

**CHRISTIAN CONCERN FOR OUR NATION
& THE CHRISTIAN LEGAL CENTRE
RESPONSE TO THE GOVERNMENT
EQUALITIES OFFICE CONSULTATION ON
THE EQUALITY BILL: MAKING IT WORK:
POLICY PROPOSALS FOR SPECIFIC DUTIES**

SEPTEMBER 2009



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The Consultation can be found here: <http://www.equalities.gov.uk/default.aspx?page=1383>

Duration of this consultation

The closing date for receipt of comments is **30 September 2009**. Any views received after this date may not be considered or reflected in our analysis.

How to respond

When responding to this document please use the proforma at Annex A. An electronic version is available to download from the Government Equalities Office website at: www.equalities.gov.uk.

Responses should be sent to:

By email: specificduties@geo.gsi.gov.uk

By post: Equality Duty Specific Duties Responses Government Equalities Office Zone J10, 9th Floor, Eland House Bressenden Place London SW1E 5DU

Please ensure that you response arrives by **30 September 2009**.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation please make clear who the organisation represents and, where applicable, how the views of members were assembled.

Queries about this document

Any queries about the subject matter of this document should be made to Harshbir Sangha by:

Telephone: 020 7944 0627 Email: Harshbir.sangha@geo.gsi.gov.uk

Any requests for accessible formats that may be required. Please send your request to:

Equality Duty Specific Duties Responses – accessible formats Government Equalities Office Zone J10, 9th Floor, Eland House Bressenden Place London SW1E 5DU

Telephone: 020 7944 0627 Email: specificduties@geo.gsi.gov.uk

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About Us

Christian Concern for Our Nation (CCFON) is a policy and legal resource centre that identifies changes in policy and law that may affect the Judeo-Christian heritage of this nation. The team of lawyers and advisers at CCFON conduct research into, and campaign on, legislation and policy changes that may affect Christian Freedoms or the moral values of the UK. CCFON reaches a mailing list of 25,000 supporters. <http://www.ccfon.org>

CCFON is linked to a sister and separate organisation, the Christian Legal Centre, which takes up cases affecting Christian freedoms. <http://www.christianlegalcentre.com>

Executive Summary

1. The Equality Bill proposes to extend the Public Sector Equality Duty (PSED) from the existing race, disability and gender duties to cover a new single Equality duty which will further extend to the equality strands of age, pregnancy and maternity, sexual orientation, religion or belief, and gender reassignment. We object in principle to the PSED extending to sexual orientation, religion or belief and gender reassignment.¹ The general duty will require public bodies such as (local authorities, schools and health bodies) to have due regard to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Bill, advance equality of opportunity, foster good relations, tackle prejudice and promote understanding.²
2. This consultation asks questions on the specific duties such selected public bodies with a general duty will have to undertake as a means of a better performance and to meet the requirements of the general duties. These specific duties will be set out in regulations after the Royal Assent of the Equality Bill. It also asks questions about equality related conditions for awarding contracts by public bodies.
3. The consultation fails to consider the negative impact of the PSED as a result of the conflicts between the different new equality strands, including the interaction between sexual orientation and faith strands and the implications for faith schools.³ There has been no specific survey on the views of schools with questions concentrating on these conflicting issues. In our opinion, educational institutions including schools should not be included in the PSED.⁴ There is no research support for the extension of the new PSED strands to small organisations under 150 employees and the new PSED should be restricted to a single PSED list of large public bodies in primary legislation.⁵ Small religious organisations should not be doubly caught when they receive public body funding as having PSED themselves when exercising a public function and by proposals here for equality related contractual award specification and criteria.
4. It is highly alarming that the consultation refers to the main purpose of the PSED is to bring about a “culture change”⁶ so that “promoting equality” becomes part of public bodies core business. There is a significant difference between on the one hand, respecting diversity and equality of opportunity and on the other hand, the promotion of equality. Promoting Equality is not a phrase used in the Bill itself under the PSED. It should be removed in any further publications or guides, as a main

¹ All of the equality strands of sexual orientation, religion or belief, and gender reassignment should be removed due to their contentious nature. but all need to be removed from the PSED otherwise there would be a hierarchy of rights .

² See clause 145 of the Equality Bill dated the 8.07.09

http://www.publications.parliament.uk/pa/cm200809/cmbills/131/09131_85-91.html#950

³ See comment at the top of page 40 in the research report by Schneider-Ross

<http://sta.geo.useconnect.co.uk/staimm6geo/pdf/Assessing%20the%20costs%20and%20cost%20effectiveness%20of%20the%20specific%20duties.pdf>

⁴ See table on question to Heads of response/reaction to equality duties on page 13

<http://sta.geo.useconnect.co.uk/staimm6geo/pdf/Assessing%20the%20costs%20and%20cost%20effectiveness%20of%20the%20specific%20duties.pdf>

⁵ Please see our answer to question 2 for further details.

⁶ See point 3.3 of this consultation:

<http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf>

purpose of the PSED.⁷ This clearly shows how the duty to “tackle prejudice” should be removed from this PSED in the actual Bill due to its closeness to the concept of “promoting equality”⁸. Christian individuals⁹, all schools including faith schools and religious organisations should not be required to promote other religions or other sexual orientations contrary to their core religious beliefs or of the parents of children who attend such schools.

5. In the award of funding by public bodies, a fair society means equal access for everyone to public funding and equality of opportunity to do so. It is important that there is recognition of the need to ensure that the PSED does not operate in a way to bar freedom of conscience and diversity of service providers.
6. We agree that there should not be a prescriptive one size fits all approach and that Equality schemes for existing strands which have been seen as creating a tick box mentality should be abandoned and a flexible approach taken. However, we are concerned that the equality objectives being proposed to replace such schemes are just as prescriptive. The equality objectives are based upon suggested questions which show a preference for an “all inclusive” approach focusing only on service users and may result¹⁰ in not allowing public bodies the freedom to develop their own equality objectives. In addition, the consultation proposes in the long term, a “one way only” national equality standard or equivalent¹¹ being imposed in the pre-selection requirements for funding of outside organisations in service delivery from local authority contracts. A one size fits all approach does not allow for access to diverse suppliers. It will lead to a discriminatory system and an uneven playing field whereby only secular organisations would receive funding. Instead it should be based on demonstrating a respect for the diversity of staff¹² and diversity of service providers¹³.
7. Religious organisations are already having difficulty obtaining local authority funding due to a tendency for “all inclusive” equality criteria being imposed. Charities should not have to consider losing their identity or faith by removing references to being a “church” or being “Christian” in order to obtain local authority grants. Local authorities should ensure that there is access to a diversity of suppliers and not create barriers to funding which the proposed ideas of a one way only national equality standard would do. The idea of a supplier having an “equality award badge”¹⁴ would mean the imposition of selective discriminatory contract (pre-selection and awarding) criteria contrary to the principles of free competition and value for money.

