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INVESTOR IN PEOPLE



Doing the duty

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Equality Duty for the public sector



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We all

want to live in communities where we can participate fully and equally.

We all want our children to do well at school; we all want to be able to use services like hospitals and libraries and not be excluded.

Many indicators show us that for disabled people this hasn't yet happened and there remains considerable work to be done to get to this point.

To ensure this happens a DISABILITY EQUALITY DUTY is being introduced for the public sector.

This new legal duty will mean that any public body will need to actively look at ways of ensuring that disabled people are treated equally. A similar duty was introduced on race equality a couple of years ago.

This new law requires organisations across the public sector (including hospitals, local and central government, schools and colleges) to be proactive in ensuring that disabled people are treated fairly.

However, this duty is not necessarily about changes to buildings or adjustments for individuals, it's all about including equality for disabled people into the culture of public authorities in practical and demonstrated ways. This means including disabled people and disability equality into everything from the outset, rather than focusing on individualised responses to specific disabled people.

“The Disability Equality Duty is a new way for public authorities to tackle disability discrimination in a practical way by introducing policies that actively promote opportunities and so prevent discrimination taking place.

By taking an organisation-wide approach you can achieve tangible outcomes and improvements for disabled people.

It will need the personal commitment from the top of your organisation and will make a real, positive change to your employees and service users.”

**Bert Massie
CHAIRMAN
Disability Rights Commission**

December 06
you need to be ready.



An outline of the duty

There is a general duty which applies to all public authorities, plus additional specific duties to support the majority of public authorities in achieving the outcomes required by the general duty.

The basic requirement for a public authority when carrying out their functions is to have due regard to do the following:

- promote equality of opportunity between disabled people and other people
- eliminate discrimination that is unlawful under the Disability Discrimination Act
- eliminate harassment of disabled people that is related to their disability
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life
- take steps to meet disabled people's needs, even if this requires more favourable treatment.

‘Due regard’ means that authorities should give due weight to the need to promote disability equality in proportion to its relevance.

Key dates

The general duty will come into force on 4 December 2006 and all public authorities should be prepared by then.

Those public authorities who are subject to the specific duties, apart from a couple of exceptions set out below, must publish their Disability Equality Schemes by 4 December 2006.

(Primary schools in England have until 3 December 2007 to publish their Disability Equality Scheme and all schools in Wales must publish their schemes no later than 1 April 2007.)

The duty applies in England, Scotland and Wales. The duty in England and Wales is in all key respects the same as the duty which applies in Scotland, except there are different arrangements in relation to education due to differences in other legislation. There is a Statutory Code of Practice for England and Wales and a separate one for Scotland.

Organisations covered by the duty

The general duty applies to all public authorities (apart from a small handful which have specific exemptions). It includes government departments, executive agencies and ministers, local authorities, governing bodies of colleges and universities, governing bodies of schools, NHS trusts and boards, police and fire authorities, the Crown Prosecution Service and the Crown Office, inspection and audit bodies and certain publicly funded museums.

It also includes any organisation which exercises some functions of a public nature.

Many, in fact most, public authorities will also have a set of specific duties which will help them to meet their overall general duty. A list of these public authorities is contained in the regulations, which set out the duties, and can be found at the back of the DRC Statutory Codes. These specific duties centre on the framework of the production of a Disability Equality Scheme.

It's really very

Where to start

At first glance the duty can appear quite complex. However, if public authorities focus on what outcomes they want to achieve with this duty and break this down into manageable stages, then it's actually very straightforward. An authority needs to consider what success will look like in relation to this duty, their particular responsibilities and how they will know they're making progress. They should consider setting appropriate performance targets and will need to consider training needs and allocate appropriate budgets for training, research and involvement.

straightforward...

