote a more confrontational model which is preferred to elimination of discrimination at an early stage.

**The proposed changes in the policy review disregard the evidence from the experience with public sector duties to date, and have the potential to undermine existing good practice.** We do not feel that sufficient consideration has been given in the policy review to parts of the existing duties that have been successful. Research has consistently shown the importance and value of involving disabled people in decision-making to enable public bodies to make informed decisions and improve services. Public bodies have benefited greatly from such involvement, which has helped them to ensure that the policies they put in place and services they provide reflect the real needs and experiences of disabled people. The government proposals to remove the requirement to involve and the requirement to publish information on engagement undertaken in determining equality policies and objectives run counter to this evidence base.

**There are, or will be, different requirements under the specific duties across the UK, with the approach in Wales and Scotland setting out explicitly the need for engagement and impact assessment.** These differences, and the lack of a consistent approach, will create an erroneous belief among public authorities in England that they will have to do less to fulfil the general duty. It is, in any case, unrealistic to expect that public bodies will allocate limited resources to complying with the duties, unless there is an explicit legal requirement under the duty.

**In these circumstances, the Government must make efforts to avoid a slip back in terms of compliance of public bodies with the duty.** DCC and others call on the Government to reinstate the requirements in the draft January regulations and implement them without any further delays. To ensure that momentum within the public sector is not lost, the Government should launch a strong and positive

communications campaign as to how the new duty should be applied in practice, in co-production with disabled people. This should be aimed at ensuring that public bodies are aware of their duties and disabled people know their rights.

### **3. Response to the proposed changes**

We have focused our response below on the main differences between the revised draft specific duties regulations and those published in January. As the policy review sets out, the duties to be removed are those which would require public bodies to publish details for:

- 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
- Information they have considered when undertaking such analysis

We support the Government's stated intention to '*make public bodies truly transparent and accountable to the public for their performance on equality*<sup>2</sup>'. However, we are concerned that stripping the regulations, in the way proposed in the policy review, would make public bodies less transparent and less accountable. This would create a recipe for inconsistency, which would at best lead to varying levels of compliance among public bodies and at worst to public bodies failing to take enough action or reverting on progress made in advancing disability equality.

We do not agree with the position in the policy review that specifying some minimum content for the specific duties makes them bureaucratic – it simply explains what is required of a public body in a way which both public bodies and disabled people would find helpful. Removing the requirements, as proposed in the policy review, will deprive public bodies of a clear and compelling direction to comply with the public sector equality duty in a way that minimises risk of discrimination and maximises performance of the public authority.

The policy review seeks to eliminate all but two requirements – to publish information, and to set equality objective(s) – on the grounds that compliance with the general duty presumes the other requirements that were previously explicitly set out in the specific duties. The policy review

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<sup>2</sup> Ibid

rightly states that under the ‘due regard’ requirement *‘public bodies will need to understand the effect of their policies and practices on equality’, which ‘will involve looking at evidence, engaging with people, staff, service users and others and considering the effect of what they do on the whole community’*. DCC agrees that the general duty can in no way be met without assessing the impact of policies on disability equality or involving disabled people at an early stage in policy making, and this is certainly the way in which the courts have interpreted it. However, this does not recognise the role that the specific duties have in guiding public bodies to comply with the general duty. The specific duties should enable public authorities to deliver better outcomes and demonstrate progress made. As they currently stand, the specific duties do not reflect the extent of the obligations imposed by the general duty, and will fail in their main purpose to support achievement of the general duty’s aims.

The policy review expresses the Government’s goal to ensure that the specific duties help public bodies deliver equality improvements on the ground. In our view, this can only be realised if the regulations are unambiguous in their requirements. However, we have concerns that there will not be enough clarity if the revised regulations are implemented. This is likely to be problematic on a number of counts, not least the expectation that in the current climate of economic uncertainty, public bodies will continue with any of their current duties unless there is an explicit legal requirement. Stripped down regulations will therefore encourage minimum compliance, not best practice.

This will be exacerbated by the fact that despite the emphasis placed on accountability, the proposed approach will substantially undermine disabled people’s ability to hold public bodies to account by removing precisely those requirements that provide the means by which to challenge public bodies that fail to meet their duties. An emasculated set of specific duties will not enable the public to understand or question actions taken by public authorities, particularly in cases where these result in cuts to vital services. These latest proposals reduce democratic accountability and potentially lead to a situation of distrust between public authorities and the public they are supposed to serve and support. Losing the requirements to publish evidence of engagement and equality analysis may shift the collaborative nature of the existing duty towards one of confrontation, as disabled people may have to take public bodies to court more often in order to hold them to account and ensure the duty is being complied with.

