



Government  
**Equalities** Office

Putting equality at the heart of government

**Equality Act 2010:  
The public sector  
Equality Duty  
Promoting equality  
through transparency  
A consultation**

August 2010

# Contents

<b>Ministerial foreword</b>	<b>page 3</b>
<b>Chapter 1: Executive summary</b>	<b>page 5</b>
<b>Chapter 2: About this consultation</b>	<b>page 7</b>
Purpose of this consultation	page 7
Intended audience	page 7
Territorial scope	page 7
Impact assessments	page 8
Duration of this consultation	page 8
How to respond	page 8
Queries about this document	page 9
After the consultation	page 9
Freedom of information	page 9
Code of Practice on Consultation	page 10
<b>Chapter 3: Background and context</b>	<b>page 11</b>
The public sector Equality Duty	page 11
The general duty	page 11
The specific duties	page 11
<b>Chapter 4: Our approach</b>	<b>page 13</b>
Our approach to the specific duties	page 14
<b>Chapter 5: Our proposals for specific duties</b>	<b>page 15</b>
Transparency	page 15
Workforce transparency	page 17
Transparency in public service provision	page 17
Setting objectives: Transparency about impact on equality	page 18
Reducing the burdens on public organisations	page 19
National priorities specified by the Secretary of State	page 19
Procurement	page 19

Action planning	page 19
Secretary of State reporting duty on disability	page 20
<b>Chapter 6: Transitional arrangements and enforcement</b>	<b>page 21</b>
Transitional arrangements	page 21
Implementation and enforcement	page 21
<b>Chapter 7: Coverage of the duties</b>	<b>page 23</b>
General duty – background	page 23
Why list any bodies in Schedule 19?	page 23
Who we propose to list in Schedule 19	page 23
Specific duties	page 24
<b>Chapter 8: Next steps</b>	<b>page 27</b>
<b>Annex 1: Section 149 of Equality Act 2010</b>	<b>page 29</b>
<b>Annex 2 Draft Statutory Instrument</b>	<b>page 31</b>
<b>Annex 3: Transparency Board’s Draft Public Data Principles</b>	<b>page 33</b>
<b>Annex 4: Schedule 19</b>	<b>page 35</b>
<b>Annex 5: Bodies that we propose to add to Schedule 19</b>	<b>page 39</b>
<b>Annex 6: Regulatory Impact Assessment</b>	<b>page 43</b>
<b>Annex 7: Equality Impact Assessment</b>	<b>page 63</b>
<b>Annex 8: Consultation questions</b>	<b>page 73</b>

# Ministerial foreword



**The Rt Hon Theresa May MP**  
**Minister for Women**  
**and Equalities**



**Lynne Featherstone MP**  
**Parliamentary Under**  
**Secretary of State**  
**Minister for Equalities**

This Government's guiding principles are freedom, fairness and responsibility, and a shared desire to work in the national interest. We want to tear down the barriers to equal opportunities and build a fairer society. We are committed to giving people the power to improve our public services through greater transparency and democratic control. Transparency is essential to improving performance across the public sector, generating value for money from services and ensuring our public services meet the needs of our diverse communities and support greater equality: we believe that citizens should be able to hold public bodies to account for how their public services are designed and delivered, at what cost and with what effect.

We intend to learn lessons from the past and restore trust in public bodies. People judge public bodies on their results, not on their ability to comply with complex bureaucratic processes. Rather than imposing top down targets on organisations, we will require them to publish data on their performance and the composition of their workforce, providing people with the information that will empower them to hold our public bodies to account on how effectively they are eliminating discrimination, advancing equality of opportunity and fostering good relations between different groups.

We are confident that our approach will help our public services to tackle inequality, while freeing up professionals and resources to deliver better services.

A handwritten signature in black ink, appearing to read 'Theresa May'.

**The Rt Hon Theresa May MP**  
**Minister for Women**  
**and Equalities**

A handwritten signature in black ink, appearing to read 'Lynne Featherstone'.

**Lynne Featherstone MP**  
**Parliamentary Under**  
**Secretary of State**  
**Minister for Equalities**

# Chapter 1: Executive summary

- 1.1 The Government believes that we need a radical shift in power away from Westminster and Whitehall and back to local communities. We need to have faith in those engaged in front-line service delivery to work with local people to identify local priorities and to design services in a way that delivers the best outcomes for the public. This means liberating public bodies from time-wasting bureaucracy. It means stripping out unnecessary prescription, processes and top down targets to free up resources for front-line services. We will put public sector professionals, working together with citizens, in the driving seat.
- 1.2 But greater freedom for public bodies must be accompanied with greater accountability – not to Whitehall but to the citizens they serve. We do not intend to prescribe how public bodies go about their business, but we will ensure that we put in place the right framework which empowers citizens to scrutinise the data and evidence on how their public services perform. We will do this by bringing data into the daylight – letting people see for themselves the information public bodies are using to make decisions and the data on their performance. Citizens will then be able to judge, challenge, applaud and hold to account the public bodies they ultimately pay for.
- 1.3 This is the vision that lies at the heart of this Government and guides our approach to the public sector Equality Duty.
- 1.4 The Equality Act 2010 replaced the existing anti-discrimination laws with a single Act. The Act included a new public sector Equality Duty, replacing the separate duties on public bodies relating to race, disability and sex equality, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment more fully. This document is the Government's consultation on the secondary legislation needed to fully implement the new Duty. It asks for your views on our proposals for the draft regulations containing the specific duties that help public bodies meet the general Equality Duty in the Act. It also sets out our proposals on which public bodies will be subject to the general Equality Duty and the specific duties.
- 1.5 **Chapter 4** sets out our approach to the specific duties, which are detailed in Chapter 5.

- 1.6 Based on our commitment to public services that support fairness, we have developed a set of proposals for specific duties that:
- is transparent;
  - enables citizens to exercise greater choice;
  - devolves power; and
  - focuses on measurable results.
- 1.7 **Chapter 5** sets out our proposals for specific duties which use the power of transparency to help public bodies fulfil the aims of the Equality Duty. The requirements relate to the publication of data and transparency about where a public body will focus its efforts, and how it will ensure transparency of outcomes in equality. We ask for your views on the draft regulations.
- 1.8 **Chapter 6** sets out proposed transitional arrangements from the three current public sector equality duties to the new single Equality Duty. It also sets out the enforcement arrangements for the Equality Duty.
- 1.9 **Annex 2** contains the draft regulations to impose specific duties.
- 1.10 **Chapter 7** sets out our proposals on which public bodies will be subject to the general Equality Duty and the specific duties. As well as the public bodies already on the list to which the Equality Duty will apply – for example central government departments, local authorities, the Armed Forces and the key health, education, policing and transport bodies – we are proposing to use secondary legislation to list additional bodies that:
- help deliver public services;
  - are responsible for regulating or inspecting the delivery of public services; or
  - otherwise influence the way public services are delivered.
- 1.11 The majority of these bodies will also be subject to the specific duties. We welcome your views on our proposals.
- 1.12 **Annex 8** lists the consultation questions.
- 1.13 Your comments will help to ensure that the regulations which the Government lays before Parliament will help to deliver a fairer and more equal society through greater transparency in our public services.

# Chapter 2: About this consultation

## Purpose of this consultation

- 2.1 We would like to hear your views on our proposals for draft regulations to impose specific duties on certain public bodies – these are legal requirements placed on public bodies to help them meet their obligations under the general Equality Duty contained in the Equality Act 2010 (the Act).
- 2.2 We are also seeking your views on which bodies should be added to Schedule 19 to the Act (by an order), and which bodies should be subject to the specific duties (through regulations).

## Intended audience

- 2.3 This consultation will be of particular interest to:
  - public bodies;
  - those monitoring the performance of public bodies;
  - others who perform public functions; and
  - organisations that are interested in how public services can eliminate discrimination, advance equality and foster good relations.

Comments from other interested parties are also welcomed.

## Territorial scope

- 2.4 These proposals will apply to certain public bodies operating in England and to certain public bodies operating across Great Britain in relation to non-devolved functions – see **Chapter 7** for further details.
- 2.5 Scottish ministers have their own powers to impose specific duties on relevant Scottish public bodies and in relation to the Scottish functions of Anglo-Scottish cross-border public bodies. Welsh ministers also have a power to impose specific duties on relevant Welsh bodies and in respect of the Welsh functions of Anglo-Welsh cross-border public bodies. The Scottish Government and the Welsh Assembly Government will issue separate consultation documents to set out their plans for specific duties for relevant Scottish and Welsh public bodies. The equality duties for public bodies in Northern Ireland are dealt with in separate legislation and the duties proposed in this consultation will not apply there.

## Impact assessments

- 2.6 We have assessed the regulatory impact of these proposals and we welcome your views on the impact assessment at **Annex 6**.
- 2.7 We have also carried out an initial assessment of the impact of our proposals on age, disability, gender, gender reassignment, race, religion or belief and sexual orientation equality. This is at **Annex 7**. We will continue to discuss and assess the likely impact of our proposals with interested parties over the course of this consultation.

## Duration of this consultation

- 2.8 This consultation begins on **19 August 2010** and ends on **10 November 2010**. Any views received after the closing date may not be considered or reflected in our analysis.

## How to respond

- 2.9 A summary of the consultation questions is provided at **Annex 8**. We would be grateful if you could use the electronic version of the response proforma to submit your comments; this is available for download from the Government Equalities Office website at [www.equalities.gov.uk](http://www.equalities.gov.uk)
- 2.10 Responses should be sent by email to:
- [specificduties@geo.gsi.gov.uk](mailto:specificduties@geo.gsi.gov.uk)
- or by post to:
- Specific Duties Consultation Responses  
Government Equalities Office  
Zone J10, 9th Floor  
Eland House  
Bressenden Place  
London SW1E 5DU
- 2.11 Please ensure that your response reaches us by **10 November 2010**.
- 2.12 Please tell us whether you are responding as an individual or are representing the views of an organisation. If you are responding on behalf of an organisation, please tell us whom the organisation represents and, where possible, how the views of members have been sought.



## Queries about this document

2.13 Any queries about this document should be made to:

Name: Harshbir Sangha  
Telephone: 0303 444 3041  
Email: [specificduties@geo.gsi.gov.uk](mailto:specificduties@geo.gsi.gov.uk)

We will consider any reasonable request for **alternative accessible formats** of this document. Please send your request to:

Email: [specificduties@geo.gsi.gov.uk](mailto:specificduties@geo.gsi.gov.uk)  
(Please state 'Accessible format request' in the subject line)

Post: Specific Duties Consultation – Accessible Formats  
Government Equalities Office  
Zone J10, 9th Floor  
Eland House  
Bressenden Place  
London SW1E 5DU

Telephone: 0303 444 3041

## After the consultation

2.14 We will publish a summary of the results of this consultation on the Government Equalities Office website within three months of the end of the consultation period.

2.15 The public sector Equality Duty is intended to come into force in April 2011. This will allow time for public bodies and other interested parties to prepare for the commencement of the Duty, and for the Equality and Human Rights Commission (EHRC) and others to provide guidance prior to implementation.

## Freedom of information

2.16 We may need to pass any information you send us to other colleagues within the Government Equalities Office and to other government departments. We may also need to publish your response.

2.17 All information you provide in your response, including personal information, may be subject to publication or disclosure if someone requests it under the Freedom of Information Act 2000 (FOI Act) or the Data Protection Act 1998. If you want the information you provide to be treated as confidential, please be aware that the FOI Act has a statutory Code of Practice that we have to comply with which sets out our obligations on confidentiality. Because of this it would be helpful if you tell us why you want the information to be treated as confidential. If someone

does then ask us to disclose the information, we will be able to take into account your reasons for confidentiality but we cannot guarantee that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system on an email will not of itself be regarded as binding on the Government Equalities Office.

### **Code of Practice on Consultation**

2.18 This consultation complies with the Code of Practice on Consultation<sup>1</sup> produced by the Department for Business, Innovation and Skills.

