



**TUC**

**Equality Duty**

**Toolkit**



This toolkit is aimed at trade union negotiators to help them understand the new public sector equality duty and how they can use it. It provides guidance on the new public sector equality duty, including what 'due regard' means in practice, and frequently asked questions.

At the back of the toolkit is a checklist for negotiators and a draft letter that can be adapted and sent to public bodies that are yet to commit to carrying out an equality impact assessment of a policy or decision.

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## Acknowledgement

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# The public sector equality duty

**The new public sector equality duty is an important part of the Equality Act 2010. It appears in s.149 of the Act and came into force on 5 April 2011. It replaces the former race, disability and gender equality duties with a single duty that applies to eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.**

S.149 states that a public authority must, in carrying out its functions, have "due regard" to the need to:

- ⦿ eliminate all forms of discrimination, harassment and victimisation that are prohibited by the Equality Act; and
- ⦿ advance equality of opportunity; and
- ⦿ foster good relations.

The duty will be properly discharged only when each of the above requirements is properly taken into account.

Having due regard to the need to advance equality of opportunity is further defined in s.149 as having due regard to the need to:

- ⦿ remove or minimise disadvantages connected with a relevant protected characteristic (e.g. address the problems that women have in accessing senior positions in the workplace)
- ⦿ take steps to meet the different needs of persons who share a relevant protected characteristic (e.g. ensure the particular needs of BME women fleeing domestic violence are met)
- ⦿ encourage persons who share a relevant protected characteristic to participate in public life or any other activity in which they are under-represented (e.g. take steps to encourage more disabled people to apply for senior posts in the civil service).

Having due regard to the need to foster good relations is further defined in s.149 as having due regard to the need to:

- ⦿ tackle prejudice (e.g. tackle homophobic bullying in schools)

- ⦿ promote understanding (e.g. promote understanding of different faiths).

Organisations that are not "public authorities"<sup>1</sup> are also required to have due regard to the needs listed above whenever they carry out "public functions". This could include, for example, a private company with a contract to provide certain public services.<sup>2</sup>

## The duties and the Stephen Lawrence Inquiry

The race equality duty was enacted as a response to the findings of the Stephen Lawrence Inquiry, established by former Home Secretary Jack Straw to look into the Metropolitan Police Services' failure to properly investigate and prosecute the racist murder of Stephen Lawrence in 1993. The Inquiry, which was chaired by Lord Macpherson, concluded that "institutional racism" affected the MPS. It defined this as: "The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin." It said it was "incumbent upon every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities." The race duty took effect in 2001. The disability duty followed in 2006 and the gender duty in 2007. When a single Equality Act was proposed, it made sense to create a single equality duty covering all the protected characteristics.

### The specific equality duties

The s.149 duty is underpinned by further, specific duties that apply to certain identified public authorities. The former public sector race, disability and gender equality duties were also supported by sets of specific duties. Their content varied depending on which of the three duties they related to, but generally they included requirements to: publish equality schemes; gather data, monitor and assess equality impact; and consult or involve stakeholders affected by their policies and practices. All of this helped focus the minds of public authorities on equality.

The coalition government has taken a new approach to the specific duties, reflecting its concerns about "reducing burdens and bureaucracy". There are now only two specific duties that the majority of public authorities have to comply with. These are:

- ⊙ **Publication of information** Each public authority must publish information to show that it is complying with the s.149 duty by 31st January 2012 (or, by 6 April 2012 if a school) and at least on an annual basis after that. Authorities must include information about persons who share a protected characteristic who are its employees (if it has 150 or more employees) and its service users.
- ⊙ **Equality objectives** Each public authority must prepare and publish one or more objectives it thinks it should achieve to have due regard to the need to eliminate discrimination and harassment, to advance equality of opportunity or to foster good relations. Any objective must be specific and measurable. Authorities must publish their first objectives no later than 6 April 2012 and at least every four years after that.

