
Public sector equality duties
UNISON guidance
2008

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Foreword



It is crucial for us to recognise the significance of the race, disability and gender equality duties – and not just because UNISON is the public sector union representing members in services where these duties will have the greatest impact. The duties represent a step-change in how employers delivering public services must address inequalities.

There is a long way to go before we have the comprehensive equality legislation we need, in particular equality duties which cover age, religion/belief and sexual orientation. But by putting UNISON at the forefront of implementing the existing duties, we still have the opportunity to drive huge improvements in the working lives of our members.

It is our job to turn the high rhetoric of the duties into concrete results and a more equal workplace. It is UNISON branch reps who will be taking an employer to task over the gender pay gap, forcing an organisation to look again at recruitment processes that discriminate against black applicants and insisting that disability no longer stands in the way of career development.

There is a danger, as with any new responsibility, that some employers may treat the duties as a tick-box exercise. But if UNISON is active and involved in the process of developing and implementing new equality schemes, this risk can be avoided. At a national level, this means that UNISON will need to work closely with the newly-established Equality and Human Rights Commission to ensure that employers comply with the duties, taking them to court if necessary.

This guidance is part of our strategy to make the duties stick. It offers a wealth of practical advice that will help members to understand how the duties work, and how UNISON should be working with them. I hope you will find this document useful and, as ever, we are interested in your feedback on the ideas you will find here. If you have any comments and you would like a response, please e-mail bsg@unison.co.uk.

A handwritten signature in black ink that reads "Dave Prentis". The signature is written in a cursive, flowing style.

Dave Prentis
General secretary

1 Introduction

UK anti-discrimination legislation covers six main equality strands: gender; disability; race; sexual orientation; age; religion and belief. Although this has started to tackle discrimination, progress has been slow and has often led to individual legal remedies which do not tackle the underlying problems.

The public sector equality duties take a fundamentally different approach. Public authorities are now legally obliged to promote equality of opportunity and eliminate discrimination for service users and staff, rather than waiting for individuals to complain. They have to go beyond ticking boxes and to review progress to ensure they're delivering results. If there are no positive outcomes, public authorities will be failing in their legal duties. This is a step towards a society where equality is the norm and diversity is seen as a benefit to everyone.

The first public sector duty, covering race equality, was introduced in the Race Relations (Amendment) Act in 2000 and came into force in May 2002. The disability equality duty came into force in December 2006 and the gender equality duty in April 2007. UNISON believes that discrimination on any grounds is unacceptable and that the principles underpinning the race, disability and gender duties should also be applied to sexual orientation, age and religion/belief.

The duties support UNISON's work to represent members in a number of ways. For example, if your employer is proposing to contract a service out, you can use the duties to make sure there has been an equality impact assessment. The chances are that the contractor will have lower equality standards for staff and service delivery and you can use this to argue for the service to stay in-house. Where employers are proposing changes to working patterns, they must comply with their legal equality duties by consulting with staff and unions first. If the changes might have a detrimental impact on particular groups of staff, unions can argue for changes on equality grounds.

How this guidance works

This guidance is designed to help branches negotiate and organise around the public sector equality duties.

Sections 2 – 10 provide core advice on the duties. They describe the general and specific duties, look at who the duties apply to and set out how public authorities should fulfil them. They then offer guidance on how branches can use the duties to organise, recruit and represent members. Case studies are presented to show how the duties can be used to drive improvement. (The case studies appear in blue boxes.)

The appendices look in detail at individual equality strands. There is also a jargon buster which explains the terms used in this guidance, a resource bank and a briefing outlining UNISON's experiences in Northern Ireland.

A note on devolution

The three equality duties apply in a broadly similar way across England, Wales and Scotland. However there are some important differences which are made clear at the appropriate point in the guidance. In Northern Ireland the legislation is significantly different, as discussed in Appendix F.

2 The general duties

The codes of practice

The equality duties relating to race, disability and gender are laid out in law. Their application is guided by codes of practice issued by the Equality and Human Rights Commission (EHRC)¹. The EHRC is responsible for writing, developing and issuing the codes of practice which have been approved by Parliament. If public authorities follow these codes of practice, they are likely to comply with the law.

Each of the duties is broken down into a **general** duty which gives the broad outlines, and **specific** duties designed to help public authorities comply with the general duty. All of them must be implemented.

What are the general duties?

All three general duties state that “due regard” must be given to:

- the elimination of unlawful discrimination
- the promotion of equal opportunities.

Each duty then builds on these objectives in a different way.

The **race** equality duty requires the promotion of good relations between people of different racial groups.

The **disability** equality duty requires public authorities to:

- eliminate harassment of disabled people that is related to their disabilities
- take account of people’s impairments, even where that involves treating disabled people more favourably than non-disabled people
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life.

The **gender** equality duty requires the elimination of unlawful harassment. It specifically includes transgender people.

Who do they apply to?

All of the general equality duties cover the major public organisations including:

- local authorities
- police authorities
- NHS trusts
- educational establishments.

Since 91% of UNISON members work for the public sector, the employers of the vast majority of the union’s members will have to comply with all three general duties. However, for members working in the private or voluntary sector, there are subtle and important differences between the application of the general duties. Take a look at the table below which shows how the application of the general race equality duty is different from that of the disability and gender general duties.

The table highlights the fact that the general race equality duty applies only to those organisations listed in its code of practice. These are almost all publicly-owned organisations, which means the general race equality duty does not apply to privatised utilities, private companies carrying out public functions or registered social landlords.

However, the general duties relating to disability and gender apply to “any organisation that has functions of a public nature” which means that private contractors carrying out public functions have to comply with the general duties in the delivery of services. For example, a company running a contracted-out street warden service or a privatised utility has to comply with the general disability and gender duties in delivering those services.

¹ The EHRC replaced the three individual equality commissions (Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission) in October 2007

	Race equality duty	Disability equality duty	Gender equality duty
Who has to comply with the general duty?	“Public authorities” listed in the code of practice	“Any organisation that has functions of a public nature, including parts of private or voluntary sector organisations that carry out public functions”	“Any organisation that has functions of a public nature, including parts of private or voluntary sector organisations that carry out public functions”

Complying with the general duties

Implementing the general duties will require a culture change which will take time and commitment. Strictly speaking, public authorities must show that they have fulfilled each part of the three codes of practice by paying “due regard” to equality issues. This means they should prioritise the most significant inequalities in employment or service delivery.

However, this is not just about the numbers of people affected. The seriousness and extent of the discrimination, harassment or inequality should also be looked at, even if the number of people affected is small.

Most public authorities will have to meet the general duty through an equality scheme with a three-year lifespan. It is unlikely that action can be taken to improve every policy or function of an authority in the three-year span of the first equality scheme. However, the duties are statutory requirements and so a public authority cannot simply claim that it does not have sufficient resources to deliver change – it may need to redeploy existing resources. Even if the best course of action cannot be followed, authorities must still have due regard to the requirement to promote equality alongside other competing requirements.

Good practice procedures to fulfil the general duty include:

- gathering and analysing information
- consulting stakeholders
- carrying out equality impact assessments
- prioritising and implementing equality objectives
- reporting and reviewing.

A local authority wants to increase employment levels in a particular district. Women are less economically active there than men, partly due to a lack of public transport for late-night shift working in a new out-of-town employer. Women are less likely to have access to private transport than men, and have greater fears about travelling on public transport at night. Therefore the local authority provides a dedicated transport service which, although also available to men, is designed to promote equality of opportunity for women. This may also impact on patterns of working for UNISON members.

A primary school wishes to train its staff in equality in order to meet the duties, but does not have sufficient training budget. It decides to arrange equality training for the headteacher, who then runs a feedback session for staff and governors at the next in-service training day.

Transgender people are likely to be small in number, but the extent of discrimination and harassment they face may be considerable. Therefore supporting them may be a priority.

