



Government
Equalities Office

Putting equality at the heart of government

**Equality Bill: Making
it work**
**Policy proposals for
specific duties**
A consultation

June 2009

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Ministerial Foreword

Maria Eagle MP

Deputy Minister for Women and Equality



We are proud of our record in fighting discrimination and promoting equality. Over the last 40 years we have created a strong framework of anti-discrimination legislation, from the first Race Relations Acts back in the 1960s to the important steps towards equality for women in the Equal Pay and the Sex Discrimination Act in the 1970s. From strengthening rights for disabled people in the 1990s to the banning of age, religion or belief and sexual orientation discrimination since 2000, the Government has led the way. In addition, we have introduced pioneering legislation requiring public bodies to proactively root out discrimination in all they do. The public sector race, disability and gender equality duties we have introduced over the last nine years have focused the attention of our public bodies on the need to tackle discrimination and disadvantage and promote equality of opportunity, both as major employers and when designing and delivering public services.

We have a right to expect our public bodies to be exemplar employers in their approach to tackling discrimination and promoting equality and diversity in their own workforces. Public bodies are major employers which need to access the skills and talents of all. Diverse organisations are high performing organisations. By treating their employees fairly and reflecting the diverse communities they serve, public bodies can ensure that different perspectives are present in the organisation.

Public bodies have an important role to play in supporting people and helping them to achieve their potential – through the provision of key services such as housing, health and education. Public services are for everyone, but different people have different needs and face different barriers. World class public services are ones which take into account the needs of their users, not their providers. They should promote fair chances for all.

The public sector equality duties have supported a more personalised approach to public service delivery, promoting services which meet the needs of different groups and tackle the disadvantages they face, so helping public bodies make progress towards closing the gaps in educational achievement and tackling inequitable health outcomes. Mainstreaming equality into the design and delivery of public services benefits everyone and drives up standards.

The new Equality Bill now before Parliament marks a major step forward in our approach to securing a just and fair society. It introduces a number of measures to strengthen and simplify our equality law, including placing a new single Equality Duty on public bodies. The new Equality Duty builds on the success of the existing duties and for the first time extends to cover the protected characteristics of age, religion or belief, sexual orientation and gender reassignment in full. This consultation paper sets out our proposals for the specific requirements, to be set out in secondary legislation, which will help public bodies meet the new Equality Duty in an effective and proportionate way.

Our proposals for the specific duties are based on research and the input of experts. They start from our firm commitment not to weaken the protection we have already put in place, but to build on, refine and remodel the best aspects of the current equality duties in a way which will suit an expanded and integrated Equality Duty. We want to place more power in the hands of local services, communities and professionals at the front line of public services. So our proposals are based on setting standards, principles and high-level objectives, moving away from specific duties requiring prescriptive processes and instead giving greater freedom to public bodies about how they achieve equality outcomes. This will allow for greater innovation and help public bodies build the Equality Duty into their own organisational culture, to deliver real improvements in people's lives rather than a tick-box approach to compliance.

We are now asking for your input to ensure the duties are as effective as possible in helping to secure the kind of society we want: a cohesive society in which the rights of individuals are protected and all can reach their potential.

A handwritten signature in black ink that reads "Maria Eagle". The signature is written in a cursive style with a large, stylized 'M' and 'E'.

Chapter 1: Preface

Purpose of this document

- 1.1 This document sets out Government's proposals for a set of specific duties to support better performance of the new Equality Duty included in the Equality Bill 2009. We welcome your views.

Territorial application

- 1.2 The proposals in this document apply to public authorities operating across Great Britain in relation to non-devolved functions, and to public authorities operating in England. Separate consultation documents will be issued by the Scottish Government and the Welsh Assembly Government setting out their plans for specific duties for relevant Scottish and Welsh public authorities.

Timing

- 1.3 Following this consultation we will continue to refine our policy in the light of the responses to this consultation and other emerging information from our discussions both within and outside government. We will then publish draft regulations for consultation following enactment of the Equality Bill.
- 1.4 We aim to commence the new Equality Duty, and for the regulations to come into force, in April 2011. This will allow time for the public sector, business and other interested parties to prepare, and for comprehensive guidance to be provided by the Equality and Human Rights Commission and others prior to implementation.

Duration of this consultation

- 1.5 The closing date for receipt of comments is **30 September 2009**. Any views received after this date may not be considered or reflected in our analysis.

How to respond

- 1.6 When responding to this document please use the proforma at Annex A. An electronic version is available to download from the Government Equalities Office website at: www.equalities.gov.uk.

1.7 Responses should be sent to:

By email specificduties@geo.gsi.gov.uk
By post Equality Duty Specific Duties Responses
 Government Equalities Office
 Zone J10, 9th Floor, Eland House
 Bressenden Place
 London SW1E 5DU

1.8 Please ensure that your response reaches us by **30 September 2009**.

1.9 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation please make clear who the organisation represents and, where applicable, how the views of members were assembled.

Queries about this document

1.10 Any queries about the subject matter of this document should be made to Harshbir Sangha by:

Telephone: 020 7944 0627
Email: Harshbir.sangha@geo.gsi.gov.uk

1.11 We have sent this document to a large number of people and organisations who we believe have an interest in the proposal. Please do share this document with, or tell us about, anyone you think will want to respond.

1.12 We will consider any requests for accessible formats that may be required. Please send your request to:

Equality Duty Specific Duties Responses – accessible formats
 Government Equalities Office
 Zone J10, 9th Floor, Eland House
 Bressenden Place
 London SW1E 5DU
Telephone: 020 7944 0627
Email: specificduties@geo.gsi.gov.uk

Freedom of Information

- I.13 The information you send us may need to be passed to colleagues within the Government Equalities Office and may be published in a summary of responses received.
- I.14 All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000 (FOIA) or the Data Protection Act 1998. If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Government Equalities Office.
- I.15 The Government Equalities Office will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Code of Practice on Consultation

- I.16 The Government Equalities Office has signed up to the Code of Practice on Consultation produced by the Department for Business, Enterprise and Regulatory Reform. This document and the consultation process have been planned to adhere to the Code of Practice, and are in line with the seven consultation criteria:

1: When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2: Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3: Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4: Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5: The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6: Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7: Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Chapter 2: Executive Summary

- 2.1 Everyone has the right to be treated fairly and to have the opportunity to fulfil their potential. The public sector equality duties are key to achieving our goal of firmly embedding equality of opportunity at the heart of our public services. The new Equality Duty provides a golden opportunity to build on the success of the current race, disability and gender equality duties, to retain their successful features whilst learning from what has not worked so well. In order for the Equality Duty to fulfil its promise, we need specific duties which will help public authorities deliver improved equality outcomes.
- 2.2 We want a set of specific duties that are *flexible*, so that public authorities are not constrained into taking action which is unnecessary or unproductive; *light-touch*, so we avoid placing unnecessary burdens on our public services; and *proportionate* so that what we expect from a small primary school or a big government department reflects their size and resources. We want to avoid rigid bureaucratic processes or a “tick-box” approach resulting in the publication of documents which, once produced, stay firmly on the shelf.
- 2.3 To that end, we have worked from a set of principles set out originally in the Discrimination Law Review consultation: A Framework for Fairness in 2007. These are: use of evidence, consultation and involvement, transparency and capability. Based on these principles we have developed a number of proposals for the specific public sector duties and we welcome your views on these. The proposals include:
 - Public authorities should develop and publish equality objectives, with reference to the relevant evidence and the requirements of the general duty, and set out the steps they intend to take to achieve them (paragraphs 5.9 – 5.10).
 - In developing their objectives public authorities should take into account certain priority areas as directed by the relevant Secretary of State (paragraph 5.9).
 - Public authorities should report annually on progress against their objectives, and review their objectives at least every three years (paragraphs 5.12 and 5.15).
 - Public authorities with 150 or more employees should publish their gender pay gap figures, their black and minority ethnic employment rates and their disabled people employment rates (paragraphs 5.17 – 5.23).

- Public authorities should demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives and what difference this has made (paragraphs 5.24 – 5.27).
- Public authorities should take reasonable and proportionate steps to consult and involve representatives of employees, service users and other relevant groups they have identified as having an interest in how they design their policies and deliver their services (in particular those from protected groups whom the duty is designed to help) when they are setting their equality objectives, developing their action plans and reviewing progress (paragraphs 5.28 – 5.32).
- Relevant Secretaries of State should report on key equality achievements/ challenges across their policy sectors at least every three years (paragraphs 5.45 – 5.50).

2.4 We also propose a set of specific duties which will help public bodies to use public procurement to contribute to delivery of their equality objectives under the Equality Duty. These consist of requirements on contracting authorities:

- when setting out their equality objectives and the steps they intend to take to achieve them, to include how they will ensure that equality factors are considered as part of their public procurement activities to help contribute to the delivery of those objectives;
- to consider the use of equality-related award criteria where they relate to the subject matter of the contract and are proportionate;
- to consider incorporating equality-related contract conditions where they relate to the performance of the contract and are proportionate (paragraphs 5.33 – 5.44).

2.5 We think this is a balanced and sensible package, which shifts the focus away from process and towards achieving improved equality outcomes on the ground. We look forward to hearing your views on our ideas.

Chapter 3: Aims and approach

In this section we set out what we want to achieve and the principles underpinning the approach we have taken to formulating the proposals set out in this consultation paper.

3.1 The Government is committed to working for a fair, prosperous and cohesive society where all can reach their potential, have the chance to live their lives freely and where none are denied opportunities through factors such as their gender, gender identity, race, disability, sexual orientation, religion or belief, or age. For a society to be fair inequality must be tackled and discrimination rooted out. Public sector equality duties are central to achieving this vision.

The purpose of public sector equality duties

3.2 Public sector equality duties are legal requirements on public bodies to have due regard to the need to, broadly speaking, eliminate discrimination, advance equality of opportunity and promote good relations when they are exercising their functions. There are currently three public sector equality duties in Great Britain – the race, disability and gender duties. Each one has slightly different requirements.¹

3.3 The main purpose of public sector equality duties is to bring about a culture change so that promoting equality becomes part of public bodies' core business. Public sector equality duties require not just a proactive approach to achieving compliance with legal requirements not to discriminate, harass or victimise; but also consideration of the need, in some circumstances, to treat those who are affected by disadvantage more favourably in order to create equal opportunities for them. They also recognise the key role public authorities can play in fostering good relations between different groups – in workforces, in educational establishments, and in the wider community.

The general duty and the specific duties

3.4 The Equality Bill which is now going through Parliament contains provision for a new single Equality Duty. This brings together the existing race, disability and gender duties and also covers other areas: sexual orientation, age, religion or

¹ There are also separate equality duties on public authorities in Northern Ireland, on the Welsh Assembly Government, and the Greater London Authority.

belief, pregnancy and maternity,² and gender reassignment.³ The **general** Equality Duty – which is set out in the Bill – itself – will require public bodies to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Bill, advance equality of opportunity and foster good relations across all these protected characteristics.

- 3.5 The **specific** duties, which will be set out in secondary legislation following Royal Assent, are designed to help public bodies to meet their obligations under the general duty.
- 3.6 It should be emphasised that the specific duties are not an objective in themselves, but a means to better performance of the general duty. They are intended to set out a clear, specific framework that, if followed properly, will assist a public body to meet the requirements of the general duty.
- 3.7 There are important differences between the current race, disability and gender specific duties. These are set out in detail at Annex B. This consultation paper sets out our proposals for the specific duties underpinning the new single Equality Duty. Our aim is to ensure that our final legislative proposals build on experience to date in implementing the existing equality duties, to ensure the new Equality Duty works effectively to further equality outcomes and improve people's life chances. We seek views on what should be contained in the specific duties and on the criteria for deciding which public bodies should be subject to them.⁴

² Currently, this characteristic is implicitly protected under sex discrimination provisions. The Equality Bill identifies pregnancy and maternity as a characteristic in its own right.

³ Gender reassignment is covered, in part, by the gender duty. The first limb of the gender duty regarding eliminating discrimination and harassment applies to gender reassignment; but the second limb, regarding the promotion of equal opportunities, does not. The Equality Duty will apply fully to gender reassignment.