Finally, it is important to stress that these requirements should not just be addressed by guidance within the codes of practice but rather should be explicitly stated within the regulations. In our view, the codes of practice will be essential to ensure that there is clarity for public bodies on how to meet their obligations, however we agree with the point expressed by the Equality and Human Rights Commission in their previous consultation response that *‘where the regulations fail to impose specific obligations, the Codes of Practice cannot do so. The Codes must elaborate on the requirements of the legislation, not add to those requirements’*<sup>3</sup>.

### **Setting equality objectives duty**

This, in particular, marks a significant regression and would fundamentally weaken the impact of the duties. DCC is extremely concerned about the view expressed in the policy review that *‘in some circumstances a single objective could be appropriate’*<sup>4</sup>. We were pleased with the Government’s decision to remove the reference to ‘one or more’ from the formulation of the draft regulations published in January. We felt that this was in recognition of the fact that a public body is unlikely to ever satisfy the general duty and demonstrate compliance by setting a minimum of one objective.

We are very disappointed that the Government is now showing signs of regression on this. We do not consider that it is either necessary or desirable to revert back to the initial wording, as suggested in the policy review. The use of the phrase ‘one or more’ objectives underestimates the scale of inequality that persists in society and the need to take specific action to reduce that inequality. Evidence shows that disabled people remain among the most marginalised and excluded groups in society. It is therefore vital that public authorities remain fully committed to the duties, however the proposed approach means that public bodies would be encouraged to be complacent about what the duty requires; allowing at the same time an authority to set only one objective, across all equality groups, will undermine the effort and commitment that must be put into achieving greater equality for disabled people.

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<sup>3</sup> Equality and Human Rights Commission (2011), Response to the Consultation

<sup>4</sup> Government Equalities Office (2011), Equality Act 2010: The public sector Equality Duty: reducing bureaucracy – policy review paper, <http://www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf>

We remain of the view that the requirement to set equality objectives needs to be seen in the context of the general duty. The regulations should make clear that the objectives a public body selects must be across the full scope of the duty. It is extremely unlikely that a public body could satisfy all the three elements of the general duty in section 149(1) – elimination of discrimination, advancement of equality and fostering of good relations – while taking a minimalist approach and setting only one objective. Retaining the reference to ‘one or more’ objectives thus potentially runs counter to the general duty, and also sends a negative message to public bodies that they might be able to get round the requirements. We are worried that public bodies may see this as an opportunity to do the bare minimum to achieve compliance.

We have further concerns that as they currently stand, there is too much flexibility overall within the regulations. Any objectives will have to be proportionate (given the “due regard” requirement of the general duty), and therefore we are not persuaded by the need to retain the ‘one or more’ reference to ensure a proportionate approach to setting equality objectives. Notwithstanding this, if the desire is to embed proportionality in the drafting of the specific duties, we suggest that a better way to achieve this would be by rewording this to require public bodies to set ‘*sufficient*’ objectives. This would reflect both a proportionality approach and be consistent with the Government’s stated goals of promoting greater accountability and transparency for disabled people. It would still leave public bodies with the flexibility to set the objectives they felt were required, but would provide citizens with a clear mechanism to challenge an authority if they felt these were insufficient.

Furthermore, we believe that it is the evidence gathered, including that obtained from engaging with equality groups, which should be used as the basis to determine whether a public body has acted in a proportionate manner in selecting its equality objectives. It is important that the regulations be set along those lines. However, under the revised regulations, there will no longer be an involvement requirement in relation to setting objectives. In its January response, the Government stated that *‘the references to engagement activity, to make clear that we expect public authorities to publish details of the engagement they undertook with relevant parties, and particularly when they are setting their equality objectives’*<sup>5</sup>. DCC welcomed this, as it made clear that

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<sup>5</sup> Government Equalities Office (2011), Equality Act 2010: The public sector Equality Duty: promoting equality through transparency, summary of responses to the consultation, <http://www.equalities.gov.uk/pdf/110114%20Promoting%20equality%20through%20transparency%20-%20Summary%20of%20responses.pdf>



details of engagement undertaken in developing equality objectives must be published at the same time as the objectives. Without the requirement to do this via engagement, it is unclear how public bodies can decide what objectives to pursue.

