

## **Response to Policy Review paper**

**'Equality Act 2010: The public sector Equality Duty:  
reducing bureaucracy'**

**Response to government proposals for the future of the public sector  
equality duties:**

[http://www.equalities.gov.uk/equality\\_act\\_2010/public\\_sector\\_equality\\_duty.aspx](http://www.equalities.gov.uk/equality_act_2010/public_sector_equality_duty.aspx)

April 2011

## **1. Inclusion London**

Inclusion London is the London-wide organisation promoting equality for disabled Londoners. Inclusion London is a second-tier, city wide organisation, which supports Deaf and disabled people's organisations and individuals to have an influence and a voice. Disabled people in London face entrenched discriminatory barriers which result in greater poverty, inequality and social isolation. Indeed evidence shows that these barriers are increasing as a result of public sector spending cuts<sup>1</sup>. Strong public sector equality duties are a way to help tackle these barriers within the public sector. It is in this framework that we approach the proposals in the government's policy paper.

## **2. About this response**

Inclusion London is dismayed that the government is consulting again on the specific equality duties. We responded at length to the last government consultation on this same subject of the future of the public sector equality duties. That consultation ended just in November 2010, only four months before the government opened another consultation on exactly the same subject. Indeed the government responded to the consultation in January 2011, just two months before it published a new paper.

We explain our view on the latest proposals in this response. However as the proposals in the latest consultation document go in the same direction as the previous consultation document – except that they go further in the direction of removing effective and proactive duties – we concentrate our comments on what is particularly new in the latest proposals. However, these new proposals will come on top of proposals set out in the last consultation document. So to put these in context we append to this submission our response to the last consultation which ended in November. We see no point in making the same points all over again.

In these latest proposals government is contradicting its own response to the last consultation. That response was published very recently, in January 2011<sup>2</sup>. Clearly there has been some change in policy in this area within

---

<sup>1</sup> All in this Together? <http://www.inclusionlondon.co.uk/all-in-this-together>

<sup>2</sup> <http://www.equalities.gov.uk/pdf/110114%20Promoting%20equality%20through%20transparency%20-%20Summary%20of%20responses.pdf>

government, with an approach that is even more worrying in terms of equality for disabled people appearing to have been adopted.

## 2.1 DCC response

We have also participated in the response from the Disability Charities Consortium to this consultation. Therefore this paper supports the points in that submission including that the proposed duties would: make public bodies less transparent and accountable; be too vague to help ensure compliance with the general duty; lead to a greater reliance on litigation; get rid of the duty to involve and thereby ignore all the evidence about the value of involvement; be less likely to support and encourage evidence-based policy making; be regressive.

## 3. Remit and purpose of consultation

This is the third consultation in 18 months and the second in a short period of time conducted by this coalition government. The proposals are worse for disabled people than those consulted upon in the last consultation and worse than the government's response to the consultation. Inclusion London believes the government's proposals fundamentally undermine the specific duties and will make it more difficult for public bodies to meet the requirements of the public sector general duty.

Weakening the public sector duties in the ways the government proposes would mean that public authorities would do less to promote and deliver equality, would involve disabled people less, would be less likely to base their policies on adequate evidence, would be less likely to design and deliver services in ways that take into account the needs of disabled people and will be less transparent. The results will be felt by disabled people in increased barriers in their lives and in communities, services and workplaces that are less inclusive.

## 4. Key new proposals in the consultation document

The consultation document proposes to **remove** duties (previously in the government proposals) that would require public bodies to publish details for:

- 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

- Information they have considered when undertaking such analysis

The new proposed draft regulations would only 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).’<sup>3</sup>

These proposals reverse what the government said it planned to do when it published new regulations in response to the last consultation (in January 2011). With regard to publication of information specifically, at that time government said that the regulations would ensure that:

- ‘public authorities publish *sufficient* information to show that they have complied with the general duty;
- ‘public authorities report on their engagement with interested parties, with a particular steer that they should engage in relation to setting their equality objectives; and
- ‘publication of information includes evidence of the analysis that the organisation carried out to assess the effect of its policies and practices on equality – a stronger steer away from formulaic and process-driven impact assessments, towards genuine consideration of the issues.’

