

The Equality Bill

Listening exercise outcome report

In February 2005, the United Kingdom Government set up the Discrimination Law Review to look at inconsistencies in the discrimination law framework and to consider how best to achieve a clearer and more streamlined equality legislation that results in better outcomes for those who experience disadvantage.

A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain was published in June 2007. This was quickly followed by *A Framework for a Fairer Future – the Equality Bill* and the *Equality Bill – Government Response to the Consultation*, both published by the Government Equalities Office.

Subsequently, the Equality Bill was announced in the Queen's speech on 3 December 2008. The Bill was introduced to Parliament on 24 April. The Equality Bill is now in the House of Lords following its successful passage through the House of Commons and, subject to the will of Parliament, should receive Royal Assent early in 2010.

Effect of the new law

The proposals within the Bill, will replace the 116 different pieces of equality legislation in force as at 2009. This comprises 35 Acts of Parliament, 52 Statutory Instruments, 13 Codes of Practice and 16 European Commission Directives.

The aim is that the new equality law will harmonise and strengthen UK discrimination law. When brought into force, it will establish the protected characteristics of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

It will also give definitions of direct discrimination, discrimination arising from disability, indirect discrimination, harassment and victimisation.

A new general equality duty for the public sector

Clause 145 of the Equality Bill will introduce a new equality duty on the public sector. In the exercise of its functions, a listed public authority must have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to advance the equality of opportunity between persons who share a relevant protected characteristic and persons that do not, involves having due regard in particular, to the need to:

- Remove or minimise disadvantages suffered by a person who share a relevant protected characteristic and are connected to that characteristic;
- Meet the needs of a person who share relevant protected characteristic that are different from the needs of persons who do not share it;
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

Compliance with these duties may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under the Bill if enacted.

The relevant protected characteristics to which the general public sector equality duties apply are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion and belief
- sex
- sexual orientation

Specific public sector duties for Wales

The Equality Bill, when enacted, will permit the Welsh Assembly Government to develop and impose specific duties that support this new general equality duty. It is important, however, that any new specific equality duties add value to the policy objectives we want to achieve. This is why a listening exercise was undertaken. The input of our partners is needed to ensure that any specific duties that are developed in Wales are focused on the right priorities, deliver improved outcomes for people and result in a better experience for citizens when accessing the services delivered by public authorities in Wales.

A listening exercise – setting out our thoughts

To help people consider how these new duties could work, some initial thoughts were set out in *Advancing equality across the public sector in Wales* about what these new specific duties developed by the Welsh Assembly Government should look like. In this document, we said that the specific duties should be:

- **Flexible** - so public authorities only take action which is necessary and productive; and
- **Proportionate** - depending on the function and size of the public authority. For example, expectations placed on a small primary school will be different to a large local council and reflect their size and resources.

The development of the specific equality duties should be guided by four principles. These are:

Use of evidence: good robust evidence to understand the communities served and shape future actions;

Consultation and involvement: so that the needs of the citizen can help shape the design and delivery of services that are fit for purpose, meet needs and deliver a positive outcome;

Transparency: about how objectives have been set and reporting progress takes place against objectives and priority equality areas; and

Leadership: strong leadership which sets a positive culture and climate within the public sector to use resources effectively to help successfully discharge their equality duties. The Welsh Assembly Government is keen to support public authorities in their delivery of better services to the citizens of Wales.

In considering the framing and scope of any specific equality duties that should be developed in Wales, some key areas of activity were suggested where there is potential to better advance equality of opportunity in Wales:

- Setting equality objectives
- Consultation and Involvement
- Assessing impact
- Reporting progress against objectives
- Gender pay and job segregation
- Public Sector Procurement
- How inspection supports the equality agenda; and
- Reporting by the Welsh Ministers.

