



The Public Sector Equality Duty

**Briefing for women's
organisations**

March 2012

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About the Women's Resource Centre

WRC is a unique charity which supports women's organisations to be more effective and sustainable. We provide training, information, resources and one-to-one support on a range of organisational development issues. We also lobby decision makers on behalf of the women's not-for-profit sector for improved representation and funding.

Our members work in a wide range of fields including health, violence against women, employment, education, rights and equality, the criminal justice system and the environment. They deliver services to and campaign on behalf of some of the most marginalised communities of women.

There are over ten thousand people working or volunteering for our members who support almost half a million individuals each year.

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Introduction

The purpose of this briefing is to provide women's organisations with more information on the Public Sector Equality Duty (PSED), also known as the 'general duty', as well as related duties which are meant to strengthen the obligation of public bodies to promote equality and meet the needs of equality groups in accordance with the Equality Act 2010.

In addition to explaining the impact of this duty on public bodies this briefing also provides suggestions and advice on:

- how women's organisations can hold public bodies to account; and
- how organisations should go about working with public bodies on setting or improving objectives relating to gender equality

Disclaimer:

This briefing is not intended to provide definitive legal advice. At the time of publication, all care was taken to ensure the information contained in this briefing was accurate and correct. However, laws do change and data and contact details can become quickly outdated. Please always check information to ensure it is correct and up-to-date at time of use. If in doubt, seek legal advice. The WRC cannot take responsibility for changes to information in this briefing.

Background and overview of the Public Sector Equality Duty

The Equality Act 2010 brings together all previous equality legislation into one single piece of legislation. It extends the previous equality duty so that it now covers not only race, sex/gender and disability as before but also age, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment (in full) and marriage and civil partnership. These are now called 'protected characteristics'.

The Public Sector Equality Duty (PSED) is part of the Equality Act 2010 and came into force in April 2011.

The PSED is aimed at advancing equality and sets out an overarching obligation for public bodies to give '**due regard**' to the need to:

1. **eliminate all forms of discrimination, harassment and victimisation** that are prohibited by the Equality Act
2. **advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
3. **foster good relations** between people who share a protected characteristic and people who do not share it

(Points 2 and 3 do not apply to marriage and civil partnership)

Giving '**due regard**' means a public body has to give real consideration to these three aims at every part of the decision-making process not just as a tick box exercise at the end.

The Act indicates that the '**need to advance equality of opportunity**' includes the need to:

- remove or minimise disadvantage suffered by particular groups
- take steps to meet different needs of particular groups; and
- encourage participation by particular groups in areas of public life or other activity where they are under-represented.

The Act specifies that the '**need to foster good relations**' includes the need to tackle prejudice and promote understanding.

It makes clear that complying with the duty might mean treating some people more favourably than others, where doing so is allowed by the Act. This also includes making use of exceptions which permit different treatment as set out in the '**positive action**' provisions.

Positive action (s.158 of the Equality Act 2010¹)

There were positive action provisions in previous legislation, but these applied to different protected characteristics in different ways and in some cases were specific about the types of action they permitted. This section extends what is possible to the extent permitted by European law, and applies in relation to all protected characteristics. This provision is aimed at allowing public bodies to take **proportionate** actions to:

- alleviate disadvantage experienced by people who share a protected characteristic;
- reduce their under-representation in relation to particular activities; and
- meet their particular needs.

It means that public bodies will be able to target support towards particular groups and relates back to the freedom to treat groups with protected characteristics differently to others without falling foul of the general prohibitions under the Act. Despite the potential of this power its use is optional and public bodies do not have to take positive action.

Below is an example of where positive action may be taken to meet the needs of women.

An NHS Primary Care Trust (PCT) (or equivalent) identifies that lesbians are less likely to be aware that they are at risk of cervical cancer and less likely to access health services such as national screening programmes. It is also aware that those who do not have children do not know that they are at an increased risk of breast cancer. Knowing this, the PCT it could decide to establish local awareness campaigns for lesbians on the importance of cancer screening.

