

Report to Finance and Performance Management Scrutiny Panel

Date of Meeting: 9 December 2010



Portfolio: Leisure and Wellbeing (Councillor B. Rolfe)

Subject: Equality Act 2010 – Public Sector Equality Duty

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Recommendations/Decisions Required:

That the likely implications for the Council of the introduction of the new Public Sector Equality Duty be noted.

Executive Summary:

1. (Office of the Deputy Chief Executive) The Equality Act 2010 came into force on 1 October 2010, and replaced existing anti-discrimination laws. The Equality Act introduces a new Public Sector Equality Duty, which brings together the existing race, disability and gender duties and extends them to cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

2. The Equality Duty consists of a general duty, set out in the Act itself, and specific duties imposed through regulation. The Government has recently published a consultation document containing draft regulations for the Public Sector Equality Duty, which is anticipated to come into force with effect from 4 April 2011.

Reasons for Proposed Decision:

3. The Government aims for the Equality Duty to help public bodies achieve improved equality outcomes, and is to introduce specific duties that create the conditions and culture in which equality performance will improve, by requiring public service providers to be transparent about decision making processes, and about data that shows whether they are achieving key outcomes.

Other Options for Action:

4. No other options are appropriate in this respect. The Council will be required to comply with the provisions of the Public Sector Equality Duty. Failure to monitor and review performance against the duty and to take corrective action where necessary, could have negative implications for judgements made about the Council in corporate assessment processes, and might mean that opportunities for improvement were lost.

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5. The Equality Act 2010 came into force on 1 October 2010, and replaced existing anti-discrimination laws. The Equality Act introduces a new Public Sector Equality Duty, which brings together the previous race, disability and gender duties and extends them to cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment. The Equality Duty consists of a general duty, set out in the Act itself, and specific duties imposed through regulation. The Government has recently published draft regulations for the Public Sector Equality Duty, which is anticipated to come into force with effect from 4 April 2011.

6. The existing race, disability and gender equality duties have different reporting requirements, different reporting timescales, and different evidence-gathering requirements. They prescribe data sets for public bodies to gather and publish, require the production of equality schemes, and require public bodies to describe their administrative arrangements for assessing impact. The proposed new specific duties harmonise these into one set of requirements that have similar timescales and evidence-gathering requirements, that are proportionate enough to apply to public bodies of different sizes and capacities, and that are transparent enough for them to be held accountable. The duties will allow public bodies to decide for themselves what their most pressing equality challenges are and what information is relevant to their circumstances.

7. The Equality and Human Rights Commission (EHRC) will be issuing guidance towards the end of 2010, through a statutory Code of Practice and guidance on the Equality Duty, to explain the requirements of the general and specific duties in more detail and to set out what different public bodies need to do to comply. This report seeks to advise the Scrutiny Panel of the general requirements for the Council of the introduction of the Public Sector Equality Duty.

The General Duty

8. The General Duty provides that public bodies subject to the Equality Duty (such as the Council) must have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9. The Council must, in the exercise of its functions, have regard to each of the above.

The Specific Duties

10. The specific duties are legal requirements designed to help public bodies meet the General Duty. A consultation document published by the Government Equalities Office in June 2009 set out proposals for specific duties, and a policy statement published in January 2010 set out the previous Government's proposed approach. However, the Coalition Government has since considered the results of that consultation and the earlier proposals, and has developed a new approach in line with its principles of freedom, fairness and responsibility, and taking into account the its aim of replacing top-down intervention with local democratic accountability driven by transparency and decentralisation.

11. Public bodies have the potential to create a fairer society through the way they deliver services, the people they employ, and the jobs and training they offer to their staff. They also have effective levers to encourage businesses, civil society organisations and other bodies to

use their creativity and resources to bring about a change of culture through the way in which they commission and procure services. The Government has developed a set of proposals for implementing the specific duties that:

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

12. The Government has designed the new specific duties to be proportionate, replacing what it considers to be the process-driven approach that shaped the existing race, gender and disability equality duties. The proposals use transparency to help public bodies to fulfil the aims of the Equality Duty to eliminate discrimination, advance equality of opportunity and foster good relations between different groups. This means that public bodies will be judged by citizens on the basis of clear information about the equality results they achieve, rather than on whether they complete tick-box processes.

(a) Transparency

13. Transparency means public bodies being open about the information on which they base their decisions, about what they are seeking to achieve, and about their results. The Government believes that, where organisations are making slow progress on eliminating discrimination, advancing equality and fostering good relations, arming citizens and civil society groups with information will allow them to apply public pressure to drive a faster pace of change.

14. The Government will require public bodies to publish a range of equality data, relating both to their workforces and to the services they provide. Publication of data must be done in a way that is open and freely available to third parties, such as community groups and equality campaigners, who can re-use this information to hold public bodies to account. Consistency with these principles will ensure that equality data is accessible and enables easy comparison, and EHRC will set out standard requirements for the publication of equality data to in its forthcoming Code of Practice and guidance.