Anybody involved in implementing this duty at a policy, planning or strategic level should obtain a copy of the relevant DRC Statutory Code, which explains key concepts, such as disability equality, and offers practical guidance on all aspects of the duty. If an authority is one of the minority of public authorities who are covered by the general duty but not subject to the specific duties, for example, a parish, town or community council, they do not have to produce a Disability Equality Scheme but they may still find the key actions within this provide a useful framework.

Involving disabled people

At the heart of the Disability Equality Duty is the requirement to involve disabled people in producing the Disability Equality Scheme including the action plan. This has to happen at the very outset and many public authorities will have little experience of involving disabled people so this is the place to start.

Why?

Involving disabled people is not only a requirement of the duty but it should bring tremendous benefit in terms of expertise to the organisation. However, in many cases, it can be a challenge both for the public body and for disabled people to ensure the involvement is straightforward and effective.

Involvement should not be confused with consultation. This duty requires a much more active engagement of disabled stakeholders at all stages. Budgets for engaging with disabled people must take realistic account of the costs associated with ongoing communication and collaboration.

How?

The important thing is to identify the most effective ways of involving disabled people in the development of the Disability Equality Scheme and action plan and to take this involvement forward in a planned and efficient way. This involvement would include areas such as identifying the barriers faced by disabled people and unsatisfactory outcomes, setting priorities for action plans and assisting in planning activity.

It would be easy to have superficial involvement which has no effect or, at the other extreme, overloads both disabled people and the public authority by constantly requiring involvement and duplicating effort. In order to make sure that the involvement of disabled people is really effective and to avoid involvement fatigue, public authorities should ensure that the involvement is focused and efficient, influential and transparent. Those people who have been involved and others who are interested need to know what effect the involvement had but also areas where it was less influential, and why.

The specific duties require authorities to involve disabled people who appear to them to have an interest in the way they carry out their functions in developing the scheme. This may include former, current and potential service users, staff and the wider community. It is important to consider the full diversity of disabled people – in terms of the type of impairment and barriers people experience, as well as other equality issues such as ethnicity, age, gender, sexual orientation and religion or belief.

There will be a wide variety of ways of involving disabled people. These could include through:

- local organisation/s of disabled people
- existing forums, such as disabled staff networks
- setting up specialist forums of disabled people (where none exist at present)
- workplace trade unions
- segmenting and developing existing consultation mechanisms or utilising existing networks.

Stage 2

Mapping

It is essential for a public authority to have some idea of how they are currently performing on disability equality to inform their Disability Equality Scheme. Mapping current performance areas for improvement can help identify further actions.

Why?

This mapping is not an end in itself, but is merely there to help the authority make decisions about what actions would best improve disability equality. The information will help the authority assess their



own performance; identify areas where they are doing well on promoting disability equality and areas where their performance is not so good. It needs to be detailed enough to enable the authority to measure their delivery on disability equality and to assess their performance and priorities.

Often information will show up a particular pattern, trend or experience and this should act as a trigger to investigate further.

Many public authorities will have very limited information in relation to disability. An initial action may be to put in place additional mechanisms for gathering evidence on the authority's performance in relation to disability equality.

However, implementing new mechanisms for gathering evidence can take a long time. It is important that authorities do not wait for this additional information to be available before making plans to improve their performance. In some cases, qualitative research (including research from other relevant sources), and involvement of disabled people will be sufficient

to initially identify key areas where action is needed to deliver improved outcomes for disabled people. With this, authorities can move ahead and build in actions to gradually increase their knowledge-base and measurement of progress.

Gathering information is an ongoing process and only having a limited amount of information is not an excuse for inaction.

How?

All authorities subject to the specific duties must set out in its disability scheme its arrangements for gathering information in relation to recruitment, development and retention of disabled employees; and it must put these arrangements into practice.

Also, authorities must look at the extent to which the services they provide and the other functions take account of the needs of disabled people. For example, when fire officers assess the safety of a public building, are they trained to take into account whether the means of escape is adequate for disabled users of the building without producing unnecessary exclusions?

