

Equality Analysis

Healthy Lives, Healthy People:
Analysis for the Consultation
Document on the arrangements for
considering proposals on the
fluoridation of drinking water

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1. The Equality Act 2010

1. As the public authority¹, the Department of Health is subject to the general duty imposed by the Equality Act 2010 ('the Equality Act').²
2. Specifically, public authorities are to ensure, when exercising functions, that due regard is given to the need to³:
 - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - foster good relations between people who share a protected characteristic and those who do not share it.
3. The public sector equality duty, which came into force in April 2011, covers the following characteristics ("the protected characteristics"):
 - age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.⁴
4. The Equality Act ensures that all public bodies, including the National Health Service ("NHS") and public health providers, are obliged to comply with equality principles.⁵ This duty also applies to private providers in so far as they are providing NHS services, on the basis that the provision of services for the purposes of the health service is a function of a public nature⁶. Where necessary, the duty can be reinforced by particular measures, such as the inclusion of conditions in contracts to advance equality with such organisations.
5. The Equality Act does not specify *how* public authorities should evaluate the effect of their existing and new policies and practices on equality. It is up to each authority to choose the most effective approach to meet the objectives under the Act.

¹ Equality Act 2010, s 150 and Schedule 19, see <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

² Equality Act 2010, see <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

³ Equality Act, s 149 and Schedule 19.

⁴ Equality Act, s 149(7).

⁵ Equality Act, s 163.

⁶ Equality Act, s19.

6. The Department of Health ("the Department") is committed to equality, diversity and human rights. In its role, it seeks to be an effective champion for all⁷, by:
 - setting the national direction and supporting delivery to advance equality of opportunity and tackling inequalities in health that arise from disadvantage and discrimination;
 - taking action to support people to maximise their health, wellbeing, independence, choice and control, including making reasonable adjustments where necessary; and
 - supporting all of the people who work in the health services and recognising the value that their differences make to the overall contribution.
7. The Department uses an Equality Analysis in order to demonstrate how it is adhering to/meeting its equality duties under the Equality Act.
8. This Equality Analysis has been prepared using the Department of Health's standard template that has been designed to ensure staff comply with the duties imposed under the Equality Act.
9. The guiding principles we have followed are that:
 - decision makers who take decisions that do or might affect people with protected characteristics must be made aware of their duty under the Act;
 - due regard must be taken before and at the time that a particular decision is being considered;
 - the duty must be exercised in substance, with rigour and with an open mind. The duty has to be integrated within the discharge of the public functions. It is not a question of "ticking boxes";
 - the duty is non delegable;
 - the duty is a continuing one; and
 - it is good practice to keep an adequate record showing that the equality duties have been actually considered and pondered. This disciplines decision makers to undertake their equality duties conscientiously.

⁷ Equality Information published in 2011, see <http://www.dh.gov.uk/health/2012/01/equality-information-2011/>

2. Introduction

Scope of this Equality Analysis

10. Our aim in this Equality Analysis document is to analyse the implications of the conduct of consultations on proposals on the fluoridation of water for those people with protected characteristics. Our analysis covers how people with protected characteristics under the Equality Act can be involved in local decisions about fluoridation. We have due regard to the ways we can meet our obligation to eliminate unlawful discrimination, harassment and victimisation of those with protected characteristics, advance equality of opportunity for them and foster good relations between people with protected characteristics and those who do not.⁸ Notably, this is not an equality analysis of fluoridating water.
11. The Department's view is that decisions on fluoridation should be determined locally and that local authorities, as democratically accountable bodies, are best placed to make a decision on behalf of their local population. The scope of the consultation document is focused (and limited to) consultation on the *process* for considering proposals relating to fluoridation.
12. In the 2012 Act there are a large number of regulation-making powers relating to water supply fluoridation within the new provisions of the Water Industry Act 1991 (as inserted by sections 35-37 of the Health and Social Care Act 2012). Before the relevant regulations can be drafted, the Department needs the advice and experience of those working at a local level and wishes to ensure that people with protected characteristics⁹ contribute to the consultation to create legislation that is relevant, practicable and proportionate. (Please see the accompanying consultation document for more detail.)
13. The most significant legislative change under the Health and Social Care Act 2012 ("the 2012 Act") is the transfer of responsibility from Strategic Health Authorities to local authorities when consulting and making decisions on water fluoridation proposals. For the first time in a generation, local government will be given the responsibility to make a major impact in improving people's health and tackling health inequalities in every community. This includes responsibility for consulting and making decisions on proposals to fluoridate water supplies. Fluoridation policy would affect the general population in a local area if a local authority considered setting up

⁸ Equality Act, s 149.

⁹ 'Protected characteristics' references the equality strands that are protected under equality legislation. Namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation; see section 149 of the Equality Act 2010 for a list of the protected characteristics and the obligations on public authorities.

a new fluoridation scheme or significantly varying or terminating an existing fluoridation scheme. This new system introduces improved democratic accountability into the decision making process. We also see that this new responsibility for local authorities' aligns well with the Secretary of State's duty to reduce inequalities in health as imposed under section 1C of the 2006 Act (as inserted by section 4 of the 2012 Act).¹⁰

14. It will be for local authorities to take into account the issues raised in this equality assessment in considering whether or not to proceed with a fluoridation proposal and, if so, how to conduct the consultation and determine its outcome. The assessment relates to the procedures that the authorities follow. They must assist all the people that would be affected by the proposals to participate in the consultations.

Introduction

The Fluoridation of Water

15. Fluoride is a natural mineral that is found in many foods. Virtually all water supplies contain some fluoride and it was from noticing different patterns of dental decay in areas of naturally fluoridated water that the benefits of fluoride were first observed. Information from the British Fluoridation Society shows that as a result, arrangements were made to add fluoride to drinking water in many countries including the United States of America, Australia and parts of England.¹¹

16. Accordingly, when we refer to fluoridation, we mean the process of adding fluoride to the water supply with a view to reaching a general target concentration of 1 milligram per litre level, or lower if that is not reasonably practicable.¹² At present, approximately six million people in England receive water that has had its level of fluoride adjusted or is naturally fluoridated to this level.¹³

17. For further information on fluoridation, please refer to the consultation document which offers options for the making of regulations on the conduct of consultations on proposals for new fluoridation schemes and the variation or termination of existing fluoridation schemes. It should be noted that the fluoridation regulations will only apply to England.