These specific duties apply to public authorities listed in Schedules attached to the Equality Act 2010 (Specific Duties) Regulations 2011. The list includes government departments, NHS trusts, police forces, fire services, probation trusts, local authorities, local authority maintained schools, academies, universities and further education colleges in England, as well as organisations like Acas, the Health and Safety Executive, HM Chief Inspector of Prisons, the Olympic Delivery Authority, the

BBC and Channel Four (with some exceptions) and Transport for London.

The Welsh Ministers have imposed different specific duties on devolved public authorities in Wales (e.g. a Welsh local authority, NHS trust or local authority maintained school) and it is likely that the Scottish Ministers will do the same for Scottish devolved public authorities. The Welsh duties are far more prescriptive and to some extent resemble the specific duties that applied under the race, disability and gender duties. The draft Scottish specific duties are similar. If you are dealing with a devolved public body, check the web pages for EHRC Wales and EHRC Scotland for more information and guidance.

<sup>1</sup> See below under FAQs "What is a public authority?"

<sup>2</sup> For ease of reference in this toolkit we will refer to "public authority" or "public body" when describing how the s.149 duty works but it will apply to other organisations carrying out public functions in the same way unless otherwise stated.

# What does “having due regard” to equality mean?

As the specific duties are so limited and do not apply to all organisations covered by the s.149 duty, it is now especially important to understand what having due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations means in practice. Case law interpreting the old equality duties can help with this because they required public bodies to have due regard to similar needs. Below are some principles that emerged from the leading legal cases on the old duties.

## 1. Avoiding discrimination is not enough

A public body that focuses only on avoiding what is prohibited by the Equality Act 2010 – discrimination, harassment and victimisation – will not be discharging the equality duty properly. Public bodies must also think about taking positive steps to advance equality and improve relations between different groups, focussing on the outcomes of policies and decisions and not just what they say. A public authority will also fail in its duty if it focuses only on equality of opportunity and good relations overlooking, for example, a risk of indirect discrimination.

## 2. The duty applies before policies are finalised and decisions are made

A key purpose of the equality duty is to require public bodies to give advance consideration to any likely impact on equality before deciding what their policy should be or making decisions that may have equality implications.<sup>3</sup> This means that a public body that gathers evidence and compiles an Equality Impact Assessment (EIA) to defend a decision after it has been made or at the end of a policy development process is unlikely to be complying with the duty.

## 3. The duty is ongoing

The duty applies not just to the development and adoption of a policy but to the implementation and review of it too.<sup>4</sup>

## 4. The decision-maker must be made aware of the duty

A person or group of people responsible for making a decision for a public body that is likely to have an equality impact must be made aware of the public body's obligations under the equality duty. For example, the London Borough of Harrow's decision to restrict home care services to those with critical needs only was held to be unlawful because there was no evidence that the particular obligations of the disability equality duty had been clearly brought to the attention of the councillors making the decision.<sup>5</sup>

## 5. Responsibility for discharging the duty cannot be delegated or sub-contracted

Ultimate responsibility for discharging the duty remains with the decision-maker – for example, the board, the elected members or the governing body. The process of assessing the impact on equality may be undertaken by others within or outside the organisation, for example equality officers within the authority or external consultants, but the decision-maker must be made sufficiently aware of the results in advance of making a decision. Nor can decision-makers avoid grappling with the equality implications of a decision simply because the duty will apply to someone else who will be implementing it when the services are delivered.

## 6. A properly informed, rational view must be taken of the likely impact on equality

Carrying out an EIA, as the EHRC recommends, may be the best way of ensuring this. However, the courts have not said that a formal EIA is necessary; what they have said is that at the most, the duty requires a public body to consider whether it would be appropriate to undertake a formal EIA or other means of gathering information, when a decision or an actual or proposed policy might have an impact on equality.<sup>6</sup>

But even if no formal EIA is carried out, a public authority would still need to do the following in order to have due regard to equality:

- ⊙ gather and consider information about who is going to be affected by a decision, policy or practice
- ⊙ ensure that the information is sufficient to enable the public body to assess the impact on people with different protected characteristics and relations between them
- ⊙ and, if there is evidence of a possible negative impact, give proper consideration to the extent, nature and duration of that impact
- ⊙ and, if there is a greater negative impact on one or more of the protected groups than others, then consider whether or not that impact can be eliminated, mitigated or justified (see point 9) below).

