Equality Duty: Detailed Proposals

Consultation on Public Sector Equality Duty Draft Regulations and Order

one scotland
SCOTTISH GOVERNMENT

Equality Duty: Detailed Proposals

Consultation on Public Sector Equality Duty Draft Regulations and Order

The Scottish Government, Edinburgh 2010

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EQUALITY DUTY: DETAILED PROPOSALS

CONSULTATION ON PUBLIC SECTOR EQUALITY DUTY DRAFT REGULATIONS AND ORDER

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PUBLIC SECTOR EQUALITY DUTY – DETAILED PROPOSALS

PURPOSE

Public authorities have a central role to play in improving the lives of the people of Scotland. This includes tackling the disadvantage and inequality faced by communities. Progress and improvement will be made more quickly if public authorities are active in promoting equality and tackling discrimination.

The UK Government's Equality Act 2010 includes a public sector equality duty – 'the general duty' – designed to help public authorities promote equality and tackle discrimination. Further 'specific duties' can be placed on public authorities to enable the better performance of the general duty.

Scottish Ministers intend to make some additions to the list of bodies covered by the general duty, and to impose further 'specific duties' on some Scottish public authorities.

The purpose of this consultation is to seek the views of stakeholders and members of the public on:

- The list of Scottish public authorities to be made subject to the general duty
- The list of Scottish public authorities to be made subject to the specific duties
- The content of the specific duties, which are intended to enable the better performance of the general duty

PUBLIC SECTOR EQUALITY DUTY – DETAILED PROPOSALS

PREFACE

Responding to this consultation paper

We are inviting written responses to this consultation paper by **26 November 2010.**

Please send your response with the completed **Respondent Information Form** (see "Handling your Response" below) to:

graeme.bryce@scotland.gsi.gov.uk

or

Graeme Bryce
Equality Unit
The Scottish Government
Area 2G
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries contact Graeme Bryce on 0131 244 2531, or by email at graeme.bryce@scotland.gsi.gov.uk

We would be grateful if you would use the consultation questionnaire provided or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at http://www.scotland.gov.uk/consultations.

The Scottish Government now has an email alert system for consultations (SEconsult: http://www.scotland.gov.uk/consultations/seconsult.aspx). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** : which forms part of the consultation questionnaire as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

The **Respondent Information Form** is enclosed. It is also available online at: http://www.scotland.gov.uk/Publications/2008/06/decapitalisation/rif/

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the enclosed Respondent Information Form), these will be made available to the public in the Scottish Government Library in January 2011. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on what specific duties should be placed on Scottish public authorities to assist them deliver on the general Equality Duty outlined in the UK Government's Equality Act 2010.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Equality Unit
The Scottish Government
Area 2G, Victoria Quay
Edinburgh
EH6 6QQ

Email: graeme.bryce@scotland.gsi.gov.uk

The Scottish Government Consultation Process

Consultation is an essential and important aspect of the Scottish Government's working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. In general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a consultation paper inviting answers to specific questions or more general views about the material presented. Consultation papers are distributed to organisations and individuals with an interest in the issue, electronically or in hard copy and are placed on the Scottish Government's consultations webpage to allow for participation from a wider audience. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4556).

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed at
http://www.scotland.gov.uk/consultations

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review,
- inform the development of a particular policy,
- help decisions to be made between alternative policy proposals, or
- be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Response Proforma – Respondent Information Form

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title **Mr** ☐ **Ms** ☐ **Mrs** ☐ **Miss** ☐ **Dr** ☐ ***Please tick as appropriate***

Surname

Forename

2. Postal Address

Postcode	**Phone**	**Email**

3. Permissions
I am responding as…

Individual ☐ **Group/Organisation** ☐

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

yes ☐ **no** ☐

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

Yes, make my response available, but not my name and address ☐

Yes, make my response and name available, but not my address ☐

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your ***response*** to be made available?

Please tick as appropriate

yes ☐ **no** ☐

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate **yes** ☐ **no** ☐

SUMMARY

Introduction

Everyone should expect to be treated with respect, to be treated fairly and to have the opportunity to reach their potential. The Scottish Government and public authorities are working to promote equality and to ensure that no-one is denied opportunities or disadvantaged through discrimination, prejudice or exclusion due to factors such as race, gender, gender identity, disability, sexual orientation, religion or belief, or age. This is essential in achieving a just and inclusive Scotland and successfully delivering our national outcomes.

Equality Act 2010

The UK Government's Equality Act 2010 is a major piece of legislation which simplifies, strengthens and where possible harmonises equality legislation into a single approach. As part of this change in legislation, a new 'general' Equality Duty will be introduced which will require public authorities to be active in promoting equality, eliminating unlawful conduct and fostering good relations. Scottish Ministers can place additional 'specific duties' on public authorities to assist the delivery of the general duty.

Scottish Specific Duties

Scottish Ministers welcome the new single equality duty and the opportunity to develop a suite of specific duties which are strong and effective whilst being flexible, proportionate and focussed on outcomes. Scottish Ministers consulted last year on the scope of the new specific duties and the findings have informed the detailed proposals set out in this consultation document.

The Areas for Consultation

<u>Coverage of the General Duty</u>

Proposals on who should be subject to the new public sector equality duty?

<u>Coverage of the Specific Duties</u>

Proposals on who should be subject to the new public sector equality duty specific duties?

<u>Content of Specific Duties</u>

The purpose of the specific duties is to set a framework for delivery of the general duty. We are proposing that regulations for the new specific duties place the following requirements on listed public authorities:

- A duty to publish equality outcomes, based on evidence and involvement of equality groups and communities, and informed by the

general duty. An authority will have to report on progress made towards these outcomes.

- A duty to report on ‘mainstreaming’ – action to embed equality across corporate systems, policies and practices
- A duty to consider the impact on equality of new policies and practices, including changes to, or redesign of, existing policies and practices. This duty includes a requirement to use evidence.
- A duty to publish specific employment data
- A duty on Scottish Ministers to set national equality priorities and report on progress
- A simplification of reporting, including a requirement to use existing public performance reporting systems.

PUBLIC SECTOR EQUALITY DUTY – DETAILED PROPOSALS

1 – INTRODUCTION

Context

1.1 The Scottish Government is committed to growing Scotland's economy with opportunities for all of Scotland to flourish. Equality contributes to this national purpose. It is a key element of our National Performance Framework and we have a specific national outcome to have tackled the significant inequalities in Scottish society. We believe that a more equal and just Scotland will contribute to our economic and social wellbeing.

1.2. Whilst equal opportunities remains a largely reserved matter, Scottish Ministers have, since devolution, sought to positively promote equality and to tackle prejudice and discrimination, within their areas of responsibility. The Scottish Government was supportive of the introduction of the existing race, disability and gender public sector equality duties, seeing them as contributing to the delivery of improved public services, Best Value and better outcomes for the people of Scotland. And the Scottish Government is supportive of the introduction of the new single equality duty as outlined in the Equality Act 2010.

The Equality Act 2010

1.3. The UK Government's Equality Act 2010 is a major piece of legislation which consolidates, strengthens and where possible harmonises equality legislation into a single approach, including a new public sector equality duty. Scottish Ministers believe this is a positive step, which will assist public authorities to deliver on equality.

1.4. The new duty brings together the existing three duties on race, gender and disability and extends coverage to sexual orientation, age, religion or belief, pregnancy and maternity, and gender reassignment. Like the current duties, this new duty has two parts – a public sector duty in the Act itself, often referred to as the **general duty**, and provision for **specific duties** to be made through Regulations.

1.5. The full text of the general duty in the Equality Act 2010 is at Annex A. In summary, the general duty will require public authorities to have due regard to the need to:

- eliminate unlawful conduct
- advance equality of opportunity
- foster good relations across all protected characteristics

1.6 The general duty will apply to any organisation carrying out public functions with regard to those functions. In addition, public authorities can be listed at schedule 19 of the Equality Act and those that are will be subject to the duty for all of their functions.

1.7. The specific duties are intended to set out a clear framework that will assist public authorities to meet the requirements of the general duty. Scottish Ministers have the power to place these specific duties on Scottish public authorities. But only public authorities listed in schedule 19 of the Equality Act can have the specific duties placed on them.

Scope of the specific duties

1.8. In order to help decide what form these specific duties might take, the Scottish Government undertook a 'Consultation on Public Sector Equality Duty Specific Duties'. The consultation ran from 29 September 2009 until 15 January 2010, and bodies covered by the legislation and other interested parties submitted their views on the specific duties which might be placed on Scottish public authorities. The consultation document invited respondents to address 39 questions on a range of topics including:

- delivering on mainstreaming;
- outlining equality plans/setting equality objectives;
- reporting on progress;
- demonstrating impact;
- involvement and consultation;
- leadership from Scottish Ministers.

1.9. Following a competitive tendering exercise, the Scottish Government commissioned George Street Research to analyse responses to the consultation. Findings from the analysis of responses have been used to help Scottish Ministers reach a decision on specific duties to be placed on Scottish public authorities.

Enforcement

1.10 The Equality Act 2010 does not change the current enforcement procedures for the existing duties. This means that enforcement of the new single equality duty will be by judicial review or through the Equality and Human Rights Commission (EHRC).

