

## **Equality, Diversity and Inclusion**

### **Guidance for those preparing and reviewing written submissions**

#### **Introduction**

In October 2020, the CIOT and ATT established a Joint Equality, Diversity and Inclusion (EDI) Committee. The committee assists us in ensuring we have clear EDI values that can be demonstrated through our behaviours, actions and operations.

The purpose of this guidance is to help those in the UK tasked with writing consultation responses by setting out some practical points that should be considered to ensure we highlight any equality and wider impacts in our responses....”

The guidance also provides some background information about the public sector equality duty, protected characteristics, and the role of impact assessments.

Technical staff and volunteers are not expected to become experts in EDI issues, but should take proportionate steps to identify potential EDI issues and exercise their professional judgement when considering how much research to undertake.

#### **Key questions to be considered**

In reviewing the consultation or call for evidence, ask yourself the following questions:

1. Who will the subject-matter of the consultation or call for evidence, and specifically any changes proposed, affect?
2. Does this include people with protected characteristics? [see appendix one]
3. What could the impacts on such people be?
4. What could be done to eliminate or mitigate negative impacts?
5. Have the impacts been fully addressed by HMRC? [see appendix two]

Consider the extent to which the answers to those questions need setting out in the submission, and where more research might be appropriate. If you identify any issues that relate specifically to low-income, unrepresented taxpayers – contact [vtodd@litrg.org.uk](mailto:vtodd@litrg.org.uk) or the relevant LITRG technical officer.

#### **Further resources and support**

The public sector equality duty is explained in appendix three, and the obligation to consider equality impacts in appendix four. These appendices have been prepared internally to provide further background. Links to useful information sources are contained in appendix five.

Any questions around potential EDI issues may be referred to Nik Mehta [Nikhil.Mehta@Taxbar.com](mailto:Nikhil.Mehta@Taxbar.com) for consideration / discussion.

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**Protected characteristics**

The relevant protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

### HMRC impact assessments, and their approach to equality

Note – HMRC does NOT have a legal obligation to conduct an equality impact assessment [see appendix four].

#### Useful steps to take

1. Read the impact assessment if there is one – this will consider some of the wider impacts on individuals, families and businesses as well as any equality impacts (relating to protected characteristics):
  - a. Does it feel like a genuine attempt to identify impacts?
  - b. Do we agree with them?
  - c. Is there adequate evidence, either to support HMRC's views, or our skepticism?
  - d. Is it complete, or are there gaps (eg due to being produced too early)?
2. If there isn't an impact assessment or if the impact assessment simply produces a nil return such as no disproportionate impact is expected,
  - a. Ask why not.
  - b. Ask whether and how such impacts have been considered.

#### HMRC's processes

HMRC have a document that sets out their equality objectives and their strategic approach to achieving them. Their latest [objectives](#) cover the period 2020 to 2024 and include a customer facing plan and internal/staff facing plan which set out how they measure progress.

Each year, HMRC publish a report about how they comply with their public sector equality duty. The latest report is [here](#). Previous reports can be found on [GOV.UK](#).

HMRC often produce an impact assessment towards the end of the tax information and impact note (TIIN) for a particular policy. This is wider than just Section 149 public sector equality duties (see appendix three). It will usually cover exchequer impact, economic impact, individuals and households impact, equalities impact (the s.149 duty), impact on business and civil society organisations, operational impact and other impacts (for example environmental or justice impacts).

A list of TIINS can be found [here](#).

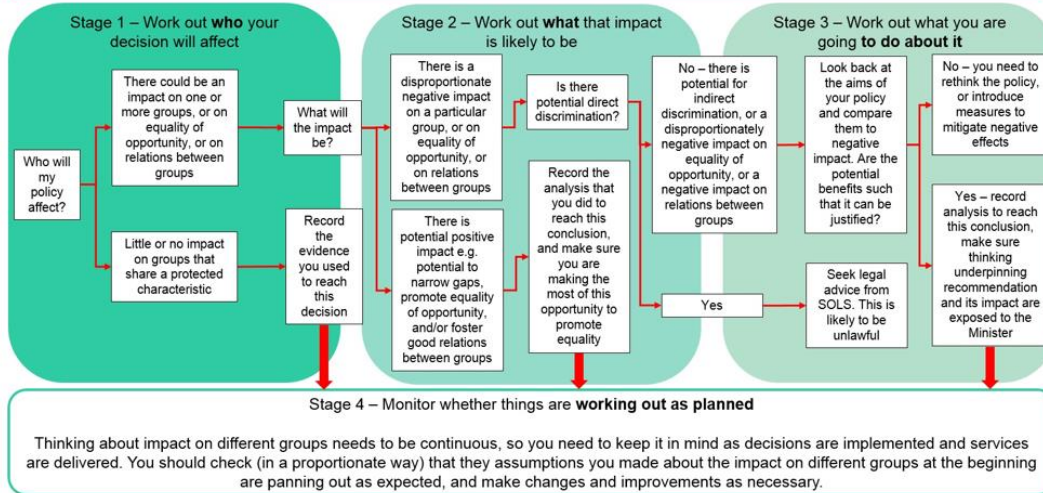
Many TIINs include a sentence or two on 'Equalities impacts'. These are often very cursory and do not set out what criteria have been adopted and how the level of impact has been judged. Some simply deny that there is any impact on those with protected characteristics.

