

## Consultation Response November 2010

### Response to the Government Equalities Office Specific Duties Consultation on behalf of the ROTA-led Winning the Race Coalition

#### About ROTA

Race on the Agenda (ROTA) is one of Britain's leading social policy think-tanks focusing on issues that affect Black, Asian and minority ethnic (BAME) communities. Originally set up in 1984, ROTA aims to increase the capacity of BAME organisations and strengthen the voice of BAME communities through increased civic engagement and participation in society.

**ROTA's Articles of Association state that the charity is set up "to work towards the elimination of racial discrimination and to promote equality of opportunity, human rights and good relations between persons of different groups".**

For historical and demographic reasons, our work prioritises London, but our activities and a number of our projects have national and international significance. To this end we work in close partnership with our membership and others interested in race equality, human rights and the promotion of good relations.

Our presence in London is enhanced by our regional network **MiNet**.

**MiNet** is the London focused BAME network of networks, which joined ROTA in 2002 to strengthen the voice for London's BAME third sector in the development of regional policy.

#### ROTA definition of BAME and Approach to Race Equality

ROTA works on social policy issues that have an impact on race equality and BAME communities. ROTA's definition of 'race' encompasses all the protected characteristics under equality legislation including colour, nationality, ethnic or national origin. We use the term BAME to refer to all groups who are discriminated against on the grounds of their race, culture, nationality or religion which includes but is not exclusive to people of

African, Asian, Caribbean, East European, Irish, Jewish, Roma and South East Asian descent.

ROTA adopts a holistic approach to race equality and works in partnership with other civil society organisations that complement its expertise and have a similar vision.

## About the Winning the Race Coalition

Race on the Agenda (ROTA) and other national race equality focused organizations formed a national coalition of civil sector organisations to highlight some areas of concern in relation to the Equality Act and to develop a unified and stronger voice to our concerns. Our focus is primarily on race equality and the discrimination faced by Black, Asian and minority ethnic (BAME) groups. However, the coalition's creation aims to make the argument for cross-equality and human rights issues where appropriate.

ROTA and the coalition members have been working and will continue to work over the duration of all the stages of the Act and its roll out to engage with key stakeholders involved in ensuring that the needs of BAME communities and the BAME third sector are met. ROTA has been representing the Winning the Race Coalition at meetings with Government Equalities Office Ministers, the EHRC, and has given evidence to the House of Commons Committee scrutinizing the Bill that became the Equality Act. ROTA keeps coalition members updated with all developments. The Winning the Race Coalition is working to ensure that effective civic participation is achieved in all processes of engagement with those who will be affected by the legislation. For a list of Coalition members and full details of the activities of the Coalition visit <http://www.rota.org.uk/pages/WTRC.aspx>.

## Methodology for this response

ROTA's policy work is evidence based in the sense that everything we do is informed by the views and real life experiences of BAME communities and the organisations that are set up to serve them. For this response we collected evidence through:

- past evidence submissions by ROTA and the Wining the Race Coalition on the Equality Act
- informed by the Winning the Race Coalition Action Group members views and opinions. The Action Groups is made up of:
  - Voice 4 Change England

- Runnymede Trust
- Black South West Network
- 1990 Trust
- Equanomics
- BECON
- MENTER

The full list of coalition members can be viewed here

<http://www.rota.org.uk/pages/WTRC.aspx>

- consultation and discussion event held with 30 BAME organisations on the 26<sup>th</sup> October
- additionally the following individuals and groups have specifically expressed that this response represents their views
  - An-Nisa Society <http://www.an-nisa.org/>
  - Enfield Racial Equality Council <http://www.enfieldrec.org.uk/>
  - Equanomics

## Key Issues

1. The specific duties exist to ensure the 'better performance of the Public Sector Equality duty'. The Public Sector Equality Duty (PSED) contained in the Equality Act 2010 is an improvement on the existing general race equality duty introduced<sup>1</sup>. However we are concerned that the proposed draft specific duties:
  - (i) are not fit for purpose in that they would not ensure the better performance of the PSED
  - (ii) could potentially foster an adversarial relationship between citizens and their public authorities.
  
