

National Policing Improvement Agency

Response to the draft Equality Act 2010 (Specific Duties) Regulations 2011 following the policy review paper dated 17th March 2011.

Whilst understanding the fundamental principles of the government's Equality Strategy - Building a Fairer Britain, and its aims to facilitate the delivery of equal treatment and equal opportunities for all, we feel that removing the requirements of 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;

affirms the lighter touch requirement but undermines the need for the specific duties to add flesh to the bones of the Equality Act. The engagement and equality analysis processes a public body has in place when determining policies and reaching policy decisions are intrinsically linked to how we pay due regard to meeting our duties. The specific duties ensure we minimise disadvantage, promote understanding, tackle prejudice and take steps to meet the needs of persons who share relevant protected characteristics. This may involve treating some persons more favourably than others. The aims of the primary legislation and its interpretation in case law is different to the government's published strategic principles; although not contradictory, to the delivery of equal treatment and equal opportunities for all.

We feel the primary aims of the equality legislation are best served in meeting the government's key four objectives; (improving transparency, devolving power, focusing on measurable results and enabling the public to exercise greater choice), by keeping the duty to publish details of engagement, equality objectives, equality analysis and equality information, if the public body is to be scrutinised for the decisions that have been made. This does not necessarily mean increasing bureaucracy, as public bodies can decide the appropriate local level of work or resources to apply for delivering equality of improvements for their staff and service users. Given the commitment to reducing expenditure and budget cuts, people are providing innovative ways to engage with our communities, assess impact and gather information, at less cost and with less bureaucracy. However, to make public bodies truly transparent and accountable (a commitment of the government's Equality Strategy) there must be some form of published evidence base, of sufficient detail which the public can scrutinise to know if a public sector body is fulfilling the general duty.

The specific duties as outlined on 12th January detailing how compliance with the Equality Act is met provides the public with freely available and accessible data to enable them to hold public bodies to account. As the proposed 17th March specific duties regulations stand, data released may just be a goal achievement objective, rather than showing how the issues addressed were given 'due regard' to the PSED through appropriate involvement and analysis, which goes some way to putting us back to where we are at present with the legislation. It would remove the means to the end. The public body will still have to consider equality information and have 'due

regard' to the general duty when undertaking any equality analysis and depending on its proportionate relevance, will still have to engage the public, local government or other agencies in consultation. This will inevitably be viewed with scepticism by the communities affected. Having these published will give the public the greatest degree of transparency to hold bodies to account and will also ensure that public bodies are actually showing due regard, rather than just box ticking.

If there are concerns about the release of sensitive datasets, having a caveat that allows an exclusion to some publication of the data would be acceptable in the right circumstances, but the current restrictive approach in 17th March specific duties goes further to muddy the waters of transparency and accountability – reducing the possibility of challenges from the public. This in turn will have a detrimental impact on public confidence. There are well established rules within Data Protection that prevent sensitive datasets from being released, and the majority of information that needs to be used is already available publicly.

We agree that good practice should be delivered through guidance, not regulation, as it will allow a small amount of flexibility when trying to achieve goals at a local level, devolving power. We would be interested in supporting GEO and EHRC in the development of sector specific guidance and believe the police service has a lot to share in terms of good practice.

We submit that the new Equality objectives regulation 2 has been weakened considerably by the removal of the requirement to publish engagement with the public on the development of objectives and by removing the requirement to set out how progress will be measured. By specifying that public authorities need to publish one or more objectives, without a regulation in place to follow guidance, it would be permissible to publish just one objective. It is accepted that this may be appropriate in certain circumstances but the concern here is that some authorities may not pursue best practice and escape accountability or Judicial Review by just publishing the one objective, as following in the words of the policy review paper at paragraph 13 "...minimising the risk that public bodies would feel compelled to do more than is needed, by following arduous and ineffective bureaucratic processes..." each public body need only do the minimal amount necessary to achieve their goal. There is already evidence amongst practitioners that business leaders are viewing this consultation as the removal of the need to do 'equality impact assessments' and therefore the need to show 'due regard'. This proposal perpetuates the current problems around organisations following a tick box approach of doing the bare minimum and this consultation goes against the original aims of the Act to ensure people are 'doing it' rather than just saying they are. This ties into our comments above that a public authority must be able to describe the process of how they measure progress against their objectives as it will allow the public to monitor progress over four years and work as a benchmarking tool so that constant improvement is possible. Further guidance on this area is necessary.

We do not agree with the removal of the requirement for matters specified by a Minister of the Crown. We believe that the provision should be invoked if it is necessary to highlight a significant national equality issue. The fact that if a NATIONAL issue were to be highlighted, it requires a direction from the top, in much the way that an EU Directive can establish what the issue is and that something has to

be done about it on a local level. This would be a much swifter way of dealing with issues that may arise and would also give central direction for local implementation.

Additional aspects that need to be considered are the cost and time implications that public bodies have already expended in preparation for the 'last' set of draft regulations from 12th January. We are thoroughly disappointed that the new regulations were released on the 17th March, so close to the date they were due to come into effect, particularly when read with the review of the EHRC, and the inclusion of the Equality Act on the 'cutting red tape' consultation website. Most of the work has already been undertaken by public bodies to align themselves with the 12th January draft. During a time of significant cuts for forces it should be noted that producing revised guidelines at this stage in the process will have a significant detrimental impact on frontline services. Forces may wish to bring this to the attention of local communities.

As the specific duties are designed to be enablers to achieve the general duty, and the specific duties have been significantly weakened from the January draft by the new draft regulations, this begs the question 'what do they add?'. In conclusion, we believe the lighter-touch approach, although purporting to offer greater flexibility, is not prescriptive enough and will not adequately support people to deliver the general duty, particularly in the current climate where equality is seen as a soft option for reducing budgets. Our experience within the service, particularly following recent interventions by EHRC, is that as public authorities, we are not nearly ready enough for such a 'hands off' approach.