

Report

4

Report to:	Equal Opportunities Forum
Date of Meeting:	15 March 2011
Report by:	Executive Director (Corporate Resources)

Subject:	Equality Act 2010 Implications
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ provide an update on the implementation of the Equality Act 2010 and the implications for the Council
- ◆ outline a draft response to the Scottish Government's consultation on the public sector equality duty draft regulations and order

2. Recommendation(s)

2.1. The Forum is asked to approve the following recommendation(s):-

(1) that the contents of the report be noted.

3. Background

3.1. As of April 2011, the existing public sector duties for race, disability and gender will be replaced by the Equality Act 2010 which introduces a single public sector equality duty – 'the general duty' – which covers age, disability, gender, gender reassignment, race, religion and belief, sexual orientation and pregnancy and maternity.

3.2. The new public sector equality duty states the following:-

A public authority must, in the exercise of its functions, have due regard to the need to:-

- ◆ eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act
- ◆ advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- ◆ foster good relations between persons who share a relevant protected characteristic and persons who do not share it

3.2.1. The Act goes on to state that those who are not public authorities but who carry out public functions such as contractors for care provision, must also have due regard to the general duty. Therefore, the Council must continue to ensure that, in its spending of public monies with private and voluntary sector groups, it is with organisations that are either following the same or similar procedures to us with regards to equalities policy and practice.

3.2.2. The Act further clarifies that having due regard to the need to advance equality of opportunity and to the need to foster good relations means a need to:-

- ◆ remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- ◆ 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
- ◆ 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
- ◆ tackle prejudice
- ◆ promote understanding

3.2.3. In doing so, compliance with the duties may involve treating some persons more favourably than others and taking steps to take account of disabled persons' disabilities.

3.3. The new Act is intended to make equality legislation both simpler to understand and to implement. Whilst the general duty covering all protected groups provides a foundation for doing this, it does also mean that public authorities have to ensure that the broader base of the legislation is properly understood and accounted for in its decision making and the carrying out of public functions. There is a strong emphasis on evidence based decision making e.g. making use of equality impact assessments to inform policy, practice and functions.

4. The Specific Duties as Developed by the Scottish Government

4.1. In January 2010 the Council responded to the Scottish Governments' consultation regarding the specific duties for the Equality Act. The Government sets out that these duties, whilst intended to be a strong and effective framework for delivering the general duty, are also flexible, proportionate and focussed on outcomes.

4.2. In the latest consultation regarding the specific duties (see appendix 1 for the Council response), the Government is proposing the following requirements on 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

4.3. In January the Council's initial response to the consultation asked that the specific duties address the language of the Act by clearly setting out what the expectations for consultation and involvement would be and also asked for clear guidance from both Government and the Equality and Human Rights Commission with regards to reporting and equality impact assessment.

- 4.4. Guidance is still to be produced by the EHRC, however, the Government set out that equality groups and communities have an important role to play in informing authorities decision making. As such, this must be more than just consultation after decisions are made. They propose that an authority's equality outcomes must be informed by the involvement of equality groups and communities. Whilst outcomes across all protected groups will not be required, evidence from across all characteristics will have to be considered.
- 4.5. The duty to publish equality outcomes is seen as a shift from 'objectives' to instead produce practical and measurable changes in the life chances of those who experience prejudice, discrimination and disadvantage. Improvements in job opportunities for those who are disabled, or provision of accessible information to improve service uptake, are examples where increase can be measured. The Government wants authorities to respond to the needs of their local communities and, therefore, they will have to be informed by involvement of local equality groups in the process. Whilst there will not be a requirement to have outcomes for all characteristics, there will be a requirement to evidence why this is the case.
- 4.6. The cycle of reporting to the community on what our outcomes are will be at least every 2 years, and we will have to review these no later than every 4 years. The intention is for authorities to build equalities reporting into the structures that already exist such as the Council Plan and the Single Outcome Agreement (SOA).
- 4.7. With regards to 'mainstreaming', the Government want authorities to embed equality across their policies, procedures and corporate systems. To ensure action is taken there must be a report no later than April 2012 on the progress an authority has made in promoting equality for all protected groups within their policies, practices and corporate systems.
- 4.8. In relation to equality impact assessment, there will not be a national standard and as such it will remain with authorities to decide how to conduct these. Assessments will need to cover all protected groups, be informed by evidence, and the duty will apply to all new policies, practices, services and provision, including changes or redesign of existing policies, practices, services and provision.

5. Specific Duty Consultation Implications and Response

- 5.1. The main implications for the Council in relation to the new specific duties will be the development and collation of relevant equalities related data for the new protected characteristics. Steps have already been taken with regards to recruitment and employee monitoring, however, further work will be required for service uptake monitoring.
- 5.2. A review of the Single Equality Scheme and Equality and Diversity Strategy, and their associated action plans, will be required to ensure Resource specific as well as Council-wide outcomes are developed with the involvement of community and employee groups.
- 5.3. An agreed cycle of reporting on outcome progress, either annually or bi-annually and an agreed life-cycle for outcomes is required. Our outcomes will remain in a Single Equality Scheme and will be linked as appropriate with the SOA and Council Plan.

6. Employee Implications

- 6.1. None

7. Financial Implications

- 7.1. There are no financial implications as equality policy is well established and any costs will be met from within current resources.

8. Other Implications

- 8.1. The risk to the Council is that if Resources do not have due regard to the Public Sector Equality Duty it may lead to non-compliance with equalities legislation. This can carry unlimited financial penalties from now.
- 8.2. There are no implications for sustainability in terms of the information contained within this report.

9. Equality Impact Assessment and Consultation Arrangements

- 9.1. This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and, therefore, no impact assessment or consultation is required.

Robert McIlwain
Executive Director (Corporate Resources)

8 November 2010

Link(s) to Council Objectives

- ◆ Fair and open
- ◆ People focused
- ◆ Working with and respecting others
- ◆ Excellent employer
- ◆ Tackling disadvantage and deprivation

Previous References

- ◆ Equal Opportunities Forum – 26 August 2008 – The Equality Bill

List of Background Papers

None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

Simon Cameron, Diversity Advisor (Equalities)

Ext: 3886 (Tel: 01698 453886)

E-mail: simon.cameron@southlanarkshire.gov.uk

Draft Response to the Consultation on Public Sector Equality Duty Draft Regulations and Order

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.

Yes. The Council welcome the provisions set out in schedule 19 as it continues to work closely with all of its partners in relation to the existing public sector duties

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.

Yes. As above

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.

Yes. Guidance/Codes of Practice must be clear on what is meant by involvement, a national standard would be welcomed.

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?

Yes.

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?

Yes.

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.

Yes.

Question 7

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

Proportionality can come from being able to prioritise protected characteristics where there is evidence of possible adverse impact or low participation. As data collection improves so will confidence in creating meaningful outcomes for all protected characteristics.

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.

Yes.

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.

Yes. It would be beneficial to have Codes of Practice that clarify the understanding of involvement and use of evidence.

Question 10

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

Yes.

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.

Yes.

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.

Yes.

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.

Yes. We would request that the development of national equality outcomes and priorities, and any associated performance reporting and regulation, are joined up across the Scottish Government departments, for example in the development of outcomes for the Scottish Social Housing Charter. A proportionate approach cannot be achieved if subsequent developments have divergent outcomes or additional or differing reporting requirements.

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.

Yes.

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.

Yes.

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

Yes.

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.

Yes. However, appropriate consultation regarding development of the Codes of Practice is required. National standards and clear guidelines will benefit all in progressing equality related outcomes.

Question 18

Do you have any other comments on the proposed regulations?

No.

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?

No.