Women-only services

The Government Equality Office (GEO) guide for public bodies states that the Equality Duty "**does not require public bodies to treat everyone the same. Rather, it requires public bodies to think about people's different needs and how these can be met. So the PSED does not prevent public bodies providing women-only services – for example, for female victims of sexual violence or domestic violence. Indeed, such services may be necessary in order to ensure women have access to the services they need.**"²

¹ <http://www.legislation.gov.uk/ukpga/2010/15/section/158>

² Home Office guidance <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/specific-duties?view=Binary>

Who and what does the Duty apply to?

The PSED applies to all public bodies listed in Schedule 19 of the Equality Act³, as well as anyone else who provides a public function while carrying out that function. For bodies in Wales or Scotland check the Equality & Human Rights Commission web pages for ECHR Wales⁴ and ECHR Scotland⁵.

Public bodies must comply with the PSED and advance equality in relation to:

- all aspects of their employment practices (does not apply where less than 150 employees)
- the provision of goods, facilities and services
- carrying out public functions
- education (including schools and further and higher education)
- disposal and management of housing and other types of premises
- associations (including clubs and political parties - the provisions extend protection in private clubs to sex, religion or belief, pregnancy and maternity, and gender reassignment)

The Specific Duties regulations⁶

The objective behind the duty is to ensure that consideration of equality issues forms part of the routine, day-to-day decision-making and operational delivery of public authorities. The regulations do not apply to small business, charities or voluntary bodies.

Introduced in September 2011, the Specific Duties regulations are intended to improve a public body's performance of the general duty. The regulations require public bodies:

- to have published information to demonstrate its compliance with the general duty by **31st January 2012** and annually after that; and
- to set one or more equality objectives - which must be specific and measurable - that it thinks it needs to do to achieve the three high-level aims of the equality duty to, **eliminate discrimination, advance equality of opportunity, and foster good relations between different people** and to review them at least every four years.

³ Schedule 19 of the Equality Act <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/Schedule-19?view=Binary>

⁴ ECHR Wales www.equalityhumanrights.com/wales

⁵ ECHR Scotland www.equalityhumanrights.com/scotland

⁶ Specific Duties Regulations – Explanatory Memorandum http://www.legislation.gov.uk/uksi/2011/2260/pdfs/uksiem_20112260_en.pdf

Key things you need to know about the specific duties

The purpose of the specific duties is to improve a public body's performance of the general equality duty to **eliminate all forms of discrimination, harassment and victimisation, advance equality of opportunity** and **'foster good relations'** by requiring them to prepare and publish objectives, setting out what they intend to achieve in order to further the aims of the duty, and to publish information demonstrating their compliance with the duty.

The introduction of the new Specific Duties⁷ marks a notable shift in the emphasis of equality legislation. The biggest shift for the equality duty is away from process and towards performance with more focus on **accountability and transparency**. This means that it is up to individual service users and others in the voluntary and community sector to take steps to hold public authorities to account. Monitoring will be carried out by the Equality and Human Rights Commission but we encourage women's organisations to engage with public bodies as early as possible.

In relation to the requirement to set one or more equality objectives, public bodies do not have to set an objective for every protected characteristic, so there is no longer any obligation to set gender equality objectives. However the aim of the duty is to ensure better performance than under previous legislation and so public bodies must set out what they intend to achieve in order to further the aims of the general equality duty.

There is no longer any legal requirement to carry out a formal, documented Equality Impact Assessment or prepare and publish Gender Equality Schemes. However because these tools are the best way for public bodies to show due regard to the general equality duty, **women's organisations should keep asking public authorities⁸ for them as a basic way of checking that the duty to have due regard is being complied with.**

Requirement to publish information

As part of the specific duties, public bodies are required to be transparent and accountable to the people they serve for their work on equality. Public bodies must have published information showing how they are complying with the general duty, by 31 January 2012. They have to publish this information every year. In some cases this may require some evidence gathering, engagement or consultation with people affected by their decisions. This information must include, in particular, information relating to people who share a protected characteristic who are:

- its employees (if more than 150)
- people affected by its policies and practices – e.g. service users and women's voluntary organisations

⁷ <http://www.legislation.gov.uk/ukxi/2011/2260/contents/made>

⁸ <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/Schedule-19?view=Binary>

The Government did not want to impose a burden on public authorities to publish details of every single meeting that it has with its staff and members of the public, and every single document that it considers during the exercise of a function but the information published should include details of:

- the effect that its policies and practices have had on people who share a relevant protected characteristic
- the analysis undertaken and the information on which it was based
- any engagement or consultation

Published information must be accessible but it doesn't have to be in a stand alone document, it can be included in other publications or documents such as Strategic or Business Plans.

