

LOCAL GOVERNMENT AND HOUSING COMMITTEE

IMPACT OF EQUAL OPPORTUNITIES POLICY ON LOCAL GOVERNMENT PURCHASING AND CONSTRUCTION

PURPOSE

1. To advise how equal opportunities policy impacts on local government purchasing and construction.

BACKGROUND

2. In the Local Government and Housing Committee's meeting on 20 June 2001 (LGH 09 01), the Committee considered a progress report on the "Rethinking Construction" initiative. The Committee welcomed the report and the progress made thus far in raising awareness and implementing the principles of "Rethinking Construction" in the public sector.

3. The minutes for the meeting record that, furthermore, it was suggested that any equal opportunities policy issued to local government regarding construction procurement should be extended to include the private sector.

4. In this context, the Minister undertook to bring forward a paper on the impact of equal opportunities policy on local government purchasing and construction activity.

THE LEGAL FRAMEWORK

5. Discrimination in employment or the provision of services, on the grounds of race, sex or disability, is outlawed in the Race Relations, Sex Discrimination and Disability Discrimination Acts.

6. The Race Relations Act, as recently amended, places a duty on public bodies to have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity between persons of different racial groups, when carrying out their functions. Both the National Assembly for Wales ("the Assembly") and local authorities are public bodies for this purpose. The duty in the Act, which came into force in December 2001, is backed up by the Code of Practice issued by the Commission for Racial Equality. The implications of this duty for public bodies such as local authorities are explored further below.

7. As a result of an EC Directive, anti-discrimination legislation is expected next year in respect of sexual orientation and religion/ belief in the employment context.

8. More specifically with regard to the issue of local government purchasing and construction, the Assembly this year made an order under sections 19 and 29 of the Local Government Act 1999, to enable local authorities to take certain non-commercial considerations into account when awarding public supply or works contracts. A copy of the Order is at **Annex 1**. Its effect is to enable local authorities to take into account the employment conditions of contractors' workforces, and the conduct of contractors or their workforces in industrial disputes. The Minister for Local Government, Finance and the Communities expects to be in a position shortly to issue guidance under section 19 of the 1999 Act, giving advice on how workforce matters, including equality of opportunity, may be considered by local authorities when awarding contracts. The latest draft of this guidance is attached at **Annex 2**.

THE EQUALITIES UNIT

9. The Equalities Unit, recently established as part of the Welsh Local Government Association, plays a key role in progressing equal opportunities policy in Welsh local authorities. The Unit, led by Naomi Alleyne, is jointly funded by the Welsh Assembly Government and the Welsh Local Government Association.

10. The Unit supports the development of best practice in equal opportunities in Welsh local government, and is very active in promoting and providing advice on the new Equality Standard. A further key task of the Equalities Unit is to assess how well equalities issues are addressed in the local government performance indicator framework, and to suggest improvements if appropriate.

THE EQUALITY STANDARD FOR LOCAL GOVERNMENT IN WALES

11. The Equality Standard for Local Government has been developed as a practical tool to assist local authorities to mainstream and benchmark their approach to equalities in both service delivery and employment. It will:

- Provide a systematic framework for the mainstreaming of equalities
- Help local authorities meet their obligations under the law
- Integrate equalities policies and objectives with the Wales Programme for Improvement
- Encourage the development of anti-discriminatory practice appropriate to local circumstances

- Provide a systematic approach to improving performance, over time.

12. The Standard sets out a level by level checklist, covering all aspects of policymaking, service delivery and employment. Time and resources will be required, along with commitment at all levels of the organisation, in order for systems to be put into place and progress through the levels to be monitored and audited in a meaningful way.

13. Level 2 of the Standard states that the review of services should include the procurement function and all contracted services and partnership arrangements. Further levels of the Standard build upon this commitment and explains what steps are required to meet this objective. For example, level 3 states that ‘for agencies delivering services on behalf of the local authority, include within contracts a requirement to deliver an effective and appropriate service, fairly and without unlawful discrimination’.

14. Although the Standard is not mandatory at present, many local authorities have already expressed interest in adopting the Standard and some have referred to the Standard in their Race Equality Schemes as a means through which they will also comply with the Race Relations (Amendment) Act. The Equalities Unit will be working to assist and support local authorities in implementing the framework that the Standard proposes to comply with their legal responsibilities and as a means for achieving best practice in equalities.