<sup>1</sup> [www.bis.gov.uk/policies/better-regulation/consultation-guidance](http://www.bis.gov.uk/policies/better-regulation/consultation-guidance)

# Chapter 3: Background and context

## The public sector Equality Duty

- 3.1 Public bodies – from government departments to local authorities, schools, health bodies and police authorities – play an important part in creating a fair society through the services they provide, the people they employ and the money they spend. For example, providers of health services, in partnership with other organisations, can take action to tackle the marked differences in health outcomes experienced by some ethnic minority groups when compared with the general population.
- 3.2 The Equality Act 2010 replaced the existing anti-discrimination laws with a single Act. It included a new public sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment more fully. The Equality Duty consists of a general duty, set out in the Act itself, and specific duties imposed through regulations.

## The general duty

- 3.3 The general duty is set out in section 149 of the Act (reproduced at Annex 1). In summary, those subject to the Equality Duty must have due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation;
  - advance equality of opportunity between different groups; and
  - foster good relations between different groups.

## The specific duties

- 3.4 Section 153 of the Act gives Ministers the power to impose specific duties through regulations. The specific duties are legal requirements designed to help public bodies meet the general duty.
- 3.5 A consultation document published in June 2009<sup>2</sup> set out proposals for specific duties, and a policy statement published in January 2010<sup>3</sup> set out the previous Government's proposed approach. We have considered the results of that consultation and the earlier proposals and developed a new approach in line

<sup>2</sup> *Equality Bill: Making it work – Policy proposals for specific duties: A consultation*  
[www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf](http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf)

<sup>3</sup> *Equality Bill: Making it work – Policy proposals for specific duties: Policy Statement*  
[www.equalities.gov.uk/PDF/psdresp\\_GEO\\_MakingItWork\\_acc.pdf](http://www.equalities.gov.uk/PDF/psdresp_GEO_MakingItWork_acc.pdf)

with the Coalition Government's guiding principles of freedom, fairness and responsibility. Our new approach also takes into account the Government's clear aim of replacing top-down interventions from the centre with local democratic accountability driven by transparency and decentralisation. This consultation explains how we propose to proceed in relation to the specific duties. It also sets out (in Annex 5) which public bodies we propose should be explicitly listed as subject to the general duty and which of those should also be subject to the specific duties. It seeks views on draft secondary legislation which would implement our proposals. A draft of the Equality Act 2010 (Statutory Duties) Regulations 2011, on which you are being invited to give your views, can be found at Annex 2.

# Chapter 4: Our approach

- 4.1 This Government's guiding principles are freedom, fairness and responsibility, and a shared desire to work in the national interest. There are too many barriers to social mobility and equal opportunities in Britain today. We need concerted action from government and public service providers to help tear down the barriers and create a fairer society.
- 4.2 Our society is changing. In 1984 there were around 660,000 people in the UK aged 85 and over. Since then the numbers have more than doubled, reaching 1.4 million in 2009. By 2034 the number of people aged 85 and over is projected to reach 3.5 million and account for 5 per cent of the total population.<sup>4</sup> The ethnic diversity of the UK is also increasing. The proportion of people from ethnic minorities in the UK population has increased from 8 per cent in 2001 to 12 per cent in 2008.<sup>5</sup> As our society becomes increasingly diverse, it becomes even more important that public bodies reflect the diversity of the population and ensure that public services meet diverse needs.
- 4.3 Public bodies have huge potential to create a fairer society through the way they deliver their services, the people they recruit, 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 lasting change of culture through the way in which they commission and procure services.
- 4.4 The Government believes that public bodies will perform best if they are free from unnecessary red tape and allowed to concentrate on their core functions. We must remove time-wasting bureaucracy and strip out unnecessary prescription, processes and monitoring regimes to free up resources for front-line services.
- 4.5 But that is only part of the story. The Government is committed to re-distributing power away from Westminster and Whitehall back to local communities. We are intent on liberating public bodies from top-down targets. We need to have faith in those engaged in front-line service delivery to work with local people to identify local priorities and to design services to meet the needs of the people they serve. Central government must give them the freedom to manage their operations in the way that delivers the best outcomes for the public.

<sup>4</sup> Source: Mid-year population estimates, Office for National Statistics; General Register Office for Scotland; Northern Ireland Statistics and Research Agency. Population projections for 2034 are ONS National Population Projections (NPP) 2008 based.

<sup>5</sup> Office for National Statistics, *Social Trends*.

- 4.6 These changes put public sector professionals, working together with citizens, in the driving seat, but greater freedom must be accompanied with greater accountability. Not accountability to Whitehall departments or bureaucratic quangos, but to the people who fund and use their services. We do not intend to prescribe how public bodies go about their business, but we will ensure that we put in place the right framework which empowers citizens to scrutinise the data and evidence on how their public services perform. We will do this by bringing data into the daylight – letting people see for themselves the information public bodies are using to make decisions and the data on their performance. Citizens will then be able to judge, challenge, applaud and hold to account the public bodies they ultimately pay for.
- 4.7 This is the vision that lies at the heart of this Government and guides our approach to the public sector Equality Duty.

### Our approach to the specific duties

- 4.8 We have considered the results of the earlier consultation on the specific duties,<sup>6</sup> as well as the policy statement<sup>7</sup> which set out possible ways forward for the specific duties. We have now 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 licences;
  - **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;
  - **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 fulfil the aims of the Equality Duty. We will also require them to publish robust data so the public can hold them to account for progress made in eliminating discrimination, advancing equality and fostering good relations.
- 4.9 These new specific duties are designed to be proportionate, replacing the process-driven approach that shaped the existing race, gender and disability equality duties.

<sup>6</sup> Government Equalities Office, *Equality Bill: Making it work – Policy proposals for specific duties: A consultation*, June 2009.

<sup>7</sup> Government Equalities Office, *Equality Bill: Making it work – Policy proposals for specific duties: Policy Statement*, January 2010.

# Chapter 5: Our proposals for specific duties

5.1 The specific duties described in this document mark a significant change in approach from the existing equality duties. Our proposals use the power of 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 have completed a tick-box list of processes.

## Transparency

5.2 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.

5.3 We will require public bodies to publish a range of equality data relating both to their workforces and to the services they provide. Different bodies will necessarily publish different data sets relating to their particular business, but there are some common principles that will guide them in how they publish their data. 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 data to hold public bodies to account. This means that equality data must be pro-actively released in a way that is consistent with the Public Data Principles set out by the Public Sector Transparency Board established by the Prime Minister (see draft at Annex 3). These Principles include:

- timeliness;
- fine granularity;
- openness;
- aggregated and anonymised data;
- standardised formats; and
- publication under a standard open licence which allows free re-use (including commercial re-use) of the data for any lawful purpose without additional permission.

- 5.4 Consistency with these Principles will ensure that equality data is accessible and enables easy comparison. This will give the public a powerful tool to hold organisations to account and enable third parties to analyse, interrogate and manipulate the data so it is easier for citizens to use.
- 5.5 The Equality and Human Rights Commission will set out the standard requirements for the equality data to be published by different types of public bodies in its statutory Code of Practice and guidance on the Equality Duty, working with the Public Sector Transparency Board on the transparency and data aspects.
- 5.6 The information is likely to come from a range of sources, including:
- raw data;
  - routine monitoring data;
  - staff, customer or population surveys;
  - data about complaints; and
  - statistics collected by external bodies, such as the Office for National Statistics.
- 5.7 Engaging with people from the protected groups is something most public bodies should do from time to time in order to carry out the general duty. We therefore do not think a specific duty to carry out prescribed types of engagement work is needed – public bodies should have the flexibility to decide for themselves when and how to engage with citizens. But, in line with our drive for greater transparency, we do 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. We do not think a specific duty, outlining a particular process or prescribed set of forms to assess impact, is necessary or useful. But we do believe that transparency about the results of such assessments, and the data that underpins them, is important.
- 5.8 We would expect the data public bodies publish 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 then we would expect them to take reasonable steps to fill that gap. Generally we would expect public bodies to set out publicly their plans and timescale for filling data gaps, on the basis of best practice rather than minimum compliance. In addition, the Coalition's Programme for Government committed to introduce a new "Right to Data" which will enable people to request and use other data sets already collected by the public body<sup>8</sup>.

<sup>8</sup> This right will not require public bodies to collect any more data which they do not need for their own purposes or to comply with the law.



- 5.9 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.

**Q1: Do you have any comments on our proposals for data reporting? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.2 to 5.9?**

### Workforce transparency

- 5.10 We will require public bodies with 150 or more employees to publish data on equality in their workforces. The Equality and Human Rights Commission's Code of Practice and guidance will set out what workforce equality data should be published by different types of public bodies, and we would expect this to include data on important inequalities such as the gender pay gap, the proportion of staff from ethnic minority communities and the distribution of disabled employees throughout an organisation's structure. Public bodies will be required to publish this data at least annually and we expect the data to be accessible and to comply with the Transparency Board's Public Data Principles and the Equality and Human Rights Commission's Code of Practice.
- 5.11 We recognise 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 encouraging that it is becoming more common for public sector employees to agree to their employers seeking this information. For this reason, this requirement should not be interpreted as a requirement on public bodies to routinely collect data on sensitive personnel issues, such as the religion or sexual orientation of their employees.

**Q2: Do you have any comments on our proposals for workforce transparency? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.10 to 5.11?**

### Transparency in public service provision

- 5.12 We also want public bodies to bring decision-making into the daylight by being open with citizens about the data they use to plan, commission and evaluate the services they provide.

- 5.13 We will therefore require public bodies 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. This data should also be accessible and comply with the Transparency Board's Public Data Principles and the Equality and Human Rights Commission's Code of Practice.
- 5.14 Public bodies should aim to publish data as regularly as possible. As a minimum, we 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 them on their performance and challenge those bodies that are failing to deliver on equality.

**Q3: Do you have any comments on our proposals for transparency in public service provision? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.12 to 5.14?**

### Setting objectives: transparency about impact on equality

- 5.15 As well as ensuring public bodies are transparent about their equality data, we also want them to be transparent about the equality outcomes they are going to work towards. We will require public bodies, as part of their normal business planning process, to set equality outcome objectives, informed by the evidence and data they publish. These objectives should be specific, relevant and above all measurable. This will 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. This approach is in line with the government's emphasis on democratic, rather than bureaucratic, accountability
- 5.16 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. We would expect public bodies to incorporate this approach to equality within their wider transparency agenda as part of business-as-usual organisational planning and management, setting objectives and reviewing them in the light of progress at least every four years.

**Q4: Do you have any comments on our proposals for setting equality objectives to achieve transparency about impact on equality? Does the drafting of regulation 3 accurately reflect the aims of the policy described in paragraphs 5.15 and 5.16?**

## Reducing the burdens on public organisations

5.17 The approach we are taking is significantly different from the arrangements in place under the existing duties, and from the last Government's approach. In particular, we are proposing a number of key changes to the last Government's approach. These are as follows:

### National priorities specified by the Secretary of State

5.18 The previous Government proposed that public bodies should be required to have regard to equality priorities decided at a national level by the Secretary of State when setting their equality objectives.

5.19 We believe that public bodies should be free from the central diktats that so often skew priorities, divert resources and hinder the ability to react more rationally to local needs. Putting trust in public bodies by reducing Whitehall interference will give them flexibility to respond effectively to local needs, supported by local data. Therefore, we do not propose that Secretaries of State should set top-down targets or national equality priorities. Nor do we propose that there should be a specific duty on public bodies to have regard to equality priorities decided by Secretaries of State when responding to the Equality Duty.

## Procurement

5.20 Historically, up to £220 billion each year has been spent by the public sector on goods and services, approximately 15 per cent of UK gross domestic product. The need to deliver value for money can go hand in hand with delivering wider benefits such as equality, because taking action to tackle disadvantage early and providing services appropriate for diverse users can save money in the longer run.

5.21 The Equality Duty requires public bodies have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different groups across all their functions. We do not believe it is necessary to impose burdensome additional processes on public bodies telling them how to conduct their procurement activity: they will be judged on the outcomes that they deliver.