⁴ The specific duties are not imposed on all public bodies. The bodies subject to the specific duties are those significant public bodies responsible for delivering important public services and which are listed in the relevant secondary legislation. A public body cannot be subject to the specific duties if it is not subject to the general public sector duty because specific duties can only be imposed to ensure the better performance of the general duties set out in the respective primary legislation. Scottish Ministers have their own powers to impose specific duties on Scottish public bodies and in relation to the Scottish functions of cross-border public bodies. Although Welsh Ministers do not currently have specific powers, Ministers are required to obtain the consent of the Welsh Ministers before imposing specific duties on Welsh public bodies. The Equality Bill will give Welsh Ministers the power to impose specific duties on relevant Welsh bodies.

3.8 In developing our proposals on the specific duties, we have taken account of the findings of the consultation on the Discrimination Law Review (DLR) in 2007, and have undertaken further stakeholder consultation and research. The findings of this process are summarised below, with an explanation of how they affected our thinking.

Principles underpinning the new specific duties

3.9 The DLR established four key principles which should underpin better performance of the Equality Duty i.e. *use of evidence, consultation and involvement, transparency, and capability*. These received widespread support in public consultation on the DLR and have been re-affirmed in the subsequent consultation and research we have undertaken as part of the development of the Equality Bill and the proposals set out in this paper.

3.10 As these principles have been central to the approach we have taken to formulating our proposals, we consider it important to set them out once again and explain how they apply to the specific duties:

3.11 **Use of evidence.** We want public bodies to direct their focus on those areas where they can make a real difference, including with historically hard-to-reach groups. To do this, public bodies need to:

- be clear about their own functions, and understand which of these are most relevant to eliminating discrimination, advancing equality of opportunity and fostering good relations
- know:
 - the people they employ
 - the people they serve
 - who is using their services and who is not
 - who is satisfied with their services, and who is not
 - what outcomes their services are achieving for different groups
 - whether some people they serve are experiencing prejudice or intolerance, or whether tensions exist between certain groups

- whether or not people from certain groups are experiencing disadvantage, for example because they are unable to participate fully in local decision-making and/or the employment market.

3.12 **Consultation and involvement.** Involving and taking account of the views of employees, service users and their representatives and other stakeholders, particularly from those protected groups for whom the duty is designed to promote equality, is essential in identifying equality objectives and developing plans for action to be taken.

3.13 **Transparency.** Greater transparency will allow local service users and employees to see the progress that public authorities are making in addressing stubborn inequalities such as the gender pay gap, and it will allow them to hold public bodies to account on progress.

3.14 **Capability.** Public bodies need strong leadership and high-level commitment if they are to successfully discharge their public sector equality duties.

Focus on outcomes and facilitating innovation and flexibility

3.15 Equally important in determining how we deliver our vision is the Government's commitment to empowering public bodies to innovate and find new and better ways of delivering public services.

3.16 We are keen to focus on the outcomes public bodies should be achieving, rather than prescribing processes that they should be following. In our view, we have a golden opportunity to build on the success of the previous duties, to learn from what has worked well, and what has not worked so well, and to firmly embed equality of opportunity at the heart of our public services.

3.17 To achieve this, we need specific duties which are effective in delivering equality outcomes on the ground. We want to avoid rigid bureaucratic processes or a "tick-box" approach resulting in the publication of documents which, once produced, stay firmly on the shelf. The specific duties should encourage public bodies to focus on achieving improved equality outcomes for people from all protected groups, rather than on filling in forms. We want to ensure that the

changes we introduce do not add burdens to public bodies, and that processes are streamlined wherever possible.

- 3.18 At the same time, we want to be clear to public bodies what the general duty requires and what we expect them to deliver. We also want duties which make clear to outsiders (service users, employees and citizens) what they can expect from public bodies, and which let them see how public bodies are planning to fulfil the requirements of the general duty.
- 3.19 We therefore want a set of specific duties that are *flexible*, so that public bodies are not constrained into taking action which is unnecessary or unproductive; *light-touch*, so we avoid placing unnecessary burdens on our public services and those they do business with; and *proportionate*, so that what we expect from, for example, a relatively small body, such as a primary school, and from a large body, such as a government department, reflects their respective size and resources, and the nature of what they do.

Impact Assessment

- 3.20 **We have carried out an impact assessment of our proposals. This is at Annex C. We welcome your views on the figures we have used. We will update the impact assessment to take into account responses received during this consultation and further refinement of the policy.**
- 3.21 **We have also assessed the impact of our proposals on race, disability, gender, gender reassignment, age, sexual orientation and religion or belief equality. This is at Annex D.**

Chapter 4: Research and consultation

In this section we set out key findings of the research and consultation process to date and how these have influenced our proposals.

- 4.1 In developing our proposals, we have taken into account the views expressed in the public consultation on the Discrimination Law Review (see “The Equality Bill – Government Response to the Consultation”, July 2008). Following this consultation we established a cross-government working group to develop the detail of proposals for the specific duties. This was supported by an expert reference group involving a full range of public bodies and other key equality stakeholders.
- 4.2 We recognised that we needed to seek the views and experiences of those directly affected by the specific duties, who would not necessarily participate in mechanisms such as this or in public consultation. We therefore commissioned equality and diversity consultants Schneider-Ross to undertake independent research⁵ amongst public bodies, to seek their views on which aspects of the existing duties are currently working most effectively to deliver equality outcomes.
- 4.3 The results of our consultation and research process are summarised below. We have set out respondents’ views on the overall operation of the existing specific duties and on individual duties; and how these have influenced the way in which we have developed our proposals for the new specific duties.

Key findings

- 4.4 The research conducted by Schneider-Ross confirms that the existing public sector equality duties have been successful in raising the profile of the equality agenda and in tackling discrimination and disadvantage. It shows that real outcomes are beginning to be realised through reducing inequalities faced by certain groups. A majority of respondents (on behalf of local authorities, schools, and health bodies) reported that the specific duties are either “very effective” or “effective”, that as a result of them their organisation was more prepared

⁵ Schneider-Ross Report – Assessing the costs and cost effectiveness of the specific Race, Disability and Gender Equality Duties, June 2009.

to confront equality issues, and that there was an increased commitment from senior management to advancing equality.

- 4.5 However, the research also highlighted some drawbacks in the current arrangements. The processes involved can lead to costs that seem to have little impact on outcomes. And they can be counter-productive: for instance, treating equality schemes as separate documents risks divorcing equality from the core business planning process. In formulating our proposals for the new specific duties we have taken into account particular concerns raised during the research and consultation process regarding the effectiveness of existing specific duties relating to equality schemes, equality impact assessments and training (see paragraphs 4.15-4.27).
- 4.6 Overall, the research suggests that there is a need to take a less prescriptive approach and allow organisations more autonomy in how they deliver equality of opportunity for the population which they serve and employ. We have taken this into account in the way we have formulated our proposals for the new specific duties.

Involvement and consultation

- 4.7 The Race Equality Duty requires public bodies to set out how they will consult people about the impact of their policies on race equality. The Disability Equality Duty requires public bodies to involve disabled people in the development of a disability equality scheme. The Gender Equality Duty requires public bodies to consult employees, service users and others (including trade unions) when drawing up a gender equality scheme.
- 4.8 These requirements to consult and involve were widely welcomed by stakeholders and by public bodies as integral to the success of the duties, meaning that any action of a public body under the duties is seen as being done in partnership with the protected groups, rather than to them. The Schneider-Ross research found that over 60% of public bodies who responded thought the current consultation and involvement duties were effective in helping them understand the needs of the communities they serve, which in turn helps public bodies to prioritise and focus their activities.

- 4.9 The research, and our discussions with stakeholders, highlighted however that it could, in some cases, result in a perception from some public authorities that they should consult on every point and at every stage, leading to cumbersome decision-making and “consultation fatigue” for stakeholders.
- 4.10 We propose to build on these findings by making consultation and involvement core components of the specific duties. We will clarify that such a duty needs to be implemented in a proportionate and relevant fashion (see paragraphs 5.28-5.32).

Guidance

- 4.11 The research highlighted the need for simple guidance which helps organisations focus on equality outcomes rather than complex processes, written in simple language with examples of good practice. It was suggested this could lead to a significant decrease in the costs to public bodies of implementing and operating the duties. Later in this paper we ask for specific suggestions to help the Equality and Human Rights Commission (EHRC) ensure that the guidance on the specific duties is sensible and proportionate, and aimed at helping organisations deliver equality outcomes. In addition to this, the EHRC will also be consulting on its guidance.

Governance

- 4.12 Some stakeholders suggested to us that we should specify the governance arrangements which all public bodies must put in place for the discharge of the Equality Duty, such as holding a named individual responsible for compliance with the duty.
- 4.13 We have considered this suggestion carefully; however we think that such an approach would be inflexible and overly prescriptive. We think that it is for public bodies to organise themselves as they see fit in order to discharge their legal obligations. Naming one person responsible for discharge of the duty also risks signalling that others are not responsible. Bodies should mainstream the duty so that all members of the organisation are responsible for considering equality. There are also legal and practical difficulties in identifying the appropriate

individual to be held responsible within each of a wide range of organisations subject to the specific duties.

- 4.14 We believe that the reporting requirements (see paragraphs 5.17-5.23), and the higher profile and wider reach of the new Equality Duty, will encourage senior management of public bodies to devote appropriate resources to achieving their equality objectives, without express duties placed on them prescribing how they should go about doing this.

Equality schemes

- 4.15 Respondents to the Schneider-Ross research reported that certain activities involved in producing equality schemes were valuable, because they required public authorities to think about how they should meet their obligations under the general duties and they provided a basis for public accountability. However, some considered that preparing and publishing equality schemes as discrete documents was burdensome and costly with little impact on outcomes. 28% of respondents said that producing equality schemes required a resource which appeared to outweigh the value it could deliver. In the words of one respondent: *“If one spends all one’s time writing schemes and doing nothing that actually makes a difference, the balance has gone awry”*.
- 4.16 The research, and our discussions with stakeholders, suggests that sometimes developing and producing equality schemes can become an end in itself. Indeed, some public bodies routinely ask external contractors to draw up their equality schemes: although sometimes this can be a defensible use of public money, at other times it can have little discernible benefit for either the organisation or the people it serves. A separate equality scheme can also have the effect of treating equality objectives as somehow different or separate from a public body’s wider business objectives.
- 4.17 Some organisations said that the concept of an equality scheme was mechanistic making their resulting action plans overly ambitious. These organisations said that they have learned from their earlier attempts at developing the schemes – they now focus on the two or three main things that will make a real difference, rather than getting stuck in the detail of an equality scheme.

- 4.18 In the light of these findings we propose not to require authorities to prepare and publish discrete equality schemes. We will continue to require organisations to set equality objectives and set out the steps they will take towards achieving them, as is currently the case with the Gender Equality Duty. Our intention is that these should be developed as part of organisations' core business planning process, rather than through a separate process. It is likely to be both more effective and less burdensome for these to be published in normal organisational business plans, rather than in a self-contained equality plan separate from normal business planning processes – which is, as such, at risk of being marginalised within the organisation. We would expect progress on the equality objectives to be reported, as with the Gender Equality Duty, as the authority sees fit, for example in usual corporate publications such as annual reports or school profiles.
- 4.19 We think that these requirements will encourage public authorities to think actively about equality and publish the results, but without the accretions of bureaucracy that have grown up around equality schemes. Of course, an authority may still draw up and publish an equality scheme if it wishes; but we will not require that to happen. We envisage that this will result in cost savings and allow public authorities to focus resources on taking action and achieving results.

Equality impact assessments

- 4.20 It is fundamental to meeting the requirements of the duties that public bodies assess the impact of what they do on different groups. The existing specific duties do not require public bodies to carry out a formal equality impact assessment – they require authorities to set out their arrangements for assessing the impact or likely impact of their existing or proposed policies and practices. The existing duties require public bodies to describe an approach, but they do not focus on *how* equality impact assessment is carried out and they are unclear about the outcomes it is supposed to achieve. Nor do they carry through to the important question of how a public body will use or act on the results of the assessment.
- 4.21 The research found that equality impact assessment has helped improve the decision making process in that it requires organisations to consider the impact on equality of policies and practices during the decision making process. There is a widespread acceptance that equality impact assessment is, in principle, valuable.

