

Appendix A: Update on the Equality Act 2010 and its implications

Introduction / Background

1. Under existing legislation, the Council is currently subject to positive statutory 'equality duties' relating to race, disability and gender which require us to have due regard to a set of identified needs. Broadly, these are to eliminate discrimination and promote equality of opportunity and require us to demonstrate the actions we are taking on race, disability and gender equality in policy-making, the delivery of services and employment.
2. The duties require public bodies to take steps not just to eliminate unlawful discrimination and harassment, but also to actively promote equality. Under these duties, the Council is specifically required to:
 - Assess the impact of our policies and practices.
 - Gather information on how our work affects different racial groups, disabled people and men and women
 - Consult employees, service users, trade unions and other stakeholders, and involve disabled people.
 - Set priorities for taking action and take the action that will deliver the best outcomes in race, disability and gender equality.

Equality Act 2010

3. The Equality Bill received Royal Assent on 9th April 2010 and aims to strengthen and simplify equality legislation that is already in place. It will harmonise the existing duties into one new duty, which will cover the protected characteristics: disability, gender, gender reassignment, marriage and civil partnership, pregnancy & maternity race, religion or belief and sexual orientation.
4. The following sets out the main provisions of the Equality Act 2010 and how these will impact on the Council:

A new public sector duty to consider reducing socio-economic inequalities

5. Inequality and disadvantage are not only associated with issues such as gender, age, disability or ethnicity. Overarching and interwoven with these is the persistent inequality that results from someone's family background or where they were born. This new duty will require local authorities to consider, in all the strategic decisions they make, how they will tackle the disadvantage some people face because of socio-economic disadvantage.
6. The Council is already aware of and seeking to address socio-economic issues within the area. The extent to which we need to formally introduce this requirement needs to be clarified and discussed, once further guidance has been released by the Government Equalities Office. In the meantime, our equality impact assessment process allows for socio-economic issues to be identified.

Public Sector Equality Duty

7. The new Equality Duty will require public authorities, in the exercise of its duties, to have due regard to the need to:
 - Eliminate discrimination, harassment and victimisation
 - Advance equality of opportunity (defined as removing or minimising disadvantage; meeting the needs of persons who share a relevant characteristic; encouraging participation in public life or any other activity in which participation is disproportionately low)
 - Foster good relations (defined as tackling prejudice and promoting understanding)

8. These are broadly similar to existing duties but the concepts of ‘advancing equality of opportunity’ and ‘fostering good relations’ have been explicitly defined and will apply across all groups protected by the legislation.

9. The specific duties will be set out in secondary legislation and are intended to help public bodies meet the Equality Duty in an effective and proportionate way. The Government Equalities Office has released a policy statement following consultation on the proposals for the specific duties. These propose some changes to existing practices as follows:

10. There will be no requirement for equality schemes but a requirement to set equality objectives and action plans and set these out publicly. In setting these objectives we should:
 - a. Target our efforts and resources to those areas of greatest need
 - b. Integrate them into mainstream business planning processes rather than treat them as marginal and separate.
 - c. Review our functions for relevance to equality
 - d. Gather and analyse evidence across all the characteristics protected under the Equality Duty;
 - e. Engage with people from the protected groups, service users, employees and their representatives.
 - f. Be able, if challenged for not having set an equality objective covering a particular protected characteristic(s), to set out the basis for having come to that decision.

11. The Council already has an equality policy / scheme in place which is actively monitored and developed. How we continue to publish our equality objectives will need to be considered once further guidance is available. Whilst it will be permitted to integrate equality objectives into existing strategies we will need to be mindful of any requirements for monitoring and reporting specifically on our progress against meeting our legal duties or on equality outcomes for other audit purposes. Our Equality Impact Assessment programme prepares us for meeting the specific duties by providing an evidence base and a foundation for setting objectives.

12. There will be no requirement for equality impact assessments, but a requirement to demonstrate how we have taken account of evidence of the impact on equality in the design of key policy and service delivery. The specific duties will require us to continue to assess the impact on equality of what we do, across all characteristics protected under the Equality Duty. Further guidance will be produced setting out when the impact of policies/services/decision needs to be considered. We will need to review our approach to equality impact assessments once the guidance is available.

13. There will be no requirement for equality training but further guidance is expected to highlight that organisations should equip their staff to ensure that they are capable of meeting the requirements of the Equality Duty. An Equality and Diversity training programme is currently being developed. Key staff have been equipped to carry out equality impact assessments and support will continue to be provided as required.