Requirement to set objectives

Public bodies do not have to set an objective for every one of the protected characteristics. The public body decides its objectives based on its own particular needs and priorities in relation to equality and where it can have the biggest impact. Any objectives must be specific and they must be measurable.

Public bodies are only obliged to review their equality objectives every four years but may revise them more frequently especially given the number of changes that could occur in the restructuring of public services in the next few years. **So it will be important to remain vigilant and aware of any proposed changes or decisions and look for opportunities to influence the revision of objectives.**

The Home Office guidance states that objectives need to be stretching, focus on the biggest equalities challenges facing the public body and where they can have the greatest impact in furthering the aims of the equality duty.

Codes of practice

The Government decided not to introduce statutory Codes of Practice for every element of the Equality Act including the PSED but the EHRC will be producing a non-statutory Code of Practice which will provide a legal interpretation of the PSED and make clear to everyone what the requirements of the legislation are.

Review

The EHRC will be reviewing the information published by public bodies. As part of this they will look at websites to assess to what extent they have published relevant and accessible information. A report of findings should be available in spring 2012.

The Government will also be reviewing in two years' time, how the specific duties are working in practice. They will be looking to see whether public bodies:

- are publishing sufficient equality information to demonstrate compliance;

- are publishing the right sort of information in the right format so that the public can easily hold bodies to account; and
- have engaged with and been challenged by the public and voluntary sector.

Enforcement

The Equality Act gives certain powers to the Equality and Human Rights Commission for monitoring and ensuring compliance with the specific duties. It has the power to issue a compliance notice to a public body that it believes has failed to comply with the specific duties. It can also apply to the courts for an order requiring compliance.

Whilst this may be the case in theory its ability to do so has been limited by government reforms. In 2011 the Government consulted on the future of the EHRC and decided to keep the commission but significantly reduce its budget. In light of this the Commission has consulted widely on its strategic plan for 2012-2015 and in its response to the first phase of consultation stated:

“As our resources decrease, we will need to increasingly rely on those on the frontline to scrutinise the performance of organisations and service providers.”⁹

Summary

The Specific Duties regulations have been in force since September 2011 so public bodies should have already published compliance information (by 31st January 2012) and carried out consultations on draft objectives:

Public bodies must publish their objectives by 6 April 2012 and so if you have not already responded to a consultation or been involved in any other kind of engagement, it is not too late to ask public bodies for more information on:

- how the objectives were decided
- the data and other evidence they used; and
- any impact assessments carried out

Remember public bodies do not have to set an objective for every single protected characteristic or every one of the high level aims. At this stage they may still be gathering evidence and data which they will need to make decisions about priorities and to determine where they can have the biggest impact. They will likely welcome **input from and engagement with women’s organisations.**

⁹ http://www.equalityhumanrights.com/uploaded_files/aboutus/stratplan-about-the-consultation.pdf

Advice for women's organisations

Using the PSED to challenge decisions, policies and practices

Remember the duty is only to have 'due regard' to the aims of the equality duty, i.e. to show that they have taken it into consideration when making decisions about key policies, practices and service delivery. This does not mean that they have to take steps or, actually achieve equality. So when challenging a decision, policy or practice you will need to look for evidence and assess whether sufficient due regard or proper consideration has been given to the three aims of the PSED by the public body concerned.

You will also need to specifically look for:

- information saying how the public body is complying with the Equality Duty;
- equality assessments or other kinds of analysis showing that the impact of a particular decision, policy or ongoing practice on those who share any of the protected characteristics has been given proper consideration.

Equality information should include the evidence used to inform policy development and decision-making, such as local or national research on equality issues, responses to consultation and other data.

Where will you find it?

The most obvious place to look will be on public body's website. However it may not always be easy to find. You may need to know the exact name of the policy or decision.

What to do if you can't find it?