¹⁰ Health and Social Care Act, 2012 s 4.

¹¹ British Fluoridation Society, *One in a Million 2012*, see <http://www.bfsweb.org/onemillion/onemillion2012.html>.

¹² Ibid.

¹³ Ibid.

The wider context

18. The main objective of the new overarching public health system is “to protect the public; and to improve the healthy life expectancy of the population, improving the health of the poorest, fastest.”¹⁴
19. As a nation, we are living longer, healthier lives than ever before. However, we know that too many of us damage our health through the choices we make in our lives and we know that we need to be ever-vigilant in protecting people from hazards to health (such as infectious diseases) from which individuals cannot readily protect themselves.
20. The current public health system has grown up piecemeal and, as a result, the benefits available from collaborative working across services and sectors are not being fully realised. There is also little freedom for local communities to help design and deliver local solutions for the particular challenges that they face.
21. The 2012 Act transfers responsibility for public health improvements from Primary Care Trusts to local authorities. This arrangement enables joined up approaches across many areas of local government work (such as housing, planning, social care, and leisure) and with important local partners (such as the police, business and schools).
22. Additionally, transferring the local public health commissioning responsibilities to local authorities allows for tailored local solutions to meet varying local needs. It is anticipated that these changes have the potential to impact positively on the wider determinants of health and wellbeing. In addition, local authorities have a democratic mandate from the local population, unlike Primary Care Trusts or Strategic Health Authorities. This additional legitimacy and accountability will help ensure that local authorities are held to account by their local populations.

The implications for fluoridation

23. The proposed reforms to fluoridation policy flow directly from the wider public health reforms facilitated by the 2012 Act. This Equality Analysis therefore complements, and builds on, the analysis undertaken for the White Paper, *Healthy Lives, Healthy People: our strategy for public health in England* (‘the White Paper’). The White Paper focuses mainly on the policy intentions relating to the creation of the new public health system. It should be read in conjunction with this Equality Analysis. The

¹⁴ *Healthy lives, healthy people: our strategy for public health in England*, see http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_127424.pdf

democratic basis to decision-making in local authorities is particularly relevant to a controversial issue like fluoridation.

3. Fluoridation regulations

24. The relevant provisions are sections 35 – 37 of the 2012 Act . The sections amend Chapter 4 of Part 3 of the Water Industry Act 1991¹⁵, which relate to the fluoridation of water. This primary legislation is not subject to further consultation. Section 87 of the 1991 Act is amended so that the Secretary of State enters into fluoridation arrangements with water companies, but only at the request of a local authority in accordance with the process set out in new sections inserted by section 36 of the 2012 Act.
25. The new sections set out the process, but also contain powers for the Secretary of State to make regulations on the procedure to be adopted by local authorities and the requirements around consultation on proposals on fluoridation schemes. This mirrors the existing provisions in that the detail of the consultation requirements is left to regulations.

The policy proposals for fluoridation

26. The 2012 Act transfers responsibility for proposing new fluoridation schemes and varying or terminating existing schemes from Strategic Health Authorities to local authorities. Before proceeding with any proposals the local authorities will need to undertake consultations and ascertain local opinion on the proposals. Generally, water distribution systems cover a larger area than that of a single local authority. Instead of having one single Strategic Health Authority making decisions on fluoridation, it is likely that, under the new arrangements, multiple local authorities will have to come together to make joint decisions on fluoridation. The Department of Health is therefore consulting interested parties on regulations governing how local authorities might decide whether to hold consultations, the conduct of the consultations and decision making on the outcome of consultations.
27. The 2012 Act also transfers the responsibility for contracting with water undertakers (water companies) for fluoridation schemes, from Strategic Health Authorities to the Secretary of State. (In practice, we intend this function to be exercised by Public Health England, which will be an executive agency of the Department of Health). Negotiating and managing contracts with water companies for fluoridation is a complex legal and technical process that can most efficiently be carried out at a national level. Therefore the regulations will also provide for the Secretary of State,

¹⁵ <http://www.legislation.gov.uk/ukpga/1991/56/contents>

through Public Health England, to be satisfied that fluoridation proposals are operable and efficient.

28. The new provisions are not intended to make fluoridation more or less likely. The aim of the regulations is to put in place a fair and practical way to reallocate and amend powers for the fluoridation of water, thereby maintaining existing fluoridation schemes and providing effective mechanisms for consideration of proposals for new schemes or proposals to vary or terminate existing schemes.
29. The responsibility for fluoridation fits well with local authorities' wider public health functions set out in the 2012 Act and introduces democratic accountability into the decision making process. We envisage that proposals will result from Joint Strategic Needs Assessments.¹⁶
30. In the Department's view, giving these responsibilities to locally elected council members should ensure that the decisions reached will better reflect the needs of their local population¹⁷.
31. For some local authorities introducing a fluoridation scheme could make a significant impact on improving their local population's oral health and tackling health inequalities. It would be for local authorities to decide whether fluoridation should be a priority, in the light of local dental health needs and consideration of other options for reducing tooth decay.

4. Consideration of the Impact of Regulations on Fluoridation Schemes on People with Protected Characteristics

32. The Department is undertaking a consultation on the content of the regulations for which there are enabling powers in the 2012 Act. In this chapter, we discuss the impact that relevant regulations could have on each group of people with protected characteristics.
33. Where there should be a positive impact we advise how its extent could be assessed whilst, where there could be a negative impact, we consider what

¹⁶ Joint Strategic Needs Assessments are assessments of current and future health and social care needs which fall to Clinical Commissioning Groups and local authorities and must be carried out by Health and Wellbeing Boards in accordance with section 116 of the Local Government and Public Involvement in Health Act 2007 as amended by the Health and Social Care Act 2012, see the "Glossary" section of the relevant consultation document for further detail.

