

# **Response to the Welsh Assembly Government consultation on the Equality Act 2010 Specific Duties for Wales**

**November 2010**



**Comisiwn  
Cydraddoldeb a  
Hawliau Dynol**

**Equality and  
Human Rights  
Commission**

# 1. Equality and Human Rights Commission

The Equality and Human Rights Commission aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

## 2. Introduction

The Equality and Human Rights Commission welcomes the consultation on the Equality Act 2010 Specific Duties for Wales.

In preparing this response, we involved stakeholders and have taken into account:

- The reports of our nine voluntary sector focus groups about the specific duties, covering all equality strands
- Our Equality Exchange events which gave public sector employers their say on how they would like the specific duties to work
- Evidence we have gathered about the positive outcomes of the current public sector duties

Our evidence shows that the current public sector duties have led to practical, on the ground change. We welcome the opportunity the specific duties present to build on the current duties and to tackle the greatest inequalities in Wales.

Our stakeholder and academic evidence tells us there is a gap between the potential for the current duties to tackle inequality and promote good relations and the results they are delivering. We believe these new specific duties can tackle this implementation gap by shifting focus away from process and onto outcomes.

The specific duties are the steps that public bodies have to take to meet their obligations under the general duty. Each specific duty needs to be outcome focused, transparent, capable of accountability, flexible enough to allow for proportionality and enforceable.

## **3. The Specific Duties**

The Commission very much welcomes the specific duties as outlined in the consultation document.

We would make the following points:

### **3.1. Objectives**

The Commission welcomes the priority given to the need for organisations to set outcome-focused equality objectives. These should be built into organisations' strategic and business planning.

The wording in the Regulations of "one or more" is not helpful. It is unlikely that a duty covering seven protected characteristics will be satisfied by setting only one objective. Public authorities should set as many objectives as are appropriate to meet the duty, in the light of evidence across all protected characteristics.

The suggested date for setting objectives as April 2012 is sensible, as it allows public authorities to use the first year to develop and pilot objectives. The duties will then be fully operational and enforceable by the commencement date.

We welcome the required statement to accompany objectives which will play an important role in helping to ensure accountability, transparency, and a focus on outcomes.

The Commission is concerned that there is no set date to review objectives. While flexibility to suit organisations' planning cycles is needed, we would not want to see this open ended. Objectives should be reviewed at least every four years to ensure that they are delivering desired outcomes and tackling inequality.

### **3.2. Engagement**

We warmly welcome the specific duty on engagement as this is fundamental part of meeting the general duty. Given its importance, we are pleased that engagement is reflected in many of the other specific duties as it is an underpinning principle of good governance.

### **3.3. Accessibility**

We welcome the specific duty on accessibility as enabling the widest range of stakeholders to understand the authority's plans.

### **3.4. Collection of information**

We welcome the duty setting out arrangements for the collection of information.

### **3.5. Equality Impact Assessments**

This duty is critically important. Equality Impact Assessments provide public authorities with a way of developing proposals that consider the needs of all members of their communities. Proposals would include all significant decisions, including financial decisions.

The proposed duty only applies to proposed policies. We would encourage amending the duty so that authorities should have a duty to equality impact assess existing policies when they are being reviewed or updated.

### **3.6. Addressing the Gender Pay Gap**

Tackling the gender pay gap is critical. Recent research shows that, despite 40 years of legislation, progress in closing this gap has slowed. The importance of this issue to women and families justifies a specific duty to address this one area, in addition to the specific duty addressing pay gaps across all protected characteristics.

This gender pay duty should enable public sector employers to identify:

- Whether they have a gender pay gap
- What is causing it
- How they can address it in an effective and timely way

The duty should require public authorities to:

- Collect evidence about the workforce in terms of numbers, jobs, pay, grades, work patterns and contracts
- Consult and involve stakeholders, for example, staff and trade unions.
- Analyse the data to identify the causes of the pay gap
- Identify the steps that will have greatest impact in narrowing the gap
- Identify the action that will be taken with a timeline and budgets
- Review and publish the progress that has been achieved

### **3.7. Employment and pay duties across all protected characteristics**

We welcome a duty that covers addressing the pay gap across all other protected characteristics in addition to gender. We agree that there should be no threshold in terms of number of employees before a pay duty takes effect.

We are concerned that the detailed list of employment data to be collected is focused on less significant areas and may distract from a focus on action to tackle inequality and promote good relations.

The data collection must include sexual orientation and transgender. If there are small numbers of LGBT people within organisations this data could be kept confidential in order to protect identity.

We welcome the duty to promote knowledge and understanding of the public sector equality duty and to address training needs.

### **3.8. Equality schemes**

There may be value in equality schemes if they are used to ensure transparency and to show that the specific duties have been met.

However, making schemes mandatory is overly prescriptive and risks organisations focusing on the process rather than equality outcomes. An organisation may choose to publish their key information in another more appropriate format, such as part of its Annual Review.

### **3.9. Reporting**

The Commission is recommending that objectives are reviewed to fit in with an organisation's existing planning cycles. This should be every four years as a minimum. We would want reporting to take place to fit in with the review of objectives and therefore to take place a minimum of every four years.

We welcome the allowance that is given to public sector authorities to publish a report in any of its published documents rather than being prescriptive.

### **3.10. Procurement**

This duty is welcomed. Procurement could have considerable impact in promoting equality in the private and voluntary sectors.

### **3.11. Reporting by Ministers**

This duty ensures that equality issues are part of the day to day life of Ministers. It also provides an evidence base through which the impact of Ministerial policies and procedures can be assessed.

### **3.12. Organisations listed to be covered by the specific duties - schools**

The clear message from the overwhelming majority of the Commission's stakeholders is that the specific duties should cover schools. The Commission strongly supports this view. Excluding schools would be a regression on current duties. It would be less progressive than the specific duties in England as they cover schools.

There is evidence the current specific duties have driven better performance in schools, and improved outcomes. This includes EHRC commissioned research which is due to be published in December 2010 and which will be provided to the Welsh Assembly Government as an annex to this paper. The Estyn report 'The Impact of schools' race equality policies' (2009) also confirms the value of having equality duties.

The specific duties aid the fulfilment of the general duty. The proposed duties incorporate proportionality and will not be burdensome to smaller public authorities such as schools.

More information about the Welsh Assembly Government consultation on the draft Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 can be found at:

<http://wales.gov.uk/consultations/equality/equalityact2010/?skip=1&lang=en>

For more information about the Equality and Human Rights Commission in Wales:

[www.equalityhumanrights.com/wales](http://www.equalityhumanrights.com/wales)  
[wales@equalityhumanrights.com](mailto:wales@equalityhumanrights.com)