

## Equality Act 2010 – Public Sector Equality Duty – General and Specific Duties - Update

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### Policy and Strategy Committee

17 May 2011

#### Purpose of report

- 1 This report describes recent developments, and the consequent implications for the Council, with regard to the introduction of new general and specific public sector equality duties, specified as part of the Equality Act 2010.

#### Main report

- 2 The Equality Act 2010 came into force on 1 October 2010 and consists of 16 parts and 28 schedules. The Act is largely focussed on defining unlawful discrimination, harassment and victimisation with regard to employment and access to goods and services.
- 3 The Act is a reserved legislative matter to the UK Parliament. However, there are parts that relate to devolved matters in Scotland, like education, policing, local government and health. The different parts of the Act are being introduced on a phased basis and the Equality and Human Rights Commission (EHRC) will produce statutory and non statutory codes of practice to assist in the understanding of, and compliance with, these new legal duties.
- 4 Of particular interest to public authorities is 'Part 11 – Advancement of Equality – Chapter 1 – Public Sector Equality Duties'. This part of the Act places a range of general and specific duties, described at Appendix 1, on listed public authorities. The general duties came into effect across the UK on 5 April 2011. Failure to pay due regard to these duties can result in compliance action from the EHRC Scotland or Judicial Review challenge.
- 5 In addition to the general duties, Scottish Ministers have powers under the Act (Sections 151, 152 and 153) to agree a list of Scottish public authorities which can be subject to a range of specific public sector equality duties. In September 2010 the Ministers embarked upon a consultation exercise to gather views on a proposed list of Scottish public authorities and a draft set of specific duties, which are described at Appendix 2. These were due to come into force on 6 April 2011.
- 6 The Council approved its largely supportive response to this consultation at the Policy and Strategy Committee meeting on 2 November 2010. It also agreed to review the current Equality, Diversity and Human Rights (EDHR) Scheme 2009

/ 2012, in light of the new general and specific duties, and to publish a new 'Equalities and Human Rights Framework' by June 2011.

- 7 However, on 8 March 2011 the Scottish Parliament's Equal Opportunities Committee voted against introducing the proposed specific duties. This was largely as a result of concerns raised by members of the Committee, and upon evidence from some community interests, about the efficacy of the consultation process and the limited extent of the proposed employment and impact assessment specific duties. The list of Scottish public authorities proposed to be covered by the specific duties, which included local authorities, was however recommended for approval.
- 8 Following this decision, the Scottish Government has indicated its intention to re-introduce the specific duties later this year in September or October. In addition, the EHRC Scotland has issued an interim statement, attached at Appendix 3, in recognition that there is uncertainty amongst Scottish public authorities covered by the Act, and the communities affected by them.
- 9 In light of the above it is proposed that the Council retain the current EDHR Scheme 2009/2012 as Council policy until the new 'Equalities and Human Rights Framework' is approved. Furthermore, given the delay in the introduction of the specific duties, approval for the new framework will be sought around April 2012, as opposed to June 2011.
- 10 In addition, given that the broad parameters of the specific duties are likely to be retained, it is proposed that current work on the new framework continues with regard to developing and publishing equality outcomes, reporting on equality mainstreaming action, designing an improved approach to equalities impact assessment and publishing diversity in employment data.

### **Financial Implications**

- 11 There are no direct financial implications arising as a result of this report.

### **Environmental Implications**

- 12 There are no direct environmental implications arising as a result of this report. However, EDHR activity contributes extensively to social sustainability objectives.

### **Equality Implications**

- 13 The publication of a new 'Equalities and Human Rights Framework', will enable the Council to pay due regard to all three general public sector equality duties.
- 14 The equalities relevance score for proposals described within this report is three, based on the high degree of relevance to equality legal duties and the low degree of relevance to public concern in equalities groups and negative impact on equalities groups. A full equalities impact assessment was not therefore required.

### **Recommendations**

- 15 It is recommended that the Committee notes the intention to retain the current EDHR Scheme 2009 / 2012 as Council policy until the new 'Equalities and Human Rights Framework' is agreed in April 2012.

Appendices	<ol style="list-style-type: none"><li>1. Equality Act 2010 - Part 11 – Advancement of Equality – Chapter 1 – Public Sector Equality Duty</li><li>2. Proposed Public Sector Specific Equality Duties – Scotland</li><li>3. EHRC Scotland – Public Sector Specific Duties – Interim Statement – March 2011</li></ol>
Contact/tel/Email	Nick Croft <a href="mailto:nick.croft@edinburgh.gov.uk">nick.croft@edinburgh.gov.uk</a> 0131 469 3726
Wards affected	All
Single Outcome Agreement	All.
Background Papers	None.

## Equality Act 2010

### Part 11 – Advancement of Equality

#### Chapter 1

##### 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.

(8) A reference to conduct that is prohibited by or under this Act includes a reference to—

(a) a breach of an equality clause or rule;

(b) a breach of a non-discrimination rule.

(9) Schedule 18 (exceptions) has effect.

## **150 Public authorities and public functions**

(1) A public authority is a person who is specified in Schedule 19.

