FFFFEXPLANATORY MEMORANDUM TO

THE EQUALITY ACT 2010 (SPECIFIC DUTIES) REGULATIONS 2011

2011 No. [XXXX]

1. This explanatory memorandum has been prepared by the Government Equalities Office (GEO) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 Section 149 of the Equality Act 2010 (c. 15) ("the Act") imposes a duty known as the public sector equality duty ("the duty"), on the public authorities listed in Schedule 19 to the Act, to have due regard to three specified matters. Those matters are the need to:

a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

2.2 These Regulations exercise powers in sections 153(1) and 154(2) of the Act which enable a Minister of the Crown to impose specific duties on public authorities by regulations. The purpose of the duties is to ensure better performance by the public authorities listed in the Regulations of their duty to have due regard to the matters set out in paragraphs (a) to (c) of section 149(1).

2.3 These Regulations facilitate better performance by the public authorities of the duty imposed by section 149(1) of the Act by requiring them to prepare and publish objectives, setting out what they intend to achieve in order to further the aims of the duty, and to publish information demonstrating their compliance with the duty.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. Sections 153(1) and 154(2) enable a Minister of the Crown to impose specific duties on a public authority specified in Parts 1 and 4 of Schedule 19 to the Act. Some additional public authorities were inserted into Parts 1 and 4 of the Schedule by the Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060). The Office for Budget Responsibility was inserted into Part 1 of Schedule 19 by Schedule 1 to the Budget Responsibility and National Audit Act 2011 (c. 4).

3.2. Both Welsh and Scottish Ministers have powers to impose specific duties on relevant Welsh and relevant Scottish public authorities listed in Parts 2 and 3 of the Schedule, respectively. The Welsh Ministers have exercised this power. The Scottish Ministers intend to exercise it later this year.

3.3 The Secretary of State may impose duties on cross-border Welsh authorities (which is what these regulations do) having met relevant procedural requirements.

3.4 Public authorities listed in Schedule 2 to the Regulations have been given additional time to publish information demonstrating their compliance with the duty in order to meet the spirit of a commitment given to the Merits of Statutory Instruments Committee, that schools should be given a full term to plan for and implement new regulations. This commitment was set out in a letter from Nick Gibb MP to the Chairman, on 27 October 2010PP[1].

4. Legislative context

4.1 The Act replaced and consolidated earlier anti-discrimination laws with a single Act.

4.2 Section 149 of the Act includes the duty, which came into force on 5 April 2011. This replaced similar, separate, public sector equality duties relating to race, gender and disability discrimination (sections 71 to 71B of the Race Relations Act 1976 (c. 74), sections 76A to 76C of the Sex Discrimination Act 1975 (c. 65) and sections 49A to 49D of the Disability Discrimination Act 1995 (c. 50)).

4.3 Section 149 of the Act extends coverage of the duty to the additional protected characteristics of age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment (in full). The duty only applies to the protected characteristic of marriage and civil partnership in respect of the requirement in section 149(1)(a) to eliminate conduct that is prohibited by or under the Act.

4.4 Sections 153(1) and 154(2) of the Act permit a Minister of the Crown to impose, by way of regulations, specific duties on public authorities specified in Parts 1 and 4 of Schedule 19 to the Act respectively. The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), which came into force on 4 April 2011, amended Schedule 19 to the Act. Schedule 19 was amended further by Schedule 1 to the Budget Responsibility and National Audit Act 2011 which added the Office for Budget Responsibility. The Schedules to these Regulations specify which of the public authorities in Schedule 19 (as amended) are subject to the specific duties.

[1] http://www.publications.parliament.uk/pa/ld201011/ldselect/ldmerit/49/4909.htm

4.5 The purpose of specific duties is to ensure better performance by the public authorities concerned of the duty to have due regard to the matters set out in paragraphs (a) to (c) of section 149(1) of the Act.

4.6 Sections 153(4) and 154(4) of the Act require a Minister of the Crown to consult the Commission for Equality and Human Rights before making regulations imposing duties on public authorities in Parts 1 and 4 of Schedule 19 and about these regulations, and she has done so. The Secretary of State has also consulted the Welsh Ministers in accordance with section 154(3) of the Act so far as the Regulations apply to cross-border Welsh Authorities.

5. Territorial extent and application

5.1 These Regulations apply to certain public authorities operating in England, or England and Wales, and to certain public authorities operating across Great Britain in relation to non-devolved functions.

6. European Convention on Human Rights

The Secretary of State for the Home Department and Minister for Women and Equalities, the Rt Hon Theresa May, MP, has made the following statement regarding human rights:

In my view the provisions of the Equality Act 2010 (Specific Duties) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The objective behind the duty is to ensure that consideration of equality issues forms part of the routine, day-to-day decision making and operational delivery of public authorities, and the purpose of the specific duties is to ensure better performance of the duty. The specific duties will therefore be imposed on almost all of the public authorities subject to the duty. The only exceptions are a few very small organisations for which the imposition of the specific duties would not be proportionate or sensible. These include parish meetings, local waste and drainage bodies, and some professional regulatory bodies.

7.2 Regulation 2 requires a public authority listed in the Schedules to publish information to demonstrate its compliance with the duty. A public authority listed in Schedule 1 must do this not later than 31 January 2012 and at least annually thereafter. A public authority listed in Schedule 2 must do this by 6 April 2012, and at least annually thereafter.

7.3 This additional time for public authorities listed in Schedule 2 ensures that schools will have a full term in which to prepare for and implement the new regulations. The Government is aware that the Merits Committee would

also normally want any regulations that affect schools – even those such as these which apply much more widely to virtually all public authorities – to be laid by April and to come into force from 1 September. This was the original intention with these regulations. However, as set out in paragraph 8.6 below, the Government was concerned that the proposals it put forward previously – while already significantly less burdensome than the legislation in place before – did not go far enough in reducing bureaucracy, and risked being still too onerous for public bodies to comply with. The Government has therefore taken the time to review them, removing many of the detailed publication requirements, and has rendered them significantly less bureaucratic. This will obviously benefit schools, as well as other public bodies. It should be noted also that the remaining workforce reporting requirement applies only to public bodies with over 150 staff, so all but the largest schools will be exempt from it.

7.4 The 31 January 2012 deadline for public authorities listed in Schedule 1 is important, as it will ensure that the public, and voluntary and community sector organisations, have the opportunity to review the data that has been published before public bodies set their equality objectives in April. This is a key element of the Government's policy, to ensure that public bodies are transparent and accountable to the people they serve for their work on equality. The timescale for the regulations will give people at least two clear months in which to review the data that has been published, and engage with and influence public bodies, from an informed perspective, about what their equality objectives should be.

7.5 Regulation 2(4) requires public authorities listed in the Schedule to publish information relating to persons who share a relevant protected characteristic who are affected by their policies and practices. Public authorities with 150 or more staff are also required to publish this information in relation to their employees.