- 4.22 On the downside, however, some respondents and stakeholders reported that in practice equality impact assessment has become an inflexible “tick-box” process which can be a significant draw on the resources available to an organisation. The majority felt equality impact assessments to be “burdensome and bureaucratic” in their current form. For some organisations, describing the impact assessment process can be a theoretical exercise included in an equality scheme which is not referred to once it is written. For others, a one-size-fits-all approach can be taken to equality impact assessments, rather than fitting in with the grain of how policy is developed or decisions made.
- 4.23 We heard, time and again, that what mattered was how an organisation went about assessing the impact of its policies and practices on equality and what changed as a result – rather than following rigid processes which may not suit the aims of the organisation.
- 4.24 In summary, at its best, equality impact assessment demonstrates transparency and accountability, informs policy-makers and the public alike, and results in better outcomes for all. At its worst, it can become a tick-box process, carried out after the decisions have been made and reinforcing an association between equality and costly and bureaucratic burdens.
- 4.25 We propose to build on these findings by moving away from an emphasis on describing process to requiring public bodies to demonstrate, in a transparent and accountable manner, outcomes and impact. We will leave it open to organisations as to the process they take to achieve the latter. We will require public bodies to demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives, and what difference this has made.

Equality training

- 4.26 Currently the Race Equality Duty requires public authorities to train all staff in race equality awareness. Although training can be effective, a blanket requirement to train staff can result in a “sheep-dip” approach to the delivery of diversity training which is ineffective in equipping people with the knowledge and skills

they need to build equality into their everyday work. Moreover, legislation is not usually the most appropriate place to prescribe matters of internal management, such as training, for public authorities.

- 4.27 We have therefore concluded not to propose a similar requirement for equality training under the new duty. Of course, that does not prevent public bodies delivering such training courses; it merely means we do not mandate them.

Employment data reporting

- 4.28 The specific duties that have been imposed in order to ensure the better performance of the Race Equality Duty require certain public bodies to report on a number of separate criteria regarding the racial make-up of their employees and the results of its monitoring or, in the case of educational establishments, the impact of their policies on service users. These criteria include not just numbers of employees, but also access to training, grievances, disciplinary proceedings, progression, terminations, and recruitment. The specific duties that have been imposed in order to ensure the better performance of the Disability Equality Duty require certain public bodies to set out arrangements for gathering information on the effect of their policies and practices on the recruitment, development and retention of their disabled employees, and to report the results annually. Schneider-Ross's research indicates that this type of detailed reporting has been useful in highlighting gaps within certain organisations. This interviewee from a Further Education college explained how the data gathered can be a very effective tool:

“At a click of a button it is possible to identify how many black and minority ethnic men are on construction courses, how many are retained and what their success rates are.... Managers can identify groups who are not achieving and where there is a problem at course level they can decide how to address it..”

But the research also indicated that detailed requirements can be too prescriptive. One district council interviewee said,

“In some cases, gathering monitoring data is not appropriate and needs to be handled sensitively....The existing duties do not currently allow for a sufficiently proportionate approach in this area.”

4.29 We recognise the value of robust data which, properly analysed, helps public bodies to target their resources effectively and allows citizens to hold public bodies to account. That is why we are proposing to require public bodies with 150 or more employees to report on certain longstanding inequalities – such as ethnic minority employment rates and disability employment rates in their organisations, and their gender pay gap. This should bring a greater focus to the information that is gathered and reported, and enable citizens to compare the performance of different authorities. But we think that to extend all the detailed reporting requirements of the existing race duty to all of the new protected characteristics might divert public authorities' attention to achieving a full data set, rather than on the more important task of making use of a range of information to identify and address the equality issues which are relevant to that particular organisation. Of course, where it is helpful, public bodies should continue collecting and publishing such data in order to highlight and address problems, and may well consider collecting and publishing such data for the other equality strands, but we will not specifically **require** them to do so.

Chapter 5: New specific duties: proposals and consultation questions

5.1 In this section we set out our proposals for the requirements which will be placed upon public bodies by the specific duties underpinning the new Equality Duty; their coverage; and the consultation questions on which we are seeking your views.

Coverage

- 5.2 The general Race Equality Duty lists those public bodies to which it applies. The race specific duties apply to a number of those listed bodies. The general Disability and Gender Equality Duties apply to organisations which carry out public functions, but only in relation to those functions. The disability and gender specific duties list those public bodies to which they apply.
- 5.3 For the general Equality Duty the Equality Bill takes a list-based approach, supplemented by a clause specifying that the general duty applies to any organisation which is not listed, but which is carrying out a public function, but only in relation to that function. In the Equality Bill we have so far listed only core generic public authorities: government departments (including their agencies), local authorities, educational establishments, NHS bodies, police authorities and fire and rescue authorities. We are talking further to those other organisations which we think should also be listed and plan to amend the list to include them following Royal Assent. This approach means that we can ensure we list all those bodies which it would be appropriate to list, and that we can explore and iron out any inconsistencies between the three existing lists.
- 5.4 Of those organisations listed as subject to the general Equality Duty, some will also be subject to the specific duties outlined in this consultation document. Of course, we will need to have a list of those bodies subject to the general Equality Duty before we can select which of them should be subject to the specific duties. But we propose to be guided by the following questions:
- Is the organisation a significant employer, in terms of either size or impact?
 - Could the organisation, for example in the decisions it takes or the services it delivers, have a significant effect on the lives of people from the protected groups?

- Does the organisation have significant direct dealings with service users?
- Is the organisation of a sufficient size to operate the specific duties without them being unduly burdensome?

5.5 We asked similar questions when deciding which public bodies should be subject to the disability and gender specific duties. Broadly speaking, we expect that the vast majority of bodies subject to the existing specific duties will also be subject to the new specific duties.

Q1: Do you think the criteria set out above are the right ones? Please give your reasons.

Q2: Are there any other criteria we should use? If so, what do you suggest?

Enforcement

5.6 The Equality Bill will not change the enforcement procedures for the general and specific duties. This means that enforcement of the general Equality Duty will be by judicial review or through the EHRC, while enforcement of any specific duties will be through the EHRC only.

5.7 In the consultation *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain* we asked what the role of the public service inspectorates should be in assessing compliance with public sector equality duties. The responses showed that a number of inspectorates had established good working links with the former equality Commissions. Since then, there have been further discussions between government, the inspectorates and the EHRC with a view to building on the way information and knowledge about performance on equality is shared between the inspectorates and the EHRC.

5.8 Of course, public service inspectorates will themselves be subject to the requirements of the Equality Duty when carrying out their functions, including their inspection function. We believe that the public service inspectorates have an important role to play in looking at how bodies within their remit are performing

on equality and meeting the requirements of the Equality Duty. Looking at how public bodies engage with key stakeholders, use evidence in policy making and deliver services for all parts of the community is at the heart of many inspectorate regimes. We want to encourage the EHRC to continue to work closely with inspectorates, and welcome the steps already underway. However, enforcing the Equality Duty will remain the statutory responsibility of the EHRC.

Proposed specific duties

A – Setting equality objectives

- 5.9 We propose that public authorities should use the evidence they have gathered, including the view they have taken on which of their functions are most relevant to the general Equality Duty, and the result of consulting and involving representatives from protected groups, to identify the areas where they can have most impact on equality. Having done this they should **develop and publicly set out their equality objectives**. They should do this with reference to the requirements of the general duty, and in the context of their existing local, regional and national priorities set through mechanisms such as Public Service Agreements, Regional Strategies and Local Strategic Partnerships. Further, the Equality Bill will empower individual Ministers to direct public bodies to develop their equality objectives **taking into account certain priority areas**.
- 5.10 In developing its equality objectives the public body may find it helpful to ask questions such as:
- Is there evidence of any unlawful discrimination, harassment or victimisation?
 - Does the evidence suggest that uptake of some services by some groups is lower than by others?
 - Could some services or aspects of service delivery impact differently on certain groups?
 - Do service users from certain groups experience different outcomes?
 - Do users from the protected groups have significantly different needs because of barriers they come across within some services?

- Are some users from a particular group not using the service because, for example, of an unsafe or unwelcoming environment, or are some users unable to participate fully in public life, or indeed other activities?
- Is there any evidence of poor relations, or tensions between different groups?
- Is there any evidence of prejudice targeted towards a particular group, or a need for greater understanding between groups, that the public body could address?

5.11 We propose that public bodies should also **set out the steps they will take towards achieving the equality objectives** over the coming business cycle, which is most sensibly a standard three-year period. This is in line with the existing gender and disability specific duties. Also in line with these duties, we propose that a public body should be **required to implement the steps it has set out for itself within the business cycle period, unless it would be unreasonable or impractical to do so.**

5.12 We also propose that public bodies should **review their equality objectives at least every three years** to enable them to be updated to reflect progress and changing circumstances and to fit with the general planning and resource cycle used by the public sector. The Government believes that a three-year interval is appropriate to allow public bodies to make progress towards their objectives before deciding if new ones are needed or that current ones need to be changed.

5.13 The general Duty requires public bodies to have due regard to all the protected characteristics and all aspects of the Duty. We do not, however, propose to require public bodies to set equality objectives relating to each protected characteristic. We have taken the view that it would be inappropriate and contrary to the evidence-based thrust of the specific duties to do so. The change from separate duties which cover three protected characteristics to a single Equality Duty which covers eight protected characteristics requires a change in how public bodies think about how to deliver on equality effectively. Based on the evidence, some public bodies may not identify a need to address a particular characteristic, and to artificially require an objective for each might distract

public bodies from the serious business of addressing those areas of real need. Further, public bodies are in a better position than central Government to assess which aspects are of greatest relevance to promoting equality in their particular business and/or locality, and to set objectives accordingly.

- 5.14 Of course, when setting out their equality objectives, public bodies will need to explain, with reference to the evidence, how they have had due regard to all the requirements of the general Equality Duty; but that will not preclude a focus on a particular characteristic which arises naturally from such an overview. Large public organisations – for example government departments, local authorities and police authorities – may well set out objectives for each characteristic as a matter of good practice: their resources and scope of activity may suggest that that would be appropriate. But a primary school, for example, may wish to focus in the first instance on a particular characteristic or characteristics as determined by the evidence. Statutory guidance from the EHRC will help public bodies decide what is appropriate for them.

Q3: Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations?

Q4: Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives?

Q5: Do you agree that public bodies should be required to implement the steps they have set out for themselves within the business cycle period unless it would be unreasonable or impractical to do so?

Q6: Do you agree that public bodies should be required to review their objectives every three years? If not, what time-period do you suggest instead?

Q7: Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State?

Q8: Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?

B – Reporting on progress in achieving the equality objectives

We propose that public bodies should have a specific duty to report annually on progress against their equality objectives.

- 5.15 This is crucial for people both outside and inside the organisation to have the confidence that the public body is delivering on its equality objectives, and to hold public bodies to account if progress is not being made.
- 5.16 However, the Government does not wish to prescribe the form that a public body should use to publish its progress reports. Given that equality objectives should be part and parcel of overall business objectives and targets, usual reporting mechanisms such as annual reports would seem appropriate, as is currently the case with the Gender Equality Duty.

Q9: Do you agree that public bodies should be required to report annually on progress against their equality objectives, but that the means by which they do so should not be prescribed in legislation?

C – Reporting important equality data in the workforce

We propose a specific duty requiring all public bodies with 150 or more employees to report annually on their gender pay gap, their ethnic minority employment rate and their disability employment rate.

- 5.17 We think it is essential, in demonstrating due regard to the requirements of the general Equality Duty, for public bodies to publish certain equality data on an annual basis. This will help public bodies to identify problem areas, track their own

progress and to ask themselves questions about whether their objectives are really delivering outcomes. It will also mean that service users, stakeholders and employees can benchmark public bodies against each other and hold those who are performing poorly to account.

- 5.18 The gender pay gap and the employment gaps for ethnic minority and for disabled people are stubborn and longstanding inequalities. By shining a light on them we can focus attention on these areas: we can encourage greater progress and empower local people to challenge poor performance. We therefore propose a specific duty requiring public authorities with 150 or more employees to publish the gender pay gap in their organisation and the percentage of ethnic minority and disabled people they employ. We think that 150 employees is the right number: organisations with fewer employees than this may experience more of a burden in gathering the information; and the smaller the pool of individuals the less meaningful the data. 150 employees is also the threshold currently used for race equality reporting, so those organisations affected will already be accustomed to publishing equality data.
- 5.19 We would anticipate public authorities understanding and being able to tell the story behind the headline figures; for example whether black and minority ethnic and disabled people are represented at all levels in the organisation; and if not what plans they have to address any under-representation.
- 5.20 We do not think the time is right to require public bodies to report employment rates for all characteristics protected under the Equality Duty, although some may well decide to do so voluntarily as a matter of good practice. Some organisations may not yet have achieved a culture in which employees are ready to be asked to provide personal information about matters such as their sexual orientation or religion or belief, although it is encouraging that it is becoming more common for public sector employees to agree to their employers seeking this information. And for some characteristics, employment rates may not be the most useful indicator of progress – for instance, the number of transsexual employees is less helpful in understanding progress on transgender equality than other factors, such as specific initiatives to meet different needs.