## Action planning

5.22 The previous Government proposed that public bodies should set out the steps they propose to take in order to achieve equality objectives. We believe that our proposals on transparency render this requirement redundant. Citizens will be able to see for themselves, through regular publication of data, how a public body is performing on equality and whether it is meeting the objectives it has set itself. What matters is whether a public body delivers improved equality outcomes, not the bureaucratic process a body is going to put in place to achieve the outcome.

Citizens will judge them on their results, not on their internal processes. In line with our approach of cutting out unnecessary regulation we therefore do not believe that a duty in this area is required.

### Secretary of State reporting duty on disability

- 5.23 The previous Government proposed to retain the existing Secretary of State reporting duty in relation to disability. This would have required named Secretaries of State to publish a report every three years on progress towards equality for disabled people across their policy areas and their plans to coordinate action to bring about further progress.
- 5.24 Disability stands apart as a protected characteristic because of the many complex and distinct barriers facing disabled people. Co-ordinated action across the public sector, and transparency on progress, are crucial to our success in tackling these barriers. But we do not believe that the current duty on certain Secretaries of State to produce reports is needed in order to further these aims. Our radical new approach to transparency and democratic accountability is the best way of ensuring that progress towards disability equality is tracked and scrutinised by the people affected – disabled people themselves and their representatives. In addition, there is a range of other information available which will help show the position on disability equality across sectors, in particular the triennial statutory ‘state-of-the-nation’ report submitted by the Equality and Human Rights Commission. We therefore do not propose to retain a disability reporting duty on certain Secretaries of State.

**Q5: Do you have any comments on these proposed changes?**

# Chapter 6: Transitional arrangements and enforcement

## Transitional arrangements

- 6.1 Public bodies have been aware of the existence of the general duty since the Equality Act gained Royal Assent in April 2010. Therefore, it is reasonable that they should be required to comply with the general duty immediately upon repeal of the existing race, gender and disability duties – this will not be before April 2011. From day one, 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.
- 6.2 We recognise, however, 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.

**Q6: Do you have any comments on our proposals for transition from the existing duties relating to race, disability and gender to the new public sector Equality Duty, as described in paragraphs 6.1 and 6.2 above?**

## Implementation and enforcement

- 6.3 The Equality and Human Rights Commission will produce practical guidance 12 weeks before the entry into force of the regulations to explain the requirements of the general and specific duties in more detail and set out what different types and sizes of public bodies need to do to comply. In addition, central government is committed to working to help public bodies understand what they must do in order to implement the Equality Duty. It is essential that there are measures in place to give public bodies confidence in complying with the Duty, and to ensure that it is effective in helping public bodies to deliver equality outcomes.

- 6.4 Our focus on transparency means that citizens themselves will be able to judge, challenge, applaud and hold to account public bodies in their performance of both the general duty and the specific duties. This new emphasis means that public bodies will be democratically accountable, and that citizens and representative groups will engage with public bodies in ensuring that they fulfil the aims of the Equality Duty.
- 6.5 The Equality and Human Rights Commission also has a number of statutory powers that it is able to use in enforcement of the specific duties. We would expect the Commission 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, our proposals mean that the Equality and Human Rights Commission will be able to focus on strategic enforcement of the general duty.

# Chapter 7: Coverage of the duties

- 7.1 This chapter explains which public bodies are already subject to the Equality Duty, either because they are named on a list in the Equality Act, or because they do certain things (“public functions”). We propose to add some more bodies to the list.
- 7.2 If a body is included in the list then it means a Minister can impose specific duties on that body. This chapter also sets out which of those bodies on the list should be subject to our proposed specific duties.

## General duty – background

- 7.3 There are two ways that a public body can be subject to the Equality Duty – it can either be listed in Schedule 19 to the Equality Act, or it can be subject to the Equality Duty because it is carrying out public functions (although the Duty would only apply to those public functions, and not any private functions it was also carrying out). A body can be listed in Schedule 19 in respect of all, or just some, of its functions.
- 7.4 Schedule 19 to the Act currently contains a broad list of public bodies, covering central government departments, local authorities, the Armed Forces and the key health, education, policing and transport bodies. Schedule 19, as it appears in the Act, can be found at Annex 4 of this consultation document.

## Why list any bodies in Schedule 19?

- 7.5 The main advantage of listing a public body in Schedule 19 is that it allows a Minister to impose specific duties on that body. Therefore, we must list all those public bodies which we wish to impose specific duties on.
- 7.6 Another reason to list public bodies in Schedule 19 is that it makes it clear to everyone that that body is subject to the Equality Duty. This is especially helpful if a particular public body carries out a mix of public and non-public functions because we can specify which functions are covered and which are not.

## Who we propose to list in Schedule 19

- 7.7 We propose to add the bodies indicated in Annex 5 of this document to Part 1 of Schedule 19 to the Act. This list includes bodies that help to deliver public services, are responsible for regulating or inspecting the delivery of those services, or otherwise influence the way in which they are delivered.

- 7.8 We propose that some of these bodies should be subject to the general duty only ‘in respect of their public functions’. Where this is so, we have indicated this in Annex 5. This applies, for example, to certain professional regulatory bodies which perform a key public function in regulating, but may carry out a wide range of private functions as well.
- 7.9 We intend to exclude certain functions from application of the general duty for some of these bodies. For the BBC, Channel 4 and S4C, we are excluding activities that relate to the provision of a content service,<sup>9</sup> and their commercial activities. This means that they will be subject to the general duty where applicable but the duty will not impinge upon editorial independence or commercial activities.
- 7.10 We are excluding the casework functions of the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman from application of the duty, to ensure that their investigations are not subject to the requirements of the general duty.
- 7.11 The Government recently announced its intention to create GP commissioning consortia. We propose that these bodies, when created, are added to Schedule 19 and are also subject to the specific duties.
- 7.12 In addition, we intend to create a new Part 4 to Schedule 19 and to add the three cross-border Anglo-Welsh authorities listed in Annex 5 of this document to this new Part 4.

**Q7: We would welcome your views on the proposed list of public bodies for Part 1 and Part 4 of Schedule 19, as described in paragraphs 7.7 to 7.12 above.**

### Specific duties

- 7.13 We propose that almost all of the public bodies currently listed in Part 1 of Schedule 19 to the Act should be subject to the specific duties described in Chapter 5. We also propose that most of the additional bodies we are proposing to add to Schedule 19 should be subject to the specific duties. This complete list will comprise key public sector bodies that have an important role to play in furthering the delivery of equalities outcomes and are of a sufficient size to carry out the specific duties. Those bodies that we think should be subject to the specific duties are indicated in Annex 4 and Annex 5 of this document.

<sup>9</sup> A content service is defined in section 32(7) of the Communications Act 2003.



7.14 There is a small number of bodies that are currently listed in Schedule 19, or that we propose to add to Schedule 19, which we do not think should be subject to the specific duties. These are a few small bodies for which the specific duties would not be proportionate or sensible. They include parish meetings, some professional regulatory bodies, and local waste and drainage bodies. Those bodies that we do not think should be subject to the specific duties are indicated in the lists at Annexes 4 and 5 of this document.

**Q8: We would welcome your views on those bodies that we do and do not think should be subject to the specific duties, as described in paragraphs 7.13 and 7.14 above.**

# Chapter 8: Next steps

- 8.1 The consultation will last 12 weeks, until 10 November 2010. Following the consultation, we will analyse the responses. We then intend to publish a response to the consultation, setting out what people thought of our plans within three months.
- 8.2 We aim to bring the general and specific duties into force in April 2011.
- 8.3 The EHRC will also consult on its draft statutory Code of Practice.

# Annex I: Section 149 of the Equality Act 2010

## **Public sector equality duty**

### **149 Public sector equality duty**

(1) – A public authority must, in the exercise of its functions, have due regard to the need to –

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

(2) – A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) – Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) – The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) – Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) tackle prejudice, and
- (b) promote understanding.

(6) – Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) – The relevant protected characteristics are –

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

(8) – A reference to conduct that is prohibited by or under this Act includes a reference to –

- (a) a breach of an equality clause or rule;
- (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.

# Annex 2: Draft Statutory Instrument

---

## DRAFT STATUTORY INSTRUMENTS -

---

**2010 No. xxx**

### **EQUALITY**

#### **The Equality Act 2010 (Statutory Duties) Regulations 2011**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i> -	***
<i>Coming into force</i> - -	***

The Secretary of State, in exercise of the powers conferred by sections 153(1), 155(1) and 207 of the Equality Act 2010(1), makes the following Regulations:

#### **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Equality Act 2010 (Statutory Duties) Regulations 2011 and shall come into force on 4 April 2011.

(2) In these Regulations—

“section 149(1) duty” means the duty under section 149(1) of the Equality Act 2010.

#### **Publication of information**

2.—(1) A public authority must publish information relating to its performance of the section 149(1) duty—

- (a) - not later than 4 April 2011; and
- (b) - subsequently at intervals of not more than one year beginning with the date of publication of the last set of information.

(2) The information shall include, in particular—

- (a) - information relating to the protected characteristics of its employees, if the public authority has 150 employees or more;
- (b) - 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 paragraphs (a) to (c) of the section 149(1) duty;
- (c) - 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 paragraphs (a) to (c) of the section 149(1) duty; and

(d) - details of any engagement that it undertook with persons whom it considered to have an interest in furthering the aims set out in paragraphs (a) to (c) of the section 149 duty.

(3) Before publishing the information required by paragraph (1) the public authority shall consider such matters as may be specified by a Minister of the Crown from time to time.

### **Equality objectives**

3.—(1) Not later than 2 April 2012 a public 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 paragraphs (a) to (c) of the section 149(1) duty.

(2) The public authority must—

(i) -ensure that the objectives that it sets in compliance with paragraph (1) are specific and measurable; and

(ii) -set out how progress towards the objectives should be measured.

(3) Before taking the action required by paragraph (1) the public authority must consider the information that it published in compliance with Regulation 2 (1).

(4) The public authority must repeat the requirements of paragraph (1) subsequently not later than the end of each successive period of four years beginning with 2 April 2012.

### **Publication**

4.—(1) The public authority must comply with any duty to publish under Regulations 2 and 3 by publishing the information in a manner that is reasonably accessible to the public.

(2) The public authority may comply with any duty to publish under Regulations 2 and 3 by setting out the information within another published document.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations impose duties on public authorities that will be listed in a Schedule to the Regulations. The purpose of the duties is to ensure better performance by the public authorities concerned of their duty to have due regard to the aims set out in paragraphs (a) to (c) of section 149(1) of the Equality Act 2010 (“the Act”).

Regulation 2 requires the public authorities that will be listed in the Schedule to publish information relating to how they have performed the duty under section 149(1) of the Act. The information should be published at least annually. The Regulation also expands on some of information that the listed public authorities should publish. Before publishing the relevant information the listed public authorities must consider any matters that a Minister of the Crown may set out elsewhere.

Regulation 3 requires the same listed public authorities to prepare and publish one or more objectives which it thinks that it should achieve in order to further one or more of the aims set out in the section 149(1) duty.

Regulation 4 explains that the information that these Regulations require the listed public authorities to publish can be published as part of another document and that the information should be provided in a manner that is reasonably accessible to the public.

# Annex 3: Transparency Board's Draft Public Data Principles

- **Public data policy and practice will be clearly driven by the public and businesses who want and use the data, including what data is released when and in what form** – and in addition to the legal Right to Data itself this overriding principle should apply to the implementation of all the other principles.
- **Public data will be published in reusable, machine-readable form – publication alone is only part of transparency** – the data needs to be reusable, and to make it reusable it needs to be machine-readable. At the moment a lot of Government information is locked into PDFs or other unprocessable formats.
- **Public data will be released under the same open licence which enables free reuse, including commercial reuse** – all data should be under the same easy to understand licence. Data released under the Freedom of Information Act or the new Right to Data should be automatically released under that licence.
- **Public data will be available and easy to find through a single easy to use online access point (data.gov.uk)** – the public sector has a myriad of different websites, and search does not work well across them. It's important to have a well-known single point where people can find the data.
- **Public data will be published using open standards, and following relevant recommendations of the World Wide Web Consortium.** Open, standardised formats are essential. However to increase reusability and the ability to compare data it also means openness and standardisation of the content as well as the format.
- **Public data underlying the Government's own websites will be published in reusable form for others to use** – anything published on Government websites should be available as data for others to reuse. Public bodies should not require people to come to their websites to obtain information.
- **Public data will be timely and fine grained** – Data will be released as quickly as possible after its collection and in as fine a detail as is possible. Speed may mean that the first release may have inaccuracies; more accurate versions will be released when available.
- **Release data quickly, and then re-publish it in linked data form** – Linked data standards allow the most powerful and easiest re-use of data. However most existing internal public sector data is not in linked data form. Rather than delay any release of the data, our recommendation is to release it 'as is' as soon as possible, and then work to convert it to a better format.