(2) In that Schedule—

- Part 1 specifies public authorities generally;
- Part 2 specifies relevant Welsh authorities;
- Part 3 specifies relevant Scottish authorities.

(3) A public authority specified in Schedule 19 is subject to the duty imposed by section 149(1) in relation to the exercise of all of its functions unless subsection (4) applies.

(4) A public authority specified in that Schedule in respect of certain specified functions is subject to that duty only in respect of the exercise of those functions.

(5) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

### **151 Power to specify public authorities**

(1) A Minister of the Crown may by order amend Part 1, 2 or 3 of Schedule 19.

(2) The Welsh Ministers may by order amend Part 2 of Schedule 19.

(3) The Scottish Ministers may by order amend Part 3 of Schedule 19.

(4) The power under subsection (1), (2) or (3) may not be exercised so as to—

(a) add an entry to Part 1 relating to a relevant Welsh or Scottish authority or a cross-border Welsh or Scottish authority;

(b) add an entry to Part 2 relating to a person who is not a relevant Welsh authority;

(c) add an entry to Part 3 relating to a person who is not a relevant Scottish authority.

(5) A Minister of the Crown may by order amend Schedule 19 so as to make provision relating to a cross-border Welsh or Scottish authority.

(6) On the first exercise of the power under subsection (5) to add an entry relating to a cross-border Welsh or Scottish authority to Schedule 19, a Minister of the Crown must—

(a) add a Part 4 to the Schedule for cross-border authorities, and

(b) add the cross-border Welsh or Scottish authority to that Part.

(7) Any subsequent exercise of the power under subsection (5) to add an entry relating to a cross-border Welsh or Scottish authority to Schedule 19 must add that entry to Part 4 of the Schedule.

(8) An order may not be made under this section so as to extend the application of section 149 unless the person making it considers that the extension relates to a person by whom a public function is exercisable.

(9) An order may not be made under this section so as to extend the application of section 149 to—

(a) the exercise of a function referred to in paragraph 3 of Schedule 18 (judicial functions, etc);

(b) a person listed in paragraph 4(2)(a) to (e) of that Schedule (Parliament, devolved legislatures and General Synod);

(c) the exercise of a function listed in paragraph 4(3) of that Schedule (proceedings in Parliament or devolved legislatures).

## **152 Power to specify public authorities: consultation and consent**

(1) Before making an order under a provision specified in the first column of the Table, a Minister of the Crown must consult the person or persons specified in the second column.

<b><i>Provision</i></b>	<b><i>Consultees</i></b>
Section 151(1)	The Commission
Section 151(1), so far as relating to a relevant Welsh authority	The Welsh Ministers
Section 151(1), so far as relating to a relevant Scottish authority	The Scottish Ministers
Section 151(5)	The Commission
Section 151(5), so far as relating to a cross-border Welsh authority	The Welsh Ministers
Section 151(5), so far as relating to a cross-border Scottish authority	The Scottish Ministers

(2) Before making an order under section 151(2), the Welsh Ministers must—

- (a) obtain the consent of a Minister of the Crown, and
- (b) consult the Commission.

(3) Before making an order under section 151(3), the Scottish Ministers must—

- (a) obtain the consent of a Minister of the Crown, and
- (b) consult the Commission.

## **153 Power to impose specific duties**

(1) A Minister of the Crown may by regulations impose duties on a public authority specified in Part 1 of Schedule 19 for the purpose of enabling the better performance by the authority of the duty imposed by section 149(1).

(2) The Welsh Ministers may by regulations impose duties on a public authority specified in Part 2 of Schedule 19 for that purpose.

(3) The Scottish Ministers may by regulations impose duties on a public authority specified in Part 3 of Schedule 19 for that purpose.

(4) Before making regulations under this section, the person making them must consult the Commission.

#### **154 Power to impose specific duties: cross-border authorities**

(1) If a Minister of the Crown exercises the power in section 151(5) to add an entry for a public authority to Part 4 of Schedule 19, the Minister must include after the entry a letter specified in the first column of the Table in subsection (3).

(2) Where a letter specified in the first column of the Table in subsection (3) is included after an entry for a public authority in Part 4 of Schedule 19, the person specified in the second column of the Table—

(a) may by regulations impose duties on the authority for the purpose of enabling the better performance by the authority of the duty imposed by section 149(1), subject to such limitations as are specified in that column;

(b) must in making the regulations comply with the procedural requirement specified in that column.

(3) This is the Table—

#### ***Letter Person by whom regulations may be made and procedural requirements***

A Regulations may be made by a Minister of the Crown in relation to the authority's functions that are not devolved Welsh functions.

The Minister of the Crown must consult the Welsh Ministers before making the regulations.

Regulations may be made by the Welsh Ministers in relation to the authority's devolved Welsh functions.

The Welsh Ministers must consult a Minister of the Crown before making the regulations.

B Regulations may be made by a Minister of the Crown in relation to the authority's functions that are not devolved Scottish functions.

The Minister of the Crown must consult the Scottish Ministers before making the regulations.

Regulations may be made by the Scottish Ministers in relation to the authority's devolved Scottish functions.