Key principles

Authorities should follow four key principles in applying the general duties²:

- equality should be mainstreamed, ie equalities considerations are taken fully into account in all aspects of employers’ activities; equalities should not be a bolt-on extra or delivered solely by an equalities team
- the main focus should be on outcomes – schemes and policies are simply a means to an end; outcomes need to be monitored and schemes reviewed if they are not producing the desired results
- change should be speeded up; the new duties were specifically introduced because existing equality legislation was taking too long to deliver change
- compliance with the duties is non-negotiable; public authorities must comply with all of the requirements of each of the duties.

Critical success factors

The codes of practice recommend six keys to making the duties work:

- **involvement** – of staff, service users, unions and community organisations
- **leadership** – from the top of the organisation, with the duties built into strategic planning and a consistent message to staff and stakeholders
- **mainstreaming** – to include the duty in business planning, budget allocation, annual reporting, organisational development and other high-level functions

² Taken from joint guidance on the duties from the CRE, DRC and EOC in Scotland; these commissions were replaced by the Equality and Human Rights Commission in October 2007

- **accountability** – with a committee, board, team or senior member of staff having strategic responsibility for ensuring the duties are implemented
- **expertise** – all relevant staff should have some understanding of the duties but specialist equality staff, service managers, procurement officers and HR managers will need special training in equality issues and/or in data collection and analysis
- **systems and procedures** – for collecting and analysing data by equality strand. The duties should be built into: policy and budget approval; organisational and departmental targets and objectives; individual objectives and appraisals.

Notes

A combined or separate approach?

Public authorities have to comply with all aspects of the three duties and, due to the similarities between them, it may make sense to take a combined approach and adopt a single equalities plan. Some advantages of this include:

- using best practice across all the different equality areas; a common approach means ‘levelling up’ not ‘levelling down’ if employers are to keep within the law
- a simpler and more understandable system that is more accessible
- a co-ordinated approach for people who experience multiple discrimination (for example women of African, Asian or Caribbean heritage)
- a framework which can be easily extended to include other equality strands which are not yet covered by public duties, such as sexual orientation, age and religion/belief.

However employers which are less experienced in dealing with equality issues may need to keep the duties separate in order to avoid falling into a ‘one size fits all’ approach.

If it has been decided that your organisation will be taking a combined approach by developing a single equality scheme, it is important that the three distinct areas are not dealt with generically. A single scheme should take full account of the different issues that arise from inequalities on the grounds of race, disability and gender. A completely generic approach will lack the focus needed to tackle the specific inequalities that the duties are intended to address.

3 The specific duties

What are the specific duties?

The specific duties give public authorities a framework for meeting the general race, disability and gender equality duties. They build on existing law and good practice but go further by requiring action to prevent inequalities.

Who do they apply to?

The specific duties apply to most public authorities (each of the codes includes a list which is periodically updated) but **not** to private contractors.

As with the general duties, since 91% of UNISON members work for the public sector, the employers of the vast majority of the union's members will have to comply with every element of all three specific duties.

The codes of practice set out which private, community and voluntary sector employers have to comply with the specific duties. However, as a general rule, private and voluntary sector employers do not have to comply with the specific duties.

What's in the specific duties?

The specific duties relating to race, disability and gender equality are all slightly different; they are described in full in the relevant code of practice.

However this common approach incorporates most aspects of the specific duties:

- the public authority should publish an action plan (referred to in the duties as an equality scheme) showing how it intends to fulfil its general and specific duties and setting out its overall objectives
- the authority should involve employees, service users, trade unions and others in preparing the scheme; this should include people facing inequalities covered by the particular scheme
- the scheme should take into account information the authority has gathered or considers relevant on how its policies and practices affect equality in the workplace and in the delivery of services.

The scheme should set out:

- the way in which people facing inequalities covered by the scheme have been involved in the development of the scheme
- the actions the authority has taken, or intends to take, to conduct equality impact assessments on its current and future policies and practices; this should include its method for impact assessment
- the actions the authority has taken, or intends to take, to gather information about the effect of its policies and practices on people facing inequalities in the performance of functions including employment, education and service delivery
- the arrangements for using the information gathered, in particular in reviewing the effectiveness of the action plan and in preparing subsequent equality schemes
- the actions the authority has taken or intends to take to:
 - use the information to review progress on the implementation of the scheme's objectives
 - ensure that the scheme's objectives are implemented.

The authority should report annually (possibly as part of its general annual report) on:

- the results of information gathering (including monitoring); what this evidence indicates; and what use has been made of the information
- what the authority has done over the past year to deliver its equality scheme, eliminate discrimination, promote equality of opportunity and ensure it is meeting its targets
- progress on the implementation of the scheme, including actions for gathering and using information within three years of publication of the scheme unless it is unreasonable or impracticable to do so.

The authority should review the scheme at least every three years.

The specific duties and devolution

Gender equality

The specific duties for gender equality in Scotland include additional requirements to the duties in England and Wales. They require public authorities to act on

the three causes of the gender pay gap (discrimination, occupational segregation and unequal caring responsibilities). In addition, ministers must publish three-yearly 'state of the nation' overviews of gender equality with suggestions for the next steps to be taken across the public sector. These must be presented to the Scottish Parliament. In full, the Scottish specific duties require listed bodies to do the following:

By 29 June 2007

- gather information on how their work affects women and men
- consult employees, service users, trade unions and other stakeholders
- assess the impact of policies and practices on both genders and use this information in their work
- identify priorities and set gender equality objectives
- plan and take action to achieve gender equality objectives
- publish a gender equality scheme, report annually and review progress every three years.

By 28 September 2007

- publish an equal pay policy statement (for listed bodies with 150+ staff)
- report on progress every three years.

Currently (November 2007), the specific duty for gender does not apply to Wales although it can be used for guidance until the Welsh Assembly has the powers to implement a duty of its own. The Welsh specific duties will not be finalised until April 2008 at the earliest. Until then, the Welsh Assembly government is advising public authorities in Wales to do the following in the interests of clarity and transparency:

- develop a scheme outlining their gender equality objectives and the action that is being taken to achieve them
- prioritise initiatives to address the most significant gender inequalities within their remit and take actions that are likely to deliver the best gender equality outcomes.

Race equality

The specific race equality duties in relation to Scottish education authorities and schools are slightly different to the rules for local authorities in England and Wales. Details of these differences can be found on the CRE Scotland website at www.equalityhumanrights.com/Documents/Race/Education/The%20duty%20to%20promote%20race%20equality%20a%20guide%20for%20education%20authorities%20and%20schools%20in%20Scotland.pdf.

The specific duties for race equality in Wales are the same as those for England in all key aspects.

Disability equality

The specific disability equality duties in England, Scotland and Wales are the same in all key respects. However, there are slight differences in the way the specific duties apply to educational institutions in Scotland. More details can be found on page 97 of the DRC code of practice for Scotland, which can be downloaded from www.equalityhumanrights.com/Documents/Disability/Public%20sector/Disability%20equality%20duty/Codes%20of%20practice/The%20duty%20to%20promote%20disability%20equality%20statutory%20code%20of%20practice%20Scotland.doc.

Notes

4 Negotiating and organising

UNISON is at the forefront of campaigning for equalities in the workplace and in local communities. Supporting equality not only shows solidarity with people facing discrimination, but should also be used to demonstrate the collective strength of the union, helping it to grow.

The equality duties require big changes from employers, meaning branches must be involved. There is an opportunity for lead branch officers, branch equality officers, activists and members to work together to strengthen branch organisation. Employers also have to be held to account to show they are delivering equality for our members.

Branch organising

The public sector equality duties present an ideal opportunity to recruit and organise new members. An organising approach should be used to involve a whole new group of members in the mainstream of the branch. The codes of practice open the door for UNISON:

- the code of practice on the race duty says staff should be consulted
- the gender duty specifies that trade unions should be consulted in addition to staff
- the disability duty goes further and says that disabled people must be involved – ie more than just being consulted; the code states that involving trade unions and their networks will provide information and advice to “help ensure that all relevant issues are addressed”.

The duties affect different parts of the branch in different ways.

Members

The duties state that employers must consult or involve staff and service users. The branch should encourage members to participate and to use the union to express their collective view. Members are also service users and part of the local community. Their experiences and contacts can be used to build alliances between UNISON and the local community.