7.6 Regulation 3 requires each public authority listed in the Schedules to prepare and publish one or more specific and measurable equality objectives, that it thinks it should achieve to further the aims set out in the duty. They are required to publish these objectives no later than 6 April 2012 and at least every 4 years thereafter.

7.7 Regulation 4 allows the information to be published as part of another document and requires it to be published in a manner that is accessible to the public.

- *Consolidation*

7.8 Public authorities were previously subject to three separate equality duties relating to race, disability and gender equality. Each was underpinned by further duties in secondary legislation ("specific duties") with different features, timescales and reporting requirements.

7.9 Section 71(2) and (3) of the Race Relations Act 1976 empowered the Secretary of State to make orders imposing specific duties on bodies subject to the race duty and four such orders were made: The Race Relations Act 1976 (Statutory Duties) Order 2001 (S.I. 2001/3458); The Race Relations Act 1976 (Statutory Duties) Order 2003 (S.I. 2003/3006); The Race Relations Act 1976 (Statutory Duties) Order 2004 (S.I. 2004/3125); and The Race Relations Act 1976 (Statutory Duties) Order 2006 (S.I. 2006/2470).

7.10 The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006 (S.I. 2006/2930) imposed specific duties on bodies subject to the gender duty and was made by the Secretary of State under section 76B(1) and (2) of the Sex Discrimination Act 1975.

7.11 Section 49D(1) and (2) of the Disability Discrimination Act 1995 empowered the Secretary of State to make orders imposing specific duties on bodies subject to the disability duty and the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 (S.I. 2005/2966) (as amended by S.I. 2007/618 and S.I. 2008/641) was made using those powers.

7.12 Section 149 of the Act, which came into force on 5 April 2011, consolidated and harmonised the race, gender and disability duties into one and extended coverage of the duty to the additional protected characteristics (age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment (in full)). Therefore only one set of specific duties (the Equality Act 2010 (Specific Duties) Regulations 2011) is required to assist public bodies in better performance of the duty.

8. Consultation outcome

8.1 The Regulations were subject to a formal consultation procedure in 2010, and also to a public policy review process in 2011. The chronology of this is set out below.

8.2 In August 2010, the draft Regulations, together with a full explanation of the policy and supporting Regulatory and Equality Impact Assessments, were published in GEO's consultation document "*Equality Act 2010: The public sector Equality Duty. Promoting equality through transparency. A consultation*[2]." The consultation appeared prominently on the GEO's website. Over 500 interested parties were contacted directly to alert them to the consultation and to invite them to comment on the proposals, including a number of key equality groups and representatives of the public, private and voluntary sectors.

8.3 In addition, GEO consulted its established wide network of contacts that were involved in the development of the Act; other Government Departments; and public bodies that would be subject to the duties. The Secretary of State consulted the Commission for Equality and Human

[2] http://www.equalities.gov.uk/pdf/402461_GEO_EqualityAct2010ThePublicSectorEqualityDuty_acc.pdf

Rights in accordance with sections 153(4) and 154(4) of the Act, and they submitted a detailed response. The Secretary of State also consulted the Welsh Ministers in accordance with section 154(3) of the Act so far as the Regulations apply to cross-border Welsh Authorities.

8.4 The consultation ran from 19th August 2010 to 10th November 2010. During this period, 373 responses were received, of which approximately 62% were from the public sector, 18% from the voluntary sector, 7% from the private sector and 13% from other types of organisation or individuals. The majority of respondents were in favour of greater transparency and democratic accountability; however, there was a mixed response on whether the draft Regulations published with the consultation reflected the policy intention set out in the consultation document. The consultation document and responses are available on line:

http://www.equalities.gov.uk/publications_and_research/consultation_responses_2010.aspx

8.5 In January 2011, the Government published a response to that consultation, and a revised draft of the regulations. (This is available on line via the link above.)

8.6 The Government quickly formed the view, however, that these revised regulations risked being inappropriately onerous for public bodies to comply with. So a further draft of the regulations was prepared, and these were published for comments in a policy review paper *The Equality Act 2010: The public sector Equality Duty: reducing bureaucracy*. This is available on line:

http://www.equalities.gov.uk/PDF/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf

8.7 The revised regulations introduced much greater flexibility to the earlier proposals. In particular, the earlier proposals included a number of prescriptive publication requirements, which were deemed by Ministers to be unduly onerous. Public bodies would have been required to publish all the details of their engagement with interested parties in determining their policies and their equality objectives; the equality analysis they had done in determining their policies; and the information they had considered when undertaking that analysis.

8.8 The revised regulations will simply require public bodies to publish their equality objectives, and information to demonstrate their compliance with the duty. This information is likely to encompass some of the information set out above, but the revised regulations will give public bodies much greater freedom and flexibility in meeting this requirement. This is in line with the Government's broader approach to the public sector – to reduce bureaucracy and increase transparency.

8.9 The policy review paper, setting out these revised proposals, was published on 17 March 2011, and was open for comments for five weeks. (A full formal 12-week consultation was not considered appropriate or necessary, given that this was simply a further iteration of regulations which had already been subject to a full consultation.) The Government's statutory commitment to consult the Commission for Equality and Human Rights was met, and they submitted a detailed response. The Secretary of State also consulted the Welsh Ministers, as required.

8.10 There were 189 responses to the paper. Of these, 46% came from public bodies and their representative bodies; 32% came from the voluntary and community sector, including equality campaign groups, charities, and religious groups; and 22% came from others, including individuals, equality practitioners, trade unions, advisory/consultancy organisations, legal firms, and training organisations.

8.11 Virtually all of the respondents supported the stated aims of reducing unnecessary processes and bureaucracy, and promoting greater transparency and accountability. There was also widespread agreement that the revised regulations would achieve the first of these aims. In particular, some parts of the public sector, especially some smaller local authorities, welcomed the greater flexibility in the revised regulations about what to publish. They had feared that complying with the earlier proposals would have been too onerous and expensive.

8.12 There was much less agreement as to whether the revised regulations would achieve greater transparency and accountability. In particular, a number of voluntary and community organisations were concerned that removing the requirement to publish details of equality analysis, information, and engagement would mean that such analysis and engagement would simply not happen.

8.13 The Government has noted this view, but does not share it, and strongly believes that the case law from the previous equality duties supports this position.

8.14 The duty requires public authorities to have due regard to the matters set out in section 149(1) of the Act and it is implicit that when exercising their functions they will need to consider any impact on people with relevant protected characteristics. Case law on the previous equality duties established that active consideration of the likely effects of different policies and programmes on people with relevant protected characteristics is inherent in having 'due regard' to the matters set out in section 149(1); and that in some cases this may require some evidence gathering, and engagement or consultation with people affected by its decisions

8.15 The specific duties will require a public authority to publish information to demonstrate its compliance with the duty. This is likely to include details of the analysis it undertook and the information on which it was based. It is also likely to include details of any engagement or consultation that it

undertook in complying with the duty. But the Government did not wish to impose a burden on public authorities to publish details of every single meeting that it has with its staff and members of the public, and every single document that it considers during the exercise of a function. Public authorities should be able to decide what information would be proportionate to disclose for this purpose and the public should be free to challenge authorities if they require more or for it to presented differently. They simply signal flexibility to public bodies, in how they demonstrate their compliance with the regulations. The Government believes this is the right approach.

