



Department
of Health

Equality duty in 2013

How the Department of Health complies with the public sector equality duty

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Equality duty in DH

How the Department of Health complies with the public sector equality duty

Prepared by the Equality Policy and Strategy Team, January 2014

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Introduction

This publication explains how the Department of Health met the duty in section 149 of the Equality Act 2010 in the period from February 2013 to January 2014. It provides information for people who are affected by the Department's policies and practices in line with its statutory duties under the Equality Act (Specific Duties) Regulations 2011¹.

Information about the Department's workforce is published in a separate report which can be found in the Equality and Diversity section of our website².

Public sector equality duty

The Equality Act replaced the previous anti-discrimination legislation with a single Act. A key measure in the Act is the public sector equality duty, which came into force on 5 April 2011. The duty covers all public bodies and other organisations that are carrying out public functions on their behalf.

The duty has three aims. It requires all public bodies to have due regard³ to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it, including promoting understanding and tackling prejudice.

The 'protected characteristics' covered by the Equality Act are age, disability, gender reassignment, pregnancy and maternity status, race (includes ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex and sexual orientation. The Act also applies to marriage and civil partnership status, but only in respect of the first aim of the duty (eliminating discrimination).

Further guidance on the public sector equality duty is available from the Government Equalities Office and the Equality and Human Rights Commission⁴.

Health inequalities duty

The Secretary of State for Health also has an overarching duty to have regard to the need to reduce inequalities between the people of England with respect to the benefits that may be obtained by them from the health service. There are similar but separate health inequalities duties for NHS England, Clinical Commissioning Groups and Monitor.

The duty, which came into effect on 1 April 2013, covers all of the Secretary of State's NHS and public health functions, and relates to the whole population of England including those not

¹ <http://www.legislation.gov.uk/uksi/2011/2260/made>

² <https://www.gov.uk/government/organisations/department-of-health/about/equality-and-diversity>

³ Having 'due regard' means consciously thinking about the three aims of duty as part of decision-making processes.

⁴ <https://www.gov.uk/equality-act-2010-guidance#public-sector-equality-duty>

registered with general practice, or who are not patients. The duty encompasses all health inequalities dimensions, not just income or socio-economic inequalities. Nor is it limited to those with protected characteristics, specific disabilities and conditions, or those in specific “seldom seen or heard” groups. Health inequalities often focus in particular on geographical and social-economic differences that may not be covered by the categories aligned with the protected characteristics of the Equality Act.

Addressing health inequalities and advancing equality are complementary. Both pursue the government’s aims of fairness and social justice and are central to the Department’s objectives to put people at the heart of health and care, helping them to live better, longer lives and delivering quality services. However, despite these overlaps there are important differences in the underpinning legislation, the conceptual framework and the methods of accountability between the two duties.

Department of Health officials must be able to demonstrate they have complied with both the public sector equality duty and the health inequality duty. Having due regard to the matters mentioned in one duty does not necessarily achieve the other.

The Department’s performance in meeting the health inequalities duty is outside the scope of this document. The Secretary of State for Health will include in his annual report on the performance of the health service in England an assessment of how effectively he has discharged his duty to have regard to the need to reduce inequalities.

Equality objectives 2012-16

The Department is working towards a comprehensive set of equality objectives which were initially published in April 2012⁵ in line with our statutory duties under the Equality Act (Specific Duties) Regulations 2011.

The objectives contribute to the six priorities of the Department of Health’s Business Plan and reflect a commitment to make equality integral to the day to day leadership of the health and social care system. They help focus attention on the priority equality issues in all aspects of the Department’s business in order to deliver improvements in policy making, service delivery and employment practices. Every directorate is expected to mainstream advancing equality into the development of its business objectives in a way that is explicit and clear to external and internal audiences.

An update was published in 2013 which provides further detail on the objectives and how we will measure our progress towards meeting them⁶. Further updates will be published in the Equality and Diversity section of the Department’s website.

Equality Delivery System

The Equality Delivery System is a toolkit that was commissioned by the Equality and Diversity Council in 2010. It was developed by the NHS, for the NHS, taking inspiration from existing work and good practice.

The main purpose of the EDS is to help local NHS organisations, in discussion with local partners including local populations, review and improve their performance for people with

⁵ <https://www.gov.uk/government/publications/department-of-health-equality-objectives-2012-to-2016>

⁶ <https://www.gov.uk/government/publications/department-of-health-equality-objectives-2012-to-2016-progress-update>

characteristics protected by the Equality Act 2010. By using the EDS, NHS organisations can also be helped to deliver on the public sector equality duty.

The second version of EDS, which is more streamlined and simpler to use, was published by NHS England in November 2013⁷.