Human Rights

1.11. As we move forward with our work on equality, we recognise the connection and relationship with human rights and the underpinning legislation. There is a clear link between equality and human rights and a human rights understanding of the principle of proportionality can assist in the balancing of competing rights and interests which may be of critical importance in the promotion of good relations between communities.

1.12. Whilst Human Rights are outside the scope of the Equality Act and the public sector equality duty, we recognise that public authorities may find it helpful to be guided on how these two areas relate and how public authorities should be addressing them in future. We suggest that this is a matter for further consideration with the Equality and Human Rights Commission and the Scottish Commission for Human Rights.

Next steps

1.13 Specific duties can only be placed on bodies which are listed in schedule 19 of the Equality Act 2010. Scottish Ministers can amend schedule 19 and plan to do so prior to imposing specific duties. Scottish Ministers' plans for making additions to schedule 19 are set out in Chapter 2 of this consultation document, which includes a draft of the necessary Order.

1.14. Specific duties are imposed through Regulations and this consultation document sets out Scottish Ministers proposals for those Regulations, building on the outcome of our earlier consultation between September 2009 and January 2010. Scottish Ministers' proposals for the specific duties are set out in Chapters 3 and 4, accompanied by a draft of the necessary Regulations and consultation questions on which we are seeking views.

1.15. This consultation document also includes a summary Business and Regulatory Impact Assessment and summary Equality Impact Assessment.

1.16 The consultation will last until **26 November 2010**. Following this, Scottish Government officials will analyse the responses and we plan to lay the Order and Regulations in January 2011.

PUBLIC SECTOR EQUALITY DUTY – DETAILED PROPOSALS

2 – COVERAGE OF THE GENERAL DUTY

Background

2.1 The new public sector equality duty – the 'general duty' – will apply to any organisation carrying out public functions with regard to those functions. In addition, public authorities can be listed at schedule 19 of the Equality Act and those that are will be subject to the duty for all of their functions.

2.2 Scottish Ministers have the power to amend schedule 19 to add Scottish public authorities, subject to the consent of a Minister of the Crown at Westminster. Some Scottish public authorities are already listed in schedule 19 and we propose listing further Scottish public authorities according to the following criteria:

- Is the organisation of a **sufficient size** to operate the public sector equality duty?
- Does the organisation perform **public functions**?
- Does the organisation perform **judicial functions**? (these functions are exempt from the duty).

2.3 Scottish public authorities already listed in schedule 19 are as follows:

- An office-holder in the Scottish Administration (within the meaning given by section 126(7)(a) of the Scotland Act 1998).
- A community council established under section 51 of the Local Government (Scotland) Act 1973.
- A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.
- An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980).
- In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.
- The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992).
- The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992).
- The managers of a grant-aided school (within the meaning section 135(1) of the Education (Scotland) Act 1980).
- A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.

- A joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973.
- A joint fire and rescue board constituted by a scheme under section 2(1) of the Fire (Scotland) Act 2005.
- A licensing board established under section 5 of the Licensing (Scotland) Act 2005, or continued in being by virtue of that section.
- A National Park authority established by a designation order made under section 6 of the National Parks (Scotland) Act 2000.
- A police authority established under section 2 of the Police (Scotland) Act 1967.
- Scottish Enterprise and Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990.
- A Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.

Proposals

2.4 Scottish Ministers propose adding a number of Scottish public authorities to this list. These organisations have already been consulted over whether they should be included. To add Scottish public authorities, Scottish Ministers must make an Order, a draft of which is included within this consultation document (pages 15-17). The list of Scottish public authorities to be added to the Equality Act 2010 and made subject to the general duty for all of their functions is in the Schedule of the draft Order, page 16-17 of this document.

Consultation Questions

Question 1

Do you agree with the proposed list of Scottish public authorities (pages 16-17) to be added to schedule 19 of the Equality Act 2010 and made subject to the general duty for all of their functions? If not, please tell us why you disagree and provide your suggestions for changes.

Draft Order

Draft – 8 September 2010
Draft Order for Consultation

Order made by the Scottish Ministers, laid before the Scottish Parliament under section 210 of the Equality Act 2010 for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2010 No.

EQUAL OPPORTUNITIES

Equality Act 2010 (Specification of Public Authorities) Order 2010

Made - - - - 2010

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of powers conferred by section 151(3) of the Equality Act 2010([1]) and all other powers enabling them to do so.

In accordance with section 152(3) of that Act the Scottish Ministers have obtained the consent of a Minister of the Crown and have consulted the Commission for Equality and Human Rights.

In accordance with section 210 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Equality Act 2010 (Specification of Public Authorities) Order 2010 and comes into force on the day after the day on which it is made.

Amendment of Schedule 19 to the Equality Act 2010.

2. After the entry under the sub-heading "Police" in Part 3 (Public Authorities: Relevant Scottish Authorities) of Schedule 19 to the Equality Act 2010 insert:

([1]) 2010 c.15.

ì Additional Bodies and Persons

A Chief Constable of a police force maintained under section 1 of the Police (Scotland) Act 1967

A Chief Officer of a Community Justice Authority

A Chief Officer of a relevant authority appointed under section 7 of the Fire (Scotland) Act 2005

A Community Justice Authority

Executive Non-departmental Public Bodies

Board of Trustees of the Royal Botanic Garden, Edinburgh

Bòrd na Gàidhlig

Creative Scotland

Crofters Commission

Learning and Teaching Scotland

Police Complaints Commissioner for Scotland

Quality Meat Scotland

Risk Management Authority

Royal Commission on the Ancient and Historical Monuments of Scotland

Scottish Agricultural Wages Board

Scottish Children's Reporter Administration

Scottish Criminal Cases Review Commission

Scottish Environment Protection Agency

Scottish Further and Higher Education Funding Council

Scottish Legal Aid Board

Scottish Legal Complaints Commission

Scottish Natural Heritage

Scottish Police Services Authority

Scottish Qualifications Authority

Scottish Social Services Council

Scottish Sports Council

Skills Development Scotland

The Accounts Commission for Scotland

The Board of Trustees for the National Galleries of Scotland

The Board of Trustees of the National Museums of Scotland

The Scottish Court Service

The Trustees of the National Library of Scotland

VisitScotland

Water Industry Commission for Scotland

Public Corporations

Scottish Futures Trust Ltd.

Scottish Water

Commissioners & Ombudsmen

Commissioner for Children and Young People in Scotland

Commission for Ethical Standards in Public Life in Scotland

Public Standards Commissioner for Scotland

Public Appointments Commissioner for Scotland

Scottish Commission for Human Rights

Scottish Information Commissioner

Scottish Public Services Ombudsman

Other Significant National Organisations

A Passenger Transport Executive within the meaning of Part II of the Transport Act 1968

A Regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005

Audit Scotland

Healthcare Improvement Scotland (HIS)

Her Majesty's Chief Inspector of Prosecution in Scotland

Mental Welfare Commission for Scotland

Scottish Road Works Commissioner

Social Care and Social Work Improvement Scotland (SCSWIS)

Standards Commission for Scotland

Sustainable Development Commission in Scotland

The Common Services Agency for the NHS in Scotland

The Law Society of Scotland

Waterwatch Scotland Convener of the Water Customer Consultation Panels appointed under paragraph 5(1) of Schedule 1 to the Water Industry (Scotland) Act 2002 (asp 3) and those Panelsî

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the list of authorities specified in Part 3 of Schedule 19 to the Equality Act 2010, which, by virtue of sections 149 and 150 of the Equality Act 2010, are subject to the general duty to have regard when exercising their functions to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act, to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

PUBLIC SECTOR EQUALITY DUTY – DETAILED PROPOSALS

3 – COVERAGE OF THE SPECIFIC DUTIES

Background

3.1 The 'general duty' will apply to any organisation carrying out public functions with regard to those functions. In addition, public authorities listed in the Equality Act 2010 will be subject to the general duty for all of their functions.

3.2 Scottish Ministers have the power to place further 'specific duties' on the public authorities which have been listed in schedule 19 of the Equality Act 2010. The purpose of the specific duties is to enable the better performance of the general duty.

3.3. The list of Scottish public authorities that we propose should be subject to the specific duties is set out below. In determining how the specific duties should be applied we considered the criteria set out in our previous consultation document. The use of these criteria was supported by the majority of those who responded to that consultation. These criteria are:

- Is the organisation a significant employer, in terms of either size or impact?
- Could the organisation, for example in the decisions it takes or the services it delivers, have a significant effect on the lives of people who are protected under the Equality Duty?
- Does the organisation have significant direct dealings with service users?
- Is the organisation of a sufficient size to operate the specific duties?

Proposals

3.4 Our proposed list includes all of the Scottish public authorities covered by the existing race, disability and gender specific duties, except for those that no longer exist or which will cease to exist prior to April 2011. It also includes some new organisations which were established after the final regulations for the existing duties were made.

