

Cross Party Group on Racial Equality in Scotland

Revised Draft Regulations for Public Sector Equality Specific Duties

Overview of changes



The Equality Act 2010 establishes a Public Sector General Equality Duty which Public Bodies must comply with. It also makes provisions for Ministers in England, Wales and Scotland to create separate Specific Duties to demonstrate how Public Bodies in those nations should fulfil the General Equality Duty.

The General Equality Duty states that Public Bodies listed under Schedule 19 of the Equality Act 2010 must:

- Eliminate conduct prohibited by the Equality Act 2010
- Advance equality of opportunity between persons who share a protected characteristic and those who do not share it
- Foster good relations between persons who share a protected characteristic and those who do not share it

The General Equality Duty has been in force since April 2011, as have Specific Duties for Wales. England's Specific Duties came into force in September 2011. The draft regulations for Specific Duties for Scotland initially put forward for approval were rejected by the Equal Opportunities Committee due to concerns about the consultation process. A further consultation is now underway for the revised draft regulations for Public Sector Equality Specific Duties, closing on 25th November 2011 (available from <http://www.scotland.gov.uk/Resource/Doc/357629/0120853.pdf>). These revised draft regulations address many of the concerns raised by respondents to the first round of consultation, strengthening and clarifying the Specific Duties for Scotland.

Revised Equality Specific Duties for Scotland: Comparison with previous versions

Revised Duty	Changes from previous Draft Regulations	Equivalent in original Duties
Publishing equality outcomes, based on evidence and involvement of equality groups and communities * <ul style="list-style-type: none"> Requirement to publish a set of equality outcomes no later than 31st December 2012 (and subsequently every 4 years at least) Take reasonable steps to involve persons with relevant protected characteristics and their representatives Consider relevant evidence relating to persons with relevant protected characteristics Publish reasons if equality outcomes do not cover all relevant protected characteristics Publish a report on the action taken and the progress made to achieve outcomes no later than 31st December 2014 (and subsequently every 2 years at least) 	<ul style="list-style-type: none"> Added requirement to publish reasons if an authority's equality outcomes do not cover all relevant protected characteristics 	Race <ul style="list-style-type: none"> Requirement to prepare and publish a Race Equality Scheme showing compliance with the general and specific Duties, including a statement of functions, policies and proposed policies of relevance to performance of the race equality duty Review the Scheme at least every three years Specific duty for educational bodies to prepare a written race equality policy and have in place arrangements for fulfilling its race equality duties
		Disability <ul style="list-style-type: none"> Requirement to prepare and publish a Disability Equality Scheme showing compliance with the general and specific Duties Implement the actions in the Scheme within three years unless unreasonable or impracticable to do so

		<ul style="list-style-type: none"> Review and report against the Scheme at least every three years
Reporting on 'mainstreaming' * <ul style="list-style-type: none"> Requirement to publish a report on action taken and progress made towards fulfilling the General Duty not later than 31st December 2012 (and subsequently every 2 years at least) The report must include an annual breakdown of any information gathered and details of the progress made in gathering and using this information 	<ul style="list-style-type: none"> Added requirement to publish reasons if an authority's equality outcomes do not cover all relevant protected characteristics Now includes employment reporting 	Gender <ul style="list-style-type: none"> Requirement to prepare and publish a Gender Equality Scheme showing compliance with the general and specific Duties and setting out gender equality objectives Consider the need to include objectives to address the causes of the gender pay gap Implement the actions in the Scheme within three years unless unreasonable or impracticable to do so Review and report against the Scheme at least every three years
Assessment of the impact on equality of policies and practices, informed by evidence <ul style="list-style-type: none"> Requirement to assess the impact of proposed policies and practices, including changes to and revisions of its existing policies and practices, on 	<ul style="list-style-type: none"> Added requirement to publish the results of impact assessment More emphasis on the importance of evidence received 	Race <ul style="list-style-type: none"> Requirement to set out arrangements for assessing and consulting on the likely impact of its proposed policies on the promotion of race equality Set out arrangements for monitoring policies for any adverse race equality impact and publish

