

Draft Regulations laid before the Scottish Parliament under section 210 of the Equality Act 2010 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2012 No.

EQUALITY

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

Made - - - - 2012
Coming into force - - 27th May 2012

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 153(3), 155(1)(c) and (2), and 207(4) of the Equality Act 2010⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 153(4) of that Act, they have consulted the Commission for Equality and Human Rights.

In accordance with section 210 of that Act⁽²⁾, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and come into force on 27th May 2012.

Interpretation

2. In these Regulations—

“the Act” means the Equality Act 2010;

“employee” is to be construed in accordance with section 83 of the Act except that it is also to include a constable (including a chief constable) and a police cadet of a police force maintained under section 1 of the Police (Scotland) Act 1967⁽³⁾;

(1) [2010 c.15](#).
(2) Section 210 was modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act [2010 \(asp 10\)](#).
(3) [1967 c.77](#); section 1 was amended by the Local Government (Scotland) Act [1973 \(c.65\)](#), section 146(2) and the Local Government etc. (Scotland) Act [1994 \(c.39\)](#), Schedule 13, paragraph 71(2).

“listed authority” means a public authority listed in the Schedule to these Regulations(4);
“relevant protected characteristic” is to be construed in accordance with section 149(7) of the Act; and
“the equality duty” means the duty of the listed authority to have, in the exercise of its functions, due regard to the needs mentioned in section 149(1) of the Act.

Duty to report progress on mainstreaming the equality duty

3. A listed authority must publish a report on the progress it has made to make the equality duty integral to the exercise of its functions so as to better perform that duty—

- (a) not later than 30th April 2013; and
- (b) subsequently, at intervals of not more than 2 years, beginning with the date on which it last published a report under this regulation.

Duty to publish equality outcomes and report progress

4.—(1) A listed authority must publish a set of equality outcomes which it considers will enable it to better perform the equality duty—

- (a) not later than 30th April 2013; and
- (b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a set of equality outcomes under this paragraph.

(2) In preparing a set of equality outcomes under paragraph (1), a listed authority must—

- (a) take reasonable steps to involve persons who share a relevant protected characteristic and any person who appears to the authority to represent the interests of those persons; and
- (b) consider relevant evidence relating to persons who share a relevant protected characteristic.

(3) If a set of equality outcomes published by a listed authority does not seek to further the needs mentioned in section 149(1) of the Act in relation to every relevant protected characteristic, the authority must publish its reasons for proceeding in this way.

(4) A listed authority must publish a report on the progress made to achieve the equality outcomes published by it under paragraph (1)—

- (a) not later than 30th April 2015; and
- (b) subsequently, at intervals of not more than 2 years, beginning with the date on which it last published a report under this paragraph.

(5) In this regulation, “equality outcome” means a result that the listed authority aims to achieve in order to further one or more of the needs mentioned in section 149(1) of the Act.

Duty to assess and review policies and practices

5.—(1) A listed authority must, where and to the extent necessary to fulfil the equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs mentioned in section 149(1) of the Act.

(2) In making the assessment, a listed authority must consider relevant evidence relating to persons who share a relevant protected characteristic (including any received from those persons).

(4) The Schedule lists those public authorities specified in Part 3 of Schedule 19 to the Equality Act 2010 which are made subject to the specific duties in these Regulations. Part 3 of that Schedule was amended by S.S.I. 2011/233 and 2012/55.

(3) A listed authority must, in developing a policy or practice, take account of the results of any assessment made by it under paragraph (1) in respect of that policy or practice.

(4) A listed authority must publish, within a reasonable period, the results of any assessment made by it under paragraph (1) in respect of a policy or practice that it decides to apply.

(5) A listed authority must make such arrangements as it considers appropriate to review and, where necessary, revise any policy or practice that it applies in the exercise of its functions to ensure that, in exercising those functions, it complies with the equality duty.

(6) For the purposes of this regulation, any consideration by a listed authority as to whether or not it is necessary to assess the impact of applying a proposed new or revised policy or practice under paragraph (1) is not to be treated as an assessment of its impact.

Duty to gather and use employee information

- 6.—(1) A listed authority must take steps to gather information on—
- (a) the composition of the authority’s employees (if any); and
 - (b) the recruitment, development and retention of persons as employees of the authority,
- with respect to, in each year, the number and relevant protected characteristics of such persons.
- (2) The authority must use this information to better perform the equality duty.
- (3) A report published by the listed authority in accordance with regulation 3 must include—
- (a) an annual breakdown of information gathered by it in accordance with paragraph (1) which has not been published previously in such a report; and
 - (b) details of the progress that the authority has made in gathering and using that information to enable it to better perform the equality duty.