Most large public bodies will have an Equalities Officer or department dealing with equality so if you can't find what you are looking for, write, e-mail or telephone and ask where you can find the information which includes the analysis that the body carried out to determine the impact of the decision, policy or practice on service users with a protected characteristic.

Assessing the information

- The analysis carried out by the public body needs to show that information about the people affected has been gathered and considered as well as the extent to which people with any of the protected characteristics are affected differently to those who do not share a protected characteristic.
- Enough information should have been gathered to enable an informed view to be taken about the impact on equality, good relations and the risks of prohibited discrimination.

- If there is a particular impact on people who share a protected characteristic, does it show that proper consideration has been given to the extent, nature and duration of the impact?
- If there is a negative impact, does the information show how that could be eliminated or at least mitigated?
- If you experience difficulty in understanding the language used in public body publications you may find it helpful to use the website Jargon Buster¹⁰. This website provides an alphabetical summary of common words and terms used by central Government/local public bodies and others.

What does the duty mean for women-only services?

The provisions of the specific duties relating to positive action, confirm the legality of women-only services and their importance in effectively meeting diverse needs. As outlined in s.158 of the Equality Act 2010 (see above), public bodies are permitted to take positive action to support specific needs, alleviate disadvantage and reduce the under-representation of people who share a protected characteristic. You may want to remind public bodies of this when challenging or influencing decisions and proposals.

¹⁰ www.jargonbusters.org.uk

Other sources of help and advice

Home Office Guidance

Equality Act 2010: Public Sector Equality Duty: What Do I Need To Know? A Quick Start Guide for Public Sector Organisations

www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/equality-duty?view=Binary

Government Equalities Office

www.homeoffice.gov.uk/equalities/equality-government

A Summary Guide for Voluntary and Community Sector service providers

www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/vcs-service-providers?view=Binary

Engaging with Women

www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/vcs-service-providers?view=Binary

Response to consultation Strengthening Women's Voices in Government (Nov 2011)

www.homeoffice.gov.uk/publications/equalities/womens-equality/strengthening-womens-voices?view=Binary

EHRC

Helpline England, Wales and Scotland

www.equalityhumanrights.com/about-us/contactus

The essential guide to the public sector equality duty

www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/news-and-updates-on-the-equality-duty

Core guidance for voluntary, charity and community organisations

www.equalityhumanrights.com/advice-and-guidance/service-providers-guidance/what-equality-law-means-for-your-voluntary-and-community-sector-organisation-including-charities-and-religion-or-belief-organisations/core-guidance-voluntary-charity-and-comm

Toolkits

TUC Equality Duty Toolkit

www.tuc.org.uk/extras/EQUALITY_TOOLKIT.pdf

TUC Women and the Cuts Toolkit

www.tuc.org.uk/tucfiles/138/WOMENANDCUTSToolkit.pdf

Women's Budget Group: Making your voice heard – A women's toolkit for local lobbying

http://wbg.org.uk/pdfs/cms-0-wbg_A5booklet_v3.pdf

Useful reference material

How to engage with the localism agenda: A guide for women's voluntary organisations (updated March 2012)

http://www.wrc.org.uk/includes/documents/cm_docs/2012/u/updated_how_to_engage_with_the_localism_act_2012.pdf

Hidden Value: Demonstrating the extraordinary impact of women's voluntary and community organisations (2011)

www.wrc.org.uk/resources/wrcs_research_and_reports/default.aspx

'Why women-only' report: The value and benefit of by women, for women services (2006)

www.wrc.org.uk/what_we_do/campaigns/why_women/why_womenonly.aspx

Power and Prejudice: Combating gender inequality through women's organisations (2010)

www.wrc.org.uk/includes/documents/cm_docs/2010/w/1_wrc_power_and_prejudice_final.pdf

WRC's report examines what helps - and what hinders - women's organisations in creating change at a local level. The research identifies the barriers facing women's organisations in being able to create these changes, presents learnings on what factors and what useful tools can help with local engagement and offers clear, practical solutions to both public bodies and women's organisations to improve this local engagement.

Compact

The Compact is the agreement between government and the voluntary and community sector to improve their relationship for mutual advantage and community gain.

www.thecompact.org.uk