¹⁷ Local Government Association, Keep it REAL - Responsive, Efficient, Accountable, Local services, November 2011, pg 4

mitigating action might be taken. When the regulations are made the Department intends to issue guidance to local authorities on their implementation which will include advice on how to handle positive and negative impacts.

34. We recognise that we do not yet have sufficient evidence about how some of the proposals on which we are consulting would impact on inequalities in participation in consultations on public health issues. We will review the evidence in the light of responses to the consultation when a further equality assessment will be issued.
35. We go on to consider the implications of the main themes of the consultation for people with protected characteristics.

Initial decision-making on a fluoridation proposal

36. The first regulation making power relates to how local authorities should decide whether to undertake a consultation on a proposal to introduce a fluoridation scheme or vary or terminate an existing fluoridation scheme. These decisions are likely to derive from coverage of oral and dental health in the Joint Strategic Needs Assessments which local authorities are required to carry out for their resident populations.
37. It will be essential that the local authority, which initiates a fluoridation proposal, provides the other local authorities that would be affected by the proposal sufficient information to make a well-informed decision on whether to proceed to a consultation, or not.

Age

Young persons

38. The impact of how local authorities should decide whether to undertake a consultation on a proposal to introduce a fluoridation scheme on those of different ages needs to be considered.

Action to be taken by DH

39. In its guidance the Department intends to emphasise the need to use the results of surveys of the dental health of children conducted under the NHS dental Epidemiology Programme¹⁸ to identify any problems in their areas. This will help local authorities proposing to conduct consultations ensure they provide the other

¹⁸ NHS, *Dental Epidemiological Programme for England*, see <http://www.nwph.net/dentalhealth/survey-results.aspx?id=1>

local authorities affected with sufficient information on the impact of the proposal with this group of people with protected characteristics. Where levels of tooth decay are above average local authorities may wish to consider investigating whether to fluoridate the local water supply.

Older people

40. About 3.5 million people aged 65 years or older have a limiting longstanding illness or disability that restricts their daily activities.¹⁹ Further, our ageing population is increasing due to a combination of increased life expectancy and low birth rates. An estimated 50% of the population will be over the age of 50 by the year 2024.²⁰ It follows that the impact of any public health intervention on older people and those with disabilities needs special consideration.
41. Evidence that the benefits of fluoridation continue into adulthood,²¹ should be of interest to older people and could help ensure that the background information provided to support the consultation has a positive impact.

Action to be taken by DH

42. To assess the potential benefit, we will aim to advise local authorities to refer to information from the national adult health survey (“the survey”)²² on levels of tooth decay among adults and older people in the regions in which they are located. The survey shows that fewer people are losing all of their teeth in old age and, as a result, there is a growing challenge for dental professionals in helping older people maintain good dental health, particularly people receiving community care and in care homes.

Disability

43. Disability affects the length and the quality of a person’s life. It can also adversely affect a person’s access to public services, including access to decision-making. It is estimated that approximately 20% of people within the United Kingdom have a physical or sensory impairment.²³ This percentage increases to 47% when

¹⁹ Williams B, Copestake P, Eversley J and Stafford B, *Experiences and Expectations of Disabled People*, Office for Disability Issues, 2008.

²⁰ 2001 census <http://www.uk/ons/guide-method/census/census-2001/index/html> 2001 census
<http://www.uk/ons/guide-method/census/census-2001/index/html>

²¹ Griffin S.O, Regnier E, Griffin P.M, Huntley V, *Effectiveness of Fluoride in Preventing Caries in Adults*, *Journal of Dental Research* 2007, 86(5):410-415.

²² Adult Dental Health Survey 2009 see <http://www.ic.nhs.uk/statistics-and-data-collections/primary-care/dentistry/adult-dental-health-survey-2009--summary-report-and-thematic-series>

²³ Williams B, Copestake P, Eversley J and Stafford B, *Experiences and Expectations of Disabled People*, Office for Disability Issues, 2008.

focussing on those over the state pension age²⁴. According to the 2001 Census, 18% of people reported a long-term illness or impairment that restricted their daily activities²⁵. People with disabilities have similar oral health problems to the general population but poorer health outcomes from care²⁶. Accordingly the local authorities' consideration of the implications of a fluoridation proposal on people with disabilities should have a positive impact.

Action to be taken by DH

44. We will aim to advise local authorities that there are a number of sources of information which local authorities could access in assessing the implications of a fluoridation proposal on people with disabilities, which should be taken into account when deciding whether or not to proceed with a proposal. It may be that consultants in dental public health will have an overview of relevant epidemiological evidence including the results of the adult and child dental health surveys. Consultants and other specialists in special care dentistry, who treat patients with disabilities, should be able to give information on their treatment needs. If, as with children, levels of dental decay were high, this might add weight to a case for consideration of a fluoridation proposal.

Gender reassignment

We have been unable to find any evidence on the oral health of people who have undergone gender reassignment. We assume the arrangements for a decision on whether to proceed with a fluoridation proposal would be neutral in relation to those who have this protected characteristic.

Action to be taken by DH

45. However, we will review this position once we have received responses on our accompanying fluoridation consultation document ("our consultation document"). Moreover, if the local authorities decided to proceed with a proposal, they should prepare their own equality analysis document from the information available to them.

²⁴ *ibid.*

²⁵ 2001 census, is available at: <http://www.uk/ons/guide-method/census/census-2001/index/html>

²⁶ http://www.bsdh.org.uk/misc/Commissioning_Tool_for_Special_Care_Dentistry_FINAL_MARCH_2007.pdf

Pregnancy and Maternity

46. Women who are pregnant or have had a baby in the previous twelve months do not have to pay NHS dental charges²⁷. It is no longer assumed that there is an automatic risk of dental decay from pregnancy. However, the demands of pregnancy can lead to particular dental problems in some women and all women are advised to consult a dentist when they find they are pregnant²⁸. Overall, the impact on pregnant women and new mothers of a decision on whether or not local authorities should proceed to consultation on a fluoridation proposal appears to be neutral.

Action to be taken by DH

47. We will aim to advise local authorities to enquire of their consultants in dental public health whether there is any epidemiological information on the oral health of pregnant and new mothers which could inform a decision on whether to proceed with a fluoridation proposal. We will review this position once we have received responses to our consultation document.

