

EXECUTIVE NOTE

THE EQUALITY ACT 2010 (SPECIFIC DUTIES) (SCOTLAND) REGULATIONS 2012

S.S.I 2012/162

1. The above instrument (“the Regulations”) will, if approved, be made by the Scottish Ministers in exercise of the powers conferred by sections 153(3), 155(1)(c) and (2), and 207(4) of the Equality Act 2010. The instrument is subject to the affirmative procedure.

Background

2. The public sector equality duty in section 149(1) of the Equality Act 2010 requires public authorities to have due regard, when exercising their functions, to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
3. The purpose of the Regulations is to place specific duties on some of these authorities to enable them to better perform their public sector equality duty.

Policy Objectives

3. The specific duties are intended to provide a supporting framework to enable certain public authorities to better perform their public sector equality duty, through enhanced data collection and evaluation, and greater transparency and accountability. In this way they help authorities to better perform their duty to have ‘due regard’.
4. The specific duties are intended to have three principal benefits:
 - they will help public authorities to better understand how they should respond to the general duty at section 149(1) of the Equality Act 2010;
 - they will help public authorities take account of evidence gained through the setting of equality outcomes and the evaluation of progress made on these; and
 - they will allow the wider community to monitor (and where appropriate challenge) the performance of public authorities in relation to the public sector equality duty.

Consultation

5. Scottish Ministers consulted three times on the specific duties. The first consultation, on the broad scope of the specific duties, took place between 29 September 2009 and 15 January 2010. The second took place between 13 September and 26 November 2010. A third consultation on revised draft regulations took place between 9 September and 25

November 2011. All bodies to be made subject to the specific duties received the consultation documents. The consultation documents are available online at:

<http://www.scotland.gov.uk/Publications/2009/09/28154835/0>

<http://www.scotland.gov.uk/Publications/2010/09/13094828/0>

<http://www.scotland.gov.uk/Publications/2011/09/09134605/0>

6. The Equal Opportunities Committee considered a previous version of the draft Regulations in March 2011 and recommended that they should not be approved. Those Regulations were withdrawn and revisions made to take account of the Committee's concerns. These concerns related to transparency and accountability and a desire to see more details into the Regulations themselves rather than in guidance. The Regulations now address the specific issues raised by the Committee and include additional duties:
 - to publish reasons if equality outcomes do not cover all protected characteristics;
 - to publish the results of impact assessments for newly adopted policies and practices;
 - to make arrangements to review existing policies and practices;
 - in relation to gathering, using and reporting employment information; and
 - in relation to procurement.
7. Public consultation showed support for the changes. A number of further revisions were made following consultation on the revised draft Regulations in response to issues raised by respondents. These included revisions to:
 - clarify various provisions including those in relation to impact assessments;
 - clarify gender pay gap and equal pay etc reporting requirements; and
 - require Scottish Ministers to review pay gap and equal pay reporting requirements.
8. The Equality and Human Rights Commission responded to the public consultations. It was also consulted informally during the drafting of the Regulations and, in response, advised that it is content with the final draft Regulations.

Financial Effects

9. A Business and Regulatory Impact Assessment has been undertaken and published to accompany these regulations.

Scottish Government
March 2012