Stewards

Stewards have a frontline role to play in using the duties as an opportunity to recruit, gain new activists and promote UNISON as leading the fight for equality. They need to give members a helping hand to become involved and encourage them to think how the duties might improve their working lives and service delivery.

Branch equality officers

The equality duties expand the role of many branch equality officers. They need to make sure branches use the duties as a bargaining and organising tool, and should encourage members to go on UNISON’s equality training courses. They should help set up self-organised groups where none exist, and act as key advisors in negotiations. As unions must be consulted over the duties, employers should make facility time available to branch equality officers.

Branch self-organised groups

The duties require consultation with staff, so this is an ideal time to launch branch self-organised groups (SOGs). Members of these groups should be given paid leave to meet and discuss equality plans and review the progress of the employer in promoting equality. SOGs should also help the branch to publicise the duties, to campaign and organise around equality and other issues, and to recruit new members. The experiences and understanding of SOG members are a key resource for negotiating collective agreements. If more people are involved in drawing up collective agreements, more people will understand them and they will have greater impact. For UNISON guidance and advice on how to set up a SOG, visit www.unison.org.uk/active/groups.asp.

Union learning reps

Many inequalities stem from lack of access to training or education. Union learning reps have an important part to play by identifying training needs in order to create a level playing field.

Senior branch officers

Notes

Senior officers need to lead the branch in negotiating collective agreements on the duties. The following section looks at negotiating in detail, but there are also other opportunities resulting from the duties. The duty for employers to consult community groups means the branch can make contact with service users – useful connections for campaigns to defend jobs and services against cuts.

Branch equality officers and new SOGs may also need support from more experienced officers to get up and running.

As there is a legal duty to consult unions, employers may be required to provide additional facility time.

Branch negotiating

Branches should be specifically involved in:

- drawing up equality schemes
- determining the criteria for equality impact assessments
- jointly assessing existing policies and functions
- jointly assessing new policies and functions
- receiving equality monitoring information on an annual basis
- jointly reviewing the outcomes of equality schemes.

Collective agreement is also needed to ensure that workers' rights are not sacrificed to improve service delivery.

Private contractors are only covered by the general equality duties (not by the specific duties) so they may provide poorer quality services and operate on reduced pay and conditions. This should be used as part of the argument against privatisation and contracting-out of services.

Branches should use equality agreement information from UNISON's Bargaining Information System (BIS) to support their negotiations, and should feed their agreements back into the system. Contact your region for BIS reports.

5 Consultation and involvement

All the duties require employers to consult and involve unions and marginalised people, although the details vary:

- the race duty says service users and employees must be consulted
- the gender duty says that trade unions must be consulted as well
- the disability duty states that disabled people must be involved, as should unions.

UNISON should be involved in the implementation of all three duties and the development of equality schemes. If employers try to ignore trade unions or exclude them from the consultation process, they may well be failing to comply with the duties themselves.

A consultation process should seek opinions and give a response so that people know what is accepted (or rejected) and why. However involvement goes further, and for groups or individuals to be involved they should be supported so they can work with the authority on an ongoing basis. Their input should include identifying problems, setting priorities and assisting with planning throughout the development, implementation and review of policies and functions. The Disability Rights Commission stated that involvement of disabled people should be focused, proportionate, influential and transparent and should use accessible mechanisms.

The consultation or involvement process depends on the size and resources of the authority and there is no set way of carrying it out. It might involve consulting individuals, focus groups, citizens' juries, surveys and other methods.

There may be barriers to consultation and involvement which need to be addressed, for example access issues for disabled people and cultural requirements of different groups. It may be necessary to provide a single sex environment or to guarantee anonymity.

The Equality Commission for Northern Ireland recommends that "a number of public authorities should consolidate consultation exercises where possible on the same, or similar, policies" to avoid "consultation fatigue".

Experience shows that the greater the number of people and groups consulted over an issue, the greater the understanding and commitment to it, and the more

effective its implementation. Involvement may take more time and possibly money, but will yield better results.

Notes

6 Procurement

Public authorities must ensure that their procurement policies and practices comply with the equality duties. An authority cannot abdicate responsibility for meeting the duties by contracting out its functions; where functions are carried out by an external supplier, the authority remains responsible for meeting the duties. With the growing trend towards outsourcing public authority functions to private contractors, the damage that poor procurement processes can do to equality in the workplace is huge.

UNISON branch officers and stewards need to get involved with the detail of procurement processes to ensure compliance with the equality duties. In Northern Ireland, a number of attempts to privatise services have been stopped by UNISON's reference to the equality duties, which shows how important the duties are. To find out more about UNISON's experiences in Northern Ireland, see Appendix G on page 29.

Generally speaking, UNISON officers and stewards should be putting pressure on employers to develop procurement processes which:

- favour the service delivery option that most fully complies with the requirements of the equality duties, specifically including the option to keep services in-house
- ask contractors detailed questions about equality policies and practices; authorities should be obtaining tangible evidence that contractors support and promote equality in their employment practices
- include equality criteria when contract compliance indicators are drafted
- make it clear that the contractor is responsible for meeting the general disability and gender duties in the delivery of services which are outsourced.

Branch officers and stewards can also take advantage of the UNISON Bargaining Information System (BIS) which holds huge amounts of information about the ownership, finances and employment practices of private contractors. Knowing the background of a contractor can be crucial when it comes to trade union involvement in the procurement process. To gain access to this information email bsg@unison.co.uk or call 0207 551 1402.

Notes

7 Monitoring

Monitoring is a valuable tool in negotiating improvements. It can:

- show which functions are of most relevance to marginalised groups and where inequalities exist
- inform action plans
- provide evidence when the effect of current policies is reviewed.

Many authorities will already have some monitoring mechanisms in place, and these should be adapted as necessary to meet the duties. Larger authorities will be expected to collect more detailed information. Branches should ensure that they receive regular reports from the employer and use them to pursue issues and claims.

As a minimum, employment data should be collected and broken down by race, disability, gender and (preferably) age, and analysed. It is important that monitoring on equalities is an ongoing process as it may take a while to build up accurate data.

Statistics may reveal an apparent inequality, but will not explain why it occurs. Supplementary questions or research from case studies, focus groups and trade unions will be needed to investigate the underlying causes.

There are particular issues in relation to collecting workforce information on sexual orientation as many lesbian, gay and bisexual people choose to keep their sexual orientation private to avoid prejudice and discrimination. UNISON policy is that sexual orientation monitoring should never be introduced unless clear equality policies and action plans are already in place and the confidentiality of the data can be guaranteed. There is UNISON guidance on sexual orientation monitoring at [www.unison.org.uk/file/A3225%20\(monitoring\).doc](http://www.unison.org.uk/file/A3225%20(monitoring).doc).

Recruitment, staff development and retention are also key areas that need to be monitored in order for an authority to comply with the duties. In addition, monitoring information should be kept on:

- applicants at each stage of the recruitment process
- training – type of training, who applies and who goes on courses
- promotion
- performance reviews/appraisals
- workplace benefits and facilities

- harassment, discrimination, grievances and disciplinary action
- redundancies, resignations, dismissals and end of fixed-term contracts etc.

An authority compares the ethnic background of people in the local community with that of its existing staff to determine whether its employment policies are producing a representative workforce. If not, it intends to take action to address the problem.

Privacy

Branches need to explain to their membership why monitoring is taking place, as well as ensuring that authorities introduce monitoring in a sensitive and collaborative way. Members should understand why the information is needed and how it will be used to produce improvements. People are more likely to disclose information if they have a guarantee of confidentiality and reassurance that they are under no obligation to give such information if they prefer not to. Equalities monitoring data will almost certainly be 'sensitive' data and must be kept confidential under the Data Protection Act. For more information, see UNISON guidance to bargaining on privacy at www.unison.org.uk/bargaining/doc_view.asp?did=144.

Notes

8 Equality impact assessments

Equality impact assessments (EIAs) play a key role in the implementation of the duties and they are a legal requirement for authorities covered by specific duties.

They aim to:

- ensure that no groups are disadvantaged on equality grounds by an authority's decisions and activities
- indicate where public authorities can promote equality of opportunity.