Race

48. The Afiya Trust in 'Achieving Equality in Health and Social Care Spring 2010' suggested that "many minority ethnic communities have poor access to health and social care services for a variety of reasons including language barriers, lack of awareness/information, social isolation, lack of culturally sensitive services and negative attitudes about communities²⁹. This suggests that local authorities will need to pay particular attention to ensuring that consultations on proposals on fluoridation do not have a negative impact on members of black and ethnic minorities.

Action to be taken by DH

49. Local authorities are likely to need to rely on local studies for information on levels of tooth decay among black and minority ethnic communities groups. We will aim to advise local authorities that, when deciding whether or not to proceed with a consultation, they should take into account our advice at paragraph 79 below on encouraging members of these communities to participate in consultations.

²⁷ <http://www.nhs.uk/NHSEngland/AboutNHSservices/dentists/Pages/nhs-dental-charges.aspx>

²⁸ http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Teeth_and_pregnancy?open

²⁹ Goddard MK, *Quality in and Equality of Access to Healthcare Services in England*. University of York Centre for Health Economics, 2008

Religion or Belief

50. Aside from when a particular religious characteristic overlaps with the association of social and economic deprivation with dental disease, there is very little available evidence about variations in levels of tooth decay or dental attendance in particular religious groups. We feel therefore that the impact of the decision making relating to a fluoridation proposal would be neutral.

Sex/Sexual Orientation

51. We have found no evidence on variations in dental health between the sexes or with gay, lesbian and bi-sexual people. There is evidence that men are less likely to visit a dentist more regularly than women³⁰ but overall we judge that the impact of decisions on whether to proceed with a fluoridation proposal would be neutral.

Conditions on the decision to proceed with a consultation

52. We do not consider this regulation making power will have an impact on groups with protected characteristics because it deals with how, when more than one local authority is affected by a fluoridation proposal, the local authorities should reach a decision on whether to proceed with a proposal. In the consultation document we recommend that a decision to proceed should require a majority (e.g. two-thirds or a super-majority) of affected local authorities. If following responses to the consultation, it appeared that people with protected characteristics might be affected by how local authorities reach a decision, we will review this judgement in preparing the follow-on equality appraisal.

Conditions as to the membership of a joint committee

53. This regulation applies where more than one local authority would be affected by a fluoridation proposal. It provides for conditions to be imposed on the membership of the committee that would progress the proposal and, subsequent to a consultation, decide whether to proceed with it.
54. In the consultation document, we recommend that the joint committee membership should reflect the membership requirements for Health and Wellbeing Boards, which are to be introduced under the Health and Social Care Act. Section 194 of the Act

³⁰ Adult Dental Health Survey 2009 see <http://www.ic.nhs.uk/statistics-and-data-collections/primary-care/dentistry/adult-dental-health-survey-2009--summary-report-and-thematic-series>

³⁰ Williams B, Copestake P, Eversley³⁰ Adult Dental Health Survey 2009 see <http://www.ic.nhs.uk/statistics-and-data-collections/primary-care/dentistry/adult-dental-health-survey-2009--summary-report-and-thematic-series>

³⁰ Williams B, Copestake P, Eversley

requires that a board consists of a range of people, including one councillor of the local authority, the directors of adult social services, children’s services, and public health and a representative of Local Health Watch and each relevant clinical commissioning group and such other persons as the local authority thinks appropriate.

Action to be taken by DH

55. A joint committee which was not representative of the population that would be affected by a fluoridation proposal could have a negative impact on the interests of people with protected characteristics. The membership recommended above does not specifically include a representative of at least one representative with a protected characteristic and, in our guidance, we will emphasise the need for local authorities to ensure they have access to the views of this group, and any other protected characteristics. If, following responses to the consultation, it appeared that people with protected characteristics might be affected by how local authorities decide the composition of joint committees; we will review our intended advice in preparing the follow-on equality appraisal.

Fluoridation decision-making: the consultation procedure and the assessment of public opinion

56. The regulatory power governing the conduct of consultations and the assessment/ascertainment of public opinion is critical to the eventual outcome of a fluoridation proposal.

57. Currently, the Water Fluoridation (Consultation) (England) Regulations 2005 (“the 2005 Regulations”) specify a number of steps that must be taken to ensure a wide-ranging and well-informed consultation. Strategic Health Authorities are under a duty to publish details of the step that they propose to take and the manner in which affected individuals or interested bodies can make representations regarding the proposal:

- in one or more newspapers circulating within the relevant area; and
- in other such accessible media considered appropriate³¹.

58. The published details must include:

- the nature of the step the Authority propose to take;
- the reasons for the proposal;
- the area affected by the proposal; and the period, being a period of not less than 3 months from the date on which the details are first published, within which representations can be made to the Authority³².

³¹ Water Fluoridation (Consultation) (England) Regulations 2005, regulation 3.

59. The consultation document proposes that the above requirements be retained in the new regulations but it also includes an option whereby additional measures would be included in administrative guidance such as:
- circulation of an information pack containing copies of the formal consultation document to Members of Parliament with affected constituencies;
 - arrangement of a press conference to announce the proposals;
 - arrangement of public meetings; and
 - display of posters on local authority premises.
60. For the assessment of public opinion, the consultation document offers three options:
- Option A:** impose no specific procedural requirements in relation to the process for ascertaining public opinion.
 - Option B:** require that the local authority or joint committee must canvass public opinion in a manner left to their discretion.
 - Option C:** specify particular polling mechanisms, for example, public meetings and/or focus groups at which votes are taken, opinion surveys or a referendum.
61. We recommend option A on the grounds that local authorities already have considerable experience of conducting consultations and gauging local opinion and should be able to make satisfactory local arrangements. Any consultation must of course be conducted in a fair and reasonable way. It must be open, accessible, well informed and allow people with protected characteristics to participate. Encouraging the participation of groups with protected characteristics in consultations on people with protected characteristics will require special attention by local authorities. In the sections below we consider relevant evidence and make suggestions as to how any negative impacts of the process of consultation could be mitigated.