- **Public data will be freely available to use in any lawful way** – raw public data should be available without registration, although for API-based services a developer key may be needed. Applications should be able to use the data in any lawful way without having to inform or obtain the permission of the public body concerned.
- **Public bodies should actively encourage the re-use of their public data** – in addition to publishing the data itself, public bodies should provide information and support to enable it to be reused easily and effectively. The Government should also encourage and assist those using public data to share knowledge and applications, and should work with business to help grow new, innovative uses of data and to generate economic benefit.
- **Public bodies should maintain and publish inventories of their data holdings** – accurate and up-to-date records of data collected and held, including their format, accuracy and availability.



# Annex 4: Schedule 19

---

## SCHEDULE 19

---

### **Public authorities**

#### **Part 1**

#### **Public authorities: general**

##### *Ministers of the Crown and government departments*

A Minister of the Crown.

A government department other than the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

##### *Armed forces*

Any of the armed forces other than any part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

##### *National Health Service*

A Strategic Health Authority established under section 13 of the National Health Service Act 2006, or continued in existence by virtue of that section.

A Primary Care Trust established under section 18 of that Act, or continued in existence by virtue of that section.

An NHS trust established under section 25 of that Act.

A Special Health Authority established under section 28 of that Act other than NHS Blood and Transplant and the NHS Business Services Authority.

An NHS foundation trust within the meaning given by section 30 of that Act.

##### *Local government*

A county council, district council or parish council in England.

A parish meeting constituted under section 13 of the Local Government Act 1972.\*

Charter trustees constituted under section 246 of that Act for an area in England.\*

The Greater London Authority.

A London borough council.

The Common Council of the City of London in its capacity as a local authority or port health authority.

The Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in that person's capacity as a local authority.\*

The London Development Agency.

The London Fire and Emergency Planning Authority.

Transport for London.

The Council of the Isles of Scilly.

The Broads Authority established by section 1 of the Norfolk and Suffolk Broads Act 1988.\*

A regional development agency established by the Regional Development Agencies Act 1998 (other than the London Development Agency).

A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in England.

An internal drainage board which is continued in being by virtue of section 1 of the Land Drainage Act 1991 for an area in England.\*

A National Park authority established by an order under section 63 of the Environment Act 1995 for an area in England.

A Passenger Transport Executive for an integrated transport area in England (within the meaning of Part 2 of the Transport Act 1968).

A port health authority constituted by an order under section 2 of the Public Health (Control of Disease) Act 1984 for an area in England.\*

A waste disposal authority established by virtue of an order under section 10(1) of the Local Government Act 1985.\*

A joint authority established under Part 4 of that Act for an area in England (including, by virtue of section 77(9) of the Local Transport Act 2008, an Integrated Transport Authority established under Part 5 of that Act of 2008).\*

A body corporate established pursuant to an order under section 67 of the Local Government Act 1985.

A joint committee constituted in accordance with section 102(1)(b) of the Local Government Act 1972 for an area in England.

A joint board which is continued in being by virtue of section 263(1) of that Act for an area in England.\*

#### *Other educational bodies*

The governing body of an educational establishment maintained by an English local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

The governing body of an institution in England within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992).

The governing body of an institution in England within the higher education sector (within the meaning of section 91(5) of that Act).

#### *Police*

A police authority established under section 3 of the Police Act 1996.

The Metropolitan Police Authority established under section 5B of that Act.

The Common Council of the City of London in its capacity as a police authority.

\* Indicates those bodies in Part I of Schedule 19 that we do not propose should be subject to the specific duties.

## Part 2

### Public authorities: relevant Welsh authorities

#### *Welsh Assembly Government, etc.*

The Welsh Ministers.

The First Minister for Wales.

The Counsel General to the Welsh Assembly Government.

A subsidiary of the Welsh Ministers (within the meaning given by section 134(4) of the Government of Wales Act 2006).

#### *National Health Service*

A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

An NHS trust established under section 18 of that Act.

A Special Health Authority established under section 22 of that Act other than NHS Blood and Transplant and the NHS Business Services Authority.

A Community Health Council in Wales.

#### *Local government*

A county council, county borough council or community council in Wales.

Charter trustees constituted under section 246 of the Local Government Act 1972 for an area in Wales.

A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in Wales.

An internal drainage board which is continued in being by virtue of section 1 of the Land Drainage Act 1991 for an area in Wales.

A National Park authority established by an order under section 63 of the Environment Act 1995 for an area in Wales.

A port health authority constituted by an order under section 2 of the Public Health (Control of Disease) Act 1984 for an area in Wales.

A joint authority established under Part 4 of the Local Government Act 1985 for an area in Wales.

A joint committee constituted in accordance with section 102(1)(b) of the Local Government Act 1972 for an area in Wales.

A joint board which is continued in being by virtue of section 263(1) of that Act for an area in Wales.

#### *Other educational bodies*

The governing body of an educational establishment maintained by a Welsh local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

The governing body of an institution in Wales within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992).

The governing body of an institution in Wales within the higher education sector (within the meaning of section 91(5) of that Act).

## Part 3

### Public authorities: relevant Scottish authorities

#### *Scottish Administration*

An office-holder in the Scottish Administration (within the meaning given by section 126(7)(a) of the Scotland Act 1998).

#### *National Health Service*

A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.

A Special Health Board constituted under that section.

#### *Local government*

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

A community council established under section 51 of the Local Government (Scotland) Act 1973.

A joint board within the meaning of section 235(1) of that Act.

A joint fire and rescue board constituted by a scheme under section 2(1) of the Fire (Scotland) Act 2005.

A licensing board established under section 5 of the Licensing (Scotland) Act 2005, or continued in being by virtue of that section.

A National Park authority established by a designation order made under section 6 of the National Parks (Scotland) Act 2000.

Scottish Enterprise and Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990.

#### *Other educational bodies*

An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980).

The managers of a grant-aided school (within the meaning of that section).

The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992).

In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.

The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992).

#### *Police*

A police authority established under section 2 of the Police (Scotland) Act 1967.

# Annex 5: Bodies that we propose to add to Schedule 19

## **Bodies to be added to Part 1 and which will be subject to the specific duties**

The Advisory, Conciliation and Arbitration Service (Acas)

The Audit Commission for Local Authorities and the National Health Service in England and Wales

The Bank of England, in respect of its public functions

The BBC, excluding activities related to the provision of a content service,<sup>1</sup> and its commercial activities

The British Transport Police

The Care Quality Commission

Channel 4, excluding activities related to the provision of a content service, and its commercial activities

The chief constable for the Ministry of Defence Police appointed by the Secretary of State under section 1(3) of the Ministry of Defence Police Act 1987

A chief constable of a police force maintained under section 2 of the Police Act 1996

The Chief Inspector of the UK Border Agency

The Child Maintenance and Enforcement Commission

The Civil Aviation Authority

The Civil Nuclear Police Authority

The Commission for Equality and Human Rights

The Commissioner of Police for the City of London

The Commissioner of Police of the Metropolis

The Financial Services Authority

The General Council of the Bar in respect of its public functions

The Health and Safety Executive

HM Crown Prosecution Service Inspectorate

HM Inspectorate of Constabulary

HM Inspectorate of Prisons

HM Inspectorate of Probation  
The Independent Police Complaints Commission  
The Independent Regulator of NHS Foundation Trusts  
The Information Commissioner's Office  
The Law Society in respect of its public functions  
The Legal Services Commission  
A local authority with respect to the pupil referral units it establishes and maintains by virtue of section 19 of the Education Act 1996  
The National Assembly for Wales Commission/Comisiwn Cynulliad Cenedlaethol Cymru  
The National Audit Office  
The National DNA Database  
Natural England  
Ofcom  
The Office of the Immigration Services Commissioner  
The Olympic Delivery Authority  
The Parole Board  
A probation trust, established under section 5(1) of the Offender Management Act 2007  
The proprietor of a City Technology College, City College for Technology or the Arts, or an Academy  
The Scottish Parliamentary Corporate Body  
The Serious Organised Crime Agency  
S4C, excluding activities related to the provision of a content service, and its commercial activities  
The Standards Board for England  
The Tenant Services Authority  
The Youth Justice Board for England and Wales

## **Bodies to be added to Part 4 and which will be subject to the specific duties**

The Environment Agency

NHS Blood and Transplant

NHS Patient Safety Agency

## **Bodies to be added to Schedule 19 but which will not be subject to the specific duties**

The Association of Authorised Public Accountants in respect of its public functions

The Association of Certified Chartered Accountants (ACCA) in respect of its public functions

The Association of International Accountants in respect of its public functions

The Chartered Institute of Patent Attorneys in respect of its public functions

The Competition Commission

The Council for Licensed Conveyancers in respect of its public functions

The Insolvency Practitioners Association in respect of its public functions

The Institute of Chartered Accountants in England and Wales in respect of its public functions

The Institute of Legal Executives in respect of its public functions

The Institute of Trade Mark Attorneys in respect of its public functions

The Local Government Ombudsman, excluding their case working functions

The Parliamentary and Health Service Ombudsman, excluding their case working functions

A Port Police Force established under an order made under section 14c of the Harbours Act 1964

A Port Police Force established under section 79 of the Harbours, Docks and Piers Clauses Act 1847

The Port Police Force established under Part X of the Port of London Act 1968

<sup>1</sup> A content service is defined in section 32(7) of the Communications Act 2003.

# Annex 6: Regulatory Impact Assessment

<b>Creating a single set of specific equality duties to underpin the new integrated public sector Equality Duty</b> Lead department or agency: <b>Government Equalities Office</b>	<b>Impact Assessment (IA)</b>
	IA No: <b>GEO 0001</b>
	Date: <b>19/08/2010</b>
	Stage: <b>Consultation</b>
	Source of intervention: <b>Domestic</b>
	Type of measure: <b>Secondary legislation</b>
Contact for enquiries: <b>Harshbir Sangha</b> <b>0303 44 43041</b> <b>Harshbir.sangha@</b> <b>geo.gsi.gov.uk</b>	

## Summary: Intervention and Options

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

Public services must be designed in a way which meets the needs of all sections of the public. Too often, public services are delivered with a generic, one-size, fits all approach. This does not deliver good quality efficient services (see 'rationale for intervention' below). The objective behind the public sector Equality Duty is to address this problem. Our analysis indicates that light-touch regulation is necessary in order to meet this objective. Without any legislation at all public bodies will not consistently design policies in a way which meets the needs of diverse communities and tackles disadvantage (see 'why regulate' below).

Public bodies are currently subject to three duties, relating to race, disability and gender equality. Each is underpinned by further duties in secondary legislation ("specific duties"), with different features, timescales and reporting requirements, making the duties burdensome and cumbersome. Intervention is necessary to simplify and reduce the burden on public bodies (projected mid-point estimate of net benefit of new duties is £17 m for year one and £25m from year two onwards).

### What are the policy objectives and the intended effects?

Improve quality and efficiency of public services by mainstreaming equality into business as usual for public bodies. Ensure public sector efficiency savings are made transparently and do not impact disproportionately on the most vulnerable groups. Improve life chances of those groups not currently covered by a public sector equality duty. Encourage public bodies to lead by example, to promote behavioural change in the private and third sectors (which are not covered by the duty).

Simplification: replace three separate sets of regulations with a single less burdensome set. Minimise formal procedures, bureaucracy, burdens on public bodies, and concentrate on achieving equality outcomes for service users and employees of public bodies.