- 5.21 There is a number of ways in which the gender pay gap can be calculated. We propose to use a single figure – the overall median⁶ gender pay gap – which is the percentage difference between women’s median hourly pay (excluding overtime) and men’s median hourly pay (excluding overtime). To calculate this figure, all permanent employees (including part-time workers) should be included, and there should be no weighting of employees related to the number of hours they work.
- 5.22 We consider the overall gender pay gap is suitable for use as a standard measure which employers can calculate to measure the relative position and pay of men and women in the organisation and compare it against other employers. It should be straightforward to calculate, and also includes part-time workers. This is especially significant as statistics suggest that more than 40 per cent of women work part time, often in order to balance work and family commitments. Women make up 77 per cent of the part-time workforce.
- 5.23 Public bodies may, as a matter of good practice, want to supplement these three headline figures with more information that helps put the figures into context – such as the gender pay gap broken down by grade or employment status, or the ethnic minority employment rate compared to the local ethnic minority population.

Q10: Do you agree that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.

Q11: Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?

⁶ The median is the figure in the middle of a set of data. For example, in a set of 100 values, the median would be higher than 50 of the values, and lower than the other 50. The median is the preferred earnings measure of the Office for National Statistics, as it is less affected by a relatively small number of very high earners.

Q12: Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?

Q13: Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?

D – Demonstrating the impact on equality of policies and services

We propose that public bodies should demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives, and what difference this has made.

- 5.24 We believe that this represents an important shift away from the current emphasis on the equality impact assessment process itself, onto outcomes and the difference assessing the impact on equality can make to the design and delivery of policies and services. In our view, the process of assessing the impact on equality should be adaptable to the needs of each organisation and each policy, while ensuring transparency and accountability to the public.
- 5.25 We envisage that public bodies may take into account evidence of the impact on equality at a number of different stages: for example, when proposing or consulting on a policy or initiative; when putting forward proposals for legislation; in their end of year reports; or indeed when requested by members of the public.
- 5.26 We welcome your views on whether a specific duty framed in these terms would be more effective in ensuring that evidence of the likely impact on equality affects the way in which policies and services are designed and delivered.
- 5.27 Many public bodies may wish to continue to use the equality impact assessment guidance issued by the EHRC. We therefore welcome the EHRC's commitment to develop new guidance, setting out examples of good, effective, proportionate equality impact assessment.

Q14: Do you agree with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence of the impact on equality into account in the design of their key policy and service delivery initiatives and the difference this has made?

E - Involvement and consultation

We propose a specific duty which requires public bodies, in setting their equality objectives and deciding what steps they will take to achieve them, and when reviewing progress, to take reasonable steps to consult and involve employees, service users and others who have an interest in how they carry out their functions; or where appropriate their representatives, such as lobby groups and trade unions. *In particular, public bodies should take reasonable steps to involve and consult the protected groups for whom the duty is designed to deliver benefits.*

5.28 We believe that involving people, especially people whose voices may not previously have been heard, is at the heart of any effective approach to understanding problems and developing effective approaches to tackling them. Increasingly public authorities are looking at how they can involve service users because they know that, without this, they cannot develop good, responsive and personalised services. We want to ensure that, through this duty, public authorities remember to make the effort to involve people from all parts of the community, workforce or wider society.

5.29 Involvement is a collaborative process between public bodies and employees and service users from the protected groups, designed to identify priorities for action and develop steps to address those objectives. The involvement should initially encompass the evidence-gathering activities, analysis and review of functions which form part of the objective-setting process. As the new Equality Duty is implemented in future years, the objective-setting process will also include a review of previous objectives and progress against them, and again it will be important to involve stakeholders and service users in this stage.

- 5.30 Consultation is the process whereby public bodies gather views from anyone with an interest in their proposals. Either or both processes could be appropriate, depending on the stage of the process and the nature of the objective.
- 5.31 We recognise that an expanded Equality Duty risks extensive consultation requirements becoming burdensome to public bodies and to stakeholders, many of whom may have limited resources and who may suffer from so-called ‘consultation fatigue’.
- 5.32 The EHRC will need to make clear in guidance that the involvement of employees, service users and stakeholders in designing objectives and action plans, and consultation on those objectives and plans, needs to be meaningful and targeted in order to make the best use of everybody’s time. We want public bodies to be proportionate when fulfilling this duty and to take a common-sense approach on whom they should consult and on what. This might include public bodies in the same local area working collaboratively in their consultation arrangements.

Q15: Do you agree that public bodies should have a specific duty, when setting their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how the body carries out its functions – or where appropriate their representatives; and in particular take reasonable steps to consult and involve the protected groups for whom the duty is designed to deliver benefits?

F – Procurement

Following our consultation in 2007 we committed to examining a range of both legislative and non-legislative mechanisms for using public procurement to help deliver our equality objectives. We would now like to explore the possible legislative options in more detail, seeking your views.

We propose a set of specific duties which will help public bodies to use public procurement to contribute to delivery of their equality objectives under the Equality Duty. These consist of requirements on contracting authorities:⁷

- a) when setting out their equality objectives and the steps they intend to take to achieve them, to include how they will ensure that equality factors are considered as part of their public procurement activities to help contribute to the delivery of those objectives;**
- b) to consider the use of equality-related award criteria where they relate to the subject matter of the contract and are proportionate;**
- c) to consider incorporating equality-related contract conditions where they relate to the performance of the contract and are proportionate.**

5.33 Approximately £175 billion is spent each year by the public sector on goods and services, which amounts to approximately 13 per cent of UK Gross Domestic Product. It is already well-established that public procurement can and should be used to support social policy objectives, including equality, and public bodies should already be considering how they can use procurement in this way through their responsibilities under the existing public sector equality duties.

5.34 Whilst there are pockets of good practice in using public procurement to promote equality, we believe public procurement should be used more consistently to help achieve equality objectives. Improved guidance is helping public bodies to build equality into their procurement activities, but it is clear from experience that a legislative imperative is needed to drive up performance.

5.35 We therefore included in the Equality Bill a clause allowing specific duties in relation to procurement activities to be imposed on certain public bodies which are contracting authorities. We believe that our proposed specific duties, combined with new guidance, will provide the optimum package to deliver equality results.

⁷ As defined by the Public Sector Directive (Directive 2004/18/EC).

- 5.36 The proposals in this section do not capture all procurement activity across the public sector; very small scale purchases that fall below the thresholds set by the Public Sector Directives will not be affected by the specific duties on procurement activity.
- 5.37 Equality factors should be considered at the early stages of the procurement process, particularly when identifying the requirements and when setting the contract specification. Recent research⁸ has indicated that equality specialists within contracting authorities are not sufficiently involved at the right stages of procurement to have greatest impact. Once specifications have been drawn up, it is more difficult and costly to incorporate equality considerations. We want contracting authorities to think ahead and this is why we propose a specific duty that will require them to set out how they will use procurement to deliver equality objectives. For instance, a Primary Care Trust might decide to commission diversity training for its staff. It could be relevant for the PCT to ask the companies bidding for the contract to provide appropriate evidence to demonstrate their technical or professional ability to deliver the training effectively.
- 5.38 To further embed equality considerations into the procurement process, we are proposing a specific duty that requires contracting authorities to consider using equality-related award criteria in their procurement activities, where these are relevant to the subject matter of the contract and proportionate. This could mean for example asking potential suppliers how they would meet the particular needs of diverse sections of the community. This requirement must be made clear as early as possible in the procurement process. For example, when bidding for a public contract intended to help unemployed people back into work, a company might, in addition to making a competitive bid, provide additional quality by offering tailored programmes for those who are particularly disadvantaged in the labour market, such as women returning to work from caring responsibilities or certain ethnic minorities.

⁸ Equality and Procurement survey, 2008, published by EHRC, LGA, IDeA.

- 5.39 In addition, we propose a specific duty to require contracting authorities to consider incorporating equality-related contract conditions where they relate to the performance of the contract and are proportionate. This could mean for example that in a contract to provide support services to victims of domestic violence, a contracting authority could include a contract condition that requires those with direct contact with customers to be female.
- 5.40 We have looked at other means to help achieve equality objectives and ensure contracting authorities spend their money with organisations that treat their employees fairly and equally.
- 5.41 One option which has been raised is whether we should consider developing an explicit requirement for public authorities to deal with suppliers' breaches of discrimination law, rather than doing this through best practice guidance alone. Current OGC best practice guidance already suggests a question relating to breaches of discrimination law that a procurer can ask, and use to evaluate expressions of interest from tenderers, at the PQQ stage where equality related issues are directly relevant to the subject of the procurement. We have not yet reached a final view on this. We therefore welcome views in order to determine whether to bring forward a specific duty in this area.
- 5.42 Guidance will be a key element in implementation of these duties. We will be working with the Office of Government Commerce (OGC) and the EHRC to produce comprehensive and practical guidance which will set out how to comply with the procurement-specific duties. This will build upon the existing guidance issued by the OGC⁹ and will provide further specific examples of what can, and should, be done to achieve equality objectives through procurement.

Q16: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?

⁹ Make Equality Count, OGC, 2008.

Q17: Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities to help contribute to the delivery of those objectives?

Q18: Do you agree that contracting authorities should be required to consider using equality-related award criteria where they relate to the subject matter of the contract and are proportionate?

Q19: Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?

Q20: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?

- 5.43 A further element that may be used to assist public authorities and their suppliers understand what is expected of them in relation to equality matters is a national Equality Standard. The Government made a commitment in “*Framework for a Fairer Future*” to consider the development of such a standard.
- 5.44 A significant number of independently developed equality standards and benchmarks already exist and we are keen to hear whether this unregulated approach is satisfactory. A national standard could have a role within the pre-qualification process as it could be one way in which a supplier demonstrates that their equality practice meets a contracting authority’s pre-qualification requirements. There would however be no compulsion to hold the standard to compete for public contracts, and contracting authorities would always accept appropriate equivalent evidence of compliance with any equality requirements. We are not at this stage proposing a specific duty requiring contracting authorities to recognise any such standard, but will look to doing something in the longer term (if this should appear to be viable in light of any standard that is developed).

Q21: Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you believe this is achievable through a specific duty or is this better tackled through a non-legislative approach? Are there any practical issues that would need to be considered?

G – Reporting duty on central government

We propose that certain Secretaries of State should be subject to a specific duty to report, every three years, on progress towards equality within their policy areas.

- 5.45 The existing disability specific duties contain an additional requirement which the race and gender specific duties do not. It requires certain Secretaries of State to publish a report every three years showing progress made towards equality for disabled people across the whole relevant policy area, and to commit to coordinated actions for further improvement.
- 5.46 The aim of the duty is to increase accountability, by placing the requirement on the Secretary of State; and to encourage joined-up working across key policy areas to ensure that, where services are delivered by a number of different organisations on the ground, work towards equality for disabled people is co-ordinated.
- 5.47 The first set of reports were published in December 2008. The Office for Disability Issues (ODI's) recent evaluation suggests that the process of producing the report resulted in better cross government working and a greater understanding of other policy areas; it engaged senior staff and Ministers; and it involved disabled people in setting the priorities that should be included. ODI also found that the reports highlighted gaps in data and created benchmarks from which to measure future performance. However, for some departments it was a fairly resource-intensive exercise.

- 5.48 Overall, ODI's review suggests that the duty on named Secretaries of State to report on disability equality has had a galvanising effect on action across a number of policy areas, and highlighted the importance Government places on disability equality.
- 5.49 That is why we are proposing to go further and extend the duty to cover all characteristics protected by the Equality Duty. We recognise however that to simply carry forward the existing model would impose unreasonable burdens on government departments.
- 5.50 We therefore want to remodel the duty in a way which continues to encourage joined-up working and senior accountability, but which works for all the equality strands.

