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## **Equality Act 2010: The Public sector equality duty: Reducing bureaucracy**

I am writing on behalf of a:gender, the Civil Service diversity network for transsexual, transgender and intersex people.

We have considerable experience of working within government to produce outcomes that have served to eliminate discrimination and harassment of people in this group, and to advance their equality. Having read and discussed the policy paper, we comment on the proposals as follows:

1. We do accept the shortcomings of the current scheme, as we have seen too many equality schemes and strategies that failed to translate into action, too many policies that fail to meet trans needs through poor engagement, and too many equality impact assessments that paid lip service, if that, to trans equality, with little effort or imagination used to identify evidence.
2. Crucial to trans outcomes has been the knowledge and commitment to trans equality of those developing the policies, guidance and advice. This, along with a willingness to work with trans people to identify and address adverse impacts, has had a far greater impact than any process by which it achieved.
3. Such knowledge and commitment are however rare, and there is likely to remain a need for guidance and non-mandatory processes that support and nudge the less aware or inclined to consider trans equality.
4. In our view, the earlier format of the regulations did not necessarily comprise “arduous and ineffective bureaucratic processes.” Our experience shows that such processes could be implemented very effectively and efficiently, but were too often implemented in an arduous, ineffective, mechanistic and bureaucratic manner. What therefore needs to be eliminated is NOT the existing process *per se*, but the inefficient use of such a process. Otherwise there is a risk that the inefficient will be rewarded for their poor operation of past processes by being given a free hand to take an even more cavalier approach with the duty, while those who used such processes perfectly efficiently and effectively to use the duties to achieve equality-oriented outcomes may be made less effective if denied those processes in favour of what may be a far more anarchic and less transparent regime.
5. Given the frequent lack of priority given to trans equality in the past (as identified in [EHRC research](#)<sup>1</sup>), we are concerned that the lack of detail and limited requirement for objectives could lead to a minimalist interpretation of obligation to transsexual people by less equality-minded public authorities, particularly under the pressures of deficit reduction.

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<sup>1</sup> [http://www.equalityhumanrights.com/uploaded\\_files/research/psd\\_trans\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/research/psd_trans_report.pdf)

6. We are also concerned that this will lead to such organisations seeking to justify a simplistic approach to trans equality, by putting in place mechanisms to count trans employees and service users and little else, and then using the lack of numbers reported to justify a lack of action, in comparison to the evidence available on the needs of other protected characteristics.
7. Paragraph 19 of the policy paper does, however, serve to highlight that the new duties do NOT represent a shift in the basic principles “to understand the effect of their policies and practices on equality – this will involve looking at evidence, engaging with people, staff, service users and others and considering the effect of what they do on the whole community.” We feel that it is important to include these words in the specific duties regulations to impose this basic set of principles in achieving due regard, without imposing any particularly process for doing so. Nevertheless, processes supporting the delivery of due regard are bound to develop and evolve into best practice, but will no longer be prescribed or reported on.
8. We fear the lack of detail in the reporting requirement will do the opposite of aiding transparency and instead mean that trans people are faced with a situation where public authorities may have little to be transparent about, and little to challenge. It will be akin to assessing the worth of a scientific paper’s conclusions without access to any of the relevant methodology, results or discussion. There is a danger that we will revert to the bad old days when a lack of action on trans issues can be justified on the basis that ‘there aren’t many of them and it would cost too much’.
9. This could leave trans people (with a similar threat facing other small and/or unpopular minorities) in a situation where the onus to achieve trans equality will shift away from the less equality-minded public authorities (which we anticipate will increase under current financial pressures) and back to trans people and their hard pressed representatives, thus largely negating the original purpose of the public sector duty to shift away from the adversarial approach to equality that preceded the introduction of the duties.
10. These dangers may be compounded by localism and the threat to fairness that may arise from the pushing down of responsibilities to lower tiers of society. This is particularly a threat to those trans people whose primary aspiration from gender reassignment is to live as men and women. This aspiration could be undermined by the need for them to publicly identify themselves as transsexual people in order to meet their needs in a direct contradiction of the protection from such discrimination that the Equality Act was meant to confer.
11. For these reasons, we lack your confidence expressed in paragraph 16 in the proposal for a minimalist specific duty; “that these changes will have a positive effect on the delivery of equality improvements for all the protected characteristics covered by the Equality Act 2010”. In particular, we anticipate a major adverse impact on trans equality unless the Regulations at least prescribe the basic principles requested in 7 above.
12. We note that para 17 talks about “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.” Given the evidence already referred to of a highly inconsistent implementation of the obligations to transsexual people under the Gender Equality Duty, and the relatively undeveloped capacity and limited resource of the trans community, we think that a particular focus on trans barriers ought also to be highlighted and incorporated into the Government’s transgender programme of action.

13. We are surprised that this consultation only appeared as an update on a hyperlink on an existing page on the website and with a subsidiary mention in the GEO newsletter. We fear the low profile given to this consultation could limit the number of responses from organisations affected by this proposal.
14. We are also aware that this Regulation will be supported by a statutory Code of Practice, which may allay some of our concerns, but regrettably is not available to consider in conjunction with this policy paper.

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