The proposals also reverse other aspects of the draft regulations published in January. We set out our objections to these proposals below.

## **5. Result will be less transparency, less accountability, more inequality**

In this new consultation the government says it aims to reduce ‘*burdens and bureaucracy on public bodies, moving away from a process-driven approach to a focus on transparency in order to free up public bodies to do what is appropriate in their circumstances, to take responsibility for their*

---

<sup>3</sup> <http://www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf>

*own performance, and to be held to account by the public. This means a shift in approach – a focus on performance, not process.’*

The government is mistaken if it believes that the specific duties as they have existed are burdensome or that removing them will create greater efficiency. The specific duties, particularly duties to involve disabled people, gather evidence, share it with the public and assess the impact of planned policies, help public bodies to plan their services and structures in appropriate ways in advance, to monitor and change policies and practices and to save time and money. They help public bodies be proactive not reactive. They help to reduce the likelihood of legal action. They help organisations to use public funds in ways that benefit communities appropriately and to meet the requirements of the Equality Act and the general duty.

The government is also mistaken if it thinks these proposals will make public bodies more transparent. Specifically, the proposals to remove the requirement to publish details of engagement undertaken in deciding equality policies and objectives and the equality analyses and information they have taken into account will self-evidently reduce transparency. The removal of these requirements will encourage confrontation as disabled people may have to take organisations to court more often in order to hold them account and ensure the general duty is being complied with.

Government defends its proposals by saying that the general duty requires public bodies to understand the effect of their policies and practices on equality. But the specific duties help organisations to do this and to use specific mechanisms. Without such help public bodies are less likely to take these proactive and timely steps and less likely to be transparent. They are more likely to fail to meet the aims of the general duty.

## **6. Key changes we want to see to these proposals**

### **6.1 Equality Objectives**

The government proposes to allow public bodies to set only one equality objective in four years, covering all and any equality groups: regulation 2 (1) refers to ‘...one or more objectives’. This reverses the government’s position in January when its proposed regulation referred to ‘objectives’. Permitting a public body to have only one objective hugely underestimates the scale of inequality, guarantees that many core issues will be omitted from consideration, makes it inevitable that proportionate action will not be taken

and means that disabled people specifically are very likely to be omitted. Particularly given the impact that severe spending cuts are already having, we are very concerned about this.

We propose that the wording is changed to 'sufficient objectives' and it is made clear that there are likely to be very few circumstances in which only one equality objective over a four year period would be sufficient for a public authority to meet its obligations to a range of equality groups in all its functions.

The January draft regulations also specified that equality objectives had to be 'specific and measurable'. The new proposed regulations remove this requirement, further undermining the point of having objectives. The new proposals also remove the wording in the January draft that specified that a public authority must set out how progress towards meeting the objectives should be measured.

If objectives are not 'specific and measurable' and progress in meeting them is not made available it will be very difficult to judge progress towards achieving them and for stakeholders to hold public bodies to account.

**We propose that the wording from the government's January draft regulations is reinserted to say that: 'A public authority must (a) ensure that the objectives it sets are specific and measurable; and (b) set out how progress towards these objectives should be measured.'**

**We propose that a requirement to publish evidence on engagement with disabled people in setting their equality objectives is reinstated, as is a requirement to report on progress towards meeting these objectives.**

## 6.2 Equality analysis

We oppose the proposal to remove the requirement to publish details of the equality analysis that has been undertaken and have considered in determining equality objectives. Again this reverses the proposals in the government's January response to the last consultation without providing any new evidence to substantiate such a change. Such a proposal is the absolute opposite of transparency: how will the delivery of equality outcomes be effectively demonstrated without publication of the equality analysis carried out? How would disabled people assess whether, or to what extent, 'due regard' has been exercised without being able to scrutinise equality analyses? Such a reduction in transparency will create

greater uncertainty about how the duty is being complied with and undermine the ability of disabled people to hold public bodies to account short of judicial review.

Furthermore, equality analyses have to be made available in a timely way to be relevant and the process of an analysis should allow for disabled people to know that it is taking place and how relevant evidence can be made available. It is not sufficient to publish information annually.

