

SOUTH YORKSHIRE FIRE AND RESCUE

SYFR Response to Coalition Government Consultation on Draft Regulations on Equality Act 2010 – Specific Duties 2011

What is this a Response to?

This is South Yorkshire Fire and Rescue's (SYFR) response to the Coalition Governments consultation exercise seeking comments from public bodies and interested others on the changed regulations for specific duties under the Equality Act 2010.

Identifying Three Options for the Specific Duties

SYFR, in considering and developing its response, has compared and contrasted the new proposed regulations published in March 2011, not only with the draft regulations published in January but has also in comparison to the detailed requirements under the previous specific duties for race, gender and disability (which public bodies have been using as legal guidance up to now). SYFR believes it is important to do so to be able to identify the size of shift the government is now proposing in relation to the regulation of equalities. SYFR also wanted to compare and contrast all three sets of specific duties in order to be able to give the stakeholders engaged to develop SYFR response a real policy choice to feed back to government upon.

What the Policy Review does?

In the Consultation Policy Review Paper of 17 March 2011 the Coalition Government summarises what is now proposed in the regulations as:

“The revised draft regulations will require public bodies to:

- Publish equality objectives every four years
- Publish information annually to demonstrate their compliance with the general equality duty;
- 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).

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

In the same document, the government states the key differences from the draft regulations it published in January, as being 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.

The draft regulations also amend the requirement to publish equality objectives to a requirement to publish “one or more objective”. The draft regulations also remove the requirement to set out how progress will be measured.

Fire and Rescue Sector Development and Leadership

In developing a response SYFR believe it is relevant to consider what SYFR are currently trying to achieve around equality and diversity work, and to therefore consider what kind of regulations will best help SYFR achieve its aims.

Following the decisions of the Coalition Government in summer 2010, to cease any monitoring of FRS progress within the FRS Equality Strategy 2008-18, and to end mandatory national recruitment targets, the fire and rescue sector has grown sector self-regulation. The Chief Fire Officers Association (CFOA) and Local Government Improvement and Development (LGID) have been working in partnership, and using the bespoke FRS Equality Framework with robust Peer Challenges offered at the achieving and excellent levels. This swift growth of sector self-regulation has reduced the risk of confusion and has helped to limit the number of FRSs re-prioritising equality and diversity. The sector itself has begun to provide alternative non-governmental direction and leadership in this area.

SYFR Current Focus on Equality and Diversity

SYFR have chosen to continue using the FRS Equality Framework; is at the achieving level within this Framework; and is in the process of making a decision as to whether to aim for excellence within the Framework by 2012. At the same time SYFR are dealing with unprecedented service change and the challenge of significant cuts to budgets and has had to consider making reductions in many areas. In addressing the question “Is equality and diversity still a priority for us?” SYFR is aware that, especially at this time, and in this context, if equality is not prioritised there is likely to be hidden, unforeseen and damaging risks to the most vulnerable communities (which could include increased risks of fire and emergencies). In starting to plan an organisational change programme SYFR is aware that undertaking equality impact assessments is vital to inform management decisions about budgets and the shape of change. With the current curtailment of external recruitment, diversity in SYFR cannot be increased by this route. It has become increasingly important to retain the existing diversity of SYFR current staff through ensuring adequate equality impact assessment, and mitigation of impacts through a range of measures in reshaping the organization, including positive action for retention and progression. These are some of the reasons SYFR has identified a strong business case for maintaining a focus on equality and diversity in a time of economic downturn.

CFOA is leading this approach with a request to all FRS’s to aim for excellence as measured by the FRS Equality Framework. At a recent CFOA Conference on 17 March 2011 on “What Would

an Excellent Fire and Rescue Service Look and Feel Like?" the Conference heard about the Governments changes to the draft regulations on the specific duties and asked all FRS to respond robustly to the Governments Consultation.