We have identified four possible ways of doing this:

- (1) A requirement for relevant Secretaries of State to report every three years against the national equality priorities that they have set for their policy areas.
- (2) A requirement for relevant Secretaries of State to include, in the third year of their department's annual reporting cycle, an expanded report covering the policy area for which they have the overview.
- (3) To rely on reporting procedures attached to the Public Service Agreements covering equality.
- (4) To require relevant Secretaries of State to report on how equality data is gathered and used across their relevant policy sectors.

Q22 :Which of the above four models do you consider achieves the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.

Q23: Do you have any other suggestions how this duty could be remodelled to retain the valuable features of senior accountability and joined-up working, whilst avoiding unnecessary burdens?

Q24: Are there any specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?

Q25: What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?

Chapter 6: Next steps

- 6.1 The consultation will last sixteen weeks, until 30 September 2009. Following the consultation, GEO officials will analyse the responses. We then intend to publish a response to the consultation, setting out what people thought of our plans.
- 6.2 We will then consult on the draft regulations. We expect the duties to commence in April 2011.
- 6.3 The Equality and Human Rights Commission will also consult on its draft statutory code of practice, which it aims to be in place before the duties commence.

Annex A: Response Proforma

| | |
|--|-------------------------------|
| Respondent name: | Address: |
| Organisation | Date: email: |
| Consultation questions | Response |
| Q1: Do you think the criteria set out above are the right ones? Please give your reasons. | |
| Q2: Are there any other criteria we should use? If so, what do you suggest? | |
| Q3: Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations? | |
| Q4: Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives? | |
| Q5: Do you agree that public bodies should be required to implement the steps they have set out for themselves within the business cycle period unless it would be unreasonable or impractical to do so? | |
| Q6: Do you agree that public bodies should be required to review their objectives every three years? If not, what time-period do you suggest instead? | |
| Q7: Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State? | |

| Consultation questions | Response |
|--|----------|
| <p>Q8: Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?</p> | |
| <p>Q9: Do you agree that public bodies should be required to report annually on progress against their equality objectives, but that the means by which they do so should not be prescribed in legislation?</p> | |
| <p>Q10: Do you agree that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.</p> | |
| <p>Q11: Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?</p> | |
| <p>Q12: Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?</p> | |
| <p>Q13: Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?</p> | |

| Consultation questions | Response |
|---|----------|
| <p>Q14: Do you agree with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence of the impact on equality into account in the design of their key policy and service delivery initiatives and the difference this has made?</p> | |
| <p>Q15: Do you agree that public bodies should have a specific duty – when setting their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how it carries out its functions – or where appropriate their representatives; and in particular take reasonable steps to consult and involve the protected groups for whom the duty is designed to deliver benefits?</p> | |
| <p>Q16: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?</p> | |
| <p>Q17: Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities?</p> | |

| Consultation questions | Response |
|---|----------|
| <p>Q18: Do you agree that contracting authorities should be required to consider using equality-related award criteria where they relate to the subject matter of the contract and are proportionate?</p> | |
| <p>Q19: Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?</p> | |
| <p>Q20: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?</p> | |
| <p>Q21: Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you believe this is achievable through a specific duty or is this better tackled through a non-legislative approach? Are there any practical issues that would need to be considered?</p> | |
| <p>Q22: Which of the above four models do you consider achieves the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.</p> | |

| Consultation questions | Response |
|--|----------|
| <p>Q23: Do you have any other suggestions how this duty could be remodelled to retain the valuable features of senior accountability and joined-up working, whilst avoiding unnecessary burdens?</p> | |
| <p>Q24: Are there any specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?</p> | |
| <p>Q25: What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?</p> | |

Annex B: Comparison of the current Race, Disability and Gender Specific Duties

| Race | Disability | Gender |
|--|---|---|
| Publish Race Equality Scheme showing how general and specific duties will be fulfilled. | Publish a Disability Equality Scheme showing how general and specific duties will be fulfilled – this can be done as part of one or more other published documents. | Prepare and publish a Gender Equality Scheme showing how the general and specific duties will be fulfilled – this can be done as part of one or more other published documents. |
| The Scheme has to state all functions, policies, or proposed policies assessed as relevant to performance of the general duty. | Involve disabled people with an interest in the public authority’s functions in the development of the Scheme. | Consult employees, service users and others (including trade unions) with an interest in the public authority’s functions in the preparation of the Scheme. |

| Race | Disability | Gender |
|---|---|---|
| <p>The Scheme also has to state the arrangements for:</p> <ul style="list-style-type: none"> • assessing and consulting on the likely impact of proposed policies on promotion of race equality • monitoring policies for any adverse impact on the promotion of race equality • publishing the results of such assessments, consultation and monitoring • ensuring public access to information and services • training staff in connection with the general duties | <p>The Scheme has to state:</p> <ul style="list-style-type: none"> • the way in which disabled people were involved in its development • methods of assessing the impact or likely impact of current or proposed policies and practices on equality for disabled persons • the steps proposed towards fulfilling the general duty • the arrangements for gathering information on the effect of policies and practices on disabled persons in particular in relation to recruitment, development and retention of disabled employees; the educational opportunities and achievements of disabled pupils and students; and how the services provided take account of the needs of disabled persons • the arrangements for using the information gathered to assist performance of the general duty and the regular review of the steps to fulfil it | <p>The Scheme has to:</p> <ul style="list-style-type: none"> • take into account in its preparation information gathered under the duties on the effect of policies and practices on men and women • set out the overall objectives identified as necessary for performance of the general and specific duties considering in particular the need for objectives addressing the causes of the gender pay gap. |
| <p>Review the assessment of relevant functions, policies and proposed policies every three years.</p> | <p>Review the Scheme and publish a revised Scheme in intervals of not more than three years.</p> | <p>Review and prepare and publish a revised Scheme in intervals of not more than three years.</p> |

| Race | Disability | Gender |
|---|---|--|
| <p>Specified educational bodies must:</p> <ul style="list-style-type: none"> • prepare a race equality policy. • have arrangements in place to fulfil the specific duties as soon as reasonably practicable and follow those arrangements | <p>Within three years of the publication of its Scheme a public authority must:</p> <ul style="list-style-type: none"> • take the steps which it has set out for itself in the Scheme towards fulfilment of the general duty • put into effect the arrangements it has set out in the Scheme for gathering and using information <p>But not where this would in all the circumstances be unreasonable or impracticable.</p> | <p>The Scheme also has to set out the actions the public authority has taken or intends to take to:</p> <ul style="list-style-type: none"> • gather information on the effect of its policies and practices on men and women, in particular the extent to which they promote employment equality and the extent to which services provided and functions performed take account of the needs of men and women • make use of that and of any other relevant information to perform its general and specific duties and in particular review the effectiveness of the actions taken to fulfil them and in preparing future Schemes • assess the impact or likely impact of current or proposed policies and practices on equality between women and men • consult relevant employees, service user and others (including trade unions) • achieve the fulfilment of the objectives set out in the Scheme |

| Race | Disability | Gender |
|--|---|--|
| <p>The specific duties in relation to specified schools are to:</p> <ul style="list-style-type: none"> • assess and monitor the impact of policies, including the race equality policy on pupils, staff and parents of different racial groups in particular in relation to educational achievement • take reasonable steps to annually publish the results of that monitoring | <p>Public authorities must publish annually a report with a summary of:</p> <ul style="list-style-type: none"> • the steps taken towards fulfilment of the general duty • the results of the information gathering it has carried out • the use it has made of such information <p>This report may be part of another published document</p> | <p>Within three years of the preparation and publication of its Scheme a public authority must put into effect the actions it has set out in the Scheme on:</p> <ul style="list-style-type: none"> • gathering information; • making use of that information; and on • achieving the objectives set out in the Scheme as necessary for the fulfilment of the general and specific duties <p>But not where in all the circumstances this would be unreasonable or impracticable.</p> |
| <p>The specific duties in relation to specified higher education institutions are to:</p> <ul style="list-style-type: none"> • assess and monitor by reference to different racial groups the impact of policies including the race equality policy on admission and progress of students and recruitment and career of staff • indicate in their race equality policy how it and the results of the assessment and monitoring is published • take reasonable steps to annually publish the results of its monitoring | <p>Named Secretaries of State must in respect of their policy sector publish a report every three years giving an overview of progress towards equality of opportunity between disabled and other persons in that sector and setting out proposals for coordinated action by public authorities in that sector to achieve further progress. The first such reports were due by 1 December 2008.</p> | <p>Public authorities must take reasonable steps to publish annually a report summarising the actions taken towards fulfilment of the objectives set out in the Scheme. This report may be part of another published document.</p> |

| Race | Disability | Gender |
|--|------------|--------|
| <p>Local education authorities have to make arrangements to monitor by reference to racial group:</p> <ul style="list-style-type: none"> • in all maintained schools, staff in post and applicants for jobs, training and promotion • in maintained schools with 150 or more full-time staff the numbers who receive training, are impacted by performance assessment procedures, involved in grievance or subjected to disciplinary procedures and numbers leaving employment • take reasonable steps to annually publish the result of its monitoring | | |
| <p>Department for Children Schools and Families (DCSF) must monitor by reference to racial group the numbers of teaching staff in schools, where possible using data provided by local education authorities and take reasonable steps to annually publish the result of its monitoring.</p> | | |

| Race | Disability | Gender |
|--|------------|--------|
| <p>Bodies overseeing higher education and vocational training have to monitor by reference to racial group the number of teaching staff at the institutions for which they are responsible and take reasonable steps to annually publish the result of its monitoring.</p> | | |
| <p>Specified employers have to monitor by reference to racial group and annually publish the numbers of staff in post and applicants for employment, training and promotion.</p> | | |
| <p>Specified employers with 150 or more full-time staff have to monitor by reference to racial group and annually publish the numbers who receive training, are impacted by performance assessment procedures, involved in grievance or subjected to disciplinary procedures and numbers leaving employment.</p> | | |

Annex C: Regulatory Impact Assessment

Summary: Intervention & Options

| | | |
|--|---|-----------------------|
| Department /Agency: Government Equalities Office | Title: Impact Assessment of creating a single set of specific equality duties to underpin the new integrated public sector equality duty and to regulate procurement by some public authorities. | |
| Stage: Consultation | Version: 1 | Date: 08/06/09 |
| Related Publications: Schneider- Ross research: Assessing the cost & cost effectiveness of the specific race, disability & gender equality duties | | |

Available to view or download at:

<http://www.equalities.gov.uk>

Contact for enquiries: Harshbir Sangha

Telephone: 020-7944-0627

What is the problem under consideration? Why is government intervention necessary?

The requirements under the current race, disability and gender specific public sector duties vary for each of the duties. Each of the three duties has different timescales and reporting requirement. For instance, the race duty has a number of process requirements which are not required under the disability or gender duty.

A new single Equality Duty, which will bring together the current race, disability and gender equality duties and extend to age, religion or belief, sexual orientation and gender reassignment, provides an ideal opportunity to harmonise the specific duties. Having a single set of specific duties, covering the above eight strands, will be more efficient than the existing duties, since it will bring together different requirements.

Also there are opportunities to use the procurement process more effectively to further equality objectives and that Government intervention will encourage and support public authorities to use their procurement activities more actively.

What are the policy objectives and the intended effects?

Minimise formal procedures and concentrate on outcomes for service users and employees of public authorities.

- Mainstreaming equality into business as usual.
- Improving transparency.
- Using public sector leadership and levers to effect broader cultural change, specifically with respect to procurement.

What policy options have been considered? Please justify any preferred option.

