

## Frequently Asked Questions about the Equality Act 2010: The public sector Equality Duty's consultation paper

### What is the Equality Act 2010?

The Equality Act 2010 replaced the existing anti-discrimination laws with a single Act. The new Act also includes a new public sector Equality Duty, replacing the three separate duties on public bodies relating to race, disability and sex equality with a single duty that will also cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

### What is the public sector Equality Duty's consultation paper all about?

The government's consultation is on the secondary legislation needed to fully implement the new Duty. It asks for views on proposals for the draft regulations containing the specific duties that help public bodies meet the general Equality Duty in the Act. It also sets out proposals on which public bodies will be subject to the general Equality Duty and the specific duties as well as key changes in how public bodies are expected to embed equality into all their functions and be held accountable by the local population. The consultation deadline is 10 November 2010

### When does the Equality Act 2010 come into force?

Over 90% of the provisions in the Act come into force from 1 October 2010. This includes:

- Simpler law - less complex and unwieldy law
- a new definition of "protected characteristics" that of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation
- provisions prohibiting discrimination in employment and service access/delivery
- the prohibition of discrimination arising from disability
- the duty to make reasonable adjustments where a provision, criterion, practice or physical feature puts a disabled person at a substantial disadvantage compared to non-disabled people.
- Clear and consistent protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic, inc. carers
- Clearer protection for breastfeeding mothers
- A new integrated Equality Duty on public bodies

- Protecting people from dual discrimination - direct discrimination because of a combination of two protected characteristics.
- Preventing employers asking job applicants questions about disability or health before making a job offer, except in specified circumstances;

### **When will the new Equality Duty come into force?**

Although the Equality Act will come into force on 1 April 2010, the new Equality Duty component of the Act will not come into force until 1 April 2011

### **To whom does the Equality Duty apply?**

The Equality Duty applies to most public bodies (such as the State, NHS, social services, police, courts, local authorities etc.) that have been specifically listed in Schedule 19 of the Equality Act. In addition, the Equality Duty will also apply to some private bodies that provide "public functions".

### **What is a general duty?**

The general duty means that those subject to the Equality Duty must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimization
- advance equality of opportunity between different groups
- foster good relations between different groups

### **What are specific duties?**

Some public bodies will be legally be required to do more than just pay due regard to the general duty. The Government has put forward four principles that underpin the specific duties proposed in the Act. The specific duties are legal requirements designed to help public bodies meet the general duty as setout below.

### **What are the four principles that underpin the specific duties?**

The consultation document has a focus on locally driven outcomes rather than those dictated from the centre. The message is about ensuring transparency and the ability of public bodies to demonstrate to their local population how information about equality is gathered, analysed and used. The Government has put forward four principles which underpin the specific duties proposed in the Act:

- **Promoting transparency** – the proposals empower citizens and civil society groups to hold public bodies to account by requiring them to put their data relating to equality in the public domain using open, standardised formats and licences
- **Promoting choice** - enables citizens to exercise greater choice more freely available data will enable people to compare public bodies and, where possible, choose between providers. Where choice is not available, free and open information will give people the power to use democratic accountability to hold organisations to account and drive up standards
- **Devolving power** – the proposals empower public bodies to identify and work towards achieving their own priorities. They encourage innovation and ownership by limiting Whitehall interference and prescription
- **Focusing on measurable results** – the proposals ensure that public bodies focus on achieving improved results by requiring them to be transparent about the objectives they will work towards in order to fulfil the aims of the Equality Duty. The proposals also require them to publish robust data so the public can hold them to account for progress made in eliminating discrimination, advancing equality and fostering good relations.

#### **What is the change for the previous legislation?**

The general duty now applies to eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

#### **Do public bodies still have to publish an equality scheme and action plans?**

There will no longer be a requirement for a public sector organisation to maintain a detailed equality scheme, or produce lengthy action plans against each protected characteristics (strands). Emphasis in the new duty is more on equality objectives to be mainstreamed via an organisations business/corporate planning process. An organisation will not have an equality objective against each protected characteristic. The focus is very much on giving local areas flexibility to determine what is appropriate for them.

#### **How will public bodies be held accountable?**

Through this consultation the government has reiterated its concept of a 'right to data' (collecting and publishing relevant/accurate data). For equalities it is intended that communities will question public bodies on slow progress in eliminating discrimination, advancing equality and fostering good relations.

#### **What are the key changes in how equality is embedded within public bodies?**

There is a distinct move away from process, demonstrated through the removal of the requirement for public bodies to maintain an equality scheme; specific equalities duties in procurement processes; equalities reporting by the Secretary of State. This move is

balanced by increased transparency of reporting and data, and a move towards increased public accountability of public bodies. Public bodies will be judged on the outcomes that they achieve.

### **What is the expectation on public bodies between now and April 2011?**

Public bodies will be "required to comply with the general duty immediately upon repeal of the existing race, gender and disability duties - this will not be before April 2011. Public bodies will be expected to publish equality objectives and measures of success through their business planning process. However these will not have to be published until April 2012.

### **What provisions is the government still considering?**

The government is still considering a range of other provisions which are made within the Act. The main ones of which are:

- the Socio-economic Duty on public authorities
- positive action in recruitment and promotion
- prohibition on age discrimination in services and public functions

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## **HOW NHS SOUTHWARK AND SOCIAL CARE WILL RESPOND TO THE NEW EQUALITY DUTY**

In recent years Southwark health and social care has been one of the leading organisation in embedding equality and human rights into all its functions and services access/delivery. Southwark health and social care has also contributed to the department of health's pilot project on "human rights in healthcare – a framework for local action", which is now in its third phase. Southwark health and social care is working with the GP Out of Hours Service and GPs to raise awareness of the Act and we run regular training courses for staff.

The Equality Act 2010, and in particular the Equality Duty, presents new challenges for Southwark health and social care. Subject to any changes from the outcome of the government's consultation on the Equality Duty, Southwark health will continue to consolidate on embedding equality and human rights into its core functions (workforce and operational) and all organisational strategies and business objectives. We will do this by:

- Consulting widely on the equality duty and in particular on the four principles which underpin the specific duties to ensure that we meet local priorities and that our equality outcomes are transparent
- Building and publishing equality objectives and measures of success through our business planning process.
- Continuing to develop a human rights based approach to service access/delivery

- Continuing to develop service access/delivery on the basis of the human rights principles of fairness, respect, equality, dignity and respect (the so-called FREDA principles).
- Continuing to provide mandatory equality and human rights training for all our staff
- Embedding equality and human rights into Personalisation
- Refreshing Equality Impact Assessments across all services/teams and functions.
- Working with our commissioning partners and provider services to integrate equality and human rights into the commissioning cycle
  
- Auditing services in preparation for ending Age discrimination in the provision of services (due sometime in 2012)
- Developing and building equality and human rights capacity within the Third Sector, BME communities and GP practices
- Integrating equality and human rights outcomes into the performance management framework and the Knowledge and Skills Framework
- Maintaining an up-to-date intranet and public website with transparent and relevant information on equality and human rights

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