8.16 In addition, the Government will ensure that advice and guidance on how to comply with the duties is made available through the Commission for Equality and Human Right's statutory Code of Practice on the Equality Duty, and in non-statutory guidance. The Code of Practice and non-statutory guidance will also make clear that public bodies will not be required to publish any personal information which would contravene the Data Protection Act 1998.

8.17 The Government will review how the specific duties are working in practice in two years time.

8.18 The Government is making arrangements to publish the responses from organisations to the recent policy review paper on line at:

www.equalities.gov.uk

9. Guidance

9.1 Section 149 of the Act and the Equality Act 2010 (Specific Duties) Regulations 2011 will be supported by a statutory Code of Practice, which is being prepared by the Commission for Equality and Human Rights. The Government Equalities Office has published non-statutory guidance for Section 149 of the Act and will publish further guidance to help support implementation of the regulations. A suite of non-statutory guidance will also be published by the Commission for Equality and Human Rights to support the duty.

10. Impact

10.1 The legislation does not apply to small business.

10.2 As the duty applies only to the public sector, there will be no cost implications for businesses, charities and voluntary bodies.

10.3 Section 149 of the Act brings three existing duties together, bringing important efficiency savings. These new specific duties cut down on unnecessary bureaucracy for public authorities and focus on achieving real equality outcomes and public services that take account of the needs of citizens.

10.4 It is estimated that the new specific duties will result in a net benefit to the public sector of between £4m and £18m (mid point estimate £11m) in year one, and a net benefit of between £14m and £25m (mid point estimate £19m) from year two onwards compared to the cost of complying with the current three separate duties. Over a ten year period the net benefit is expected to be in the region of around £110m to £205m (net present value terms) compared to the cost of the current duties. A copy of the impact assessment is attached.

11. Regulating small business

11.1 These Regulations do not apply to small business.

12. Monitoring and review

12.1 The Government is committed to reviewing the operation of these particular Regulations in 2013. This is in addition to the ongoing monitoring and review of the whole Equality Act, which the GEO and the Commission for Equality and Human Rights is doing.

13. Contacts

Tim Morgan, Paul Howarth or Harshbir Sangha at the GEO can answer any questions regarding these Regulations.

Tel: 0207 035 8097 or email enquiries@geo.gsi.gov.uk.

Title:	Impact Assessment (IA)
Creating a single set of specific duties to underpin the new Public Sector Equality Duty	**IA No:** GEO 1019
	Date: 27/06/2011
Lead department: **Home Office/** **Government Equalities Office**	**Stage:** Final Proposal
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Harshbir Sangha (0207 035 8128)

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Public bodies were previously subject to three duties, relating to race, disability and gender equality. Each duty was underpinned by further duties in secondary legislation ("specific duties"), with different features, timescales and reporting requirements, making the duties burdensome and cumbersome. Intervention is necessary to simplify and reduce the burden on public bodies.

Our analysis indicates that light-touch regulation is required to help mainstream equality into business as usual of a public body and to help them make more transparent and accountable. Without any legislation at all, public bodies will not consistently design policies in a way which meets the needs of diverse communities.

What are the policy objectives and the intended effects?

The objective is to improve equality and efficiency of public services by reducing bureaucracy and improving transparency. The policy has been designed to ensure public sector efficiency savings are made transparently, and do not impact disproportionately on the most vulnerable in society, and to improve life chances of those with protected characteristics. The intention is to encourage the public sector to lead by example and to promote behavioural change in the private and third sectors (which are not directly covered by the duty, unless discharging a public function).

Simplification: replaces three separate sets of regulations with a single less burdensome instrument which minimises formal procedures, bureaucracy and burdens on public bodies.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Before publication of the policy review document in March 2011 a range of options were considered; having something similar to the previous specific duties; removing the duties completely to replace with more hands-off, outcome focussed duties.

At the final stage two options were considered:
1. having something similar to the three previous duties or race, gender and disability; or
2. having hands-off and outcome focussed duties.

The previous duties on race, gender and disability were highly prescriptive and most public bodies found them confusing and burdensome. We have opted for measures which increase transparency and accountability and focus public bodies on delivering real and measureable outcomes. We propose to require public bodies to be transparent by publishing data about their service delivery in an open and accessible manner that will enable citizens to judge how effectively they are promoting equality through their services.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 07/2013	
What is the basis for this review? See PIR. **If applicable, set sunset clause date:** N/A	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Sign-off

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Theresa May Date: 27 June 2011

Summary: Analysis and Evidence

Policy Option 2

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 110	**High:** 205	**Best Estimate: 158**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	7		21	**184**
High	9		26	**233**
Best Estimate	8		23	**209**

Description and scale of key monetised costs by 'main affected groups'

The one-off familiarisation costs will fall entirely to the public sector. The recurring costs are largely due to the costs of public bodies publishing data to demonstrate their compliance with the Duty. The public sector will bear recurring costs of between £21 and £26 million per year. As the specific duties only apply to listed public bodies, the private and voluntary sector will bear no costs, either one-off or recurring.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		40	**343**
High	0		45	**389**
Best Estimate	0		43	**366**

Description and scale of key monetised benefits by 'main affected groups'

The previous specific duties on race, gender and disability have been repealed and the public sector no longer needs to comply with them. This is expected to result in an annual benefit to the public sector in the region of £40 to £45 million.

Other key non-monetised benefits by 'main affected groups'

The Equality Duty requires public bodies to consider the need to eliminate discrimination, advance equality of opportunity and foster good relations when exercising their functions. This may lead to a reduced social cost of inequality – as inequality impacts directly on those who suffer discrimination. However, the costs of failing to address disadvantage experienced by certain people in society are borne more broadly.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

Risk1: Projected benefits might not be fully realised.
Mitigation:
- Cost analysis includes all the available evidence and relevant information.
- GEO will work closely with the EHRC to ensure duties are properly implemented and enforced.

Risk 2: Data published by public bodies breach confidentiality or are inaccurate.
Mitigation:
- Comprehensive guidance from EHRC will help ensure public bodies publish data in a standardised manner which is accurate.
- GEO is working with the voluntary sector to develop a toolkit to help voluntary sector/ citizens hold public bodies to account for improving equality.

Risk 3: Increased transparency could lead to more legal cases being brought against public sector organisations
Mitigation:
- The regulations will not change enforcement procedures. An organisation can only be challenged by the EHRC for non-compliance with the specific duties.
- Increased transparency could lead to increased compliance, as non-compliance or a gap in data will be highlighted.
- Government's public data principles will set some high level guidelines for public bodies on publication of the data.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 0	**Benefits: 0**	**Net:** 0	No	N/A

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			July 2011 (subject to Parliamentary approval)		
Which organisation(s) will enforce the policy?			EHRC		
What is the annual change in enforcement cost (£m)?			See page 16		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 0	**Benefits:** 0	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	**Micro** N/A	**< 20** N/A	**Small** N/A	**Medium** N/A	**Large** N/A
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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Does your policy option/proposal have an impact on…?	Impact	Page ref within IA
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	Yes	See a) consultation document[2] published June 2009 b) the policy review paper[3] published March 2011.