Linked to this, we are disappointed that there are not more specific requirements for setting equality objectives. There is a need for greater clarity in the proposals on how public bodies should go about setting equality objectives; however, the policy review reverses aspects of the draft regulations published in January and removes the requirements to set 'specific and measurable' objectives and to report on progress. The rationale for that is that *'a requirement on public bodies to describe the process of how they will measure progress against their objectives will not contribute to the delivery of equality improvements'*<sup>6</sup>. This fails to take into account that the duty to set out how progress will be measured is important for action planning and co-production – helping public authorities identify ways to best meet their objectives. It allows progress to be monitored to see how well objectives are working, and where necessary changes made. If progress in meeting them is not made available, an opportunity will be missed for disabled people and their organisations to be able to suggest to public bodies ways to help deliver their objectives which could prove more effective. Nor will this ensure that public bodies actually take action to promote equality, in the absence of a proposal that public bodies should set out what steps they intend to take to achieve them. There is a need to introduce a provision requiring public bodies to demonstrate that 'reasonable steps' have been taken to implement published objectives, which would create the impetus for action whilst allowing for flexibility.

Given the above, we are concerned that the duty to set equality objectives has been left too vague and too open to interpretation. The basis on which disabled people can hold public bodies accountable becomes unclear and therefore weak.

### **DCC suggests that the Government:**

- **Changes the wording from 'one or more objectives' to 'sufficient objectives', which is more rigorous and also ensures a proportionate approach**

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<sup>6</sup> Government Equalities Office (2011), Equality Act 2010: The public sector Equality Duty: reducing bureaucracy – policy review paper, <http://www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf>

- **Reinstates an explicit requirement to publish evidence on their engagement with disabled people, particularly in relation to setting their equality objectives, and to report on progress towards meeting these objectives**

## **Equality analysis duty**

We are concerned about the decision to remove the requirement for public bodies to publish equality analysis, which would be a regression from the requirements under the current duties and those contained in the January proposals. In its response to the consultation, the Government amended the draft regulations to require public bodies to publish *‘information that it took into account when it assessed the impact of its policies and practices, and the likely impact of its proposed policies and practices, on the furtherance of the aims’*<sup>7</sup> set out in the general duty. While DCC recognises the Government’s reluctance to be prescriptive about the detail of the method of assessing impact, it is important to note that this provision will still allow public authorities to decide how they assess impact. Thus, we do not agree with the view expressed in the policy review that this is ‘unnecessarily prescriptive’.

Without doing this, public authorities, when reaching their decisions, may inadvertently create or reinforce existing inequality patterns or miss opportunities to address inequality that disabled people experience. This does not ensure either that public bodies will not adopt a silo mentality that fails to recognise that individuals will inevitably have needs which affect more than one protected characteristic. We are concerned that without an explicit requirement, public bodies may not see the need to assess equality impact, despite this being fundamental to complying with the general duty clause. There is a concern that this would leave public bodies more open to legal challenges for failing to assess the equality impacts of their policies on disabled people. Some of these failures have been subject to successful judicial reviews. Case law shows that in a successful judicial review, the need for that review would have been avoided if the public authority had assessed the impact of their plans properly.

On the whole, removing this would be counter-productive by making it more difficult for public bodies to demonstrate compliance with the

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<sup>7</sup> Government Equalities Office (2011), Equality Act 2010: The public sector Equality Duty: promoting equality through transparency, summary of responses to the consultation, <http://www.equalities.gov.uk/pdf/110114%20Promoting%20equality%20through%20transparency%20-%20Summary%20of%20responses.pdf>

duties. It is not clear, for instance, how the delivery of equality outcomes could be effectively demonstrated without publication of the equality analysis carried out. Without being able to scrutinise equality analysis, it would also be more difficult for disabled people to assess whether, or to what extent, 'due regard' has been exercised. The reduction in transparency will only lead to greater uncertainty about how the duty is being complied with and substantially undermine the ability of disabled people to hold public bodies to account short of judicial review.

The formulation in the draft regulations requiring public bodies to publish equality analysis did not resolve the issues around timing that we highlighted in our previous submission. The approach in the draft regulations would, at most, provide a retrospective confirmation that equality impact has been taken into account. Equality analysis that is published after the decision has been made will not contribute to good decision making. The specific duties should make clear that this must take place in advance of a decision having been made, if it is to be meaningful, and require a public body's equality analysis to be published at the time it is carried out, when it can be most effective, rather than once a year.

This is vital for the effective performance of a public authority of their equality duties. There may be considerable resource implications for public bodies if the decisions are subsequently found to have an adverse impact on equality. It is always more difficult and costly (if not impossible) to change decisions after they have been taken or implemented as opposed to building equality into the design and operation of public functions. The costs of un-doing decisions that have discriminatory impacts could be avoided by publishing the results of engagement and assessing the equality impacts of policies and practices, while ensuring that disabled people have an opportunity to be engaged from the outset.