It is important to note that doing an EIA on its own will not be enough to comply with the duty, particularly if it is just approached as a 'tick-box' exercise and the public authority has failed to gather sufficient information and/or has failed to take a rational view of the likely impact on equality. In a successful challenge to Birmingham City Council's decision to withdraw funding from various specialist advice services, the Council claimed that it had carried out an EIA but the court said it was inadequate because it had not consulted the specialist advice providers and their service users about the specific impact the termination of funding would have on them.<sup>7</sup> Similarly, in the successful challenge to Ealing Borough Council's decision to stop funding

domestic violence services provided by Southall Black Sisters, there was criticism of how the Council had used and interpreted the data available to it on the incidence of domestic violence by ethnic group.<sup>8</sup>

## 7. The process of having due regard should be documented and transparent

It is advisable for public bodies to have written documentation to show they have had due regard to equality. For example, the Home Office failed to convince a court that it had considered at a formative stage the impact of proposed changes to immigration policy on foreign doctors because it had no written record of the informal assessment it said it had carried out.<sup>9</sup> This is another good reason why public authorities should continue to carry out and publish EIAs to demonstrate compliance with the s.149 duty, even though there is no specific requirement to do them anymore.

## 8. The degree of regard depends on how relevant a decision or policy is to equality

Assessing a public authority's compliance with the duty is not just a matter of showing whether it had any or no regard to equality. It is about whether, in all of the circumstances, the authority gave the appropriate degree of regard i.e. it must be proportionate to how relevant a function is to equality. When decisions or actual or proposed policies have or are likely to have a direct impact on people, such as service users or the workforce, then considerable regard will normally be necessary, especially if these groups of people include those who are disadvantaged because of a protected characteristic. For example, in the successful challenge to London Councils' decision to withdraw funding to a group of charities providing specialist services to vulnerable people many of whom fell within one of the protected groups, the court said the regard that had to be had to equality was "very high". London Councils therefore had to begin the process all over again, doing proper impact assessments and consultation with those affected.

## 9. Where negative effects are identified, potential mitigation must be considered

Having assessed the impact on equality, if a negative impact or a risk of a negative impact is identified the public authority must consider whether it needs to discontinue or change the policy or proposal.

- ⊙ If a public authority concludes that discrimination prohibited by the Equality Act 2010 is or will be the result of a current or proposed policy, it must discontinue the policy or withdraw the proposal. If it believes it can lawfully justify the action (e.g. in the case of indirect discrimination or a failure to make an adjustment for a disabled person) then it should clearly identify this justification at the time of having due regard (and it should be included in an EIA if it does one).
- ⊙ If it concludes that a policy or proposal may result in unlawful discrimination, it should take steps to eliminate that risk.
- ⊙ If a policy or proposal may undermine equality of opportunity or harm good relations, then the public authority should consider whether there are any ways of eliminating the risk or mitigating that negative impact.<sup>10</sup>

If the public authority does an EIA then part of that EIA is to consider and document whether there is a need to stop or amend a policy or proposal.<sup>11</sup>

## 10. Equality is not the only consideration

Public authorities can – and must – take other considerations into account besides those identified in the equality duty when making decisions or reviewing current policies. They also have some latitude in deciding what is most important. However, the s.149 duty always requires public authorities to listen with an open mind to the voices of the most vulnerable at a formative stage of the decision-making process and to remain vigilant to ensure that policies and practices are not creating disadvantage when applied. Trade unions have a role to play in ensuring that happens and enabling the most vulnerable to speak up.

### The business case

“Compliance with the general equality duty is a legal obligation, but it also makes good business sense. An organisation that is able to provide services to meet the diverse needs of its users should find that it carries out its core business more efficiently. A workforce that has a supportive working environment is more productive. Many organisations have also found it beneficial to draw on a broader range of talent and to better represent the community that they serve. It should also result in better informed decision-making and policy development. Overall, it can lead to services that are more appropriate to the user, and services that are more effective and cost-effective. This can lead to increased satisfaction with public services.”