**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

A number of options were considered:

1. keeping the status quo of three separate duties;
2. removing the existing three public sector duties and not replacing them – no legislative framework; and,
3. replacing the existing duties with hands-off and outcome focussed duties.

The status quo is confusing and burdensome for public bodies. We rejected highly prescriptive duties as public bodies should achieve outcomes rather than fill forms and produce documents. We would not meet our policy objective without regulation. We opted for measures which increase transparency and accountability for delivery of results. We propose to require public bodies to be transparent by publishing data about their service delivery in an open and accessible manner that will enable citizens to judge how effectively they are advancing equality, eliminating discrimination or fostering good relations through their services. We are also proposing for larger bodies, with 150 or more staff, to publish information on the diversity of their workforce.

As well as public bodies being transparent about their data, we also want them to be open about the impact they are seeking to achieve on equality by requiring them to publish equality objectives based on the evidence they have gathered.

We have removed any elements of the last Government's proposals where the objective could be achieved otherwise than through regulation. For instance, we are proposing to remove the requirement for public bodies to take national priorities into account when setting their objectives. We want a shift away from the current system of top-down reporting requirements and detailed processes, towards putting more trust and responsibility onto public bodies themselves to decide local priorities and decide what information is relevant to them.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It be reviewed as part of the Equality Act review within six years of implementation.
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**SELECT SIGNATORY Sign-off** For final proposal stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

## Summary: Analysis and Evidence

### Policy Option 3

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 150	High: 265	Best Estimate: 207

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
<b>Low</b>	7	23	<b>206</b>
<b>High</b>	9	30	<b>266</b>
<b>Best Estimate</b>	8	27	<b>236</b>

#### Description and scale of key monetised costs by 'main affected groups'

The one-off familiarisation costs will fall entirely to the public sector. The recurring costs are largely due to the costs of public bodies gathering and publishing data, publishing the results of any engagement activity and publishing assessments on the impact of policies on equality. The public sector will bear recurring costs of between £23 and £30 million per year. The private sector will bear no costs, either one-off or recurring.

#### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
<b>Low</b>	0	48	<b>416</b>
<b>High</b>	0	55	<b>471</b>
<b>Best Estimate</b>	0	52	<b>444</b>

#### Description and scale of key monetised benefits by 'main affected groups'

At the time the new specific duties are implemented the current three equality duties will be repealed and the public sector will no longer need to comply with the existing duties. This will result in an annual benefit to the public sector in the region of £48m to £55m.

### Other key non-monetised benefits by 'main affected groups'

*Reduced social cost of inequality:* Inequality impacts directly on those who suffer discrimination. However, the costs of failing to address disadvantage experienced by certain groups in society are borne more broadly. For example, PricewaterhouseCoopers LLP (PwC) was commissioned by Communities and Local Government (CLG) in 2006/07 to estimate an order of magnitude of the potential benefit to the economy of England and Wales of removing the disadvantage and underachievement experienced by Black boys and young Black men<sup>11</sup>. The key conclusions were that the potential economic benefit of removing the underachievement of Black boys and young Black men in education and resultant underachievement in the labour force, and their over-representation in school exclusions and in the criminal justice system is about £808 million a year. The major components of the estimates are the costs associated with the over-representation of Black boys and young Black men in the CJS (approximately £583m each year) and reduced gross earnings and taxes associated with educational underachievement (£215m each year). The costs, if they continue over the next 50 years without any change (the 'total present value costs') will amount to approximately £24bn.

Key assumptions/sensitivities/risks		Discount rate (%)	3.5
Assumptions have been made regarding how long it will take bodies to comply with the new duties and how much supporting work they may choose to do.			
Risks	Mitigation		
Projected benefits might not be fully realised.	<ul style="list-style-type: none"> <li>– Cost analysis is robust and impact assessment includes all the available evidence</li> <li>– GEO will work closely with the EHRC to ensure duties are properly implemented and enforced</li> </ul>		
Data published by public bodies breach confidentiality or is inaccurate.	<ul style="list-style-type: none"> <li>– Comprehensive guidance from EHRC will help ensure public bodies publish data in a standardised manner and is accurate.</li> </ul>		

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	<b>Yes/No</b>

<sup>11</sup> Department for Communities and Local Government. REACH – An independent report to government on raising the aspirations and attainment of Black boys and young Black men. (Aug 2007) <http://www.communities.gov.uk/documents/communities/pdf/reach-report.pdf>

## Enforcement, implementation and wider impacts

What is the geographic coverage of the policy/option?		Great Britain			
From what date will the policy be implemented?		06/04/2011			
Which organisation(s) will enforce the policy?		EHRC			
What is the annual change in enforcement cost (£m)?		TBA			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	
Does the proposal have an impact on competition?					
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		<b>Costs:</b>		<b>Benefits:</b>	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>12</sup></b> Statutory Equality Duties Impact Test guidance	Yes	Please see attached Equality Impact Assessment
<b>Economic impacts</b> Competition: <i>Competition Assessment Impact Test guidance</i> Small firms <i>Small Firms Impact Test guidance</i>	No	
	No	
<b>Environmental impacts</b> Greenhouse gas assessment <i>Greenhouse Gas Assessment Impact Test guidance</i> Wider environmental issues <i>Wider Environmental Issues Impact Test guidance</i>	No	
	No	
<b>Social impacts</b> Health and well-being <i>Health and Well-being Impact Test guidance</i> Human rights <i>Human Rights Impact Test guidance</i> Justice system <i>Justice Impact Test guidance</i> Rural proofing <i>Rural Proofing Impact Test guidance</i>	No	
	No	
	No	
	No	
<b>Sustainable development</b> <i>Sustainable Development Impact Test guidance</i>	No	

<sup>12</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence base (for summary sheets) – Notes

### References

No.	Legislation or publication
1	Schneider- Ross: Assessing the cost & cost effectiveness of the specific race, disability & gender equality duties – June 2009. Web link: <a href="http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/research,_facts_and_figures/research/specific_duties.aspx">http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/research,_facts_and_figures/research/specific_duties.aspx</a>
2	Equality Bill – Making it work : Policy proposals for specific duties, A consultation – June 2009 <a href="http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/news/specific_public_sector_equalit.aspx">http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/news/specific_public_sector_equalit.aspx</a>
3	Equality Bill – Making it work: Policy proposals for specific duties, Policy Statement – January 2010 <a href="http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/pdf/psdresp_GEO_MakingItWork_acc.pdf">http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/pdf/psdresp_GEO_MakingItWork_acc.pdf</a>
4	Audit Commission: Under Pressure: Tackling the Financial Challenge for Councils of an Ageing Population, Feb 2010 <a href="http://www.audit-commission.gov.uk/nationalstudies/localgov/underpressure/Pages/default.aspx">http://www.audit-commission.gov.uk/nationalstudies/localgov/underpressure/Pages/default.aspx</a>
5	RADAR: Lights, Camera Action. Promoting disability equality in the public sector. Page 39 <a href="http://www.radar.org.uk/radarwebsite/RadarFiles/Documents/lightscameraaction.pdf">http://www.radar.org.uk/radarwebsite/RadarFiles/Documents/lightscameraaction.pdf</a>

### Evidence Base

#### Annual profile of monetised costs and benefits\* – (£m) constant prices

	Y0	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9
Transition costs	8	0	0	0	0	0	0	0	0	0
Annual recurring cost	27	27	27	27	27	27	27	27	27	27
Total annual costs	35	27	27	27	27	27	27	27	27	27
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	52	52	52	52	52	52	52	52	52	52
Total annual benefits	52	52	52	52	52	52	52	52	52	52

Note: Values may not sum up to totals due to rounding.

\* For non-monetised benefits please see summary pages and main evidence base section

## Evidence base (for summary sheets)

### Problem under consideration

There are currently three separate general equality duties in primary legislation; on race, disability and gender. These duties were designed to ensure that public bodies take account of the needs of disadvantaged groups both as employers and in the development and delivery of public services. They require certain public bodies to consider the need to avoid discrimination and to work towards equality for disabled people, people of different races and women and men. Each duty is underpinned by a set of further duties in secondary legislation (“specific duties”).

The Equality Act 2010 contains a single equality duty which will replace the three current duties on race, gender and disability and also cover age, sexual orientation, gender reassignment, religion or belief and pregnancy and maternity. The new duty will follow the same structure as the current duties and will be underpinned by a number of specific duties in secondary legislation to help public bodies in better performance of the general duty.

### Policy objective/rationale for intervention

The public sector Equality Duty will require public bodies to consider the equality implications of their proposals. In this way, public bodies will be required to take into account the needs of diverse communities in designing their policies and to consider whether it would be possible to deliver their services in a way which would tackle disadvantage. This results in improved equality outcomes for individuals. Public services which deliver improved equality outcomes are better, more effective public services. A report produced by Schneider Ross for the Diversity and Equality Task Group of the Public Services Forum reported that:

“Expectations of public sector organisations are increasingly higher, with the emphasis on delivering value for money and providing the best service.

The existing equality duties have helped organisations understand how their current services may not meet the needs of everyone.

### Examples of the impact of the current duties

#### Age

Where public bodies have intervened early to tackle disadvantage of the groups protected by the duties, this has generated savings for public bodies. The Audit Commission has found, for example:

“Poor housing can increase the need for care, if older people can no longer manage in their own homes, or if living conditions harm their health. A third of older people live in non-decent housing, with older people in private rented accommodation in the worst conditions (Ref. 40). Spending between £2,000 and £20,000 in one-off adaptations to an older person’s home can have a payback period between three months and three years, if it enables a person to remain in their own home (Ref. 41)”<sup>13</sup>

<sup>13</sup> Audit Commission: Under Pressure: Tackling the Financial Challenge for Councils of an Ageing Population, Feb 2010. (Page 38)  
<http://www.audit-commission.gov.uk/nationalstudies/localgov/underpressure/Pages/default.aspx>

More specifically:

#### “Essex County Council Telecare scheme

Essex has an increasing proportion of older people. In some parts of the county the proportion is significantly higher than the national average – for example, one in three in Tendring. By 2021 there will be 75 per cent more over 85s than there were in 2009, and over a quarter of the Essex population will be over 65. The number of older people living alone is expected to increase by 40 per cent.

In 2009, Essex County Council pledged to offer a free telecare service for 12 months to everyone aged over 80.

Currently the average first year Telecare package cost in Essex is £317. The average cost of residential accommodation in Essex is £400 per week. If only 2 per cent of those using Telecare are enabled to remain in their own homes this equates to a saving of approximately £2 million in one year”<sup>14</sup>

#### **Health**

“The Department of Health undertook a strategic review of its Cancer Strategy in 2007 and this was accompanied by a lengthy equality impact assessment. This identified a significant range of evidence in relation to disability and cancer and identified or put forward actions to address a wide range of issues. For example, concerns were identified about the expansion of cancer screening through mobile screening units, which were often not accessible for some disabled people. Actions have been put in place in relation to offering any disabled person who found the mobile units inaccessible an appointment within the same timescale at a static unit and longer appointments to deal with their particular needs (particularly for disabled women having breast screening). They also produced information leaflets on breast, cervical and bowel screening for people with learning disabilities. The leaflets were in a “books beyond words” format of easy to understand pictures, with text for each picture for use by carers if required. The leaflets were developed with Professor Sheila Hollins at St George’s Hospital Medical School, and women (and men for bowel cancer) with a learning disability were on the development and design groups”<sup>15</sup>

#### **Why is legislation required? What about non-legislative means of achieving these objectives?**

Our analysis has shown that while it is no longer necessary to impose highly prescriptive legislative requirements upon public bodies in order to achieve equality objectives. Now is not the time to deregulate entirely. Our analysis in this respect has been informed by the factors outlined below.

The new Equality Duty will enable policy makers to overcome their own behavioural barriers which can result in unintentional bias, and raise and embed self awareness of the problems relating to hidden discrimination and systematic barriers. The duty will ensure that the barriers are continually addressed and that the consideration of them becomes business as usual over time.

