

EXECUTIVE NOTE

The Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005 (S.S.I 2005/565)

The above instrument was made in exercise of the powers conferred by section 49(D) (3) and (4) of the Disability Discrimination Act 1995. The instrument is subject to negative resolution procedure.

Background

The regulations apply to the exercise by public authorities of the general duty to promote equality of opportunity for disabled people, introduced by section 49(A) (1) of the Disability Discrimination Act 1995. The section 49(A) (1) duty (the general duty) was introduced by the Westminster Parliament and requires public authorities to have due regard, when carrying out their functions, to:

- a) the need to eliminate discrimination that is unlawful under the Act;
- b) the need to eliminate harassment of disabled persons that is related to their disability
- c) the need to promote equality of opportunity between disabled persons and other persons;
- d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled people more favourably than other persons;
- e) the need to promote positive attitudes towards disabled persons: and
- f) the need to encourage participation by disabled persons in public life.

Sections 49(D) (3) of the Disability Discrimination Act 1995 confers a power on Scottish Ministers that they may by regulations impose on a relevant Scottish authority such duties as they consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49(A). Section 49(D) (4) confers a power on Scottish Ministers that they may by regulations impose on a relevant cross border authority such duties as they consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49(A) so far as relating to its Scottish functions.

Public authorities will not be required to comply with the general duty at section 49(A) until December 2006. The regulations require them to have set out by this date how they intend to comply with the section 49(A) duty. In this way, the general duty is not commenced until authorities have been able to prepare their disability equality scheme (see below).

Policy Objectives

Authorities will be required to publish a disability equality scheme setting out what they plan to do to promote equality of opportunity for disabled people. Within the scheme they will be required to state:

- a) the ways in which disabled people have been involved in developing the scheme
- b) the authorities methods for assessing the impact of its policies and practices on disabled people
- c) the steps that the authority intends to take to fulfil its section 49(A) (1) duties

d) the authority's arrangements for gathering information on the effect of its policies on disabled people and its arrangements for making use of that information

All authorities publishing a disability equality scheme will be required to report annually on progress and to review and publish a revised scheme every three years.

These arrangements will allow public bodies, and Government, acting as a stakeholder on behalf of the public, to assess whether the public sector is improving its treatment of disabled people and taking appropriate action where it is needed.

The regulations will assist public authorities to comply with the general duty and will have three principal benefits:

- they will help public authorities to understand how they should respond to the general duty set out in legislation;
- they will allow the wider community to see whether public authorities are complying with their legal obligations; and
- they will facilitate cost-effective enforcement by the Disability Rights Commission.

Section 2(5) of the regulations is intended to make clear that an authority may publish its disability equality scheme within another document if it wishes to do so, for example, within an overarching equality strategy which also covers race, gender and other equality issues.

Consultation

Detailed proposals for the introduction of the public sector duty to promote equality or opportunity for disabled people were the subject of public consultation from 24 July to 21 October 2004 (see 'Delivering Equality for Disabled People' <http://www.dwp.gov.uk/publications/dwp/2004/equality/>). All bodies to be made subject to the specific duties received the consultation document.

In addition, further consultation specifically on the regulations was undertaken with the Disability Rights Commission in accordance with the requirement at section 49D(5) of the Act. Scottish Ministers also consulted with the relevant Secretary of State in relation to cross border authorities as required by section 49D(9) of the Act.

Sectors affected

The specific duties set out in these regulations will apply to listed public bodies only (see Annex A). Where public bodies contract out their functions, for example, where a local authority contracts out street cleaning to a private contractor, authorities will need to design contracts in a way that ensures that the authority continues to comply with the duty to promote equality of opportunity for disabled people. It is expected that the Disability Rights Commission will produce guidance to authorities on how the duty impacts on planning for the procurement of goods, facilities and services.

Financial Effects

A regulatory impact assessment has been undertaken and is available at from the Scottish Executive Equality Unit, Area 2F, Victoria Quay, Edinburgh, EH6 6QQ. The cost of introducing the specific duties is estimated to be between £1.9m and £3.0m.

**Scottish Executive
November 2005**

List of bodies to be subject to the specific duties

The Accounts Commission for Scotland

Audit Scotland

Bord na Gaidhlig (Alba)

The Cairngorms National Park Authority established under section 6 of the National Parks (Scotland) Act 2000

The Criminal Injuries Compensation Authority in relation to its Scottish functions

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

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

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

NHS National Services Scotland

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

The Keeper of the Records of Scotland

The Keeper of the Registers of Scotland

The Law Society of Scotland, in respect of its public functions

The Loch Lomond and the Trossachs National Park Authority established under section 6 of the National Parks (Scotland) Act 2000

A licensing board constituted under section 1 of the Licensing (Scotland) Act 1976 (e)

The Board of Trustees for the National Galleries of Scotland established under section 3 of the National Galleries of Scotland Act 1906 (F/N)

The Trustees of the National Library of Scotland, constituted under section 1 of the National Library of Scotland Act 1925 (F/N)]

The Board of Trustees of the National Museums of Scotland established by the National Heritage (Scotland) Act 1985 (F/N)

A Passenger Transport Executive within the meaning of Part II of the Transport Act 1968 for a passenger transport area within Scotland

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

The Registrar General of Births, Deaths and Marriages for Scotland

The Scottish Arts Council

Scottish Natural Heritage

Scottish Screen

Sportscotland

Scottish Water

The Scottish Commission for the Regulation of Care

Scottish Enterprise and Highlands and Islands Enterprise established under the Enterprise and New Towns (Scotland) Act 1990

The Scottish Further Education Funding Council

The Scottish Higher Education Funding Council

The Scottish Legal Aid Board

The Scottish Ministers^{note 1}

The Service Authority for the National Criminal Intelligence Service in respect of its Scottish functions

The Scottish Qualifications Authority

The Scottish Social Services Council

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

Visitscotland

Education authorities

The managers of a grant- aided school (within the meaning of section 135 of the Education (Scotland) Act 1980 (a))

The board of management of a self- governing school (within the meaning of the Self-Governing Schools etc (Scotland) Act 1989 (b))

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 ©)

A college of further education maintained by an education authority in the exercise of its further education functions in providing courses of further education within the meaning of section 1 (5) (b) (ii) of the Education (Scotland) Act 1980

Newbattle Abbey College

Sabhal Mor Ostaig College

The governing body of an institution within the higher education sector (within the meaning of part II of the Further and Higher Education (Scotland) Act 1992) other than any institution whose activities are principally carried on outwith Scotland including the Open University

The managers of a central institution (within the meaning of section 135 of the Education (Scotland) Act 1980)

Note 1. ‘The Scottish Ministers’ includes Scottish Executive Departments and Agencies as follows:

Core SE Departments
General Register Office for Scotland
National Archives of Scotland
Registers of Scotland
Historic Scotland
Communities Scotland
Scottish Courts Service (which includes the Office of the Public Guardian)
Scottish Prisons service
HMIE and other Inspectorates
Scottish Agricultural Science Agency
Student Awards Agency for Scotland
Scottish Public Pensions Agency
Scottish Fisheries Protection Agency
Fisheries Research Service