

## POLICY NOTE

### THE EQUALITY ACT 2010 (AUTHORITIES SUBJECT TO THE SOCIO-ECONOMIC INEQUALITY DUTY) (SCOTLAND) REGULATIONS 2018

SSI 2018/xxx

The above instrument will be made in exercise of the powers conferred by section 2(4) of the Equality Act 2010. The instrument is subject to affirmative procedure.

#### Policy Objectives

The socio-economic inequality duty [‘the duty’] is set out in Part 1 of the Equality Act 2010. The duty requires a named public authority to pay due regard to narrowing inequalities of outcome, caused by socio-economic disadvantage, when making strategic decisions. Commencing the duty was the first commitment in the Fairer Scotland Action Plan (October 2016).

The purpose of this instrument is to set out which Scottish public authorities are to be subject to the duty. This is required because the Equality Act 2010 does not name any Scottish authorities, providing a list of English or UK bodies only.

However, the Act does include the following test to define which Scottish authorities could be made subject to the duty:

“An authority whose functions—

- (a) are exercisable only in or as regards Scotland,
- (b) are wholly or mainly devolved Scottish functions, and
- (c) correspond or are similar to those of an authority for the time being specified in section 1(3).” [i.e. the list of UK/English public authorities]

#### Consultation

The Scottish Government held a consultation exercise on the duty, which ran between 18 July and 12 September 2017.

The consultation document can be found here: <https://consult.gov.scot/social-justice/the-socio-economic-duty/>

An analysis of responses to the consultation can be found here:

<https://beta.gov.scot/publications/consultation-socio-economic-duty-analysis-responses/documents/00527914.pdf?inline=true>

The consultation included a specific question on whether respondents agreed that the public authorities proposed by the Scottish Government should be named under the duty. The public authorities proposed were as follows:

- Scottish Ministers [see below]
- Local Authorities
- NHS Health Scotland
- Integration Joint Boards
- Regional Health Boards
- The Scottish Police Authority
- Highlands and Islands Enterprise
- Scottish Enterprise

“Scottish Ministers” includes the following: The Scottish Government, Accountant in Bankruptcy; Disclosure Scotland; Education Scotland; Scottish Prison Service; Scottish Public Pensions Agency; Student Awards Agency for Scotland; Transport Scotland. The new Scottish Social Security Agency, once established, will also be subject to the duty.

In response to this particular question, there was general agreement that the authorities proposed were appropriate to be named under the duty.

A follow-up question asked whether additional authorities should also be named under the duty and, if so, why. A large number of suggestions were made. However, many of the bodies suggested were not appropriate to be named under the duty: some had UK-wide functions; others did not have functions that corresponded to or were similar to the bodies listed in the Act; still others were not constituted as public authorities.

However, some additional bodies proposed did meet the test set out in the Act and were considered appropriate to be named under the duty. This led to consideration of other, similar, public authorities that could also be named, as non-Ministerial departments equivalent to UK ‘Government Departments’. The additional bodies to be named are as follows:

- Food Standards Scotland
- Keeper of the Registers of Scotland
- National Records of Scotland
- Revenue Scotland
- Scottish Courts and Tribunals Service

The Scottish Government corresponded with the above bodies to confirm that they agreed that they met the tests set out in the Equality Act 2010 re equivalent functions.

All Special Health Boards will also now be named as subject to the duty, in specific response to suggestions made in the consultation.

Responses to the consultation also suggested that the duty needed to have a name that, in practice, communicated more clearly what was trying to be achieved. Ministers have therefore determined that the duty will be known in practice as the ‘Fairer Scotland’ Duty.

### **Impact Assessments**

A separate Equality Impact Assessment will be prepared on the effect of the introduction of the duty, ahead of the duty coming into force on 1 April 2018.

## **Financial Effects**

The Cabinet Secretary for Social Security, Communities and Equalities confirms that no BRIA is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.

**Scottish Government**

**Housing and Social Justice**

**26 January 2018**