<sup>14</sup> Audit Commission: Under Pressure: Tackling the Financial Challenge for Councils of an Ageing Population, Feb 2010. (Page 44) <http://www.audit-commission.gov.uk/nationalstudies/localgov/underpressure/Pages/default.aspx>

<sup>15</sup> RADAR: Lights, Camera Action. Promoting disability equality in the public sector. Page 39 <http://www.radar.org.uk/radarwebsite/RadarFiles/Documents/lightscameraaction.pdf>



Evidence has shown that decision-makers tend to assume that their experience is typical<sup>16</sup>. If left to their own devices, those designing and delivering public services may be inclined to do so in a manner which is appropriate for people like them. Their view of what is necessary will be informed by their own experience and social background. Unless policy-makers have sufficient information about the experiences of others, they will not make optimal decisions. To help ensure that the optimum solutions are found we need to move public servants to look at evidence on the characteristics and experiences of many different parts of the population. In other words, we need to open the minds of those delivering public services to new and diverse outlooks and perspectives, through which optimal solutions can be found. The duty ensures that those delivering public services must engage with those with different perspectives and experiences, and take into account information about their experiences, when designing services for them. This can overcome biases that stem from limited personal experience of public services, resulting in new and innovative approaches to long-standing challenges, that deliver optimum value.

A further reason why public servants' decisions may not be socially optimal is that there are internal biases which lead decision-makers to prioritise short term reward over long term gain. If decision-makers were fully rational, they would ensure that public services tackle disadvantage, in order to avoid the long-term costs of an unequal society<sup>17</sup>. However, without the duty, policy-makers would in many cases choose instead to deliver services to meet only the needs of a non-existent 'generic' citizen, even if this is not 'optimal' in the long-term. At a time of efficiency savings in the public-sector, it is even more important that the duty is there to ensure that the key decisions regarding public service delivery are not driven only by short-term considerations.

When faced with difficult and complex decisions on how to deliver public services, the natural tendency is to maintain the status quo, and carry on in the way we have always done<sup>18</sup>. The duty helps to overcome inertia and cause people to examine and question their habits.

One of the factors that influence behaviour is the existence of 'norms'.<sup>19,20</sup> One of roles of the duty is to create a social norm – to shape expectations as to the way in which things should be done – to encourage behavioural change in the private and third sectors. By imposing an injunctive norm on the public sector (regulation), the duty creates a descriptive norm for the private and third sectors i.e. they will follow the behaviour of public sector in delivering their own services. In order to be effective in creating a social norm, behaviour in the public sector must be consistent – all bodies must take equality into account in performing their functions. There will only be consistency of behaviour across the public sector if public bodies are required by light-touch regulation to set an example by taking equality into account. Evidence shows that while social norms can develop without regulation, this takes generations.

<sup>16</sup> Judgment under uncertainty; Heuristics and biases, Tversky and Kahnemann, 1974

<sup>17</sup> See, for example, The Spirit Level, R. Wilkinson and K Pickett, 2009

<sup>18</sup> Samuelson, W. & R. J. Zeckhauser. (1988). Status quo bias in decision making. *Journal of Risk and Uncertainty*, 1: 7-59 (1988)

<sup>19</sup> Cialdini R, Kallgren C and Reno R (1991), A focus Theory of Normative Conduct: a theoretical refinement and re-evaluation of the role of norms in human behaviour in *Advances in Experimental Social Psychology*, vol 24, 201-34

<sup>20</sup> Schultz PW, Nolan JM, Cialdini RB, Goldstein NJ and Griskevicius V (2007) 'The Constructive, Destructive, and Reconstructive power of Social Norms', in *Psychological Science*, vol 18 No, 5, 429-34

If the duty is effective, it will pave the way for de-regulation in other areas. If the broad policy objectives underpinning the duty are achieved more specific interventions will become unnecessary. In other words, the duty will facilitate a move away from detailed regulation in other areas. For example, if the duty encourages schools to address the disadvantage among black boys in the education system, micro-management as to how they should achieve improved educational attainment becomes unnecessary. This is consistent with Robert West's PRIME Theory, The Theory of Planned Behaviour, Social Cognitive Theory and Social Capital Theory, where the first step is to create the right conditions for behavioural change. If, for example, a local authority, as a result of the duty, addresses the existence of deprived areas in which the majority of inhabitants are of a certain religion or race, the Government need not intervene through regulation to address this specific issue.

Evidence shows that decision makers are more likely to take action to tackle a problem if they feel they are in a position to influence it<sup>21</sup>. Regulation across the public bodies will reassure individual public bodies that by taking limited action in their sphere of influence to tackle inequality, they are part of a network of public bodies, which are all required to act similarly. This ensures, for example that prisons will tackle disproportionately negative outcomes in the criminal justice system amongst people of particular ethnic minorities, if they know that their efforts will be complemented by efforts in the probation service. Without the duty, individual bodies might be discouraged from taking action to tackle inequality because the problem is too large for them to tackle alone, and other public bodies, either upstream or downstream, are not required to contribute to the task.

The existing duties relating to race, disability and gender have been a good start and have brought about a positive change in culture and practice in many public bodies<sup>22</sup> because they are required to consider how their employment practices and service delivery affect the people they serve. However, at the same time we are also aware that there is variable performance across the public sector with certain bodies performing better than the others.<sup>23</sup> We have considered all these factors and based on the progress made by the public sector are proposing a balanced package which is driven by data, is flexible, light-touch and proportionate. We, however, do not think a stage has come where public bodies will continue the action without the need for a legal requirement. We want to build on the momentum gained by the current duties through this light touch regulatory approach to ensure that the need to take into account is embedded into organisational behaviour, and levels of self-efficacy (i.e. the ability to carry out a particular action successfully and that action will bring about the expected outcome) are high before moving to an entirely de-regulatory approach to the achievement of the policy objectives.

We have considered several means of achieving these objectives, including retaining the *status quo* (retaining the three duties), relying on alternatives to legislation to achieve these objectives (repealing the existing duties and not replacing them), and replacing the existing duties with a single streamlined duty, supported by hands-off specific duties in secondary legislation (our preferred option).

<sup>21</sup> Darton A (2008), GSR Behaviour Change Knowledge Review. Reference Report: An overview of behaviour change models and their uses, MHT Publishing Unit, London.

<sup>22</sup> Schneider- Ross: Assessing the cost & cost effectiveness of the specific race, disability & gender equality duties – June 2009. [http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/research,\\_facts\\_and\\_figures/research/specific\\_duties.aspx](http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/research,_facts_and_figures/research/specific_duties.aspx)

<sup>23</sup> Ibid

## Options considered

1 **Maintain the status quo:** Keep the three separate set of duties for race, disability and gender.

Pros:

- No new regulation will be required.
- Public bodies already have systems/mechanisms in place to comply with the duties. Public bodies will not, therefore, be required to devote resources to complying with the duties. Nor will they incur familiarisation costs.

Cons:

- Public bodies will remain subject to three different sets of regulations, which all have different requirements, timescales, and reporting mechanisms.
- The three sets of specific duties are highly prescriptive and cumbersome.
- Compliance with the existing duties incurs significant costs.
- Would not cover the additional protected characteristics protected by anti-discrimination legislation.

## 2 Remove Existing Duties

Pros:

- There will be no regulation/s, and this will result in reduced burdens on public bodies in context of financial constraints/austerity.

Cons:

- Public bodies will not consistently design policies in a way which meets the needs of diverse communities and tackles disadvantage without the prompt of the Duty. This will result in poorer and less-efficient public services.
- Public bodies may put too much emphasis on the immediate inconvenience of considering equality objectives and not enough on the longer-term and more indirect benefits obtained by achieving improved public services for all equality groups.
- The Equality Duty, and the design of the specific duties to support it, are designed to expose, and make public bodies consider, hidden discrimination, systematic barriers. Without the legal framework there is a risk that these issues might not come to light or get tackled.
- Public bodies are not yet ready for the legislative imperative to be removed entirely as this would undermine the progress that has been made to date.

### 3 Simplify through creating outcome focussed duties – Chosen Option.

Pros:

- *Simplification*: replace three separate set of regulations which impose different, and fairly burdensome, requirements, which must be met at different times with one set of streamlined and light touch legislation. For instance, research from Schneider- Ross suggested that the requirements to produce equality schemes under the existing duties are considered a significant burden, and public bodies routinely ask external contractors to draw up their equality schemes. Once published these schemes are rarely used but the cost to the public sector of producing the current schemes for race, disability and gender is substantial.
- *Outcome focused*: proposals remove bureaucratic requirements and ensure that public authorities focus on achieving improved equality outcomes. These will be more effective in furthering the policy objectives of achieving equality outcomes than the existing requirement to produce equality schemes, in which a public body must describe the processes they will follow in order to comply with the duties.
- *Proportionate and flexible*: the proposals do not set targets for public bodies, but require them to consider the information which should lead them to be transparent about the impact they are seeking to achieve.
- *Mainstreams equality into business as usual*: the proposals encourage public bodies to address equality considerations as part of their core business, rather than as a separate and additional burden.

Cons:

- *Regulatory burden*: The new package will still impose a regulatory burden, even though it will be substantially reduced compared with the cost of complying with the existing three sets of regulations.

## Cost analysis

### Costs and benefits of a simplified Equality Duty

#### Coverage

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

Table 1

<b>Detailed breakdown of public bodies</b>	
<b>Type</b>	<b>Number</b>
Central Government	70
Local Bodies,	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
<b>Total</b>	<b>27,344</b>

Source: Various including Office for National Statistics, Department for Education, Department of Health

The final list of which public bodies will be subject to the specific duties has not yet been determined. The Government is currently consulting on the list of public bodies that will be subject to the specific duties.

#### Base model used to calculate the costs

To estimate costs of our proposals for the new specific duties we have used the regulatory impact assessment undertaken for the current gender equality duty as a base model<sup>24</sup>, but re-estimated the costs taking into account new information available through the research conducted by Schneider-Ross and discussions with public sector bodies and our equality partners.

<sup>24</sup> Proposal for a public duty to promote gender equality, dti, February 2005

## Costs to public bodies: One Off

The one off costs of the new requirement will arise from an equality/personnel manager spending time to familiarise themselves with the new legislation.

We estimate, based on the time estimate used to calculate the familiarisation costs for the general Equality Duty, that public bodies such as health bodies, general bodies (such as police and the fire service), local authorities and government departments would spend between 1.5 days and 2 days familiarising themselves with the new duties. We expect a one-off cost to the public sector of familiarising with the new specific duties to be in the region of £7m to £9m<sup>25</sup>.

Table 2

### One off costs of the new duties

		One off Costs	
		Low	High
New Specific Duties	NHS Bodies	£143,329	£191,105
	Other Authorities	£247,102	£658,939
	Education Institutions	£6,236,520	£8,315,360
	Local Authorities	£103,175	£137,567
	Central Government	£18,614	£24,819
	<b>Total</b>	<b>£6,748,740</b>	<b>£9,327,789</b>

Source: Government Equality Office calculations

## Costs to Public Bodies: Recurring

The Government wants specific duties to be less bureaucratic and more outcome focused. To help achieve this we are proposing to remove the requirement for public bodies to develop and publish equality schemes. Discussions with equality partners and ongoing research suggests that initial development of an equality scheme was considered a significant burden, and public bodies routinely ask external contractors to draw up their equality schemes. The government would like to remove the process of publishing an equality scheme and ask public bodies to be transparent about the impact they are seeking to achieve by requiring them to publish equality objectives based on the evidence they have gathered. We would also like public bodies to be transparent about their data, and publish relevant equality data that would allow citizens to understand the equality outcomes they are trying to achieve, how they will advance equality and hold them to account.

<sup>25</sup> The familiarisation costs are calculated as: *Total number of affected public bodies X days required for familiarisation (1.5 for low estimate, 2 for high estimate) X Daily wage for HR manager uplifted for non-labour costs.*

The implementation costs of the new duties will arise from public bodies undertaking steps such as gathering and publishing data in relation to employment and service delivery, publishing the results of any engagement activity where this has been undertaken, publishing assessments on the impact of its policies on equality and other relevant underlying raw data. The public bodies will also need to be transparent about the impact they are seeking to achieve on equality by publishing equality objectives that will inform citizens of the areas they are going to focus on in order to advance equality.

