

Equality Act 2010:

Public Sector Equality Duty: reducing bureaucracy

Submission by Prospect to the Government
Equalities Office policy review paper

April 2011

www.prospect.org.uk

Introduction

Prospect is an independent trade union representing over 122,000 members in the public and private sectors. Our members work in a range of jobs in a variety of different areas including in aviation, agriculture, communications, defence, energy, environment, heritage, industry, and scientific research.

We have considerable experience of advising and representing members on equality and discrimination issues. We have also worked closely with employers in introducing and implementing equal pay reviews, as well as equal opportunities and work-life balance policies in the workplace. We have a dedicated equalities research officer, a member of the senior management team with responsibility for equal opportunities, legal officers experienced in dealing with discrimination law cases, and an equal opportunities advisory committee who have all been instrumental in developing this response.

A significant proportion of our members work in the public sector. We have therefore welcomed the implementation of the single public sector equality duty covering all the protected characteristics.

However, we have major concerns at the withdrawal of the previous regulations (upon which we also had concerns) and the proposals to make the specific duties much weaker in effect.

The policy review paper states in para 19 that "information to help public bodies comply with the duties and understand what constitutes good practice will be delivered through guidance, not regulation". Experience has shown that unless there is regulation on public bodies, good practice will be ignored - this is one of the reasons why the public sector duties were introduced in the first place. We believe, therefore, that guidance will not be enough.

We are also extremely concerned that the requirement on public bodies to engage with stakeholders in formulating policies has also been removed. This requirement has been enormously important, particularly in regard to the previous disability equality duty in ensuring that barriers experienced by disabled people are identified and that their specific needs and requirements are taken into account.

We believe that the watering down of the regulations in this way has rendered them almost meaningless. Over the years of working with the previous public sector duties, public bodies have begun to take seriously the impact on equality of their decisions on policies and practices across their functions. However, we believe that the proposed regulations will render all this good practice as futile and will be a considerable retrograde step.

The primary aim of the specific duties is to assist public bodies to meet their general duty. We do not consider that the revised regulations achieve that aim.

In addition to the comments we made in our submission to the consultation on the previous regulations, our further comments are set out below following the main headings in the proposed new regulations:

Equality objectives

We are very disappointed to see the requirement to publish "one or more" objectives reintroduced following its removal in the previous regulations. As we stated in our previous submission, this implies that no more is required. The public sector duty requires organisations to have due regard to addressing equality across all the protected characteristics, not just to one or two areas. The objectives should also relate to all three aspects of the general duty, ie eliminating discrimination, advancing equality and fostering good relations. The policy review paper states at para 21 that "in some circumstances a single objective could be appropriate" - we consider it would hardly be appropriate for one objective to cover all these areas.

In addition, encouraging public bodies to only publish "one or more" objectives will allow organisations to concentrate on this minimal requirement and revisit only those objectives in subsequent years, thereby ignoring their duties under the other protected characteristics, and perpetuating inequalities by not considering or addressing those other areas.

We believe that there should be direction within the regulations in regard to how objectives are set and who will be involved in the setting of the objectives, ie organisations should be required to involve service users and trade unions (or where there is no union other employees' representatives).

The new draft regulations have removed the requirements to set out how progress will be measured. It is difficult to see, therefore, how individuals will be able to judge whether public bodies have made any progress on meeting their objectives and whether they may be subject to challenge. As other organisations have pointed out, notably the Institute of Equality and Diversity Practitioners and the TUC, the key information individuals will need to hold public bodies to account will only be available via freedom of information requests, thereby adding to the bureaucracy public bodies will face.

Publication of information

We believe that the removal of the requirement to publish "sufficient" information significantly weakens this requirement, as does the removal of the requirement to publish information across the organisation's functions.

There is much emphasis throughout the review document that public bodies should focus on transparency and be held to account on equalities. By removing the requirement to publish equality information, particularly the impact of their decisions across all the protected groups, we fail to see how individuals will be able to hold them to account. Far from being transparent and accountable, public bodies and their actions will become obscure and incomprehensible.

In regard to being held to account, we believe that the approach of the policy review paper and the proposed new regulations, assumes accountability in relation to local government and similar bodies. It is less easy for people to hold Government Departments to account for the services that they deliver locally.

Reiterating the point made in our previous submission, we do not agree that there should be a threshold of 150 employees before public authorities are required to report on workforce equality. We are concerned that in a shrinking public sector environment, fewer and fewer employers will be required to report on the composition of their workforce in terms of equality and therefore will not consider equality issues affecting their employees. We are further concerned that if employers are not encouraged to take seriously their responsibility in regard to equality for all their workforce, then they will be disinclined to do so in terms of service delivery.

We believe that the change of emphasis on publishing information "relating to persons who share a relevant protected characteristic" from the previous requirement on publishing *the effect* of policies and practices is again a step backwards, since organisations will not be required to demonstrate that they have considered the outcome of their actions on groups with the protected characteristics.

The policy review document acknowledges at para 19 that organisations "will need 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 in considering the effect of what they do on the whole community". Therefore, if these issues are being considered, in order to promote transparency etc, then this information should be published.

We believe it is essential that the regulations cover the necessity to carry out and publish equality impact assessments, otherwise it will be impossible for public bodies to be "transparent and accountable". In addition, it would support the intention of transparency and accountability to involve those concerned at the outset, and throughout, rather than merely allowing citizens to hold public authorities to account after the event and once information has been published.