**DCC therefore strongly urges the Government to:**

- **Maintain the requirement for public bodies to publish details of equality analysis that they have carried out**
- **Clarify that this requirement is on-going and that as and when equality analyses are completed, they should be made available**

### **Involvement duty**

The involvement duty has been one of the most successful elements under the disability equality duty, and has ensured a step change in

policy and service development. The previous draft regulations proposed a requirement to publish information *‘on any engagement with any persons whom it considers to have an interest’* to replace the current requirements to consult and involve. The policy review recognises that compliance with the general duty will require involving disabled people and that the duty to publish information demonstrating compliance may require information showing that engagement has taken place. It remains vital, however, that the specific duties clearly spell out the need for disabled people to be involved.

After analysing the responses to the consultation, the Government acknowledged that *‘around a third of respondents raised a concern about the lack of any requirement for public authorities to engage with or involve relevant groups. The consultation document made clear that engaging with the public and being responsive to their views are at the heart of its approach to reforming public services. The consultation document said that ‘Engaging with people from the protected groups in something that most public bodies should do from time to time in order to carry out the general duty’. However, the consultation responses highlighted a widespread belief that, without a specific requirement on public authorities to engage with relevant groups (as is contained to various degrees in the existing duties), such engagement on equality issues would not happen<sup>8</sup>. This demonstrates the importance placed upon the principle of ‘involvement’, both from the perspective of disabled people and of public bodies, and the potential negative impacts of not regulating in this respect, which would send a signal to public bodies that they do not need to involve disabled people. We strongly support the retention of the requirement to publish information on what engagement a body has undertaken, as was envisaged in the January proposals.*

Under the previous disability equality duty, involvement of disabled people has proved fundamental for public bodies to understand systemic failures in addressing inequality. There is ample evidence that shows this which we have referenced in our previous submissions. In particular, the research carried out by Schneider-Ross<sup>9</sup> which looked at the benefits of different elements of the duties showed that of 174 respondents, more than half rated the specific duties ‘very effective’ or ‘effective’ (ranging from 51% to 81%), leading to positive outcomes. The

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<sup>8</sup> Ibid

<sup>9</sup> Government Equalities Office (2010), Equality duties, Assessing the Cost and Cost Effectiveness of Specific Race, Disability and Gender Equality Duties, <http://www.equalities.gov.uk/pdf/Assessing%20the%20costs%20and%20cost%20effectiveness%20of%20the%20specific%20duties%20%28Executive%20Summary%29.pdf>

duty to involve in particular has enabled public bodies to make informed decisions about policies and services that meet the real needs of disabled people. However, our experience has been that there is still a limited understanding among public authorities of the need to involve disabled people. We are very concerned that at a time of tight financial constraints, public bodies will be reluctant to put scarce resources towards meaningful involvement activities and reach out to marginalised groups. They may interpret this regressive change as an opportunity to scale back any engagement exercises.

This is why involvement must be made explicit in the duties. The draft regulations were not prescriptive as they did not outline how public authorities should engage. Notwithstanding this, to reiterate DCC's previously stated position, we believe that a more useful approach would be to use the formulation in the regulations from the devolved administrations which have more detailed engagement provisions on the face of the regulations. DCC would recommend that the draft regulations incorporate the wording of the draft Scottish regulations which provide that, in meeting the reporting and publication requirements of the regulations, organisations should *'take reasonable steps to involve equality groups and communities in the process'*. Such a provision would stop short of placing restrictive obligations on public authorities to undertake prescribed forms of engagement, but would facilitate valuable involvement of disabled people in how a public authority is delivering its functions.

#### **DCC urges the Government to:**

- **Retain the requirement to involve disabled people**
- **Retain the duty for public bodies to publish information of their engagement with disabled people**
- **Ensure that engagement starts at the beginning of the process of setting equality objectives**

#### **Publication of information**

DCC welcome and support the Government's stated commitment, to greater transparency through publication of information, as part of its approach to the specific duties. However, whilst the annual duty to report will provide some insight into the extent of a public body's commitment to the general duty, it will not be timely enough to ensure that disabled people will have an opportunity to shape and have meaningful influence over the decision making of public bodies.

Transparency and publication of information are important ways to drive accountability, however we would stress that access to information alone does not necessarily lead to greater accountability. The emphasis in the regulations seems to be on ensuring accountability after the fact. As currently drafted, the regulations would require publication of information, but not necessarily in a timely manner. Being told about the thinking behind decisions and actions taken up to twelve months in the past does not provide a substitute for the opportunity for disabled people to contribute to ongoing decision-making processes. The regulations would enable comparison of performance and progress after the fact, but this in and of itself will not necessarily improve accountability. Overall, it would in fact only make it more difficult for disabled people to effectively hold public bodies to account.