Duty to publish gender pay gap information

- 7.—(1) A listed authority must 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).
- (2) The information is to be published no later than 30th April in—
- (a) 2013; and
 - (b) each second year after that.
- (3) The information published must be based on the most recent data available for a date when the authority had at least 150 employees.
- (4) No publication is necessary if, throughout the period since these Regulations came into force or since publication was last due, the authority did not have 150 or more employees at any point.
- (5) The Scottish Ministers must review from time to time whether the figure of “150” in paragraphs (3) and (4) should be amended.

Duty to publish statements on equal pay, etc.

- 8.—(1) A listed authority must publish a statement containing the information specified in paragraph (2) no later than 30th April in—
- (a) 2013; and
 - (b) each fourth year after that.
- (2) The statement must specify—
- (a) the authority’s policy on equal pay among its employees between—

- (i) men and women;
- (ii) persons who are disabled and persons who are not; and
- (iii) persons who fall into a minority racial group and persons who do not; and
- (b) occupational segregation among its employees, being the concentration of—
 - (i) men and women;
 - (ii) persons who are disabled and persons who are not; and
 - (iii) persons who fall into a minority racial group and persons who do not,
 in particular grades and in particular occupations.

(3) The information published must be based on the most recent data available for a date when the authority had at least 150 employees.

(4) No publication is necessary if, throughout the period since these Regulations came into force or since publication was last due, the authority did not have 150 or more employees at any point.

(5) Paragraphs (2)(a)(ii) and (iii) and (2)(b)(ii) and (iii) apply only in relation to the second and subsequent statements published by a listed authority under paragraph (1).

(6) In paragraph (2), “racial group” is to be construed in accordance with section 9 of the Act.

(7) The Scottish Ministers must review from time to time whether the matters specified in paragraph (2) and the figure of “150” in paragraphs (3) and (4) should be amended.

Duty to consider award criteria and conditions in relation to public procurement

9.—(1) Where a listed authority is a contracting authority and proposes to enter into a relevant agreement on the basis of an offer which is the most economically advantageous, it must have due regard to whether the award criteria should include considerations to enable it to better perform the equality duty.

(2) Where a listed authority is a contracting authority and proposes to stipulate conditions relating to the performance of a relevant agreement, it must have due regard to whether the conditions should include considerations to enable it to better perform the equality duty.

(3) Nothing in this regulation imposes any requirement on a listed authority where in all the circumstances such a requirement would not be related to and proportionate to the subject matter of the proposed agreement.

(4) In this regulation—

“contracting authority”, “framework agreement” and “public contract” have the same meaning as in the Public Contracts (Scotland) Regulations 2012(5); and

“relevant agreement” means a public contract or a framework agreement that is regulated by the Public Contracts (Scotland) Regulations 2012.

Duty to publish in a manner that is accessible, etc.

10.—(1) A listed authority must comply with its duty to publish under regulations 3, 4, 7 and 8 in a manner that makes the information published accessible to the public.

(2) A listed authority must, so far as practicable, comply with its duty to publish under regulations 3, 4, 7 and 8 by employing an existing means of public performance reporting.

Duty to consider other matters

11. In carrying out its duties under these Regulations, a listed authority may be required to consider such matters as may be specified from time to time by the Scottish Ministers.

Duty of the Scottish Ministers to publish proposals to enable better performance

12.—(1) The Scottish Ministers must publish proposals for activity to enable a listed authority to better perform the equality duty—

- (a) not later than 31st December 2013; and
- (b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published proposals under this paragraph.

(2) The Scottish Ministers must publish a report on progress in relation to the activity—

- (a) not later than 31st December 2015; and
- (b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a report under this paragraph.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Executive

SCHEDULE

Regulation 2

List of public authorities

Scottish Administration

The Scottish Ministers.
Keeper of the Records of Scotland.
Keeper of the Registers of Scotland.
Registrar General of Births, Deaths and Marriages for Scotland.
Scottish Court Service.

National Health Service

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

Local government

A council constituted under section 2 of the Local Government etc (Scotland) Act 1994.
A joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973.
A joint fire and rescue board constituted by a scheme under section 2(1) of the Fire (Scotland) Act 2005.
A licensing board established under section 5 of the Licensing (Scotland) Act 2005, or continued in being by virtue of that section.
A National Park authority established by a designation order made under section 6 of the National Parks (Scotland) Act 2000.
Scottish Enterprise and Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990.