⁷ This is not what is stated to be the purpose in the proposed clause 145 of the Equality Bill dated the 8.07.09.

⁸ A proactive “promoting” of equality is different from not discriminating or showing respect for diversity.

⁹ Staff or volunteers.

¹⁰ The suggested questions should be deleted even in guidance they could be highly influential.

¹¹ See point 5.44 of this consultation as something looked at as one way in the long term as a prequalification supplier equality requirement. This makes the point of there not being a compulsion for contract competing but suggests equivalent evidence of compliance with any equality requirements. This could easily lead to precontract all inclusive equality criteria.

¹² So that religious staff who work for service providers do not have to act in ways which conflict with core religious beliefs.

¹³ To ensure an even playing field so that religious organisations have fair access to act as suppliers in local authority contracts without imposing criteria which would conflict with core religious beliefs.

¹⁴ See Easy read version of this consultation.

8. All inclusive equality objectives, principles or funding criteria are at heart discriminatory. In a democratic society there should be a market place of ideas which allows for religious pluralism and cultural diversity. Religious organisations with traditional religious beliefs would have difficulty in signing up for an all inclusive funding criteria or pre-selection equality requirements which promote other religions or other sexual ethics.¹⁵ This would lead to the inevitable marginalisation and de-selection of Christian service providers in local authority contracts. National equality standards being imposed on obtaining local authority funding appears to be contrary to the EU Directives on public procurement¹⁶. Here there are two award criteria only, namely, “the lowest price” or “the most economically advantageous tender” (MEAT).¹⁷ The UK policy is to use MEAT.¹⁸
9. The public procurement process only relates to contracts above a certain threshold and does not cover very small-scale purchases, which will not be affected by specific duties on procurement activities. However, once policies and practices are in place in public bodies, it is highly likely that a similar emphasis upon equality objectives will be applied to small-scale purchases.
10. Religious organisations contribution and service to the support of local communities should not be underestimated and the proposed changes if not revised will negatively impact upon the valuable contribution by faith communities.¹⁹

¹⁵ Under existing law and the Equality Bill, religious organisations may not discriminate on the grounds of sexual orientation in local authority contracts but there are some exceptions on the grounds of religion. The problem being that if an all inclusive criteria is adopted then local authorities may prefer organisations who can tick all the boxes and do not use exceptions, this will lead to a de-selection of religious organisations.

This was explained in answer to question 63 by Vera Baird Solicitor General :

“...Some public authorities may choose to use multiple suppliers to meet the different requirements of different sectors of the community. In those situations, religious organisations may make use of certain limited religious exceptions. The point remains, however, that the public authority (on whom the Duty falls) will need to ensure that it does not discriminate in carrying out its functions and will need to have due regard to the need to advance equality of opportunity for all the protected groups; so if it uses a religious organisation to provide services as a means of performing its functions, that organisation must either do so even-handedly or, if the organisation chooses to make use of exceptions, the public authority must ensure that it provides equivalent services to people of other religions and none.”

http://www.parliament.uk/documents/upload/Baird_Equality190609.pdf

¹⁶ Even if stated to be supplier pre-qualification requirements as opposed to contractual ones.

¹⁷ Article 53 of the EU Directive allows for bids to be evaluated on the basis of either the most economically advantageous tender (MEAT) or the lowest price. The UK’s policy is to use MEAT.

¹⁸ See Vera Baird Solicitor Generals’ comments on the EU Directive in answer to question 65 which demonstrates the government’s view on the EU Directives which stresses the equality side-even under social and environmental factors in the performance of contracts-Are “social” factors equality issues ? :

http://www.parliament.uk/documents/upload/Baird_Equality190609.pdf

¹⁹ Although this is an English consultation, a study entitled Faith in Wales indicates that the activities organised by faith communities to serve their local communities are delivered by over 42,000 volunteers and the value of services is conservatively estimated at £102M.

“Involved with government

Faith communities are largely self-financing, and only 27% indicated that they had received any funding from public sources. However, many are involved in working co-operatively with government. Overall, an estimated 500 faith communities participate in Government regeneration activities or are strongly involved in their local Community Strategy, or both.”

http://www.gweini.org.uk/download/English%2003_03%20comp%20smaller.pdf

ANNEX A

Response Proforma

RESPONDENT NAME: Andrea Minichiello Williams, Barrister Director of Christian Concern for our Nation and the Christian Legal Centre 020 7467 5427 07712 591164 www.ccfon.org & www.christianlegalcentre.com	ADDRESS : P.O. Box 655, Haywards Heath, West Sussex RH16 9AT
ORGANISATION: Christian Concern for our Nation Ltd (CCFON) & Christian Legal Centre Ltd (CLC).	DATE: September 2009 EMAIL: info@ccfon.org
CONSULTATION QUESTIONS	RESPONSE
Q1: Do you think the criteria set out above are the right ones? Please give your reasons.	Yes, all criteria ²⁰ should be fully included plus 2 other criteria in answer to question 2. Matching only some of the above criteria could include small organisations where this specific Public Sector Equality duty requirement could be extremely burdensome.

²⁰ The preamble to this question on pages 25 and 26 of the consultation explains that the given criteria is as follows:

“Of those organisations listed as subject to the general Equality Duty, some will also be subject to the specific duties outlined in this consultation document. Of course, we will need to have a list of those bodies subject to the general Equality Duty before we can select which of them should be subject to the specific duties. But we propose to be guided by the following questions:

- Is the organisation a significant employer, in terms of either size or impact?
- Could the organisation, for example in the decisions it takes or the services it delivers, have a significant effect on the lives of people from the protected groups?
- Does the organisation have significant direct dealings with service users?
- Is the organisation of a sufficient size to operate the specific duties without them being unduly burdensome? ”.

Q2: Are there any other criteria we should use? If so, what do you suggest?

Additional Other Criteria

Yes, in addition to ensure only large public body employers have these specific duties and it is not overly burdensome for small organisations, 2 other criteria need to be added:

1. Is the organisation a sizable (over 150 employees) local or national governmental provider of services?
2. Is the body a large public body employer and not a private service or organisation?

We have answered this consultation based on there being an extended PSED in the Equality Act. However, we are totally opposed to the extension of the PSED for gender reassignment, sexual orientation and religion or belief. All these new strands need to be removed to avoid a hierarchy of rights.

In addition, there do not appear to be any research findings, which would merit an extension of the PSED to the new equality strands, particularly for small organisations. The research undertaken by Schneider-Ross²¹ presented positive results on the effectiveness of the existing PSED's with only a 5% response rate. The majority of the responses came from large organisations with over 150 employees; only 2% of responses came from organisations with less than 150 employees.²² The burden for small organisations has not been researched. The PSED should apply only to large organisations of over 150 employees listed as a single list²³ in primary legislation who have the resources to manage such a duty.

