



Government
Equalities Office

Putting equality at the heart of government

Reducing the Deficit Fairly

- How this piece of work came about
- Connection to all public bodies
- Connection to the Fire Service



Background

- In May 2010 the Government announced plans to save £6 billion this year to help tackle the country's deficit.
- This was reflected in the Budget announcement June 2010,
- In the Spending Review Framework 2010, issued by the Treasury to departments in June, the Government clarified the detail of the processes which underpin the Spending Review.
- All public bodies are subject to the gender, race and disability duties set out in the Sex Discrimination Act 1975, Race Relations Act 1976 and Disability Discrimination Act 1995.



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Current Position

- General and specific duties
- Pro-active duty
- Three strands
 - Race
 - Gender
 - Disability



General duties (1) – race

- S 71 Race Relations Act 1975
Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, **have due regard** to the need—
 - (a) to eliminate unlawful discrimination
 - (b) to promote equal opportunities and foster good relations between persons of different racial groups



General duties (2) – gender

- S76A Sex Discrimination Act 1975
A public authority shall in carrying out its functions **have due regard** to the need -
 - (a) to eliminate unlawful discrimination and harassment;
and
 - (b) to promote equality of opportunity between men and women.



General duties (3) - disability

- S49A Disability Discrimination Act 1995
Every public authority shall in carrying out its functions **have due regard** to—
 - (a) the need to eliminate discrimination that is unlawful under the this Act;
 - (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
 - (c) the need to promote equality of opportunity between disabled persons and other persons;
 - (d) the need to take steps to take account of disabled persons' disabilities even where that involves treating disabled persons more favourably than other persons;
 - (e) the need to promote positive attitudes towards disabled persons; and
 - (f) the need to encourage participation by disabled persons in public life.



Codes of Practice

Paragraph 1.5 of the Commission for Racial Equality "Code of Practice on the Duty to Promote Race Equality": The duty of public authorities to promote race equality in *employment* will:

- help to make the authority's workforce more representative of the communities it serves;
- attract able staff;
- avoid losing or undervaluing able staff;
- improve staff morale and productivity;
- improve the way staff are managed;
- help to develop good practice; and
- help to avoid claims of unlawful racial discrimination



Due regard (1)

- Commission for Racial Equality "**Code of Practice on the Duty to Promote Race Equality**":
- Paragraph 3.16:
 - (a) Could the policy or the way the function is carried out have an adverse impact on equality of opportunity for some racial groups? In other words, **does it put some racial groups at a disadvantage?**
 - (b) Could the policy or the way the function is carried out **have an adverse impact on relations** between different racial groups?
 - (c) **Is the adverse impact, if any, unavoidable?** Could it be considered to be unlawful racial discrimination? Can it be justified by the aims and importance of a policy or function? Are there other ways in which the authority's aims can be achieved without causing an adverse impact on some racial groups?
 - (d) Could the adverse impact be **reduced by taking particular measures?**
 - (e) **Is further research or consultation necessary?** Would this research be proportionate to the importance of a policy or function? Is it likely to lead to a different outcome?"



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Due regard (2)

- Sedley LJ, in *R (BAPIO Action Ltd) v Secretary of State for the Home Department* [2007] EWCA Civ 1139, described compliance with section 71 not as “rearguard action following a concluded decision but as an essential preliminary to any such decision.”



Due regard (3)

- Black J in R (on the application of JL and another) v Islington London Borough Council [2009] EWHC 458 (Admin) said:
- “The local authority submits that it has had regard to section 49A. However, there is no audit trail confirming that the local authority has complied with its DDA duty or even had reference to it at all.
- The local authority has produced no documentation to demonstrate a proper approach to the question.
- There is no evidence that a proper impact assessment was carried out to see how the proposals were likely to affect particular groups of disabled children.
- In fact, very little was offered by way of submissions on this issue during the hearing in front of me.”