2. Draft regulation 2 sets out requirements to publish information including information on '*assessments of the impact*' and on '*policies and practices*'. We believe that existing statutory codes or practice and case law on equality impact assessments make it clear that:

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<sup>1</sup> The current General Race Equality Duty (Section 71) came into force in 2000 as a result of the Race Relations (Amendment) Act 2000 which amended the Race Relations Act 1976.

- (i) such assessments should be conducted routinely and before a new or amended policy or practice is implemented
  - (ii) any necessary changes should be made to a new or amended policy or practice before the policy is implemented or if issues are identified
  - (iii) equality impact assessments are key to enabling citizens to genuinely hold public authorities to account.
3. The proposals on setting and measuring equality objectives, contained in draft regulation 3<sup>2</sup>, have the potential to undermine securing the Public Sector Equality Duty. Key concerns are listed below.
- (i) We do not believe that there is evidence that selecting one or two equality objectives would enable public authorities to make meaningful progress towards securing equality of opportunity across eight strands or protected characteristics.
  - (ii) A requirement that allows a public authority to set just one or two equality objectives actually create prioritised groups and communities that pits equality strands or issues relevant to different equality characteristics against one another.
  - (iii) The primary legislation, the Public Sector Equality Duty, requires public authorities, in exercising their functions, to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. The approach proposed with respect to selecting only 'one or more' equality objectives, potentially runs counter to the duty set out in the primary legislation.
4. We are unsure how the proposed specific equality duties will ensure that public authorities actually take action to promote equality and make real strides towards the new general equality duty. In the existing specific disability and gender equality duties, the statutory requirement is for a public body to take the steps that it has agreed to take unless it is unreasonable or impossible for it to do so<sup>3</sup>. Furthermore, the reporting requirements also mean that public bodies must

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<sup>2</sup> Draft regulation 3 (1) *'Not later than 2 April 2012 a public authority must prepare and publish one or more objectives which it reasonably thinks that it should achieve in order to further one or more of the aims set out in paragraphs (a) t (c) of the section 149 (1) duty.'*

<sup>3</sup> Regulation 3 (1): *'A public authority listed in Schedule 1 shall within the period of three years beginning with the date when a Scheme prepared for the purposes of regulation 2 is published—*  
*(a) take the steps which it has been required to set out in the Scheme by virtue of regulation 2(3)(c). ....*  
*(2) Nothing in this regulation imposes any duty on an authority where, in all the circumstances, it would be unreasonable or impracticable for it to perform the duty.* [The Disability Discrimination (Public Authorities)(Statutory Duties) Regulations 2005]

report on why they failed to take any agreed actions. To ensure that public bodies address the expanded general equality duty, we would advocate for a regulation that builds on:

- (i) the existing specific disability and gender equality duties; or
- (ii) the Welsh regulations.

5. The draft regulation (regulation 3), on setting equality objectives, proposes that these equality objectives should only be reviewed every 4 years. We are concerned about this proposal and would suggest a more frequent review period of at least every three years.
6. We have reflected on the research, commissioned by the Government Equalities Office in 2008 and published in 2009, on the cost effectiveness of the existing specific disability, gender and race equality duties<sup>4</sup>. The Schneider-Ross research report, published in 2009, recognised the importance of community engagement, involvement and consultation. The research conclusions and recommendations were that the existing specific equality duties should be retained and built on. We are concerned that the proposed draft regulations would only require a public authority to **publish details of any engagement undertaken**<sup>5</sup>. A requirement to report on engagement activities undertaken:
  - (i) is a far cry from a duty to engage or involve key stakeholders
  - (ii) could actually undermine existing established practices, based on the current specific equality duties, to consult, involve and engage with stakeholders.
7. Significant restructuring of public authorities is proposed by the Coalition Government. We are concerned about the fact that only listed public authorities will be subject to the general duty (Equality Act 2010, Section 149) and the specific equalities duties could create a vacuum unless statutory regulations or requirements:

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<sup>4</sup> Equality Duties: Assessing the Cost & Cost Effectiveness of the Specific Race, Disability & Gender Equality Duties [GEO, Schneider-Ross: June 2009]

<sup>5</sup> Draft regulation 2 (d) A public authority must publish information relating to its performance of the section 149 (1) duty ... (d) (d) details of any engagement that it undertook with persons whom it considered to have an interest in furthering the aims set out in paragraphs (a) to (c) of the section 149 duty.' [Equality Act 2010: The public sector Equality Duty Promoting equality through transparency A consultation]

- (i) make successor bodies – carrying out the public functions of listed bodies – automatically subject to the general PSED and specific equality duties
- (ii) should continue to meet the PSED and the specific duties unless they conduct a proper review and effectively engage with stakeholders.

## Consultation Questions

### **Q1: Do you have any comments on our proposals for data reporting? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.2 to 5.9?**

8. The publication proposals in regulation 2 will be fundamental in ensuring that the equality data published is (a) transparent (b) accessible and (c) meaningful for citizens. While the WtRC is pleased with the Government's aims to shift the focus of specific duties to outcomes, it is difficult to see how the information proposals in regulation 2, as worded, will meet the aims of achieving greater effective transparency for citizens. There are several underlying problems with the way in which the proposals are phrased.
9. WtRC has supported the change in the wording clause 149(1) in the Equality Act 2010 from 'having due regard to the need to... **promote** equality of opportunity' to '...**advance** equality of opportunity between persons who share a relevant protected characteristic and those who don't'. The use of the word *advance* imposes a wider and more positive duty as does paragraph 149(3) of that Act, which should be reflected in the specific duties to enable public bodies to better perform these wider duties.
10. We are concerned that draft regulation 2(1) could be interpreted as only relating to performance of the section 149(1) duty. For ease of clarity, the duties under 149(1) must be interpreted in light of **all** of section 149 general duties, inclusive of 149(2) - (7), which are fundamental to performance of the general duty. This interpretation may be unclear and it is important that statutory codes ensure the interpretation of section (2)-(7) are included in understanding what section 149(1) means.
11. In light of the comments above and to avoid confusion ROTA suggests that the wording of regulation 2(1) be changed to:

***“A public authority must publish information which is relevant to its performance of the section 149 duty”.***

12. Regulation 2(1) as drafted does not require public bodies to publish a race equality scheme *showing how it intends to fulfil* its general equality duty, nor is there a requirement to identify functions and policies, which it has assessed, as relevant to its performance of the Equality Duty. In this regard, it remains unclear whether there is a requirement that public bodies assess all policies and processes. The requirements under the Race Relations Act 1976 (Statutory Duties) Order 2000 for having a formal race equality scheme to impact assess, proved for many organisations to be an effective mechanism for identifying whether their functions were in line with the general duty in terms of both process and substance.<sup>6</sup>
13. The obligation in the new specific duties that a public authority must *publish information relating to its performance* of the section 149(1) is vague, and removes the requirement that public bodies produce a detailed action plan showing how it has achieved the outcomes in the general equality duty.
14. WtRC is of the view that in the absence of more prescriptive duties, public bodies may see this as an opportunity to publish obscure business plans. It is necessary that public authorities have robust guidelines on the publication duty so that the information produced will fulfil the aims envisaged in the policy. It must be clear in the specific duties that all relevant policies are covered by the primary duty and should be covered by the requirement to produce information.
15. The substance of the duty in regulation 2(2)(c) to publish information that a public body *took into account when assessing its policies*, has no specification as to the nature of information to be taken into account. WtRC fears that these proposals focus on the process of reciting how information has been taken into account, rather than demonstrating an assessment of the impact of their policies. Although we do not advocate the retention of formal Race Equality Schemes as long as adequate and accessible action plans are provided, it is our view that the draft specific duties must clarify that rationale and/or analysis of data is an essential facet of assessing the impact of policies. The Court in decisions such as *Baker* and *Brown* made it clear that in order to fulfil its general equality duty, a

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<sup>6</sup> Article 2 Race Relations Act 1976 ( Statutory Duties Order 2001 (SI 2001/ 3458)

public body must examine the *substance and reasoning* of its decision.<sup>7</sup> WtRC believes that the inclusion of reasoning and analysis is critical to achieving transparency that is effective for the better performance of the General Duty 149.