We considered a number of options from keeping the status quo, having highly prescriptive requirements, to very hands-off. Our research, undertaken by Schneider-Ross, along with our ongoing engagement with stakeholders suggest a combination of having certain prescriptive requirements and providing flexibility in other areas strike the right balance.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The Equality and Human Rights Commission will review the operation of the duties on an ongoing basis, following implementation, and will also be responsible for enforcing them.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Date:

Summary: Analysis & Evidence

Policy Option:

Description: A single set of outcome focused specific duties covering race, gender, disability, age, sexual orientation, religion or belief, pregnancy and maternity and gender re-assignment

| | | | |
|--|--|------------|---|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' Proposed new duties – £299.2m – £385.1m <i>(Existing Duties – £409.9m – 463.9m)</i> The above shows that over a 10 year period the new proposed duties will result in benefits to the public sector in the region of around £80m to £110m compared to the current ongoing costs of the three existing duties. |
| | One-off (Transition) | Yrs | |
| | £29.7m–43.2m | 1 | |
| | Average Annual Cost (excluding one-off) | | |
| | £31.4m–39.9m | | |
| Total Cost (PV) | | | £299.2m–385.1m |
| Other key non-monetised costs by 'main affected groups' | | | |
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' Key monetised benefits fall on public sector. |
| | One-off | Yrs | |
| | £ | | |
| | Average Annual Benefit (excluding one-off) | | |
| | £14.6m–16.4m | | |
| Total Benefit (PV) | | | £121.6m–136.0m |
| Other key non-monetised benefits by 'main affected groups' | | | |
| <ul style="list-style-type: none"> • Streamline and simplify the different reporting and evidence gathering requirements under the separate race, disability and gender duties for public authorities. • Help mainstream equality into public authorities business as usual through the requirement to assess the impact on equality of new policies or changes to the existing policies. • Reduced social cost of inequality • Broader cultural change through proposed duties on procurement | | | |

| | | | |
|---------------------------------------|---|---|---|
| Price Base Year 2008 | Time Period Years 10 | Net Benefit Range (NPV) £163.2m–263.5m | NET BENEFIT (NPV Best estimate) £ See Range |
|---------------------------------------|---|---|---|

| | | | | |
|---|---|------------------|-------------------|------------------|
| What is the geographic coverage of the policy/option? | PA's across GB in relation to non devolved functions, and PA's across England | | | |
| On what date will the policy be implemented? | To be decided | | | |
| Which organisation(s) will enforce the policy? | EHRC | | | |
| What is the total annual cost of enforcement for these organisations? | To Be Assessed (TBA) | | | |
| Does enforcement comply with Hampton principles? | Yes | | | |
| Will implementation go beyond minimum EU requirements? | N/A | | | |
| What is the value of the proposed offsetting measure per year? | N/A | | | |
| What is the value of changes in greenhouse gas emissions? | N/A | | | |
| Will the proposal have a significant impact on competition? | No | | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro TBA | Small TBA | Medium TBA | Large TBA |
| Are any of these organisations exempt? | No | No | No | No |

| | |
|---|-------------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | (Increase – Decrease) |
| Increase of £ TBA | Decrease of £ TBA |
| | Net Impact £ TBA |

| | | |
|------|---|----------------------------|
| Key: | Annual costs and benefits: Constant Prices | (Net) Present Value |
|------|---|----------------------------|

Evidence Base (for summary sheets)

Background

The current general equality duties on race, disability and gender are each supported by a set of specific equality duties. These specific duties have different reporting requirements, different timescales and different evidence gathering requirements.

We have taken these separate requirements and harmonised them into one set of duties that is proportionate enough to apply to all public authorities and provides a balanced approach for them to extend to age, sexual orientation, religion or belief and gender re-assignment. We believe our proposed package avoids the focus on process-for-process sake that some argue came to characterise the race duty, and moves public authorities towards concentrating on achieving outcomes. We want to give public authorities as much freedom as possible to set their own objectives, according to the evidence in their own areas, and to design their own processes to suit their own needs.

We believe, one general duty, supported by one common set of specific duties, will provide a simpler and more efficient framework than three existing separate duties.

Costs and benefits of an integrated public sector duty

Coverage

We identify that 27,344 public authorities could be affected by the specific duties forming part of the new equality duty:

| Detailed breakdown of public authorities | |
|---|---------------|
| Type | Number |
| Central Government | 70 |
| Local Authorities, | 388 |
| NHS Bodies | 539 |
| Schools | 22,937 |
| Higher Education | 131 |
| Further Education | 385 |
| Police Forces, Prison Services, Exec Justice Dept, Nationalised Industries, Probation Boards, Inspectorates | 122 |
| NDPBs sponsored by UK Govt Departments | 913 |
| Others | 1859 |
| Total | 27,344 |

Of course, the final list of which public authorities will be subject to the specific duties has not yet been determined and will be subject to collective clearance. But we anticipate the number will be broadly similar to now.

Costs to public authorities: One Off

For public authorities covered by the specific duties there will be some one off costs of implementation and familiarisation. This will largely consist of an employee's time spent familiarising with the new legislation/guidance and drawing up the relevant requirements under the new specific duties.

To estimate these costs we have used a methodology consistent with the regulatory impact assessment for the public sector gender duty, but re-estimating to take account of new information. The total one-off cost to public authorities of the gender duty was estimated to be between £35.3m and £55.4m, detailed below:

| | | One Off | |
|--|-------------------------------|--------------|--------------|
| | | Low | High |
| One Off Costs of the Specific Gender Duties | NHS Bodies | £ 1,943,158 | £ 3,239,631 |
| | Other Authorities | £ 575,687 | £ 1,151,373 |
| | Education Institutions | £ 24,818,184 | £ 39,709,095 |
| | Local Authorities | £ 6,512,292 | £ 9,305,735 |
| | Central Government | £ 1,484,684 | £ 1,984,122 |
| | Totals | £ 35,334,005 | £ 55,389,956 |

Proposed Changes

The main suggested change to the specific duties is the removal of the requirement to develop and publish an equality scheme for race, gender and disability. Public authorities would instead publish equality objectives with reference to their relevant evidence across protected characteristics of race, disability, gender, age, religion or belief, gender reassignment and sexual orientation and set out the steps to achieve them. Discussions with stakeholders suggested that initial development of an equality scheme was considered a significant burden and required a large investment of resource.

The one off costs of the new requirement will arise from an equality/personnel manager spending time reading the new legislation, carrying out initial scoping and consultation work to identify the areas where they can have the most impact on equality and setting out their own equality objectives.

The amount of time spent by an employee will vary depending on the size of the authority, with smaller authorities spending relatively less time. Ranges have been used to estimate the time spent by authorities and therefore the associated cost, utilising evidence from the gender duty impact assessment, research undertaken by Schneider-Ross, and one to one interviews with key stakeholders.

Below estimates costs to a range of authorities:

| Authority Type | Time Estimates | |
|--------------------|----------------|------------|
| | Low | High |
| NHS Bodies | 1 month | 1.5 months |
| Other Authorities | 1 days | 3 days |
| Education Sector | 0.25 month | 0.4 month |
| Local Authorities | 2 months | 2.5 months |
| Central Government | 2.5 months | 3 months |

However, we assume these new one-off costs will not apply to all public authorities covered by the specific duties because many have already extended their equality schemes beyond current legislation to cover all equality strands. Around half of the respondents to the research conducted by Schneider-Ross on behalf of the Government Equalities Office which looked at "Assessing the Cost and Cost Effectiveness of the Race, Disability and Gender Equality Duties", reported that they had already started to publish combined equality schemes going beyond current legislation to cover more equality strands.

The one-off costs therefore represent half of the public authorities, who would have to implement new processes to comply with the requirements. Around 50% of the authorities who are currently publishing combined schemes for equality strands beyond current legislation would benefit from the new requirements. We have assumed a personnel/equality manager would be responsible for this initial implementation. The wage cost is taken to be the hourly rate of a personnel manager as given in the Annual Survey of Hours and Earnings 2008 code 1135, uprated by 21 per cent to include non-labour costs.

The costs are summarised below by main authority type:

| | | One Off | |
|---|-------------------------------|--------------------|---------------------|
| | | Low | High |
| One Off Costs of the New Specific Duties | NHS Bodies | £ 571,890 | £ 869,749 |
| | Other Authorities | £ 103,998 | £ 623,987 |
| | Education Institutions | £ 19,959,123 | £ 31,934,596 |
| | Local Authorities | £ 2,641,586 | £ 3,301,983 |
| | Central Government | £ 595,718 | £ 714,862 |
| | Totals | £23,872,315 | £ 37,445,177 |

The new specific duties also include a policy objective to ensure that public procurement is always considered and used as appropriate to further equality objectives by all authorities. Our discussions with stakeholders suggest this will begin a cultural shift that will improve equality outcomes within authorities and the businesses bidding for public contracts.

By prescribing specific duties for certain public bodies we are clarifying how Government requires authorities to promote equality when exercising their procurement functions, making a clear link between the role of public procurement and the general public sector Equality Duty.

The public sector one-off costs of procurement are estimated to be up to £2,811,798. A detailed breakdown can be found in Annex 1.

Costs to the Private Sector: One Off

We anticipate a level of familiarisation and implementation will be required of the private sector as a result of the procurement aspect of the public sector duties. This will result in a total one off private sector cost of: £2,977,272 more details of which can be found in Annex 1.

Costs to Public Authorities: Ongoing

As with the current separate duties, there will be ongoing costs to public authorities due to the need to report progress against objectives annually and review objectives every three years. This will require the ongoing collection and monitoring of equality data in terms of employment, training and service delivery. We anticipate larger authorities will choose to employ other methods such as undertake research and surveys to help monitor and review equality objectives.

The current specific race, disability and gender duties already impose ongoing costs to all public authorities. The new combined equality duty is intended to be light-touch and proportionate, avoiding unnecessary burdens on public authorities and reflecting more closely what can be reasonably expected from smaller public authorities. We therefore believe the new specific duties will impose smaller ongoing costs on public authorities, creating an annual saving for authorities, detailed as a benefit below.

The majority of the ongoing costs of the current race, disability and gender duties arise from publishing reports on progress, publishing results of equality impact assessments, and reviewing and revising their equality schemes every three years.

Using new information to update the previous regulatory impact assessments for the existing duties, we estimate the ongoing costs of the three current duties as:

| | | Ongoing Costs | |
|---|-------------------------------|--------------------|--------------------|
| | | Low | High |
| Ongoing Costs of the three current equality duties | NHS Bodies | £ 1,906,234 | £ 2,330,528 |
| | Other Authorities | £ 2,065,305 | £ 4,130,610 |
| | Education Institutions | £37,909,938 | £ 37,909,938 |
| | Local Authorities | £ 4,033,520 | £ 7,815,270 |
| | Central Government | £ 1,702,870 | £ 1,702,870 |
| | Totals | £47,617,866 | £53,889,215 |

The suggested new specific duties remove or modify a number of requirements that our research indicated were disproportionately burdensome to authorities. The proposed duty to have equality objectives should form part and parcel of overall business objectives and targets; public authorities may choose to report on progress in a number of ways, including their annual reports, school profiles, or placing information on websites.

The development and publication of equality schemes is believed to be mechanistic and bureaucratic by many public authorities. The schemes require public authorities to describe number of processes. For example; steps for assessing impact, consulting and involving, gathering evidence, setting out legislative requirements etc. The research, and our discussions with stakeholders, suggests that sometimes developing and producing equality schemes can become an end in itself and that the schemes can grow out of proportion. We want to cut these processes and strip down to the essentials

which will not only result in a reduction in costs but also allow public authorities to concentrate more on delivering outcomes.

The current duties also require the equality schemes to be reviewed and revised every three years which produces a significant cost to authorities. Although the proposed equality objectives will still need to be reviewed every three years to reflect progress and changing circumstances but this is intended to fit in with the general planning and resource cycle used by the public sector. This will not only reduce the general costs but also the publication costs as the objectives could be included in the existing corporate publications such as annual reports and school profiles.

The existing specific duties do not require public authorities to carry out formal equality impact assessments – they merely require authorities to set out their arrangements for assessing the impact or likely impact of their existing or proposed policies and practices. Many respondents to the Schneider-Ross research reported that the process involved could become overly 'bureaucratic and burdensome'. The proposal builds on these findings by moving public authorities away from emphasis on describing process to requiring them to demonstrate, in a transparent and accountable manner, outcomes and impact. It will be open to organisations to choose the process they take to achieve the latter. We believe that such a step will not only result in cost savings but also mainstream equality into decision making process.

The current Race Equality Duty requires certain public authorities to report on a number of different criteria regarding the racial make-up of their employees or, in the case of educational establishments, their service users. The criteria not only include numbers of employees, but also access to training, grievances, disciplinary proceedings, progression, terminations, and recruitment. Although Schneider-Ross's research indicates that this type of detailed reporting has been useful in highlighting gaps within certain organisations, at the same time the blanket detailed requirements can be too prescriptive.