We would seek further clarification about the explanation for reversing the order in which the requirements are set out in the specific duties. We are unclear why the requirement for public bodies to set equality objectives now precedes the requirement to publish information in the draft regulations. This appears to suggest that public bodies are required to simply produce data without any rationale. Public authorities would need to ensure that they are well informed and set objectives based on the information they have gathered. We are concerned that otherwise, there is a great risk that transparency may be seen as the end of the process rather than as a means to an end.

It is important that the link is made (as was previously the case) between the requirements under regulation (2) and (3) of the specific duties, to avoid public bodies publishing information and setting equality objectives with no links between the two. In their revised form, there appears to be a gap on the face of the regulations and disconnect from the process of setting equality objectives. The previous draft regulations made clear that the information published by a public body would have to be taken into account when setting its equality objectives: *'before taking the action required by paragraph (1)'* (referring to setting equality objectives), *'the public authority must consider the information that it published in compliance with Regulation 2(1)'*<sup>10</sup> (referring to publication of information). However, this has been removed from the amended wording of the regulations, which leaves scope for ambiguity. To provide clarity and avoid this leading to an incorrect interpretation of the duties, we would recommend this to be restored in the text of the regulations.

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<sup>10</sup> Government Equalities Office (2010), Equality Act 2010: The public sector Equality Duty – Promoting Equality through transparency – a consultation, [http://www.equalities.gov.uk/pdf/402461\\_GEO\\_EqualityAct2010ThePublicSectorEqualityDuty\\_acc.pdf](http://www.equalities.gov.uk/pdf/402461_GEO_EqualityAct2010ThePublicSectorEqualityDuty_acc.pdf)

Further, it is important that the data, as well as being timely, is published in accessible formats. We welcome the retention of the 'accessibility' requirement under paragraph (4)(1) of the draft regulations which requires information to be published '*in such a manner that the information is accessible to the public*'. The barriers that disabled people face in trying to access information are well known, so the regulations need to clarify that information needs to be made accessible to all disabled people, by provision of accessible formats for blind and partially sighted people, easy read and plain English. In addition, data which is often presented in its rawest form, is at best overly complex and at worst meaningless. The Government would need to take steps to make sure that public bodies comply with their legal duties in this area, and also ensure that data produced is fit for purpose.

**DCC recommends that the Government should:**

- **Clarifies that published data must be timely to support the aim of accountability**
- **Sets out clearly in the regulations that information published has to be accessible to all disabled people**

#### **4. Implementing the Equality Duty**

Further delays perpetuates a vacuum in which the general duty has come into effect unaccompanied by specific duties, leading to greater uncertainty among public bodies as to what they have to do and among disabled people as to what they can reasonably expect from a public authority. This makes it all the more imperative that the Equality and Human Rights Commission publishes the statutory code of practice on the duty as soon as possible and that this code includes clear guidance on the steps necessary to meet the general equality duty.

In order to avoid a lapse in the compliance of public authorities with the public sector equality duty, it is vital that the Government launches a strong and positive communications campaign, co-produced with disabled people to ensure that public bodies are aware of their duties and disabled people know their rights. We are concerned that otherwise the effective implementation of the public sector equality duty, and progress made to date, is at risk.

Also, DCC would strongly urge the Government to make monitoring and evaluating the implementation of the public sector equality duty a key priority in moving forward. The research on the previous duties could

serve as a benchmark to use in monitoring progress in public bodies achieving outcomes to meet the general and specific duties.

Further to this, we believe that the Government should encourage the EHRC as the primary enforcement body to publish its plans for how it will assess compliance and carry out enforcement of the new duty, preferably alongside any Code of Practice or guidance it produces. The strength and effectiveness of the duties will depend on the EHRC having necessary powers not only to monitor the implementation but also ensure enforcement is effective and robust. With the proposals on the reform of the EHRC that the Government is currently consulting on, we would stress the need to ensure that any proposals should not undermine its capacity to use its powers to ensure that public bodies comply with the public sector equality duty.

## **5. Conclusion**

DCC and others are concerned that the proposals represent a regression on what is currently in place and that these will undermine the good practice that many public bodies have established in implementing the disability duty.

The latest draft regulations, published in March 2011, are more regressive than the proposals launched in August 2010. DCC strongly urges that the Government should:

- Restore the draft regulations published in January 2011
- Lay regulations before Parliament as quickly as possible so that they can support effective implementation of the public sector equality duty