²¹ See page 6 and 7- Survey reached over 3,500 organisations and 174 responses received.

<http://sta.geo.useconnect.co.uk/staimm6geo/pdf/Assessing%20the%20costs%20and%20cost%20effectiveness%20of%20the%20specific%20duties.pdf>

²² See page 47 -48 table on number of employees, a total of 122 excluding the 52 schools, where no figures of staff numbers have been given.

²³ Excluding the unnamed supplementary list of those organisations not public bodies but exercising a public function and incorporating any organisation over 150 employees from the race PSED list. There could be very small organisations unfairly brought under this duty that are seen as exercising a public function.

	<p style="text-align: center;">Extra points on the wording of the PSED</p> <p>Remove “tackle prejudice” from the PSED</p> <p>Under the Public Sector Duty public authorities are particularly directed to have due regard to the need to tackle prejudice and promote understanding.²⁴ A particular example of concern is in relation to Gay Pride events, which may be construed as a way to “tackle prejudice”.</p> <p>The Catholic Bishop’s memorandum on the Equality Bill points out that exempting Catholic staff from a “Gay Pride” recruitment event could be seen as failing to tackle prejudice but obliging them to attend could be seen as failing to tackle prejudice against religious belief.²⁵</p> <p>“Tackle prejudice” or even at a stretch “promote understanding” could also be used in an educational setting to put forward, for example, lessons on Lesbian Gay Bisexual Transgender History Month, which again would cause conflicts between sexual orientation and religious belief and have the reverse effect.</p> <p>The Education circular on sex and relationship education in schools has made it clear that the promotion of sexual orientation is inappropriate teaching.²⁶</p> <p>Christian parents should not be placed in a position where they have to resort to removing their children from school as result of teaching contrary to core religious beliefs under the guise of a “tackle prejudice” PSED. Governors of schools will be subject to this duty.²⁷</p>
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²⁴ See current clause 145(4) of the bill dated the 8.07.09
<http://www.publications.parliament.uk/pa/cm200809/cmbills/131/09131.85-91.html#j950>

²⁵ See <http://www.publications.parliament.uk/pa/cm200809/cmpublic/equality/memos/ucm1402.htm>

²⁶ See point 9 Sex and Relationship Education guidance;
<http://publications.teachernet.gov.uk/eOrderingDownload/DfES-0116-2000%20SRE.pdf>

²⁷ For example, Christian and Muslim parents are facing potential court action for removing their primary-school aged children from a week of lessons designed to celebrate “Lesbian Gay Bisexual Transgender History Month.”²⁷ One story covered in a lesson was King and King, a fairytale about a prince who turns down three princesses before falling in love with one of their brothers. Such actions may spoil a pupil’s attendance record, whilst parents suffer the loss of earnings or annual leave.
 See <http://www.dailymail.co.uk/news/article-1160067/Parents-face-court-action-removing-children-gay-history-lessons.html>

	<p>Clarify Exceptions in the PSED</p> <p>The Equality Bill provides an exception for harassment and for the curriculum in other parts of the bill and it is assumed this also applies to the PSED. Harassment has implications for freedom of speech and it is important there are exceptions for gender reassignment, sexual orientation and religion or belief. It would be helpful for the avoidance of doubt if this Part of the Equality bill on the PSED expressly clarified these points on the face of the bill. For example, the Education Part of the Equality bill has a clause, which explicitly excludes the curriculum on the face of the bill. This part of the Equality Bill should do likewise.</p>
<p>Q3: Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations?</p>	<p>We agree that public bodies should develop and publicly set out their equality objectives²⁸ but with mechanisms for local accountability on how valuable public money is spent. Those Equality objectives need to be based on the following principles:</p> <ul style="list-style-type: none"> • Acting in a fair, balanced, proportionate and reasonable way to aim to avoid and resolve conflicts when equality strands conflict. • Demonstrating a respect for the diversity of staff and diversity of service providers. <p>The development of such principles should be in guidance only not secondary legislation to avoid too prescriptive an approach.</p> <p>We do not agree with the current equality objectives, which would arise because of the suggested questions proposed in point 5.10²⁹ of this consultation are the correct ones. The</p>

²⁸ See point 5.9 of this consultation.

²⁹ Point 5.10 of this consultation, the questions on equality objectives will lead to a preference for an all inclusive service user criteria.

“5.10 In developing its equality objectives the public body may find it helpful to ask questions such as:

- Is there evidence of any unlawful discrimination, harassment or victimisation?
 - Does the evidence suggest that uptake of some services by some groups is lower than by others?
 - Could some services or aspects of service delivery impact differently on certain groups?
 - Do service users from certain groups experience different outcomes?
 - Do users from the protected groups have significantly different needs because of barriers they come across within some services?
 - Are some users from a particular group not using the service because, for example, of an unsafe or unwelcoming environment, or are some users unable to participate fully in public life, or indeed other activities?
 - Is there any evidence of poor relations, or tensions between different groups?
- Is there any evidence of prejudice targeted towards a particular group, or a need for greater understanding between groups, that the public body could address?”.

	<p>majority of the questions asked will lead to all inclusive equality objectives, which only consider service users, which will be prejudicial to religious organisations as service providers. It creates a one-size fits all view of Equality rather than a multi-faceted one, which includes both Equality and diversity looking at service providers.</p> <p>The need to consider the issues of equality and diversity as far as staff are concerned in this consultation only appears to stretch as far as the gender pay gap. It is important that the religious beliefs of staff that are providing a service in either a religious or non-religious organisation or a religious organisation being service providers themselves are fully respected and accommodated.</p> <p>The Public Sector Equality Duty refers to the need to have due regard to fostering good relations³⁰ which illustrates the need to consider not just equality but diversity as well.</p>
<p>Q4: Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives?</p>	<p>We disagree with the equality objectives here because the questions suggested to achieve them would result in a preference for a narrow all-inclusive criteria largely based on considering service users only. It is more important that Public bodies properly assess and consider what the equality objectives are and what the negative impact may be, before they take any steps.</p> <p>There should be a non-prescriptive approach and organisations should be left to develop their own equality objectives without predetermined suggested questions. There is a need to take account of any negative impact of equality objectives for religious staff and service providers.</p>
<p>Q5: Do you agree that public bodies should be required to implement the steps they have set out for themselves within the business cycle period unless it would be unreasonable or impractical to do so?</p>	<p>No, because we disagree with the preference for an all inclusive equality objectives being proposed here because of the suggested questions. The steps taken may result in further barriers to public body funding for religious organisations and indirect discrimination against them.</p> <p>However, if the equality objectives were appropriate, involved non-contentious equality</p>