<u>Proposed list of Scottish Public Authorities to be covered by the specific duties</u>

- A Chief Constable of a police force maintained under section 1 of the Police (Scotland) Act 1967
- A chief officer of a Community Justice Authority
- A Chief Officer of a relevant authority appointed under section 7 of the Fire (Scotland) Act 2005
- A Community Justice Authority established under the Management of Offenders (Scotland) Act 2005
- A council constituted under section 2 of the Local Government etc (Scotland) Act 1994

- A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978
- A joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973
- A joint fire and rescue board constituted by a scheme under section 2(1) of the Fire (Scotland) Act 2005
- A licensing board constituted under section 5 of the Licensing (Scotland) Act 2005
- A National Park authority established under section 6 of the National Parks (Scotland) Act 2000
- A Passenger Transport Executive within the meaning of Part II of the Transport Act 1968
- A police authority established under section 2 of the Police (Scotland) Act 1967
- A Regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005
- A Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978
- An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980
- Audit Scotland
- Bòrd na Gàidhlig
- Creative Scotland
- Healthcare Improvement Scotland (HIS)
- Learning and Teaching Scotland
- Scottish Enterprise and Highlands and Islands Enterprise
- Scottish Ministers
- Scottish Natural Heritage
- Scottish Sports Council
- Scottish Water
- Skills Development Scotland
- Social Care and Social Work Improvement Scotland (SCSWIS)
- The Accounts Commission for Scotland
- The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992)
- In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.
- The Board of Trustees for the National Galleries of Scotland
- The Board of Trustees of the National Museums of Scotland
- The Commissioner for Children and Young People in Scotland
- The Common Services Agency for the NHS in Scotland
- The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992)
- The Keeper of the Registers of Scotland
- The Keeper of the Records of Scotland

- The Law Society of Scotland,
- The managers of a grant-aided school (within the meaning of that section)
- The Mental Welfare Commission for Scotland
- The Registrar General of Births, Deaths and Marriages
- The Scottish Court Service
- The Scottish Further and Higher Education Funding Council
- The Scottish Legal Aid Board
- The Scottish Qualifications Authority
- The Scottish Social Services Council
- The Trustees of the National Library of Scotland
- VisitScotland

Consultation Questions

Question 2

Do you agree with the proposed list of Scottish public authorities to be covered by the specific duties? If not, please tell us why you disagree and provide your suggestions for changes.

PUBLIC SECTOR EQUALITY DUTY – DETAILED PROPOSALS

4 – CONTENT OF SPECIFIC DUTIES

Overview of Specific Duties

4.1. We have developed our proposals for the new specific duties based on the findings of the consultation that we undertook between September 2009 and January 2010. Our proposals reflect the key findings – that new specific duties should be proportionate, flexible, outcome focussed and operate within a public authority's existing systems and frameworks. The key elements of the new specific duties are:

- Publishing equality outcomes, based on evidence and involvement of equality groups and communities
- Reporting on 'mainstreaming' – action to embed equality into day to day systems and practices
- Consideration of the impact on equality of policies and practices, informed by evidence
- Gathering and publishing employment data
- A Scottish Ministers' duty to set national equality priorities and report on progress
- Publication duty – simplification of reporting using existing public performance reporting systems

4.2 We do not plan to require publication of an equality scheme, or to specify the documentation that public authorities must publish. But to aid transparency we want public authorities to say in advance where they will publish their equality outcomes and report on progress. We also do not plan to include specific duties relating to procurement given the need for a consistent procurement equality framework across GB and the decision by the UK Government not to take forward a procurement duty for English and GB public authorities.

Proposals

4.3. We want a set of specific duties which will operate within public authorities' existing systems and frameworks and deliver better outcomes for those who experience discrimination and disadvantage. This view was made strongly in the response to our earlier consultation on the scope of the new specific duties. The move to outcomes goes with the grain of public sector policy. The Scottish Government is focussed on outcomes and, through our national performance framework, we are working collaboratively with Scottish public authorities to deliver shared national outcomes.

Regulations

4.4 The specific duties are placed on Scottish public authorities via regulations. A draft of the Equality Act 2010 (Statutory Duties) (Scotland)

Regulations 2011 is included within this consultation document (on pages 31-35). Regulation 1 establishes the date that the regulations will come into force and regulation 2 defines a number of the terms used in the regulations. The specific requirements of the duties are set out in regulations 3 – 8.

Regulation 3: Publication of Equality Outcomes by Listed Authorities

4.5. We consider that public authorities need to give particular focus to delivering better equality outcomes. We will therefore ask that public authorities set equality outcomes, based on evidence, and informed by the involvement of equality groups and communities. The focus on 'outcomes' rather than 'objectives' reflects our desire to see practical, measurable changes in the life chances of those who experience prejudice, discrimination and disadvantage. We recognise that outcomes take time to deliver, but believe it is important to focus on the intention of policy. We believe that public authorities should be allowed the flexibility to determine for themselves which outcomes to set and to publish their outcomes in the manner which best suits them. However, to increase transparency we will require a public authority to state where it will publish its equality outcomes in advance of publication.

4.6. We recognise the important role that equality groups and communities have to play in working with public authorities to inform their decision making. This must be more than just consultation after decisions are made. We are therefore proposing that a public authority's equality outcomes must be informed by the involvement of equality groups and communities. We will not require outcomes covering all characteristics, although public authorities, when determining their outcomes, will need to consider evidence across all characteristics.

4.7 Public authorities will be required to report on the progress made on their equality outcomes, and we are proposing that this should be no later than every 2 years. We are also proposing that a public authority should review its equality outcomes no later than every 4 years. This does not mean that a public authority must wait for 4 years: if an authority would prefer to work to a shorter timetable, it will be free to do so. However, it will not be allowed to go beyond 4 years before reviewing its equality outcomes.

Regulation 3: Publication of Equality Outcomes by Listed Authorities

Question 3
Do you agree that a public authority should be required to publish equality outcomes which are informed by evidence, informed by the involvement of equality groups and communities, and informed by how the outcomes will assist the authority to meet the general duty? If you do not agree, please let us know why.

Question 4
Do you agree that a public authority should be required to report on progress towards its equality outcomes no later than 2 years after the outcomes are published and at subsequent intervals of no more than 2 years?

Question 5
Do you agree that a public authority should be required to review its equality outcomes no later than 4 years after the outcomes are published and at subsequent intervals of no more than 4 years?

Regulation 4: Mainstreaming Equality

4.8. Integration of the duties within public authorities' existing systems will drive the 'mainstreaming' of equality. By 'mainstreaming' equality we mean that we want public authorities to embed equality across their policies, procedures and corporate systems.

4.9 We believe that public authorities should be allowed the flexibility to determine for themselves how best to do this. But to ensure that action is taken we want public authorities to report on the progress they have made in promoting equality for those with protected characteristics within their organisation's policies, practices and corporate systems. This reporting must encompass all of the characteristics covered by the equality duty in the Equality Act 2010. It is additional to the reporting on progress on specific equality outcomes and additional to the duty to assess impact. The first report will be required no later than April 2012, with subsequent reports within each 2 year period thereafter.

4.10 We wish to allow maximum flexibility and allow authorities to take a proportionate response to this duty. We do not expect an authority to report on progress across all of its functions. Rather, we envisage that an authority may wish to report on the 'corporate' systems it has in place, on actions it has taken in key areas, and progress it is making in moving forward equality across the organisation for those persons with protected characteristics. We will consider further how best to reflect this in the drafting of the regulations.

Regulation 4: Mainstreaming Equality

Question 6
Do you agree with the proposed duty that an authority must report on action taken to 'mainstream' equality, across all protected characteristics, into day to day systems and practices? If you do not agree, please let us know why.

Question 7
Please tell us your views on how we can build appropriate proportionality into the requirements around mainstreaming.

Questions 8
Do you agree that the first report on progress on the action taken to 'mainstream' equality should be in April 2012, with subsequent reports no later than every 2 years? If you do not agree, please let us know why.

Regulation 5: Impact Assessment

4.11. Assessing the impact that decisions about policies and practices have on equality is a key aspect of the existing duties. Under the proposed new duties this would remain. We do not, however, propose to specify how public authorities should assess impact, or to ask a public authority to publish its methodology. Rather, public authorities should have the flexibility to decide for themselves how best to approach this within their organisation. The duty will apply in relation to new policies and practices, including changes or redesign of existing policies, practices, services and provision. The requirement to consider the impact that decisions have on equality will cover all protected characteristics, and must be informed by evidence. Authorities will also be required to have regard to the outcome of assessment.

4.12 The value of impact assessment is in ensuring that equality considerations inform policy making, but to enable an authority to respond appropriately the requirement must be proportionate. We believe the focus on new policies and practices and changes or redesign of policies or practices will help public authorities to take a proportionate response to the duty. But we would welcome views on how best to ensure that authorities can respond in a proportionate manner.

4.13. It clearly makes sense that the impact on equality of policies and practices delivered in partnership between public authorities should be considered. Whilst the equality duty cannot be directly applied to such partnerships, we believe that our focus on setting equality outcomes will encourage equality to be considered at this level.

Regulation 5: Impact Assessment

Question 9
Do you agree that a public authority should be required to consider the impact on equality of new policies and practices, including changes or redesign of policies, practices, services and provision; to use evidence to inform its impact assessment; and have regard to the outcome of assessment? If you do not agree, please let us know why.

Question 10
Please tell us your views on how we can build appropriate proportionality into the requirements around impact assessment.