Economic impacts		
Competition Competition Assessment Impact Test guidance	No	20
Small firms Small Firms Impact Test guidance	No	20
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	20
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	20
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	20
Human rights Human Rights Impact Test guidance	Yes	20
Justice system Justice Impact Test guidance	No	20
Rural proofing Rural Proofing Impact Test guidance	No	20
Sustainable development Sustainable Development Impact Test guidance	No	20

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

[2] Equality Act 2010: The Public Sector Equality Duty, Promoting equality through transparency: A consultation – August 2010.

[3] The Equality Act: The Public Sector Equality Duty: reducing bureaucracy, Policy Review Paper – March 2011.

Evidence Base (for summary sheets) – Notes

References

No.	Legislation or publication
1	Schneider- Ross: Assessing the cost & cost effectiveness of the specific race, disability & gender equality duties - June 2009. Web link: http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/research,_facts_and_figures/research/specific_duties.aspx
2	Equality Bill - Making it work : Policy proposals for specific duties, A consultation – June 2009 http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/news/specific_public_sector_equalit.aspx
3	Equality Bill – Making it work: Policy proposals for specific duties, Policy Statement – January 2010 http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/pdf/psdresp_GEO_MakingItWork_acc.pdf
4	Audit Commission: Under Pressure: Tackling the Financial Challenge for Councils of an Ageing Population, Feb 2010
5	RADAR: Lights, Camera Action. Promoting disability equality in the public sector. Page 39 http://www.radar.org.uk/radarwebsite/RadarFiles/Documents/lightscameraaction.pdf
6	Equality Act 2010: The public sector Equality Duty: Promoting equality through transparency. A consultation: August 2010 http://www.equalities.gov.uk/news/specific_duties_consultation.aspx
7	Equality Act 2010: The public sector Equality Duty: reducing bureaucracy - March 2011

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	8	0	0	0	0	0	0	0	0	0
Annual recurring cost	23	23	23	23	23	23	23	23	23	23
Total annual costs	31	23	23	23	23	23	23	23	23	23
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	43	43	43	43	43	43	43	43	43	43
Total annual benefits	43	43	43	43	43	43	43	43	43	43

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base

PROBLEM UNDER CONSIDERATION

There were previously three separate general equality duties in primary legislation; on race, disability and gender. Each was underpinned by further duties in secondary legislation ("specific duties"). These duties had different features, timescales and reporting requirements, making them burdensome and cumbersome.

On 5 April 2011, a new single Equality Duty brought together the three previous duties on race, gender and disability and also extended to cover age, sexual orientation, gender reassignment, religion or belief and pregnancy and maternity. The new Equality Duty will follow the same structure as the previous duties and will be underpinned by a number of specific duties in secondary legislation to help public bodies in better performance of the general duty. This document assesses the cost of the draft specific duties regulations, laid before Parliament on 27 June 2011, to certain listed public sector bodies based in Great Britain in relation to their non-devolved functions within Scotland and Wales. They also apply to four cross-border authorities, who exercise some devolved Welsh functions.

POLICY OBJECTIVE/RATIONALE FOR INTERVENTION

The public sector Equality Duty will require public bodies to consider the equality implications in design of their policy and service delivery initiatives. In this way, public bodies will be required to take into account the needs of diverse communities in designing their policies and to consider whether it would be possible to deliver their services in a way which would tackle disadvantage. This results in improved equality outcomes for individuals. Public services which deliver improved equality outcomes are better, more effective public services. A report produced by Schneider-Ross for the Diversity and Equality Task Group of the Public Services Forum reported that

"Expectations of public sector organisations are increasingly higher, with the emphasis on delivering value for money and providing the best service”

The previous equality duties helped organisations understand how their services may not meet the needs of everyone, and provided them the information/tools to refine their approach.

Why is legislation required? What about non-legislative means of achieving these objectives?

Our analysis has shown that while it is no longer necessary to impose highly prescriptive legislative requirements upon public bodies in order to achieve equality objectives. Now is not the time to deregulate entirely. Our analysis in this respect has been informed by the factors outlined below.

The new Equality Duty will enable policy makers to overcome their own behavioural barriers which can result in unintentional bias, and raise and embed self awareness of the problems relating to hidden discrimination and systematic barriers. The Duty will ensure that the barriers are continually addressed and that the consideration of them becomes business as usual over time.

Evidence

Evidence shows that decision-makers tend to assume that their experience is typical[1]. If left to their own devices, those designing and delivering public services may be inclined to do so in a manner which is appropriate for people like them. Their view of what is necessary will be informed by their own experience and social background. Unless policy-makers have sufficient information about the experiences of others, they will not make optimal decisions. To help ensure that the optimum solutions are found we need to move public servants to look at evidence on the characteristics and experiences of many different parts of the population. In other words, we need to open the minds of those delivering public services to new and diverse outlooks and perspectives, through which optimal solutions can be found. The duty ensures that those delivering public services must engage with those with different perspectives and experiences, and take into account information about their experiences, when designing services for them. This can overcome biases that stem from limited personal experience of public services, resulting in new and innovative approaches to long-standing challenges that deliver optimum value.

Short Term

A further reason why public servants' decisions may not be socially optimal is that there are internal biases which lead decision-makers to prioritise short term reward over long term gain. If decision-makers were fully rational, they would ensure that public services tackle disadvantage, in order to avoid the long-term costs of an unequal society[2]. However, without the Duty, policy-makers would in many cases choose instead to deliver services to meet only the needs of a non-existent 'generic' citizen, even if this is not 'optimal' in the long-term. At a time of efficiency savings in the public-sector, it is even more important that the Duty is there to ensure that the key decisions regarding public service delivery are not driven only by short-term considerations.

Inertia

When faced with difficult and complex decisions on how to deliver public services, the natural tendency is to maintain the status quo, and carry on in the way we have always done[3]. The Duty helps to overcome inertia and cause people to examine and question their habits.

Social Norm

One of the factors that influence behaviour is the existence of 'norms'.T[4, 5] One of roles of the Duty is to create a social norm - to shape expectations as to the way in which things should done – to encourage behavioural change in the private and third sectors. By imposing an injunctive norm on the public sector (regulation), the Duty creates a descriptive norm for the private and third sectors i.e. they will follow the behaviour of public sector in delivering their own services. In order to be effective in creating a social norm, behaviour in the public sector must be consistent – all bodies must take equality into account in performing their functions. There will only be consistency of behaviour across the public sector if public bodies are required by light-touch regulation to set an example by taking equality into account. Evidence shows that while social norms can develop without regulation, this takes generations.