From EHRC website (accessed 29.6.2011)

<sup>3</sup> Secretary of State for Defence v Elias [2006] EWCA Civ 1293 [274]

<sup>4</sup> R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin) [95]

<sup>5</sup> R (Chavda) v Harrow LBC [2007] EWHC 3064 (Admin) [40]

<sup>6</sup> Brown [89]

<sup>7</sup> R (Rahman) v Birmingham City Council [2011] EWHC 944 [35]

<sup>8</sup> R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2026 [45]-[46]

<sup>9</sup> R (BAPIO Action Ltd) v Secretary of State for the Home Department and Secretary of State for Health [2007] EWHC 199 [69]

<sup>10</sup> e.g. see Kaur and Shah [25],

<sup>11</sup> e.g. R (W) v Birmingham City Council [2011] EWHC 1147 [158]

# Frequently Asked Questions

## What is a public authority?

For the purpose of the s.149 duty a "public authority" is an organisation that is specified in Schedule 19 of the Equality Act 2010 (as amended). A body specified in Schedule 19 is subject to the s.149 duty in respect of all of its functions. Schedule 19 covers most public sector organisations, for example, it includes: government departments, the armed forces, NHS trusts and foundation trusts, local councils, fire and rescue authorities, probation trusts, local authority maintained schools, academies, universities, FE colleges, police forces, the BBC and Channel 4 (with some exceptions), the EHRC, the CPS, the Olympic Delivery Authority, Acas, the National Audit Office, Transport for London and the Health and Safety Executive.

## Does the duty apply to private or voluntary sector providers of public services?

An organisation that is not listed as a "public authority" in Schedule 19 may nevertheless be subject to the duty since s.149 states that it also applies to organisations that are not listed in Schedule 19 but which exercise public functions as and when they do so. Whether something is a public function is ultimately up to the courts to decide and it depends on a number of factors such as dependence on public funds to provide the service, whether an organisation is exercising powers given to it by law, whether it is imposed on people, or if it is a substitute for something central or local government would otherwise provide. For example, a DWP work programme provider, a private prison, or a housing association that depends on public funding and has a close relationship with a local authority in the allocation of social housing are likely to be considered to be carrying out public functions. The duty only applies to the public functions that such an organisation carries out, not to all of its functions. For example, if a public service is contracted out, the contractor would be subject to the duty in relation to provision of the service but in most cases would be unlikely to have to meet the duty in relation to their employment policies.

## Does the duty apply to employment decisions and policies?

If a public authority is listed in Schedule 19 then the duty applies to all its functions, including employment policies and decisions such as proposed changes to terms and conditions or workforce relocations. If an organisation is not listed in Schedule 19 but is carrying out a public function, then its employment policies and decisions may still be caught, but only if there is a close connection between workforce issues and how that public function is carried out, for example, the delivery of a service to a diverse community may rely upon having people in the workforce who understand and meet the needs of that community.

## What happens if a public authority outsources some functions, does it contract out of the s.149 duty?

No, the public authority is still under a duty to have due regard to equality in the exercise of those functions. First, a public authority must have due regard to equality by considering the impact of any proposed outsourcing decision on employees and service users who share a protected characteristic. If the public authority goes ahead with the decision to outsource, it must ensure that due regard is had to equality in the exercise of those functions. Therefore, it should build equality considerations into the contract and ensure adequate monitoring and contract compliance arrangements are in place so it can check that due regard is being had to equality by the external organisation. The duty may also apply directly to the contractor if it is deemed to be carrying out public functions (see above).

## Do public authorities still have to publish equality schemes?

No, there is no longer a specific duty to prepare and publish a written equality scheme. (Although the Welsh specific duties require a Strategic Equality Plan to be made, which is similar to an equality scheme.) However, many public authorities found the process of developing and publishing equality schemes useful because it required them to review all of their functions for

relevance to equality and to set out how they were going to have due regard to equality in relation to all of their functions – what evidence they would have to gather, who they should consult or involve, how they would assess impact and what actions they would take to advance equality. Equality schemes also enabled stakeholders like trade unions to check what a public authority was doing to comply with the duty and to hold the public authority to account against its commitments. Where public authorities have published equality schemes in the past, which have enabled good involvement and dialogue with affected groups, trade unions should urge them to keep doing so.