Regulation 6: Publication of Employment Information

4.14 As employers, public authorities must take action to eliminate discrimination, promote equality and foster good relations within their organisation. Reporting on headline employment data will help public authorities to do this in a straightforward and streamlined way. We propose that public authorities with at least 150 full time staff should be required to publish employment rates for disability, sex and ethnicity and their gender pay gap. In addition, public authorities with 150 or more staff should publish an equal pay statement with information on their equal pay policy and occupational segregation. Public authorities will be required to report on employment data no later than every 2 years. They will also be required to report on their equal pay statement and to publish a revised equal pay statement no later than every 4 years.

4.15 We are proposing that the 150 employee threshold should apply in relation to employment reporting for two reasons: i) smaller organisations may not have the capacity or the systems which will allow them to respond to these requirements; ii) to protect the confidentiality of sensitive personal data. We expect that organisations will not want to report on numbers less than 5 as this could identify individuals. In an organisation of 150, 5 people would be 3.3%.

4.16 We recognise that employment reporting, particularly on the gender pay gap, needs to reflect local circumstances and the different pay and grading structures which exist in different parts of the public sector and in different areas of the country. Appropriate context and explanation should be attached to employment reporting to avoid crude comparisons being made and we will work with the Equality and Human Rights Commission to develop guidance on this. Guidance will also cover methodology for gender pay gap calculation.

4.17 We are not proposing a specific duty to publish employment rates for other characteristics such as sexual orientation, religion or belief, or gender reassignment. However, the mainstreaming duty at paragraph 4.4 above requires a public authority to report on the progress it is making on promoting equality in relation to all protected characteristics within its corporate systems and practices. An authority may wish to take the opportunity provided by the mainstreaming duty to say how it intends to put in place arrangements to reflect the new characteristics in its employment practices.

Regulation 6: Publication of Employment Information

Question 11
Do you agree that a public authority with 150 or more full time staff should report on employment data starting from April 2012 and no later than every 2 years? Employment data are – the minority ethnic employment rate, the disability employment rate, the employment rates for women and men and the gender pay gap? If you do not agree, please let us know why.

Question 12
Do you agree that a public authority with 150 or more full time staff should be required to publish an equal pay statement in April 2012 containing information on equal pay policy within the organisation and occupational segregation within the organisation and should report on the statement no later than every 4 years? If you do not agree, please let us know why.

Regulation 7: Duty on Scottish Ministers in Respect of National Equality Priorities

4.18. Scottish Ministers have a particular role in supporting the Scottish public sector and the specific duties place a leadership role on Scottish Ministers to publish national equality priorities. Scottish Ministers will base their priorities on evidence and will publish them by 30 June 2012, after publication of equality outcomes by public authorities in April 2012. This will allow Scottish Ministers to take an overview of what public authorities are doing already, which will reflect local and sectoral issues, before articulating national priorities.

4.19. Scottish Ministers will then report on progress made on national equality priorities by 31 December 2014. National priorities will be reviewed and published within each 4 year period from when they are first set, and further reports on progress published within 4 year periods following the first report. These dates set the Scottish Ministers' duty within the timeframe of Scottish Parliament elections, ensuring that priorities are set and reported on in the same Parliamentary term.

Regulation 7: Duty on Scottish Ministers in Respect of National Equality Priorities

Question 13
Do you agree that Scottish Ministers should determine national equality priorities? If you do not agree, please let us know why.

Question 14
Do you agree that Scottish Ministers should publish their national equality priorities in June 2012 and report on them after no later than December 2014? Subsequent priorities would then be set in June 2016 with a report in December 2018 and at 4 year intervals thereafter. If you do not agree, please let us know why.

Regulation 8: Compliance with Publication Duty

4.20. We wish to allow public authorities to take a flexible and proportionate response to the duties, and are therefore limiting the degree of regulation relating to process. In relation to reporting we wish to go with the grain of what public authorities already do. Many Scottish public authorities produce

annual reports or report through other means. We will require reporting through these existing public performance reporting systems where they exist. Where such mechanisms do not exist a public authority will be free to determine how best to report. To aid transparency, a public authority will be required to state in advance where it will report and the timeframe.

4.21. We are proposing that reporting should take place no later than every 2 years. That does not mean that public authorities must wait for 2 years before they report. If an authority wishes to report annually it may do so, but it will not be permitted to go more than 2 years without reporting. We are also proposing a simplification of the reporting requirements of the current duties, so that reporting relates only to progress on mainstreaming, progress towards equality outcomes and headline employment data.

4.22. Linking reporting on equality to public performance reporting mechanisms will establish a link to audit and scrutiny as it is the public performance reporting mechanisms which provide the material routinely considered by audit, scrutiny and regulatory bodies. In line with a risk-based and proportionate approach to external scrutiny we do not intend to place additional duties on scrutiny bodies in relation to equality.

4.23 To ensure transparency in relation to equality outcomes we intend to require that an authority states in advance where it will publish its equality outcomes.

Regulation 8: Compliance with Publication Duty

Question 15
Do you agree that a public authority should report on progress on the specific duties within its existing public performance reporting systems, and should be required to state in advance where it will report and its intended timescale? If you do not agree, please let us know why.

Question 16
Do you agree that a public authority should be required to state in advance where it will publish its equality outcomes? If you do not agree, please let us know why

Draft Regulations

4.24 We consider that the enclosed draft regulations capture our intention that the new specific duties should be flexible, proportionate, outcome focussed and designed to operate within a public authority's existing systems.

Question 17
Do you agree that the proposed regulations for the specific duties set out a flexible, proportionate and outcome based approach? If you do not agree, please let us know why and tell us what changes you would make.

Question 18
Do you have any other comments on the proposed regulations?

Timescales and Transitions

4.25 The move from established duties with particular sets of requirements to a new single duty covering more characteristics but with less emphasis on process, will take time. Although the new single equality duty in the Equality Act 2010 is expected to come into force in April 2011, the majority of the requirements of the proposed new specific duties will have a later start date. This is because public authorities will need time to adjust to the new duties and gather the evidence necessary to respond effectively. The bulk of the new requirements will start from April 2012. The duty to assess the impact on equality of new policies and practices, informed by evidence, will start from April 2011.

4.26. A key challenge in making the transition from duties which cover race, disability and gender to a new duty covering 8 protected characteristics is the availability of data. Even for the existing duties, research and data are often incomplete or inconsistent and issues around definitions remain. With new characteristics such as sexual orientation, religion and belief and gender identity these research and data issues are even more significant. It will take time to build the necessary evidence base, data sets, and measurement frameworks. The Scottish Government will work with the Equality and Human Rights Commission and with COSLA to address this aspect of the transition to the new duties, building on the EHRC's Equality Measurement Framework.

Summary of proposed specific duties

Consultation Questions	Regulation	Duty	Start Date	Reporting Arrangements	Report Date	Review date
3, 4, 5	3	Publish **equality outcomes** based on evidence and informed by the involvement of equality groups and communities.	April 2012	Report within public performance reporting systems on progress made towards equality outcomes	April 2014 and no later than every 2 years	Publish revised outcomes no later than every 4 years
6, 7, 8	4	'**Mainstreaming**' – report on progress on promoting equality across all protected characteristics.		Report within public performance reporting systems on action taken on mainstreaming	April 2012 and no later than every 2 years	
9, 10	5	**Impact Assessment** – consider the impact on equality of policies and practices	April 2011			
11, 12	6	Report on **employment data** and publish an equal pay statement (only public authorities with 150 or more staff).	April 2012	Report within public performance reporting systems on headline employment data and on equal pay statement	April 2012 and no later than every 2 years for headline employment data. April 2014 and no later than every 4 years for equal pay statement.	Publish revised equal paystatement no later than every 4 years
13, 14	7	Scottish Ministers publish **national equality priorities**.	June 2012	Report on progress towards national equality priorities no later than 2.5 years after published.	Dec 2014 and no later than every 4 years	Publish revised Priorities no later than every 4 years
15, 16	8	**Publication** duty – state where outcomes will be published; and where progress on all aspects of the duties will be reported, the timeframe for reporting.	At least 3 months before April 2012			

Draft Regulations laid before the Scottish Parliament under section 210 of the Equality Act 2010, for approval by resolution of the Scottish Parliament.

SCOTTISH STATUTORY INSTRUMENTS

2011 No.

EQUALITY

The Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011

Made - - - - 2010

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of powers conferred by section 153(3), section 155(1)(c) and section 207 of the Equality Act 2010([2]) and all other powers enabling them to do so.

In accordance with section 153(4) of that Act the Scottish Ministers have consulted the Commission for Equality and Human Rights.

In accordance with section 210 (2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"equality outcome" means a result intended to be achieved in order to further one or more of the aims mentioned in paragraphs (a) to (c) of the duty under section 149(1) of the Equality Act 2010 in relation to equality, as a consequence of action taken by a listed authority;

"listed authority" means a public authority listed in the Schedule to these Regulations, which names those bodies listed in Part 3 of Schedule 19 to the Equality Act 2010 which are to be made subject to the specific duties;

"relevant protected characteristics" has the meaning set out in section 149(7) of the Equality Act 2010;

"section 149(1) duty" means the duty under section 149(1) of the Equality Act 2010.