16. WtRC believes that in order to shift the focus to equality outcomes, there should be a nexus between regulation 2(2)(b) and (c), which will move impact assessments away from being a tick box exercise. On the face of the specific duties, there appears to be a gap between public bodies taking information into account as required by 2(c), and reflecting this in the published data on impact assessments. If public bodies simply produce raw data without any rationale, as seems to be suggested in the draft regulations, they are less likely to focus on outcomes of policies and functions which have been impact assessed. While we recognise the importance for having an evidentiary basis in mainstream decision making, rationale of data will be paramount to meaningful impact assessments. In absence of the requirements to have formal schemes, it is essential that the rationale behind decisions and policies is a requirement to avoid public bodies publishing raw data and final decisions with no links between the two. With this, there is no locus for citizens to effectively challenge the outcome delivery vehicle.

17. WtRC agrees that data must be consistent with the public data principles set out by the Public Sector Transparency Board. Specifically, we agree that public data should be available and easy to find through a single easy to use access point. ROTA and the WtRC BAME member organisations have expressed their concerns that currently, information is not transparent as it is largely inaccessible and difficult to navigate. Hence, information published must be presented in formats and documents that are easily navigable by the public. Equally the requirement to publish data to be analysed by citizens moves a massive staff and time resource requirement on to civil society organisations and communities to make these specific duties effective.

18. In line with court decisions such as *Elias* and *Baker*, it is clear precedent that impact assessments must be meaningful and produced at the proper time.<sup>8</sup> The

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<sup>7</sup> R (Baker ) v Secretary of State for Environment [2008] EWCA (Civ) 141, R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin)

<sup>8</sup> R(on the application of Elias) v Secretary of State (Commission for Racial Equality Intervening) [2005] EWHC 1435 admin, R (Baker ) v secretary of State for Environment [2008] EWCA (Civ) 141



WtRC strongly believes that specific duties should make it clear that public bodies must undertake impact assessments at an appropriate stage. It is suggested that impact assessments must be undertaken prior to decision making and before publication to ensure that citizens have an opportunity to effectively challenge that public body.

19. Regulation 2(2)(d) of the draft specific duties establishes the need to publish information on any *engagement with any persons whom it considers to have an interest*. This marks a regression from the existing consultation duty under the Race Relations (Amendment) Act 2000 for public bodies to **assess and consult** on the likely impact of its proposed policies on the promotion of race equality. WtRC fears that public bodies may not see the need to, or actively consult with BAME and other marginalised groups. Public bodies should be required to undertake and identify how its outcomes have been informed by relevant service users, employees and relevant groups. This is fundamentally implied in the PSED to advance equality of opportunity and foster good relations, as it will enable employers and service providers to identify equality gaps which need to be addressed.
20. It is doubtful whether the use of the word *engagement*, rather than *consult*, will be given a positive interpretation by the courts. WtRC suggests that the term **involve** be used in the regulations as this carries a stronger duty as proven by the settled body of case law on the scope of the duty and the implementation under the disability Equality Duty guidance. The statutory codes also need to specify the level of engagement needed in the consultation process, at what stage involvement should occur and what persons, if any, should be consulted when assessing the likely impact of proposed policies.
21. There are real problems with the way in which the duty to engage is formulated as it seems to suggest that a lower standard of proof is required of public bodies to comply with the engagement provisions. The draft regulation in 2(2)(d) appears to give wider discretion to a public body to decide '*whom it considered to have an interest*'. WtRC fears that such discretion may risk exclusion of persons with protected characteristics including Black and Asian minorities, faith communities and other groups that share protected characteristics in the consultation process. Reference can be made to other duties where public

bodies are required to comply with the duty ‘*reasonably*’.<sup>9</sup> There is a concern that public bodies now have a lower threshold in relation to their engagement duties, and this risks the exclusion of BAME people in the consultation process. WtRC believes that it would be more effective if regulation 2(2)(d) made specific reference to engagement with people with “protected characteristics”, as this is more likely to be inclusive of marginalised groups. It is neither consistent nor makes much sense why regulation 2(2)(d) should be so heavily qualified by the discretion of public authorities in the phrase ‘*whom it considered to have an interest*’ when this discretion is not given to other regulations 2(2)(a)-(c).

