

# Equality Analysis Protocol

(Version 2 July 2015)

This equality analysis protocol is for senior managers, but will also be of interest to Elected Members. The purpose of this protocol is to:

- Establish the procedures to which the Council will adhere to when conducting equality analysis.
- Provide guidance for senior managers on completing the equalities section of Committee, Mayoral and Portfolio Holder reports.

The protocol outlines and provides guidance on the Council's statutory general equality duty. Extracts from the Equality Act 2010 and the Equality Act 2010 (Specific Duties) Regulations 2011 are included for information in the appendices. If you are unclear in any way about your duties please contact the Legal Team.

There is separate guidance explaining what an equality analysis is, when it should be done and the key steps to completing an equality analysis.

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## 1 Public Sector Equality Duty

- 1.1 The Equality Act 2010 (the Act), which replaced all existing discrimination legislation, came into force in October 2010. It increased the obligations on the Council to advance equality when carrying out its day to day business.
- 1.2 Section 149 of the Act sets out the Public Sector Equality Duty. It contains a general provision referred to as the general equality duty, which came into force on 5 April 2011.
- 1.3 The general equality duty requires the Council to have 'due regard' to the need to:
  - Eliminate discrimination, harassment and victimisation;
  - Advance equality of opportunity between people who share a protected characteristic<sup>1</sup> and people who do not share it;
  - Foster good relations between people who share a protected characteristic and persons who do not share it.
- 1.4 The Act states that advancing equality involves removing or minimising disadvantage, taking steps to meet the different needs of people who

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<sup>1</sup> The different equality groups covered by the Equality Act 2010 are known as 'protected characteristics'.

share a protected characteristic and encouraging people who are under-represented to participate in public life.

- 1.5 The Act states that fostering good relations involves tackling prejudice and promoting understanding.
- 1.6 The general equality duty covers eight protected characteristics i.e. age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It also covers marriage and civil partnership in relation to the elimination of discrimination, harassment and victimisation only.

## **2 Specific Equality Duties**

- 2.1 Section 153 of the Act contains a power for the government to make orders imposing specific duties 'for the purpose of ensuring the better performance' of the general equality duty. The Equality Act 2010 (Specific Duties) Regulations 2011 came into force on 10 September 2011.
- 2.2 The specific duties are outlined in full in the appendix. The duties require the Council to publish:
  - Information to demonstrate compliance with the equality duty, by 31 January 2012 ( 6 April 2012 for schools) and then at least annually;
  - Equality objectives, by 6 April 2012 and then at least every four years.
- 2.2 To meet the general equality duty and the specific equality duties, the Council will need to understand the effect of its activities (policies and practices) on equality by carrying out equality analysis.

## **3 Legal position**

- 3.1 The duties are usually enforced by third parties. This is done through:
  - (a) A claim to the High Court for judicial review of a decision made by the Council. A claim for judicial review can be made by a person or a group of people with an interest in the matter or the Equality and Human Rights Commission.
  - (b) The Equality and Human Rights Commission, which has the power to get involved in the enforcement and compliance of the specific equality duties.
- 3.2 The Council must comply with the statutory duty to have 'due regard' to equality, as outlined above. The general equality duty must be complied with in carrying out all services, functions and decision making. This includes regulatory Committees such as Licensing or Planning.

- 3.3 To comply with the duty to have 'due regard' to equality, equality analysis reports and reports to Members must make reference to and show clear consideration of the general equality duty.
- 3.4 Some Council services or functions may not be relevant to the general equality duty and therefore may not require equality analysis. The relevance section of the Council's corporate analysis template must be used in determining whether a service, function or decision has relevance to the general equality duty. **Where it is not determined relevant a full explanation must be documented.** This demonstrates that you have given "due regard to" the general equality duties in considering the activity.
- 3.5 The equality analysis is the tool by which the Council discharges its duty "to have due regard to" equality. Where the equality duty is relevant the Council must demonstrate real engagement with them. Simply conducting an equality analysis does not meet the duty. The analysis must be both meaningful and properly applied by Council officers and Members in decision making in order to show a demonstrable commitment to the "have due regard" provisions.
- 3.6 The general duty is a duty to "have due regard". It is **not a duty to eliminate discrimination, or to advance equality of opportunity and foster good relations.** If awareness of the general duty is demonstrated, and a proper, logical balance struck between the aims of the duty and the Council's own purposes, the Council will usually be able to show that it "had regard" as required, and that its conclusions are rational and therefore not subject to successful judicial review challenge.
- 3.7 Finance and resource issues are insufficient justification for not discharging and meeting the general equality duty.