([2]) 2010 c.15.

Publication of equality outcomes by listed authorities

3.—(1) Each listed authority must prepare and publish equality outcomes, which must be informed by how those outcomes will assist the authority to fulfil the section 149(1) duty.

(2) In meeting the requirements of paragraph (1) each listed authority must—

(a) take reasonable steps to involve equality groups and communities in the process; and

(b) consider relevant evidence relating to the needs of equality groups and communities and take reasonable steps to involve them in the process of gathering the evidence.

(3) To satisfy the publication requirement in paragraph (1) listed authorities must comply with regulation 8.

(4) A listed authority must publish its equality outcomes not later than 2nd April 2012.

(5) Within each period of four years, beginning with the date of publication of its equality outcomes the listed authority must—

(a) review progress towards achieving those outcomes;

(b) publish equality outcomes that comply with the criteria in paragraph (1).

(6) Each listed authority must publish a report on progress in respect of its equality outcomes—

(a) not later than 2nd April 2014; and

(b) subsequently at intervals of not more than two years beginning with the date of publication of the last report.

Mainstreaming equality

4.—(1) Each listed authority must report on the action it has taken and the progress it has made to ensure that, in carrying out its functions, the needs of persons with a relevant protected characteristic are being taken into account—

(a) not later than 2nd April 2012; and

(b) subsequently, at intervals of not more than two years, beginning with the date of publication of the last report.

Impact assessment

5.—(1) Each listed authority must—

(a) assess the impact of its proposed policies and practices, including changes and revisions of its existing policies and practices, on those with relevant protected characteristics and on its ability to fulfil the section 149(1) duty; and

(b) consider relevant evidence relating to the needs of equality groups and communities in relation to such assessments of impact; and

(c) have due regard to the results of such assessments of impact.

Publication of employment information

6.—(1) Where the number of its full time employees is at least 150 on 2nd March 2012, a listed authority must—

(a) not later than 2nd April 2012 and subsequently at intervals of not more than two years beginning with the date of publication of the last set of information publish employment information on—

(i) the percentage of its workforce comprised of—

(aa) ethnic minority groups;

(bb) disabled people;

(cc) women; and

(dd) men; and

(ii) the gender pay gap, which for the purposes of this provision means the percentage difference between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime); and

(b) not later than 2nd April 2012 publish an equal pay statement specifying—

(i) the authority's policy on equal pay between women and men; and

(ii) occupational segregation within its workforce, being the concentration of women and men in particular grades and in particular occupations.

(2) To satisfy the publication requirement in paragraph (1) listed authorities must comply with regulation 8.

(3) A listed authority that has published an equal pay statement must review that statement and publish a report on it no later than the end of the period of four years beginning with the date of publication of its first equal pay statement and subsequently at intervals of not more than four years, beginning with the date of publication of the last revision of its equal pay statement.

Duty on Scottish Ministers in respect of national equality priorities

7.—(1) Scottish Ministers must set national equality priorities and publish them—

(a) not later than 30th June 2012;

(b) subsequently, at intervals of not more than four years, beginning with the date of publication of the last set of priorities.

(2) Scottish Ministers must report on progress made towards those priorities—

(a) not later than 31st December 2014; and

(b) subsequently, at intervals of not more than four years beginning with the date of publication of the last report.

Compliance with publication duty

8.—(1) Subject to paragraph (4), a listed authority may comply with its duty to publish its equality outcomes by any means considered appropriate by the authority.

(2) At least three months prior to publication, a listed authority must state where it will publish its equality outcomes.

(3) At least three months prior to reporting in terms of regulation 3, 4 and 6, a listed authority must state where it will report and the timescale which applies.

(4) A listed authority must publish a report by employing an existing means of public performance reporting if there is an existing means.

A member of the Scottish Executive

St Andrew's House,
Edinburgh
2010

SCHEDULE

Regulation 2

List of Scottish Public Authorities to be made subject to the specific duties

A Chief Constable of a police force maintained under section 1 of the Police (Scotland) Act 1967

A chief officer of a Community Justice Authority

A Chief Officer of a relevant authority appointed under section 7 of the Fire (Scotland) Act 2005

A Community Justice Authority established under the Management of Offenders (Scotland) Act 2005

A council constituted under section 2 of the Local Government etc (Scotland) Act 1994

A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978

A joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973

A joint fire and rescue board constituted by a scheme under section 2(1) of the Fire (Scotland) Act 2005

A licensing board constituted under section 5 of the Licensing (Scotland) Act 2005

A National Park authority established under section 6 of the National Parks (Scotland) Act 2000

A Passenger Transport Executive within the meaning of Part II of the Transport Act 1968

A police authority established under section 2 of the Police (Scotland) Act 1967

A Regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005

A Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978

An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980

Audit Scotland

Bòrd na Gàidhlig

Creative Scotland

Healthcare Improvement Scotland (HIS)

Learning and Teaching Scotland

Scottish Enterprise and Highlands and Islands Enterprise

Scottish Ministers

Scottish Natural Heritage

Scottish Sports Council

Scottish Water

Skills Development Scotland

Social Care and Social Work Improvement Scotland (SCSWIS)

The Accounts Commission for Scotland

The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992)

In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.

The Board of Trustees for the National Galleries of Scotland

The Board of Trustees of the National Museums of Scotland

The Commissioner for Children and Young People in Scotland

The Common Services Agency for the NHS in Scotland

The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992)

The Keeper of the Registers of Scotland

The Keeper of the Records of Scotland

The Law Society of Scotland,

The managers of a grant-aided school (within the meaning of that section)

The Mental Welfare Commission for Scotland

The Registrar General of Births, Deaths and Marriages

The Scottish Court Service

The Scottish Further and Higher Education Funding Council

The Scottish Legal Aid Board

The Scottish Qualifications Authority

The Scottish Social Services Council

The Trustees of the National Library of Scotland

VisitScotland

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose specific duties on the Scottish public bodies and authorities listed in the Schedule, which derive from the list in Part 3 to Schedule 19 of the Equality Act 2010. They are made under section 153(3),155(1)(c) and 207 of that Act. The purpose of the specific duties is to ensure better performance by listed authorities of their general duty under sections 149 and 150 of that Act to have regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act, to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations.

Regulation 3 requires listed authorities to prepare and publish equality outcomes by 2nd April 2012, to review them within the four year period after the initial publication date and to report on progress made according to a set timescale.

Regulation 4 requires listed authorities to report on a two yearly cycle on progress made in ensuring that the needs of persons with a relevant protected characteristic are being taken into account.

Regulation 5 requires listed authorities to assess the impact of their proposed policies and practices on those with relevant protected characteristics, to consider relevant evidence relating to the needs of equality groups and communities and to have due regard to the results of such impact assessments.

Regulation 6 requires listed authorities, where there are more than 150 employees, to report and publish specified employment data and an equal pay statement, which has to be reviewed within every four year period thereafter.

Regulation 7 imposes a duty on Scottish Ministers, to set and publish national equality priorities and to report on progress and review them according to a specified timetable.

Regulation 8 outlines what listed authorities must do to comply with the publication duty.

The Schedule lists the Scottish Public Authorities to be made subject to the specific duties.

Annex A

The general duty introduced by the Equality Act 2010

149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—
age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

Annex B

Draft Initial Business and Regulatory Impact Assessment

Public Sector Equality Duty Specific Duties

PURPOSE AND INTENDED EFFECT

Objectives

1. The Regulations are intended to:
   - simplify and streamline the equality duties placed on public authorities
   - reduce the complexity and bureaucracy of the current framework
   - minimise process and encourage public authorities to concentrate on outcomes for service users
   - set out a clear framework that will enable the better performance of general public sector equality duty in the Equality Act 2010, leading to improved outcomes, opportunities and life experience for those who experience prejudice and discrimination

Background

2. There are currently 3 separate public sector equality duties covering race, gender and disability. The Equality Act 2010 replaces these with a new single duty and extends the scope to cover sexual orientation, age, religion or belief, pregnancy and maternity, and gender reassignment.

3. Like the current duties, this new single equality duty has two parts – a general duty in the Act itself, and provision for specific duties to be made through Regulations.

Rationale for Government intervention

4. One common set of specific duties will provide a simpler, more efficient and more cost effective framework than the existing regime of 3 separate duties.