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[1] Judgment under uncertainty; Heuristics and biases, Tversky and Kahnemann, 1974

[2] See, for example, The Spirit Level, R. Wilkinson and K Pickett, 2009

[3] Samuelson, W. & R. J. Zeckhauser. (1988). Status quo bias in decision making. *Journal of Risk and Uncertainty,* 1: 7-59 (1988)

[4] Cialdini R, Kallgren C and Reno R (1991), A focus Theory of Normative Conduct: a theoretical refinement and re-evaluation of the role of norms in human behaviour in *Advances in Experimental Social Psychology*, vol 24, 201-34

[5] Schultz PW, Nolan JM, Cialdini RB, Goldstein NJ and Griskevicius V (2007) 'The Constructive, Destructive, and Recontructive power of Social Norms', in *Psychological Science*, vol 18 No, 5, 429-34

If the Duty is effective, it will pave the way for de-regulation in other areas. If the broad policy objectives underpinning the Duty are achieved more specific interventions will become unnecessary. In other words, the Duty will facilitate a move away from detailed regulation in other areas. For example, if the Duty encourages schools to address the disadvantage among black boys in the education system, micro-management as to how they should achieve improved educational attainment becomes unnecessary. This is consistent with Robert West's PRIME Theory, The Theory of Planned Behaviour, Social Cognitive Theory and Social Capital Theory, where the first step is to create the right conditions for behavioural change. If, for example, a local authority, as a result of the Duty, addresses the existence of deprived areas in which the majority of inhabitants are of a certain religion or race, the Government need not intervene through regulation to address this specific issue.

Evidence shows that decision makers are more likely to take action to tackle a problem if they feel they are in a position to influence it[6]. Regulation across the public bodies will reassure individual public bodies that by taking limited action in their sphere of influence to tackle inequality, they are part of a network of public bodies, which are all required to act similarly. This ensures, for example that prisons will tackle disproportionately negative outcomes in the criminal justice system amongst people of particular ethnic minorities, if they know that their efforts will be complemented by efforts in the probation service. Without the Duty, individual bodies might be discouraged from taking action to tackle inequality because the problem is too large for them to tackle alone, and other public bodies, either upstream or downstream, are not required to contribute to the task.

The previous duties relating to race, disability and gender have been a good start and have brought about a positive change in culture and practice in many public bodies[7] because they are required to consider how their employment practices and service delivery affect the people they serve. However, at the same time performance was variable across the public sector with certain bodies performing better than the others.[8] The Government has considered all these factors and based on the progress made by the public sector are proposing a balanced package which is driven by data, is flexible, light-touch and proportionate. The Government, however, do not think a stage has come where public bodies will continue the action without the need for a legal requirement. It wants to build on the momentum gained by the previous duties through a light touch regulatory approach to ensure that the need to take into account is embedded into organisational behaviour, and levels of self-efficacy (i.e. the ability to carry out a particular action successfully and that action will bring about the expected outcome) are high before moving to an entirely de-regulatory approach to the achievement of the policy objectives.

The Government has considered different means of achieving these objectives, including having similar duties to those under race, disability and gender and extending them to cover all protected characteristics; relying on alternatives to legislation to achieve these objectives; or having a single streamlined duty, supported by hands-off specific duties in secondary legislation (our preferred option).

Options considered at final stage

1 *Similar duties to previous race, disability and gender specific duties*

Pros:

[6] Darton A (2008), GSR Behaviour Change Knowledge Review. Reference Report: An overview of behaviour change models and their uses, MHT Publishing Unit, London.

[7] Schneider- Ross: Assessing the cost & cost effectiveness of the specific race, disability & gender equality duties - June 2009. http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/research,_facts_and_figures/research/specific_duties.aspx

[8] Ibid

- Public bodies already have systems/mechanisms in place to comply with the duties. Public bodies will not, therefore, be required to devote resources to complying with the duties. Nor will they incur familiarisation costs.

Cons:

- The different sets of regulations will impose different requirements, timescales, and reporting mechanisms – making them burdensome.
- The duties will be highly prescriptive and cumbersome.
- Compliance with the duties will incur significant costs.

2 **Simplify through creating outcome focussed duties – Chosen Option.**

Pros:

- *Simplification*: a single set of streamlined and light touch legislation. For instance, research from Schneider- Ross suggested that the requirements to produce equality schemes under the previous duties were considered a significant burden, and public bodies routinely ask external contractors to draw up their equality schemes. Once published these schemes were rarely used but the cost to the public sector of producing the schemes for race, disability and gender was substantial.

- *Outcome focused*: remove bureaucratic requirements and ensure that public bodies focus on achieving improved equality outcomes. These will be more effective in furthering the policy objectives of achieving equality outcomes than the previous requirement to produce equality schemes, in which a public body must describe the processes they will follow in order to comply with the duties.

- *Proportionate and flexible*: do not set targets for public bodies, but require them to consider the information which should lead them to be transparent about the impact they are seeking to achieve.

- *Mainstreams equality into business as usual*: encourage public bodies to address equality considerations as part of their core business, rather than as a separate and additional burden.

Cons:

- *Regulatory burden*: The new package will still impose a regulatory burden, albeit a reduced one compared to the cost of three separate duties.

COST & BENEFIT ANALYSIS

Option 1 – Similar duties to those in existence before April 2011

Due to the short amount of time since the previous duties were repealed, it is assumed that re-introducing similar duties to those previously in place would not realise any significant economic costs or benefits for public authorities as the time period for transition to new adapted working practices would have been very short.

Option 2 - Costs[9] and benefits of a simplified Equality Duty

Coverage

We identify over twenty five thousand public bodies could potentially be affected by the specific duties forming part of the new equality duty:

Table 1

Detailed breakdown of public bodies	
Type	**Number**
Central Government	70
Local Bodies	388
NHS Bodies	539
Education Institutions	
Schools[10]	22,381
Higher Education	131
Other authorities	1860[11]
Including...	
Police Forces, Prison Services, Exec Justice Dept, Nationalised Industries, Probation Boards, Inspectorates	122
NDPBs sponsored by UK Govt Departments	730
Total	**25,369**

Source: Various including Office for National Statistics, Department for Education, Department of Health

Base model used to calculate the costs

To estimate costs of our proposals for the new specific duties we have used the regulatory impact assessment undertaken for the previous gender equality duty as a base model[12], but re-estimated the costs taking into account new information available through the research conducted by Schneider-Ross and discussions with public sector bodies and our equality partners.

[9] All costs and benefits presented in this section, and throughout the document, have been inflated to 2010 prices using the HM Treasury GDP Deflator series consistent with December 22nd 2010

[10] Comprises all nurseries, primary, secondary, special schools, academies, pupil referral units and city technology colleges in England, 2009

[11] Approximately 10% of all other public bodies

[12] Proposal for a public duty to promote gender equality, dti, February 2005

Costs to public bodies: One Off

The one off costs of the new requirements will arise from a personnel manager or a person with responsibility for, or equivalent in smaller public bodies, spending time to familiarise themselves with the new legislation.