When assessments identify negative impact or a missed opportunity to promote equal opportunities, the specific duties say the public authority must have due regard to the need to modify the policy or practice.

EIAs do not have to be onerous. The assessment process will depend on the size of the authority – smaller bodies like schools can use small-scale, flexible processes.

However, EIAs all require good information and consultation with staff, service users and trade unions. Authorities need staff in relevant posts to have the skills to be able to analyse the implications for equality.

For simplicity, authorities may impact-assess policies and practices for all the equality duties at the same time, but they must make sure that each duty is fully and properly considered. They may also want to extend the assessment to cover sexual orientation, age and religion/belief.

The specific duties require the assessment of existing policies and practices as well as new ones, so authorities should set a timetable to impact-assess their main activities over the first three years of the scheme(s). For new policies and practices, impact assessments should be carried out early in the development process.

Not all policies and practices will be equally relevant to a particular duty. However, where they are, the authority should make sure it has paid due regard to the duty.

Preliminary and full assessments

A preliminary 'screening' is useful to decide if a full impact assessment is needed. Authorities should look at the aims of the policy or practice (this should be straightforward) and existing evidence of potential impact on equality. Even if there is little data, action may still be required.

The screening should consider whether:

- a) the policy is a major one in terms of scale or significance for the authority's activities; or
- b) although the policy is minor in terms of scale and significance, it is likely to have a major impact upon equalities.

A policy which has an extremely adverse impact on a small number of people is more important than one with a minor impact on more people. People from marginalised groups should be involved in drawing up the criteria for screening.

If the policy falls into category a) or b), the authority should conduct a full impact assessment. This will involve:

- analysing available data and research
- consulting relevant groups
- assessing the potential impact
- considering measures which might mitigate any adverse impact and/or alternative policies
- arriving at a decision on the way forward
- publishing the results of the impact assessment
- arranging for future monitoring of the actual impact of the policy.

An authority may find that further research or consultation is necessary, especially if it is likely to lead to a different conclusion.

The authority should look at the needs, experiences, concerns and priorities of different groups and involve people from marginalised groups in conducting the assessment. The unintended consequences of a policy should also be considered.

An NHS Trust reviews its employment of disabled people and finds visually-impaired people are under-represented. Following consultation with staff, unions and groups representing blind and partially-sighted people, the authority sets itself a target of doubling the number of visually-impaired people applying for posts within the next five years. It targets potential applicants by advertising on radio and in other media which the local organisations of blind and partially-sighted people recommend. Regular monitoring and applicant feedback is undertaken to assess the effectiveness of this strategy.

9 Implementation and enforcement

Notes

General duties

Equality schemes are designed to bring about change, so public authorities should focus on outcomes, ie specific identifiable improvements in policies, in the way services and functions are delivered, and in equality outcomes for employees. Even though it may not be possible to address and resolve all issues of inequality in a three-year period, authorities should begin to tackle the most significant problems.

Resource implications will be a factor since a major deep-seated inequality may take a lot of staff time and money to address. But, if a major issue is ignored, it could lay the public authority open to enforcement action.

Specific duties

Authorities covered by the specific duties are expected, within the three-year period, to:

- implement their actions for gathering and using information
- work towards meeting the objectives in their scheme.

Schemes should set out overall objectives and it is then up to the authority to select the priorities for action, in consultation with service users, employees and trade unions. In large authorities, each department may need its own plan which is part of the overall plan.

The duties do, however, exempt authorities from fully implementing their schemes if, in all the circumstances of the case, it would be unreasonable or impracticable to implement some aspect of the scheme. For example, there might be particular difficulties with implementing objectives in the scheme and these difficulties could not have been foreseen. It could also be that the costs associated with an action unexpectedly escalate to a level which is out of proportion to the duty. If this happens, authorities should consider alternative solutions to address the inequality.

It is important that the scheme is implemented in a continuous and sustainable manner. In the past, some equal opportunities initiatives have received a lot of publicity initially, but have petered out and failed to deliver in the long run. Branches need to review the equality duties regularly to keep their employers on-track.

Reviewing the schemes

Each of the equality schemes must be reviewed every three years. If employers align the reviews of the race, disability and gender schemes so that these happen at the same time, they can achieve a more coherent approach across the equality strands.

The review should include an assessment of progress to date. Authorities should also aim to continuously improve their work to meet the duties by considering if the previous scheme objectives and impact assessment process are effective and appropriate.

Evidence to demonstrate progress should include:

- information gathered
- the results of impact assessments
- any feedback from stakeholders on the effectiveness of the first three-year scheme.

Groups of people who benefit from the duties, trade unions and other stakeholders should be invited to contribute to the review.

Enforcement

The Equality and Human Rights Commission (EHRC) has issued statutory codes of practice (which must be complied with) and non-statutory codes which explain and promote good practice. There is a strong emphasis on encouraging and helping public authorities to comply with the duties.

If a public authority (including a private or voluntary organisation exercising public functions) does not comply with a **general** duty, then a person or a group of people with an interest in the matter, or the EHRC, can ask the high court for a judicial review.

If a public authority does not comply with a **specific** duty, the EHRC can serve a compliance notice and subsequently apply to the county court or sheriff court (in Scotland) for an order requiring compliance. If the court makes an order, the authority may be in contempt of court if it does not obey it.

This should, however, be a last resort and a UNISON branch proposing such action should seek the advice of UNISON's legal department via the regional office.

Notes

10 Other issues

Harassment

Current equality laws prohibit harassment of individuals, and an atmosphere where harassment is seen as acceptable is likely to discriminate indirectly. A public authority is liable for acts of harassment carried out by its employees on prohibited grounds, even if they are carried out without the employer's knowledge or approval, unless the authority has taken reasonable measures to prevent harassment taking place.

The equality duties reinforce the importance of authorities trying to prevent situations where harassment may occur. The organisations need to find out how effective their policies and procedures are, for example by monitoring the number of complaints of harassment and their outcome. Procedures should be reviewed periodically to ensure that they are working effectively and complainants are not being victimised. Relevant staff should be trained to deal with incidents of harassment.

An authority distributes information to all staff explaining the different types of harassment and why it is unacceptable. Staff are reminded of support available to them if they feel harassed by colleagues or service users, and given a variety of confidential ways to report it. Managers are told to reinforce this message in team meetings.

Positive action

In limited circumstances, organisations can use 'positive action' to address inequalities. This is a powerful tool for creating a level playing field and is intended to make up for past discrimination and stereotyping of particular groups of staff. Positive action is only allowed where the law expressly permits it, because it amounts to indirect discrimination.

Gender and race equality legislation allows positive action in employment and training. Employers can support members of a gender or racial group which is under-represented in particular posts through:

- training to equip people with the skills for these posts
- encouragement to take advantage of opportunities to move into these posts (although the selection process itself must be based on merit and treat all applicants equally).

Disabled people are in a slightly different situation. For many disabled people, environmental barriers are as great an obstacle in restricting opportunities as other people's attitudes. Therefore more favourable treatment of a person because he or she is disabled is permitted. Authorities must take people's disabilities into account and make 'reasonable adjustments', even if that involves treating them more favourably than non-disabled people.

There are limited exemptions allowing for discrimination in employment on grounds of a 'genuine occupational requirement' for all the equality strands except disability. There are also allowances for single sex provision in service delivery.

A college's analysis of enrolment on further education courses shows that more men than women take engineering and IT courses. The reasons for this are complex. The college decides to encourage more women to apply by targeting women with relevant information and offering help with childcare.

Multiple discrimination

Some people are likely to experience multiple discrimination – for example a black worker who is also disabled. Although equalities law tackles discrimination on the basis of individual equality strands, an effective approach to equalities means looking beyond separate pigeon holes. People facing multiple discrimination are likely to be particularly excluded and authorities may need to put special effort into meeting their needs.