The new specific duties propose to remove the above requirements and include new and standardised requirements on public authorities with 150 or more employees to publish their Gender Pay Gap figure, their Black and Minority Ethnic (BME) employment rate and their Disabled People employment rate. Anecdotal evidence suggests the majority of larger authorities are already collecting this data, but very few go as far as publishing the results. Authorities who currently do not collect this data will incur a small additional cost, but we envisage this data would be easy collectable through a staff survey, of which evidence suggests 97% of public authorities already have in place. We therefore believe there will be minimal additional costs to authorities of this new requirement, mainly arising through the analysis of the raw data to produce the required metrics. By definition smaller authorities are unlikely to be captured by this requirement, having less than 150 employees.

Below we estimate the ongoing costs to a range of authorities of complying with the new specific duties. The amount of time spent by an employee will vary depending on the size of the authority, with smaller authorities spending relatively less time. Ranges have been used to estimate the time spent by authorities and therefore the associated cost, utilising evidence from the gender duty impact assessment, research undertaken by Schneider-Ross, and one to one interviews with key stakeholders.

NHS Bodies

We have assumed that on average NHS bodies will spend up to 6 days a year reporting on progress against objectives and publishing equality metrics. This will also include reviewing the equality objectives every three years. This time will be split between an equality officer and administrative support with wage cost from the Annual Survey of Hours and Earnings 2008, and uprated by 21 per cent to include non-labour costs.

They will also need to demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives. Evidence suggests health authorities will conduct up to 20 of these each year, taking an equality officer 1 day each on average.

We also anticipate some larger NHS bodies, such as strategic health authorities, may continue to commission research for the purpose of developing and reviewing their equality objectives at an average cost of £15,000 per body.

Other Authorities

We believe they will spend a similar amount of time to NHS bodies reporting on progress against objectives and publishing equality metrics, up to 6 days per year. Again this time will be split between an equality officer and administrative support with wage cost taken the Annual Survey of Hours and Earnings 2008, and uprated by 21 per cent to include non-labour costs.

We also estimate these authorities will need to demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives around 5- 7 times per each year, each taking an equality officer 1 day to complete.

Education Institutions

Again we assume a school will spend up to 4 days per year reporting on progress against objectives and publishing equality metrics. The time would be split between teaching staff and administrative support with wage cost taken the Annual Survey of Hours and Earnings 2008, and uprated by 21 per cent to include non-labour costs.

Education institutions will also need to demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives. We assume they will carry this out around 3-7 times a year, taking half a day each time.

Local Authorities

We anticipate that local authorities would have an equality officer drawing up equality objectives and coordinating input from a statistician/researcher with support from an administrative assistant over a period of 8 days per year.

Local authorities will also need to demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives. We assume there will be around 15-20 changes a year requiring an assessment, with an equality officer spending up to a day to complete.

We also anticipate local authorities may continue to commission research for the purpose of developing and reviewing their equality objectives at an average cost of £15,000 per authority.

Central Government

We anticipate that Central Government departments would have an equality officer drawing up equality objectives and coordinating input from a statistician/researcher with support from an administrative assistant over a period of 8 days per year.

Central Government will also need to demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives. We assume there will be around 35-40 changes a year – although for bigger departments this may be higher – requiring an assessment, with an equality officer spending up to a day to complete.

We also anticipate Central Government may continue to commission research for the purpose of developing and reviewing their equality objectives at an average cost of £15,000 per authority.

We anticipate there will be no ongoing costs of procurement to the public sector as once implemented, the duties will become part of the business as usual procurement process and therefore will not result in additional costs to the public sector, see Annex 1 for detail.

The table below shows the total ongoing costs of the specific duties summarised by main authority type:

| | | Ongoing Costs | |
|---|-------------------------------|---------------|--------------|
| | | Low | High |
| Ongoing Costs of the proposed Duties | NHS Bodies | £ 1,076,604 | £ 1,320,882 |
| | Other Authorities | £ 1,645,655 | £ 4,091,293 |
| | Education Institutions | £ 23,867,426 | £ 28,915,044 |
| | Local Authorities | £ 3,774,742 | £ 4,192,274 |
| | Central Government | £ 982,322 | £ 1,057,650 |
| | Totals | £ 31,346,750 | £ 39,577,144 |

Costs to the Private Sector: Ongoing

We anticipate that the 'suite' of duties attributable to the procurement element of the public sector duty will result in recurring private sector costs of: £40,939 to £273,036 See Annex 1 for further details.

Benefits to Public Authorities

We anticipate the new specific duties will create benefits for public authorities, these have been calculated as the saving to ongoing costs when compared to the existing three duties. To establish a baseline we assume the gender duty impact assessment gives a fair representation for the costs of the Race and Disability duties. From this we can establish a baseline of the current costs associated with the three separate public sector duties, outlined below:

| | | Ongoing Costs | |
|--|-------------------------------|---------------|--------------|
| | | Low | High |
| Ongoing Costs of the existing Specific Duties | NHS Bodies | £ 1,906,234 | £ 2,330,528 |
| | Other Authorities | £ 2,065,305 | £ 4,130,610 |
| | Education Institutions | £37,909,938 | £ 37,909,938 |
| | Local Authorities | £ 4,033,520 | £ 7,815,270 |
| | Central Government | £ 1,702,870 | £ 1,702,870 |
| | Totals | £47,617,866 | £ 53,889,215 |

The ongoing costs of the new specific duties have been highlighted above, by subtracting these from the costs above we can see the potential savings of the new duties, and this the potential benefit.

| | | Ongoing Costs | |
|---|-------------------------------|---------------|--------------|
| | | Low | High |
| Ongoing Costs of the three current equality duties | NHS Bodies | £ 829,630 | £ 1,009,646 |
| | Other Authorities | £ 419,650 | £ 39,316 |
| | Education Institutions | £ 14,042,512 | £ 8,994,894 |
| | Local Authorities | £ 258,778 | £ 3,622,996 |
| | Central Government | £ 720,548 | £ 645,220 |
| | Totals | £ 16,271,117 | £ 14,312,072 |

There will be a benefit arising from the difference between the recurring costs of the new combined duty and the established baseline. There will also be wider benefits that have not been monetised.

What this means for Public Authorities

Year One

In year one the ongoing costs to Public Authorities will be slightly altered, there will not be the need to review the equality objectives. The actual costs for Public Authorities are outlined below:

| | | Ongoing Costs | |
|---|-------------------------------|---------------|--------------|
| | | Low | High |
| Ongoing Costs of the proposed Specific Duties (Year 1) | NHS Bodies | £ 883,089 | £ 1,127,367 |
| | Other Authorities | £ 1,297,099 | £ 3,394,181 |
| | Education Institutions | £ 15,070,348 | £ 20,117,966 |
| | Local Authorities | £ 3,607,729 | £ 4,025,261 |
| | Central Government | £ 952,191 | £ 1,027,519 |
| | Totals | £ 21,810,456 | £ 29,692,293 |

The table below shows the net cost of public authorities of the proposed specific duties in year one.

| | Proposed Duties | | Existing Duties | |
|------------------------|-----------------|-------------|-----------------|-------------|
| | Low | High | Low | High |
| One Off Costs | £26,684,113 | £40,256,975 | £ – | £ – |
| Ongoing Costs | £21,852,112 | £29,733,949 | £47,617,866 | £53,889,215 |
| Total Cost | £48,536,225 | £69,990,924 | £47,617,866 | £53,889,215 |
| | Low | | High | |
| Year 1 Net Cost | £ 918,358 | | £16,101,709 | |

Year Two Onwards

The table below shows the net benefit to Public Authorities of the proposed specific duties from year two onwards.

| | Proposed Duties | | Existing Duties | |
|-----------------------------------|-----------------|-------------|-----------------|--------------|
| | Low | High | Low | High |
| One Off Costs | £ – | £ – | £ – | £ – |
| Ongoing Costs | £31,388,406 | £39,618,800 | £ 47,617,866 | £ 53,889,215 |
| Total Costs | £31,388,406 | £39,618,800 | £ 47,617,866 | £ 53,889,215 |
| Year 2 onwards Net Benefit | £14,270,416 | | £16,229,461 | |

From year two onwards the proposed specific duties will create benefits for Public Authorities in the range of £14m to £16m per year. **This means that any additional set up costs will be recovered within the first two years.**

Annex 1: Procurement Analysis & Evidence

| | | | | |
|--|--|------------|---|-----------------------------|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' | |
| | One-off (Transition) | Yrs | Public Sector One-off – £2,811,798 Private Sector One-off – £2,977,272 | |
| | £5,789,070 | | | |
| | Average Annual Cost (excluding one-off) | | Public Sector Annual – £41,656 Private Sector Annual – £40,939- 273,036 | |
| | £82,595-314,692 | | Total Cost (PV) | £6,195,224-8,497,840 |
| Other key non-monetised costs by 'main affected groups' | | | | |

| | | | | |
|---|---|------------|---|----------|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups'. | |
| | One-off | Yrs | | |
| | £ | | | |
| | Average Annual Benefit (excluding one-off) | | | |
| | £ | | Total Benefit (PV) | £ |
| Other key non-monetised benefits by 'main affected groups' | | | | |
| If implemented the proposals will bring clarity and consistency on how to address equality issues through the public procurement process and put this consideration at the heart of Authorities' strategic policy and programme planning process. | | | | |

Key Assumptions/Sensitivities/Risks

- That this Impact Assessment is provisional and be updated and revised in light of evidence submitted during the consultation period.
- That a balance of legislative requirement and good practice will ensure optimum benefits.
- That a majority of Authorities already follow and implement appropriate guidance.
- That the assessment will

| Price Base Year | Time Period Years | Net Benefit Range (NPV) £0 | NET BENEFIT (NPV Best estimate) £0 |
|------------------------|--------------------------|-----------------------------------|---|
|------------------------|--------------------------|-----------------------------------|---|

| | | | | |
|---|---------------|-------|--------|-------|
| What is the geographic coverage of the policy/option? | Great Britain | | | |
| On what date will the policy be implemented? | To be decided | | | |
| Which organisation(s) will enforce the policy? | EHRC | | | |
| What is the total annual cost of enforcement for these organisations? | £ (TBA) | | | |
| Does enforcement comply with Hampton principles? | | | | |
| Will implementation go beyond minimum EU requirements? | | | | |
| What is the value of the proposed offsetting measure per year? | £ (TBA) | | | |
| What is the value of changes in greenhouse gas emissions? | | | | |
| Will the proposal have a significant impact on competition? | | | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro | Small | Medium | Large |
| Are any of these organisations exempt? | N/A | N/A | N/A | N/A |

| | | |
|---|---------------|-----------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase – Decrease) |
| Increase of £ | Decrease of £ | Net Impact £ |

| | | |
|------|---|----------------------------|
| Key: | Annual costs and benefits: Constant Prices | (Net) Present Value |
|------|---|----------------------------|

Evidence Base (for summary sheets)

The intention is to provide an overarching set of costs for a 'suite' of Specific Duties that will meet the policy objective of ensuring that public procurement is always considered and used as appropriate to further equality objectives by all authorities to whom these duties would apply.

Public Sector costs:

One off public sector costs:

Based on the statistical returns exercise under the EU procurement Directives, it is thought that there may be around 4,000 contracting authorities who conduct procurement above the EU financial threshold that will fall within the remit of the proposed specific duties, i.e. that conduct procurement above the they are above the minimum financial threshold required for the EU procurement regulations to come into force. The procurement elements of this Impact Assessment are therefore based on the assumption of 4,000 authorities.

For the purposes of the procurement element of the Impact Assessment, it has been assumed that activity is undertaken by public sector procurement experts and Equality officials, costed at a senior official rate: The cost per hour of a senior official's time is taken to be the hourly rate (as given in the Annual Survey of Hours and Earnings 2008 code 11), uprated by 21% to cover non-labour costs. In addition, we have included the provision of legal advice. The cost per hour of a legal professional's time is taken to be the hourly rate (as given in the Annual Survey of Hours and Earnings 2008 code 241), uprated by 21% to cover non-labour costs:

It is assumed that consideration of all aspects of the Specific Duties, including an assessment of associated guidance on implementation will be carried out simultaneously as they are elements of an integrated package.

Officials must also assess and decide how to build the Specific Duties into their Equality Objectives and into the various components of the procurement process.

We have assumed that these considerations will involve a combination of public procurement and equality officials, who will require 19 hours to carry out this plus 3.5 hours of legal advice time.

This will result in a one off public sector cost of: £2,811,798.