We estimate, based on the time estimate used to calculate the familiarisation costs for the general Equality Duty, that public bodies such as health bodies, general bodies (such as police and the fire service), local authorities and government departments would spend between 1.5 days and 2 days familiarising themselves with the new duties. We expect a one-off cost to the public sector of familiarising with the new specific duties to be in the region of £7m to £9m[13].

Table 2

One off costs of the new duties

		One-off Costs	
		Low	**High**
New Specific Duties	**NHS Bodies**	£149,977	£199,970
	Other Authorities	£258,773	£690,092
	Education Institutions	£6,263,984	£8,351,979
	Local Authorities	£107,961	£143,948
	Central Government	£19,478	£25,970
	Total	**£6,800,174**	**£9,411,929**

Source: GEO calculations, ASHE 2009

Note: The specific duties only apply to certain listed public bodies. Private businesses that successfully bid for public sector contracts are not required to comply with specific duties, and therefore no familiarisation costs would be incurred.

Costs to Public Bodies: Recurring

The Government wants specific duties to be truly non-bureaucratic and focused on equality outcomes. To help achieve this it has already proposed to remove the requirement for public bodies to develop and publish equality schemes. Discussions with equality partners and ongoing research suggests that initial development of an equality scheme was considered a significant burden, and public bodies routinely ask external contractors to draw up their equality schemes. The government would like to remove the process of publishing an equality scheme and ask public bodies to be transparent about their data, and publish relevant equality data that would allow citizens to understand the equality outcomes they are trying to achieve, how they will promote equality and hold them to account. We also want public bodies to be transparent about the impact they are seeking to achieve on equality i.e. how they will advance equality.

The annual recurring costs of the new duties will arise from public bodies undertaking steps such as gathering and publishing data in relation to employment and service delivery and any underlying raw data. The public bodies will also need to be transparent about the impact they are seeking to achieve on equality and will be required to publish information that will inform

[13] The familiarisation costs are calculated as: *Total number of affected public* bodies X d*ays required for familiarisation (1.5 for low estimate, 2 for high estimate)* X *Daily wage for HR manager uplifted for non-labour costs (ASHE 2009 Code 1135 - £25.33 incl. 21% uplift for non-wage labour costs x 7).*

citizens of the areas they are going to focus on in order to advance equality. This will be in form of equality objectives.

The new specific duties do not mandate a particular process to assess the potential impact of policies on equality. However, as the general duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations – it is important that they understand how their policies and practices will affect equalities outcomes, and do that early enough to influence the policy development.

Below we estimate the recurring costs to a range of bodies of complying with the new specific duties. The amount of time spent by an employee will vary depending on the size of the authority, with smaller bodies spending relatively less time, although in specific circumstances, this may nonetheless have a proportionately larger impact on smaller organisations. To estimate the time spent by bodies and the associated costs, we have used evidence from the gender equality duty impact assessment, research undertaken by Schneider-Ross, and one to one interviews with key equality partners.

As the requirement is for public bodies to review their equality objectives every four years, for simplicity the cost of reviewing has been split evenly over each four-year period and the derived estimates described below reflect a constant annual proportion of this cost.

NHS Bodies

We anticipate that large NHS bodies would have a person with responsibility for drawing up and publishing the equality objectives with input from statistical/research support and an administrative assistant over a period of around 8 days per year. We estimate similar task will take a small NHS body around 3 days to complete.

To help better comply with the general duty, and as a matter of best practice, they will also assess the impact on equality of their policies in the design of key policy and service delivery initiatives. Evidence from the Schneider-Ross research and discussions with health sector bodies suggests health bodies will conduct 15-20 (small bodies 5-7) of these each year, taking an analyst around 1 day each on average. There is no requirement on NHS bodies to publish this information.

We also anticipate some larger NHS bodies, may continue to commission research for the purpose of developing and reviewing their equality objectives at an assumed average cost of £20,000 per body per four-year reporting period.

Other Authorities

We anticipate that around 5-10% of other authorities (including non- departmental public bodies) would need to comply with the specific duties. These authorities, as a matter of best practice, and also to better comply with the Equality Duty, will assess the impact on equality. Evidence, from the Schneider-Ross research and discussions with some of these authorities, suggested they will conduct 5-7 of these each year, taking an analyst around 1 day each on average. There is no requirement on these authorities to publish this information.

Education Institutions

Again we assume a school will spend up to 3 days drawing up and publishing the equality objectives. They will also assess the impact on equality of their policies in the design of key policy and service delivery initiatives. We assume they will carry out around three to five of these a year, taking half a day each time. There is no requirement on education institutions to publish this information.

Local Bodies

We anticipate that local bodies would have a person with responsibility for drawing up and publishing equality objectives with input from statistical/research support and an administrative assistant over a period of 8 days per year.

To help better comply with the general duty, they will also assess the impact on equality of their policies in the design of key policy and service delivery initiatives. Evidence from the Schneider-Ross research and discussions with local authorities suggests that they will conduct 15-20 of these each year, taking an analyst around 1 day each on average. There is no requirement on local bodies to publish this information.

We also anticipate local bodies may continue to commission research for the purpose of developing and reviewing their equality objectives at an assumed average cost of £20,000 per authority per four-year reporting period.

Central Government

We anticipate that Central Government departments would have a person with responsibility for drawing up and publishing equality objectives with input from statistical/research support and an administrative assistant over a period of 8 days per year[14].

Central Government departments will also assess the impact on equality of their policies in the design of key policy and service delivery initiatives. We assume there will be around 35-40 changes a year - although for bigger departments this may be higher - requiring an assessment, with an analyst spending up to a day to complete[15]. There is no requirement on Central Government to publish this information.

We also anticipate Central Government may continue to commission research for the purpose of developing and reviewing their equality objectives at an assumed average cost of £20,000 per authority per four-year reporting period.

The table below shows the total recurring costs of the specific duties summarised by main authority type:

Table 3

Recurring Costs of the new duties

New Specific Duties		Annually recurring costs Low	High
	NHS Bodies	£767,871	£933,952
	Other Authorities	£1,079,191	£2,702,716
	Education Institutions	£14,594,016	£17,888,119
	Local Authorities	£3,358,300	£3,642,174
	Central Government	£810,736	£861,950
	Total	**£20,610,115**	**£26,028,912**

[14] Daily wage costs: ASHE 2009 Codes 1135, 4215, 232 - £25.33, £13.24, £19.98 incl. 21% uplift for non-wage labour costs respectively x 7

[15] ASHE Code 232

Source: GEO calculations, ASHE 2009

Benefits to Public Bodies

The previous specific race, disability and gender duties imposed ongoing costs to all public bodies. The new integrated equality duty is intended to be outcome focussed and proportionate, avoiding unnecessary burdens on public bodies and reflecting more closely what can be reasonably expected from smaller public bodies. The Government therefore believe that the new proposed specific duties will impose smaller ongoing costs on public bodies, creating an annual saving for them. This is detailed as a benefit below.

The majority of the costs of the race, disability and gender duties arose from reporting on progress, setting process for assessing the impact on equality and reviewing and revising their equality schemes every three years.