³⁰ See Clause 145(1)(c) of the Equality Bill dated 8:07:09 <http://www.publications.parliament.uk/pa/cm200809/cmbills/131/09131.85-91.html#j950>

	<p>strands and did not conflict with core religious beliefs, we believe that public bodies should try to implement them within a 3-year cycle. Nevertheless, we do not believe that there should be a prescriptive mandatory requirement to do so in secondary legislation. It is more reasonable to ask to review such steps every 3 years and to see if equality outcomes have been achieved or not and address any negative impacts for religious organisations.</p>
<p>Q6: Do you agree that public bodies should be required to review their objectives every three years? If not, what time-period do you suggest instead?</p>	<p>No, because we disagree with the preference for all inclusive equality objectives being proposed here.</p> <p>If the equality principles and subsequent equality objectives were appropriate and revised then a three-year period would appear to be reasonable in order to review.</p>
<p>Q7: Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State?</p>	<p>No, because local public bodies rather than central government are in the best position to decide on equality objectives (provided the all-inclusive criteria are avoided). This is because they have more local knowledge of the population they serve.</p> <p>This is supported by the consultation itself which states³¹ that:</p> <p><i>“Overall, the research suggests that there is a need to take a less prescriptive approach and allow organisations more autonomy in how they deliver equality of opportunity for the population which they serve and employ. We have taken this into account in the way we have formulated our proposals for the new specific duties.”</i></p>
<p>Q8: Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?</p>	<p>Yes, we agree that this is the case and this should be the case for larger public organisations.</p> <p>The consultation suggests that in practice this may operate differently³² where it states that:</p> <p><i>“Large public organisations – for example government departments, local authorities and police authorities –</i></p>

³¹ See point 4.6. of this consultation.

³² See point 5.14 of this consultation.

	<p><i>may well set out objectives for each characteristic as a matter of good practice: their resources and scope of activity may suggest that that would be appropriate. However, a primary school, for example, may wish to focus in the first instance on a particular characteristic or characteristics as determined by the evidence. Statutory guidance from the EHRC will help public bodies decide what is appropriate for them.”</i></p> <p>We agree that a flexible non-prescriptive approach should be taken.</p> <p>However, there should be some form of accountability to stop local authorities for “political” reasons placing too much emphasis upon one equality strand.³³</p> <p>We are also concerned that many council taxpayers would consider that the promotion of a particular sexual orientation is a private matter and scarce council resources should not be used to promote “Gay pride” events.</p> <p>We would oppose the sponsorship of such events by public bodies, which does not foster good relations but simply creates conflicts between the equality strands. The best solution to avoid and resolve conflicts is not to have such events in the first place. However, if they do go ahead religious staff should not risk detriment as a result of non attendance because of a conflict with their conscience. For example, a fireman has received damages because of a “gay” pride March incident, which he felt in conscience unable to attend.³⁴</p> <p>There are indications that there is an intention to use this PSED to ask local councils to fund “gay” bars.³⁵ The local council has been reported as stating that:</p>
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³³ For example, making policies which gold plate sexual orientation matters to the detriment of religious beliefs and behaving in ways, which take equality issues to extremes. Anti-religious policies should be prevented. In the case of a Public Sector Equality Duty, this could arise where a local authority was seen to withdraw funding, did not award contracts to religious organisations or acted in a discriminatory way towards religious beliefs.

³⁴ See press reports:
<http://www.telegraph.co.uk/news/uknews/4304735/Christian-fireman-given-damages-over-gay-pride-march-row.html>
<http://www.telegraph.co.uk/news/uknews/4305644/Christian-fireman-wins-apology-over-gay-stance.html>

³⁵ See <http://www.dailymail.co.uk/news/article-1181301/Canterbury-city-simply-isnt-gay-according-equality-campaigners.html>
<http://www.telegraph.co.uk/news/uknews/5320388/Canterbury-not-gay-enough.html>
<http://www.christian.org.uk/news/just-wait-until-weve-got-the-equality-bill/>

	<p><i>“No council in the land would set up a bar-“gay”³⁶ or otherwise. It would be seen as a colossal waste of taxpayers’ money.”</i></p> <p>There is a real danger that local councils are bullied into wasting time or taxpayers’ money or risk false allegations of “homophobia” because of this duty. Schools should also not be asked to promote inappropriate events as a result of this duty.³⁷ The EHRC guidance should clearly ensure that this does not happen.</p>
<p>Q9: Do you agree that public bodies should be required to report annually on progress against their equality objectives, but that the means by which they do so should not be prescribed in legislation?</p>	<p>We agree that public bodies could report on the progress on equality objectives provided these are appropriate ones. However, a three-year rather than annual report seems more appropriate in line with the suggested time to review such objectives. We agree that this should not be prescribed in legislation.</p>
<p>Q10: Do you agree that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.</p>	<p>Yes, we have no objection to the non-controversial existing PSED strands such as gender, race and disability.</p>
<p>Q11: Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?</p>	<p>Yes.</p>
<p>Q12: Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?</p>	<p>No.</p>

³⁶ Our internal quotation marks

³⁷ Faith schools or other schools may have no difficulty in trying to prevent all forms of school bullying including bullying of homosexuals. However, the promotion of a LGBT history week or showing school plays with Romeo and Romeo rather than Romeo and Juliet or textbooks contrary to the strongly held religious beliefs of the school and/or religious parents which is inappropriate teaching which promotes a particular sexual orientation is another matter entirely.

<p>Q13: Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?</p>	<p>Yes, because of the intrusion of privacy in the collection of data in the more controversial strands of gender reassignment, sexual orientation and religion or belief.</p> <p>The consultation states³⁸ that:</p> <p><i>“Some organisations may not yet have achieved a culture in which employees are ready to be asked to provide personal information about matters such as their sexual orientation or religion or belief, although it is encouraging that it is becoming more common for public sector employees to agree to their employers seeking this information.”</i></p>
<p>Q14: Do you agree with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence of the impact on equality into account in the design of their key policy and service delivery initiatives and the difference this has made?</p>	<p>Yes, but this is likely to lead to an inclusive equality tick box approach which emphasises positive outcomes and does not consider the conflicts between equality strands and the negative aspects. All Key policies on service delivery should consider the effect upon religious staff and the diversity of religious service providers, as well avoiding indirect religious discrimination.</p> <p>Key policies should not extend to ensuring that the organisation and staff who receive procurement funding have to sign up for an all inclusive equality agenda or undergo equality and diversity training. The one-way only view of equality should not be imposed upon other organisations who are not public bodies but who seek public funding in a way that is contrary to their strongly held religious beliefs. Such an approach is prejudicial to religious service providers and religious staff of religious or non-religious service providers.</p>

³⁸ See 5.20 of this consultation:
<http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf>

Q15: Do you agree that public bodies should have a specific duty - when setting their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how it carries out its functions - or where appropriate their representatives; and in particular take reasonable steps to consult and involve the protected groups for whom the duty is designed to deliver benefits?