Notes

Appendix A

The race equality duty

More than thirty years after the Race Relations Act 1976 (RRA), black workers – people of African, Asian and Caribbean heritage – continue to be poorly paid and represented in the workplace. They still face higher levels of discrimination and harassment. The murder of Stephen Lawrence led the government to bring in the Race Relations (Amendment) Act 2000 (RR(A)A) and this introduced the race equality duty.

Section 71 of the RR(A)A placed a general duty on public authorities to exercise their functions with due regard to the need to:

- eliminate unlawful discrimination
- promote equality of opportunity
- promote good relations between people of different racial groups.

Defining race discrimination

Race discrimination occurs when a person is treated less favourably on the grounds of: race; colour; nationality; ethnic or national origin. It is unlawful to discriminate against any worker on racial grounds. The RRA makes it unlawful to discriminate in:

- recruitment
- pay (including bonuses and shift premiums)
- other terms and conditions (eg holidays)
- access to opportunities or benefits (eg promotion, training, bonuses)
- dismissal

or by disadvantaging a worker in any other way on racial grounds.

Promoting good relations between people of different racial groups

This element of the race duty is perhaps even more relevant now than when it was first introduced. The intention is to avoid stereotyping and – in the most extreme example – splitting the community into segregated groups which hold misconceptions about each other, leading to strife and a deeply divided society.

Duties in education

Schools in England, Northern Ireland and Wales (but not Scotland) must publish a race equality policy, and monitor and assess how their policies affect ethnic minority pupils, staff and parents. The emphasis is on pupils' achievements.

Further and higher education institutions must develop a race equality policy, assess how their policies affect ethnic minority students and staff, and publish the results of assessments and monitoring.

Race equality schemes

Public authorities should already have a race equality scheme (RES) which sets out how they will meet the employment duties as well as the policy and service delivery aspects of the RR(A)A. Branches should ask what impact the scheme will have on the lives of members in the workplace. How will it improve the way that services are delivered to ethnic minority communities?

Will it affect the way the service is delivered by members?

The RES should be realistic and branches should encourage authorities to include trade unions in the consultation process, even though employers are not required to do so.

Monitoring

Most public bodies are required to monitor their employment procedures and practices. This means monitoring by ethnic group all staff in post, and applicants for employment, training and promotion.

Public authorities with 150 full-time staff or more must also monitor the number of staff from each ethnic group who are involved in:

- grievances
- disciplinary action
- performance appraisals
- training
- dismissals.

The results of this monitoring must be published once a year.

Training

Public authorities are required to train staff in the general duty to promote race equality and any specific duties they may have under the RR(A)A.

Authorities might argue that this means meeting the training needs of those staff responsible for delivering the RES as a whole. Branches should reject this argument as the law requires all staff to work in a

non-discriminatory way. Another counter-argument is that frontline staff deliver services to the public and are, in effect, delivering the race equality scheme.

Involving members

Branches need to ensure there is discussion among members so that they understand what the race equality legislation says and why it is needed. Members need to recognise that race equality is not just an issue for black members. The RR(A)A affects all members because it gives them responsibilities in relation to service delivery and because it can involve changes in work organisation.

Branches also need to consider how they will engage black employees who must be consulted. This is an excellent opportunity to recruit and involve black workers in UNISON in an initiative which can make a difference to the quality of their daily working lives. Where they exist, self-organised groups of black members should be involved in the process of looking at the race equality scheme and its implications. Branches that have black members but have not yet established a group should use the race equality duty as an opportunity to set one up.

Some public authorities may set up their own group of black workers for consultation purposes. If this is the only forum available, branches should try to ensure that the union's voice is heard.

Further information

The Home Office website www.homeoffice.gov.uk/equality-diversity has information on race equality schemes and an overview of the Race Relations (Amendment) Act 2000.

All statutory codes/guides are on the Equality and Human Rights Commission website at www.equalityhumanrights.com/en/pages/default.aspx. The code of practice, guide for public authorities, guide on ethnic monitoring, guide for schools and guide for institutions of further and higher education can all be downloaded from here – as can the draft codes for Scotland.

Appendix B

The disability equality duty

The legal definition of disability states that a person is disabled if he or she has a mental or physical impairment that has an adverse effect on his/her ability to carry out normal day to day activities, and the adverse effect is substantial and long-term. Long-term means that the impairment has lasted for 12 months, or is likely to last for more than 12 months. People diagnosed with HIV, multiple sclerosis or cancer are automatically included. This approach to disability is referred to as the medical model of disability.

The alternative approach is known as the social model of disability. This is based on the principle that, at present, disabled people do not have the same opportunities or choices as non-disabled people. Nor do they enjoy equal respect or full inclusion in society on an equal basis. The poverty, disadvantage and social exclusion experienced by many disabled people are not the inevitable result of their impairment or medical condition, but stem from attitudes and environmental barriers.

UNISON supports the social model which argues that it is physical, communication and social barriers which prevent disabled people from having equality in all aspects of their life. Under this model, disabled people usually self-declare that they consider themselves to be a disabled person.

For many disabled people, environmental barriers play an even more crucial role in restricting opportunities than negative attitudes. These barriers may be unintentional, but this does not make their impact upon disabled

people any less significant. Disabled people are excluded and disadvantaged when buildings, services and employment practices are designed in a way that fails to take their particular circumstances into account. The same applies when budgets are set without the additional needs of disabled people being adequately considered.

Disclosing disability

While there is no requirement for people to disclose a disability, some members have found it difficult to secure reasonable adjustments when their impairment is not apparent to the employer. People can be reluctant to declare their disability status due to fear of future discrimination, so employers should take steps to create a workplace atmosphere where workers feel safe to declare their disability status. A public commitment from the most senior person in the organisation, backed up with disability equality training for staff, is likely to reduce discrimination.

Participation in public life

The general disability equality duty requires public authorities to encourage participation by disabled people in public life. This is an end in itself, and it will also promote equality for disabled people more generally. Disabled people can bring valuable experience to public life, and this will promote positive attitudes towards disabled people which could result in a reduction in harassment.

Public life is a broad term which includes: residents' associations; neighbourhood forums; school governing bodies; user groups consulted by local authorities; even the House of Lords.

Selection criteria for public body appointments should be examined to ensure that it is not more difficult for disabled people to succeed in applications for such posts than non-disabled people.

Positive attitudes

The general duty also requires public authorities to promote positive attitudes towards disabled people. While many non-disabled people do have positive attitudes towards disabled people, some express pity, fear, lack of respect and even contempt. Not only are these attitudes hurtful, they can also lead to discrimination and place unnecessary restrictions on disabled people. When exercising their functions, authorities will need to consider what they can do to eliminate ignorance and prejudice in the wider community.

Broadcasters may examine their programme policies and commissioning strategies to ensure that disabled people are represented in mainstream news, factual, drama, comedy, lifestyle and feature programmes in prominent, non-stereotypical roles.

More favourable treatment

More information is available at www.unison.co.uk/disabled/index.asp.

Equality for disabled people may mean treating them more favourably than non-disabled people. The general duty requires public authorities to have due regard to the need to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people. This underlines the fact that equality of opportunity cannot be achieved simply by treating disabled and non-disabled people alike.

A disabled student needs a dedicated space in the college car park because she is unable to use public transport. Non-disabled users might also want a parking space, but will not suffer the same degree of disadvantage if they do not get one. The disabled student will be prevented from attending the course if she does not have the space, while non-disabled students will merely be inconvenienced. More favourable treatment is necessary to provide equality of access to the course.

This principle has been recognised in the Disability Discrimination Act 2005, particularly through the requirement to make reasonable adjustments. The college cited in the example is required by the act to provide a parking space for the disabled student if, in all the circumstances, this is a 'reasonable' adjustment to make.

Appendix C

The gender equality duty

The gender equality duty is intended to address the causes of persistent gender inequality for women and men, girls and boys. It sets out to target and tackle stereotyping, discrimination and sexism.

Women are more frequently disadvantaged by policies and procedures which do not recognise:

- their greater caring responsibilities
- the differing pattern of their working lives (maternity leave, career breaks, part-time working)
- their more limited access to resources (barriers include occupational segregation, lack of training opportunities, low pay)
- their vulnerability to domestic abuse.