<p>persons with relevant protected characteristics; and on the Authority's ability to fulfil the General Duty</p> <ul style="list-style-type: none"> • In assessing these impacts, consider relevant evidence relating to persons with relevant protected characteristics (including evidence received from persons with relevant protected characteristics) • Have due regard to the results of the assessments and publish each result • Make arrangements to review and, where necessary, change or revise its existing policies and practices to ensure that these do not have a detrimental impact on its ability to fulfil the General Duty • Impact assessment not necessary where a policy or practice has no bearing on the general duty 	<p>from equality groups</p> <ul style="list-style-type: none"> • Added duty to make arrangements to review and if necessary change or revise existing policies and practices (although focus remains on new and changed policies and practices) • Impact assessment not necessary where a policy or practice has no bearing on the general duty 	<p>the results of assessments, consultation and monitoring</p> <ul style="list-style-type: none"> • Specific assessment and monitoring duties for educational bodies (staff and students) <p>Disability</p> <ul style="list-style-type: none"> • Requirement to assess the impact of its current and proposed policies and practices on disability equality, and pay due regard to the results of those impact assessments • Gather and use information on how policies and practices affect disability equality in the workforce and in delivery of services • Involve disabled people in the development of Disability Equality Schemes and include in the Scheme a statement of how this was done <p>Gender</p> <ul style="list-style-type: none"> • Requirement to assess the impact of its current and proposed policies and practices on gender equality, and pay due regard to the results of those impact assessments • Gather and use information on how policies and practices affect gender equality in the workforce and in delivery of services • Consult stakeholders and take account of relevant information in determining gender
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		equality objectives
Gathering and publishing employment data <ul style="list-style-type: none">Requirement to take reasonable steps to gather information on the composition of the workforce and the recruitment, development and retention of staff (number and relevant protected characteristics staff each year)Using this information to assist in fulfilling the General Duty	<ul style="list-style-type: none">Requires authorities to take reasonable steps to gather, use and report on information for all relevant protected characteristics	Race <ul style="list-style-type: none">Undertake employment monitoring and publish results annually on recruitment, retention, promotion, and for larger authorities also those receiving training, benefiting or suffering detriment as a result of performance management, involved in grievance or disciplinary procedures and ceasing employment
		Disability <ul style="list-style-type: none">Gather and use information on how policies and practices affect disability in the workforce (and in delivery of services)
		Gender <ul style="list-style-type: none">Gather and use information on how policies and practices affect gender equality in the workforce (and in delivery of services)
Publication of gender pay gap information and statement on equal pay <ul style="list-style-type: none">Requirement for larger authorities (over	<ul style="list-style-type: none">Requires larger authorities to consider equal pay for gender, race and	Race <ul style="list-style-type: none">n/a
		Disability

<p>150 staff) to publish information on the percentage difference among its employees between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime) no later than 31st December in that year (and subsequently every 2 years at least)</p> <ul style="list-style-type: none"> • Requirement to publish an Equal Pay Statement no later than 31st December in that year (and subsequently every 4 years at least) • The Statement must include policy on equal pay among its employees between women and men; persons who are disabled and persons who are not; persons who fall into a minority racial group and persons who do not; and occupational segregation among its employees on grounds of gender, race and disability 	<p>disability</p>	<ul style="list-style-type: none"> • n/a <p>Gender</p> <ul style="list-style-type: none"> • Requirement for larger authorities to prepare and publish an equal pay statement setting out policy on equal pay between men and women, and to review and report against the statement at least every three years
<p>Scottish Ministers' duty</p>	<ul style="list-style-type: none"> • No changes, other 	<p>Race</p>

<ul style="list-style-type: none"> • Scottish Ministers must publish proposals for activity to assist authorities to fulfil the General Duty no later than 31st December 2013 (and subsequently every 4 years at least) • Scottish Ministers must publish a report on progress no later than 31st December 2015 (and subsequently every 4 years at least) 	<p>than to dates</p>	<ul style="list-style-type: none"> • Scottish Ministers required to monitor the number of teaching staff from each racial group at all schools that the education authorities manage; to use information provided by education authorities and schools for that purpose; and publish the results annually <p>Disability</p> <ul style="list-style-type: none"> • Scottish Ministers required to publish reports every three years showing progress towards disability equality and set out proposals for co-ordination of action by public authorities towards further progress <p>Gender</p> <ul style="list-style-type: none"> • Scottish Ministers required to set out priority areas for the advancement of equality of opportunity between women and men (reporting on this every three years)
<p>Publication duty</p> <ul style="list-style-type: none"> • Requirement to comply with the various duties to publish information in the Specific Duties in a manner that is accessible to the public • Requirement to comply with the various duties to publish information in the 	<ul style="list-style-type: none"> • Publication now required in an 'accessible' rather than 'reasonably accessible' manner 	<p>Race</p> <ul style="list-style-type: none"> • Requirement to ensure public access to information and services which it provides <p>Disability</p> <ul style="list-style-type: none"> • n/a (although guidance made it clear that Schemes should be published accessibly) <p>Gender</p>

Specific Duties by employing an existing means of public performance reporting as far as possible.		<ul style="list-style-type: none"> n/a (although guidance made it clear that Schemes should be published accessibly)
Possibility of including a procurement duty <ul style="list-style-type: none"> Requirement to have due regard to whether award criteria should include considerations relevant to the General Duty where an authority is undertaking procurement on the basis of an offer which is the most economically advantageous Requirement to have due regard to whether conditions of contract should include considerations relevant to the General Duty when undertaking procurement Authorities do not have to follow these requirements where what they are procuring is irrelevant to the General Duty or where considering the requirements would be disproportionate 	<ul style="list-style-type: none"> Not included in previous draft 	Race <ul style="list-style-type: none"> No specific duty; procurement considered as a general part of the functions of authorities
		Disability <ul style="list-style-type: none"> No specific duty; procurement considered as a general part of the functions of authorities
		Gender <ul style="list-style-type: none"> No specific duty; procurement considered as a general part of the functions of authorities

*The two first new Draft Specific Duties relate approximately to the previous duties regarding Equality Schemes