22. Drawing from the Welsh regulations which have more detailed engagement provisions, it is suggested that we emphasize the importance of consulting with minorities. We should also suggest changing the word “engagement” to “involve and consult” as these words confer a more definitive duty.

23. In this regard, ROTA suggests that regulation 2(2)(d) be rephrased and read: ‘*details of **involvement and consultation** that it undertook with people who share protected characteristics, in compliance with paragraphs (a) to (c) of the section 149 duty.*’

**Q2: Do you have any comments on our proposals for workforce transparency? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5:10 to 5:11?**

24. We support with the Government’s aims of ensuring that data published will be “broad enough to give the public a full picture of equality in the work place and public service provision.”<sup>10</sup>

25. Yet the duty to publish information *related to the protected characteristics of its employees* has no requirement that public bodies with 150 or more employees undertake employment reporting in relation to marginalized groups including ethnic minorities, faith communities and other groups that share protected characteristics. WtRC believes that the draft regulations should have a more regulatory duty to collect data which will be more effective in allowing public

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<sup>9</sup> Regulation 3(1) “public authority must prepare and publish one or more objectives which it **reasonably** thinks it should achieve”, Regulation 4(1) “the public authority must comply with any duty to publish ... in a manner that is **reasonably** accessible to the public.”

<sup>10</sup> Equality Act 2010: The Public Sector Equality Duty, Promoting Equality Through Transparency, A Consultation

bodies to meet the equality duties of section 149. By having a more explicit duty to collect data such as important employment data in the workplace, this will ensure that public bodies identify equality gaps in a range of their functions and policies. In practice, many organisations are already committed to the elimination of discrimination in their workforce and are already performing this in relation to race, gender and disability with systems already in place and will have a minimised bureaucratic burden.

26. It may be that in cases on sensitive issues such as sexuality and religion, public authorities would need to strike a balance and use the proportionality test to justify why they have not collected (or unable to collect) sensitive data. The WtRC recognises that in some cases public bodies will already be collecting and reporting sensitive data such as religion or sexuality, and where this is the case, full transparency of data and analysis should be available. Data could be collected through cost effective means already in use. We consider that the Government's reliance on best practice may result in the bare minimum compliance by public authorities and hence deter transparency for citizens. We advocate that the specific duties should have more detailed monitoring requirements to report on **each** protected characteristic thus promoting equality in mainstream decision-making.

27. Furthermore, WtRC is concerned that information relating to the protected characteristics of its employees limits data reporting to employment. At present the Race Relations (Amendment) Act 2000 specific duties outline a responsibility on public authorities to set out how it will be *monitoring its policies for any adverse impact on race equality*. This covers the range of employment activities including promotion and training provision that are fundamental to equality in the workplace. This should be a minimum standard.

**Q3: Do you have comments on our proposals for transparency in public service provision? Does the drafting of regulation 2 accurately reflect the aims of the policy described in paragraphs 5.12 to 5.14?**

28. The issues raised in answer to question 1 regarding the effectiveness of the transparency proposals as they stand to achieve the better performance of the PSED need to be addressed with regard before service provision would receive a benefit.