⁷ <http://www.england.nhs.uk/ourwork/gov/edc/eds/>

Meeting the equality duty

Apart from being a legal requirement, there are clear business benefits from considering equality as a matter of course in policy development and service design. The Department aims to put equality and human rights at the heart of all its business where it forms part of everything that it does.

To realise this aim, all departmental staff must be aware of the public sector equality duty and consciously consider the impact of their work on people sharing the whole range of characteristics protected by the Equality Act. They are supported by a central equality team which offers advice about embedding equality into programme plans, policy proposals and about the delivery of the Department's equality objectives.

The Department's overall compliance with equality legislation is assured by the Director General's Equality and Human Rights Assurance Group on a quarterly basis. Every Director General has appointed a Director Level Assurance Lead in his or her directorate who are in turn supported by nominated officials from their directorates as well as a named contact within the Department's central equality team.

Where it's proportionate in the circumstances, the Department publishes equality analyses or impact assessments for specific policies. These documents show what we've done to consider how specific policies could affect people protected by the equality legislation. Officials have the option of using a template to carry out such analyses⁸ or they can incorporate their assessments into policy and consultation documents or wider impact analyses.

A list of such documents published or updated by the Department of Health in the period from February 2013 to January 2014 can be found below. It is important to bear in mind that the Department's arm's length bodies⁹ are also subject to the general equality duty. Some are also subject to the requirements of the Equality Act (Specific Duties) Regulations 2011 and as such, they publish information about their own compliance with the general equality duty on their own websites.

Document name	Location
A Mandate from the Government to NHS England: April 2014 to March 2015 - coordinating statement	https://www.gov.uk/government/publications/nhs-mandate-2014-to-2015
Adult Social Care Outcomes Framework 2013-14	https://www.gov.uk/government/publications/the-adult-social-care-outcomes-framework-2013-to-2014
Care Bill 2013-14	https://www.gov.uk/government/publications/the-government-published-a-series-of-impact-assessments-alongside-the-care-bill

⁸ <https://www.gov.uk/government/publications/analysing-the-impact-on-equalities-assessment-template>

⁹ <https://www.gov.uk/government/publications/arms-length-bodies/our-arms-length-bodies>

Consultation on standardised packaging of tobacco products	https://www.gov.uk/government/consultations/standardised-packaging-of-tobacco-products
Directive 2011/24/EU on the application of patients' rights in cross-border healthcare	https://www.gov.uk/government/consultations/eu-directive-on-patients-rights-to-healthcare-in-other-european-countries
Health Care and Associated Professions (Indemnity Cover) Order 2013	https://www.gov.uk/government/consultations/protecting-patients-from-negligence
Health protection (ships and aircraft) regulations	https://www.gov.uk/government/consultations/bringing-port-health-regulations-up-to-date
Immigration sanctions for those with unpaid debts arising from the NHS (Charges to Overseas Visitors) Regulations 2011	https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations
Interim Coordinating Equality and Impact Statement - Refreshing the Mandate to NHS England 2014 - 2015	https://www.gov.uk/government/consultations/refreshing-the-nhs-mandate
Living well for longer - a call to action on reducing avoidable premature mortality	http://livinglonger.dh.gov.uk/2013/03/04/mortality-call-to-action/
Management of HIV-infected Healthcare Workers	https://www.gov.uk/government/consultations/management-of-hiv-infected-healthcare-workers
Mid Staffordshire NHS FT public inquiry: government response	https://www.gov.uk/government/publications/mid-staffordshire-nhs-ft-public-inquiry-government-response
Overseas visitors charging regulations and guidance	https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations
Public Health Grants to Local Authorities 2013-14 and 2014-15	https://www.gov.uk/government/publications/ring-fenced-public-health-grants-to-local-authorities-2013-14-and-2014-15
Public Health Outcomes Framework 2013 to 2016	https://www.gov.uk/government/publications/healthy-lives-healthy-people-improving-outcomes-and-supporting-transparency
Sustaining services, ensuring fairness - A consultation on migrant access and financial contribution to NHS provision in England	https://www.gov.uk/government/consultations/migrants-and-overseas-visitors-use-of-the-nhs

Requesting further information

Where there is no published equality analysis for a departmental policy or decision, members of the public can make a request under the Freedom of Information Act 2000 by using the on-line form at <http://www.info.doh.gov.uk/contactus.nsf/memo?openform> or by addressing their correspondence to:

Ministerial Correspondence and Public Enquiries Unit
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

Further information on making a Freedom of Information request is available at <https://www.gov.uk/make-a-freedom-of-information-request/the-freedom-of-information-act>