

## **(Draft) Response from the Institute of Equality and Diversity Practitioners to Government consultation on the public sector specific duties**

### **Deadline for comments on the draft response**

The deadline for comments to the Government Equalities Office on the draft specific duties regulations is Thursday **21 April 2011**. To enable incorporation of IEDP consultees' views, please send your feedback on the draft response by email to [info@iedp.org.uk](mailto:info@iedp.org.uk) by Monday **18 April 2011**.

### **INTRODUCTION**

1. The Policy Review Paper, "Equality Act 2010: The public sector Equality Duty: reducing bureaucracy" was published by the Government Equalities Office on 17 March 2011. To read the paper, go to
2. <http://www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf>
3. The purpose of the Policy Review Paper ["the paper"] is to seek views on new draft regulations that will impose specific duties to support the performance of the new single general public sector Equality Duty, which comes into force on 5 April 2011. Government intends that the specific duties will come into force in July 2011.
4. The deadline for comments to the Government Equalities Office on the draft specific duties regulations is **21 April 2011**.
5. The Institute of Equality and Diversity Practitioners has considered the detail of the paper and the draft regulations appended to it, called "Equality Act 2010 (Specific Duties) Regulations 2011". The IEDP Board set out its response below.
6. The response reflects the views of IEDP member and non-member consultees who are equality, diversity and human rights practitioners, and of other consultees with an interest in equality law and practice.

### **EVIDENCE-BASED EQUALITY OUTCOMES**

7. The key differences between the proposed new draft regulations on public sector specific equality duties and those published on 12 January 2011 are discussed below. In the name of reducing bureaucracy, the Government proposes to remove 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
8. In our view, these are the very features that enable citizens to hold public bodies to account for delivering equality outcomes.
9. The Government's proposals for public sector specific equality duties will, in our view, roll back the gains made by all communities that enabled them to hold public bodies accountable under the legacy legislation for equality progress through the publication of community engagement practice; and equality analyses including the information considered. Done effectively, this is not unnecessary bureaucratic process. On the contrary, the publication of community engagement inputs and equality analyses are essential tools of local and national democratic accountability.
10. We note that the Government is interested in the delivery of equal treatment and equal opportunities for all. It is not clear how the delivery of equality outcomes will be evidenced by public bodies if they are not required to publish key aspects of decision-making. Without publication, how can all citizens and communities do the following:
- know how public body equality objectives are shaped and outcomes achieved?
  - know to what extent public bodies have taken their views into account?
  - hold public bodies to account for delivering equality objectives?
  - begin to identify equality gaps?
  - put forward ideas that avoid unnecessary bureaucracy?
  - suggest ways of achieving savings without losing quality?
11. For example, how will people with different needs related to hearing impairment know if their community is properly engaged by public bodies in setting objectives to meet their particular needs in service delivery and employment? How will public bodies be held accountable for making adequate service provision for vulnerable minority groups such as elderly lesbians and gay men? How will any community know if adequate service provision is made for their community when equality analyses are not available? How will anyone know what officials take into account when making decisions if evidence of engagement and considerations of due regard to the general equality duty are not published?
12. It is helpful to recall the great pain and hurt that was felt by many people in the Jewish and Muslim communities when, in 2006, DEFRA announced their decision to outlaw ritually slaughtered meat. When reaching their decision, the department failed to undertake an equality impact assessment. As a result of this failure, relations between communities were damaged.
13. There are many more examples of public bodies failing to engage with relevant communities or to assess the equality impacts of policies and practice on affected communities. Some of these failures have been subject to successful Judicial Reviews. Others have resulted in expensive changes to policy and practice, avoidable when official decisions are based on sound evidence.