Using new information[16], to update the previous regulatory impact assessments for the previous duties, we estimated the cost of complying with the race, disability and gender duties as:

Table 4

	Annually Recurring Benefits		
		Low	High
Recurring benefit of removing the three separate equality duties	**NHS Bodies**	£1,201,369	£1,360,373
	Other Authorities	£1,846,987	£3,693,975
	Education Institutions	£31,713,774	£31,713,774
	Local Authorities	£3,509,545	£6,861,207
	Central Government	£1,616,902	£1,616,902
	Total	**£39,888,577**	**£ 45,246,230**

Source: GEO calculations based on ASHE 2009, research by Schneider-Ross and other sources

(A detailed comparison of the assumptions from which the costs of the new and previous duties are derived is provided in table 7 in Annex1)

Wider Benefits

The previous three duties straight-jacketed public bodies into seeing people from the prisms of race, gender and disability, and further constrained them to the reporting requirements which may not achieve an equality outcome or provide a bespoke solution to the needs of customers. The new duties are designed to ensure that public bodies take account of the needs of disadvantaged individuals, both as employers and in the development and delivery of public services. They will help highlight, and make public bodies consider, hidden discrimination, systematic barriers, and shifted them towards considering the available evidence leading them to take action. This will result in improved, more efficient, public services, and reduce social costs of inequality. Though it is not possible to robustly monetise these benefits, these are nonetheless significant.

Net Benefits – What this means for public bodies

The net benefits of the new duties are primarily as a result of reduced burdens for public sector organisations in complying, compared with the previous separate duties, which had different timescales and reporting requirements.

Year 1

[16] Including updated background data (wage costs and number of public bodies) and improved assumptions following further discussions with stakeholders

In year 1 the measurable net benefits accruing to public sector bodies will be the costs of previous duties less familiarisation and the recurring costs of the new duties.

Table 5

		Net Benefits Year 1	
		Low	High
New Specific Duties	**NHS Bodies**	£67,448	£442,524
	Other Authorities	-£1,545,791	£2,356,011
	Education Institutions	£5,473,675	£10,855,773
	Local Authorities	-£276,577	£3,394,945
	Central Government	£728,981	£786,688
	Total	**£4,447,736**	**£17,835,941**

Source: Calculations based on Tables 2, 3 and 4

Year 2 onwards

From year 2 onwards the net benefits will be the costs of the previous duties less the recurring costs of the new duties, i.e. the cost reduction of switching from the previous to the new duties. These net benefits are set out in the table below.

Table 6

		Net Benefits Year 2 onwards	
		Low	High
New Specific Duties	**NHS Bodies**	£267,417	£592,501
	Other Authorities	-£855,729	£2,614,784
	Education Institutions	£13,825,654	£17,119,758
	Local Authorities	-£132,629	£3,502,907
	Central Government	£754,951	£806,166
	Totals	**£13,859,665**	**£24,636,115**

Source: Calculations based on Tables 3 and 4

Risks and sensitivities

Risks	Mitigation
Projected benefits might not be fully realised.	- Cost analysis includes all the available evidence and relevant information. - GEO will work closely with the EHRC to ensure duties are properly implemented and enforced.
Data published by public bodies breach confidentiality or is inaccurate.	- Comprehensive guidance from EHRC will help ensure public bodies publish data in a standardised manner which is accurate. - GEO is working with the voluntary sector to develop a toolkit to help voluntary sector/ citizens hold public bodies to account for improving equality.
Increased transparency could lead to more legal cases being brought against public sector organisations.	- The regulations will not change enforcement procedures. An organisation can only be challenged by the EHRC for non-compliance with the specific duties. - Increased transparency could lead to increased compliance, as non-compliance or a gap in data will be highlighted. - Government's public data principles will set some high level guidelines for public bodies on publication of the data.

Enforcement

The Equality and Human Rights Commission (EHRC) is the regulatory body with responsibility for enforcing the equality and human rights enactments in accordance with its statutory duty. The duties include reducing inequality, eliminating discrimination, strengthening good relations between people and promoting and protecting human rights. The EHRC is independent of Government and can choose when and which interventions to make in respect of assessing compliance with the equality duty. The Commission manages its own budget and its priorities as set out in its business plan[17]. Therefore, it has not been possible to calculate the exact figure of the change in enforcement costs of the EHRC at this moment in time. However, given the drive by the Government to get public data into the public domain, and to rely on citizens, rather than regulators, to judge the performance of public bodies, it can be assumed that the cost to the EHRC will be less compared to the cost of enforcing the previous duties on race, gender and disability.

Also, given the data will be in the public domain it will be easy for the Commission to review the information and check compliance, as opposed to request the data first and then review. Also given the fact that the transparency requirements are linked explicitly to the general duty to have due regard to the need to achieve the outcomes set out in the legislation means that the proposed specific duties will enable the Commission to issue compliance notices which have a more direct link to the performance of the duties general duty.

Monitoring and Evaluation

Annex 2, Post Implementation Review, includes information on monitoring and evaluation of the Equality Duty.

Summary

Option 2 was chosen as the measures will not only reduce burdens and bureaucracy, they will result in increased transparency and better equality outcomes. Our proposals for the new specific duties will result in a net benefit to the public sector of between £4m and £18m (mid-point estimate £11m) in year one, and a net benefit of between £14m and £25m (mid-point estimate £19m) from year two onwards compared to the cost of complying with the three separate duties. Over a ten year period the net benefit is expected to be in the region of around £110m to £205m (net present value terms) compared to the cost of the previous duties. The focus on delivery and achieving real outcomes will ensure that every taxpayer gets better value for money and public services that take account of their needs.

[17] http://www.equalityhumanrights.com/about-us/vision-and-mission/our-business-plan/

Annex 1

Comparison of assumptions used to calculate the annually recurring costs of the new and previous equality duties where different – *Table 7*