Due regard (4)

- In *Baker v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141 Dyson LJ said at para 31:
- In my judgment, *it is important to emphasise that the section 71(1) duty is not a duty to achieve a result, namely to eliminate unlawful racial discrimination or to promote equality of opportunity and good relations between persons of different racial groups. It is a duty to have due regard to the need to achieve these goals.*



Due regard (5)

- *'... What is due regard? In my view, it is the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision maker is performing.'*



Due regard (6)

- *'The question in every case is **whether the decision maker has in substance had due regard to the relevant statutory need.** Just as the use of a mantra referring to the statutory provision does not of itself show that the duty has been performed, so too a failure to refer expressly to the statute does not of itself show that the duty has not been performed **To see whether the duty has been performed, it is necessary to turn to the substance of the decision and its reasoning**'.* (para 37)



Due regard (7)

- **In R (on the application of the Equality and Human Rights Commission) v Secretary of State for Justice [2010] EWHC 147 (Admin) Wyn Williams J said at: para 65:**
- **“... it must be for the Defendant to assess what weight is given to various factors relevant to the statutory duties. I remind myself that there is no duty to undertake an impact assessment let alone undertake it in a particular way. The obligation of the Defendant is to have due regard to the relevant statutory duties. It must be for the Defendant to assess the weight to be given to the many factors which are necessarily to be considered.”**



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Equality Act

Public Sector Equality Duty



Equality Duty

- Equality Act (2010) Section 149 creates single integrated public sector Equality Duty
- Duty covers race, disability, and gender (existing duties), plus age, sexual orientation, religion or belief, gender reassignment, and pregnancy and maternity – collectively referred to as the protected characteristics
- Public bodies must have due regard to the need to:
 - eliminate discrimination, harassment, and victimisation
 - advance equality of opportunity
 - foster good relations
- General duty is underpinned by specific duties, to help public bodies perform better



New Government, new specific duties

Two guiding principles for the new administration:

Horizon shift

- Looking to the long-term, considering how things will look in 5 years time

Power shift

- Looking to devolve power, cut bureaucracy, and empower citizens

For the specific duties that means:

- Move away from process-driven, tick-box approaches to equality
- Move from bureaucratic accountability to democratic accountability
- Focus on local solutions for local needs
- Transparency in releasing data is of paramount importance



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What does that mean in practice?

For the specific duties, that means a focus on:

- **Promoting transparency**
- **Devolving power**
- **Achieving measurable results**
- **Promoting choice**



Specific duties – transparency

- Public bodies will need to publish:
 - information regarding the protected characteristics of their workforces (for organisations over 150 staff)
 - assessments of the likely impact of their proposed policies and practices
 - information they took into account in assessing the likely impact of their proposed policies and practices
 - details of any engagement with relevant people
- Information could be raw data; routine monitoring data; staff, customer or population surveys; data about complaints; statistics collected by external bodies such as the Office for National Statistics



Specific duties - objectives

- Public bodies must publish specific, measurable, reasonable equality objectives, to further the aims of the Equality Duty
- Before setting their objectives, public bodies must consider all the relevant information and data they have published
- Public bodies must set out how progress towards the objectives will be measured, and publish further information regularly (at least annually) to show how they are performing
- No requirement to set an objective for each protected characteristic, or for each of the three aims of the Equality Duty – freedom to focus on the priority issues for that organisation



Equality impact assessments

- The specific duties do not require them, but the assessment of the potential impact of policies on equality is inherent in the public sector Equality Duty
- Public bodies must, in exercising their functions, have due regard to the need to eliminate discrimination, harassment, and victimisation; advance equality of opportunity; and promote good relations
- To do that, and demonstrate that they have done that, they will obviously need to understand how their policies and practices affect or could affect equalities outcomes – and early enough to influence policy development
- We will not specify the exact process they should go through, or the form they should use. But the EHRC will issue guidance on this for public bodies, to help them in meeting the general duty



Code, guidance, enforcement

The Equality and Human Rights Commission (EHRC) will produce:

- Statutory Code – explaining in detail what the Equality Duty legally requires
- Quick-start Guidance – setting out briefly the key things a public body needs to do to comply with the Equality Duty, and highlighting the changes from the current public sector duties on race, gender, and disability

The EHRC has statutory powers to enforce the specific duties. But new focus on transparency and democratic accountability should mean that citizens and representative groups also help hold bodies to account, freeing up the EHRC to take a strategic role, and consider the big picture



Transitional arrangements

The policy intention is that public bodies should:

- Release relevant data (including workforce data) on a regular basis from April 2011
- Draw on the data and set equality objectives (and explain how progress will be measured) no later than April 2012
- Publish relevant data on a regular basis (at least annually) thereafter to show how they are performing against the duty
- Revise their objectives every 4 years, so (at the latest) by April 2016



Consultation arrangements

- The consultation runs until 10 November 2010
- Given the changes from earlier proposals on the specific duties, we are putting together a coordinated package of engagement activity
- Very happy to come and speak to specific groups, or to provide slides for depts to use with stakeholders, or articles for mailshots or journals, etc
- Consultation document can be downloaded from:

www.equalities.gov.uk