Men can also be disadvantaged, for example by workplace cultures which do not recognise their caring role within the family and by health and education services which do not meet their needs.

The legislation

The gender equality duty, which came into effect on 6 April 2007, requires public authorities to have due regard to the need to:

- eliminate unlawful discrimination and harassment
- promote equality of opportunity between women and men.

Transgender people are also covered by the duty which requires public bodies to have due regard to the need to eliminate unlawful discrimination and harassment in employment and vocational training for people who intend to undergo, are undergoing, or have undergone gender reassignment.

The Equality and Human Rights Commission has issued a code of practice which is available from the EHRC website: www.equalityhumanrights.com.

The code of practice is statutory and is admissible in evidence in any legal action arising under the appropriate legislation, ie:

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Equality Act 2006.

Copies of these acts are available from HM Stationery Office.

The code also includes an extensive list of organisations to which the specific duties apply.

The gender duty includes a specific duty which does not appear in the race and disability duties. This is that, in formulating its overall objectives, an authority must consider the need to include objectives to address the causes of any gender pay gap.

Targets and outcomes

The implementation and enforcement of the duty should lead to measurable progress in gender equality. Examples of such progress (and areas to be considered when discussing gender equality schemes in the workplace) would be:

- women and men represented equally at all levels of the workforce and in all areas of work
- zero tolerance of sexual harassment, and effective processes to prevent harassment
- support for people with caring responsibilities

- flexible and part-time working opportunities for women and men at all levels in the workforce
- an end to discrimination against pregnant women and those returning from maternity leave
- transgender people being valued, supported and protected from harassment and discrimination
- fairness and transparency in grievance, disciplinary, redundancy and retirement procedures
- elimination of any gender pay gap.

UNISON publishes a range of guidance on maternity and parental rights, work/life balance and transgender issues. The guidance is constantly being updated and for current information you should visit the Equalities Zone and/or Bargaining Zone on the UNISON website www.unison.org.uk.

The gender pay gap

The specific duties require public bodies to consider “the need to have objectives that address the causes of any differences between the pay of men and women that are related to their sex”.

The causes of the gender pay gap, as outlined in the 2006 Women and Work Commission report *Shaping a Fairer Future*, are threefold:

- discrimination in pay systems
- occupational segregation
- the impact of caring responsibilities.

It is difficult to envisage how an authority could meet the requirement to address the causes of the gender pay gap without carrying out an assessment of pay along gender lines and then seeking to identify

any causes of a gender-related differential. An authority which failed to carry out such an assessment, or which fails to implement the necessary action resulting from an assessment, may be in breach of the duty and could face enforcement action through the Equality and Human Rights Commission or judicial review.

An alternative scenario is that failure to comply with this aspect of the duty could be used as evidence in an individual case taken under the Sex Discrimination Act or Equal Pay Act.

Discrimination in pay systems

Issues of pay for UNISON members are generally collective in nature. Therefore the most effective way for employers to address this particular element of the duty is to conduct an equal pay review rather than face the pursuit of individual claims under the Equal Pay Act.

The essential elements of an equal pay review are:

- comparing the pay of men and women doing equal work (as defined in the Equal Pay Act)
- identifying equal pay gaps (including gaps between full-time and part-time workers; claims relating to part-time work would be determined under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000)
- eliminating the gaps which cannot be explained on grounds other than sex.

The majority of UNISON members will be covered by equality-proofed job evaluation agreements, eg Single Status in local government, Agenda for Change in health, HE Framework in higher education. Information on these schemes and advice on negotiating equal pay is available from the UNISON website.

However, in the event that negotiation fails to resolve equal pay issues, there are formal processes which **must** be followed if branches wish to pursue equal pay cases on behalf of members. Advice should be sought from the regional officer before any action is taken, and the guidance periodically issued to branches should be carefully studied.

For more information visit www.unison.org.uk/equalpay/index.asp.

Appendix D

Sexual orientation

Promoting equality on grounds of sexual orientation

Sexual orientation is one of the equality strands for which there is currently no legal duty to promote equality in England, Scotland or Wales, although there is such a duty in Northern Ireland. There is legislation throughout the UK banning employers and providers of vocational training from discriminating on grounds of sexual orientation. In addition, new regulations outlawing such discrimination by people and bodies providing goods, facilities and services came into force in England, Scotland and Wales in April 2007.

UNISON believes that employers and service providers can only be sure that they are not discriminating on grounds of sexual orientation if they are proactive in considering and addressing inequalities in this area. This is very much in line with the move to the new type of positive equality duty. We argue strongly that all employers and service providers should be looking at how to promote equality on grounds of sexual orientation, alongside their work on the statutory grounds.

What does sexual orientation mean in this context?

Employment legislation defines sexual orientation as orientation towards people of the same sex, the opposite sex or both sexes; in common language, lesbian/gay, straight or bisexual.

What about transgender people?

Being transgender means perceiving your gender in a way that does not conform to the one you were assigned at birth. Some transgender people wish to live permanently in the opposite gender and since 2004 it has been possible for people to gain full legal recognition in their reassigned gender. Being transgender is not a person's sexual orientation – transgender people may be lesbian, gay, bisexual or straight, just like non-transgender people.

In the UK, gender equality legislation protects transgender people against discrimination. Appendix C on the gender duty provides information on promoting equality for trans people. At present, the scope of this duty is limited in relation to trans issues and UNISON is campaigning for it to be extended. UNISON guidance on bargaining for transgender workers' rights is available at www.unison.org.uk/acrobat/B1260.pdf.

Lesbian, gay, bisexual, transgender (LGBT) members – stronger together

In organising terms, lesbian, gay, bisexual and transgender people often work in coalition; this is very much the case in UNISON. Although it is important to recognise the distinction between sexual orientation and gender identity, there are many areas of common concern for LGBT people, such as tackling prejudice, ignorance and harassment, and issues around confidentiality. UNISON

has developed a model statement on sexual orientation and gender identity for branches to promote with their employers. It is at www.unison.org.uk/file/B2307.pdf.

Promoting equality in employment and service delivery

Some members may wonder what people's private sexual orientation has to do with employment or service delivery.

As far as employment is concerned, the fact is that too many lesbian, gay and bisexual workers face discrimination when seeking work and once they are in a job. Discrimination can include:

- failure to be appointed to jobs
- verbal and physical abuse
- unfair work allocation or over-supervision
- prejudiced attitudes about suitability to work with children and other vulnerable groups
- non-recognition of lesbian, gay and bisexual families and denial of benefits available to other workers.

UNISON guidance on bargaining for lesbian, gay and bisexual workers' rights is at www.unison.org.uk/acrobat/B1776b.pdf.

Too often, the needs of lesbian, gay and bisexual service users are not even considered. It is assumed that everyone is heterosexual. Everyone has the right to work and live free from fear and not to have their dignity undermined by prejudice and harassment. UNISON campaigns for public services that meet the needs of all service users.

If it is not immediately obvious how a particular policy, practice or service could affect LGBT people, the answer lies in the new duties. The key is to consult the people concerned and to involve them in drafting policies and designing services.

UNISON is very well-placed to promote equality for LGBT people as we have a national network of lesbian, gay, bisexual and transgender members, and active groups in each UNISON region and many branches.

If there is no group in your branch, the new approach to equality is the opportunity to involve and engage members. There is advice on reaching under-represented groups of members in *Organising for Equality* at www.unison.org.uk/acrobat/15486.pdf.

There are compelling reasons to seek to negotiate inclusive policies covering sexual orientation as well as the other strands. Although there are important differences between the equality strands, the principles are the same. It is not hard to make the business case – it is far more time-consuming to start all over again for each strand. Also people are not exclusively black or female or disabled or lesbian or young. The strands overlap when it comes to real people, and strategies to address inequality should recognise this.

The government has pledged to introduce a single equality act harmonising all the strands and UNISON is lobbying hard for this legislation to include a duty to promote equality across all grounds.

The sense in taking a unified approach is being increasingly recognised by public authorities. The revised Equality Standard for Local Government in England takes in all six equality strands. The employers' information on the Equality Standard is at www.idea.gov.uk/idk/core/page.do?pageld=5145172.

