

Equality Act 2010: The Public Sector Equality Duty

UNISON response to the consultation on the public sector Equality Duty: “reducing bureaucracy”

Introduction

UNISON is the UK's largest public service union with more than 1.3 million members. Our members are people working in the public services, for private contractors providing public services and in the essential utilities. They include frontline staff and managers, working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector. Over 70% of our members are women; many are low paid or work part time. Our members have extensive experience of the operation of the previous public sector equality duties. UNISON believes that they have made a difference to people's lives and so can provide a valuable tool for change in society. In a time of public sector cuts and reform it is more important than ever that policies and change proposals are subject to scrutiny as to their equality impact.

UNISON welcomed the Equality Act 2010 and the introduction of the single equality duty covering all protected characteristics. We have argued that the new single duty should include the best aspects of the previous equality duties, building on good practice and so creating a harmonised comprehensive and effective single duty. We believe that such a duty can only be achieved via clear and relevant specific duties on all public bodies.

UNISON was extremely concerned to note that, without warning, the regulations laid before Parliament were withdrawn and new proposed regulations have been presented for limited consultation. We had already argued that the direction of travel from the government would lead to watering down of a commitment to tackle inequality and the new proposals confirm this view.

Inequality has not ended: for many families inequality has worsened. This was evidenced in detail by Professor John Hills' report last year. Recent studies show child poverty is growing – 1.7m children were in poverty in 2003/4, the number is now 2.1m. The pay gap remains stubbornly wide, youth unemployment is rising, and a disabled person unemployed for over 2 years is more likely to reach retirement age or die than achieve one day's paid work.

People have widely varying life chances depending on class and upbringing. 90% of lone parents are women but tax credit reforms mean increased child care costs. Two fifths of Black people live in low income households, twice the rate for white people and 45% of Black children are poor.

The new Equality Duty creates new duties in regards to lesbian, gay and bisexual people and extended duties for trans people. But employers and service providers often have little knowledge of the needs of these communities: this is an area where clear and robust specific duties are essential. The public sector Equality Duty has a key role to play in terms of both service delivery and the employment of staff.

Public bodies have demonstrated a key role in tackling inequality, poverty and social exclusion and rightly so. The previous public sector duties were a valuable tool in a range of commitments required of public bodies. We do not consider them onerous; indeed they are now widely understood and entrenched in public processes. UNISON is further disappointed that the Government has chosen not to introduce the socio-economic duty which would have had a role in addressing many of these issues

The policy review paper demonstrates a wholesale lack of commitment to any real measures to tackle inequality, but instead sets such minimum requirements that should public authorities follow them to the letter they will not meet their legal obligations under the general duty. The delay between the introduction of the psED on 5 April 2011 and the introduction of the specific duties is unsatisfactory.

S149(1) of the Equality Act sets out the requirements of the Equality Duty: to have due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. This general duty is welcome.

The specific duties are intended to support and give clarity to how public authorities meet the general duty. (“for the purpose of enabling the better performance by the authority of the duty imposed by S149[1]”). The government states that the intention of the revised specific duties is to move from a “process driven approach to a focus on transparency” and “a shift in approach – a focus on performance not process”. However, as drafted, the specific duties will not help or support either public authorities or stakeholders in delivering equality improvements.

UNISON does not accept that the previous specific duties (race, disability and gender) placed an unnecessary burden on public authorities. Rather they added clear processes which have become widely understood and which allowed for consistent processes enabling real and meaningful scrutiny and improvement of policies, procedures and proposals. In particular we commend the role of equality impact assessments (EIAs) which have enabled the public, and in particular under-represented groups, to scrutinise and influence public authorities. EIAs have become simple to operate, widely accepted and defined by the courts and have helped drive improvements in public policy.

The policy document states “we want the Duty to achieve real changes in people’s lives and experiences. The specific duties will ensure that public bodies are accountable for delivering on the Equality Duty by requiring them to be transparent about their own staff and the public services they deliver, so giving the public the information they need to hold them to account.”

We note the stated intentions to reduce burdens and bureaucracy on public bodies moving away from process driven requirements. The policy review paper states that public authorities will be held to account on what equality improvements they deliver. This will be achieved via “transparency and challenge from the public”.

We further note that the new proposals remove from public authorities the need to:

- Publish details of engagement when determining policies
- Carry out engagement when determining equality objectives
- Undertake equality analysis undertaken when reaching decisions
- Provide information considered when undertaking such analysis.

UNISON believes that the above are not bureaucratic processes but real means of delivery of transparency for the public service users and staff. Whilst outcomes may be more important than process our experience tells us that without specified processes shortcuts will be taken. The language used in the policy review document could encourage public authorities to take very limited action, thus ignoring their overall obligations under the general duty.

The proposals strip out many of the existing requirements: but what remains? A requirement to publish “one or more objective”. It is far from clear how any public authority could meet all 3 requirements of the general duty across all protected characteristics via a single equality objective or by not producing information in advance. In particular we urge the reversion to the earlier formulation that public authorities should publish information “on the effect its policies and practices have had on persons who share a relevant protected characteristic”. In this we specifically highlight the continuing need to address the gender pay gap and the need therefore for public authorities to publish meaningful information on pay via comprehensive audits. UNISON argues that public authorities should be required to set comprehensive equality objectives taking into account the needs of all protected characteristics.

This proposal further fails the transparency test: the lack of requirement for engagement with staff or the community or stakeholders could mean that a public authority sets only one objective – perhaps an easy win – without any public consultation, nor can anyone – staff, community or stakeholder – be clear as to how the public authority came to that decision. The previous requirement to engage under the Disability equality duty was important in helping to formulate relevant policies. We do not believe that public authorities can meet their obligations without effective stakeholder engagement: this should therefore be spelled out in the specific duties.

The same can be said in regards to the proposed information requirements of the specific duties. The only obligations can be read as retrospective and the removal of the word “sufficient” substantially waters down the obligation. A key change is therefore the absence of a specific requirement to assess the effect on equality of any proposals, policies or procedures in advance; or to provide information in advance. The only requirement within the specific duties is arguably a retrospective requirement. Yet the general duty will need public authorities to consider equality implications *in advance*. This is further well established in case law. Inevitably the paucity of the specific duties will mean recourse to legal action in the absence of consultation and meaningful stakeholder engagement in advance of decisions being made. Public authorities should expect more Freedom of Information requests should they follow the minimum steps set out in the proposed specific duties.

Access to information needs to be in advance so that there is an opportunity to influence policy in advance rather than retrospectively. We note the proposal in the regulations for information to be “accessible to the public” but that how this should be achieved is not spelled out.

The EHRC psED Code of Practice will be extremely important in terms of clarifying how public bodies can meet their obligations under the general duty. Public authorities have to understand how they can fully comply, the alternative will be expensive and lengthy litigation. It is of concern that there is no set timetable for the Code to be produced.

Conclusions

The clear obligation on public authorities lies within the general duty. The specific duties are designed to give force and meaning to the general duty. However as now proposed, the specific duties will not give meaningful effect to the general duty and will inevitably lead to confusion as to what has to be done. It may encourage some public authorities mistakenly not to take action under the general duty.

UNISON would welcome greater transparency and improved equality outcomes. However we do not believe that the new proposals will deliver either of these aspirations. In summary we believe there is a need for specific duties which set clear requirements for advance and informed engagement and consultation, full assessments of the equality impact of all proposals, policies and procedures, effective transparency via advance data and the requirement to set comprehensive equality objectives addressing all requirements of the general duty and protected characteristics.

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