Assumption	***Previous Equality Duties***	***New Equality Duty***
Number of days spent by an officer with responsibility for drawing up equality objectives	Small Health Authorities: 1 Schools: 1 HE/FE institutions: 1 Other small public bodies: 1 Local Authorities: 2 Large Health Authorities: 2 Central Government: 2	Small Health Authorities: 1 Schools: 1 HE/FE institutions: 1 Other small public bodies: 1 Local Authorities: 4 Large Health Authorities: 4 Central Government: 4
Number of days spent by an administrative assistant in drawing up equality objectives	Small Health Authorities: 1.5 Schools: 1.5 HE/FE institutions: 1.5 Other small public bodies: 1.5 Local Authorities: 2 Large Health Authorities:2 Central Government: 2	Small Health Authorities: 1 Schools: 1 HE/FE institutions: 1 Other small public bodies: 1 Local Authorities: 2 Large Health Authorities: 2 Central Government: 2
Number of days spent by statistician/researcher in drawing up equality objectives	Small Health Authorities: 1.5 Schools: 1.5 HE/FE institutions: 1.5 Other small public bodies: 1.5 Local Authorities: 2 Large Health Authorities:2 Central Government: 2	Small Health Authorities: 1 Schools: 1 HE/FE institutions: 1 Other small public bodies: 1 Local Authorities: 2 Large Health Authorities: 2 Central Government: 2
Number of days spent by statistician/researcher to understand the impact of policy.	Small Health Authorities: 2 Schools: 2 HE/FE institutions: 2 Other small public bodies: 2 Local Authorities: 0.5-1 Large Health Authorities:0.5-1 Central Government: 1	Small Health Authorities: 1 Schools: 0.5 HE/FE institutions: 0.5 Other small public bodies: 1 Local Authorities: 1 Large Health Authorities:1 Central Government: 1
Potential instances of analysis of evidence each year	Small Health Authorities: 5 Schools: 3 HE/FE institutions: 3 Other small public bodies: 5 Local Authorities: 20 Large Health Authorities: 20 Central Government: 40	Small Health Authorities: 5-7 Schools: 3-5 HE/FE institutions: 3-5 Other small public bodies: 5-7 Local Authorities: 15-20 Large Health Authorities:15-20 Central Government: 35-40
Average (research) cost of reviewing equality objectives	£15,000 – over a 3 year period	£20,000 – over a 4 year period
Proportion of organisations incurring cost of reviewing equality objectives	Local Authorities: 25%-50% Large Health Authorities: 25%-50% Central Government: 25%-50%	Local Authorities: 100% Large Health Authorities: 100% Central Government: 100%
Proportion of organisations drawing up annual action plan	Large Health Authorities: 80%-100% Central Government: 80%-100%	Large Health Authorities: 100% Central Government: 100%
Impact of streamlining duties	Authorities would have to draw up and publish Equality Schemes, action plans and in depth impact assessment separately on the three specific duties. With variable requirements.	The new approach not only streamlines different requirements with different timescales into one duty, there is also no requirement for public authorities to publish lengthy equality schemes or action plans. The new duties require public bodies to deliver real, measurable transparent outcomes, rather than complete a list of tick box processes or complete lengthy documents.
Secretary of State Reports on disability	Listed Secretaries of State are required to publish a report every three years on the progress made to advance equality for disabled people in their department.	No requirement

Source:

- June 2009: Schneider- Ross: Assessing the cost & cost effectiveness of the specific race, disability & gender equality duties,

- June 2009: Equality Bill - Making it work : Policy proposals for specific duties,

- January 2010: Equality Bill – Making it work: Policy proposals for specific duties, Policy Statement,

- August 2010: Equality Act 2010: The public sector Equality Duty: Promoting equality through transparency. A consultation

- January 2011: The public sector Equality Duty: Promoting equality through transparency - Summary of responses to the consultation.

- Information in regard to cost/time of implementing/undertaking certain activities was also collated by GEO officials through direct engagement with public sector organisations including the Fire Service, Police, Government Departments and Local Authorities.

Annex 2

Post Implementation Review (PIR) Plan

Basis of the review:

The Government Equalities Office is committed to reviewing the Equality Act as a whole, and the Public Sector Equality Duty will be an integral part of that review. The Equality and Human Rights Commission also has an interest in reviewing the policy, given their regulatory role. A Framework approach to the evaluation of the Act has already been approved, with objectives and success criteria set out, and the Public Sector Equality Duty will have a small programme of research dedicated to understanding how it has worked, delivered through this Framework.

Review objective:

As part of the overall evaluation of the Equality Act, the precise objectives of the review of the Public Sector Equality Duty are still to be approved but will reflect those of the wider Equality Act of simpler law and strengthened legislation. At this stage it is envisaged any objective will also incorporate:

- To understand if, where and to what extent the Equality Duty is being implemented and the resulting outcomes (for both general and specific duties)

The review will seek to understand the resulting effect on equalities in the public sector, were this is demonstrable and directly attributable to the new duty, and also establish where lessons can be learnt from the implementation of the duty to enhance future application and better inform the development of future policy or legislation in this area.

Review approach and rationale:

The review approach is planned to take the form of a programme of research coordinated by GEO with input from EHRC, and this is being developed in the context of the wider Equality Act review. It will involve a variety of methods of evidence collection from public sector bodies themsleves as well as the voluntary and community sector, citizens and the gathering of stakeholder views. This is in the absence of large scale and systematic monitoring data.

Baseline:

Work has already been undertaken to coordinate a baseline of evidence for the Equality Act as a whole, and in the context of the Public Sector Equality Duty this includes:

- Evidence regarding the functioning of the previous duties (gender, race and disability) referenced in this impact assessment.
- Relevant evidence from the Schneider- Ross report on Assessing the cost & cost effectiveness of the specific race, disability & gender equality duties (June 2009) that can be compared against as a baseline through follow-up research on a single Equality Duty.

Also EHRC have started an exercise to draw together existing evidence on equality reporting in some specific public sector bodies from previous EHRC work.

Success criteria:

The precise success criteria for the Public Sector Equality Duty will be determined in the context of the Equality Act review. The extent to which equalities considerations are mainstreamed into the decision making of relevant public bodies will be a key concern. At this stage it is envisaged the success criteria will incorporate:

- An integrated Public Sector Equality Duty is simpler – bringing together race, disability and gender equality duties.
- Implementation of the Public Sector Equality Duty is effective.
- Public sector bodies are aware of and understand their responsibilities; have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.
- Public sector bodies respond to their equality obligations and where they do, can do so more efficiently
- Public sector bodies are transparent in demonstrating their compliance with the Equality Duty.
- Where it is necessary the Public Sector Equality Duty results in the improved access to and operation of justice.

Monitoring information arrangements:

As the regulator, the Equality and Human Rights Commission will collect some information that maybe possible to use for monitoring purposes but there is not currently a large scale and systematic monitoring data for this across the public sector – which mean that the primary research for this review will be required to collect the information necessary to monitor the Public Sector Equality Duty. Where possible, the contextual and outcome indicators may also be monitored through relevant existing surveys and collected in collaboration with various and relevant public bodies (especially where information could be publicly published in response to greater transparency).

Annex 3

Competition Assessment Impact Test

We do not believe there will be any impact on competition as a result of these regulations.

Greenhouse Gas Assessment Impact Test

We do not believe there will be an impact on greenhouse gas emissions as a result of these regulations.

Wider Environmental Issues Impact Test

We do not believe there will be any wider environmental issues as a result of these regulations.

Health and Well-being Impact Test

We do not believe there will be an impact on health and well-being as a result of these regulations.

Human Rights Impact Test

These proposals do not contravene individuals' human rights. However, there will be a positive impact on the observance of individuals' human rights, as the measure requires public bodies to publish information in relation to the performance of Section 149 of the Equality Act, which requires public bodies to consider the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations.

Justice Impact Test

We do not believe there will be an impact on Justice as a result of these regulations.

Rural Proofing Impact Test

We do not believe there will be an impact on rural proofing as a result of these regulations.

Sustainable Development Impact Test

We do not believe there will be an impact on sustainable development as a result of these regulations.