



**GEO Consultation on the Equality Act 2010:  
The Public Sector Equality Duty**

**UNITE – the Union  
Response**

**November 2010**

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### **Introduction**

This response is submitted by Unite, the union. Unite is Britain and Ireland's largest trade union with 1.5 million members across the private and public sectors. As the union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors, we have extensive experience of representing men and women workers who are faced with discrimination on all grounds. We believe that the current public sector duties, general and specific, are an important tool for union reps as well as employers to ensure action to prevent and tackle discrimination in employment and in the wider community.

### **Unite the Union Response - Key Points**

1. Unite welcomes this consultation however, we are very concerned that the draft Regulations do not encourage promotion of equality in order to eliminate all forms of discrimination, advance equality of opportunity and foster good relations, as stated in the Equality Act 2010. The so-called "lighter touch" approach undermines and belittles the importance of equality to employees and service users and the impact of inequality on their lives.
2. We are concerned that the draft Regulations do not ask for specific information when collecting data and they are ambiguous and at best general, allowing public bodies to elect the easy option rather than their duty to address all inequalities.
3. Public bodies have a duty to put in measures to eliminate discrimination but by allowing them to pick and choose areas of equality, whether by collection of data or setting of objective(s), the 'duty' effectively becomes meaningless and simply a "paper exercise".
4. We are alarmed that "telling public bodies how to conduct their procurement activity" is considered "burdensome". This is in contradiction to the ethos of the general duties and paragraph 5.20 of this consultation. The Regulations should include specific duties on procurement so that public bodies can ensure elimination of discrimination throughout the process, and that other bodies carrying out public responsibilities do not undercut through discrimination.
5. The involvement of trade unions is mentioned once in this consultation whereas the important role of trade unions including the role of union equality reps in implementing the public sector duty should be recognised. The draft Regulations should include the wording on involvement of trade unions from the existing Gender Equality Duty.
6. Unite believes that the positive case for a public sector duty needs to be made much more strongly than suggested in the consultation. Unite would highlight

the following:

- Public sector duties have been vital in raising the importance of specific areas of equality for workers and service users eg gender, disability and health & safety
- Looking at public sector policies and practices through the equality lens also assists in identifying under-representation of eg women or black workers or gaps in services. Once identified, measures to eradicate the discrimination can then be put in place

Specific duties helping public bodies meet the general duty are a benefit to the whole community and should not be identified as a “burden”. Unite also believes there is a strong case for the public sector duty being extended to the private sector, so that there is effective protection from discrimination across workplaces and communities.

**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**

Unite welcomes the proposed transparency in publishing data and public bodies' decision making on equality.

We believe this information, as stated in the Public Data Principles, should be clear, understandable and accessible to employees, service users and relevant organisations such as trade unions who want to use this data. However, this is not evident in Regulation 2. This should be clearly written in Regulation 2 and supplemented by the EHRC code of practice to provide public bodies with guidance.

Public bodies should consult and involve employees, users and representative organisations like trade unions instead of "considering" who they engage with. The wording should change to make this clear in Regulation 2. We are very concerned that these proposals will allow public bodies to either pick and choose areas of equalities they publish information on, or to publish information on areas where they find it easier to collect information, or areas where they already have information. Regulation 2 should clearly specify that public bodies have to publish information on:

- the data they have collected on all areas of equality
- steps they have taken to address discrimination
- steps they will take in the future
- details of who they have consulted and involved/will consult and involve
- equality gaps identified
- a timeline for addressing these equality gaps

Unite believes that the equality duty should be strengthened in Regulation 2 to ensure implementation and this should include monitoring action in order to hold the authority to account, and require a written equality scheme which measures outcomes through equality impact assessments as the way forward. Therefore, we are concerned that in paragraph 5.7 "outlining a particular process or prescribed set of forms to assess impact" is not seen as "necessary or useful". Changing the nature of equality impact assessments makes them an after-the-event procedure instead of a preventative measure. We strongly oppose the lack of inclusion in the proposals of a strong and "prescriptive" equality impact assessment, as it is often only when this is carried out that the equality dimensions are made clearer. In local government, there is a joint union/employer commitment/agreement on how to carry out equality impact assessments which illustrates the importance of this area. A good example is the initiatives of the Scottish government around equalities, for example to highlight the needs of transgender men and women in the provision of services, the Scottish government is working with the public sector and supports the Inclusion Project as part of its work to improve NHS Scotland.

The current Race Equality Duty has led to the clear recognition of the value of equality impact assessments and monitoring, and it is essential that this remains in the new duty. We believe any measures other than strengthening the current monitoring process would effectively be regression.

There should be a requirement to carry out Equality Impact Assessments as

prescribed by the government, as a vital tool in ensuring measured public sector policies and decisions prior to implementation. For example in our experience the closure of some care homes could have been avoided if the impact assessment showing disproportionate impact to black, Asian and ethnic minority (BAEM) workers had been properly implemented. On a positive note the London Equalities Commission's<sup>1</sup> impact assessment helped identify equality indicators. They then assessed whether there has been measurable progress to improve equality in London and reported on their findings.