Yes, it is very important to consult but it is important to develop an atmosphere in which trust can develop. This is why it is so important to have guidance, which encourages openness without the threat that views expressed when consulting employees may lead to them being sacked or suffering from disciplinary proceedings.

Anonymous surveys with an absolute confidentiality guarantee of not using any response to any detriment or any disciplinary or sacking of staff is required. Breach of this confidence by an employer should be legally prescribed to amount to an automatic unfair dismissal finding against an employer and substantial fine.

Unfortunately, this is the state of current employment law particularly by public body employers such as local authorities and the NHS because of unreasonable equality policies and practices, which is having a chilling impact on free speech in the workplace for religious employees. Equality Bill guidance should seek to ensure that there is not a hierarchy of rights developing where sexual orientation and religious rights conflict.

There are numerous employment cases on the Christian legal centre website showing intolerance of Christian beliefs in the name of Equality laws and policies where the simple expression of a religious belief at work can lead to someone being sacked. For example, a local authority homeless prevention officer has recently been sacked for suggesting a terminally ill client should put her faith in God. A NHS nurse has had to be transferred to administration duties if she wants to continue to wear a one inch cross she has worn for nearly 30 years as a nurse.³⁹

This is not the type of atmosphere at work, which is likely to facilitate open consultations.

Similar confidentiality measures should ensure that service users are not penalised in any way for views expressed. Again, anonymous non-traceable surveys are best.

³⁹ See Christian Legal Centre website :
<http://www.christianlegalcentre.com/index.php?tid=0>
<http://www.christianlegalcentre.com/view.php?id=854>
<http://www.christianlegalcentre.com/view.php?id=783>

Q16: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?

No, we strongly object to imposing specific equality duties on contracting authorities in relation to their public procurement activities. They are not the best way to help deliver equality objectives. Such an approach should not be pursued at this time.⁴⁰

There is a genuine concern that Christian groups are already facing discrimination and difficulty in obtaining local authority funding due to all-inclusive criteria. The proposal to tie in procurement contracts to such equality duties will only serve to make this situation much worse.

Specific equality duties may be irrelevant to particular contracts and so imposing specific duties on contracting authorities would be inappropriate. Equality objectives may only be relevant to a very small percentage of contracts in relation to single equality strands only; a case-by-case approach needs to be taken. Criteria has to be linked to the subject matter of the public contract in question, in accordance with EU Directives on public procurement. There is already a great over-emphasis upon the importance of equality which needs to be turned down not up.

The suggested questions asked in this consultation to help develop equality objectives suggest a preference for an all-inclusive tick box approach to public procurement, ticking all the Equality strands. The specific equality duties are likely to arise from and be connected to such equality objectives.

There is a possibility that Public contracting authorities may well just add to existing Public sector duties the other equality strands to contractual conditions and ignore the conflicts between the new Equality strands or the need to only consider such matters if strictly linked to the subject matter of the contract itself.

⁴⁰ The preamble to these questions on page 36 states as follows:

We propose a set of specific duties which will help public bodies to use public procurement to contribute to delivery of their equality objectives under the Equality Duty.

These consist of requirements on contracting authorities:

a) when setting out their equality objectives and the steps they intend to take to achieve them, to include how they will ensure that equality factors are considered as part of their public procurement activities to help contribute to the delivery of those objectives;

b) to consider the use of equality-related award criteria where they relate to the subject matter of the contract and are proportionate;

c) to consider incorporating equality-related contract conditions where they relate to the performance of the contract and are proportionate.

<http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf>

Q17: Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities?

No, we strongly object to contracting authorities being required to state how they will ensure equality factors are considered as part of their procurement activities.

We assume that by equality factors this may mean the specifications in contracts themselves. Although the question does not make this point clear.⁴¹

The only relevant consideration to specifications is to ensure they are linked to the actual subject matter of the contract itself and not impose irrelevant equality specifications, which inhibit free and fair competition.

The Department for Communities and Local Government has been reported as dropping plans for a new Charter of Excellence for faith groups seeking public funding. This was akin to the idea of the faithworks charter, which would prevent funding if faith groups were to evangelise. Religious organisations running groups such as youth clubs do so as an outworking of their faith. To argue that they cannot pray when doing so asks them to provide services whilst leaving their faith behind. The motivation for the provision of such services is an outworking of our faith to show the love of God to others by providing caring services, often on a voluntary basis. To leave our faith behind is akin to asking us to leave our motivation behind.

Imposing such requirements on religious organisations is indirectly discriminatory and based on an aggressive secular agenda. For example, a toddlers' group was warned it would lose its funding unless children stop singing songs about Jesus and it removed the word "Christian" from its title.⁴²

⁴¹ See 5.37 which suggest that this relates to specifications-“Equality factors should be considered at the early stages of the procurement process, particularly when identifying the requirements and when setting the contract specification”.

⁴² See <http://www.telegraph.co.uk/news/uknews/1536676/Sing-about-Jesus-and-youll-lose-your-grant.html>

Q18: Do you agree that contracting authorities should be required to consider using equality-related award criteria where they relate to the subject matter of the contract and are proportionate?

No, we strongly object to equality-related award criteria being adopted in any circumstances.

The consultation even suggests that :

“This could mean for example asking potential suppliers how they would meet the particular needs of diverse sections of the community.”⁴³

The problem of an equality-related award criteria is that contracting authorities may easily forget that this only relates to the subject matter of the contract and are proportionate. This could very easily end up with contracting authorities applying such an idea on a wholesale equality fully inclusive basis, particularly if following all inclusive equality objectives, as proposed in question 16 as a way to deliver equality objectives.

It is questionable whether “equality” adds any element of additional “quality” to the contract, as discussed in our answer to question 21.

Christian organisations would have extreme difficulty in signing up to contractual conditions, which require them to sign an all inclusive equality duty conditions in contracts to “promote” other religions or sexual ethics. To leave their faith behind. There is a large difference between the promotion of equality and respecting diversity. Whilst this question suggests that this is correctly linked to the subject matter of the contract, it does not make it clear that it is only relevant where it is and may only be relevant to one particular equality strand only.

There is a clear danger that Local authorities may well miss the point here⁴⁴ and some already have all inclusive equality and diversity policies⁴⁵ which

⁴³ See point 5.38 of this consultation

5.38 To further embed equality considerations into the procurement process, we are proposing a specific duty that requires contracting authorities to consider using equality-related award criteria in their procurement activities, where these are relevant to the subject matter of the contract and proportionate. This could mean for example asking potential suppliers how they would meet the particular needs of diverse sections of the community. This requirement must be made clear as early as possible in the procurement process. For example, when bidding for a public contract intended to help unemployed people back into work, a company might, in addition to making a competitive bid, provide **additional quality** by offering tailored programmes for those who are particularly disadvantaged in the labour market, such as women returning to work from caring responsibilities or certain ethnic minorities.