Age

Young persons

62. Young persons could be of an age where their access to consultations is limited. Local authorities will therefore need to take extra measures to ensure that children themselves and also families with young children have access to the decision-making process and are encouraged to participate in fluoridation consultations and decisions relating to the process of the consultations.

³² Ibid, regulation 3(2).

Action to be taken by DH

63. We will facilitate this by advising local authorities to advertise and consult at places where children and young families visit or attend frequently, such as child health clinics, pre-school facilities, schools and youth groups. We will also suggest that use of communication media, such as local television and the internet, might be helpful to disseminate information to young people regarding consultations. Focus groups and local consultation meetings might then reinforce these initiatives. In any communication the local authority would need to give a balanced view in which full account was taken of the effects of fluoridation and the ethical considerations arising from a population based public health intervention.

Older people

64. Through our research, we found no evidence on participation rates by people with protected characteristics in consultations on issues like fluoridation. Nevertheless, evidence from elections provide a guide to the challenges local authorities face in encouraging this group of people to participate in consultations. The evidence shows that, in national elections, people aged 65 years or older have the highest voting rate of all people (85%).³³
65. There is no evidence for participation rates at local elections, but it is assumed that the national trend reflects the voting trend at local elections. We could therefore conclude from national election statistics that, even though those with impairments caused from ageing may be restricted in their access to public debates and polling stations, older people are more likely than other sections of the community to participate in consultations. The impact should therefore be positive.

Action to be taken by DH

66. Older people may be more interested than other age groups in research into any effects fluoride has on general health, for example whether it might exacerbate an existing illness. This underlines the importance of including information on the research undertaken on the effects of fluoridation in consultation documents and to ensure that the information is accessible to older people. To make consultation documents readily accessible to older people, they will need to be made available in a range of formats (electronically and by post). Consultations could also be publicised through posters and leaflets in places frequented by older persons, (e.g. community centres, public libraries, local halls, churches, supermarkets). In any

³³ Equality and Human Rights Commission, *How Fair is Britain*, 2010, p. 586.

opinion surveys or referendums, we would also advise that large ballot papers are made available in case there are older people with visual impairments.³⁴

Disability

67. There is no evidence about participation of disabled people in local elections but national participation rates may be indicative of local participation. Statistics show that two-thirds of polling stations at the 2010 general election had at least one significant access barrier such as absence of ramps, space in which to manoeuvre a wheelchair, or suitably adapted polling booths. These barriers were potentially restricting access for older people, the long-term sick and those with physical disabilities.³⁵ There is a significant risk that similar barriers could also have a negative impact on people with disabilities in local consultation exercises.
68. However, the Electoral Commission estimates that a larger proportion of disabled people (69%) in England and Wales voted in the 2005 general election than did non-disabled people (66%). This is reportedly due to the growth in postal voting³⁶.
69. Despite more disabled people voting than the average population, evidence suggests that disabled people are less likely than non-disabled people to maintain that they can influence local decisions. In England, 34% of those with a limiting long-term illness or disability said that they believed that they could influence decisions in 2009/10, compared to 41% of those without a disability.²⁴ This information supports the need for local authorities to have particular regard to how people with disabilities can be encouraged to participate in consultations.

Action to be taken by the Department of Health

70. As for other listed protected characteristics, we will be advising local authorities to ensure that this evidence is readily accessible during public consultations on water fluoridation to those with impairments or disabilities. Research projects on the effects of fluoridation were the subject of a review published by the University of York in 2000³⁷. The report found no clear association between water fluoridation and illness or disability which should allay concerns among people with disabilities over whether the fluoridation of water might cause them additional health problems. We will nevertheless aim to advise local authorities to refer to this research in

³⁴ Scope, Polls Apart: Opening elections to disabled people, 2010 <http://www.scope.org.uk/campaigns/inclusion-and-participation/elections>.

³⁵ Scope, Polls Apart: Opening elections to disabled people, 2010 <http://www.scope.org.uk/campaigns/inclusion-and-participation/elections>.

³⁶ Equality and Human Rights Commission, How fair is Britain, 2010, <http://www.equalityhumanrights.com/key-projects/how-fair-is-britain/>

³⁷ A Systematic Review of Water Fluoridation, <http://www.york.ac.uk/inst/crd/fluores.htm>

consultations since it should be of interest to disabled people and capable of stimulating discussion during consultations.

71. We also recognise that change could be made to increase the accessibility of decision-making for those with disabilities. For example, it has been suggested that for disabled people to vote at a polling booth independently and confidentially, a wider range of options should be available, including online voting.³⁸ We will also aim to advise local authorities to make consultation material available in a range of formats including large print and Braille.

Gender reassignment

72. We found no evidence on the links between gender, dental health and the level of participation in local authority consultations. There is evidence from the 2004 Election in a report by the Electoral Commission showing that there is no difference in voting participation between the genders during local elections³⁹. It could therefore be assumed that the impact of a fluoridation proposal would be neutral.

Action to be taken by the Department of Health

73. We will therefore aim to advise local authorities to be alert to any barriers there might be to the participation of people who have undergone gender reassignment in consultations.

Pregnancy and Maternity

74. We have found no evidence of links between pregnancy and new motherhood and access to the decision-making processes, but there is a risk of a negative impact because family commitments could impair the access of pregnant women and new mothers to events and materials related to a consultation.

Action to be taken by the Department of Health

75. The exemption from dental charges referred to at paragraph 46 provides an incentive for pregnant women and new mothers to attend a dentist. In our guidance to local authorities, we will aim to advise them to ensure that consultation materials are made available in dental practices. This will ensure that pregnant women and new mothers, who attend for dental treatment, have access to these materials and can be encouraged to participate in consultations.

³⁸ Scope, Polls Apart: Opening elections to disabled people, 2010, <http://www.scope.org.uk/campaigns/inclusion-and-participation/elections>.

³⁹ The Electoral Commission, *Gender and political participation*, April 2004, pg 21.

76. Similarly, the information should also be provided at places which these women attend frequently, such as midwifery and child health clinics, general medical practices and the obstetric and gynaecological departments of district general hospitals.