### What about Equality Impact Assessments?

There is no legal requirement to carry out a formal, documented EIA under the GB-wide duty (the draft Scottish specific duties require EIAs and the Welsh duties require appropriate arrangements to be made for the assessment of impact). But if you consider what a public authority needs to do to have due regard to equality (see point 6 above), it is evident that carrying out an EIA will often be the best method of approaching the task in a careful, structured way and demonstrating it has been done. Trade unions should keep asking public authorities for EIAs as a basic way of checking that the duty to have due regard is being complied with. If you are told that the public authority no longer believes it has to do an EIA or has decided to stop doing EIAs then you should ask how the public authority intends to demonstrate that it has had due regard. A draft letter is on p.12 for you to adapt and use in such situations.

### How does the duty apply to decisions to make cuts?

The duty applies to cuts decisions just as it does to any other decisions a public authority makes. This means at a formative stage public authorities need to consider the impact of the proposed cuts on people who share different protected characteristics and where there is evidence of negative impact the possibility for any alternative or mitigating action (also see point 10 above). There have been a number of successful

legal challenges to cuts decisions because public authorities have failed to show such consideration during the process. In such cases, the public authority will almost always be required to start the decision-making process again, with proper consultation and evidence gathering to identify the impact on particular groups. The EHRC has useful guidance 'Using the equality duties to make fair financial decisions' which you may want to refer a public authority to.

### Importance of equality duty in tough financial times

**“Even when the context of decision-making is financial resources in a tight budget, that does not excuse compliance with the PSEDs, and there is much to be said for the proposition that even in straitened times the need for clear, well informed decision-making when assessing the impacts on less advantaged members of society is as great, if not greater.”**

*Blake J in R (Rahman) v Birmingham City Council [2011] EWHC 944 (Admin)*

### How can the duty be enforced through the courts?

Failure to comply with the s.149 duty can be challenged by means of an application for judicial review to the High Court. It can be brought by anyone with a sufficient interest in the case such as the EHRC, trade unions, NGOs, local campaigners or individual service users. If a judicial review action is successful, at best, it will result in a decision being quashed and sent back to the public authority to make it again having due regard to equality. Cases must be brought promptly and at least within three months of the action that is being challenged.

### What about the EHRC's enforcement powers?

The Equality and Human Rights Commission has some unique powers to enforce the duty. It can issue a notice requiring a public authority to comply with the duty, which can be enforced through the court if an organisation fails to abide by it (s.32 Equality Act 2006). It can enter into an agreement with an organisation setting out an action plan for compliance with the duty (s.23 Equality Act 2006). And it can carry out an assessment of the extent to which a public authority has complied with a duty and in doing so it can require the authority to hand over certain documents, information and/or provide oral evidence (s.31 Equality Act 2006); this could be before a compliance notice is issued or an agreement entered into. For example, in 2010, the EHRC began an assessment of HM Treasury's compliance with the former public sector equality duties in carrying out the Spending Review 2010 (the results were due in late 2011). The EHRC can also make independent interventions in judicial review cases brought by others and where it has done so, it has given helpful guidance on what the duty requires.

### What about the statutory Code of Practice?

In due course, the EHRC will produce a statutory Code of Practice, giving guidance on the new s.149 duty. What this statutory Code says will be important as it will be taken into consideration by courts when determining compliance with the duty. EHRC has already produced non-statutory guidance and guidance for the old duties that will still be relevant to the new duty (see below).

