

equal to the task

how overview and scrutiny
can help local authorities
meet their equalities duties



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Equal Opportunities Commission



COMMISSION FOR
RACIAL EQUALITY

Disability
Rights
Commission

Specific Duties

The specific duties were introduced when the Race Relations Act was amended in 2000. They became enforceable in May 2002. They aim to provide a framework to help public authorities better meet the General Duty. It is obligatory for all public authorities listed under Schedule 1 of the Race Relations Act to meet the prescribed specific duties. This includes all local authorities, excluding Town and Parish councils. There are separate specific duties placed on schools and further and higher education bodies.

Race Equality Schemes (specific duty 1)

A Race Equality Scheme (RES) packages the specific duties into a coherent strategy and action plan. It should cover all relevant functions and policies.

A scheme must make clear how a public authority plans to meet both its general and specific duties. A scheme should summarise the public authority's overall approach to racial equality and how this links to its corporate aims and objectives as well as an action plan setting out how it will be delivered. It should be a living and public document which holds authorities accountable to the public for delivering the programme set out in the scheme. It should enable you to measure your progress in delivering race equality.

Some authorities have opted to produce generic equality schemes covering gender and disability as well as race and they may also cover age, sexual orientation religion and belief. This is acceptable as long the race equality and other equality sections are distinct and specific and cover all aspects of the statutory public sector equality duties.

What should a race equality scheme include?

The race equality scheme can be seen as a two-staged process:

- 1 It should include a screening process to assess all policies and services for relevance to the general race equality duty. A priority list should be drawn up for the actions in the action plan that accompanies the RES, proportionate to the degree of relevance
- 2 The policies and services that are assessed as relevant should be:
 - Impact assessed and consulted on, including public consultation using a wide range of accessible methods, in order to assess the likely impact of proposed policies on the promotion of race equality which can be understood as the three strands of the RED
 - monitored once in place, to reveal any adverse or positive impacts on the promotion of race equality

In addition, you are required to:

- publish the results of assessments, consultation and monitoring
- train staff in connection with the duties imposed by section 71 (1) of the Race Relations Act 1976 and the appropriate Order
- review the Race Equality Scheme and Action Plan every three years from 31st May 2002 (2001 Order) or 31st May 2004 (2003 Order) or 31st May 2005 (2004 Order). This is to re-assess relevance and to include any new policies and functions introduced in the intervening period.

Questions to ask

- Was the previous RES and Action Plan delivered?
- Is there an up to date action plan that is proportionate and which states who is responsible for actions?
- Have the actions set out in the action plan taken place?
- Is information related to consultation, assessments and monitoring published/publicly available?
- Is information accessible to everybody?
- Has effective, tailored Race Equality Duty Training been delivered regularly?
- Do staff understand their responsibilities under the Duty?
- Is the scheme up-to-date/has it been reviewed?
- Have you established adequate systems for monitoring the impact of your relevant functions and policies?
- Are you systematically monitoring the impact of high priority functions and policies on the promotion of race equality?
- Does the evidence show you have properly judged relevance and priority?
- Are services that have been contracted out or that are delivered in partnership included in the Race Equality Scheme and Action Plan?

To assess improvement have you:

- Developed procedures to ensure that all proposed policies that have a relevance to race equality are subjected to a race equality impact assessment, including consultation, to determine their likely impact on promoting race equality?
- Improved access to key services for all ethnic groups?
- Increased access to the information that you provide to the public?

- Increased access to the services that you provide, especially those ranked as highly relevant to the General Duty?
- Provided role-specific training to staff on the General Duty and relevant specific duties?
- Published reports on your impact assessment, consultation and monitoring activity, in line with the arrangements set out in their Scheme?

The Employment Duty (specific duty 2)

If you are a public authority that is bound by the General Duty you are also likely to be bound by the Employment Duty, unless exempted, such as Town and Parish Councils.