15. Engaging with people from the protected groups is something most public bodies should do from time to time in order to meet the General Duty. The Government does not therefore think that a specific duty to carry out prescribed types of engagement work is needed, and that public bodies should have the flexibility to decide for themselves when and how to engage with citizens. But, in line with its drive for greater transparency, the Government does propose that public bodies should be open about how they have engaged with people as part of their work towards fulfilling the aims of the Equality Duty. Similarly, part of normal decision-making for public bodies involves assessing (insofar as is relevant and proportionate) the impact they are having on equality. The Government does not think that a specific duty outlining a particular process or prescribed set of forms to assess impact, is

necessary or useful. However, transparency about the results of such assessments, and the data that underpins them, is important.

(b) Workforce Transparency

16. The Government will require public bodies with 150 or more employees to publish data on equality in their workforce. The ERHC Code of Practice and guidance will set out what workforce equality data should be published by different types of public bodies, and the Government expects this to include data on inequalities such as the gender pay gap, the proportion of staff from ethnic minority communities and the distribution of disabled employees. This data will be required to be published at least annually.

17. The Government recognises that some public bodies 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 becoming common for public sector employees to agree to their employers seeking this information. Although public bodies will be expected to take reasonable steps to fill data gaps, this should not be interpreted as a requirement to routinely collect data on sensitive personnel issues, such as the religion or sexual orientation of employees.

18. The Government expects the data published by public bodies to be broad enough to give the public a full picture of equality in the workplace and in public service provision. If a public body does not have the data which is needed to give the full picture, it will be expected to take reasonable steps to fill that gap. Generally, public bodies will be expected to set out publicly their plans and timescale for filling data gaps, on the basis of best practice rather than minimum compliance.

(c) Transparency in Public Service Provision

19. The Government also wants public bodies to bring decision-making into the daylight, by being open with citizens about the data used to plan, commission and evaluate services. Bodies will be required to publish data that will enable people to judge how effectively they are eliminating discrimination, advancing equality and fostering good relations through the services they provide, commission and procure. The Government will require organisations to publish data on an annual basis to enable people to compare present and past performance, and to track progress on specific equality issues. Requiring public bodies to publish this information regularly will enable citizens to judge their performance and challenge those that are failing to deliver on equality.

(d) Setting Objectives – Transparency About Impact on Equality

20. As well as ensuring public bodies are transparent about equality data, The Government also wants them to be transparent about the equality outcomes they are going to work towards. As part of normal business planning process, bodies will be required to set equality objectives, informed by the evidence and data they publish. Objectives should be specific, relevant and measurable, to enable meaningful scrutiny by citizens and other interested groups who will be able to tell, from the equality data, whether a public body is achieving what it set out to achieve. It is intended that the public will be able to look at this information, alongside a wider set of data, to judge whether public bodies are focusing on the right areas. The Government expects public bodies to incorporate this approach to equality as part of business planning and management, setting objectives and reviewing them in the light of progress at least every four years.

21. This new duty effectively replaces the current requirements, under the race, disability and gender duties, to publish equality schemes. Evidence has suggested that some organisations found the concept of equality schemes to be mechanistic, and for some the development of schemes became the point of the duty. The Government wishes public

bodies to focus on the difference they can make and the improved equality outcomes they can deliver, rather than producing burdensome equality schemes. Drawing on the data and evidence published, public bodies should determine the areas on which they plan to focus, set out what they want to achieve, and explain how they will measure success. Evidence will typically include that gathered from engaging with, and involving, people from the protected groups.

22. The Government considers that a shift away from publishing equality schemes to publishing equality outcome objectives, with specific, relevant and measurable intended impacts, combined with the other requirements to publish data on their performance, will have a positive impact on better performance of the Equality Duty. The Government believes that this approach will encourage public bodies to concentrate on achieving outcomes, rather than describing processes. In setting equality objectives, public bodies will still be expected to go through a similar process to the one they would have used to develop an equality scheme, i.e. they will still need to assess the relevance of their functions to equality, gather evidence in relation to all protected characteristics and consult and involve relevant people. Crucially, public bodies will now need to publish that data and other evidence that they have drawn on, so that the public can see why they have chosen to focus on the areas they have.

23. Public bodies may still draw up and publish equality schemes if they wish, although this is not a requirement of the Equality Duty. The Council has recently commenced the development of a new Single Equality Scheme to reflect the extension of the range of protected characteristics, and it is considered that this still represents the best approach to meeting the requirements of the new Public Sector Equality Duty, although without many of the requirements of the former race, disability and gender duties. The new Single Equality Scheme will be considered by the Cabinet in due course.

24. The previous disability-specific duty required public bodies to involve disabled people in the development of disability equality schemes, and the gender-specific duty required public bodies to consult employees, service users and others (including trade unions) when preparing a gender equality scheme. The proposals of the Coalition Government require public bodies to publish data and evidence which includes the results of engagement that they have undertaken with people protected by the Equality Act, and be transparent about the data they have used to determine areas of focus and intended impacts. The EHRC is to set out in its forthcoming guidance and Codes of Practice what the Government means by engagement in terms of the new duties, and examples of when and how it can be used to best effect.

