

## CONSULTATION RESPONSE FORM

### THE PUBLIC SECTOR EQUALITY DUTY Promoting equality through transparency – A consultation

**The consultation closes on 10 November 2010.** Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

#### Contact details:

Please supply details of who has completed this response.

Response completed by (name):

Brenda Weston

Position in organisation (if appropriate):

Policy Officer and Gender Equality lead

Name of organisation (if appropriate):

Fair Play South West

Address:

c/o East Reach House  
East Reach  
Taunton  
Somerset TA1 3EN

Contact phone number:

01823 250814

Contact e-mail address:

brenda.weston@equalitysouthwest.org.uk

Date:

9 November 2010

#### Confidentiality

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you wish your response to remain confidential, please tick the box below and say why. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

I would like my response to remain confidential  
(please put a cross in the box if appropriate):

Please say why

In what capacity are you responding (please put a cross in the appropriate box)?

As an individual

On behalf of a public sector organisation

On behalf of a private sector organisation

On behalf of a voluntary sector organisation

Other (please specify)

On behalf of Fair Play South West, an executive committee for the South West Gender Equality Network supported by Equality South West

**Note:**

- In addition to the completed pro-forma, you can also send other supporting information if you so wish.

**Thank you for completing this response form.**

**Question 1: 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 paragraph 5.2 to 5.9?**

Does the drafting of regulation 2 accurately reflect the aims of the policy?

Please place a cross in the appropriate box

Yes  No  Not sure

Please explain:

We welcome the commitment to adhere to the new Public Data Principles in data reporting and see this as a minimum requirement. In itself, adherence to the principles does not amount to transparency for the practical purposes of informing civil society, in particular those whom the Duty, and specific duties are intended to protect. The nature of the data used is key. It has to be meaningful, not just accurate and available. The specific duties as proposed provide no reassurance on this and we believe that guidance in this area is necessary if transparency is to be achieved.

- Statistical data alone cannot inform either public bodies or civil society as to the ways in which discrimination is experienced and in which inequalities impact on people's lives. Qualitative data and proactive engagement with people whom the legislation is designed to protect is essential and should be a specific duty. The assumption in 5.7 is that public bodies will do what they evidently should, in an effective way and at the right time. This assumption is not supported by people's experience, as focus groups conducted by Equality South West have shown very clearly.
- Public bodies need guidance about what data they should be collecting and using to monitor. This should explicitly include gender pay differentials, and the categories of data required under the current race equality duty, such as grievances, disciplinarys, recruitment etc, which should also be explicitly required.
- Assessing impact is demonstrably not a routine part of public authorities' normal decision making. This is currently being demonstrated in the actions of some local authorities in the South West. The government needs to pay heed to the ways in which some councils are proceeding in their decision making and build safeguards into the specific duties accordingly.
- The Codes of Practice should give advice on impact assessments, and public bodies should be required to state that they have based their actions on the Public Sector Duty Code of Practice.
- Overall the specific duties as proposed place an unfair and unrealistic burden on individuals and civil society organisations to interpret data themselves.
- Given the importance we place on the establishment of a sound and meaningful baseline of evidence on which future evidence can be built, we believe that the deadline of 4<sup>th</sup> April 2011 for public authorities to have to publish the information

required relating to its performance under section 149 (1) is unworkable and should be reviewed. However they could be required to set out their strategy for evidence gathering, and what evidence they propose to gather and use.

- In 2.(2)(b) 'aims' needs to be replaced by 'duties' since this is what is being referred to.

**Question 2: 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?**

Does the drafting of regulation 2 accurately reflect the aims of the policy?

Please place a cross in the appropriate box

Yes  No  Not sure

Please explain:

- We disagree with the proposal to exclude sexual orientation and religion or belief from the monitoring data that public authorities are expected to collect. A survey carried out by Equality South West this year among LGB&T people showed a majority preferring to have the question in place, giving people the option to leave this blank. The government has prioritised work to eliminate discrimination in relation to LGB&T people. Monitoring is a basic step towards this.
- We hope that the Code of Practice guidance will ensure that public service employers publish data that provide a meaningful picture of equalities within the organisation.

**Question 3: 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?**

Does the drafting of regulation 2 accurately reflect the aims of the policy?

Please place a cross in the appropriate box

Yes  No  Not sure

Please explain:

- Statistical data need to be analysed and assessed in order to meet the accessibility test.
- The publication of evidence that informs impact assessments some time after decisions have been made of itself takes power away from civil society and

contradicts the notion of transparency. Those whom the Duty is intended to protect need to know the information on which decisions are reached, which may be far from accurate in reflecting the reality for them.

- It is difficult to see how civil society is encouraged to challenge decision-making that does not comply with the public duty if the evidence on which decisions are made is not available in advance.
- Involvement of and consultation with protected groups, as set out in the Disability Equality legislation, in order to inform decision making was proposed in an earlier version of the draft specific duties as part of a commitment to harmonise upwards. The draft specific duties now proposed represent a retrograde step in this regard and the quality of decision making will almost certainly suffer.
- We believe that the draft specific duties published by the Scottish government provide a model which England should follow.