### Equality duty pioneer

Diana Elias (below) brought the very first equality duty case. It challenged the scope of a Ministry of Defence compensation scheme for those who had been held in Japanese concentration camps during World War II. Internees were only compensated if they could prove a 'bloodlink' to the UK through a parent or grandparent, a rule that had been found to be lawful by the High Court and Court of Appeal in an earlier test case. Mrs Elias would not accept this, believing that this rule discriminated on racial grounds and its effects had never been properly considered when the scheme was devised - just five days after the first equality duty came into force. The High Court and Court of Appeal agreed with her. The scheme rules were struck down and several hundred former internees and their defendants were compensated for the first time



# Checklist for trade unions

## a) When considering a decision, proposed or existing policy of a public authority:

- 📄 If you think it is resulting or might result in:
  - 📄 unlawful discrimination (including indirect discrimination or failure to make reasonable adjustments for disabled people)
  - 📄 the undermining of equality of opportunity or missed opportunities for the advancement of equality of opportunity
  - 📄 the undermining of good relations or missed opportunities for fostering good relations

then ask the authority at an early stage whether it accepts that the s.149 duty is triggered and how it intends to comply with it.

- 📄 Check the authority's existing equality policies and equality schemes and see if there is a commitment to undertake a formal equality impact assessment.
- 📄 If an EIA is going to be done, ask how it will be done to best take into account the views of those affected and to follow the EHRC's guidance on EIAs, equality analysis, information gathering and engagement with stakeholders.
- 📄 If the authority is not proposing to carry out an EIA then ask in writing how it intends to demonstrate that it has had due regard to equality (see draft letter on p.12).
- 📄 Ensure that the equality officers within a public authority are aware of any issue you are dealing with as well as those in the relevant department and copy them into any correspondence.

- 📄 When the process of assessing impact is underway encourage employees and service users from the protected groups to engage with the process at an early stage and on an ongoing basis to make their views known, especially on the extent of negative impact and what (if anything) could be done to mitigate or eliminate it. Consider working with local organisations representing service users from protected groups to make sure they feed into the consultation and impact assessment process.
- 📄 Ask to see the assessment of equality impact and use the information in it to raise awareness among the workforce or service users of any negative consequences for equality of a proposed course of action. You could work with local groups to do your own assessment of equality impact. The TUC has produced a toolkit with Coventry Women's Voices that provides guidance on collating information on the equality impact of public spending cuts and how to run a local campaign.
- 📄 Check whether decision-makers such as councillors or board members are fully aware of the impact on equality and the requirements of the duty and at what stage they are given that information. It may be worth contacting the decision-makers directly to draw their attention to any negative equality impacts you have identified.
- 📄 If you believe the public authority is failing to comply with the duty, for example, it is refusing to assess the impact of a decision, an existing or proposed policy that is relevant to equality then speak to an equality officer or legal officer in your union early on for further advice. If a judicial review action were to be taken it would have to be taken promptly.

## b) When considering a public authority's implementation of the new duty

- 📄 Ask the public authority if it intends to continue developing and publishing written equality schemes. If it is not, ask where it will publish its equality objectives and information about its workforce and service users so they are readily accessible to employees and the public. Refer it to EHRC guidance on equality objectives.
- 📄 Ask how it will engage with stakeholders when developing its equality objectives and its arrangements for gathering information. Refer it to EHRC advice on stakeholder engagement.
- 📄 Ask how it intends to gather information and monitor employees and service users who share different protected characteristics. Refer it to EHRC advice on information gathering under the duty. If a public authority intends to begin monitoring by sexual orientation or gender reassignment for the first time, the TUC's 'LGBT Equality at Work' guide provides useful advice on what needs to be considered.
- 📄 If data or information in certain key areas is missing ask how it intends to fill that gap and what monitoring or other measures it intends to put in place to address the issue. Again, refer it to the EHRC advice on information gathering.
- 📄 Ask what information or training is being given to decision-makers on the requirements of the new duty.



**“Consider working with local organisations representing service users from protected groups”**

# Draft letter to public body that is not intending to do an EIA

**The letter should be sent to the person responsible for the particular decision, policy or proposal you are concerned with and copied to any equality officers at the public authority.**

Dear

Re: [Insert particular issue] and compliance with the s.149 duty in the Equality Act 2010

I am writing to request further information on how [public authority] intends to discharge the duty in s.149 of the Equality Act 2010 with regard to [decision, policy, proposed policy or ongoing practice]. S.149 requires a public authority in the carrying out of all of its functions to have due regard to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations across the protected characteristics of age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.