5. The public sector equality duties contribute to the delivery of improved public services, *Best Value* and better outcomes for the people of Scotland; and there is evidence in this respect. For example:

- The Government Equality Office at Westminster commissioned work by Schneider-Ross which highlighted the value of the existing public sector equality duties in raising the profile of equality, tackling discrimination and disadvantage, assisting authorities to tackle equality issues and increasing commitment and leadership
  http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/research,_facts_and_figures/research/specific_duties.aspx

- *Capturing the Gains* (2009), a report by the Equality and Human Rights Commission provided positive examples of the developments which had

taken place as a result of the current duties in Scotland. For example: many authorities had taken steps to develop systems to collect better qualitative and quantitative data to progress equality; authorities were putting policies and practices in place which focussed on recruiting and retaining a diverse workforce and promoting greater partnership working with equalities groups.
http://www.equalityhumanrights.com/scotland/projects-and-campaigns/capturing-the-gains/

- the Scottish Ministers' reports in 2009 on the progress made on disability stated the Disability Equality Duty has been helpful in providing a focus and framework for the work on disability equality and highlighted areas where there has been a marked progress in relation to the position of disabled people in Scotland in the context of the six Government ministerial portfolios.
http://www.scotland.gov.uk/Topics/People/Equality/disability/disabilityministersduty

- Audit Scotland (2008) reported on the impact of the race equality duty on council services. It concluded that councils need to build better understanding of the needs of their minority communities; mainstream their approach to race equality; and give more priority to race equality in delivering their services. In addition, it noted that councils took steps to improve their understanding of their minority ethnic communities through for example, commissioning or undertaking in-house research – with some evidence of new services tailored to minority ethnic communities and increased use of existing services as a result.
http://www.audit-scotland.gov.uk/media/article.php?id=90

CONSULTATION

Consultation within Government

6. All Directorates General within the Scottish Government were consulted. Work was undertaken more closely with the following Directorates and Divisions:

- Scottish Procurement Directorate
- Communities Analytical Services Division
- Public Bodies Policy Division
- Finance Directorate
- Public Service Reform Directorate
- Justice Directorate
- Primary and Community Care Directorate
- Learning Directorate
- Lifelong Learning Directorate
- The Crown Office

Public Consultation

7. A public consultation on the proposals for the new specific duties was conducted between September 2009 and January 2010. 160 responses were received.

Respondent Groups	Number o Responses
Organisations or agencies within the education sector (education)	35
Organisations or agencies dealing with equality issues (equality)	34
Local authorities (local authority)	23
Miscellaneous public authorities (misc. public authority)	21
Organisations or agencies within the health or social care sector (health/social care)	15
Police or fire bodies (police/fire)	13
Miscellaneous non-public authorities (other)	11
Individuals (individual)	8
TOTAL	**160**

8. Over three-quarters (79%) of all respondents felt that it would be helpful to place specific duties on Scottish public authorities; many felt this would provide a structure for, or would generally assist in, the delivery of the general equality duty.

9. The main points made by respondents were:
- the need for measurable results;
- the need for flexibility;
- the need for specific duties to be crafted in a way that helps public authorities to deliver the general duty in the Equality Act 2010;
- the need for duties which can operate within public authorities
- existing systems and frameworks.

Business

10. Business was engaged through the consultation process. This included specific targeting of the Federation of Small Business Scotland, CBI Scotland, Scottish Chambers of Commerce, the Institute of Directors, the Scottish Council for Development and Industry and Scottish Financial Enterprise.

11. A small number of business organisations responded. In addition, a larger number of Third Sector service providers (who deliver public sector contracts) responded. Some business organisations which responded did not support the previously proposed specific duties on procurement and these duties have not been included in the current proposals. Further engagement with organisations which deliver public sector services will be undertaken, including with business.

OPTIONS CONSIDERED

Option 1

Maintain the existing duties

12. Public bodies already have systems/mechanisms in place to comply with the duties. They will not incur familiarisation costs.

13. Cons:
- Public authorities will remain subject to three different sets of complex regulations, which all have different requirements, timescales, and reporting mechanisms.
- The three sets of specific duties are highly prescriptive and driven by processes.
- Compliance with the existing duties incurs significant costs.
- The additional protected characteristics protected by anti-discrimination legislation would not be included.

Option 2

Remove Existing Duties

14. There would be no regulations, resulting in less burden on public authorities in context of financial constraints.

15. Cons:
- Public authorities will not consistently design policies and deliver services in a way which meets the needs of equality groups and communities.
- Barriers to accessing services may not be proactively identified and addressed.
- Inequality, discrimination and exclusion lead to poorer health and wellbeing, poorer educational attainment and employment opportunities and increased costs in terms of services, support and intervention. Tackling inequality, discrimination and exclusion will have a cost saving in the longer term.
- Public authorities are not yet ready for the legislative imperative to be removed entirely as this would undermine the progress that has been made to date.

Option 3

Simplification, streamlining and focussing on outcomes – Chosen Option.

16. *Simplification*: replace three separate set of regulations which impose different, process laden requirements, which must be met at different times with one set of streamlined duties. For instance, research from Schneider-Ross suggested that the requirements to produce equality schemes under the

existing duties are considered a significant burden, and public bodies routinely ask external contractors to draw up their equality schemes. Once published these schemes are rarely used but the cost to the public sector of producing the current schemes for race, disability and gender is substantial.

17. *Focus on Outcomes*: proposals remove bureaucratic requirements and ensure that public authorities focus on achieving improved equality outcomes by setting and working towards evidence based outcomes.

18. *Proportionate and flexible*: there is less prescription and the flexibility for public authorities to decide for themselves how to respond to aspects of the duties.

19. *Goes with the grain*: the duties are designed to operate within public authority's existing systems and frameworks.

20. Cons:

- *Regulatory burden*: The new package will still impose a regulatory burden, even though it will be substantially reduced compared with the cost of complying with the existing three sets of regulations.

Sectors and groups affected

21. Primarily, the **public sector.** To a lesser extent, the Third Sector and some businesses delivering public sector contracts.

COSTS AND BENEFITS

This section summarises the costs and benefits of the proposed new duties.

Current duties	Proposed new duties	Cost implication
Publish 3 separate, complex, stand-alone schemes every 3 years	Publish equality outcomes every 4 years	Significant reduction
Publish separate annual reports	Report every 2 years using existing systems	Significant reduction
Gather complex data on impact of policies	Simplification and streamlining	Significant reduction
Complex employment monitoring and reporting	Simplification and streamlining	Significant reduction

Costs Summary

(figures £m per year)

	Ongoing cost of **existing duties**	Ongoing cost of **new duties**	**Cost saving**
NHS	0.393-0.504	0.189-0.259	0.204-0.245
LA	0.525-0.672	0.252-0.345	0.273-0.327
FE/HE	0.399	0.143	0.256
Other public authorities	0.719	0.241	0.478
Central Government	0.039	0.026	0.013
Total	**2.075-2.333**	**0.851-1.014**	**1.224-1.319**

22. One-off familiarisation costs of between 0.407-0.672 result in a total cost for year 1 of the new duties of 1.258-1.686. This is still less than the estimated cost of continuation of the existing duties (2.075-2.333).

Methodology

23. We have calculated costs using a similar methodology to the Government Equality Office at Westminster.

New Duties – ongoing costs – methodology

Larger public authorities (NHS and local authorities)

Outcomes, mainstreaming and reporting requirements

- Equality manager: 1-2 weeks per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 1-2 weeks per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs). Impact assessment
- Equality manager: 1-2 weeks per year.

Research work

- Estimated at £5,000 per year in line with GEO estimate.

Smaller public authorities (further and higher education)

Outcomes, mainstreaming and reporting requirements

- Equality manager: 1 week per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 1 week per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs). Impact assessment
- Equality manager: 0.5 week per year.

Smaller public authorities (police, fire, NDPBs etc)

Outcomes, mainstreaming and reporting requirements

- Equality manager: 1 week per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 1 week per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs). Impact assessment
- Equality manager: 0.5 week per year.

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Outcomes, mainstreaming and reporting requirements

- Equality manager: 2 weeks per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 2 weeks per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs).

Impact assessment

- Equality manager: 2 weeks per year.

Research/analysis work

- Estimated at £20,000 per year

24. We have calculated the ongoing costs to the public sector of the new duties to be:

(figures £m per year)

	Lower estimate	Higher estimate
NHS	0.189	0.259
LA	0.252	0.345
FE/HE	0.143	0.143
Other public authorities	0.241	0.241
Central Government	0.026	0.026
Total	**0.851**	**1.014**

New Duties –one-off familiarisation costs – methodology

25. For listed public bodies covered by the specific duties there will be some one-off implementation and familiarisation costs. These costs will largely consist of an employee's time spent familiarising themselves for the authority with the new legislation/guidance and drawing up the relevant requirements under the new specific duties, including engagement with equality groups and communities.

26. The amount of time spent by an employee will vary depending on the size of the authority, with smaller bodies spending relatively less time. However, consideration has been given to the fact that the time spent by an employee of a smaller organisation could have a disproportionate impact on the overall time spent by the organisation.

27. We estimate education bodies, health bodies and others (such as police and the fire service) would spend between 1.5 and 2.5 weeks familiarising themselves with and implementing the new duties. Similarly, large bodies such as local authorities, health bodies are expected to spend between 8 weeks to 12 weeks to implement the new duties; the Scottish Government 12 to 16 weeks. The implementation costs of the new duties will arise from undertaking steps such as gathering evidence, engaging with communities and based on this publishing equality outcomes.

28. However, like the GEO we assume the new one-off costs will not apply to all public authorities covered by the specific duties because many have already extended their equality schemes beyond current legislation to cover all equality strands. Around half of the respondents to the research conducted by Schneider-Ross on behalf of the Government Equalities Office, "Assessing the Cost and Cost Effectiveness of the Race, Disability and Gender Equality Duties", reported that they had already started to publish combined equality schemes going beyond current legislation to cover the additional equality strands. We expect this number to have increased since then as, whilst reviewing their gender and disability equality schemes during 2010, most bodies have opted for a single equality scheme including the additional protected characteristics which will be covered under the new single Equality Duty.