Developing SYFR Response

SYFR responded to this request by holding a Stakeholder Consultation Workshop on 7 April 2011, to develop SYFR response, bringing together:

- SYFR Authority Elected Members
- SYFR Directors
- Heads of Departments and Equality Co-ordinators
- Experts on consultation and engagement
- Staff across the protected characteristics

Workshop participants heard from a barrister who specialises in equality cases about how equality works in the Courts and about the risks and opportunities for public bodies in the Government providing more or less guidance in the specific duties.

Key Areas

A range of issues were considered and debated including;

Equality Assessment and Engagement

The short period of time FRAs were involved in Comprehensive Performance Assessment and then Comprehensive Area Assessment helped to grow a performance management, consultation and partnership culture. However SYFR believe there is more to do in the sector in all of these areas. In relation to equality and diversity removing reference to equality assessment and engagement from the specific duties is likely to have a detrimental effect on FRS's progress on equalities.

Measuring Progress

Participants considered how SYFR are developing measures for assessing progress and feel that it would not be useful to remove the requirement to set out how progress will be measured. While the Government identify a desire to focus on outcomes rather than processes it could be said that outcomes without processes are mere accidents.

How Many Priorities

Part of the spirit of the Equality Review 2007 enacted through to the Equality Act 2010 was to ensure that people experiencing discrimination would all be afforded the same degree of

protection through the law: that some groups would not be prioritised at the expense of others. It is therefore important for all public bodies to consider all protected characteristics and undertake thorough assessments of equality gaps. SYFR will be committed to having equality objectives across each of the 8 protected characteristics and believe that guidance from government should encourage this holistic approach by maintaining a requirement to have equality objectives across the whole spectrum of protected characteristics.

Risks and Opportunities

SYFR stakeholders identified that, contrary to the Governments view in the Policy Review, having robust guidance does not stop innovation but can provide a foundation for the growth of innovation in a service or cross cutting area. Robust guidance which clarifies the law would also allow for a more accurate assessment of business risks. Minimalist guidance would, on the other hand, leave the single general duty rather vague, which could leave courts having to make up the law with public authorities not knowing how to be compliant until significant case law has grown.

In terms of efficiency there is an assumption in the Policy Review that regulation is a cost to organizations but self-regulation with vague and minimalist statutory guidance could be more costly, ineffective and produce a risk of duplication and confusion.

There is also a potential for casualties with public bodies vulnerable to significant litigation through lack of guidance or direction from the state. Minimalist statutory guidance assumes strong sector self-regulation can be relied upon which may not exist, or exist yet. It also relies on the existence of individual organisational excellence which in turn relies critically on quality leadership, which cannot be sustained on all occasions.

The Best Context for Sector Self-regulation

Stakeholders at SYFR believe that in looking at the equality context the very best context for sector self-regulation (which has developed a good foundation) to continue would be to have statutory guidance which is detailed enough to provide robust clear direction. This would provide clarity and incentives upon which the public sector can continue to develop tools such as the suite of LGID Equality Frameworks. It would also show leaders across public organisations what the basic legal requirements were for their organisations to comply with.

Providing clear mandatory guidance was felt by stakeholders at SYFR to be the best context to grow quality sector self- regulation.

Balance of Views from SYFR

Following these debates participants were given an opportunity to vote on which of the three levels of detail (for the guidance on specific duties) they felt was needed by SYFR and other public bodies. The result was that 54% of participants wanted more detailed guidance of the quality and quality in the previous race, gender and disability specific duties. The rest of the

participants voted equally for the January regulations (23%) and for the new regulations issued with the consultation (23% again). This means that over three quarters of SYFR participating stakeholders are asking the Coalition Government to think again and not to proceed to reducing guidance in the specific duties. A small minority of participants wanted the Government to proceed with the slimmed down regulations.

Request to Government

SYFR are therefore requesting that the Coalition Government **do not proceed** with implementing the Draft Regulations of 17 March but go back and look again at implementing, either the regulations issued in January 2011 or a more detailed set of regulations to ensure that the spirit of the Equality Act is fully supported in the underpinning legislation and guidance. By doing that SYFR believe that public bodies will be best supported to realise equality for staff and customers across all their business functions.



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