⁴⁴ That equality-related award criteria must relate to the subject matter of the contract and be proportionate.

⁴⁵ See <http://www.stockport.gov.uk/content/communitypeopleliving/equality/depdfs/divequalpolicy?a=5441>

A hierarchy of rights where rights conflict is shown in statements such as :

Respect people's beliefs where the expression of those beliefs does not impinge on the legitimate rights of others.

Conflicts of rights are shown in statements which instead of respecting diversity promote homosexuality contrary to strongly held religious beliefs such as:

Promote positive images of lesbians, gay men and bisexuals.

	<p>may only partially take account of negative impacts for religious organisation service providers and easily be carried over to contracts or funding under the threshold.</p> <p>Local authorities may inappropriately ask those who seek funding to sign up to all-inclusive policies and/or for external staff to undergo equality and diversity training. This type of practice should stop as being unfair to free competition and a barrier to funding support for religious organisations. The point to underline here is it is only the subject matter of the contract that counts and not making equality count.</p>
<p>Q19: Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?</p>	<p>We do not agree with equality related award criteria being adopted in any circumstances including equality related contract conditions where they relate to the performance of the contract.⁴⁶ The performance of the contract could be artificially expanded to include such performance criteria.</p> <p>This is dictating to those who receive public monies how they should perform the contract. For example, who should be employed. We do not consider that local authorities should dictate to others how they run the services they provide or offer equality and diversity training if suppliers do not wish to partake. It is up to service providers to ensure the subject matter of the contract is performed. There should not be specific performance contractual conditions on this.</p>

Christians would want to promote positive images of all people but would not support the promotion of the practice of homosexuality as this is contrary to strongly held Biblical beliefs on homosexuality as a sin and such statements border upon promotion.

⁴⁶ It has been argued in relation to the EU Directive on public procurement in the performance of a contract under Article 26 that "social and environmental considerations are relevant;

See answer to question 65 by Vera Baird Solicitor General:

http://www.parliament.uk/documents/upload/Baird_Equality190609.pdf

"...contract conditions may, in particular, include social and environmental considerations – for example, a contract to manage a contracting authority's recruitment function may include a condition that all jobs must be advertised on either a part-time basis and/or with flexible working provisions unless there is a justified business case why a particular job cannot be offered with these terms."

Should "social" be interpreted here as an equality issue?

Article 26

Conditions for performance of contracts

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:NOT>

Q20: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?

We strongly disagree with the suggestion that there should be a regulatory proposal to deal with suppliers who have breached discrimination law. This consultation refers to the approach in the OGC brochure –*Make Equality Count* in relation to this question.⁴⁷

The OGC brochure provides an example of an infringement of sex discrimination law by an organisation. As a result of this infringement, it was seen as a proportionate response to exclude a potential supplier that had not undergone a “full review of its equality and diversity policies and procedures, and had consequently established a formal complaints procedure and equality training for its staff”.⁴⁸

We consider the approach of dealing with suppliers who have breached discrimination law as very inappropriate. A local authority may itself infringe EU procurement directives by imposing irrelevant equality award criteria on contracts and the shoe would then be on the other foot.⁴⁹

Approximately £175 billion is spent each year by the public sector on goods and services, which amounts to approximately 13 per cent of UK Gross Domestic Product.⁵⁰ It is very inappropriate for the Government to be using its power and public body’s money to enforce an equality agenda and “culture change” upon organisations who receive public money. In our opinion, such a

⁴⁷ See 5.41 One option which has been raised is whether we should consider developing an explicit requirement for public authorities to deal with suppliers’ breaches of discrimination law, rather than doing this through best practice guidance alone. Current OGC best practice guidance already suggests a question relating to breaches of discrimination law that a procurer can ask, and use to evaluate expressions of interest from tenderers, at the PQQ stage where equality related issues are directly relevant to the subject of the procurement. We have not yet reached a final view on this. We therefore welcome views in order to determine whether to bring forward a specific duty in this area.

<http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf>

⁴⁸ See page 15 OGC Make Equality Count:

http://www.ogc.gov.uk/documents/Equality_Brochure.pdf

⁴⁹ See answer to question 65 from Vera Baird Solicitor General: suppliers that have breached relevant laws and practices may be rejected, as well as those who lack the requisite technical and/or professional ability to perform a contract – for example, this could permit the exclusion of candidates who have seriously breached discrimination laws and suppliers who are unable to meet an authority’s requirement to answer questions from service users with little or no English when providing the service;

But no reference is given to where this is in the Directive.
http://www.parliament.uk/documents/upload/Baird_Equality190609.pdf

However the main contract award criteria are those in Article 53 of the EU Directive:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:NOT>

⁵⁰ See point 5.33 of this consultation.

	<p>proposal may be considered either a lever or even an abuse of monetary power.</p> <p>Religious organisations have their own religious beliefs and should not be subjected to the imposition of values to promote other religions or other sexual ethics or not receive public monies. Nor should they have to sign up to an national equality standard or equivalent. The OGC guide even illustrates equality and diversity workshops for suppliers.⁵¹ A free democratic society should allow for diversity of opinions.</p> <p>It is not a public authority’s job to use public funds and act as an agent to enforce discrimination law.</p>
<p>Q21: Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you believe this is achievable through a specific duty or is this better tackled through a non-legislative approach? Are there any practical issues that would need to be considered?</p>	<p>No, we strongly oppose a national equality standard, equality award criteria or equality award conditions in procurement contracts, which public bodies such as local authorities could use in awarding funds to other organisations (including religious organisations). There should be no legislative or non-legislative approach and this proposal should not be pursued.</p> <p>The Easy read guide suggests that this would involve looking at whether or not the organisation works fairly and equally and whether the organisation can meet the needs of lots of different people. In other words, an all inclusive criteria which would result in the promotion of other religions or sexual ethics contrary to core religious beliefs favouring secular organisations.</p> <p>Religious bodies or charities with religious links should not face barriers of funding due to an all-inclusive criteria discriminating against them because of a national equality standard for pre-selection of suppliers. We fear that the type of questions proposed here for the equality objectives would increase rather than remove such</p>

⁵¹ See page 19 of the OCR guide:

The OGC guide Make Equality count provides an illustration of supplier training in the following quote

“Equality and diversity workshops for suppliers

In line with OGC’s model terms and conditions, a public authority includes as a contract condition that its contractors must comply with all existing equality legislation. To help its suppliers comply with this condition, the authority organises an equality and diversity workshop for all of its suppliers. The aim of the workshop is to provide its suppliers with an overview of the equality legislation and to ensure that they understand their legal responsibilities with respect to their contracts, including where any obligations under the public sector equality duties are passed to contractors.”