Recurring Public Costs:

There will be minimal recurring public sector costs as once implemented, the duties will become part of the routine procurement process and will result in minor additional costs to the public sector. We have estimated that it would take approximately 20 minutes for a purchasing professional to check that procurement-specific equality duties remain in each new contract that is being let if, appropriate. 20 minutes on each contract let. We will examine and test this assumption during the consultation process.

This will result in recurring public sector costs at £41,656.

Private Sector Costs:

One off private sector costs:

In 2008-09 there were 26,218 above threshold contract notices made by the public sector. Although it is accepted that more than one private business could apply for a single contract, it is also accepted that many businesses do not apply for a contract every year. Therefore, when considering the impact of the duties upon the private sector, we assume 26,218 is a fair judgement of the number of private sector contracts business applies for each year.

The package of proposals will result in familiarisation costs to the private sector. The current assumption is that the specific duties will only apply to lead contractors. We will examine and test this assumption during the consultation process.

For the purposes of this package of duties we have included activity by private sector purchasing managers. The cost per hour of a purchasing manager's time is taken to be the hourly rate (as given in the Annual Survey of Hours and Earnings 2008 code 1133), uprated 21% to cover non-labour costs.

It is assumed that, on average it will take a purchasing manager (or equivalent) 3.5 hours to familiarise themselves with the any questions and associated guidance for the duties this is applicable to:

This will result in a one off private sector cost of £2,977,272.

Recurring private sector costs:

There will be some recurring private sector costs for suppliers once the duties are implemented. We have estimated that activities associated with the new duties will take a supplier's purchasing officer an estimated 20 minutes to address questions or statements of fact that might be included in authorities' tender documents at the PQQ stage.

It is difficult to estimate the percentage of suppliers for whom this activity will require a new or different approach, which may need to be modified or updated with every new tender. We have therefore assumed recurring costs will range from a low of £41,656 per annum (based on 15% of the population) to £273,036 per annum (based on 100% of the population). We propose to use the consultation to test these assumptions.

This will result in recurring private sector cost of between: £40,939 and £273,036.

Benefits:

This suite of public sector Equality Duties will require certain authorities to consider how to improve equality outcomes via their public procurement activities. Recent research¹⁰ has indicated that whilst pockets of good practice already exist within authorities, there is still uncertainty about how this might be done and even when it is understood, there may be reluctance to do anything about it. When asked 36% of responding procurement officers felt that a strengthening of the legal position or political support would make them feel more confident and more able to include equality considerations within their procurement activities.

The requirement to set out in an authority's Equality Objectives how it intends to put the package of proposed duties into effect will directly link the improvement of equality outcomes into their strategic planning and priority setting ensuring these considerations are mainstreamed.

¹⁰ Equalities and Procurement Research 2009 by Equality and Human Rights Commission (EHRC), the Improvement and Development Agency for local government (IDeA), the Local Government Associations (LGA) and the Society of Procurement Officers in local government (SOPO)

Annex D: Equality Impact Assessment

Introduction

1. Our aim is for the Equality Duty to be as effective as possible in helping public authorities achieve improved equality outcomes, whilst also ensuring that the specific duties are flexible, proportionate and light-touch.

Stakeholder Engagement

2. In September 2008, the Government Equalities Office commissioned independent research from Schneider-Ross to understand:
 - which aspects of the current separate specific equality duties are effective and why
 - to identify the costs associated with the implementation of the current specific equality duties; and
 - to identify the improved outcomes, and where possible the financial benefit, of work on the current equality duties.
3. The research which included responses from local councils, schools, health bodies and other public sector organisations showed that, due to the specific duties, a majority of respondents (over 80%) had seen improvements in the way their organisations made decisions or allocated resources. Around 97% of the survey respondents reported either “significant” or “some” improvement in at least one specific outcome. The research also indicated that the specific duties had been a catalyst for a positive shift in culture, which brought equalities into the “mainstream”. At the same time, the research also found that some duties, such as publication of equality schemes, could be burdensome and considered as tick box exercises.
4. The Government Equalities Office set up two working groups – a cross-Government Working Group and a Reference Group made up of key external stakeholders – to develop policy proposals for the specific duties. The groups met four times between September 2008 and February 2009 and their input was instrumental in the policy development process.

Policy Proposals – Impact on Equality

Equality Objectives

Proposed duties

- *Public authorities should develop and publish equality objectives, with reference to the relevant evidence, and publicly set out the steps they intend to take to achieve them.*
- *In developing the objectives the public authorities should take into account certain priority areas as directed by the relevant Secretary of State.*
- *Public authorities should report annually on progress against their objectives, and review their objectives at least every three years.*

5. This new duty effectively replaces the current requirements, under the race, disability and gender duties, for a separate equality scheme. There is currently a specific requirement on public authorities, under each of three equality duties on race, disability and gender, to draw up and publish equality schemes, and require them to set out various processes and statements according to the different requirements of each duty, for instance how they will gather evidence, assess impact and involve stakeholders. We would like to get public authorities to focus on the difference they can make and the improved equality outcomes they can deliver, rather than asking them to produce lengthy schemes which can be burdensome and, once written, rarely referred to. We propose not to require public authorities to publish an equality scheme, and instead focus public authorities on setting out their equality objectives, with reference to the evidence, and the action plans to achieve them.

Impact on race, disability and gender

6. We think that a shift away from publishing an equality scheme to developing equality objectives, together with action plans, will have a positive impact on better performance of the Equality Duty in relation to race, disability and gender. We believe that this will encourage public authorities to concentrate on achieving outcomes, rather than describing processes. In setting the equality objectives public authorities will still be required to go through a similar process as they would to

develop an equality scheme i.e. they will still need to gather evidence and involve stakeholders (a separate specific duty). The specific gender equality duties require public authorities, when setting objectives, to consider the need to have objectives that address the causes of any differences between the pay of men and women that are related to their sex. Our new proposal, for public authorities to have regard to the national priorities set by relevant Secretaries of State, takes forward this duty but in a context which makes sense for an expanded Equality Duty: we expect that one of the priorities will be to address the gender pay gap, and therefore do not anticipate any adverse impact on gender as compared with the current gender specific duties.

Impact on age, sexual orientation, religion or belief and gender reassignment

7. When developing their equality objectives public authorities will be required to take into account the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations for people of different ages, religions or beliefs, sexual orientations and people undergoing gender reassignment. This can only have a positive impact on these protected characteristics as currently no legal requirement exists on public authorities to consider the needs of these protected characteristics, although some authorities have voluntarily extended their responsibilities under the equality duties to cover additional strands.

Reporting Requirements

Proposed duty:

Public authorities with more than 150 employees should publish their gender pay gap figures and their black and minority ethnic employment rates and their disabled people employment rates.

8. The current race specific equality duties require public authorities to monitor and report on ten separate figures, and the disability duty requires public authorities to report on three separate areas. We propose to replace these requirements

with one single reporting requirement for race (BME employment data), one for disability (number of disabled staff) and one for gender (the gender pay gap) which all public authorities with more than 150 staff would have to produce.

Impact on Race

9. We recognise that narrowing the reporting requirements on race could, in theory, have an adverse impact. We do not think that will in practice be the case. We want to focus public authorities on a number of equality data sets which, looked at across the piece, should help citizens understand the overall progress a public authority is making. The BME employment rate is the central metric to help people understand how a public authority is engaging with its staff on race issues. Our expectation is that, as the mechanism for collating the data is already in place, public authorities will continue to collate and monitor the data in order to set the headline figure in context.

Impact on Disability

10. We propose that public authorities with over 150 employees should publish their disabled people employment rate.
11. The Secretary of State reports on disability, published 1 December 2008, suggested that there are currently a number of data gaps regarding disabled people generally. Adding a requirement on public authorities to report their disabled people employment rate will be a step forward towards addressing this gap. It will encourage public sector organisations to consider the evidence and, if required, encourage them to take steps to address any problem.
12. The current disability specific duties require public authorities to describe their arrangements for gathering information on the effect of their policies and practices on the recruitment, retention and development of their disabled employees. We believe that our proposal will have a beneficial impact on disabled people because it is a simpler duty which will make it easier for people to compare progress between authorities and to hold to account those public authorities which are lagging behind. Further, we anticipate that public authorities will be able to tell the whole story behind the headline figures in order to put them into context.

Impact on Gender

13. Reducing the gender pay gap is a clear equality commitment. We believe that requiring public authorities with 150 or more employees to report their gender pay gap will have a beneficial impact on gender equality – it will shine a light on previously undisclosed inequalities and allow citizens to hold public authorities to account.

Assessing the Impact on Equality

Proposed duty:

Public authorities should demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives and what difference this has made.

14. The current duties require public authorities to *set out their processes* for assessing the impact on equality of what they do; we propose to amend this to make it more outcome focused by requiring public authorities to demonstrate how they have taken equality into account in the design of key policies or services.

Impact on race, disability and gender

15. We think this will have a positive impact on the current protected characteristics of race, disability and gender. We are retaining the principle of a specific duty around assessing impact, but we are shifting the focus away from describing the process, and encouraging public authorities to focus on being transparent and accountable. Ultimately we believe this will help mainstream equality impact assessments into the decision/policy making process.

Impact on age, sexual orientation, religion or belief and gender reassignment

16. Having a duty to assess the evidence of the impact on equality in policy/decision making should have a positive impact in relation to the protected characteristics of age, sexual orientation, religion or belief and gender reassignment as it will encourage public authorities to take into account these protected characteristics whilst developing their policies or making changes to current procedures.

Consultation and Involvement

Proposed duty:

Public authorities should take reasonable and proportionate steps to consult and involve representatives of employees, service users and other relevant groups they have identified as having an interest in how they design their policies and deliver their services (in particular those from protected groups whom the duty is designed to help) when they are setting their equality objectives, developing their action plans and reviewing progress.

17. The current disability and gender duties require public authorities to involve disabled people/employees, service users and trades unions when drawing up their schemes. We propose to amend this, so that public authorities are required to consider how best to consult and involve people from the protected groups when setting equality objectives, and reviewing progress.

Impact on race, disability and gender

18. There is currently no requirement to involve people from different racial groups when drawing up race equality schemes; and so an explicit requirement on public authorities to consider doing this should have a beneficial impact. For disability and gender, we do not intend the proposed change to have any adverse impact as the proposal will ensure that public authorities involve people from the protected groups throughout the process.

Impact on age, sexual orientation, religion or belief and gender reassignment

19. The duty will have a positive impact as it will encourage public authorities to consult and involve people of different ages, religions or beliefs, sexual orientations and people going through gender reassignment, all of whom are not covered by the existing equality duties.

Procurement

Proposed duties:

- to consider when setting out their equality objectives and the steps they intend to take to achieve them, including how they will ensure that equality factors are considered as part of their public procurement activities to contribute to delivery of their objectives;
- to consider the use of equality-related award criteria where they relate to the subject matter of the contract and are proportionate;
- to consider incorporating equality-related contract conditions where they relate to the performance of the contract and are proportionate;

20. This proposed set of specific duties on procurement is a new development. The first proposed duty will embed procurement-related equality considerations within the equality objective planning process. The proposed focus on outcomes will mean contracting authorities will be under a duty to consider how their procurement activity will contribute to improved equality outcomes for all groups protected by the Equality Duty.
21. The second and third proposals will require contracting authorities to consider possible improvements in equality outcomes within the public procurement contracting process. Of course, the extent to which equality outcomes will be improved for specific protected groups will vary according to the nature of the particular contract being let. However, overall, we anticipate that these specific duties will have a beneficial impact on all the protected groups: public authorities will now explicitly be required to consider how their procurement actions now positively help all protected groups.


Secretary of State Duty on Disability

22. The current disability duty requires named Secretaries of State to report on progress towards equality for disabled people across their policy areas every three years. We propose to retain this but to re-model it to encompass all protected characteristics and focus it at a more strategic level.

23. The Office for Disability Issues (ODI) evaluation of the first set of reports found some benefits from the existing duty, such as greater joined-up working and a higher profile for issues around disability. We want to retain the positive impact of this duty for disability, and are consulting on how we can do this, whilst also extending the duty so that it benefits the other protected groups.

Conclusion

24. Our research and ongoing discussions with stakeholders suggest that the proposed specific duties will have a positive impact on all the protected strands. The outcome focused nature of the duties will provide public authorities more time to tackle discrimination rather than spend time undertaking certain 'tick box' exercises or unnecessary processes.



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