**Q4: Do you have any comments on our proposals for setting equality objectives to achieve transparency about impact on equality? Does the drafting of regulation 3 accurately reflect the aims of the policy described in paragraphs 5.15 to 5.16?**

29. Under draft regulation 3(1), public authorities must prepare and publish Equality Objectives which it *reasonably thinks it should achieve*. Although the draft states that these equality objectives must be specific and measurable, it remains ambiguous whether there is a duty to **implement** those objectives. We advocate that there should be a duty to implement those objectives.
30. Equally it is unclear whether the objective should meet one, two or all three of the branches of 149(1) in the Equality Act 2010. The PSED will apply regardless of a public bodies' compliance with the specific duties, the requirement to show due regard to all three branches will remain even if the objective setting process does not cover one or more of those branches or all protected characteristics. This could lead public bodies to be open to cases of breach of the PSED even if they have met the requirements of the specific duties. This makes the specific duties on objective setting redundant as facilitating the better performance of the PSED.
31. The use of the term '**reasonably thinks**' appear to suggest that public authorities can refuse to achieve objectives although these objectives could reasonably be achieved. This would be contradictory to the PSED and undermines the specific duties role for better performance of the PSED.
32. The WtRC proposes that the wording of Regulation 3(1) should be simplified so that it is clear that a public body should *implement* steps to achieve its objectives unless it would be **unreasonable or impracticable** to do so. In the draft form, the regulation will not encourage public bodies to set and implement meaningful objectives. Regulation 3(1) should read as follows:
3. - (1)... **a public authority must prepare and publish overall objectives to achieve the duties set out in paragraphs (a) to (c) of the section 149(1) duty.**
- i. **(2) A public authority must -**
- (ii) **set out reasonable or proportionate steps that it has taken or intends to take towards fulfilling the objectives."**
33. Regulation 3(1) carries no stipulation that public bodies set Equality Objectives for **each** protected characteristic or all functions that effect or are affected by section 149 of the Equality Act 2010. A public authority may choose to set *one or*

*more* objectives. Although the Government envisages that in principle, public bodies are better able to decide which objectives they should achieve, in reality, public services dealing with budget cuts may result in many organisations setting only the bare minimum objectives. WtRC believes that the specific duties should be more rigorous so that public bodies should **identify** and **meet** all their Equality Objectives. It also needs to be stressed that the phrase “one or more” runs counter the aims of section 149 to foster good relations. If a public body decides that an objective should be set for one group but ‘reasonably’ an objective should not be set for another group, this could foster resentment between groups and contradict the duty to foster good relations by setting up a hierarchy of protected characteristics. This therefore undermines the role of the specific duties.

34. The Government believes that section 149 of the Equality Act 2010 would have the effect to require public bodies to have “due regard” in relation to all their public functions. Hence, it must be clear that regulations on equality objectives must be set along those lines.

35. As regards regulation 3(2)(ii), WtRC believes that the use of the word *progress* is vague and therefore it is not clear what progress should be measured and how it should be measured. We suggest rephrasing the word “progress” to “**set out its arrangements for monitoring its progress towards achieving its objectives.**”

**Q5: Do you have any comments on these proposed changes? [ 5.18 to 5.24]**

36. WtRC is concerned that although the reduction of the burden on public authorities is welcomed in times of fiscal austerity, the burden of resources to make these specific duties effective and to hold public authorities to account will move onto communities. Greater democratic accountability of public authorities by communities requires resources in terms of staff time, skill sets, financial support and coordination between different communities and groups. It is very unlikely that communities will be able to achieve this all by themselves and will require support to replace the work put in by public authorities under previous arrangements.

37. WTRC believes that there is a role for national priorities set by the Secretary of State in ensuring that equality for extremely excluded and marginalised groups is achieved. While trust in local bodies is important, it has failed certain

communities, such as Gypsy and Travellers who have mortality rates far higher than other ethnic groups for example, or 33% of working age Muslim women who have no qualifications, and only 9% have a degree<sup>11</sup>. Addressing issues such as these needs some central drivers and we believe there is a role to play for national priorities.

38. We are disappointed that there are not more specific requirements on the procurement process. The PSED applies to procurement as did the previous general duties on race, gender and disability but there was little done due to a lack of clarity of the intersection of the duties with EU procurement regulations. WtRC believes that there should be a specific duty outlining the inclusion of equality conditions in the procurement process to ensure the PSED is applied in public bodies procurement processes.