29. The one-off costs therefore represent half of the public bodies, who would have to implement new processes to comply with the requirements. We have assumed a personnel/equality manager would be responsible for this initial implementation. The wage cost is taken to be the hourly rate of a manager as given in the Annual Survey of Hours and Earnings 2009 code 1135, up rated by 21 per cent to include non-labour costs.

30. Summary of public sector one-off cost of familiarisation with new duty (figures £m per year)

	Lower estimate	Higher estimate
NHS	0.114	0.171
LA	0.152	0.227
FE/HE	0.049	0.098
Other public authorities	0.078	0.157
Central Government	0.014	0.019
Total	**0.407**	**0.672**

Costs of Existing Duties – Methodology

31. In order to get a true understanding of the cost of the new duties we need to consider the ongoing costs of the 3 existing duties. Doing this will identify the potential savings of the new requirements. To do this accurately the same methodology needs to be used to cost both the existing duties and the proposed new duty.

32. To calculate the cost of the existing duties we have taken the cost of the new duties and added the costs of the additional elements which form part of the existing duties – publication of schemes and action plans, and complex annual reporting. For larger authorities we have assumed 6 weeks every 3 years of equality manager and admin time preparing a scheme and action plan, and 2 weeks every year of equality manager and admin time in preparing and publishing an annual report. In line with the assumptions made earlier, that 50% of public authorities have moved to single schemes, we have multiplied the cost of scheme production and reporting by 3 (race, disability and gender) for only 50% of authorities.

33. We have calculated the ongoing costs to the public sector of the existing public sector equality duties to be:

(figures £m per year)

	Lower estimate	Higher estimate
NHS	0.393	0.504
LA	0.525	0.672
FE/HE	0.399	
Other public authorities	0.719	
Central Government	0.039	
Total	**2.075**	**2.333**

Scottish Firms Impact Test

34. The duties fall only on the public sector. They place no requirements on the private sector.

Costs to the Private Sector

35. In line with the Regulatory Impact Assessment published by the Government Equalities Office at Westminster, we anticipate no additional costs to the private sector.

36. There are no familiarisation costs as the duties relate to the public sector and not to the private sector. Contracting authorities can already build in equality-related factors within contracts where considered relevant and proportionate and from the private sector perspective there is therefore no change.

Competition Assessment

37. No competition impacts are anticipated.

Test run of business forms

38. No business forms will be involved in implementation of the regulations.

Legal Aid Impact Test

39. No new rights created.

Enforcement, sanctions and monitoring

40. The specific duties do not create individual rights for people. Enforcement of the specific duties against public authorities is through the Equality and Human Rights Commission (EHRC).

Annex C

Equality Impact Assessment

Purpose of the policy

1. This Equality Impact Assessment (EQIA) relates to the introduction of new public sector equality duty specific duties. The purpose of the specific duties is to enable better performance of the public sector equality duty, imposed under section 149 of the Equality Act 2010, by public authorities.

2. Together, the section 149 duty and the specific duties aim to assist public authorities to deliver better outcomes for people who experience discrimination and disadvantage on the basis of the characteristics of race, sex, gender reassignment, disability, sexual orientation, religion or belief, pregnancy and maternity or age. They require public authorities to be proactive in promoting equality, eliminating unlawful conduct and fostering good relations.

3. The new specific duties set a framework for the delivery of the section 149 duty. This framework includes:

- Publishing equality outcomes, based on evidence and involvement of equality groups and communities
- Reporting on 'mainstreaming' – action to embed equality into day to day systems and practices
- Consideration of the impact on equality of policies and practices, informed by evidence
- Gathering and publishing employment data
- A Scottish Ministers' duty to set national equality priorities and report on progress
- Publication duty – simplification of reporting using existing public performance reporting systems

Those affected by the policy

4. The majority of Scottish public authorities will have to comply with the specific duties. Some businesses and third sector organisations delivering public sector contracts may also be affected. People with protected characteristics will benefit from public authorities acting in accordance with the specific duties.

The current specific duties

5. The new specific duties replace the framework of existing specific duties, relating to race, gender and disability, which are set out in the following secondary legislation:

- Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002;
- Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005; and
- Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007.

6. The current specific duties largely prescribe processes for documenting plans and arrangements and reporting on progress. They have different reporting requirements, different timescales and different evidence gathering requirements.

7. The proposed specific duties will focus on outcomes and the requirements placed on public authorities will be proportionate and flexible, so that public authorities are not constrained into taking action which is unnecessary.

National Performance Framework

8. Equality is a key element of the National Performance Framework and there is a specific national outcome "we have tackled the significant inequalities in Scottish society". The specific duties aim to help public authorities to be proactive in tacking discrimination, promoting equality and achieving outcomes which meet the diverse needs of the population. As such, they will contribute to the National Performance Framework and the focus on outcomes across the public sector.

Evidence and Consultation

9. Evidence suggests that the existing specific duties on equalities have helped provide clear direction and/or guidance to authorities in helping them understand and comply with the current obligations under the general equality duties. They also help provide consistency in standards, ensure equality is seen as a priority, and enable monitoring of progress towards reducing inequalities as well as allowing comparisons between public bodies.

10. We consulted on the development of the new specific duties, and received 160 responses to the consultation. Over three-quarters (79%) of all respondents felt that it would be helpful to place specific duties on Scottish public authorities. Many felt this would provide a structure for, or would generally assist in, the delivery of the section 149 duty in the Equality Act 2010. An analysis of the consultation responses has been published.

11. We also held a series of meetings with equality groups and public authorities, met with COSLA on a number of occasions and met with the Equality and Human Rights Commission.

Proposed specific duties – impact on equality

Publication of equality outcomes

Mainstreaming equality

12. The focus of the new specific duties is on setting equality outcomes, complemented by the integration of equality considerations across the day to day work and systems of the organisation (mainstreaming). Essentially, these duties replace the existing requirements to publish race, disability and gender schemes and action plans.

Impact on race, disability and gender

13. We anticipate that the shift away from describing processes and arrangements in schemes, to developing equality outcomes and more effective mainstreaming, will enable better performance of the general duty in relation to race, disability and gender.

14. The emphasis on outcomes should have a positive impact, by ensuring that public authorities focus on action which is achievable, measurable and person centred – to improve the lives of individuals. A frequent criticism of the current duties is that they are not outcome focussed.

15. Our proposal that public authorities' existing systems and frameworks become the vehicles for mainstreaming equality will help ensure that equality is integral to, and embedded in, all that public authorities do, including policy change and restructuring.

Impact on sexual orientation, religion and belief, gender reassignment, age, pregnancy and maternity

16. When developing their equality outcomes public authorities will be required to consider the available evidence, including the evidence from involvement of equality groups and communities. Public authorities will not be required to set an outcome for every protected characteristic in the Equality Act 2010. However, they will be required to take into account the section 149 duty and have due regard to the promotion of equality across all eight characteristics in the way that they determine their equality outcomes. If challenged they will need to justify the decisions they have made.

17. We acknowledge that there is a risk that in the early stages of delivery, public authorities may focus their equality outcomes on protected characteristics where there is familiarity, evidence and data, or where communities have more capacity to become involved. To mitigate against this and ensure that public authorities do address the needs of all protected groups the mainstreaming duty and the impact assessment duty will cover all protected characteristics.

18. We anticipate that the duties to set equality outcomes and report on mainstreaming will have a significant positive impact on the protected characteristics of sexual orientation, religion and belief, gender reassignment, age and pregnancy and maternity, as currently public authorities are not legally required to consider these characteristics in relation to their work to deliver public sector equality duties.

Impact assessment

19. The current duties on race, gender and disability all have slightly different requirements on impact assessment, although all relate to setting out the process that will be followed. In the new specific duties, we propose to make the impact assessment requirement common across all characteristics.

Impact on race, disability and gender

20. A consistent impact assessment duty should have a positive impact in relation to the race, disability and gender protected characteristics. It will make impact assessment more straightforward.

21. The focus on new policies and practices, including changes or redesign of policies and practices, will help public authorities take a proportionate response.

22. For the first time we are also making an explicit link between impact assessment and evidence. This goes further than the impact assessment requirements of the existing duties and will have a positive impact on race, disability and gender equality.

23. We are also including a requirement that an authority must have due regard to the outcome of impact assessment, which is currently a requirement only under the gender duty. This is a positive step for race and disability equality.

Impact on sexual orientation, religion and belief, gender reassignment, age, pregnancy and maternity

24. The duty to impact assess should also have a positive impact on the other characteristics as it will ensure public authorities take these protected characteristics into account when developing policies or making changes to current procedures.

Publication of employment information

25. The current specific equality duties relating to race require public authorities to monitor and report on seven separate figures. The current disability duty requires public authorities to report on three separate areas.

26. We propose to simplify the requirements, and have a single reporting requirement for the employment rate for minority ethnic staff, disabled staff, women and men. We will also require a public authority to publish an equal pay statement, its gender pay gap and information on occupational segregation.