**Question 4: 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?**

Does the drafting of regulation 3 accurately reflect the aims of the policy?

Please place a cross in the appropriate box

Yes  No  Not sure

Please explain:

- If the evidence and data that authorities publish do not provide an accurate and full picture of the nature as well as the extent of inequalities across all strands, the priorities and objectives set are unlikely to bring about the most significant and needful changes, but may reflect those that are easier to effect and measure. Engagement with protected groups is essential to gather qualitative information.
- The data underlying the proposed objectives should be publicised before the final decisions are made.
- Authorities should be required to set out the milestones they intend to meet towards realising their objectives/outcomes. Without these there is a real danger that other priorities will overtake the equalities objectives and little will be achieved during the 4 years allowed before reporting back. Milestones are an aid to achieving the desired outcomes, and would give the public an opportunity to comment and contribute to progress.

**Question 5: Do you have any comments on the changes proposed in Chapter 5 under the section ‘Reducing the burdens on public organisations’?**

Please place a cross in the appropriate box

Yes  No

Comments:

- The previous government’s approach to the specific duties was heavily informed by the feedback from extensive consultations undertaken with the public, particularly groups who have a direct interest in, and are affected directly by the quality of equality legislation.
- Our view is that the balance indicated in the current proposals between addressing inequalities and discrimination, and reducing burden for public authorities is not the right one.
- Public authorities do not always behave rationally and in the interests of vulnerable minorities, and their capacity to respond to legitimate local needs relies once again on the quality of their data and information. We believe 5.19 adds weight to previous comments regarding the nature and quality of data.
- The consultation document acknowledges that procurement is one of the important ways in which public bodies can promote equality, but assumes that public bodies will automatically embed equality into its procurement and commissioning procedures. We believe that it is important to make this a requirement in order to achieve the impact that the document acknowledges it can have.

**Question 6: 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?**

Please place a cross in the appropriate box

Yes  No

Comments:

Given that public bodies already have data relating to disability, gender, and race inequalities we see no reason why objectives should not be set from April 2011 in relation to those issues and priorities already known about, particularly at a time when public bodies are required to make cuts in services and to restructure in ways

that potentially have a disproportionate impact on those who share these protected characteristics.

In addition, we are aware that, anticipating the new single duty, some public bodies have already begun to gather evidence concerning the remaining protected characteristics, and may therefore be in a position to set objectives concerning one or more of these additional groups.

**Question 7: 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?**

Comments:

The consultation document states that “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**”. It also states that listing in Schedule 19 “**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.”

As it stands, bodies listed in Schedule 19 include several which are scheduled for abolition, or full or partial replacement by other, as yet, unconstituted bodies. These include bodies which will be publicly funded but in some cases will be governed and controlled by private individuals and commercial bodies etc. For the avoidance of doubt we believe it would help if the intention within the Act were clarified by including a ‘purpose clause’ defining the categories of authorities and bodies that the general and specific duties are intended to cover, particularly because we are facing extensive changes and restructurings affecting the ways in which public services are delivered.

The wording of para 7.7 might be adapted for the purpose, for example:

*Bodies covered by the general and specific duties include those whose responsibilities are likely to have an impact on equality in relation to the protected characteristics, and those that: are responsible for planning and/or delivering public services; that help to deliver public services; those that are responsible for regulating or inspecting the delivery of those services; or those that otherwise influence the way in which they are delivered.*

**Question 8: We would welcome your views on the bodies that we do and do not think should be subject to the specific duties, as described in paragraphs 7.13 and 7.14**

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Comments:

See comments in response to question 7.

In addition, we agree that requirements on public bodies or bodies undertaking some public functions need to be proportionate. However, bodies that are subject to the general duty but which are proposed for exemption from the specific duties should nevertheless be advised to operate within the spirit and under the guiding principle of transparency as set out the consultation document and the draft duties.

**Question 9: Do you have any other comments on the drafting of the Statutory Instrument? If yes, please explain.**

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Please place a cross in the appropriate box

Yes  No

Comments:

There is a suggestion within the consultation document that in accordance with some current theories the 'norms' that govern organisational thinking within public authorities will be shifted by the actions required in the draft specific duties such as the production of statistics. However, our own experience, and drawing on the opinions of public authority equality officers with whom we work, suggests that norms are most effectively influenced and challenged by encountering real local people whom the legislation aims to protect, and hearing and reading about their real experiences. This is one of the key benefits of undertaking qualitative research and creating channels for dialogue with those who share the protected characteristics.

**Question 10: Do you have any evidence or data that you can provide or direct us to which would help us to develop our regulatory impact assessment?**

Please place a cross in the appropriate box

Yes  No

Comments:

**Question 11: 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?**

Please place a cross in the appropriate box

Yes  No

If yes, please explain:

**Question 12: 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.**

Please place a cross in the appropriate box

Yes  No

Comments:

Examination of the costings shown in Annex 6 indicate that the contents of the proposed specific duties are cost driven rather than representing an attempt to make equality a reality. They indicate a profound lack of understanding of the social complexities involved in the creation and perpetuation of inequality, discrimination and prejudice-based disadvantage.

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**THANK YOU FOR YOUR COMMENTS.**