



The public sector Equality Duty: reducing bureaucracy

University and College Union response to GEO policy review paper

About UCU

The University and College Union (UCU) represents 117,000 lecturers, researchers and academic related staff in further, higher, adult and prison education. We are affiliated to the TUC and we endorse all the main points made by the TUC in its own response to this consultation.

Introduction

On 12 January 2011 the Government Equalities Office released the draft specific duties regulations which included equality analysis and engagement. Although the draft duties published in January fell short of that which we believe would positively assist colleges and universities to meet the general duty we felt there was enough guidance left for institutions to work with as they work towards meeting their equality outcomes.

The outcome focused approach of the new duties has been broadly welcomed by UCU but in the absence of a concomitant procedural steer (as suggested in the review paper of 17 March) our fear is that the further and higher education sectors risk leaping backwards to a time when equality was tagged on to the job description of someone in HR and dealt with 'after the fact' rather than crafted proactively through effective and meaningful consultation.

The thrust of the General Duty with its emphasis on 'due regard' presents organisations with the opportunity to foreground equality considerations in their decision making processes thereby enabling them to position themselves in an increasingly globalised context. We fear that the proposed new duties will greatly reduce that opportunity leaving institutions more rather than less likely to challenge on the grounds of not showing 'due regard'. In this respect the 12 January regulations featuring 'analysis' and 'engagement' offered institutions the means or tools by which they could track their progress towards their stated outcomes.

It remains unclear as to who is pressing this changed agenda within Government given that the proposal appears a mere 9 weeks after the initial draft regulations. We feel it would be appropriate for the GEO to share the details of any formal submissions made upon which the proposed changes of 17 March were formulated and drafted.

Equally as worrying is the fact that the review paper completely disregards the previous submissions made by UCU specifically and the trade union movement and third sector agencies more generally. The 17 March 'review' effectively shelves all previous submissions and risks placing the GEO at odds with its own business plan, namely:

"... we will continue to involve and consult widely with partners in the public, private and third sectors, and we will build on our experience over the last two years of using a range of different engagement methods to ensure that we are open, inclusive, and hearing the voices of all the different groups affected by our work. "

Turning Policy into Action Business Plan 2010/11 p8

Lighter touch transparency requirements

The Government has stated that its new approach to the specific duties is about improving transparency and democratic accountability.

In common with the TUC we are supportive of a more open and accountable system of decision making. However, in the absence of an agreed framework such as an equality

analysis or impact assessment procedure we remain unconvinced that such transparency and accountability will be achieved.

If, as the policy review paper suggests the “challenge from the public [is] the key means of holding public bodies to account on their performance on equality”, then information must be sufficient for this stated purpose. To remove the word ‘sufficient’ prior to ‘information’ would, in effect, remove one of the key tools available to present such a challenge.

In the absence of clear and measurable specific duties we would have to advise our members to resort to freedom of information requests which would ultimately tie up organisations in a series of costly bureaucratic exercises. The net effect would be unproductive for all and would once again locate equality considerations on the organisational periphery rather than as something which sits at the heart of an institutions strategic vision.

Equality objectives

The return to “one or more” equality objectives to be published at least every four years rather than simply ‘equality objectives’ under the 12 January draft means that employers may focus only on one protected characteristic. In our view this logic and approach runs counter to the spirit and letter of the General Duty and the thrust of equality legislation for the last ten years. The policy review paper explains that this is because the Government now believes this to be a “proportionate approach which takes into account the size and role of the public authorities..., [and] in some circumstances a single objective could be appropriate”.

We are struggling to think of one college or university where a single objective would be appropriate. To specifically sanction such an approach is to invite a ‘one objective’ mind-set which by its very nature is at odds with the General Duty.

We would echo the TUC view that the phrase “one or more” should be deleted. The Regulations should simply state that a public body must prepare and publish equality objectives it thinks it should achieve to meet the general duty. This avoids the risk that a large number of public bodies may be encouraged to think that setting a single equality objective for a four year period is sufficient.

To confirm our view on the above and again echoing the view of the TUC we would like to see the following:

- The word “sufficient” should be reinstated prior to “information” in the requirement to publish information to demonstrate compliance with the general duty.
- The wording of the second requirement which states that public bodies must publish information “relating to persons who share a protected characteristic” should revert to the more specific requirement to publish information “on the effect its policies and practices have had on persons who share a relevant protected characteristic”. Without this change public bodies are likely to just produce some minimal information on workforce composition for a few of the protected characteristics where information is already gathered.
- The requirement to publish evidence of equality analysis must be reinstated as one of the basic transparency requirements. The Government recognises in the policy review paper that evidence of equality analysis is a necessary part of showing due regard to equality. In addition, requesting equality impact assessments (or an equivalent form of equality analysis) is the most common starting point for those seeking to establish whether public bodies have paid due regard to equality. Without this requirement in the

Regulations, public bodies could be inundated with freedom of information requests seeking this analysis.

Engagement

We are disappointed that after placing more emphasis on engagement in the draft Regulations, the Government has now decided to completely remove all references to engagement from them. The policy review paper states that engagement is an integral part of showing due regard, in which case the Regulations should include requirements in relation to it.

If the draft Regulations are not amended then the statutory Code and any guidance from Government must make clear the need for engagement in order to fulfil the general duty and also make clear the positive benefits of early engagement in terms of more effective policy making.

Conclusion

Finally, we would seek to ensure that:

- Engagement (and the evidence that this has taken place) remains as a central function of the specific duties to assist colleges and universities in recognising and reaching achievable and meaningful equality outcomes
- Similarly, equality analysis is restored as it is a vitally important tool for institutions to ensure a robust and systematic approach against which colleges and universities may assess their policies and practices with due regard for equality.

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