You must monitor, by racial group, the numbers of:

- Staff in post
- Applicants for employment, training and promotion

Where an authority has 150 or more full-time staff, you must also monitor by racial group the number of staff who:

- Receive training
- Benefit or suffer detriment as a result of performance assessment procedures
- Are involved in grievance procedures
- Are the subject of disciplinary procedures
- Cease employment

You must publish the results of monitoring annually. The employment duty is not just about collecting numbers and counting staff. You must use the data collected to show that you are actively meeting the three elements of the General Duty in your employment functions.

Questions to ask

- Is data reported against 2001 census categories or expanded categories? If not, why?
- Has data been analysed to see if there are any differences or discrepancies for certain ethnic communities?
- Can you explain these differences? Have they been investigated?
- What action has been put in place to address any unfairness, disadvantage or possible discrimination?
- Is data on the employment duty published annually?
- Does data show improvements from the previous year/s?

The benefits of ethnicity monitoring

- You will know your workforce better
- You will be able to baseline, benchmark, monitor and set targets
- It will highlight any inequality
- You will be able to remove any unfairness or disadvantage in order to address inequality. This will result in fair, accessible services employment systems and practices
- The result may be a more representative workforce with higher morale

All these benefits serve to improve the performance and the reputation of your organisation as well as avoiding cases of racial discrimination.

Race Equality Impact Assessments

A race equality impact assessment (REIA) is a very useful tool to help you to systematically assess how a policy will affect people, depending on their racial group. They present an opportunity to conduct public consultation in order to assess the impact on race equality as well as to identify ways in which any adverse impact could be addressed. The assessment extends to monitoring the actual effects of the policy, once it is put into practice, possibly as a test run. This can provide reassurance that any amendments to avoid potential discrimination or unfairness are working as well as highlighting what is not working. REIAs should be seen as a critical stage in good policy-making as a way to ensure that the decisions taken by an authority are fully informed and reviewed, thus helping to avoid problems later on.

The main purpose of a REIA is to pre-empt the possibility that your proposed policy could affect some racial groups unfavourably.

There are two main stages, the first stage involves screening for relevance to race equality and the second stage involves a full assessment of the impact on race equality. In scrutinising race equality you may look at impact assessments. A useful starting point is to ensure that the following stages have been carried out effectively:

Stage 1: Screening

Is the proposed policy relevant to race equality?

- 1** Identify main aims of the policy
- 2** Collect information
- 3** Decide if the policy is relevant to the three strands of the General Duty

If relevant you must conduct a full assessment.

Stage 2: Full Assessment

Is the proposed policy likely to have an adverse impact on race equality?

- 1 Identify all aims of the policy
- 2 Consider the evidence
- 3 Assess any likely impact
- 4 Consider alternatives
- 5 Consult formally
- 6 Decide whether to adopt the policy
- 7 Make monitoring arrangements
- 8 Publish assessment results, including details of how the policy will be monitored

Questions to ask

- Is the screening process robust?
- Are a wide variety of people involved in REIAs?
- Are policies and services that are contracted out also subject to a REIA prior to being procured? Any potential adverse impact and mitigating measures identified through consultation and assessments should be built into all stages of the procurement cycle when tendering for the contract. The specification stage and contract management are particularly critical.
- Are measures to mitigate adverse impact identified as part of the REIA process put into place?
- Are the needs of and the impact on all racial groups considered, including smaller groups such as Gypsies and Irish Travellers?
- Are policies meeting the General Duty?

Further guidance can be found at: www.cre.gov.uk/duty/reia/index.html.

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scrutiny and the Disability Equality Duty

Whatever indicator you consider, disabled people fare badly, whether it is lack of educational qualifications, poor employment rates, high crime rates or low use of services. The Disability Discrimination Act has had some impact on this but it is now accepted that dealing with discrimination one person at a time is a slow way to make progress. To speed up improvements in disability equality the Disability Equality Duty (DED) was introduced in 2006.