Activity during the exercise

The listening exercise was formally announced by the Minister for Social Justice and Local Government on July 27th at a meeting of the Welsh Equality Reference Group. Initially circulated electronically to almost 140 equality groups and networks across Wales, this was followed up by sending out printed versions of the document to more than 200 groups and networks. Amongst others, organisations covering the following characteristics were contacted:

Race	22
Disability	53
Gender	21
Age	18
Faith	26
Sexual Orientation	4
Transgender	2
Housing	35
Midwifery	15
Breastfeeding	5

During the listening exercise, officials of the Welsh Assembly Government attended a series of organised workshops, forums and other events to raise awareness and discuss the development and opportunities that could result from these new duties. These events included:

- A series of three focused forums commissioned by the Welsh Assembly Government to capture the opinions of senior representatives and equality practitioners drawn from the public, academic and Third Sectors;
- A series of discussion groups organised by Women Making a Difference capturing the thoughts from women working and living in some of our most disadvantaged communities;
- Government Equalities Office sponsored event in Cardiff on 1st September attended by more than 80 equality practitioners to discuss the new duties as well as the age discrimination elements of the Bill;
- A series of network meetings organised by the Welsh Local Government Association including a meeting of elected councillors with responsibility for equality, Local Government HR directors and the WLGA's joint committee;
- Disability Wales' Right to Control event in Wrexham attended by more than 50 representatives of disability groups and organisations;
- Wales Council for Voluntary Action Equality Forum;
- Learning Disability Wales events in Cardiff and Llandudno
- Information was provided during the consultation events to Gypsy Traveller communities;
- A series of discussion groups organised by AWEMA.

Additionally, the Equality and Human Rights Commission in Wales convened a series of equality exchanges in November about the Equality Bill and the duties that will follow. Equality organisations received funding from the Welsh Assembly Government and the Equality and Human Rights Commission in Wales to capture views from organisations representing equality groups in Wales. The findings from this work will help further inform development of the duties in Wales.

Responses to the listening exercise

The Welsh Assembly Government received more than 60 responses and contributions from a range of organisations and individuals during the listening exercise. 34 percent of the responses were generated by the public sector, mainly health and local government, whilst 23 percent came from organisations in the Third Sector. Contributions were received from organisations representative of the protected characteristics.

A consensus opinion was that the principles set out in *Advancing equality across the Public Sector in Wales* about duties was appropriate and their application should be proportionate to the size and function of the public authority and its function.

In similar fashion, the consensus opinion was that the duties should allow public authorities a degree of flexibility to determine local priorities as long as they contribute to national objectives. A few respondents whilst accepting the need for some flexibility, did express some concern about the risk of public authorities not delivering if too much flexibility were to be allowed.

The setting of equality objectives has been broadly supported albeit those objectives should be published in an equality scheme linked to the organisation's corporate plan. It has been suggested that objectives should be agreed for a longer timescale - perhaps 10 to 15 years but reviewed and updated regularly.

In respect of consultation and involvement, the overwhelming view is that the positive attitude towards involvement within current disability regulations should be extended to the other protected characteristics. The importance of effective engagement in the design and delivery of services has been re-affirmed.

Only one respondent suggested that Equality Impact Assessment should be discontinued. Most feel that this systematic process, although it can be made simpler, has been a positive approach for most organisations and that any duty should continue to require assessments to be undertaken and published.

Most respondents have stated that public authorities must be required to collect data about people sharing the protected characteristics to inform the development of meaningful objectives. It has also been recognised that collection of the data informs and contributes to the growing equalities evidence base.

Some respondents have suggested that where data is collected, it does not follow that this should be published. For example, smaller public authorities may collect data in respect of its workforce, but may not be required to publish it to protect the anonymity of its staff. Such an exemption might not be extended to all of the characteristics.

There is no consensus about the size of organisation on which these requirements should be placed. Some respondents suggested an appropriate threshold of 100 employees; another agreed that 150 would be appropriate. Some have suggested that all public authorities irrespective of size should be subject to the duties.

Most respondents agreed that gender pay gap reporting should be included. However, it was acknowledged that reporting of the gender pay gap in itself will not address continuing pay inequality and that any duty should require public authorities to take action on any factors that may contribute to a pay gap.

Some respondents asked why pay inequity was restricted only to gender when there is evidence that pay inequality remains for other protected characteristics such as race and disability.

