



Equality Act 2010

The public Sector Equality Duty: reducing bureaucracy

Policy review paper

The paper calls for a shift in approach from the process driven where each public sector body, irrespective of size or public objective, comply with certain processes, to one more focused on performance and accountability based on published targets developed by the public body.

The government believe that the process driven top-down approach disconnected the public body from the public to whom they should be accountable and was wasteful of resource as the processes were unfocussed and bureaucratic, which did not reflect the individual requirements of each public body.

The proposed changes in the Specific Duties mirror those in the General Duty where greater emphasis is laid on outcomes and not on processes.

UKCAE approach to the issue

The Government focus on reducing bureaucracy and outcomes-driven approaches are consistent with the approach taken by UKCAE and are strongly supported by it.

UKCAE is a cross-community body that has produced the UKCAE Pathway, which is an iterative and transparent approach, designed to be flexible and to encompass all existing and emerging diversity and equality issues.

The Pathway is an outcomes-focussed approach that provides a clear, practical and inexpensive common framework, for all businesses, irrespective of size, sector or area of operation. It builds awareness, understanding, knowledge and the necessary skills for staff to enable any organisation to

understand the principles of equality and diversity, rather than merely the requirements of equality legislation. The aim is to assist them in adopting practices and implementing systems that will bring about equality at work.

The Council of Reference brings together a range of individuals and organisations with specific diversity and equality interests. Their role is to advise the UKCAE Board of Directors and to review UKCAE products and services.

The flexibility of the Pathway ensures that all work areas (employment, supply chain, customers, etc) are covered and the same assessment criteria are applied but with the ability for the organisation to develop their own solutions.

The analysis of the Review Paper reflects this unique cross-community role and represents an objective assessment based on the interests of all stakeholders and the outcomes of the UKCAE Pathway in general.

Comments on the review as set out in sections of the draft Equality Act 2010 (Specific Duties) Regulations 2011

Paragraphs 9 and 10

9. The revised draft regulations will require public bodies to:

- publish equality objectives every four years (Note: the draft regulation actually states at intervals on not greater than four years)*
- publish information annually to demonstrate their compliance with the general Equality Duty (Note: the draft regulation actually states at intervals on not greater than one year)*
- in particular publish information relating to their employees (for bodies with 150 or more staff) and others affected by their policies and practices (such as service users)*

10. All information must be published in a way that is accessible to the public.

Comment: The 4-year reporting cycle on equality objectives falls into line with the planning cycles used by most public bodies but setting an objective is not the same as achieving it. If the change in approach is to focus on outcomes and for public bodies to be held to account for performance, then there has to be some form of measurement and some formal link with the publication of annual General Equality Duty compliance information as required under section 149(1).

While the government will be issuing guidance, there needs to be some agreement on definitions and areas to be measured, in particular with respect to equal pay. There needs to be a commonality in approach and in interpretation so that the information can be used to hold individual public bodies to account but also to compile or aggregated to provide a more detailed picture of the wider public service.

It is suggested that a small number of clear output measures may be a useful indicator of progress towards specific outcomes to ensure movement towards them over the four-year period.

Paragraph 14

The key differences of the new draft regulations from those published on 12 January are discussed below. In brief, they are the removal of 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.*

Comment: UKCAE would disagree with this amendment. The exclusion of these requirements has a significant impact on the effectiveness of holding the public body to account as without this information the public will not be able establish whether proper consultation has been carried out. Perhaps more importantly no-one will be able to establish what factors were considered, and what weight they were given, as the public body made its policy decision as this will be completely hidden. In the longer term, this may increase false claims being upheld leaving public bodies more vulnerable.

It is suggested that a simpler form of equality impact assessment should be developed along with a consultation grid so that the evidence can be collected more efficiently and more easily made available.

Paragraph 15

The new regulations also omit the regulation which gave the Secretary of State a power to specify certain matters which public bodies must consider.

Comment: UKCAE would disagree with this amendment. This surrender of power means that the public body can only be required to take action through public pressure and that there is no ultimate sanction where the public interest is protected by an elected official.