#### **4 Meeting the general equality duty in decision making**

- 4.1 The broad purpose of the general equality duty is to integrate consideration of equality and good relations into the Council's business planning and decision making.
- 4.2 To meet the general equality duty, equality analysis and consultation with relevant stakeholders and protected equality groups, must be carried out in a robust and timely manner and the results of these fully considered and used to inform decision making. Equality analysis that fails to do this brings legal, financial and reputational risks to the Council.
- 4.3 All final Member, Portfolio Holder, Mayoral or delegated officer decisions made must be informed by equality analysis and relevant

statutory consultation. This is to ensure the Council discharges its general equality duty in a timely and transparent manner.

- 4.4 To demonstrate compliance of the general equality duty, the findings of any equality analysis carried out must be included in Committee, Mayoral or Portfolio Holder reports where final decisions are being made. Reports must make reference to the relevant equality duty to ensure Members are aware of their responsibilities in making decisions. The equalities section of the report must state:

*“In preparing this report, due consideration has been given to the Borough Council’s statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.”*

- 4.5 Where an equality analysis has not been carried out because the activity is not relevant to the general equality duty, reports to decision makers must then state:

*“A relevance test for equality has been completed. The equality test determined that the activity has no relevance to Bedford Borough Council’s duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. An equality analysis is not needed.”*

- 4.6 Where an equality analysis has been carried out because the activity is relevant to the general equality duty, reports to decision makers must then include a summary of the equality analysis and the equality analysis findings.

- 4.7 Where an equality analysis will need to be carried out because the activity is relevant to the general equality duty, but the activity is still being developed, reports to the decision maker that do **not** relate to a final decision may state:

*“A relevance test for equality has been completed. The equality test determined that further equality analysis is required. An equality analysis will be carried out and findings of the equality analysis will be reported prior to a final decision being made.”*

- 4.8 The equality duty does not prevent the Council making necessary and unpopular decisions regarding budgets, funding and service provision. However decisions must be made in accordance with the general equality duty and this protocol.

## **5 Meeting the general equality duty in developing service modernisation proposals**

- 5.1 In developing service modernisation proposals, Management Team and Members will first agree options for consideration; at this juncture the proposals will have an initial assessment for potential equality impact. To demonstrate effective embedding of equality practice and to assist in compliance with the general equality duty, options will then be subject to robust analysis for their impact on equality and subject to statutory consultation.
- 5.2 Relevant equality information, including consultation, and equality analysis must be used to inform service decisions and budget priorities. Modernisation proposals must be analysed for their effect on equality. Where a number of proposals are interrelated, e.g. all related to older people, a single overarching equality analysis of the proposals **may** be appropriate.
- 5.3 There are statutory requirements in regards to different forms of consultation; in addition the Council's Consultations Strategy recommends a minimum of 8 weeks, wherever possible, should be set aside for consultation. Therefore early decisions regarding options for consideration are important in order to help compliance with the general equality duty.

## **6 Equality analysis**

- 6.1 All equality analysis must be completed using the Council's corporate template. The outcome of equality analysis must be referred to in the equalities section of all Committee, Mayoral, Portfolio Holder and Members reports and the equality analysis report published on the Council website.
- 6.2 To meet the equality duties, Heads of Service are required to attend mandatory equality analysis training as identified by Directorate Equality & Diversity Forums or Senior Management Teams.