25. The specific duties will require public bodies to publish their equality outcome objectives, and the data and evidence they have on the eight protected characteristics, including the results of any engagement work undertaken with people from these groups. Bodies will need to take reasonable steps to fill gaps in data where they cannot demonstrate how they are delivering on equality. This process will require public bodies to consider all the protected characteristics, to go through a rigorous assessment of evidence of need, and to publish the evidence and data sets they have drawn on. It will not be necessary to choose an equality objective for each strand, but citizens and civil society groups will have the necessary information that will allow them to challenge public bodies to explain their rationale in cases where they have not done so, and to ensure that public bodies are making evidence-based choices.

Implementation and Enforcement

26. Public bodies have been aware of the existence of the General Duty since the Equality Act gained Royal Assent in April 2010. The Government considers that it is therefore reasonable that they should be required to comply with the duty immediately upon repeal of the existing race, gender and disability duties on 4 April 2011. From then, public bodies will be required to have due regard to the need to eliminate discrimination, advance equality of

opportunity and foster good relations in relation to all relevant protected characteristics. The immediate implications for the Council of the enacting of the Equality Act 2010 and the Public Sector Equality Duty are:

- (a) That, by 4 April 2011, the authority must publish information relating to its performance against the General Duty, including in particular:
 - (i) information relating to the protected characteristics of its employees;
 - (ii) assessments of the impact of its policies and practices, and the likely impact of its proposed policies and practices, on the furtherance of the aims set out in the General Duty;
 - (iii) information that it took into account when it assessed the impact of its policies and practices, and the likely impact of its proposed policies and practices, on the furtherance of the aims set out in the General Duty; and
 - (iv) details of any engagement that it undertook with persons whom it considered to have an interest in furthering the aims set out in the General Duty;

27. The Council must comply with the above requirements by publishing information in a manner that is reasonably accessible to the public, but may comply with the duty to publish by setting out the information within another published document. The Corporate Equality Working Group is currently considering how best this information could be published.

28. The Government recognises that public bodies will need time to familiarise themselves with the requirements of some of the new specific duties, and to put in place systems to implement them effectively. For example, public bodies will wish to ensure that they have good information on which to base their equality objectives. Therefore, while the specific duties relating to publishing equality-related data will come into force from the day the regulations are commenced, public bodies will not be expected to publish equality objectives and measures of success until a year after the duties have come into force. The subsequent implications for the Council of the enacting of the Public Sector Equality Duty are:

- i. Not later than 2 April 2012, the authority must prepare and publish one or more objectives which it reasonably thinks that it should achieve in order to further one or more of the aims set out in the General Duty;
- ii. The authority must ensure that the objectives that it sets are specific and measurable, and set out how progress towards the objectives will be measured;
- iii. Before publishing relevant objectives, the authority must consider the information that it has published in respect of its performance against the General Duty (paragraph 19 (a)(i)-(iv) above); and
- iv. The authority must repeat the requirements of (a) above subsequently not later than the end of each successive period of four years beginning 2 April 2012.

29. The EHRC will be producing practical guidance prior to the coming into force of the regulations, to explain the requirements of the general and specific duties in more detail and set out what different public bodies need to do to comply. EHRC has a number of statutory powers that it is able to use in enforcement of the specific duties, and the Government expects it to use these powers in a strategic way, supplementing the democratic accountability built into the specific duties (for example, when it identifies a problem with equality results in a particular sector, or wants to drive up performance on a particular equality issue). By shifting the specific duties away from processes and towards transparency

requirements, the proposals of the Coalition Government mean that EHRC will be able to focus on strategic enforcement of the general duty.

Resource Implications:

Compliance with the requirements of the Public Sector Equality Duty and the development of the Council's new Single Equality Scheme, will be met from within existing resources.

Legal and Governance Implications:

The Council will be required to comply with the relevant provisions of the Equality Act 2010 and the Public Sector Equality Duty. There are no other legal implications or Human Rights Act issues arising from this report, which seeks to ensure that appropriate arrangements are in place to secure compliance with the Equality Act 2010 and the Public Sector Equality Duty.

Safer, Cleaner and Greener Implications:

There are no legal implications arising from this report in respect of the Council's commitment to the Nottingham Declaration for climate change, the corporate Safer, Cleaner and Greener initiative, or any Crime and Disorder issues within the district.

Consultation Undertaken:

The content of this report has been considered by the Corporate Equality Working Group, and the report was made available to the Leisure and Wellbeing Portfolio Holder in advance of the preparation of this agenda. The Council's draft Single Equality Scheme will be considered by the Cabinet in due course.

Background Papers:

'Equality Act 2010: The Public Sector Equality Duty, Promoting Equality Through Transparency - A Consultation' (Government Equalities Office – August 2010)

Impact Assessments:

Risk Management

A failure on the part of the Council to comply with the relevant provisions of the Equality Act 2010 and the Public Sector Equality Duty, could mean that opportunities for improvement were lost, and might adversely affect the reputation of the authority.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?

No. Relevant equality objectives will be identified as part of the development of the Council's new Single Equality Scheme.

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group? N/A