Below we estimate the recurring costs to a range of bodies 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 bodies spending relatively less time, although this may nonetheless have a proportionately larger impact on smaller organisations. To estimate the time spent by bodies and the associated costs, we have used evidence from the gender equality duty impact assessment, research undertaken by Schneider-Ross, and one to one interviews with key equality partners.

As the requirement is for public bodies to review their approach every four years on the areas they are going to focus to advance equality, for simplicity the cost of reviewing has been split evenly over each four-year period and the costings described below reflect a proportion of this cost.

### **Central Government**

We anticipate that Central Government departments would have an equality officer drawing up and publishing equality objectives with 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 publish the assessments on the impact of its policies 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 analyst 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 assumed average cost of £20,000 per authority per four-year reporting period.

### **Local Bodies**

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

They will also need to publish information on the assessments on the impact of its policies 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 analyst spending up to a day to complete.

We also anticipate local bodies may continue to commission research for the purpose of developing and reviewing their equality objectives at an assumed average cost of £20,000 per authority per four-year reporting period.

## NHS Bodies

We anticipate that large NHS bodies would have an equality officer drawing up and publishing equality objectives with input from a statistician/researcher with support from an administrative assistant over a period of around 8 days per year. We estimate similar task will take a small NHS body around 3 days to complete.

They will also need to publish information on the assessments on the impact of its policies in the design of key policy and service delivery initiatives. Evidence, available through Schneider-Ross research and in discussions with health sector bodies, suggests health bodies will conduct between 15-20 (small bodies between 5-7) of these each year taking an analyst around 1 day each on average.

We also anticipate some larger NHS bodies, may continue to commission research for the purpose of developing and reviewing their equality objectives at an assumed average cost of £20,000 per body per four-year reporting period.

## Education Institutions

Again we assume a school will spend up to 3 days drawing up and publishing equality objectives. The time would be split between equality officer and personnel manager with administrative support.

They will also need to publish information on the assessments on the impact of its policies in the design of key policy and service delivery initiatives. We assume they will carry around five assessments a year, taking half a day each time.

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

**Table 3**  
Recurring Costs of the new duties

		Recurring	
		Low	High
<b>New Specific Duties</b>	<b>NHS Bodies</b>	£831,754	£1,032,963
	<b>Other Authorities</b>	£1,203,910	£3,066,758
	<b>Education Institutions</b>	£16,950,241	£21,107,921
	<b>Local Authorities</b>	£3,464,641	£3,808,559
	<b>Central Government</b>	£747,113	£792,114
	<b>Totals</b>	<b>£23,197,658</b>	<b>£29,808,315</b>

Source: Calculations based on ASHE 2009

Note: Costs may not sum to totals due to rounding



## Benefits to Public Bodies

The current specific race, disability and gender duties already impose ongoing costs to all public bodies. The new integrated equality duty is intended to be outcome focussed and proportionate, avoiding unnecessary burdens on public bodies and reflecting more closely what can be reasonably expected from smaller public bodies. The Government therefore believe that the new specific duties will impose smaller ongoing costs on public bodies, creating an annual saving for them. This is detailed as a benefit below.

The majority of the ongoing costs of the current race, disability and gender duties arise from reporting on progress, setting process for assessing the impact on equality and reviewing and revising their equality schemes every three years.

Using new information<sup>26</sup>, and using median rather mean measures of wages to bring this assessment into line with the assessments of other elements of the Equality Act, to update the previous regulatory impact assessments for the existing duties, we estimate the ongoing costs of the three current duties as:

Table 4

		Recurring Costs	
		Low	High
<b>Recurring Benefits of removing the three current equality duties</b>	<b>NHS Bodies</b>	£1,931,194	£2,361,043
	<b>Other Bodies</b>	£2,092,347	£4,184,695
	<b>Education Institutions</b>	£38,406,321	£38,406,321
	<b>Local Bodies</b>	£4,086,334	£7,917,601
	<b>Central Government</b>	£1,843,807	£1,843,807
	<b>Total</b>	<b>£48,360,003</b>	<b>£54,713,467</b>

Source: Calculations based on ASHE 2009, research by Schneider-Ross and other sources

There will be a benefit arising from the removal of the recurring costs of the existing duties. There will also be wider benefits that have not been monetised.

## Wider Benefits

The new duties are designed to ensure that public bodies take account of the needs of disadvantaged groups both as employers and in the development and delivery of public services. They will help highlight, and make public bodies consider, hidden discrimination, systematic barriers, and shifted them towards considering the available evidence leading them to take action. This will result in improved, more efficient, public services, and reduce social costs of inequality.

<sup>26</sup> Including updated background data and improved assumptions following further discussions with stakeholders

## Net Benefits – What this means for public bodies

### Year 1

In year 1 the measurable net benefits accruing to public sector bodies will be the costs of existing duties less familiarisation and the recurring costs of the new duties.

Table 5

		Net Benefits Year 1	
		Low	High
New specific duties package	NHS Bodies	£707,126	£1,385,961
	Other Authorities	-£1,633,350	£2,733,683
	Education Institutions	£8,983,040	£15,219,560
	Local Authorities	£140,208	£4,349,785
	Central Government	£1,026,875	£1,078,080
	<b>Totals</b>	<b>£9,223,899</b>	<b>£24,767,069</b>

Source: Calculations based on Tables 2, 3 and 4

### Year 2 onwards

From year 2 onwards the net benefits will be the costs of the existing duties less the recurring costs of the new duties, i.e. the cost reduction of switching from the current to the new duties. These net benefits are set out in the table below.

Table 6

		Net Benefits Year 2 onwards	
		Low	High
New specific duties package	NHS Bodies	£898,231	£1,529,290
	Other Authorities	-£974,411	£2,980,785
	Education Institutions	£17,298,399	£21,456,079
	Local Authorities	£277,775	£4,452,960
	Central Government	£1,051,693	£1,096,695
	<b>Totals</b>	<b>£18,551,688</b>	<b>£31,515,809</b>

Source: Calculations based on Tables 3 and 4

## Summary

Our proposals for the new specific duties will result in a net benefit to the public sector of between £9m and £24m (mid point estimate £17m) in year one, and a net benefit of between £18m and £31m (mid point estimate £25m) from year two onwards compared to the cost of complying with the current three separate duties. Over a ten year period the net benefit is expected to be in the region of around £105m to £265m (net present value terms) compared to the cost of the current duties. The focus on delivery and achieving real outcomes will ensure that every taxpayer gets better value for money and public services that take account of their needs.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>The Government Equalities Office is committed to reviewing the Equality Act as a whole. The Equality Duty will be an integral part of that review. The Equality and Human Rights Commission also has an interest in reviewing the policy, given their role in enforcement and monitoring, and are currently in the process of developing an evaluation framework for the Equality Duty. They are expected to consult on the framework later this year.</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The objective of the review will be to learn lessons from the implementation of the regulations that can enhance their future application and the development of other policies, including to check whether they are proportionate response to the problem identified.</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>The precise review approach will be determined in the context of the wider Equality Act review, which will involve gathering stakeholder views, use of monitoring data and potentially specifically commissioned primary research if required and considered proportionate.</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The precise elements of the baseline will be determined in the context of the Equality Act review, but will include evidence regarding the functioning of the existing duties (gender, race and disability) referenced in this impact assessment.</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>The precise success criteria will be determined in the context of the Equality Act review. The extent to which equalities considerations are mainstreamed into the decision making of relevant public bodies will be a key concern.</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>As the regulator, the Equality and Human Rights Commission will collect some of the necessary monitoring information. Contextual and outcome indicators could also be monitored through relevant existing surveys.</p>
<p><b>Reasons for not planning a PIR:</b> [If there is no plan to do a PIR please provide reasons here]</p>

# Annex 7: Equality impact assessment

## Introduction

1. The Equality Act introduces a new integrated Equality Duty, which brings together the existing race, disability and gender duties and extends it to cover age, sexual orientation, religion or belief, pregnancy and maternity (explicitly), and gender reassignment. The Act also provides a power to impose specific duties on certain public bodies to help them meet the requirements of the duty better.
2. The Government's aim is for the Equality Duty to be as effective as possible in helping public bodies to achieve improved equality outcomes. We are keen to create specific duties that create the conditions and culture in which equality performance will improve, by requiring public service providers to be transparent about their decision making processes, and about the data that shows whether they are achieving the outcomes they have committed to achieving.
3. The current 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.
4. The new specific duties will be harmonised into one set of duties that will 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. But they will need to be transparent about it, and publish the data that will enable citizens to judge how effectively they are promoting equality, through the services they provide and commission. Citizens will also be able to see clearly the areas on which public bodies plan to focus, and the impact they are seeking to have, in order to fulfil the aims of the Equality Duty. Public bodies with 150 or more employees will also need to publish information on the diversity of their workforces.

5. These measures will allow citizens to scrutinise the data and evidence that public bodies themselves have used to assess how their work affects equality, and how their public services are performing. It will liberate public bodies from central government control on this, giving them the freedom to innovate, identify local priorities, and design services to meet the needs of the people they serve. This package replaces a system of bureaucratic accountability with one of democratic accountability.
6. These specific duties mark a significant change in approach from the existing equality duties. The proposals use the power of transparency to help public bodies to promote equality and fulfil the aims of the Equality Duty, to eliminate discrimination, advance equality of opportunity, and foster good relations between different groups. However, this equality impact assessment builds on a previous equality impact assessment published in June 2009 by the previous Government when they consulted on policy proposals for the specific duties.

### Available evidence

7. 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.
8. The research, which included responses from local authorities, schools, health bodies and other public sector organisations, showed that, due to the specific duties, a majority of respondents (over 80 per cent) had seen improvements in the way their organisations made decisions or allocated resources. Around 97 per cent 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. Officials also took into account other available literature, for example the Office for Disability Issues' review of the disability reporting requirement on certain secretaries of state and the results of research carried out by the Equality and Human Rights Commission (EHRC).

9. 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 input into the development of policy proposals for the specific duties. The groups met four times between September 2008 and February 2009.
10. In June 2009, a public consultation was held on policy proposals for the specific duties. Over 400 responses were received from public bodies, lobby groups, partners and individuals. The responses are summarised in Equality Bill: Making it work – Policy proposals for specific duties: Policy Statement. During the consultation period and subsequently, officials held a number of meetings with public bodies and representatives from equality groups around the country. In addition officials met a number of times with the Disability Charities Consortium, the Women’s National Commission and other equality groups.

## Policy proposals – impact on equality

### Workforce transparency

#### Proposed duties

- *Government is proposing to change the existing employment reporting duties, to make them broader and more flexible.*
- *We will require public bodies with 150 or more employees to publish data on equality in their workforces, at least annually.*

11. We will require large public bodies with 150 or more staff to publish data on equality in their workforces. This approach to employment reporting is in line with wider government policy on transparency and localism, and is consistent with the Transparency Principles set out by the new Public Sector Transparency Board established by the Prime Minister.

#### *Impact on race, disability and gender*

12. We know that some partners feared that a shift away from the current legal obligation to publish specific pieces of data would have an adverse impact on those who suffer from discrimination on account of their race, disability or gender. Our proposals require publication of data that is broad enough to give a full picture of equality in the workplace. For example, we would expect this to include data on important equalities issues such as the gender pay gap, the proportion of staff from ethnic minority communities, and the distribution of disabled employees through an organisation’s structure, as well as other relevant data.

### *Impact on sexual orientation, religion or belief and gender reassignment*

13. We are proposing that public bodies should publish such data as they have available and that it would be appropriate to release in regard to these characteristics. If a public body does not have data in these areas which would help give a broader picture of the organisation's performance, it should take reasonable steps to fill those data gaps. This will ensure that public bodies consider their performance in these areas, but should not be interpreted as a requirement to routinely collect data on sensitive personal issues. We expect that people with these characteristics will welcome this approach.

