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TUC Equality Duty Toolkit

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New public sector equality duty

- Came into force on 5 April 2011
- Replaces the race, disability and gender equality duties
- Applies to: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation



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S.149 Equality Act 2010

- A public authority must in carrying out its functions pay due regard to the need to:
 - eliminate unlawful discrimination and harassment
 - advance equality of opportunity
 - foster good relations.
- Private or voluntary sector providers must comply with duty when carrying out public functions.



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Specific duties

- Listed public authorities must publish info to show compliance with s.149 duty by 31 Jan 2012
 - If school then by 6 April 2012
 - Workforce info must be published if more than 150 employees
- Listed public authorities must prepare and publish equality objectives before 6 April 2012 and at least every 4 years after that



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Key principles

- The duty applies before policies are finalised and decisions are made
- The duty is ongoing
- The decision-maker must be aware of the requirements of the duty
- Responsibility for discharging the duty cannot be delegated or subcontracted
- Properly informed, rational view must be taken of likely equality impact



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Key principles

- The process of having due regard should be documented and transparent
- Degree of regard depends on relevance of a decision or policy to equality
- Where negative effects are identified, potential mitigation must be considered
- Once due regard has been had to equality, it is for public bodies to decide what to do



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What about Equality Impact Assessments?

- No legal requirement to do EIAs
- But if an organisation stops doing EIAs ask how it intends to:
 - gather sufficient evidence of the equality impact
 - show that it has given proper consideration at a formative stage
 - considered mitigating actions where negative impact likely



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The duty and cuts

- EHRC *Making Fair Financial Decisions* guidance
- Successful cases e.g. SBS, London Councils, Building Schools for the Future, Birmingham cuts to advice services and adult social care, Gloucestershire library cuts
- But some recent unsuccessful cases: Brent library, Lancashire adult social care, CPAG housing benefit challenge



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The duty and cuts

“even in straitened times the need for clear, well informed decision-making when assessing the impacts on less advantaged members of society is as great if not greater”

*R (Rahman) v Birmingham City Council
[2011] EHC 944 (Admin)*



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The duty and cuts

“in a case where large numbers of vulnerable people, many of whom fall within one or more of the protected groups, are affected, the due regard necessary is very high”

R (Hajrula and Hamza) v London Councils [2011] EWHC 861 (Admin)



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Implementing new duty checklist

- Ask if equality schemes will continue.
- If not, how will equality objectives be prepared and published?
- How will stakeholder engagement occur?
- How will information gathering/monitoring take place?
- What guidance/training is being given to decision-makers on the new duty?



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Checklist for decision-making

- Ask at early stage whether public body accepts s.149 is triggered
- Check if formal EIA is going to be undertaken
- If not, ask how due regard will be had to equality
- If it is, ask how views of those affected will be taken into account and if EHRC guidance will be followed



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Checklist for decision-making

- Encourage employees and service users from protected groups to engage early on and on ongoing basis
- Ask to see EIA or other information/analysis
- Raise awareness of any negative impact identified
- Consider doing own EIA (see TUC's 'Women and Cuts' toolkit)



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Checklist for decision-making

- Keep equality officers informed of any issue/correspondence
- Check whether decision-makers e.g. councillors/board members are fully informed
- If failing to comply seek further advice early on from legal officers/lawyers



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Lessons learned by Southall Black Sisters

- A very important tool but not enough on its own
- You have to campaign and win the political argument
- Be vigilant and be organised
- Gather evidence and stay one step ahead all the way
- Demonstrate the importance of what's at stake

