



**Friends of  
the Earth**

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**By Email**

Dear Sirs,

**Equality Duties Consultation**

Compliance with the specific equality duties is necessary, but is not sufficient in itself to comply with the general equality duty. Principles established in case law on the previous duties will continue to apply to compliance with the new duty.

Therefore, the specific duties are an opportunity to make life easier for public authorities by setting out specific requirements which will assist them in meeting the general equality duty. They also assist the Equalities and Human Rights Commission in holding public authorities to account, rather than relying on members of the public to bring judicial reviews of public authority decisions (particularly important bearing in mind that access to justice in the UK for members of the public is prohibitively expensive<sup>1</sup>).

The Government states it is interested in “delivery of equal treatment and equal opportunities for all, not the performance of processes that support it”. Processes can increase transparency, promote participation and support both public authorities seeking to take action, and members of the public seeking to hold public authorities to account. Certainly, meaningful legal obligations to deliver better equality outcomes would be a significant advance on process duties, and we would be keen to engage in a

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<sup>1</sup> The UK has been subject to an adverse finding by the Compliance Committee of the Aarhus Convention and is currently being taken to the ECJ by the European Commission on the same point. Both of these relate to access to justice in environmental matters, but the costs rules are no better in relation to other types of judicial review.

Friends of the Earth

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consultation seeking proposals for how to move towards this – but this is not what the Government proposes in this short consultation. Without including any additional duties to improve equality outcomes, the new proposals remove requirements for transparency on engagement, analysis and information in determining policies and equality objectives – it is hard to see how this improves, rather than risks, delivery of equality of opportunity.

It is also a sudden u-turn in policy since the Government published its response to earlier consultation on the specific duties in January 2011. The new consultation document gives no explanation of why the Government was persuaded of the arguments on engagement and transparency in January, but by March had decided that it would in some way improve action on equality to remove the provisions on engagement and transparency.

In summary Friends of the Earth submits that:

- The wording “publish *sufficient* information to demonstrate its compliance” should remain in place
- The requirement to publish evidence of the analysis a public body undertook to establish whether its policies and practices had furthered the aims set out in s149(1) of the Act, and to publish details of the information it considered when it undertook the analysis, should remain
- The requirement to publish details of the engagement the public authority undertook when persons whom it considered to have an interest in furthering the aims set out in s149(1) of the Act, and details of the engagement it undertook when developing its equality objectives, should remain

The Government is correct to state at paragraph 19 that to comply with the general duty public bodies will need to understand the effect of their policies and practices on equality – so they will have to go through the processes set out in the above three bullet points. The effect of the changes is to remove a clear requirement for transparency, leaving members of the public to use freedom of information laws to try to access this information where they are able and resourced to do so. It also removes a legal duty on engagement without explaining why this should be left to the discretion of public authorities.

- The wording should remain as “public authorities must prepare and publish objectives”, and the requirement to set out how progress will be measured should remain

Looking at the list of public authorities who will be bound by the specific duties, to state that across all of their policies and functions a single equality objective could be appropriate suggests a lack of appreciation of the scale of structural inequality in the UK. And of course, it is worth noting here that as the Government stated in its consultation response in January, a public authority which fails to set appropriate objectives, or to take reasonable steps to achieve them, risks not being compliant with the general duty. Setting out from the beginning how progress against an objective will be measured has become a basic principle of objective-setting across business, public authorities and the voluntary sector. It is unclear how it can be considered an unnecessary burden rather than central to proper monitoring and evaluation.

## **Conclusion**

These proposals remove requirements for transparency and engagement whilst again failing to tackle issues raised during the first consultation, including failure to require action plans (which would increase transparency of the action required under the general equality duty) and other more critical issues.

Yours faithfully

Friends of the Earth Rights and Justice Centre