### **Transparency in public service provision**

#### **Proposed duties**

- *Government is proposing that public bodies should be transparent about their decision-making, by being open with citizens about the data they use to plan, commission, and evaluate the services they provide.*
- *We will require public bodies to publish data that will enable people to judge how effectively they are promoting equality, through the services they provide, commission and procure. They will need to do this as regularly as possible, and at least annually.*

14. The specific duty on transparency in public service provision is a new development which will require public bodies to publish data that informs their decision making; identification of priorities and service design; and which will enable citizens to compare public bodies equality performance and, where possible, choose between providers. We expect that for all characteristics the publication of free and open information will give people the power to use democratic accountability to hold organisations to account and drive up standards. Where organisations are making slow progress on equality, arming citizens and civil society groups with information will allow them to apply public pressure to drive faster pace of change.

## Transparency about impact on equality

### Proposed duties

- *Government is proposing that public bodies are transparent about the impact they are seeking to achieve on equality – how they will further the aims set out in the Equality Duty.*
- *We will require public bodies to publish their equality outcome objectives, what they are seeking to achieve in order to fulfil the aims of the Equality Duty.*
- *Their objectives should be expressed in ways that are specific, relevant and measurable.*
- *Public bodies should review their approach at least every four years*

15. This new duty effectively replaces the current requirements, under the race, disability and gender duties, to draw up and publish equality schemes. They are also currently required to set out – in different ways for each duty – how they will gather evidence, assess impact, and involve stakeholders.
16. Evidence suggested that some organisations found the concept of an equality scheme to be mechanistic and for some the development and publication of the scheme became the point of the duty. The Government would like to get public bodies to focus on the difference they can make and the improved equality outcomes they can deliver, rather than asking them to produce lengthy schemes that can be burdensome and, once written, rarely referred to. Drawing on the data and evidence they have 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. The evidence they draw on will typically include evidence gathered from engaging with, and involving, people from the protected groups.
17. We do not want to specify a duty on public bodies to have regard to national equality priorities as set by the secretaries of state, as we want to give them the freedom to identify their own objectives, rooted in the available data, that best meet the needs of their service users.

### *Impact on race, disability and gender*

18. We think that a shift away from publishing an equality scheme 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 in relation to race, disability and gender. We believe that this will encourage public bodies to concentrate on achieving outcomes, rather than describing processes. In setting equality objectives we expect public bodies will still 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 (including race, disability and gender) and consult and involve relevant people. And, crucially, they will now need to publish that data and other evidence that they have drawn on, so the public can see why they have chosen to focus on the areas they have.

19. In their responses to the public consultation, some stakeholders, particularly disability groups, voiced concerns that a shift away from publishing equality schemes might also mark a shift away from mainstreaming equality. Equality groups also stressed that, unless any objective-setting processes were firmly rooted in evidence, public bodies could concentrate their resources on 'easy' targets to the detriment of others. The new requirement on public bodies to publish the data and other evidence that they have drawn on when setting out their equality objectives will ensure that this doesn't happen, and that citizens and equality groups can openly hold public bodies to account on this.
20. We think that the principle of mainstreaming is clearly enshrined in the general duty, which applies to all the functions of a public body that is listed in Schedule 19 to the Equality Act. We are not persuaded that the production of an equality scheme is the best way of helping public bodies to fulfil this principle. The key elements of a mainstreaming approach (assessing functions for relevance, using evidence, and engaging with partners) should be part and parcel of business-as-usual organisational planning and management. Our proposals for publication of objectives can to be reported on through the usual planning and reporting mechanisms, such as business plans and annual reports. This should result in more action, and better outcomes, for disadvantaged groups.
21. The identification of areas of focus and intended impacts will be firmly rooted in the consideration of relevant data and evidence, including where appropriate the data and evidence gathered through engaging with partners. We believe that this safeguards against any watering-down of the current requirements: where data and evidence suggests the existence of a need, then citizens will have access to that data and evidence and will be able to apply pressure on public bodies to focus action in that area.
22. When formulating gender objectives, the current gender-specific duties require public bodies 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. Some women's groups argued that the removal of this duty could have a detrimental impact on women. We think this risk is mitigated by requiring public bodies to publish information on equality in their workplaces at least annually, which is likely to include information on the gender pay gap, and publishing the data that informed the selection of their areas of focus. In terms of drawing public bodies' attention to the gender pay gap, we expect that the guidance and Codes of Practice that accompany the duty will highlight this persistent inequality. Citizens will have access

to this information and will be able to judge whether public bodies are making evidence-based choices that focus on relevant areas. And where necessary, they will be able to apply pressure on public bodies to focus efforts on addressing any differences in pay of men and women that are related to their sex.

23. The disability-specific duties require public bodies to involve disabled people in the development of their disability equality schemes, and the gender-specific duties require public bodies to consult employees, service users and others (including trade unions) when preparing a gender equality scheme. Our proposals require public bodies to publish data and evidence which includes the results of engagement work that public bodies have undertaken with people protected by the Equality Act, and be transparent about the data they have used to determine their areas of focus and intended impacts. We will mitigate against any unintended adverse impact on disabled people by encouraging the EHRC to set out in guidance and Codes of Practice what we mean by engagement, and examples of when and how it can be used to best effect.

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

24. The specific duties will require listed 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 that public bodies have 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. They will not necessarily have 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 this, and to ensure that public bodies are making evidence-based choices. We believe that this process will have a beneficial impact on people from these protected groups.

## **Secretary of state duty on disability**

25. The response to the 2009 consultation document was mixed on proposals for a remodelled secretary of state reporting duty. The aims of the duty will be delivered through our proposals which increase transparency and democratic accountability across all protected characteristics and the listed public services. There are a range of additional transparency measures which help focus the picture across sectors. In particular, the triennial statutory 'state-of-the-nation' report submitted by the EHRC should provide similar information. We are confident that these measures mean that a disability reporting duty is no longer needed, and we therefore do not expect this change to have an adverse impact on any of the protected groups.

## **Equality impact assessment – additions to Schedule 19 to the Equality Act, and decisions on which bodies should be subject to the specific duties**

### **Background**

26. The Equality Duty applies to public bodies listed in Schedule 19. The Equality Act gives ministers the power to add bodies to Schedule 19, provided those bodies meet certain criteria (namely that they are non-devolved bodies carrying out at least one public function (which the Act defines as a function of a public nature for the purposes of the Human Rights Act 1998)).

27. The Equality Duty also applies to bodies not listed in Schedule 19 that exercise a public function, but only in respect of that function. Theoretically, therefore, Schedule 19 need not be populated. However, there are two main reasons to list bodies in Schedule 19:

- It allows ministers to impose specific duties on those public bodies in order to assist the better performance of the Equality Duty.
- It provides legal certainty that that body is subject to the Equality Duty.

28. Schedule 19 already lists a large number of types of public body, such as government departments, local authorities, police and fire and rescue bodies, schools and health authorities. These account for roughly 90 per cent of the public sector.

### **Existing duties**

29. The general gender and disability duties apply to any person carrying out a public function in respect of that function. The general race duty applies to bodies listed in Schedule 1A to the Race Relations Act 1976.

### *Policy rationale*

30. The Government's policy is to add bodies to Schedule 19 only if there is good reason for doing so, i.e. it is important for that body to be listed either for legal clarity or because the Government wishes to impose specific duties on that body.

We propose to add the bodies listed in Annex 5 of the consultation document. These are mainly larger bodies that have the ability to significantly impact on equality outcomes (for example the Care Quality Commission and the Equality and Human Rights Commission) or smaller professional regulatory bodies which, for legal clarity, we think it important to list.

### *Impact on equality*

31. Listing should have a positive impact on disability and gender equality. The approach in the Equality Act replicates the coverage of the general disability and gender duties, but the addition of a list provides a greater degree of legal clarity than was previously the case. That applies to both individual bodies and to particular functions.
32. Partners may object that Schedule 19 to the Equality Act does not contain as many bodies as Schedule 1A to the Race Relations Act. However, the approach to coverage of the duty in the Equality Act means that the Equality Duty will apply to **more** bodies than the general race duty, since it will apply to any person carrying out a public function in respect of that function. For instance, a private company carrying out a public function is not directly subject to the general race duty in respect of that function; under the Equality Act, it will be. This general increase in coverage, which is not dependent on whether an individual is listed in Schedule 19, will have a positive impact on race equality. In addition, it should be noted that the majority of bodies in the race schedule will appear in Schedule 19, including professional regulatory bodies, public broadcasters and others.
33. There are currently no public sector equality duties for the characteristics of age, sexual orientation or religion or belief. The creation of the Equality Duty, and its application to bodies carrying out public functions or appearing on Schedule 19, will have a positive impact on these groups.

### **Specific duties**

34. The Government's approach is to impose specific duties on those public bodies that, by virtue of their size, power or role, have the potential to have the most impact on equality outcomes. Our aim is to maximise the efficacy of the duty by focusing attention on key bodies, while at the same time not overburdening smaller bodies with inappropriate procedural requirements.
35. We propose imposing specific duties on those bodies already listed in Schedule 19 (except for some minor types of bodies such as parish councils which are too small to merit specific duties). At present, Schedule 19 already accounts for around 90 per cent of the public sector, so the vast majority of public sector bodies will be subject to specific duties.

36. In addition, we propose to impose specific duties on around 50 other bodies or types of body listed in Annex 5 to the consultation document.

*Impact on equality*

37. The new, lighter-touch, outcome-focused specific duties will apply to fewer bodies than are currently subject to the specific race, disability or gender duties, although it must be remembered that the vast majority of public bodies will still be subject to the specific duties. Those bodies no longer subject to the specific duties will continue to be subject to the general duty in respect of their public functions. Guidance from the Equality and Human Rights Commission will remind those bodies that they remain subject to the general duty. Those bodies will of course be free to develop and publish equality related data and evidence and publish their equality objectives themselves (as well as other specific duty requirements) if they judge them to be helpful in meeting their general duty. However, the decision about the best processes to follow in order to meet their general duty obligations will be devolved to those bodies themselves. We therefore believe that the small reduction in the number of bodies subject to the specific duties, which is in line with the broader government policy of reducing regulation and focusing resources, will have a broadly neutral effect on race, disability and gender equality.

38. There are no specific duties in relation to age, sexual orientation or religion or belief. Imposing specific duties on public bodies will have a beneficial impact on these groups.

# Annex 8: Consultation questions

The following is a list of the consultation questions.

**The responses to the questions should be made on the proforma, which is available for download from the Government Equalities Office website at [www.equalities.gov.uk](http://www.equalities.gov.uk)**

Q1: Do you have any comments on our proposals for data reporting? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.2 to 5.9?

Q2: Do you have any comments on our proposals for employment reporting? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.10 to 5.11?

Q3: Do you have any comments on our proposals for transparency in public service provision? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.12 to 5.14?

Q4: Do you have any comments on our proposals for setting equality objectives to achieve transparency about impact on equality? Does the drafting of regulation 3 accurately reflect the aims of the policy described in paragraphs 5.15 and 5.16?

Q5: Do you have any comments on the changes proposed in Chapter 5 under the section 'Reducing the burdens on public organisations'?

Q6: Do you have any comments on our proposals for transition from the existing duties relating to race, disability and gender to the new public sector Equality Duty, as described in paragraphs 6.1 and 6.2 above?

Q7: We would welcome your views on the proposed list of public bodies for Part 1 and Part 4 of Schedule 19, as described in paragraphs 7.7 to 7.12 above.

Q8: We would welcome your views on those bodies that we do and do not think should be subject to the specific duties, as described in paragraphs 7.13 and 7.14 above.


## General Questions

Q9: Do you have any other comments on the drafting of the Statutory Instrument? If yes, please explain.

Q10: Do you have any evidence or data you can provide or direct us to which would help us to develop our regulatory impact assessment?

Q11: Are you aware of any other benefits resulting from the proposal that have not already been described in the consultation document or the regulatory impact assessment?

Q12: Are there any other comments you would like to make in relation to this consultation that have not already been covered by this form? If yes, please explain.



Government Equalities Office  
9th Floor  
Eland House  
Bressenden Place  
London SW1E 5DU

Tel: 0303 444 1204  
Email: [enquiries@geo.gsi.gov.uk](mailto:enquiries@geo.gsi.gov.uk)  
**[www.equalities.gov.uk](http://www.equalities.gov.uk)**

© Crown copyright 2010

JN402461