The Scottish Ministers must consult a Minister of the Crown before making the regulations.

- C Regulations may be made by a Minister of the Crown in relation to the authority's functions that are neither devolved Welsh functions nor devolved Scottish functions.

The Minister of the Crown must consult the Welsh Ministers and the Scottish Ministers before making the regulations.

Regulations may be made by the Welsh Ministers in relation to the authority's devolved Welsh functions.

The Welsh Ministers must consult a Minister of the Crown before making the regulations.

Regulations may be made by the Scottish Ministers in relation to the authority's devolved Scottish functions.

The Scottish Ministers must consult a Minister of the Crown before making the regulations.

- D The regulations may be made by a Minister of the Crown.

The Minister of the Crown must consult the Welsh Ministers before making the regulations.

- (4) Before making regulations under subsection (2), the person making them must consult the Commission.

### **155 Power to impose specific duties: supplementary**

(1) Regulations under section 153 or 154 may require a public authority to consider such matters as may be specified from time to time by—

(a) a Minister of the Crown, where the regulations are made by a Minister of the Crown;

(b) the Welsh Ministers, where the regulations are made by the Welsh Ministers;

(c) the Scottish Ministers, where the regulations are made by the Scottish Ministers.

(2) Regulations under section 153 or 154 may impose duties on a public authority that is a contracting authority within the meaning of the Public Sector Directive in connection with its public procurement functions.

(3) In subsection (2)—

- “public procurement functions” means functions the exercise of which is regulated by the Public Sector Directive;
- “the Public Sector Directive” means Directive [2004/18/EC](#) of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended from time to time.

(4) Subsections (1) and (2) do not affect the generality of section 153 or 154(2)(a).

(5) A duty imposed on a public authority under section 153 or 154 may be modified or removed by regulations made by—

(a) a Minister of the Crown, where the original duty was imposed by regulations made by a Minister of the Crown;

(b) the Welsh Ministers, where the original duty was imposed by regulations made by the Welsh Ministers;

(c) the Scottish Ministers, where the original duty was imposed by regulations made by the Scottish Ministers.

## **156 Enforcement**

A failure in respect of a performance of a duty imposed by or under this Chapter does not confer a cause of action at private law.

## **157 Interpretation**

(1) This section applies for the purposes of this Chapter.

(2) A relevant Welsh authority is a person (other than the Assembly Commission) whose functions—

(a) are exercisable only in or as regards Wales, and

(b) are wholly or mainly devolved Welsh functions.

(3) A cross-border Welsh authority is a person other than a relevant Welsh authority (or the Assembly Commission) who has any function that—

(a) is exercisable in or as regards Wales, and

(b) is a devolved Welsh function.

(4) The Assembly Commission has the same meaning as in the Government of Wales Act 2006.

(5) A function is a devolved Welsh function if it relates to—

(a) a matter in respect of which functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or

(b) a matter within the legislative competence of the National Assembly for Wales.

(6) A relevant Scottish authority is a public body, public office or holder of a public office—

(a) which is not a cross-border Scottish authority or the Scottish Parliamentary Corporate Body,

(b) whose functions are exercisable only in or as regards Scotland, and

(c) at least some of whose functions do not relate to reserved matters.

(7) A cross-border Scottish authority is a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998.

(8) A function is a devolved Scottish function if it—

(a) is exercisable in or as regards Scotland, and

(b) does not relate to reserved matters.

(9) Reserved matters has the same meaning as in the Scotland Act 1998.

**Proposed Public Sector Specific Equality Duties – Scotland**

- (a) Publish equality outcomes, based on evidence and community involvement, in line with the general duties.
- (b) Publish a report on equalities mainstreaming action and progress in line with the general duties.
- (c) Assess the impact of proposed policies and practices, including changes to and revisions of its existing policies and practices, on persons with relevant protected characteristics, consider relevant evidence relating to persons with relevant protected characteristics in relation to such assessments of impact and have due regard to the results of such assessments of impact;
- (d) Publish employment information on (i) the percentage of its workforce comprised of ethnic minority groups, disabled people, women and men, (ii) the gender pay gap, (iii) an equal pay statement specifying the authority's policy on equal pay between women and men and (iv) occupational segregation within its workforce, being the concentration of women and men in particular grades and in particular occupations.
- (e) Publication of information relating to items (a) to (d) must be completed in a manner that is reasonably accessible to the public and linked to an existing means of public performance reporting.

## **EHRC Scotland – Public Sector Specific Duties – Interim Statement – March 2011**

The main elements of the statement are described below:

1. Public authorities will still be covered by the general duties to give due regard to the elimination of discrimination, the advancement of equality of opportunity and the fostering of good relations on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. It is only the specific duties which are not being implemented at the moment
2. The EHRC encourage all listed authorities to keep using their existing systems for the time being whilst extending their consideration to encompass all of the protected characteristics, until greater clarity about the substance, requirements and timescales of the specific duties are available from the Scottish Government.
3. Existing specific duties on race, disability and gender will cease on the 6th April. The EHRC will issue temporary guidance in due course which will assist public authorities on best practice in the interim.