Race

77. We found no evidence about participation rates segmented for racial characteristics for local elections. However, data from national elections gives an indication of participation rates at the local level. At the national level, research suggests that first generation naturalised migrants vote in similar proportions to the general population, with levels of electoral participation dropping in subsequent generations. Levels of self-reported turnout fell unevenly across ethnic groups between the 1997 and 2005 general elections. The largest decline was in the mixed race group. However, there was a rise in self-reported turnout of Asian people which means that they are reported to have a larger turn-out than the White population. It was found by this data from national elections that all other racial groups vote less than the White population⁴⁰.

78. There is evidence from the last decade that, in some circumstances, people from ethnic minority backgrounds have felt that they had higher levels of personal influence on local matters than people from white backgrounds. However, the extent of this influence varies. For example, in 2009/10, 49% of Black and 45% of Asian people felt able to influence decisions in their local area compared with 36% of White people. However, within these broader groups, levels of perceived influence also varied.⁴¹ There remains a risk that the conduct of consultations may have a negative impact on members of Black and Ethnic Minorities if they do not participate in the consultations.

Action to be taken by the Department of Health

79. To help mitigate this risk, we will aim to advise local authorities to contact leading members of local ethnic minorities once they have decided to proceed with a consultation on a fluoridation proposal to discuss how best to encourage members of these communities to participate. We also understand that consideration will need to be given to options for communication, including arrangements for meetings and focus groups and the translation of evidence on the effects of fluoridation.

⁴⁰ Equality and Human Rights Commission, How fair is Britain, 2010 pg 593

⁴¹ Equality and Human Rights Commission, How fair is Britain, pg 603

Religion or Belief

80. We found no evidence presented specifically on links between religious characteristics and access to the decision-making process. However, Sikhs, Hindus and Muslims are slightly (not significantly) more likely than Christians, and those without religious affiliation, to feel that they can influence decisions at a local level. Levels of confidence of religious minorities to influence local decisions have tended to fluctuate over time whilst those of Christian and non-religious respondents have stayed fairly constant (declining slowly since 2001). The biggest increase in perceived local influence has been amongst Sikhs⁴². Figures show that the self-reported turnout of people with a religious identity is generally higher than that of those without such an identity.⁴³ In this light, the impact of conduct of a consultation should be neutral provided members of the different religious groups are made aware of a consultation.

Action to be taken by the Department of Health

81. The Department will therefore aim to advise local authorities to contact leaders of local religious groups to explore how best to encourage their members to participate in consultations. Information on consultations could be distributed to facilities adjacent to places of worship, for example, church halls. To encourage participation, local authorities could then offer to arrange meetings or focus groups at these locations.

Sex/Sexual Orientation

82. We found no evidence on the links between gender, dental health and the level of participation in local authority consultations. There is evidence from the 2004 Election in a report by the Electoral Commission showing that there is no difference in voting participation between the genders during local elections⁴⁴. Neither have we have found evidence of links between sexual orientation, dental health and access to the decision-making process. However, there is some evidence to suggest that gay, lesbian or bisexual people are slightly more likely to feel that they are able to influence decisions affecting their local community than are heterosexuals.⁴⁵ There is also evidence that men are less likely to attend a dentist regularly than women.⁴⁶

⁴² Equality and Human Rights Commission, *How fair is Britain*, 2010 pg 603

⁴³ Equality and Human Rights Commission, *How fair is Britain*, 2010 pg 596

⁴⁴ The Electoral Commission, *Gender and political participation*, April 2004, pg 21.

⁴⁵ Equality and Human Rights Commission, *How fair is Britain*, 2010 pg 604

⁴⁶ Adult Dental Health Survey 2009 <http://www.ic.nhs.uk/statistics-and-data-collections/primary-care/dentistry/adult-dental-health-survey-2009--summary-report-and-thematic-series>

83. This evidence suggests the conduct of consultations could have a negative impact on the interests of adult males.

Action to be taken by the Department of Health

84. To mitigate this risk, we will suggest to local authorities that they place posters and leaflets publicising the consultation in general, widely-used venues, such as like gyms, sports facilities, clubs and restaurants. Information about the proposal could also be posted on the internet.

Reaching a decision on whether to proceed with a fluoridation proposal.

85. The consultation document offers the following options on the factors on which local authorities should take into account in deciding, after a consultation, whether to proceed with a fluoridation proposal:

Option A no prescription in regulations.

Option B replicate the current requirements in regulations.

Option C prescribe different requirements in regulations. For example, that a local authority or joint committee when determining whether to proceed with a fluoridation proposal must have regard to:

- the views of the local population including the extent of support for the proposal;
- the validity of the arguments advanced, having particular regard to the scientific basis of the representations for and against as well as views on the ethical arguments about fluoridation;
- whether the Joint Strategic Needs Assessment and the Health and Wellbeing Strategy for the affected areas supports the proposal;
- the financial implications of a fluoridation proposal; and
- whether the health arguments in favour of proceeding with the proposal outweigh all arguments against proceeding.

86. We recommend option C. Ensuring that the views of people with protected characteristics are taken into account under these criteria will, to a considerable extent, depend upon the extent of their participation in the consultation. In the sections below we consider relevant evidence and make suggestions as to how any negative impacts on these groups could be mitigated.

Age

Young persons

87. We are not aware of any evidence of the capacity of children and young people to assimilate and respond to issues arising from consultations, such as the scientific evidence on fluoridation or its financial implications.

Action to be taken by DH

88. To mitigate the potentially negative impact on younger people in deciding whether to proceed with a consultation, we will aim to advise local authorities to have particular regard to evidence from the Joint Strategic Needs Assessment on levels of dental decay and any improvements achieved by oral health promotion initiatives other than fluoridation. If following responses to the consultation, it appeared that children and young people might be affected by how local authorities determine the outcome of a consultation, we will review our advice in preparing the follow-on equality appraisal.

Older people

89. Some older people might also have had difficulties with interpretation of the scientific and financial aspects of a fluoridation proposal. These sometimes originate from reports in academic journals and other publications to which older people may not have ready access. They may also have difficulty in interpreting the results of research studies published in these reports or in what to conclude from apparently conflicting results of different studies. This could have a negative impact on older people.