**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?**

Unite strongly supports the provision of monitoring information to underpin taking action on equality, and welcomes that there is some reference to this. However, Unite is very concerned that the requirement only applies to public bodies with 150 or more employees, and we are also concerned that the proposed measures are insufficient to identify and ensure action needed to tackle inequalities.

The exclusion of smaller public authorities from the requirement to publish their gender pay gap figures for example, will have a significant impact within smaller but significant organisations such as schools. Significant numbers of schools will fall outside of this scope and with more schools moving outside of local authority scope, this will damage transparency or evidence concerning equal pay impacts in the future. Also, the 150 limit could effectively undermine race and disability equality since in one organisation BAEM or disabled workers could be a high proportion of the workforce, or a low proportion compared with the local community, and yet no action is deemed necessary since the total numbers are below 150. This can apply to areas like London, Birmingham and Bradford where there is a high proportion of BAEM communities or in supported employment workplaces where there is a high proportion of disabled workers.

We are concerned that proposed transparency methods and data collection are too general and hide other forms of discrimination eg part-time workers; or are not appropriate for example in removing the extremes of earnings. Additionally, we believe that the requirement to publish the gender pay gap should be extended to BAEM workers and not just be limited to data on their employment rate. This should be in addition to monitoring requirement in the existing Race Equality Duty and not a replacement. Also, it will not be sufficient to collect data only on the distribution of disabled workers throughout the organisation's structure. The only way data can be useful for future action is that it includes detailed information and Regulation 2 should specify what information is to be collected and published with a reference to the EHRC code of practice. These are details of the gender pay gap and BAEM pay gap as well as detailed information such as the number of applicants for employment, recruitment and promotion, training, selection for redundancy, grievances and disciplinaries, pay grades, jobs, full and part-time working, etc. for women, BAEM, disabled people, LGBT, young and older workers. It is also important

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<sup>1</sup> The State of Equality in London report January 2007

to note that many public bodies already collect information on gender, race and disability and many do so for other areas of equality.

We recognise the sensitivity of collecting data on sexual orientation and religion or belief. However by not requiring public bodies to provide any data, organisations could effectively be allowed to ignore discrimination in these areas of equality. Public bodies should collect and publish this data with guidance from the EHRC code of practice. Unite, TUC and other unions have had many discussions around this issue and have guidelines for monitoring and collection of data which have been agreed by our LGBT members to ensure confidentiality is addressed.

**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?**

We agree with the TUC as well as agreeing that there should be a requirement on public bodies to provide an annual report of their progress on their equality objectives. This should be done through an EHRC Code of Practice similar to the existing DRC Code of Practice.

**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?**

Unite disagrees with Regulation 3(1) which contradicts not only paragraph 5.3 but most importantly the requirements under the s.149(1). Public bodies should implement their set out action, as in the existing gender and disability duties, but they should not be able to pick and choose areas of equality that are “unreasonable or impractical”. In our experience assessments of “reasonableness” on equalities do not fully count the cost of not acting to prevent discrimination or promote equality. Not setting equality objectives for all areas of equality will negate the purpose of Equality Act 2010 extension to all areas of equality.

We agree that the Duty would be more effective if public authorities are required to prioritise equality outcomes, that action should be proportionate to their size and the impact of the inequality identified. However, we are gravely concerned that the priority equality objective approach proposed here will weaken the current position and give public bodies the scope to limit in a way that effectively ignores needed actions for non-priority groups. For example, although lack of progression of BAEM workers may be identified as the major equalities issue requiring action this should not mean no action on disabled or women workers. Regulation 3(1) should state that public authorities must prepare and publish objectives on all areas of equality with reference to the EHRC Code of Practice and guidance on how to prioritise.

Regulation 3 should place a requirement on authorities to publish an Equality Scheme. These Schemes have not been a “burdensome” exercise but a plan to ensure action is taken on equality. Currently Equality Schemes strongly support authorities’ promotion of equality coming to fruition. These Schemes should be easy to access and also simple to read and understand.

Additionally, Equality training is a key component in developing understanding of the practical implications and meaning of equality law and is part of the necessary processes that need to be in place to ensure understanding at all levels of an organisation. The need for equality training, as in the existing Race equality Duty should be included in Regulation 3. At the very minimum training should be encouraged as part of this process rather than left to institutions to decide. If an institution decides not to provide any training this will leave employees, particularly middle management, in an extremely vulnerable position, where they can be held accountable but they have not been provided with training to ensure they understand their responsibilities.

There should be a requirement for public bodies to identify goals and action to be taken to progress towards these goals. This can only be achieved fully by gathering evidence to address inequalities for workers and service users. Unite supports the TUC in asking for a specific duty on public bodies to gather evidence prior to setting their objectives. Without this evidence objectives can be too general or at worst irrelevant to the needs of workers and the community they serve. This should be specifically stated in Regulation 3(3) and Regulation 2.