We believe [the decision, policy, proposed policy or ongoing practice] [could/will] have a negative impact on equality and/or good relations [and may result in discrimination that is prohibited by the Equality Act 2010]. [Say why]. Therefore, the s.149 is duty clearly engaged.

We would expect that you will be carrying out an EIA and we look forward to co-operating with you in ensuring that you have access to all the relevant information. If you are not proposing to carry out an EIA could you explain the reasons why and how you intend to have due regard to the requirements listed in s.149. In particular, in the absence of an EIA, could you explain how you intend to:

- gather and consider information about the people affected, what protected characteristics they have and the extent to which they are affected differently from people who do not have those characteristics;
- ensure that the information gathered is sufficient to enable a proper, informed view to be taken about the impact on equality and good relations generally and the risks of prohibited discrimination;
- and, if there is a particular impact on people who share a protected characteristic, give proper consideration to the extent, nature and duration of that impact;
- and, if there is a negative impact, give consideration to how that could be eliminated or at least mitigated?

We look forward to hearing from you.

Yours sincerely,

# Further information and resources

## Legislation

The Equality Act 2010:  
[www.legislation.gov.uk/ukpga/2010/15/contents](http://www.legislation.gov.uk/ukpga/2010/15/contents)

The amended Schedule 19 listing public authorities to whom the s.149 duty applies:  
[www.homeoffice.gov.uk/publications/equalities/equality-act-publications/Schedule-19?view=Binary](http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/Schedule-19?view=Binary)

The Equality Act 2010 (Specific Duties) Regulations 2011 (including the Schedules listing the public authorities to whom they apply):  
[www.legislation.gov.uk/ukdsi/2011/9780111512951](http://www.legislation.gov.uk/ukdsi/2011/9780111512951)

The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011:  
[www.legislation.gov.uk/wsi/2011/1064/contents/made](http://www.legislation.gov.uk/wsi/2011/1064/contents/made)

The Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011 (draft):  
[www.legislation.gov.uk/sdsi/2011/9780111012215](http://www.legislation.gov.uk/sdsi/2011/9780111012215)

## Equality and Human Rights Commission

EHRC has produced non-statutory guidance on the new public sector duty, including specific guidance on equality analysis, stakeholder engagement, equality objectives and equality information. It will also be producing the statutory Code of Practice in late 2011. Some EHRC good practice guidance published under the old duties is also relevant such as its *Equality Impact Assessment Quick-Start Guide* and its 'Using the equality duties to make fair financial decisions' guidance. These are all available from:  
[www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/](http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/)

For guidance on how the duty applies to devolved Welsh public authorities see:  
[www.equalityhumanrights.com/wales/publications/guidance-on-the-equality-duty-for-the-welsh-public-sector/](http://www.equalityhumanrights.com/wales/publications/guidance-on-the-equality-duty-for-the-welsh-public-sector/)

For guidance on how it applies to devolved Scottish authorities see:  
[www.equalityhumanrights.com/scotland/public-sector-equality-duty-in-scotland/](http://www.equalityhumanrights.com/scotland/public-sector-equality-duty-in-scotland/)

## TUC

TUC guidance on monitoring by sexual orientation and gender reassignment, which some public authorities may begin for the first time in response to the duty, is available from:  
[www.tuc.org.uk/equality/tuc-19413-f0.cfm](http://www.tuc.org.uk/equality/tuc-19413-f0.cfm)

A toolkit on how to assess the impact of the cuts on equality at community level will be published on the TUC website in late November 2011.

The newly published *TUC Guide to Equality Law 2011* is available as a printed 60 page A4 booklet from TUC Publications 020 7467 1294 or can be downloaded for free from the TUC website.

## Trade unions

Many unions have produced their own guidance for union negotiators. Check your union website or with your union equality officer for more information about the duty.



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