14. Without publication, citizens and groups will have no alternative but to make huge numbers of Freedom of Information requests to all public bodies in order to see how decisions were made when they have equality impacts on communities. This will have considerable resource impacts on all public bodies, communities and citizens. In our view, as they are burdened by the duty to respond to individual Freedom of Information requests, pressure on public bodies to provide evidence of engagement and considerations of due regard will increase if the requirement to publish the evidence is removed.
15. The general and specific duties of the Disability Discrimination Act 2005 and amended Sex Discrimination Act 1975 meant that equality considerations became increasingly central to public sector decision-making.
16. Even so, some public bodies did not learn how to consult or engage effectively with communities affected by policy and practice or make use of the information provided by myriad organisations such as Age UK, Stonewall, Runnymede Trust, Rota, Nacro and Inquest.
17. Many equality and diversity practitioners remember how few local authorities exercised due regard between 1978 and 2002, although required to do so by Section 71 of the Race Relations Act 1976. During that time, the authorities faced almost no consequences for failing to meet their general duty to promote race equality. The Stephen Lawrence Inquiry Report by Sir William Macpherson, published in 1999, led to the amendment of Section 71. The report's recommendations ensured that the statutory duty was extended to many more public bodies through the implementation of the general and specific duties of the Race Relations Amendment Act 2000. Significantly, public bodies were required to demonstrate, through published evidence, that due regard had been satisfied.
18. In our view, the Government's proposals to remove the specific duty to publish will return citizens to the days before the Race Relations Act 1976 was strengthened, leaving it open to public bodies to decide what is in the best interest of communities. In the name of lessening bureaucracy, the proposals ignore the good practice by the majority of public bodies that has come out of Stephen Lawrence's tragic death.
19. In our view, the removal of the requirement to publish information will increase friction between those with particular protected characteristics and those without such characteristics. The Government's proposals may instead foster ignorance, prejudice and misconceptions about the facts regarding inequality as public bodies become less transparent and accountable.

## **TOP DOWN TARGETS**

20. The paper make a number of references to top down targets, paragraph 3; 8; 11(b) 13; 16. However, no examples of such targets are provided to illustrate when or where this has occurred.

21. Many equality and diversity practitioners work with public sector frontline managers and other employees on the means of providing fairness and equality evidence for services and employment. Practitioners have not reported to the IEDP any examples of 'top down' targets. On the contrary, practitioners report that equality targets result from effective consultation and engagement with citizens and employees.
22. The IEDP knows that leadership and accountability means that senior managers approved their organisations' equality work programmes. We also know that they sometimes failed to deliver the equality outcomes published in their work programmes. Nevertheless, the specific duties of legacy equality legislation meant that, through evidence-based publication, public bodies could be held directly accountable to citizens and employees for achieving the explicit aims, objectives and targets set out in equality work programmes.

## **BENEFITS OF PUBLICATION**

23. As happened before the general and specific duties of the legacy legislation were introduced, officials who make decisions will only ever have partial information if they fail to tap into the knowledge and creativity of all citizens, including those in marginalised communities.
24. It may be criticised as bureaucratic process to demonstrate transparency and inclusiveness through publication but this is a key part of the strategy to achieve equality within and between all communities. If the results of community engagement and considerations of due regard are not published, citizens in all communities will be denied the opportunity to understand why particular decisions are made; and to identify any unintended direct and indirect discrimination that may result from the decisions.
25. The financial and community relations costs of un-doing decisions that have unlawful discriminatory impacts can be limited by publishing the results of community engagement and considerations of due regard, giving citizens an early opportunity of making positive interventions.
26. During its short history, the Institute of Equality and Diversity Practitioners has trained and advised public body practitioners on effective means of engaging with communities and providing evidence of due regard to equality considerations. We know about many examples of good equality practice. For example, the Department for Work and Pensions has done excellent work with a wide range of disabled people so that policies and practices do not exclude or marginalise. Similarly, the Crown Prosecution Service and many police forces have reduced fears and anxieties about using relevant justice services by working closely with communities affected by hate crimes. Without the facility to scrutinise published engagement practice and equality analyses, how might any interested person know that due regard has been exercised?
27. In the interests of democratic accountability and transparency, and to avoid the bureaucracy associated with Freedom of Information requests, the IEDP calls on the Government not to proceed with the proposals outlined in its Policy Review

Paper, "Equality Act 2010: The public sector Equality Duty: reducing bureaucracy".

**SIGNED**

Linda Bellos, IEDP Chair  
Juliette Brown, Board Member  
Paul Carswell, Board Member  
Terri Connor, Board Member  
Kate Hinton, Board Member  
Julie Kaya, Board Member  
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**SIGNATURES IN SUPPORT OF IEDP RESPONSE**

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