

The Equality Act 2010: The Public Sector Equality Duty: reducing bureaucracy.

Equality South West's Response to the Policy review paper

About Equality South West

Equality South West (ESW) is a pan-equality social purpose infrastructure body, established in 2005. We support organisations in all sectors, and across the South West of England, to promote equality and human rights and to challenge discrimination and to improve their policy and practice in the area of equality. In total ESW works with and supports hundreds of organisations providing frontline services within rural and urban areas across the SW.

Integral to our work is our engagement with, and support for seven regional equality networks, representing the seven equality 'strands'. We also support locally based equality organisations such as Racial Equality Councils and Disability User Led Organisations across the region.

A key part of our work is to research and understand the issues and barriers for people from under-represented groups who live, work in and visit our region and to share and apply this knowledge to empower equality groups and service providers.

We were gratified by the following tribute paid to our work by Sir Francis Maude, Minister for the Cabinet Office, in recent letters to some of the south west's MPs.

"May I begin by recognising the work carried out by equality South West to eliminate discrimination and promote diversity and human rights in the local south west community. I would like to pay tribute to the value of this charitable work to individuals and communities."

In this predominantly rural area of England, the issue of rural isolation, and some local cultures less tolerant to 'difference' than is often found in more urban areas, significantly impacts on the opportunities and choices available to people from already disadvantaged backgrounds, and those who are the target of discrimination and prejudice.

Previous Consultation responses

Equality South West has responded to previous consultations on the Equality Act, the Public Duties more generally and the Specific Duties.

Whilst it did not fulfil all of our hopes with regard to the new specific duties underpinning the single Public Sector Equality Duty specific duties, we welcomed much in the government's response to the consultation published in January 2011. These draft regulations sought to address the needs of local communities for information on how priorities for action had been determined and would have made explicit who had been engaged and consulted prior to local decision making.

We are therefore dismayed that the government's position has been reviewed, apparently allowing the interests of powerful public authorities to outweigh those of local community organisations that represent vulnerable equality groups and those individuals directly affected by prejudice and discrimination.

Our new response

Conflicting measures and barriers to community empowerment

We believe that the new draft regulations represent fundamental contradictions. On the one hand the government expresses the aim, through the concept of the big society, of empowering local communities to hold public bodies to account, while on the other hand it removes the requirement for these bodies to publish key information that will assist communities to do this.

The government's aspiration toward transparency and openness has been much welcomed. It is arguably an essential pre-requisite to the success of the 'Big Society' agenda. However, the overall impact of the proposed changes to the specific duties place unfair and unnecessary obstacles in the way of individuals and civil society organisations accessing the necessary information and data for themselves.

This is particularly important, given the parallel withdrawal of a range of key mechanisms for holding local public bodies to account with regard to their equalities performance. For example, the significantly reduced resources of the EHRC, the removal of Comprehensive Area Assessments, the proposed changes to the Ofsted inspection framework, and the proposed abolition of Audit Commission.

We fear that an outcome of these combined measures will be the emergence of a 'postcode lottery' in relation to the elimination of discrimination and the promotion of equality of opportunity. The underlying assumption that all public bodies, of their own volition, will do what they evidently should, in an effective way and at the right time, is not supported by people's experience, as focus groups conducted by Equality South West have shown very clearly. Meaningful analysis of equality impacts is demonstrably not a routine part of public authorities' normal decision making. This is currently being demonstrated in the actions of some local authorities in the South West.

The government needs to pay heed to the ways in which some councils are proceeding in their decision making and build safeguards into the specific duties accordingly.

Opacity - not transparency

Many of the most disadvantaged communities and equality groups will be discouraged from challenging decision-making that does not comply with the public duty if the evidence on which decisions are made is not published accessibly, in advance and in full. The data underlying the proposed objectives should be publicised before final decisions are made.

Whilst undoubtedly important, statistical evidence, and particularly not inadequate statistical evidence – cannot properly inform either public bodies or communities as to the ways in which discrimination is experienced and in which inequalities impact on people’s lives. If the evidence and data that authorities publish do not provide an accurate and full picture of the nature as well as the extent of inequalities across all strands, the priorities and objectives set are unlikely to bring about the most significant and needful changes, but instead may reflect those that are easier to effect and measure.

The essential role of engagement with protected groups

Involvement of and consultation with protected groups in order to inform decision making was proposed in the earlier version of the draft specific duties. The draft specific duties now proposed represent a retrograde step in this regard and the quality of decision making will almost certainly suffer in many areas of the country.

Qualitative data and proactive engagement with people whom the legislation is designed to protect is essential and should be a specific duty, clearly set out in the regulations.

Unintended consequences: – increased bureaucracy

We also believe that an unintended consequence of the changes to the earlier draft specific duties will be to increase bureaucratic burdens on some public authorities where there is stronger representation among equality groups. The Policy review paper (17th March, Para 19) says that:

“Under the requirements of the general duty to have “*due regard*” to the matters set out in the Act, public bodies 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 and considering the effect of what they do on the whole community.”

This indicates that public bodies will be expected to carry out the work of evidence gathering, engagement and analysis, but not to publish it. This could well lead to equality groups resorting to Freedom of Information requests in order to secure access to the data, engagement activities, and the analysis undertaken.

Equality objectives

Equality South West expressed the view in the previous consultation that use of the phrase 'one or more' objectives will encourage less committed authorities to identify the easiest targets and not address some of the most needful issues affecting particular protected groups.

In conclusion

In our view, the 12th January 2011 draft regulations struck a reasonable balance.

The provisions contained therein would much more effectively enable local communities to hold public bodies to account and shift the emphasis away from bureaucratic processes to a transparent, analytical evidence-based, outcomes-focused one.

We most strenuously urge the government to revert to the 12th January draft.