http://www.ogc.gov.uk/documents/Equality_Brochure.pdf

	<p>barriers to equality of opportunity.</p> <p>The Easy read version of this consultation makes this plain by stating that:</p> <p><i>“We think it may help organisations and public bodies if there is just one way that everyone has to follow... Organisations who do work that way could have an equality badge.”</i>⁵²</p> <p>The all-inclusive approach to funding is already adversely affecting religious charities. For example, a charity in Scotland is planning to drop the word church from its title, saying that it creates “unnecessary barriers” to accessing public funding. The chairman of Perth-based Churches Action for the Homeless (CATH) says he has been told “off the record” that their perceived religious identity has made it more difficult for them to receive grants.⁵³</p> <p>Elsewhere in the consultation,⁵⁴ it states, “It is fundamental to meeting the requirements of the duties that public bodies assess the impact of what they do on different groups.”</p> <p>It will result in a secular only agenda being promoted. A democratic society needs to allow for a market place of ideas. A national equality standard would be akin to saying that there was only one “politically correct “way of doing business.</p> <p>The consultation suggests that this would be a long term proposal and that it would relate to preselection criteria for suppliers who met equality practice standards. But this is tantamount to providing a bar to competing for a contract as an initial hurdle to overcome.⁵⁵</p> <p>The approach being suggested in this consultation as reflected in questions 16 to 21 in this</p>
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⁵² See page 31 of the easy to read version of this consultation:
<http://www.equalities.gov.uk/pdf/ISL102%2009%20EasyRead%20Equality%20Bill%20Specific%20Duties%20consultation%20FINAL%20LoRes.pdf>

⁵³ See <http://www.christian.org.uk/news/20090811/charity-drops-church-to-get-public-funding/>

⁵⁴ See point 4.20 of this consultation:
<http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf>

⁵⁵ See point 5.44 of this consultation:
 A national standard could have a role within the pre-qualification process as it could be one way in which a supplier demonstrates that their equality practice meets a contracting authority’s pre-qualification requirements. There would however be no compulsion to hold the standard to compete for public contracts, and contracting authorities would always accept appropriate equivalent evidence of compliance with any equality requirements. We are not at this stage proposing a specific duty requiring contracting authorities to recognise any such standard, but will look to doing something in the longer term (if this should appear to be viable in light of any standard that is developed).

	<p>consultation in our opinion is contrary to the European Directives on procurement. Like the approach in the OGC brochure,⁵⁶ <i>Make Equality Count</i> gives an undue stress and over emphasis to the issue of equality.</p> <p>Public Procurement regulations must comply with the Public Sector Directive (2004/18/EC)⁵⁷ and ensure that contracts are awarded based on two award criteria only, namely, “the lowest price” or “the most economically advantageous tender” (MEAT).⁵⁸ The UK policy is to use MEAT.</p> <p>This award criteria includes quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance and delivery period or period of completion.</p> <p>It should be noted that the OGC brochure states that “Although equality is not explicitly stated, in some cases equality can be relevant; for example equality issues can affect the ‘quality’ of a service being delivered.”⁵⁹ In our opinion, equality factors</p>
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⁵⁶ See http://www.ogc.gov.uk/documents/Equality_Brochure.pdf

⁵⁷ See **Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts**

Recital 46) Contracts should be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in **conditions of effective competition**. As a result, it is appropriate to allow the application of **two award criteria only: "the lowest price" and "the most economically advantageous tender"**.

Article 53

Article 53

Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:

(a) when the award is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, or

(b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a) the contracting authority shall specify in the contract notice or in the contract documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:NOT>

All legislation at: http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm

⁵⁸ Article 53 of the EU Directive allows for bids to be evaluated on the basis of either the most economically advantageous tender (MEAT) or the lowest price. The UK’s policy is to use MEAT.

⁵⁹ See page 16 of the OGC guide *Make Equality Work*: http://www.ogc.gov.uk/documents/Equality_Brochure.pdf

	<p>may or may not improve “quality” of a service and this provides a very weak foundation for the proposals suggested here and the vast over emphasis of the importance accorded to equality under the EU Directive on procurement.</p> <p>The procurement regulations must also comply with European Directive 2007/66/EC⁶⁰ to have regard to improving the effectiveness of review procedures concerning the award of public contracts.</p> <p>There is a need to ensure that there are review procedures with powers for the award of damages to persons harmed by an infringement of the Public Sector Directive (2004/18/EC). Whilst the new review Directive (2007/66/EC) has been seen as a means of combating direct contract awarding without competitive bidding, it includes infringements. Therefore, it could include infringements of the imposition of award criteria for contracts other than the two award criteria of lowest price or MEAT.⁶¹</p> <p>In the circumstances, we consider that it would be appropriate for the Government to abandon such public procurement proposals, as there is already an undue emphasis upon equality to the detriment of fair business competition and value for money.</p>
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⁶⁰ See Directive 2007/66/EC : <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007L0066:EN:NOT>

Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (Text with EEA relevance)

Recital (17) A review procedure should be available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.

Article 1

Scope and availability of review procedures

- I. This Directive applies to contracts referred to in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [], unless such contracts are excluded in accordance with Articles 10 to 18 of that Directive.

Contracts within the meaning of this Directive include public contracts, framework agreements, public works concessions and dynamic purchasing systems.

Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/18/EC, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of public procurement or national rules transposing that law.

3. Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.

See Article on this issue for rejected bidders: http://www.channelregister.co.uk/2007/06/25/ep_public_procurement_directive/

⁶¹ New EU Directives normally have time limits in which they must be transposed into Member State law.

<p>Q22: Which of the above four models do you consider achieves the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.</p>	<p>We do not support a national reporting duty or the suggestions put forward here⁶² as such matters are best to be locally determined. In our opinion, the role of the Secretary of State should be to operate in an ombudsman type way to deal with complaints where Equality policies and practices are not being applied in a reasonable way and are not providing value for money.</p> <p>The Equality principles, which could be used to inform this process and evaluate practices and policies, are found in answer to question 3.</p> <p>Nevertheless, if this suggestion were to be implemented, we would make the following comments:</p> <ol style="list-style-type: none"> 1. This first option would be opposed because local rather than national priorities are preferable but there could be monitoring on a non-legislative basis by the Secretary of State (as outlined above). 2. This second option is preferable of all the suggestions if it could be based upon a monitoring role (as outlined above). 3. We strongly disagree with the third option that equality matters should be linked to Public Service Agreements. 4. This fourth option is not supported unless this in relation to the proposals on data collection for gender, race and disability and not the other strands. The consultation is not in favour of a prescriptive data collecting approach.
<p>Q23: Do you have any other suggestions how this duty could be remodelled to retain the valuable features of senior accountability and joined-up working, whilst avoiding unnecessary burdens?</p>	<p>Please see the first 2 paragraphs of our answer to question 22.</p>

⁶² The fourfold suggestions prior to this question are:

- (1) A requirement for relevant Secretaries of State to report every three years against the national equality priorities that they have set for their policy areas.
- (2) A requirement for relevant Secretaries of State to include, in the third year of their department's annual reporting cycle, an expanded report covering the policy area for which they have the overview.
- (3) To rely on reporting procedures attached to the Public Service Agreements covering equality.
- (4) To require relevant Secretaries of State to report on how equality data is gathered and used across their relevant policy sectors.