Of respondents that have commented on public procurement (about 50%), all have supported the need to include procurement in the specific duties. Public procurement is considered a valuable instrument available to public authorities to advance equality of opportunity and a specific public sector duty in this area will complement the work started by Value Wales. In recognition of the impact that such a duty may have on small and medium enterprises in Wales, it has been suggested that any duty should apply only on larger value contracts or larger organisations.

In similar fashion, respondents have indicated that inspectorates should play a more significant role in advancing equality. Recognising that as public authorities the duties will apply to them in the work they do. Suggestions range from a requirement to

share information, to building equality outcomes into audit frameworks, agreed equality performance frameworks and one suggestion that the Inspectorates should undertake joint inspections with the Equality and Human Rights Commission.

Finally, a majority of respondents considered annual reporting by Welsh Ministers preferential and that reporting should focus on outcomes both positive and negative to improve transparency.

There are some other comments and suggestions that could merit further consideration:

- Allowing public authorities to report on each strand triennially, but report annually on say two strands to allow public authorities to focus on those issues rather than all equality issues;
- A requirement on public authorities to establish equality advisory groups drawn from staff for development of their internal processes and equality panels drawn from members of the public to inform policy development and service delivery;
- A requirement on public authorities to publish equality reports in community journals and council papers - utilise public community facilities to improve accessibility
- A specific duty to include a requirement to ensure that staff undertake training to build awareness and knowledge of equality issues encountered by people sharing the protected characteristics introduced by the Bill;
- A requirement on public authorities to include equality into staff appraisal procedures.

One strong emerging theme has been the lack of credible, reliable and local equality evidence to support objective setting, impact assessment and reporting. Some have suggested the Welsh Assembly Government should take a lead.

A list of the organisations responding to the listening exercise is provided at annex A.

Next steps

The purpose of the listening exercise was to capture and fully consider the views of our partners about how best these new specific equality duties can be framed in Wales. Although some initial thoughts were set out about how these duties might look, efforts were made to give assurances that the Welsh Assembly Government was prepared to consider any suggestions about how these duties could be made to work more effectively for the people of Wales.

It is in this context that the representations made to us during this exercise are being considered. It is on this basis that our policy proposals will be developed and published for public consultation in the late Spring 2010. These policy proposals will set out in detail what the specific public sector equality duties will look like, and on which public authorities these duties will be imposed.

Subject to consultation, regulations will be presented to the National Assembly for Wales and, subject to their view will come into force in the Spring/Summer of 2011.

Annex A.

Organisations responding to the listening exercise
A:gender
Abertawe Bro Morgannwg Health Board
Aneurin Bevan Local Health Board
Arts Council for Wales
AWEMA
BCU Health Board
Breastfeeding Network
Bridgend County Borough Council
Cardiff City and County Council
Cardiff University
Children in Wales
Countryside Council for Wales
Cwm Taf NHS Trust/Local Health Board
Dyfed Powys Police
Equality Challenge Unit
Equality and Human Rights Commission Wales
Gwynedd County Council
Higher Education Funding Council Wales
Mind Cymru
National Childbirth Trust
National Association of Old Age Pensioners
National Deaf Children's Society
National Public Health Service Wales
Network of HR Directors Wales
Older Peoples Commissioner Wales
PCS – Revenue and Customs
Pembrokeshire County Council
Public Sector Workforce Forum
Rhondda Cynon Taf County Borough Council
RNID Cymru
South Wales Police Authority
Stonewall Cymru
Swansea City Council
University and College Union Wales
Wales Fire and Rescue Service
Wales Assembly of Women
Wales Council for Deaf People
Wales NHS Centre for Equality and Human Rights
Wales Council for Voluntary Action
Wales TUC
Wales Womens National Coalition
Welsh Food Alliance
Welsh Local Government Association
Welsh Assembly Government Trade Union Side

Organisations responding to the listening exercise
Welsh Sports Association
Welsh Womens Aid
Well Being Regeneration Ltd
Women Connect First
Women Making a Difference