The NHS employers launched a framework to help NHS organisations meet their legal duties on disability and gender in November 2006. This recommends that trusts carry out integrated equality impact assessments that take into account race, disability, gender, sexual orientation, age and religion/belief. The NHS equality impact assessment tool is at www.nhsemployers.org/excellence/excellence-1871.cfm.

How it works in Northern Ireland

Public bodies in Northern Ireland have had a duty to promote equality between people of different sexual orientations since 1 January 2000. This is overseen by the Equality Commission for Northern Ireland. Public bodies are required to produce equality schemes which must be approved by the Equality Commission. They have to assess the equality impact of their policies and publish the outcome, consult with relevant groups and consider how to promote equality.

The fact that this duty has been in operation for a number of years shows that there are no real obstacles to promoting sexual orientation equality, only imagined

ones. Public bodies have found that there are very few policies and practices for which there is no sexual orientation equalities impact.

Monitoring

The duty to promote race equality includes a requirement to monitor people's ethnicity. There is no equivalent requirement to monitor people's sexual orientation and UNISON would advise caution in this area. It is not necessary to know individuals' sexual orientation in order to tackle prejudice and promote equality. However, it is strongly recommended that sexual orientation policies and their implementation are monitored.

Once policies and procedures have been thoroughly equality-proofed and action plans to promote equality are being implemented and have been evaluated, that might be the time to consider whether to introduce sexual orientation monitoring. Even then, careful consideration must be given to issues of confidentiality and there should be consultation with members locally. UNISON promotes the TUC advice on monitoring LGBT workers; this is at www.unison.org.uk/file/A2744.pdf.

Appendix E

Comparing the duties

The general duties

Race equality duty	Disability equality duty	Gender equality duty
<p>Due regard to:</p> <ul style="list-style-type: none"> — eliminating unlawful racial discrimination — promoting equality of opportunity — promoting good relations between people of different racial groups 	<p>Due regard to:</p> <ul style="list-style-type: none"> — promoting equality of opportunity between disabled people and other people — eliminating unlawful discrimination — eliminating disability-related harassment — promoting positive attitudes towards disabled people — encouraging participation by disabled people in public life — taking account of disabled people's impairments, even where that involves treating disabled people more favourably than non-disabled people 	<p>Due regard to:</p> <ul style="list-style-type: none"> — eliminating unlawful discrimination and harassment (for transgender people, in relation to employment and vocational training, higher and further education) — promoting equality of opportunity between men and women

The specific duties (England)

Race equality duty	Disability equality duty	Gender equality duty
Different duties for employment, and policy and service delivery; separate duty for educational institutions	Same duties for all public authorities including all schools and other educational establishments	Same duties for all public authorities including all schools and other educational establishments
First scheme published May 2002; second scheme in place May 2005	Disability equality schemes to be published by all public authorities by 4 December 2006 with the exception of primary schools, community special schools and foundation special schools which must publish their scheme by 3 December 2007	Gender equality scheme to be published by all public authorities by 30 April 2007
<p>Publish a race equality scheme</p> <p>Scheme should set out:</p> <ul style="list-style-type: none"> — functions and policies that are relevant to the general duty on race — arrangements for assessing and consulting on the likely impact of proposed policies — arrangements for monitoring policies for any adverse impact — arrangements for publishing the results of assessments — arrangements to ensure that the public has access to information and services — arrangements for training staff on the race equality duty <p>Monitor employment procedures and practices</p> <p>Schools must have a race equality policy</p>	<p>Publish a disability equality scheme demonstrating how the authority intends to fulfil its general and specific duties</p> <p>Involve disabled people in the preparation of the scheme</p> <p>Scheme should state:</p> <ul style="list-style-type: none"> — how disabled people have been involved in its development — methods for impact assessments — steps to fulfil the general duty (action plan) — arrangements for gathering information in relation to employment and delivery of education and its functions — arrangements for using information, particularly when reviewing action plan and revising the scheme <p>Take the steps set out in the action plan within three years and put into effect the arrangements for gathering and using information</p> <p>Publish report summarising steps taken under action plan, and results of gathering and using information</p>	<p>Publish a gender equality scheme which sets out gender equality objectives to fulfil the general and specific duties</p> <p>In preparing the scheme authorities must:</p> <ul style="list-style-type: none"> — consult employees, service users and others — take into account any information they consider relevant — consider the need to have an objective to address the causes of any pay gap <p>Scheme needs to set out actions the authority has taken or intends to take to:</p> <ul style="list-style-type: none"> — gather information on the effect of its policies and practices on men and women in employment, services and performance of all its functions — use information collected to review implementation of the scheme — assess the impact of current and future policies on gender equality — consult relevant employees, service users and others — ensure implementation of the equality scheme objectives
	Report on progress annually	Report on progress annually
Review at least every three years	Review and revise at least every three years	Review and revise at least every three years
	Demonstrate actions taken to implement scheme	Implement within three years

Appendix F

Equality duties in Northern Ireland

The agreement reached between governments and political parties in Northern Ireland in 1998 included a commitment to a statutory obligation on public authorities to promote equality. This commitment was then implemented through section 75 of the Northern Ireland Act 1998.

The section 75 statutory duties

Under section 75, public authorities are required “to have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without”.

These are commonly referred to as the nine equality categories. Public authorities are also required “to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group”.

Section 75 applies to all public authorities in Northern Ireland, including government departments, health boards and trusts, education and library boards, further education colleges, universities and local councils. Some bodies which have a UK-wide remit are subject to section 75 in relation to their work which affects Northern Ireland. A full list of these can be found on the Equality Commission for Northern Ireland’s website at www.equalityni.org.

Equality schemes

Each public authority is required to draw up an equality scheme which sets out how it proposes to fulfil the statutory duties over a five-year period; this must be submitted to the Equality Commission for approval.

An equality scheme must set out:

- how the public authority will identify where it has the most significant impact on equality of opportunity
- how it will assess the equality impact of its policies
- its arrangements for consultation with those affected by the policies.

If a public authority’s assessment of the impact of a policy shows a possible adverse impact on individuals from any equality category, it must consider how this impact might be reduced, including moving to an alternative policy which better promotes equality of opportunity.

Consultation with those affected, or likely to be affected, is central to the effectiveness of the duties in Northern Ireland. Authorities must also publish the outcomes of impact assessments.

The role of the Equality Commission

As well as advising on and approving equality schemes, the Equality Commission for Northern Ireland is responsible for monitoring and overseeing the effectiveness of section 75. Each year, the commission produces an overall progress report which summarises progress made by public authorities.

Further information and advice

Find out the latest from UNISON in Northern Ireland at www.unison.org.uk/northernireland.

The Equality Commission for Northern Ireland’s website is www.equalityni.org.

Appendix G

How the equality duties have been used in Northern Ireland

Northern Ireland has more experience of the impact of equality duties than the rest of the UK. UNISON's activities in Northern Ireland provide useful examples of best practice.

Using the legislation described in Appendix F as a starting point, UNISON's Northern Ireland officials and activists have won a series of significant victories for greater equality. These achievements include:

- changing the Northern Ireland government's budget decisions in order to provide free nursing care in residential establishments
- changing Department of Health policy on outsourced support services contracts with the outcome of returning over 1,000 outsourced workers in-house
- ensuring that health workers in a major hospital were excluded from a private finance initiative
- getting 4,000 school meals workers and 5,000 school cleaners excluded from all private finance initiatives and privatisation schemes.

Working on a cross-community basis, they have also used the statutory duty to:

- challenge decisions on the allocation of funding to the community and voluntary sector, and the provision of public service delivery to areas of abject need
- challenge current policy and practice on the provision of social housing and affordable housing
- develop a series of partnership projects with public sector employers and government departments on employment and regeneration initiatives.

These significant achievements were possible because the union systematically used the detail of the equality duties in consultations on major policy decisions. Highlighting the negative impact on equality of privatising public services proved particularly powerful.

For more information about UNISON's experiences in using the equality duties in Northern Ireland, contact bsg@unison.co.uk.