27. Only public authorities with more than 150 staff will be required to publish employment data. We are proposing that the 150 employee threshold should apply in relation to employment reporting for two reasons: i) smaller organisations may not have the capacity or the systems which will allow them to respond to these requirements; ii) to protect confidentiality in terms of sensitive personal data. We expect that organisations will not want to report on numbers less than 5 as this could identify individuals. In an organisation of 150, 5 people would be 3.3%.

Impact on Race, Disability and Gender

28. Our aim is to simplify and streamline the requirement and focus public authorities in a manner which should help communities to understand the overall progress a public authority is making in relation to equality. In addition, the new duty to report on mainstreaming will allow authorities to report on their HR activities.

29. The current disability equality duty does not require an authority to publish its employment rate for disabled staff. Rather, an authority is required to publish information relating to recruitment, retention and development of disabled staff. We are unaware of any evidence to suggest that not requiring a public authority to publish annual information relating to the recruitment, retention and development of disabled staff will result in a reduction in recruitment, retention and development of disabled staff. The general duty requires the proactive elimination of discrimination within an authority's employment functions.

30. The current race equality duty requires an authority to publish the results of its monitoring, by reference to racial groups, of the number of staff. Our proposed new duty requires publication of an organisation's minority ethic employment rate. In order to make the employment duty consistent across race, disability and gender in a manner which is proportionate we do not intend to require publication of other employment monitoring information relating to race. We are unaware of any evidence to suggest that not requiring a public authority to publish annual information on the numbers of staff from each racial group who, for example, receive training or are involved

in grievance procedures, will result in less training for minority ethnic staff or an increase in grievances. The first limb of the new general duty is a duty on a public authority to have due regard to the need to eliminate discrimination, harassment and victimisation across all of its functions, including its employment functions.

31. If public authorities wish to contiue to gather and publish the information required by the current duties they will be able to do so. Our proposals will not prevent this.

Impact on sexual orientation, religion and belief, gender reassignment, age, pregnancy and maternity

32. We do not currently propose to place specific duties on public authorities to collect and publish data in relation to age, sexual orientation, religion or belief, gender reassignment or pregnancy and maternity. However, we consider that the new mainstreaming obligations, which apply to all 8 protected characteristics, will help encourage consideration of data which is relevant to these characteristics. Public authorities will be obliged to consider their needs in the work of the organisation, including in employment systems and practices.

Involvement of equality groups and communities

33. The current duties on disability require that disabled people are involved in the development of a scheme, and the gender duties require that 'staff, service users and others' are consulted in relation to the preparation of a scheme. Under the race duty, public authorities must set out their arrangements for consulting and publish consultation results.

34. We recognise the important role that equality groups and communities play in working with public authorities to inform their decision making, and that this must be more than just consultation after decisions are made. We have therefore included a requirement to involve equality groups and communities in the setting of equality outcomes.

Impact on race, gender and disability

35. We want to move forward from current duties on disability, gender and race which have a significant degree of process to focus more strongly on outcomes and achieving positive results for people in relation to the protected characteristics. Our previous consultation showed that making a difference in terms of outcomes was considered important by public authorities and by equality groups and communities. We therefore consider that asking public authorities to set outcomes informed by the reasonable involvement of equality groups and communities, and reporting on these outcomes, will have positive impacts in progressing race, gender and disability equality.

36. Whilst the current requirements have been helpful, we believe that a focus on involvement of equality groups and communities, including disabled people, in order to determine equality outcomes is more likely to lead to better outcomes than the current requirement to involve disabled people in the development of a scheme. And engagement with minority ethnic communities in order to determine equality outcomes is also more likely to lead to better outcomes than the current requirement to set out methods of consultation. In relation to gender, the focus on 'outcomes' rather than 'objectives' reflects our desire to see practical, measurable changes for those who experience prejudice, discrimination and disadvantage.

Impact on sexual orientation, religion and belief, gender reassignment, age, pregnancy and maternity

37. The current duties do not require involvement on these characteristics. As such, the proposed duties should have positive impacts for progressing equality in these areas.

38. We acknowledge that for some communities there may be a lack of capacity to become involved. But the requirement placed on public authorities to involve equality groups and communities will mean that, over time, arrangements will take shape.

Duty on Scottish Ministers in respect of national equality priorities

39. Scottish Ministers must currently publish reports which give an overview of progress towards disability equality and set out proposals for coordination of action by public authorities in order to bring about progress. They must also set our priority areas for the advancement of equality of opportunity between men and women, and report on progress.

40. Under the new duties we propose that Scottish Ministers publish national equality priorities and report on progress.

Impact on all protected characteristics

41. Scottish Ministers will want to base their priorities on evidence, including that obtained from equality groups and communities and engagement with public authorities.

42. Scottish Ministers currently have specific duties to set gender equality priorities and report on them and to set out arrangements for coordination of action across the public sector to advance disability equality. The proposed new duty is unlikely to have a detrimental effect on gender and disability equality, given that it is similar to the existing gender and disability duties, only extended to other characteristics. We consider that extending the duty to encompass other protected characteristics will have beneficial effects in providing leadership, and supporting public authorities in promoting equality.

43. There is no guarantee that Scottish Ministers will set priorities for all protected characteristics. But Scottish Ministers will make decisions after examining evidence and taking an overarching view of the duties.

Conclusions

44. Our research, and information from our previous consultation and from our own engagement with stakeholders, suggests that the proposed specific duties will have positive impacts and promote equality in relation to all of the protected characteristics. In particular, the outcome focused nature of the duties will require public authorities to spend less time on process driven activities, and provide them with more time to make progress on equality.

Annex D

Consultation Questions

Coverage of the General Duty

Question 1
Do you agree with the proposed list of Scottish public authorities (pages 16-17) to be added to schedule 19 of the Equality Act 2010 and made subject to the general duty for all of their functions? If not, please tell us why you disagree and provide your suggestions for changes.

Coverage of the Specific Duties

Question 2
Do you agree with the proposed list of Scottish public authorities to be covered by the specific duties? If not, please tell us why you disagree and provide your suggestions for changes.

Content of Specific Duties

Regulation 3: Publication of Equality Outcomes by Listed Authorities

Question 3
Do you agree that a public authority should be required to publish equality outcomes which are informed by evidence, informed by the involvement of equality groups and communities, and informed by how the outcomes will assist the authority to meet the general duty? If you do not agree, please let us know why.

Question 4
Do you agree that a public authority should be required to report on progress towards its equality outcomes no later than 2 years after the outcomes are published and at subsequent intervals of no more than 2 years?

Question 5
Do you agree that a public authority should be required to review its equality outcomes no later than 4 years after the outcomes are published and at subsequent intervals of no more than 4 years?

Regulation 4: Mainstreaming Equality

Question 6
Do you agree with the proposed duty that an authority must report on action taken to 'mainstream' equality, across all protected characteristics, into day to day systems and practices? If you do not agree, please let us know why.

Question 7
Please tell us your views on how we can build appropriate proportionality into the requirements around mainstreaming.

Questions 8
Do you agree that the first report on progress on the action taken to 'mainstream' equality should be in April 2012, with subsequent reports no later than every 2 years? If you do not agree, please let us know why.

Regulation 5: Impact Assessment

Question 9
Do you agree that a public authority should be required to consider the impact on equality of new policies and practices, including changes or redesign of policies, practices, services and provision; to use evidence to inform its impact assessment; and have regard to the outcome of assessment? If you do not agree, please let us know why.

Question 10
Please tell us your views on how we can build appropriate proportionality into the requirements around impact assessment.

Regulation 6: Publication of Employment Information

Question 11
Do you agree that a public authority with 150 or more full time staff should report on employment data starting from April 2012 and no later than every 2 years? Employment data are – the minority ethnic employment rate, the disability employment rate, the employment rates for women and men and the gender pay gap? If you do not agree, please let us know why.

Question 12
Do you agree that a public authority with 150 or more full time staff should be required to publish an equal pay statement in April 2012 containing information on equal pay policy within the organisation and occupational segregation within the organisation and should report on the statement no later than every 4 years? If you do not agree, please let us know why.

Regulation 7: Duty on Scottish Ministers in Respect of National Equality Priorities

Question 13
Do you agree that Scottish Ministers should determine national equality priorities? If you do not agree, please let us know why.

Question 14
Do you agree that Scottish Ministers should publish their national equality priorities in June 2012 and report on them after no later than December 2014? Subsequent priorities would then be set in June 2016 with a report in December 2018 and at 4 year intervals thereafter. If you do not agree, please let us know why.

Regulation 8: Compliance with Publication Duty

Question 15
Do you agree that a public authority should report on progress on the specific duties within its existing public performance reporting systems, and should be required to state in advance where it will report and its intended timescale? If you do not agree, please let us know why.

Question 16
Do you agree that a public authority should be required to state in advance where it will publish its equality outcomes? If you do not agree, please let us know why

General Questions

Question 17
Do you agree that the proposed regulations for the specific duties set out a flexible, proportionate and outcome based approach? If you do not agree, please let us know why and tell us what changes you would make.

Question 18
Do you have any other comments on the proposed regulations?

Draft Business and Regulatory Impact Assessment

Question 19
Do you have any evidence or data that would help us to develop our draft Business and Regulatory Impact Assessment?

The Scottish Government

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