We believe that a three yearly review, as in the existing duties, is long enough and that Regulation 3(4) should reinstate the three year period. It should also include a requirement for public bodies to review their action taken and future remedies in that period.

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

We share the TUC's concern and great disappointment at the omission of a specific duty on public procurement.

We have continually supported the use of public sector procurement to achieve equality outcomes as recognised under paragraph 5.20. We believe that procurement is key to ensuring that poor practice in the private sector cannot be used to undermine good practice introduced in the public sector in response to the Equality Duty, and that equality should be taken into account in all public functions. For this reason we are extremely concerned that equality impact assessment of procurement policies is missing from the proposals and believe it should be embedded in the procurement process.

It is important that public sector procurement is used as a lever to promote equality in the private, not-for-profit and voluntary sectors. It cannot be right that public money should be spent on organisations which have discriminatory policies and practices. Embedding equality in public procurement would have the advantage of ensuring high quality services, allowing all businesses to compete on an equal footing, spreads best practice on equality and avoiding the race to the bottom.

We believe that there should be an explicit requirement for public authorities to deal with supplier's breaches of discrimination law, rather than doing this through best

practice guidance as some authorities have already done.<sup>2</sup> Public authorities must ensure that those who supply services are not discriminating and this is consistent with the whole Equality Duty ethos. Minimum equality standards are necessary which should be properly enforced and organisations should be banned from tendering for public contracts if they are in serious breach of discrimination law.

We have experience of the impact of privatisation when equalities considerations were specifically excluded from the tendering process under compulsory competitive tendering. This showed that disproportionately it was low paid women, black women and disabled workers that were affected, leading in our experience to the creation of the current equal pay cases and serious decline in the employment of disabled workers. This showed that serious problems occur when the impact of policies on equality is not taken into account. Additionally, when the impact of procurement on social cohesion is not recognised, then it can be undermined, for example if race equality is not adequately addressed, then the wrong perception of housing allocation could lead to the rise of the far right.

Transport for London's procurement practices have been a good example of how early engagement and communication with all stakeholders, clear presentation of the business case and reporting of successes and benefits provides positive outcomes for BAEM, women and other under-represented groups in its supply base.

**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?**

Many public bodies collected data on different areas of equality ahead of the enforcement of the Act. Therefore there should be an expectation that all organisations will be ready to publish their equality objectives ahead of the enforcement of specific duties in April 2011. All public bodies have been aware of the timetable for the enforcement of the specific duties and we believe there are no justifications for further delays.

**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.**

**Q.8: 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.**

Unite believes that the duty should apply to all public bodies. As the employer of one in five of the employees in Britain the public sector should be an exemplar employer. Tackling inequality in the public sector has a massive impact on society. We are concerned, on the other hand that many public sector employees work in places where public sector duties will not apply. We do not believe there are any reasons or argument for not applying the specific duties to all public authorities. We disagree with the suggested exclusion of smaller organisations such as schools, charities or small NHS trusts. For example GPs who might refuse help to women who wish to terminate an unwanted pregnancy or GPs & PCTs who do not provide an

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<sup>2</sup> Local Government Information Unit Briefing, Discrimination Law Review, 2007

appropriate service to someone seeking their assistance, as per Debbie in Mansfield, a trans woman<sup>3</sup>.

This reduced scope would seriously dilute the impact of the duty. Small public authorities can have a big impact on equality in the community in which they operate. For instance, schools should be supported in their role in tackling inequalities, such as homophobic and racist bullying of their employees as well as pupils. For example, religious schools or teachers in RE lessons should not be free to comment negatively/make a pejorative value judgement on someone's sexual orientation or gender identity, either as an individual or a specific community.

We are also concerned that there is no mention of the fact that some organisations on these lists are being abolished and a massive reorganisation and decimation of the public sector is taking place. The great impact of the cuts on public bodies is missing from this list.

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

We have been consistently calling for the duty on the public sector to be extended to the private sector. The government should recognise the importance of using the Single Equality Duty as an opportunity to extend to the private sector the requirement to promote equality and prevent discrimination. We have a great deal of experience promoting equality in the private sector with employers of a range of sizes, including British Airways, Ford Motor Company, J Sainsbury, BAA, London Buses, English Church Housing Group, Ineos, TNT, Happy Computers, Associated British Ports, Cadbury, Stagecoach. Our experience is that a clear commitment to promoting equality and to establishing procedures for implementing this commitment is beneficial to all aspects of the workplace. The specific example of win-win-win agreements on equality and flexible working that meet workers' caring and other commitments outside work, as well as the employers' need for flexibility in order to meet varying customer demand demonstrates this.

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<sup>3</sup> [http://www.chad.co.uk/news/local/rainworth\\_transsexual\\_denied\\_nhs\\_operation\\_1\\_702905](http://www.chad.co.uk/news/local/rainworth_transsexual_denied_nhs_operation_1_702905)