Other educational bodies

An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980).
The managers of a grant-aided school (within the meaning of that section).
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) which is a fundable body (within the meaning of section 6(2) of the Further and Higher Education (Scotland) Act 2005).
In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.
The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992) which is a fundable body (within the meaning of section 6(2) of the Further and Higher Education (Scotland) Act 2005).

Police

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

Other bodies and offices

Accounts Commission for Scotland.

Audit Scotland.

Board of Trustees for the National Galleries of Scotland.

Board of Trustees of the National Museums of Scotland.

Bòrd na Gàidhlig.

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

A chief officer of a community justice authority.

A Chief Officer of a relevant authority appointed under section 7 of the Fire (Scotland) Act 2005.

Commissioner for Children and Young People in Scotland.

The Common Services Agency for the Scottish Health Service.

A community justice authority.

Creative Scotland.

Healthcare Improvement Scotland.

The Mental Welfare Commission for Scotland.

A regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005.

Scottish Children's Reporter Administration.

The Scottish Criminal Cases Review Commission.

Scottish Environment Protection Agency.

Scottish Further and Higher Education Funding Council

The Scottish Legal Aid Board.

Scottish Natural Heritage.

Scottish Qualifications Authority.

The Scottish Social Services Council.

The Scottish Sports Council.

Scottish Water.

Skills Development Scotland.

Social Care and Social Work Improvement Scotland.

The Trustees of the National Library of Scotland.

VisitScotland.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose duties on a public authority listed in the Schedule (“listed authority”) for the purpose of enabling the better performance by the listed authority of the duty imposed by section 149(1) of the Equality Act 2010 (“the equality duty”).

Regulation 3 requires a listed authority to report, at least every 2 years, on the progress made to make the equality duty integral to the exercise of its functions so as to better perform that duty.

Regulation 4 requires a listed authority to publish a set of equality outcomes which it considers will enable it to better perform the equality duty (by, for example, enabling the authority to take account of the extent to which progress towards achieving those outcomes has helped to meet the needs mentioned in section 149(1) of the Equality Act 2010) at least every 4 years, and to report on the progress it has made to achieve these outcomes at least every 2 years.

Regulation 5 requires a listed authority to assess, where and to the extent necessary to fulfil the equality duty, the impact of applying a proposed new or revised policy or practice against the needs mentioned in section 149(1) of the Equality Act 2010. Any consideration as to whether or not it is necessary to assess the impact of a policy or practice for these purposes is not to be treated as an assessment of impact. Paragraphs (2) to (4) do not therefore apply in relation to, for example, an initial screening exercise to establish whether or not an assessment is required. Where an assessment is made and the authority decides to apply the policy or practice to which it relates, the authority must publish the results of that assessment within a reasonable period. A listed authority must also make arrangements to review any policy or practice that it applies to ensure that, in exercising its functions, it complies with the equality duty.

Regulation 6 requires a listed authority to take steps to gather information on the composition of its employees and on the recruitment, development and retention of individuals (including applicants who are not offered employment) with respect to their number and relevant protected characteristics. It also requires the listed authority to use this information to better perform the equality duty, and to publish a breakdown of information gathered and details of the progress made in gathering and using that information to better perform the equality duty.

Regulation 7 requires a listed authority with 150 or more employees to publish information on the gender pay gap within the authority.

Regulation 8 requires a listed authority with 150 or more employees to publish statements specifying its policy on equal pay and certain information on occupational segregation. The reference to a ‘minority racial group’ includes a minority ethnic group.

Regulation 9 requires a listed authority that is a contracting authority for the purposes of the Public Contracts (Scotland) Regulations 2012 to have regard to whether certain award criteria and conditions relating to the performance of a relevant agreement should include considerations that are relevant for the purposes of enabling the listed authority to better perform the equality duty.

Regulation 10 requires a listed authority to publish the information required by regulations 3, 4, 7 and 8 in a manner that makes the information accessible to the public and that employs, so far as practicable, existing arrangements for public performance reporting by the authority.

Regulation 11 provides that a listed authority may, in carrying out its duties under these Regulations, be required to consider such matters as may be specified by the Scottish Ministers.

Regulation 12 requires the Scottish Ministers to publish proposals for activity to enable a listed authority to better perform the equality duty and to report on progress at least every 4 years.

The Schedule lists the public authorities that are subject to duties under these Regulations.