HMRC's approach to applying their public sector equality duty can be seen in this chart:

## Aide memoire

# How do I assess the equality implications of my policy or service?

Assessing the equality implications of your policy or service is about understanding who your policy will affect, and what this affect will be; and then deciding what you need to do about it (if anything). This flowchart will lead you through the key questions you need to ask.



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### What is the Public Sector Equality Duty?

The Public Sector Equality Duty came into force in April 2011 via [Section 149 Equality Act 2010](#). Public authorities, including HMRC, must have regard to the objectives set out under Section 149 in the exercise of their functions. The duty also extends to a person who, even though not a public authority, exercises public functions. There are some slight differences in the devolved administrations. The three objectives are the need to:

- (1) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- (2) Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it. This involves having due regard, in particular, to the need to:
  - a. Remove or minimise disadvantages suffered by people who share a relevant protected characteristic that are connected to that characteristic;
  - b. Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it
  - c. Encourage people who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
- (3) Foster good relations between people who share a relevant protected characteristic and those who do not share it. This includes having regard, in particular, to the need to tackle prejudice and promote understanding.

The section also notes that:

- The steps involved in meeting the needs of disabled people that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities
- Compliance with the duties in Section 149 may involve treating some people more favourably than others, but that doesn't permit conduct that would be otherwise prohibited under other parts of the equality act

Public authorities must think about these objectives as part of the process of decision making. The weight given to the equality duty compared to other factors will depend on the nature of issue. There are several principles from caselaw that have been developed which give more guidance on what is essential for the equality duty to be fulfilled. These include:

- Knowledge – ensuring those who exercise functions are aware of their equality duties
- Timeliness – the duty must be complied with before and at the time that a policy is under consideration or decision is taken. A decision cannot be justified after it has been taken.
- Real consideration – consideration of the objectives in Section 149 must form an integral part of the decision-making process. It is not a box-ticking exercise and must be exercised in substance.
- Sufficient information – the decision maker must consider what information they have and what further information they may need in order to give proper consideration to the equality duty and ensure they understand the potential effects of their decisions on different people covered by the duty.
- No delegation – Public bodies are responsible for ensuring any third parties which exercise functions on their behalf are capable of complying with the equality duty and are required to comply with it and do so in practice.

- Review – must comply with the duty not only when a policy is developed and decided upon but also when it is implemented and reviewed. It is a continuing duty.

The duty does not:

- Impose a legal requirement to conduct equality impact assessments
- Does not mean public bodies have to examine equality issues where they are not relevant to the matter in hand
- It does not require public bodies to take disproportionate action on equality
- It does not require public bodies to treat everyone the same
- It does not require public bodies to remove or ignore differences between people

The [Equality and Human Rights Commission](#) is responsible for assessing compliance with and enforcing the equality duty. There are some useful case law examples of how public bodies have (and haven't) had 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation as well as advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not on the [EHRC website](#).

### Equality impact assessments

The equality duty does not impose a legal requirement to conduct an equality impact assessment. The duty requires only conscious thinking about the three objectives in Section 149. That will entail understanding the potential effects of the organization's activities on different people but **there is no prescribed process for doing this**. A simple record showing it was considered will suffice.

Saying that, the following best practice points should be borne in mind:

- that while the focus of the equality impact assessment process is assessing and recording the likely equality impact, this is not the end of the story. The consideration of mitigating measures and alternative policies should also be at the heart of the process.
- that the process of undertaking an equality impact assessment, should not be looked on as an end in itself. Assessing and monitoring compliance with equality law should be on-going and should be revisited at various stages. If the monitoring and analysis of results over a certain period show that there is a greater adverse impact than predicted (or, indeed, if opportunities arise which would allow for greater equality of opportunity to be promoted), the department should ensure that their plans are revised to achieve better outcomes for the relevant equality groups.
- that the commitment to equality demonstrated at the top level, is reflected in how services are managed and delivered at the front line.
- that all decision making around the equality impact assessment is documented to make sure the Equality Act duties are met. In *R (Kaur and Shah) v London Borough of Ealing*<sup>[1]</sup> it was held that that 'The process of assessments should be recorded ... records contribute to transparency. They serve to demonstrate that a genuine assessment has been carried out at a formative stage'.

<sup>[1]</sup> [2008] EWHC 2026 (Admin)

### Useful links / information

- [Public sector Equality Duty – quick start guide](#) by Government Equalities Office
- [Office of National Statistics](#) – The ONS has a wealth of statistics that include data about protected characteristic groups to help identify equality impacts. See for example this [LITRG budget representation](#) that used ONS data on total fertility rates to highlight potential equality impacts of the high income child benefit charge.
- [HMRC research reports](#) – These reports sometimes include data and figures that can be helpful in thinking about equality impacts.
- [HMCTS equal treatment bench book](#) – Although aimed at providing guidance to judges, the benchbook has information/statistics about protected characteristic groups as well as other potential areas that might be relevant to wider impacts on individuals and businesses such as capacity, literacy and numeracy, modern slavery, social exclusion and poverty.
- [Parliamentary questions](#) and [FOI responses](#) sometimes PQs contain helpful information. For example, it was via a PQ that LITRG established that the net pay pension inequality impacted mostly women.
- The government’s style guide for writing about ethnicity can be found [here](#).