15. A summary of the contents of the Equality Standard is at **Annex 3**.

IMPACT OF THE RACE RELATIONS (AMENDMENT) ACT 2000

16. The introduction of the Race Relations (Amendment) Act placed a statutory duty on specified public bodies to:

- Eliminate unlawful racial discrimination
- Promote equality of opportunity; and
- Promote good relations between persons of different racial groups.

17. The duty aims to make the promotion of race equality central to the way public authorities work. This should also improve the way public services are delivered for everyone and public authorities are responsible for meeting their general and specific duties under the Act.

18. The CRE have provided advice in their Code of Practice about where the responsibility lies in complying with the Act, when there is an agreement with a private company or voluntary organisation to carry out any of the public body’s functions to which the duty to promote race equality applies. The responsibility for meeting the general duty, and any specific duties that

apply to that function, will lie with the public authority. However, if the duties are relevant to the function that is contracted out, it may be appropriate to incorporate those duties among the performance requirements for delivery of the service. This would not involve requirements concerning the contractor's internal practices and, whatever action the authority take in this regard, it must be consistent with the policy and legal framework for public procurement.

19. It may also be that in carrying out their general duty, authorities may promote race equality by encouraging contractors to draw up policies that will help them (the contractors) avoid unlawful discrimination and promote equal opportunities. Such encouragement should only be within a voluntary framework, once contracts have been awarded, rather than by making specific criteria or conditions part of the selection process. Public authorities must bear in mind that the general duty does not override other laws or regulations on public procurement.

THE ROLE OF THE NATIONAL ASSEMBLY FOR WALES

20. While local authorities, as democratically elected bodies, have responsibility for equalities issues in local government, the Assembly does have a role in progressing equality of opportunity which has a potentially wide impact in Wales.

21. Under sections 48 and 120 of the Government of Wales Act 1998, the Assembly has a duty to give due regard to the principle of equality of opportunity **for all people**, both in the conduct of its business and in the exercise of its functions.

22. The Assembly's Committee on Equality of Opportunity has been established to audit the Assembly's arrangements for promoting, in the exercise of its functions and the conduct of its business, the principle of equality of opportunity for all people. It meets regularly to consider equal opportunities issues.

23. The Assembly is not an enforcement agency, and does not have the power to enforce third parties' equalities obligations (the Counsel General advised on this point for a meeting of the Committee on Equality of Opportunity on 17 January 2001). However, the Assembly cannot contract out of its own duties on equality of opportunity, and needs to bear these duties in mind when it enters into contracts with others to carry out its functions.

24. One of the Assembly's functions is to fund local government. The Assembly's part funding of the Equalities Unit is one way in which it promotes equality of opportunity in the context of local government.

25. Generally, the Assembly and the Welsh Assembly Government adopt a partnership approach to promoting equality of opportunity, whether in local government or elsewhere. The Wales Public Sector Round Table on Equality, chaired by Edwina Hart AM as Minister for Equal Opportunities, brings together representatives from a wide range of Welsh public bodies, including the Welsh Local Government Association and its Equalities Unit.

26. The Welsh Assembly Government has taken specific action to promote best practice in construction in the Welsh public sector, including in local government. The Assembly Government supports the UK Government's 1998 Egan Report "Rethinking Construction", which was considered by this Committee in its meeting on 20 June last year. Part of the Assembly Government's commitment to working more closely with its local authority partners is to promote best practice in construction procurement. In support of this, the Minister for Local Government, Finance and Communities wrote to all Chief Executives and Leaders of local authorities in September 2001, enclosing copies of the Rethinking Construction Local Government Task Force "Toolkit", and recommending its use to aid the effective procurement of construction. A copy of the letter is at **Annex 4**. A summary of Construction Procurement Policies and Guidance, relevant to local government, is at **Annex 5**.

SUMMARY

27. Local government and the Assembly are already working in partnership to promote equality of opportunity in local government.

28. Through the Wales Public Sector Round Table, there will be opportunities to continue discussions with public sector partners, including the WLGA's Equalities Unit, and to promote equality of opportunity for all.

29. Principal responsibility for promoting equal opportunities in local government, including in purchasing and construction, lies with the authorities themselves. The Equality Standard appears to be an effective tool for ensuring that equal opportunities issues are addressed and progressed by local authorities.