Action to be taken by DH

90. To mitigate these risks, we will aim to advise local authorities to pay particular attention to the means by which scientific and financial information is communicated to the local population during a consultation. The consultation document proposes that directors of public health in local authorities, that would be affected by a fluoridation proposals, would have a key role in advising on the interpretation of evidence-based information on the effects of fluoridation. The directors would be able to use feedback from public meetings, focus groups etc to refine the information to make material as comprehensible as possible.

Disability

91. It will be important that people with disabilities have access to financial and scientific information on fluoridation. They may also need help to be able to communicate their views on the issues raised in a consultation to the local authorities conducting the consultation. We do not have any current evidence of any problems that people with disabilities might encounter here, but a further equality analysis will be completed after we receive submissions to the consultation document.
92. In an attempt to mitigate any risks to people with disabilities from having access to consultation on a proposal, we will aim to advise local authorities to ensure that those specialists who provide dental treatment to disabled people are equipped to discuss a fluoridation proposal with their patients. We will also request that these dentists provide feedback from their patients on both their views and any difficulties they may have had in understanding the issues. If, following responses to the consultation, it appears that there might be a negative impact on people with disabilities by how local authorities determine the outcome of a consultation, we will review our advice in preparing the follow-on equality analysis.

Action to be taken by the Department of Health

93. We are not aware of any evidence that the measures with which we recommend local authorities reach decisions on fluoridation proposals would have a particularly negative or positive impact on people who had undergone gender reassignment. It is therefore likely that the impact would be neutral and would not require any further action in order to lessen the impact on equality to those with the gender reassignment protected characteristic. If, following responses to the consultation, it appeared that people who had undergone gender reassignment might be affected by how local authorities determine the outcome of a consultation, we will review our advice in preparing the follow-on equality appraisal.

Pregnancy and Maternity

94. The claims of a link between fluoridation and problems with reproduction or congenital disabilities may be of particular concern to pregnant women, new mothers, members of their families and experts in the field. Local authorities would need to take account of responses relating to the scientific evidence that there is no clear link with such problems when weighing the health benefits of a fluoridation proposal. Failure to do so could have a negative impact on the interests of this group.

Action to be taken by the Department of Health

95. To mitigate such a risk, we will aim to advise local authorities to ensure that, through contact with pregnant women, new mothers, members of their families and experts in the field that they make every attempt to obtain views from this group on a fluoridation proposal from pregnant women and new mothers. These views can then be taken into account in reaching a decision on the proposal.

Race

96. In paragraph 38 above we indicated that we would be advising local authorities to arrange for translation of information on fluoridation where this would encourage increased participation of members of ethnic minorities in consultations. Any problems in communicating feedback could have a negative impact on this group.

Action to be taken by the Department of Health

97. To mitigate such a risk, we will aim to advise local authorities that if they are in any doubt about the interpretation of feedback on a consultation from ethnic minorities that they should seek advice from leaders of these communities and for access translation services where necessary and justifiable.

Religion or Belief

98. It may be that the policy of fluoridating a population's water supply appears to be incompatible with the tenets of some religions. We have no evidence of this, but if local authorities failed to take account of any such views in reaching a decision on a consultation then there could be a negative impact on members of these religious groups.

Action to be taken by the Department of Health

99. We will aim to advise local authorities to be sensitive to people's religious beliefs during a consultation and take any views that are relevant to fluoridation into account in reaching a decision on a fluoridation proposal.

Sex/Sexual Orientation

100. We are not aware of any evidence that the measures with which we recommend local authorities reach decisions on fluoridation proposals would have a negative impact on men or women of different sex or sexual orientation.

Seeking agreement on whether to proceed with a fluoridation proposal

101. The consultation document offers the following options for the making of regulations where, following a consultation, a joint committee of local authorities is seeking agreement on whether to proceed with a fluoridation proposal:

Option A No procedure prescribed in regulations. The joint committee would determine its own procedure for making the final decision.

Option B Prescribe that the joint committee must make a decision by majority voting but that the committee is free to determine whether a simple majority is sufficient, or whether a larger majority would be more appropriate under its own rules of procedure.

Option C Prescribe that the joint committee must make a decision by a super-majority (two-thirds) where equal numbers of members from each local authority have a vote but no other members of the committee.

Option D Prescribe that the joint committee must make a decision by a super-majority (two-thirds) but that local authorities would be free to determine their own rules of procedure, including which members of the committee would be eligible to vote.

102. Where the joint committee comprises of four or more local authorities, the consultation document includes an additional option whereby voting would be weighted by the size of the population in each authority that would be affected by the proposal.

103. We recommend that there should be a super majority of local authorities in favour for agreement to be reached on a fluoridation proposal with either the voting procedures left to the discretion of the authorities or prescribed in regulations (including population weighting where four or more authorities are involved).

104. We do not consider that these procedural arrangements for the conduct of local authority business will have any particular positive or negative impact on people with protected characteristics compared to people who do not share that protected characteristic. However, if we receive information about this through the consultation, we will include this in a further equality assessment with the response to the consultation.

Variation, termination and maintenance of fluoridation

105. Throughout this document we have referred to consultations on “fluoridation proposals”. Such proposals could be for a new fluoridation scheme, for a variation in an existing fluoridation (to extend or reduce its area) or the discontinuation of

maintenance or termination of an existing scheme. However, there are separate regulation making powers in the Act for consultations and decisions on these issues.

106. As the accompanying consultation document indicates,⁴⁷ the Department's view is that the consultation and procedural requirements for varying, maintaining or terminating a scheme should be the same as for a proposal for a new fluoridation scheme. As a consequence, the proposals set out above, for the conduct of consultations and decision-making would apply to all fluoridation proposals.

107. The guidance which we propose to issue with advice on how to mitigate any negative impacts on groups with protected characteristics will apply equally to consultations on the variation, maintenance and termination of fluoridation schemes. We do not consider therefore that there will be a negative impact on these groups, or where there might be a negative impact this can be mitigated by the local authorities.