Requirement to use public procurement to improve equality

14. The new specific duties will require us to actively consider the equality requirements of every contract we tender and, if it is relevant and proportionate, to consider including equality-related award criteria or contract conditions.
15. Equality requirements are already included in the Councils procurement and commissioning processes but these will need to be reviewed in the light of any new guidance.

Gender pay and equality reports

16. There will be a requirement for public bodies with 150 employees or more to report on the gender pay gap, ethnic minority and disability employment rates. Further guidance is expected to make it clear that publication of these figures are a statutory minimum and that in order to fulfil the requirements of the general and specific duties, we will need to gather and analyse a range of evidence in relation both to employment and services and that we should be seeking to improve the quality and comprehensiveness of our evidence base across all protected characteristics.
17. Equal Pay Audits are already undertaken regularly and employment data is published annually. We will need to consider if, when and how we may extend data gathering across all protected characteristics and ensure that we are able to publish data on the gender pay gap in the required format.

Extending the scope to use positive action

18. This will allow employers to choose to take positive action to appoint a person from an under-represented or disadvantaged group in order to make a workplace better reflect the community it serves. This is a voluntary measure and will only be allowed if two candidates under consideration are as qualified as each other in terms of competence, aptitude, experience and overall performance during an interview or assessment.

Banning age discrimination outside the workplace.

19. This will outlaw unjustifiable age discrimination against people aged 18 and over where goods are bought and services provided, such as in shops, hospitals, and when buying financial products. Beneficial age-based treatment such as free bus passes for over-60s will still continue, and discounts for pensioners and age related group holidays will still be allowed.
20. Our Equality Scheme and Equality Impact Assessments covers / will cover age related aspects in relation to the provision of goods facilities and services.

Strengthening the powers of employment tribunals

21. The Equality Act will allow employment tribunals to make recommendations in discrimination cases that benefit the wider workforce as well as the individual claimant, to help employers improve their equality performance.

Banning discrimination in private members' clubs

22. The Equality Act will making it unlawful for private clubs to discriminate against their members or guests because of their sex, religion or belief, because they are pregnant or a new mother, or because they are a transsexual. It is already unlawful for them to discriminate against a person because of their race, sexual orientation or disability. This means that clubs which are open to all will no longer be able to restrict access to, for example, the golf course or a club bar, or apply different conditions and fees for membership because of any of these characteristics.

Protecting carers from discrimination

23. The Equality Bill protects people who are, for example, caring for a disabled child or an older relative. They will be protected by virtue of their link to that person. We will need to ensure that our equality impact assessments consider the needs of carers.

Protection for breastfeeding mothers

24. Mothers will be permitted to breastfeed their children without being asked to leave places like cafes and shops, and ensures that schools cannot discriminate against pupils who are pregnant or new mothers.

Strengthening protection from discrimination for disabled people.

25. This will make it unlawful for employers to ask job applicants questions about disability or health before making a job offer, except in specified circumstances. We will therefore need to review our recruitment procedures.

26. There are also provisions to increase the number of wheelchair accessible taxis so that a local authority that doesn't have enough wheelchair-accessible taxis in its area cannot refuse a licence to such a vehicle simply because it has a policy of controlling the overall number of taxis.

27. The Equality Act makes it explicit that reasonable adjustments for disabled people include reasonable steps to provide information in accessible formats, when the way information is provided would otherwise put disabled people at a substantial disadvantage. We will therefore need to review our methods for providing information in accessible formats.

Protecting people from dual discrimination

28. This relates to direct discrimination because of a combination of two protected characteristics. We will need to consider whether our Equality Impact Assessment process needs to be adapted to take account of this.

Enforcement

29. The proposals for enforcement of the duties remains the same in that enforcement of the general duties is by judicial review or through the Equality and Human Rights Commission (EHRC) and enforcement of specific duties by the EHRC only. The EHRC will develop statutory and non-statutory guidance to support implementation of the duties. The Commission will continue to enforce against the existing duties until April 2011.

Next Steps

30. The Equality Act 2010 will come into force in phases as follows:

October 2010: main provisions relating to employment, equal pay and services, public functions and associations. Further guidance on these aspects is expected to be published in July 2010 (subject to change).

April 2011: The integrated public sector Equality Duty, the Socio-economic Duty and dual discrimination protection. Further guidance on these aspects is expected to be published by December 2010 (subject to change).

2012: The ban on age discrimination in provision of goods, facilities, services and public functions. Further guidance on this aspect is expected to be published by December 2011 (subject to change).

2013: Private and voluntary sector gender pay transparency regulations (if required) and political parties publishing diversity data.

31. Any further updates on the Equality Act will to be monitored and we will continue to prepare for these in a relevant and proportionate way.

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