This legal duty means that public bodies, including local government and health bodies, need to actively look at ways of ensuring that disabled people are treated equally. The whole aim of the duty is to take a proactive and organisation-wide approach to promoting disability equality across all of the functions. There is also a strong requirement to involve disabled people.

However, this duty is not necessarily about changes to buildings or adjustments for individuals, it means including equality for disabled people in all the functions of public authorities in practical and demonstrable ways.

This means including disabled people and disability equality in everything from the outset, rather than focusing on individualised responses to specific disabled people who may have complained.

This is a very new approach to disability equality and because it is designed to get into all of the functions of the authority, and to make tangible and measurable improvements, it is a key issue for scrutiny.

What is the Disability Equality Duty?

All public authorities have a **general duty** which means they have to do the following:

When carrying out their functions, public authorities must have **due regard** to the need to:

- Eliminate unlawful discrimination
- Promote equal opportunities
- Eliminate disability related harassment
- Promote positive attitudes towards disabled people
- Encourage participation by disabled people in public life.

There is an underlying principle that authorities must take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons.

How do you do the duty?

DED came into force December 2006 and applies to all local authorities in Great Britain. For local authorities and other key public bodies the general duty (set out above) needs to be achieved through the structure of a Disability Equality Scheme (DES).

While the overall aim of any scrutiny will be to assess whether the authority is actually achieving practical and tangible improvements and outcomes for disabled people, scrutinising the DES is a good way of structuring that scrutiny because the DES should provide a clear three year project plan for delivering equality.

What should be included within a Disability Equality Scheme?

The aim of the DES is to support the authority in making practical improvements for disabled people. It sets out various elements that the authority needs to include to be effective in making those improvements.

It must include clear information about:

- How the authority has involved disabled people in developing the scheme.
- How the authority went about gathering information on the effect of policies and practices on disabled people.
- Arrangements for assessing the impact of policies and practices.
- A 3 year forward-looking action plan.
- Arrangements for reviewing the effectiveness of the action plan.

Within all of this they must ensure that the full range of their functions are considered as well as all the elements of the general duty set out above.

Involvement of disabled people in developing the scheme

This is a key element of the Disability Equality Duty, and a unique element of the duty on disability. Involving disabled people provides the bedrock and foundations for the scheme and the improvements which the authority should make as a result of this.

An effective and compliant scheme would demonstrate the following elements:

- **Effective involvement of disabled people in developing the scheme, not just consultation.**

Involvement is an active relationship, involving dialogue with disabled people from the beginning rather than consulting on a finished product.

- **A range of mechanisms to involve a range of disabled people including staff and service users.**

It is unlikely that involvement will be effective unless different approaches have been taken to involving disabled people. This could include events, focus groups, online discussions, questionnaires or other activities where the authority has gone out to meet disabled people. This should include people with different impairments and from different backgrounds including disabled people from BME communities, of different ages and different sexual orientations.

- **Clear indication of the issues and priorities for disabled people.**

There is no point involving disabled people if the scheme does not give information about what issues they raised. This should identify how the involvement influenced the scheme and provide those disabled people with evidence that their involvement was recorded and taken forward.

- **A golden thread linking these issues and priorities to the actions within the scheme.**

It is important that the scheme clearly demonstrates where the involvement of disabled people has been influential and is reflected in the priorities and actions.

- **Where a priority for disabled people has not been taken forward an explanation of why not.**

Obviously, although involving disabled people is of key importance and making the involvement effective will improve the effectiveness

of the organisation, not everything disabled people suggest will be taken forward. In making decisions about priorities, the authority will need to consider evidence, the views of disabled people, strategic priorities and organisational constraints.

Where the priorities of disabled people were not taken forward clear reasons for this should be set out within the scheme.

■ **Ongoing involvement as effective practice.**

The legal requirement is for involvement of disabled people in developing the scheme. However, organisations who are committed to effective practice have found that ensuring an ongoing relationship with disabled people is extremely beneficial.

