

**Legal Services Commission's Response to the Government Equalities  
Office consultation paper on the Equalities Bill – policy proposals for  
specific duties**

**29 September 2009**

**Introduction**

The Legal Services Commission (LSC) is a non-departmental public body sponsored by the Ministry of Justice (MoJ). The LSC is the biggest single purchaser of legal services in England and Wales with an annual spend of £2.1 billion; we are responsible for the delivery of civil and criminal legal aid and the development of community legal services.

**The response**

The LSC is grateful for the opportunity to respond to this consultation paper and our full response is attached at **Annex A**.

I hope you will find this response useful. If you have any queries about its content, please do not hesitate to contact Kirstie Adams, Equality and Diversity Team, at [kirstie.adams@legalservices.gov.uk](mailto:kirstie.adams@legalservices.gov.uk).

Finally, you might be interested to know that we have recently published the LSC Single Equalities Scheme Annual Report on our website which you can access at [http://www.legalservices.gov.uk/aboutus/how/specialised\\_publications.asp#](http://www.legalservices.gov.uk/aboutus/how/specialised_publications.asp#).

Yours sincerely

**Carolyn Regan**  
Chief Executive  
Legal Services Commission

Cc. Kirstie Adams

**RESPONSE PROFORMA**

**ANNEX A**

RESPONDENT NAME:	ADDRESS:  4 Abbey Orchard Street London SW1P 2BS
ORGANISATION Legal Services Commission	DATE: 28 September 2009 EMAIL: Kirstie.Adams@legalservices.gov.uk
CONSULTATION QUESTIONS	RESPONSE
Q1: Do you think the criteria set out above are the right ones? Please give your reasons.	Yes. We think that the criteria are correct. It would also be useful to maintain a list, as provided under the race equality duties, to ensure certainty about the application of the duty. Organisations that are currently subject to equality duties should remain subject to the new duty.
Q2: Are there any other criteria we should use? If so, what do you suggest?	No.
Q3: Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations?	Yes.
Q4: Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives?	Yes.
Q5: Do you agree that public bodies should be required to implement the steps they have set out for themselves within the business cycle period unless it would be unreasonable or impractical to do so?	Yes.
Q6: Do you agree that public bodies should be required to review their objectives every three years? If not, what time-period do you suggest instead?	Yes, this is the same as the action plan and reporting cycle under the current equality duties.
Q7: Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State?	Yes.
Q8: Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?	Yes.
Q9: Do you agree that public bodies should be required to report annually on progress against their equality objectives,	Yes, the safeguard of annual reporting is important.

<p>but that the means by which they do so should not be prescribed in legislation?</p>	
<p>Q10: Do you agree that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.</p>	<p>Yes, the statutory requirements are useful.</p>
<p>Q11: Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?</p>	<p>Yes, it would be useful to have a common standard to work against.</p>
<p>Q12: Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?</p>	<p>No.</p>
<p>Q13: Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?</p>	<p>We understand the reluctance to make it a legal duty to report on sexual orientation, religion or belief and transgender and agree that for some indicators these are statistically insignificant.</p> <p>However, the requirement to report is a useful incentive to monitor properly and raise awareness of protection against discrimination among staff.</p> <p>We will continue to monitor and report headline figures for all protected characteristics.</p>
<p>Q14: Do you agree with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence of the impact on equality into account in the design of their key policy and service delivery initiatives and the difference this has made?</p>	<p>We agree with the approach set out. There is a risk that the equality impact assessment process can drive a tick box approach rather than focussing on changing policy. Changing policy and delivering outcomes needs to be given greater emphasis.</p> <p>We hope that any shift in emphasis away from process will not result in less clear guidance about how organisations are expected to achieve outcomes. We would also welcome guidance remaining flexible as to how evidence of impact is taken into account.</p>
<p>Q15: Do you agree that public bodies should have a specific duty - when setting</p>	<p>Yes, involvement and engagement is important and valuable. It is also</p>

<p>their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how it carries out its functions - or where appropriate their representatives; and in particular take reasonable steps to consult and involve the protected groups for whom the duty is designed to deliver benefits?</p>	<p>important the cost of involvement is assessed in the Impact Assessment accompanying the Bill.</p>
<p>Q16: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?</p>	<p>Yes. The proposals update the OGC guidance.</p>
<p>Q17: Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities?</p>	<p>Yes, this replicates what public bodies are currently required to do under the Codes of Practice and Statutory Guidance relating to the existing public duties on equality. Having a clear procurement requirement under the new equality duty will maintain consistency with this practice and further clarify requirements in public procurement.</p>
<p>Q18: Do you agree that contracting authorities should be required to consider using equality-related award criteria where they relate to the subject matter of the contract and are proportionate?</p>	<p>Yes, for the reasons explained to Q17 above. Further, the proposed subject matter test would help to retain flexibility and make sure that contract requirements are proportionate.</p>
<p>Q19: Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?</p>	<p>Yes, for the reasons explained to Q17 above. Further, the proposal to require authorities 'to consider' is similar to the present legal duty 'to have due regard to the need to promote equality'.</p>
<p>Q20: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?</p>	<p>Any common standards would be useful and add value.</p> <p>However it should not be burdensome to achieve or hold, particularly in relation to costs.</p>
<p>Q21: Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you believe this is achievable through a specific duty or is this better</p>	<p>A national equality standard should not have a perverse outcome of being too expensive for small businesses or NfPs taking it up. This would risk excluding a large number of BAME organisations.</p>

<p>tackled through a non-legislative approach? Are there any practical issues that would need to be considered?</p>	
<p>Q22: Which of the above four models do you consider achieves the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.</p>	<p>No 3.</p> <p>Reporting procedures attached to PSA covering equality.</p> <p>This would have the benefit of mainstreaming equality and diversity. It is difficult to tell what benefit has been gained from the existing Disability SoS Reports. These are bureaucratic to compile and respond to. We contributed to our first SoS in November 2008, our department received a letter in response from EHRC in July 2009 and we are now contributing to a response to that response in September 2009. This doesn't appear to add value or be a useful way to hold organisations to account.</p>
<p>Q23: Do you have any other suggestions how this duty could be remodelled to retain the valuable features of senior accountability and joined-up working, whilst avoiding unnecessary burdens?</p>	<p>No.</p>
<p>Q24: Are there any specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?</p>	<p>Clear and concise guidance.</p>
<p>Q25: What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?</p>	<p>It should give clarity about what is expected of public bodies.</p> <p>It should list who it applies to.</p> <p>It would be helpful to explain what an objective should look like and compare with previous equality duties.</p> <p>It would be helpful to cover all topics covered the duty, especially equal pay, procurement, objective setting, reporting and monitoring, as well as application of the duty to all protected characteristics.</p> <p>It would be useful to clarify the status of the guidance at the outset, if possible, i.e. whether it has statutory guidance</p>

	and what weight the government would expect courts and EHRC to give to compliance/ non-compliance with it.
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