108. Under normal circumstances, the Secretary of State may not request variation of fluoridation arrangements or require a water undertaker to terminate such arrangements unless a proposal has been made by one or more affected local authorities. However, section 88I (4) provides that the Secretary of State may provide that this does not apply in prescribed circumstances. These powers could be used to enable unilateral termination as a fail-safe option to be used to preserve the safety of the water if, for example, contrary to our experience of fluoridation schemes over 40 years, risk to general health from fluoridation were identified.

109. We do not consider that this 'force majeure', power will have a negative impact on groups with protected characteristics because the circumstances in which we envisage it would be used, such as the identification of a risk to general health, is intended to apply equally to all sections of the population.

Summary of Analysis

110. In order to evaluate this policy we have asked the following questions in this equality analysis document:

- How will people with protected characteristics under the Equality Act have their views heard and public health needs considered during consultation on fluoridation to be conducted by local authorities?
- How could the conduct of consultations be developed, or what other steps could be taken, to ensure that those with protected characteristics are made aware of

⁴⁷ See paragraph 168 of the fluoridation consultation document.

the health related and ethical issues relating to fluoridation and have the opportunity to express their views on these issues?

111. Where we have identified a potential negative impact on people with a protected characteristic, we have made suggestions as to how it could be mitigated in order to reduce the inequality.
112. The analysis indicates that that there is no evidence that transferring responsibility for consulting and deciding on local fluoridation schemes from Strategic Health Authorities to local authorities will have a negative impact on people protected under equality legislation. In the Department's view, all people generally (including those with protected characteristics) should feel that they have more influence on the decisions of a democratically elected local authority than they would on those of an unelected health authority.
113. In delivering public health initiatives to tackle the needs of the local population, local authorities are accountable to the local electorate. It is expected that this democratic mandate will increase the sensitivity of councillors to the views of all its local population about fluoridation and ensure that their decisions take account of these views. This democratic mandate has previously been assessed as part of the equality analysis of the public health aspects of the Health and Social Care Act 2012.
114. Nonetheless, when consulting and deciding on fluoridation for a local area it will be important for local authorities to actively engage with all groups with protected characteristics. In preparing guidance on implementation of the relevant regulations, the Department will aim to advise local authorities how they can facilitate and encourage the participation of those with protected characteristics in consultations. Likewise, the Department/ Public Health England, will work with local authorities in developing arrangements for collecting equality data that could assist access to consultations by those with protected characteristics.
115. Deciding whether to fluoridate the local water supply:
 - there is a risk that local authorities may not make a full appreciation of the oral health needs of their child populations because young children are reliant on their parents/carers to advocate on their behalf; and
 - there is a risk that the evidence on the effects of fluoridation across the various groups may not be accessible to people with protected characteristics under the Equality Act. Local councils will need to familiarise themselves with the relevant evidence to help target oral health initiatives to the specific needs of these groups. This may include working with community advocates, "local elders", bilingual professionals, church leaders and members of local community groups.

116. As public bodies, local authorities, in addition to the Department of Health, need to be aware of and meet the obligations and duties set out in equality and human rights legislation and regulations. Under section 149 of the Equality Act 2010, this includes having regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act;
- advance equality of opportunity between those who share a protected characteristic and those who do not; and
- foster good relations with people who share a protected characteristic.

117. Therefore, the Department expects local authorities will conduct their own equality analysis of the impact of the process for consultation on proposals for fluoridation. If a local authority discovers any potential adverse impacts on protected groups from their fluoridation proposals, then that authority would meet its obligation and take appropriate action to mitigate these impacts. As indicated above, we intend to issue guidance on how people with protected characteristics can be encouraged to participate in consultations and thereby make the local authority aware of their views. We suggest that contacts with community advocates in arranging public meetings, focus groups etc will be critical here.

118. The Local Government Association suggests that “councils and their partners have a real opportunity to challenge inequality, to ensure that everyone has an equal chance in life and to respond to the diverse needs of the communities they serve”. The Equalities and Cohesion team at the Local Government Improvement and Development (LGID) helps councils to meet these challenges by providing up-to-date information on equality policy and practice, such as where to find evidence and data, guidance on legislation and examples of good practice. Their webpage on “sharing good practice” has a selection of case studies on areas such as age discrimination, sexual orientation, gender and disability that Local Authorities can learn from when undertaking their equality analyses and preparing their Joint Strategic Needs Assessments⁴⁸.

⁴⁸ <http://www.idea.gov.uk/idk/core/page.do?pagelId=6452237>

5. Action planning for improvement

Category	Actions	Target date	Person responsible and their Directorate
Involvement and consultation	<ul style="list-style-type: none"> DH will consider the consultation responses including further evidence for the equality analysis in the development of the regulations. DH proposes to issue guidance to local authorities to clarify their responsibilities in respect to consultations on fluoridation proposals. 	December 2012	Chief Dental Officer
		March 2013	Chief Dental Officer
Data collection and evidencing	The Department will develop its policy on the collection of information about oral health of the national / local population to feed into JSNAs ⁴⁹ e.g. by sponsoring epidemiological surveys. This also applies to the arrangement for ensuring that any evidence is made available to relevant local authority staff. The Department/ Public Health England, will work with local authorities in developing arrangements for collecting equality data.	Recurring	Chief Dental Officer
Analysis of evidence and assessment	The Department/ Public Health England will then analyse the data to assess whether the views of people with protected characteristics have been captured in the consultation.	Recurring	PHE-TT
Monitoring, evaluating and reviewing	In the light of the data obtained from the above analysis, the Department will seek to gather more evidence about how those with protected characteristics engage or are involved in consultations on fluoridation (or more widely on other health matters) to strengthen the analysis of the Department's proposals and their implementation.	Recurring	Chief Dental Officer
Transparency (including publication)	The Department will publish an updated equality analysis alongside the final regulations.	2013	Chief Dental Officer

⁴⁹ For further information on Joint Strategic Needs Assessments (JSNAs), refer to the glossary section of the relevant consultation document –

<http://www.dh.gov.uk/health/category/publications/consultations/consultations-open/>

For the record Name of person who carried out this assessment: Public Health Development Unit
Date assessment completed:
Name of responsible Director/Director General: Kathryn Tyson
Date assessment was signed:

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