Appendix H

Other resources

General

Information on negotiating on equality issues can be found on UNISON's website: www.unison.org.uk/bargaining/equalities.asp.

UNISON's general bargaining guide is *Local Bargaining – A Guide for UNISON Negotiators*: www.unison.org.uk/acrobat/11251.pdf.

Information on general equality issues can be found on UNISON's website: www.unison.org.uk/equality/index.asp.

The Equality and Human Rights Commission's website is www.equalityhumanrights.com.

Race

EHRC race equality duty code of practice: www.equalityhumanrights.com/Documents/Race/Public%20sector/Race%20equality%20duty/Specific%20duties/Code%20of%20Practice%20on%20the%20Race%20Equality%20Duty.pdf.

Other guidance: www.equalityhumanrights.com/en/publicationsandresources/race/pages/publicsector.aspx.

Disability

EHRC disability equality duty code of practice: www.equalityhumanrights.com/Documents/Disability/Public%20sector/Disability%20equality%20duty/Codes%20of%20practice/The%20duty%20to%20promote%20disability%20equality%20statutory%20code%20of%20practice%20England%20and%20Wales.doc.

Other EHRC guidance: www.equalityhumanrights.com/en/forbusinessesandorganisation/publicauthorities/disabilityequality/Pages/Disabilitye.aspx.

The EHRC disability equality duty guidance specific to Scotland: www.equalityhumanrights.com/Documents/Disability/Public%20sector/Disability%20equality%20duty/Codes%20of%20practice/The%20duty%20to%20promote%20disability%20equality%20statutory%20code%20of%20practice%20Scotland.doc.

Gender

EHRC gender equality duty code of practice: www.equalityhumanrights.com/Documents/Gender/Public%20sector/Gender%20equality%20duty/Specific%20gender%20equality%20duty/Codes%20of%20practice/Gender%20equality%20duty%20Code%20of%20Practice%20for%20England%20and%20Wales.doc.

Other EHRC guidance: www.equalityhumanrights.com/en/publicationsandresources/gender/pages/gender.aspx.

EHRC gender equality duty guidance specific to Scotland can be found here: www.equalityhumanrights.com/Documents/Gender/Public%20sector/Gender%20equality%20duty/Specific%20gender%20equality%20duty/Codes%20of%20practice/Gender%20equality%20duty%20Code%20of%20Practice%20for%20Scotland.pdf.

EHRC guidance on procurement: www.equalityhumanrights.com/Documents/Gender/Public%20sector/Gender%20equality%20duty/Meeting_the_gender_duty_in_procurement.doc.

Appendix I

Best practice in implementing the equality duties

Staff training and monitoring

Cardiff Council created step by step guidance on conducting ethnic monitoring. It also used the results of ethnic monitoring to set targets and evaluate the success of work programmes. Find out more at <http://83.137.212.42/sitearchive/cre/Default.aspx.LocID-0hgnew0cp.RefLocID-0hg00b00e008.Lang-EN.htm>.

Kent Constabulary implemented a three-year staff training scheme to ensure that the delivery of services fitted the needs of communities. It also strengthened in-house diversity training. Find out more at <http://83.137.212.42/sitearchive/cre/Default.aspx.LocID-0hgnew0cn.RefLocID-0hg00b00e008.Lang-EN.htm>.

The Department for International Development undertook detailed research with staff for its disability equality scheme. Kamaljit Kerridge-Poonia, DFID's Diversity Adviser, commented: "Out of our research came the issue that although we have good monitoring we have a lack of people declaring disability due to a lack of trust. People don't know how the information will be used. This has now informed our approach to building up trust, getting messages out and explaining why we collect the data." To find out more on this issue contact bsg@unison.co.uk.

The community college in Hackney was keen to investigate ways of encouraging more students to complete the ethnic monitoring section on their enrolment forms. In 2003, 29.5% of students did not

declare their ethnicity on the form, but the college was able to reduce this to less than 10% by 2005. Find out more at <http://83.137.212.42/sitearchive/cre/Default.aspx.LocID-0hgnew0bp.RefLocID-0hg00b00e008.Lang-EN.htm>.

Equality schemes

The Disability Rights Commission praised Nottinghamshire PCT for the quality of its disability equality scheme. In particular, the level of consultation with disabled employees and the Coalition for Disabled People in Nottingham has been shown to have improved the effectiveness of the scheme. See the scheme at www.nottinghamshirecountyteachingpct.nhs.uk/index.asp?pgid=9876.

The Department for Transport's gender equality scheme has a particularly strong action plan. A table clearly sets out the objectives the organisation will be working towards, and how progress will be measured. See the scheme at www.dft.gov.uk/about/sr/ges.pdf.

When assessing existing race equality schemes, it might be useful to take a look at the CRE assessment template for race equality schemes and the employment duty. This can be seen at http://83.137.212.42/sitearchive/cre/downloads/res_3yr_review_assess_templ.doc.

The Equal Opportunities Commission singled out the Department for International Development's gender equality scheme for praise. A key aspect of

the scheme is that it makes it clear exactly who will be consulted and explicitly includes trade unions. For further information, see the scheme at www.dfid.gov.uk/pubs/files/gender-scheme07-10.pdf.

Single equality schemes

One danger in producing a single equality scheme is that it becomes too generic and ignores important issues that are specific to individual equality strands. The Department for Work and Pensions' comprehensive single equality scheme covers race, disability and gender. Find out more at www.dwp.gov.uk/aboutus/equalityschemes/group_finance.asp.

Appendix J

Public sector equality duties checklist

Question	Yes / No / Need to find out
How does the employer intend to consult UNISON about the issues raised in the duties?	
Has your employer published an equality scheme for each of the three duties?	
Where is the equality scheme published?	
Who was involved in the preparation and development of the scheme?	
Has the scheme been reviewed?	
Does your employer intend to combine all three duties into one equality scheme?	
If yes to above, how does your employer intend to retain the integrity of all of the separate duties?	
Does the scheme adequately take into account service users and staff alike?	
Has your employer released any monitoring information? Is it accessible to staff and service users?	
Was the information used consistent year on year?	
Has the employer developed an equality action plan?	
How does it intend to implement the plan? Has the plan set out achievable targets?	
What resources are being set aside to implement the action plan?	
Who in senior management is leading on this agenda?	
Has the organisation impact-assessed current policies and procedures? What was the outcome of this review?	
What process will management use to ensure that future proposals and policy changes are impact-assessed and fully consulted on?	

Appendix K

Jargon buster

CRE

Commission for Racial Equality

DRC

Disability Rights Commission

EOC

Equal Opportunities Commission

EHRC

The Equality and Human Rights Commission was launched in October 2007. It takes on the role and functions of the CRE, DRC and EOC, and will also cover sexual orientation, religion/belief, age and human rights.

Due regard

Having 'due regard' means that the weight given to the need to promote equality is in proportion to the relevance of equality to a particular function. In practice, this means that public authorities should prioritise action to address the most significant inequalities within their remit by focusing on functions or policies that have greatest effect on the public, on the authority's employees, or on a section of the public or a section of employees.

Public authority

This term covers most public sector employers. The general duties for disability and gender apply to any organisations that have functions of a public nature, including parts of private or voluntary sector organisations that carry out public functions. The general duty for race includes a list of public authorities covered.

Direct discrimination

Direct discrimination means treating a person less favourably because of their race, sex, disability, sexual orientation, age or religion/belief. It could be not appointing a person to a job, refusing them a promotion or training, or giving them worse terms and conditions.

Indirect discrimination

Indirect discrimination happens when policies or benefits that apply equally to all employees nonetheless disadvantage a group covered by equality legislation. This is unlawful whether or not the discrimination is intentional. An example would be putting unnecessary restrictions on when employees can take parental leave, which would disproportionately affect women.

Harassment

Harassment can take the form of obvious bullying or more subtle teasing. It includes unintentional behaviour which is upsetting to the individual and also covers a general culture which, for example, tolerates the telling of certain types of jokes.

Victimisation

Victimisation is causing somebody detriment because they use the equality laws to defend their rights or because they support somebody else in doing so.

