

Consultation response

The public sector Equality Duty: reducing bureaucracy.

Policy review paper

April 2011

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About this consultation:

The Government published this policy review paper on 17 March 2011 to seek views on new draft regulations setting out specific duties designed to assist public authorities in complying with the public sector Equality Duty, legislated for in s.149 Equality Act 2010.

Key points and recommendations

- Age UK is extremely disappointed by the Government's proposals to make amendments to the draft specific duties at this very late stage in the process of implementing the public sector Equality Duty and fear that they threaten to significantly weaken its effectiveness.
- Above all, public bodies need clarity about the steps they need to take to comply with the general duty that came into effect on April 5th 2011. Instead this review is creating great uncertainty and risks causing public bodies to draw the incorrect conclusion that they will now be expected to do less in order to comply with the primary legislation.
- It is our view that both engagement and systematic equality analysis of policy and practices are essential to meeting the requirements of the general duty and we object to their removal from the draft regulations.
- The Code of Practice due to be issued to support the implementation of the public sector Equality Duty must make clear that while the specific duties require the setting of 'one or more equality objectives' the general duty applies across all the relevant characteristics. In addition a very clear communications strategy is urgently required to ensure that public bodies are aware that the Equality Duty applies to age from 5 April 2011, despite the fact that the ban on harmful age discrimination is not due to come into effect until 2012.
- It is essential that requirements regarding the need for timeliness of data and the inclusion of information pertaining to the analysis of decision make are incorporated into the Code of Practice.
- The Code of Practice must make clear that involving people with relevant protected characteristics, including older people, is integral to meeting the requirements of the general duty.

1. General Comments

Age UK is extremely disappointed by the Government's proposals to make amendments to the draft specific duties at this very late stage in the process of implementing the public sector Equality Duty. The General Duty has now already come into effect and the Equality and Human Rights Commission (EHRC) has drawn up and disseminated extensive guidance based on the draft regulations published in January. The previous draft regulations were published after an extensive

consultation process and were already designed with the objectives of being light touch and non bureaucratic firmly in mind. We fear that the decision to review the regulations threatens to significantly weaken their effectiveness.

Above all, public bodies need clarity about the steps they need to take to comply with the general duty that came into effect on 5 April 2011. Instead this review is creating great uncertainty and risks causing public bodies to draw the incorrect conclusion that they will now be expected to do less in order to comply with the primary legislation. Not only does this leave them vulnerable to legal challenge but even more importantly undermines the central commitment made by the Coalition Government to ensuring that the principle of fairness will be at the heart of public sector reform and public spending cuts.

The specific duties are important because they guard against a minimalist interpretation of the general duty and give public bodies a clear idea of what is required and the confidence to take action. We refute the contention that the regulations as published in January would have created an unacceptable or disproportionate bureaucratic burden.

2. Equality Objectives

The draft regulations published in January required that a public authority should publish equality objectives by April 2012. In the new regulations, the wording has reverted to that which was included in the version originally consulted on in August 2010 that public authorities should publish 'one or more objectives'. In our response to the original consultation we expressed concerns about this wording that still stand.

While we are sympathetic to the need to allow individual public bodies to determine for themselves which areas of inequality they will prioritise, we are concerned that some may misinterpret 'one or more objective' as meaning that they only need to address equality in relation to one or a limited number of the relevant protected characteristics. To mitigate this risk it is vital that the code of practice and non statutory guidance make very clear that while the specific duties allow a degree of prioritisation the general duty will continue to apply across **all** the relevant characteristics.

This is particularly important in relation to age, as it is not one of the characteristics previously subject to an equality duty. As a result, there is a risk that lack of familiarity with the issues involved may cause some public authorities to de-prioritise age in favour of other areas they are more used to addressing, such as race, gender and disability. Additionally, the fact that the ban on age discrimination in the provision of goods and services is not expected to come into effect until 2012 could potentially lead to confusion about the applicability of the public sector Equality Duty to age from April 2011. A very clear communications strategy and comprehensive guidance is urgently required to ensure that any such misinformation is dispelled.

3. Publication of information

It is of serious concern that the revised draft regulations have removed the requirement to publish information relating to the assessment of the likely impact of

policies and practices on those with protected characteristics. Without evidence of how a decision was reached, the information that was taken into account and how it was evaluated, it will be impossible for effected groups and those advocating on their behalf to effectively hold public bodies to account.

We also reiterate our concern, expressed in our response to the original consultation that information is only required to be published at yearly intervals. As the Equality and Diversity Forum (EDF), of which Age UK is a member, highlights in its response to this consultation, the benefits of transparency are rendered almost completely ineffective if takes place too long after the event. Data that is published up to a year after a decision has been made cannot possibly be used to evaluate that decision in a timely way. This effectively denies protected groups the opportunity to legally review a decision as any judicial review must be brought within three months of the decision being made.

In light of these criticisms it is essential that requirements regarding the need for timeliness of data and the inclusion of information pertaining to the analysis of decision make are incorporated into the code of practice.

4. Engagement

Involving people with relevant protected characteristics is an essential part of meeting the general duty and the requirement in the previous set of draft regulations to publish details of engagement undertaken was in our view a proportionate means of holding public authorities to account for doing so. We recommend that the new regulations are amended to re-incorporate this requirement. If this is not deemed necessary, it is vital that the importance of meaningful engagement to meeting the general duty is made clear in the code of practice to be produced by the EHRC.

Furthermore we reiterate that information about the role of the engagement and advice as to how it can be effectively carried out must form a core part of the EHRC's non-statutory guidance on the public sector Equality Duty. This should include a recommendation that public bodies seek to work in partnership with the voluntary and community sector to facilitate involvement. Age UK has significant experience of working to facilitate older people's involvement in public sector decision making, for example through our support of the network of Speaking Up for our Age Forums. These older people's forums and our other local partners are well placed to support public sector bodies engage directly with older people in order to meet the requirements of these duties. Fully utilising this capacity will be essential if involvement is to be extended to older people who are not easily able to engage with standard engagement processes such as written consultations or events. This could include older people who are socially isolated or who have cognitive or sensory impairments.