**We propose that the government retain the requirement for public bodies to publish details of equality analysis that they have carried out.**

**We propose that information that such analyses are taking place is made publicly available as it is happening and that reports of such analyses are available when published and are not only produced once a year or buried in annual reports.**

### 6.3 Involvement

The government is proposing that there be no requirement to involve (or 'engage') disabled people or to publish information about such involvement/engagement. We disagree with this and believe that there should be an explicit duty to involve/engage and to publish information.

The previous draft regulations proposed a requirement to publish information '*on any engagement with any persons whom it considers to have an interest*' and gave '*a particular steer that they should engage in relation to setting their equality objectives*'. While the supporting text to the latest draft regulations in the policy review recognises that compliance with the general duty will require involving/engaging disabled people it removes the duty to publish information about any engagement that has taken place and there is also no specific duty requiring such engagement or involvement.

Involvement of disabled people has been crucial in ensuring that public bodies understand what they have got wrong in the past and ensure improvements in addressing inequality. There is ample evidence to support this and we have referenced it in our previous submissions.

**We propose that the government retains the explicit requirement in specific duties to involve disabled people**

**We also propose that the government retains the duty for public bodies to publish information of their engagement with disabled people and ensures that engagement starts at the beginning of the process of setting equality objectives**

#### 6.4 Publication of information

The proposed requirement to publish information annually to demonstrate compliance with the general Equality Duty is insufficient. There will be no specific requirement to publish certain kinds of information, as at present and as proposed in the regulations published in January.

To be useful in contributing to greater equality, information has to be published in a timely way. This means in a way that means it can be used effectively. This means that it is produced as part of the process of arriving at decisions on policies and process. Previously the draft regulations said that the information published by a public body would have to be taken into account when setting its equality objectives. This is also removed in the new draft regulations. In setting an equality objective a public body would not have to consider the information it published or gathered. This would make sense of the new proposal to allow information to be published once a year and out with the process of determining policies. These proposed regulations would make information gathering less likely and where it was gathered, more of an abstract process, disconnected from the process of setting equality objectives.

**We propose that the proposed regulations are changed to make clear that data must be published in a timely fashion and that it should be considered when an authority is setting its equality objectives.**

#### 6.5 Accessibility

To be useful information also has to be published in accessible formats. Draft regulation 4 (2) states only that information 'must be published in a way that is accessible to the public'<sup>4</sup>. This is not precise enough. It must be made clear to public bodies that they have to provide information in a range of language formats including BSL, in audio, in large print, easy read and so forth.

---

<sup>4</sup> <http://www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf>, page 2



**We propose that it is explicit in the regulations that information published has to be accessible to all disabled people.**

## **7. The need for action**

This unnecessary extra consultation aimed at stripping the specific duties of content and weakening the draft regulations published in January 2011 yet further means that the general public sector duty has come into effect unaccompanied by specific duties. It is unclear how long will go on for. This means that public bodies are operating without sufficient clarity and framework for action. Momentum will inevitably be lost. The negative impact that this will have in creating confusion and limiting action by public bodies will be felt in the lives of disabled people. This was entirely avoidable.

The negative message coming from government that equality legislation is an optional 'burden' on organisations has been reinforced by initiatives such as 'Red Tape Challenge'<sup>5</sup>, whereby government has used apparently scarce resources to establish and maintain a website suggesting that the Equality Act 2010 is merely 'red tape' and inviting comments in support of its removal.

Government should take on board the views of disabled people's organisations and other equality organisations and reframe its regulations so that they are adequate to support organisations in complying with the general duty. It should do this rapidly.

## **8. Further information**

For further information contact

**Inclusion London**

Can Mezzanine

49-51 East Road

Old Street

London N1 6AH

Email: [anne.kane@inclusionlondon.co.uk](mailto:anne.kane@inclusionlondon.co.uk)

**Telephone:** 020 7237 3181

[www.inclusionlondon.co.uk](http://www.inclusionlondon.co.uk)

*London Deaf and Disability Organisations CIC*

*Company registration no: 6729420*

---

<sup>5</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/equalities/>