If you are unsure about the Council's equality duties please speak with your Legal Team or the Corporate Policy & Programme Management Team.

## **Acknowledgements**

This protocol was written following advice from Bedford Borough Council Legal Services and Equality & Human Rights guidance to public authorities (*Equality Act 2010 Technical Guidance on the Public Sector Equality Duty England*, January 2013; *Meeting the Equality Duty in Policy and Decision-Making*, October 2014; *The essential guide to the public sector equality duty*, January 2011; *The Public Sector Equality Duties and financial decisions*, March 2009;).

It is a general summary of key aspects of the law and does not obviate the need to seek specific legal advice in the particular circumstances of individual cases.

# Appendix

## Appendix 1: Public Sector Equality Duty (in full)

### Section 149 of the Equality Act 2010 Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to –
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) – 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).
- (3) – Having due regard to the need to advance equality of opportunity 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 –
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - (c) 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.
- (4) – The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) – 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 –
- (a) tackle prejudice, and
  - (b) promote understanding.
- (6) – Compliance with the duties in this section 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 this Act.
- (7) – The relevant protected characteristics are – age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.
- (8) – A reference to conduct that is prohibited by or under this Act includes a reference to –
- (a) a breach of an equality clause or rule;
  - (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.

## **Appendix 2: Specific Equality Duties (in full)**

### **The Equality Act 2010 (Specific Duties) Regulations 2011**

These Regulations are made in exercise of the powers conferred by sections 153(1), 154(2) and 207(4) of the Equality Act 2010(a).

The Secretary of State has consulted the Commission for Equality and Human Rights in accordance with sections 153(4) and 154(4) of that Act.

The Secretary of State has consulted the Welsh Ministers in accordance with section 154(3) of that Act so far as these Regulations apply to cross-border Welsh authorities.

A draft of these Regulations was laid before and approved by a resolution of each House of Parliament in accordance with section 208(4), (5)(f) and (8) of that Act.

The Secretary of State, in exercise of those powers, makes the following Regulations:

#### **1. Citation, commencement and interpretation**

- (1) These Regulations may be cited as the Equality Act 2010 (Specific Duties) Regulations 2011 and come into force on the day after the day they are made.
- (2) In these Regulations “the Act” means the Equality Act 2010.

#### **2. Publication of information**

(1) Each public authority listed in either Schedule to these Regulations must publish information to demonstrate its compliance with the duty imposed by section 149(1) of the Act.

- (2) A public authority listed in Schedule 1 to these Regulations must publish the information—
- (a) not later than 31st January 2012; and
  - (b) subsequently at intervals of not greater than one year beginning with the date of last publication.

- (3) A public authority listed in Schedule 2 to these Regulations must publish the information—
- (a) not later than 6th April 2012; and
  - (b) subsequently at intervals of not greater than one year beginning with the date of last publication.

- (4) The information a public authority publishes in compliance with paragraph (1) must include, in particular, information relating to persons who share a relevant protected characteristic who are—
- (a) its employees;
  - (b) other persons affected by its policies and practices.

(5) Paragraph (4)(a) does not apply to a public authority with fewer than 150 employees

### **3. Equality Objectives**

(1) Each public authority listed in either Schedule to these Regulations must prepare and publish one or more objectives it thinks it should achieve to do any of the things mentioned in paragraphs (a) to (c) of subsection (1) of section 149 of the Act.

(2) The objectives must be published—

(a) not later than 6th April 2012; and

(b) subsequently at intervals of not greater than four years beginning with the date of last publication.

(3) An objective published by a public authority in compliance with paragraph (1) must be specific and measurable.

### **4. Manner of Publication**

(1) Each public authority listed in either Schedule to these Regulations must publish the information referred to in regulations 2 and 3 in such a manner that the information is accessible to the public.

(2) A public authority may comply with a duty to publish information imposed by regulation 2 or 3 by publishing the information within another published document.