Covering all the functions

The whole point of the DED is to get into all of the areas and functions of the authority. This is essential if significant improvements are going to be made across the organisation and disability equality is to get into the mainstream.

Questions to ask

■ **Does the scheme and action plan cover all local authority functions?**

For example, waste management, parking, community safety and partnerships like the Local Strategic Partnership (LSP)

■ **Are all of the elements of the DED addressed within the scheme and action plan?**

■ **Is the scheme really going to help the authority mainstream disability equality?**

Including the evidence

It is essential that the priorities and actions for the authority on disability equality for the next three years are based on clear evidence where this is available. Often authorities will only have limited evidence as this is the first scheme and it is essential that the scheme sets out how they will build up a complete evidence base and how they will use this.

Questions to ask

- Does the scheme actually give you some idea/evidence about the position of disabled people in your area?
- Is there a link between this evidence and the priorities/actions within the scheme?
- Are the gaps in evidence clearly identified and mechanisms in place within the action plan for collecting the additional evidence?
- Does the scheme explain what the evidence will be used for on an ongoing basis?

Disability Equality Impact Assessments

One of the most effective ways of promoting disability equality is by systematically undertaking disability equality impact assessments and acting on their findings. For this reason it is essential that the scheme sets out the authority's arrangements for assessing the impact of policies and practices (both current and past) on disability equality.

When scrutinising the effectiveness of arrangements to assess impact, you should consider whether:

- **It is clear from the scheme how your authority will assess the impact of policies on disability equality.**

The scheme is the place where these arrangements should be set out in complete clarity. It is essential for both officers undertaking impact assessments and disabled people and others looking at the scheme that it is easy to ascertain what the authority will be doing, how they will be doing this and when they will do it.

- **The scheme includes clear prioritisation for which of the existing policies will be assessed and when.**

The arrangements should not just cover new policies which the authority is developing but also existing policies. There will be a huge number of existing policies and prioritising these for impact assessment is a major, but essential, task.

It may be that the authority decides to prioritise certain functions or service areas rather than listing specific policies. However, the scheme should give some idea as to how specific policies will be identified and impact assessments taken forward.

- **There is adequate support available for staff i.e. guidance, training, helpline**

Officers can find undertaking impact assessments to be daunting and sometimes fail to see the immediate benefits of this.

This makes it particularly important that the scheme sets out exactly what support will be available for staff to undertake these assessments and for senior officers and members to ascertain whether the assessments have been effective.

- **The arrangements include clear information about how the results of the impact assessments will be reported.**

Impact assessments need to look at both potential negative impacts and areas where the policy or practice could be improved to better promote disability equality. It is important that the results from this consideration are reported through a specific structure rather than changes simply being made without anybody noting this has happened.

It is only through identifying issues, finding solutions and putting these into practice and reporting this that the policy will be improved and the organisation will learn from this experience.

- **Will the actions be taken forward and what are the monitoring arrangements?**

Impact assessments should be seen as part of an improvement process and actions should be monitored. The scheme should set out how this will be done.

Action plans

The three-year action plan should be the largest and most detailed section of the scheme. This is the heart of the project plan and like all action plans needs to be clear, well structured, focused, measurable and accountable. Its actions should:

- cover all of the functions of the authority.
- have a logical connection to the evidence and/or the priorities of disabled people and the authorities strategic objectives.
- be clear about delivery times and responsible officers.
- deliver practical and tangible improvements for disabled people and the authority.

Next steps

The Disability Equality Scheme is not a document to be left on the shelf or at the back end of the web site. It needs to be published, and officers, members and stakeholders need to be actively engaged in taking it forward. It should be included within performance measures and subject to regular challenge. Each year in **December** an annual report must be published detailing progress on the scheme.

December 2009 sounds like a long while away but that is when the next scheme will need to be produced and it is essential that learning from the current scheme is captured so that the next scheme is even better and even more effective for disabled people.

Further information can be found at: www.dotheduty.org

