

EQUALITY ACT 2010

1. The Equality Act 2010 (the 2010 Act), having replaced previous separate pieces of legislation in relation to equalities, introduces a general equality duty on public authorities. It also introduces specific duties on public authorities specifically named in Schedule 19 to the Act (and accompanying secondary legislation); however the Commission is not a named body and therefore only the general duty on the Commission exists – the specific duties are therefore not considered further in this paper.

2. The Secretariat has considered the implications for the Commission's work of this general duty, and makes recommendations to the Commission on how to ensure it is complying with the obligations in the Act. The Secretariat has sought legal advice from the Treasury Solicitor's Department (TSol) in making these recommendations. **The Commission is invited to agree the policy, and its implementation, outlined in paragraph 14.**

The 2010 Act

3. The general duty on public authorities is set out in section 149 of the 2010 Act, and states that 'a public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.'

4. The Commission will wish to note that, while a 'public authority' is defined by the 2010 Act as 'a person specified in Schedule 19' of the Act – which omits the Commission – section 149(2) of the 2010 Act also states that:

'a person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1)'

5. Therefore, the Secretariat's view, supported by legal advice, is that *general duty set out in the Act does apply to the Commission*. Therefore, where there is scope for the Commission to take into account the general duty in the exercising of its functions, then the Commission should do so. It should be noted at this stage, however, that the recommendations and policy prepared *applies only to the Commission's exercising of its functions*; i.e. corporate issues such as the application of the duty in relation to staffing, recruitment, procurement etc are covered by the policies of the Commission's sponsoring body, the Cabinet Office.

The application of the general duty

6. The general duty set out in paragraph 3 of this paper refers to 'protected characteristics'. These are defined in section 4 of the Act as:

- a) Age;
- b) Disability;
- c) Gender reassignment;
- d) Marriage and civil partnership
- e) Pregnancy and maternity;
- f) Race;
- g) Religion or belief;
- h) Sex;
- i) Sexual orientation.

7. The legislation is not prescriptive about the approach public authorities should take to the general duty. However, the Equalities and Human Rights Commission (EHRC) has issued guidance to public sector authorities, to explain how such authorities can meet the requirements of the 2010 Act, and it is the Secretariat's intention that the Commission follows this guidance in its application of the general duty.

8. The guidance states that 'the broad aim of the public sector equality duty is to integrate consideration of equality and good relations in the day-to-day business of public authorities ... It requires equality considerations to be reflected in the design of policies and delivery of services ... and for these to be kept under review'. The guidance suggests, among other things, that public bodies should conduct an 'equality analysis' of its policies – and act on the outcomes of that analysis – in order to fulfil its obligations under the 2010 Act. The analysis should be proportionate to the size of the organisation and scope of the policy, and should be made available (on the internet and otherwise publicly on request).

9. The Secretariat has identified two discrete aspects of the Commission's functions to which it would be appropriate to apply the general duty (leaving aside, as mentioned, matters of a corporate nature that are covered by the Cabinet Office's policies):

- a) Decisions taken relating to the initial, revised (where appropriate) and final proposals; and
- b) The manner in which the Commission engages, communicates and consults with its stakeholders and the general public.

Decisions taken relating to proposals

10. In relation to a), the Secretariat had concerns over the potential conflict between the factors contained in the rules in the 1986 Act to which the Commission must have regard when making recommendations, and the obligations placed upon it by the Equality Act 2010. For example, the Secretariat has anticipated that arguments might be put to the Commission during the consultation periods that are based on its obligations under the 2010 Act. Arguments may be made to the effect that placing a boundary in a certain place may detrimentally (or indeed positively) affect race or religious relations in the area (one of the protected characteristics).

11. The legal advice received in relation to this potential conflict is quite clear (the Secretariat has emphasised the key points:





12. The Secretariat’s clear recommendation to the Commission, therefore, is that the Commission must have due regard to its duty under the Equality Act 2010 when taking decisions on its initial, revised and final proposals, but should not be led by it.

The manner of engagement, consultation and communication

13. In relation to b), in conducting an initial scope of the types of issues that might be expected to be identified in an equality analysis of the way in which the Commission communicates and engages with the public, the Secretariat has identified issues such as accessibility of documents and public hearings as likely key issues, though expects the list of issues to be far more thorough. The Secretariat intends to conduct an equality analysis of the way in which it intends to engage with the general public – the scale and scope of which will be proportionate to the size of the organisation, and undertaken by three members of the senior management team. The findings of this analysis will be acted upon and displayed on the Commission’s website, and made otherwise publicly available. The Secretariat recommends that the Secretary be authorised to sign-off this analysis, given the light-touch approach and the issues being considered.

Recommendations

14. The Commission is invited to agree, therefore, that:
- a) It will have due regard to the general duty set out in the Equality Act 2010 in taking decisions on its initial, revised and final proposals;
 - b) The Secretariat will conduct an equality analysis of the manner in which the Commission engages, consults and communicates with the general public, and act upon its results;
 - c) The analysis, and the agreed policy from this paper, be published on the Commission’s website and made otherwise freely available on request.