**Q6: Do you have any comments on our proposals for transition from the existing duties relating to race, disability and gender to the new public sector Equality Duty, as described in paragraphs 6.1 and 6.2 above?**

39. WTRC believe that the requirement to only set Equality Objectives by April 2012 will delay action to address the inequalities facing many communities. With the extension of the review period for equality objectives to 4 years this will mean that an assessment and review of achievement against the first set of objectives will occur after 5 years of the PSED coming into force, outside of a single business planning period for most statutory organisations. This will also mean that review of the race equality schemes by public bodies, due in 2011 as required under the present race duty, will be delayed by these transitional arrangements. This will mean there will be no meaningful assessment of the effect of public bodies 'due regard' for the current 4 year period since 2008.

40. We believe that the time required for public bodies to set equality objectives is unrealistic. Although there is extension of the PSED to five more protected characteristics, the most difficult part will be putting in place data gathering systems. Equally for race, gender and disability the data gathering and reporting mechanisms will already be in place. Delaying objective setting for these three protected characteristics is unnecessary and transitional arrangements should reflect the different awareness of issues for different characteristics.

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<sup>11</sup> How Fair is Britain, 2000, Equality and Human Rights Commission

**Q7: We would welcome your views on the proposed list of public bodies for part 1 and Part 4 of Schedule 19, as described in paragraphs 7.7 to 7.12 above.**

41. WtRC has some concerns about the listed bodies in Schedule 19 which are subject to the general and specific duties. Currently, Schedule 19 does not contain as many bodies as under previous race laws. Although we appreciate that those private bodies exercising a public function will be subject to the general equality duty, some core bodies which were subject to specific duties will no longer be covered by the new law. We have identified the exclusion of some local governmental bodies, housing bodies, police bodies and educational academies. It is WtRC's position that these bodies should be subject to specific duties as they have responsibilities which are likely to impact race equality and are the public functions.
42. Academies are not currently listed as public bodies in Schedule 19 and therefore are not subject to the general equality duty and specific duties. WtRC recognises that the government has proposed in Annex 5 its intention to add Academies to Schedule 19: "The proprietor of a City Technological College, City College for Technology or the Arts, or an Academy". Providing that maintained schools are already listed as public bodies in Annex 4, we fear that the Equality Act treats Academies differently to maintained schools, which may disadvantage BAME communities which are statistically proven to be at a greater risk of exclusion and discrimination in education (*Gillborn and Drew, 2010*).<sup>12</sup> In this regard, it is suggested that in line with the proposals, Academies must be listed as public authorities and be required to promote equality in the same way as maintained schools. Equally, it is a major concern that Arms Length Management Organisations and other Housing Management organisations for Local authorities are not listed.
43. Significant restructuring of public authorities is proposed by the Coalition Government. We are concerned about the fact that only listed public authorities will be subject to the general duty (Equality Act 2010, Section 149) and the specific equalities duties could create a vacuum unless statutory regulations or requirements:

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<sup>12</sup> Gillborn, D and Drew, D (2010) "Academy Exclusions" Runnymede Bulletin, Summer edition 2010.

- (i) make successor bodies – carrying out the public functions of listed bodies – automatically subject to the general PSED and specific equality duties
- (ii) should continue to meet the PSED and the specific duties unless they conduct a proper review and effectively engage with stakeholders.

44. However, there is a level of uncertainty in how the term public function will be interpreted by courts. The term ‘public function’ is given the same meaning as under the Human Rights Act 1998 section 6(3)b meaning ‘ a person certain of whose functions are functions of a public nature’. This definition has been given varied interpretation by domestic courts and therefore is likely to exclude for example private companies whose functions are public in nature but exercise private acts, or who performed an activity which otherwise a public body would be under a duty to perform.<sup>13</sup> There remains a uncertainty on the position of hybrid authorities, some of whose functions will have an impact on race equality.

45. WtRC recommends that statutory guidance expands on the definition of public bodies and the position of hybrid authorities.

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<sup>13</sup> Poplar Housing and Regeneration Community Association Ltd v Donoghue [2001] EWCA Civ 595