Q24: Are there any specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?

Yes, it is important that the equality principles put forward in answer to question 3 be adhered to. Equality outcomes need to ensure that no inclusive equality policies and contracts are advocated and a case-by-case approach is taken.

In our opinion to adhere to the EU Directives would mean that equality criteria needs to be contract specific so that if the contract is relevant to disability, then only that criteria should apply when the contract is directly on providing services for the disabled. No other equality strands should be applied and for general contracts, no equality criteria may be relevant to the subject matter of the contract.⁶³

Public bodies need to ensure that there is accessibility of contracts to different groups of suppliers to ensure supplier diversity, which can contribute to better quality, public goods and services and better value for money. Contract opportunities should be easily accessible to small and medium sized enterprises (SMEs) including those owned by religious organisations.⁶⁴

The OGC brochure –*Make Equality Count* appears to be aware that equality standards may have the potential to result in unequal treatment of suppliers generally, exclude, or disadvantage prospective contractors from outside the UK.⁶⁵

⁶³ See OGC Brochure –Note this even argues for a case by case approach and not a blanket one-see page 12

“Equality issues can be a core requirement included within a specification where they are relevant to the subject of the procurement. Public authorities will need to assess on a case-by-case basis which requirements are core requirements.”

In our opinion it would only be a core requirement where the contract was primarily relevant to a particular equality strand and only in relation to that strand not others.

http://www.ogc.gov.uk/documents/Equality_Brochure.pdf

⁶⁴ See OGC Brochure :*Make Equality Count: Accessibility of contracts to different groups of suppliers and encouraging supplier diversity* pages 11 and 19:

http://www.ogc.gov.uk/documents/Equality_Brochure.pdf

⁶⁵ See page 12 of the OGC Brochure :*Make Equality Count*

Care must be taken when drawing up the specification to ensure that it does not result in the unequal treatment of suppliers generally or exclude or disadvantage prospective contractors from outside the UK, for example by specifying a particular equality standard for relevant contracts that does not allow for equivalents from outside the UK.

http://www.ogc.gov.uk/documents/Equality_Brochure.pdf

Q25: What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?

It is important that the EHRC guidance on the Equality Bill in relation to the Public Sector Equality Duty and the other guides produced on the Equality Bill that the principles set out in answer to question 3 are adhered to. This would help public bodies implement specific duties in a sensible and proportionate manner.

In terms of what the guidance should cover, the guidance needs to take a reasonable approach to this issue and look to resolving issues in an informal and sensible way.

On the new Equality Duty, the Solicitor General has written, “*we have to ensure our legislation recognises and addresses the balance to be achieved between all of the various equality strands*”.⁶⁶

We are particularly concerned that a number of recent guidance on Equality appear to have forgotten that when religion or sexual orientation conflict there are also religious rights to be taken into account.

Directly relevant to the issue of public procurement the Stonewall⁶⁷ guide on religion or belief and sexual orientation provides an illustration of a printer who was a supplier for a council but did not wish to print materials for an event for the lesbian, ‘gay’ and bisexual community. In the words of the guide, “The supplier refused to produce the materials on the grounds that they objected to the message targeted at lesbian, gay and bisexual people because it was against their religion.... The council made the decision, in line with their policies, that the entire council contract with that company would be withdrawn and no further business would be given to the supplier.”

Clearly there are legal rights for strongly held religious beliefs and in the Northern Ireland case on the sexual orientation regulations which struck out the harassment provisions, the judge supported the case of Brockie (Ontario Human Rights Commission v. Brockie [2002] 22 DLR (4th) 174.)⁶⁸ the Canadian printer. Mr Brockie, president

⁶⁶ See <http://www.scottish.parliament.uk/s3/committees/equal/documents/LetterVeraBairdEqualitiesBill.pdf> answer to question 19

⁶⁷ See page 20 and 21 of Stonewall’s guide: Religion and Sexual Orientation: How to manage relations in the Workplace. <http://www.stonewall.org.uk/workplace/1473.asp>

⁶⁸ See the *Re the Christian Institute & Ors* [2007] NIQB 66 case at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/nie/cases/NIHC/OB/2007/66.html>

and directing mind of the company, held the religious belief that homosexual conduct was sinful. He acted for customers who were homosexuals but he would not assist in the dissemination of information intended to spread the acceptance of a gay or lesbian lifestyle. The judgment of the Court found that there had been interference with Mr Brockie's freedom of religion in that he was being forced to act in a manner contrary to his religious belief. In giving judgment in the Northern Ireland case *Wetherup J*, at paragraph 88 affirmed the principle to be derived from Mr Brockie's case that "the believer is not required to undertake action that promotes that which the essence of the belief teaches to be wrong".

The Judge also confirmed that the orthodox Christian belief that the practice of homosexuality is sinful engages Article 9 of the European Convention of Human Rights.

Stonewall's guidance is therefore seen to be flawed by not taking into account relevant UK case law which directly conflicts with their preferred approach.

It is important that the Equality Bill guides ensure that measures are put in place to ensure public bodies allow for the diversity of suppliers and do not advocate a hierarchy of rights.

In our opinion, as far as Public Procurement is concerned the approach adopted in this consultation with its over-emphasis upon equality criteria should be abandoned. Instead, measures should be taken to address guidance such as the OGC brochure-*Make Equality Count*- which despite at the end mentioning some relevant points.⁶⁹

⁶⁹ See OGC-Make Equality Count Brochure page 21 on do's and don'ts- some relevant points :

Do:

Equality issues that are addressed in procurement are relevant to the subject or performance of the contract.

Do not:

Impose contract conditions that are not relevant to the performance of the individual contract.

As part of the procurement process, ask suppliers about their policies generally on equality issues that are not related to the specific contract.

Impose any unnecessary burdens that would seriously deter suppliers, especially SMEs, from competing for public contracts, which in turn could reduce the choice available and could impact on costs and service standards. The suppliers that are deterred could be the very ones whose participation would help to further the Government's equality agenda, for example, those businesses owned by women, black and ethnic minorities and disabled people.

	<p>Overall give the misleading impression that equality has a major role to play in contract award criteria, which according to the EU Directives; it does not, as criteria, needs to be linked to the subject matter of the contract.</p>
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