Educational bodies need in particular to consider the effect of their policies and practices on the educational opportunities and achievements of disabled learners. They are also likely to want to gather evidence about the extent to which their services more generally meet the needs of disabled people.

Authorities may well have to set up specific mechanisms for identifying their performance on disability equality but they may also utilise the range of existing mechanisms to collect information



(from examination results in educational bodies, homelessness statistics in local authorities or PSA targets in central government or just customer or staff surveys). Much of this information may already be easily broken down to identify the experience of disabled people, or if it isn't disaggregated then straightforward systems can be set up to ensure this happens and to ensure good representation of disabled people on things like citizen's panels or focus groups.

Anyone designing a system within an authority to gather information should be considering whether the authority is going to make use of the information, particularly when monitoring according to impairment type. There is no point collecting information if you have no intention of making use of it.

For this reason within the Disability Equality Scheme an authority must set out their arrangements for making use of the information obtained, in particular, for reviewing on a regular basis the effectiveness of the action plan and for preparing subsequent Disability Equality Schemes.

Stage 3

The Disability Equality Scheme and action plan

The essential elements that the Disability Equality Scheme must include are:

- a statement of how disabled people have been involved in developing the scheme
- the action plan
- arrangements for gathering information about performance of the public body on disability equality
- arrangements for assessing the impact of the activities of the authority on disability equality and improving these when necessary
- details of how the authority is going to use the information gathered, in particular in reviewing the effectiveness of its action plan and preparing subsequent schemes.

Preparing the Disability Equality Scheme

It is important to ensure that the Disability Equality Scheme demonstrates commitment at the very highest level of authority. The DRC strongly recommends that the introduction should have the endorsement of and be signed by the Chief Executive, the Chair or their equivalent.

In addition, it would be valuable for a senior officer to take responsibility for the implementation of the duty and the scheme. Having someone with disability expertise to advise and co-ordinate would also be beneficial.

The scheme must be published and authorities will need to ensure that this is accessible to the whole community. It may be set out within the published document, such as an annual report, but to ensure transparency it would generally be appropriate to publish a scheme as a whole so that stakeholders can view its different elements and objectives together.

The action plan

The action plan is basically the steps that a public authority is going to take to meet the general duty. It will set out the key actions that the authority will take to promote disability equality over the period of the Disability Equality Scheme. It should address all areas of the duty, including elements like eliminating harassment and encouraging participation of disabled people in public life within the context of promoting disability equality.

In a highly effective Disability Equality Scheme the action plan will reflect a number of things. This would include the priorities of disabled people (and this is the information which would come from involving disabled people), the strategic priorities of the authority (including things like major forthcoming programmes and business milestones), evidence of where the issues and priorities lie and, very importantly, the specific outcomes which the authority wishes to achieve set against a realistic timetable.

It will also include measurable indicators of progress towards outcomes and lines of accountability and ownership of specific actions.

The action plan should be aimed at making practical improvements to equality for disabled people and that is why the specific outcomes must be clearly identified.

Where an authority has within it distinct units with discrete areas of activity, it will be appropriate for those units to have separate action plans within the generic Disability Equality Scheme for that authority.

External contractors

Sometimes services will be being delivered for the public authority by an external contractor. If this contractor is not itself a public body then the contracting public authority, and in particular those procuring or commissioning a service, need to build relevant disability considerations into that process to ensure that the authority is meeting the duty, even when the service is being carried out by an external contractor.



Equality schemes

Some authorities have produced combined equality schemes and there is nothing within the legislation to prevent this. However, the Disability Equality Scheme must be clearly identifiable and presented in such a way as to enable all interested stakeholders to readily access it.

The most effective combined schemes are likely to be those where an overall approach is outlined, the different mechanisms for achieving improvements are identified but the various equality areas are then clearly presented and specific actions and outcomes identified. From the point of view of disability equality, the duty is unlikely to be effectively met if clear outcomes relating to the promotion of disability equality are not clearly forthcoming from a combined scheme.