Paragraph 17

“... We are developing tools and mechanisms to support organisations and individuals to challenge public bodies effectively to ensure they publish the right information and deliver the rights results, with a particular focus on addressing the barriers facing some disabled people”.

Comment: UKCAE would disagree with this amendment. These are words, they are not practical measures. They speak of intentions but provide little assurance that the public interest will be protected. When taken into account with the surrender of power in Paragraph 15 of the Review, it would appear unwise to propose the omission of the element of compulsion while the systems and mechanisms are not in place to ensure that public bodies can be effectively held to account and those systems and mechanisms are not even tested to ensure that they work effectively.

Paragraph 18

The new draft regulations:

- *Change the wording from: “Publish sufficient information to demonstrate its compliance...” to “Publish information to demonstrate its compliance...”;*
- *Remove 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 section 149(1) of the Act, and remove the requirement to publish details of the information it considered when it undertook the analysis;*
- *Remove the requirement to publish details of the engagement the public authority undertook with persons whom it considered to have an interest in furthering the aims set out in section 149(1) of the Act, and details of the engagement it undertook when developing its equality objectives*

Comment: UKCAE would disagree with this amendment. The observations are largely the same as in Paragraph 14. That the exclusion of these requirements has a significant impact on the effectiveness of holding the public body to account as without this information the public will not be able establish whether proper consultation has been carried out and does little to aid transparency. It is important that the public understand what systems the public body has in place to ensure compliance with their General Duty obligations under S.149(1). While the General Duty Guidance requires public bodies to publish equality objectives, details of the engagement that it undertook in developing its objectives, ensure that those objectives are specific and measurable and how the progress on delivery of those objectives

will be measured, it would appear that the proposed amendments to the Specific Duty removes or weakens those obligations.

Paragraph 19

“...Information to help public bodies comply with the duties and understand what constitutes good practice will be delivered through guidance, not regulation”.

Comment: While UKCAE would wholeheartedly agree with the view that organisations should be free to develop strategies and mechanisms that best suit their business requirement and that is preferable to a central directive, the effectiveness of the approach depends on the level of skills and knowledge of the workforce.

Equality and diversity is not an “add-on”, it is a central part of each function within the organisation. The key principles need to be embedded in the everyday business and not seen as a matter of compliance or as some form of central guidance and processes need to be aligned to ensure a common set of values or equality criteria are applied in the development and maintenance of all systems and processes.

That is why, in our view, it is essential for some form of legal obligation, rather than guidance that requires public bodies to publish information on the strategies they have adopted and the evidence that progress is being monitored so that they can be held to account.

Paragraph 20

The new draft regulations:

- *amend the requirement from “Public authorities must prepare and publish objectives” to “Public authorities must prepare and publish one or more objectives”*
- *remove the requirement to set out how progress will be measured.*

Comment: UKCAE would disagree with this amendment. It is not the number of objectives that is important: it is what they seek to achieve. While the suggested amendment seeks to clarify the ability or legitimacy of the public body to have a reduced number of targets, even if it is just one, the concentration on reducing the numbers does little to focus the public body on the delivery of outcomes and therefore support the overall change in government policy.

Paragraph 23

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, so we have removed it.

Comment: UKCAE would strongly disagree with this amendment. In order to hold the public body to account, and in the interests of transparency, it is important to understand how the measurement process operates particularly in relation to the achievement of outcomes. That knowledge gives a level of assurance, informs the public and supports greater accountability.

Paragraph 24 - 26

The new draft regulations:

24. Remove the requirement for public authorities to consider such matters as may be specified by a Minister of the Crown in a written statement to Parliament.

25. Some respondents to the August 2010 consultation thought that this provision could be invoked if it became necessary to highlight significant national equality issues.

26. We have been clear that equality considerations for public bodies will vary according to their nature and role. Priorities are best set by public bodies locally, not by Ministers centrally. Other issues that this provision could be used for (e.g. standards for the publication of data) can be dealt with through guidance.

Comment: UKCAE would disagree with this amendment. This surrender of power means that the public body cannot be directed by the Minister to best serve the interests of wider public concerns outside the public body's immediate interests or business sector and therefore the accountability to Parliament is weakened. Guidance is not an effective replacement for the ultimate protection of public interest.