An impact

assessment is not
an end in itself.

Stage 4

Assessing the impact of policies and activities

One of the key ways of embedding disability equality into the policies and activities of a public authority is to systematically undertake disability equality impact assessments. Public authorities have to set out how they will do this within the Disability Equality Scheme.

Why?

The purpose of these impact assessments is to ensure that an authority's activities do not disadvantage disabled people in any way (either intentionally or not), and also, crucially, to identify where they can best promote equality of opportunity. Where the assessment identifies an adverse impact or missed opportunity to achieve a more positive impact, then the authority should look at what it can do to remedy this and to take up this missed opportunity.

Gaps, adverse impacts and missed opportunities in relation to disability equality can be identified by looking over things carefully and using criteria developed with disabled people.

Identifying these should be seen as positive and if an authority can't identify something to improve in a policy or practice they probably aren't looking hard enough!

An impact assessment is not an end in itself but is merely the process which an authority will go through in order to identify and then act on the need to modify and change policies and practices to better promote disability equality. It's something an authority does to decide on actions and improvements. If they only do the identification of issues and don't make the improvements and do the improvements and the necessary follow through then it's a pretty fruitless task.

How?

Approaches to impact assessments are likely to vary depending upon the nature of the public body and the degree of relevance of the function for disabled people. Where the relevance of function is high, this indicates a need for a very thorough impact assessment. Where it is clear that relevance is low, authorities may wish to have a system for identifying this and recording what actions they have taken if they don't do a full impact assessment. Criteria will need to be developed to help these decisions.

As well as new policies and activities which should be impact assessed as they are developed, authorities will have a significant 'back catalogue' of existing policies and activities that will need to be assessed. A timetable for doing this over the period of the Disability Equality Scheme and prioritisation system is essential.

There are a range of actions which a full impact assessment is likely to involve. These would include consideration of the available information, assessment of the effect the policy or decision would have on disabled people, or for existing programmes and policies, an assessment of any detrimental impact on, or shortfall in take up by, disabled people.

Additionally, consideration of the measures which may mitigate any adverse impact and alternative approaches which may better achieve promotion of equality for disabled people are essential. It's also important to build in arrangements for monitoring for future adverse impact.

The scheme

can last for up to
three years.

Getting on with it

Once the scheme is written and approved it will need to be published, but that is only the beginning. The core of the work is taking forward the actions, improving the performance of the authority through the outcomes of impact assessments, building up the information base about performance on disability equality and actually improving and changing things for disabled people.

The scheme can last for up to three years and it should be regularly reviewed and information gathered to review the effectiveness of the action plan will help prepare subsequent schemes. Public authorities should report annually on progress and be aware that organisations like inspection bodies will be looking at progress, as will disabled people.

The DRC will be providing a wide range of information for public authorities. But we also play a key role in enforcing the duty. The general duty can be enforced via a judicial review (which anyone with a legal basis can take via the High Court and Court of Session) but the specific duties are enforced through a compliance notice issued by the DRC.

National leadership by Secretaries of State

Certain Secretaries of State, the National Assembly for Wales and Scottish Ministers will have to publish a report every three years that gives an overview of the progress made by public authorities in their policy sector in relation to disability equality. They must also set out proposals for co-ordination of action by those public authorities in that policy sector, or remit area, to bring about further progress on disability equality.

The first set of these reports is due in December 2008. This duty allows for a greater degree of strategic co-ordination across government.

This guidance should be read in conjunction with the DRC Statutory Codes of Practice which give full details of the duty and the legal obligations. These can be viewed on the DRC website section on the DED www.dotheduty.org or obtained from The Stationery Office.

Every effort has been made to make sure that the information in this booklet is correct. However, it is not intended to be an authoritative statement of the law, and the DRC cannot accept any legal responsibility or liability.

**For more information and
practical advice on the
Disability Equality Duty visit:**

www.dotheduty.org

