

# FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

## PUBLIC SECTOR EQUALITY DUTY SPECIFIC DUTIES

### PURPOSE AND INTENDED EFFECT

#### Objectives

1. The Regulations are intended to:
  - simplify and streamline the equality duties placed on public authorities
  - reduce the complexity and bureaucracy of the previous framework
  - minimise process and encourage public authorities to concentrate on outcomes for service users
  - set out a clear framework that will enable the better performance of the general public sector equality duty in the Equality Act 2010, leading to improved outcomes, opportunities and life experience for those who experience prejudice and discrimination

#### Background

2. Previously, there were 3 separate public sector equality duties covering race, gender and disability. The Equality Act 2010 replaced these with a new single duty and extended the scope to cover sexual orientation, age, religion or belief, pregnancy and maternity, and gender reassignment.
3. Like the previous duties, this new single equality duty has two parts – a general duty in the Act itself, and provision for specific duties to be made through Regulations.

#### Rationale for Government intervention

4. One set of specific duties will provide a simpler, more efficient and more cost effective framework than the previous regime of 3 separate duties.
5. The public sector equality duties contribute to the delivery of improved public services, *Best Value* and better outcomes for the people of Scotland; and there is evidence in this respect. For example:
  - The Government Equality Office at Westminster commissioned work by Schneider-Ross which highlighted the value of the existing public sector equality duties in raising the profile of equality, tackling discrimination and disadvantage, assisting authorities to tackle equality issues and increasing commitment and leadership  
<http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/research, facts and figures/research/specific duties.aspx>
  - *Capturing the Gains* (2009), a report by the Equality and Human Rights Commission provided positive examples of the developments which had taken place as a result of the current duties in Scotland. For example: many authorities had taken steps to develop systems to collect better qualitative and quantitative data to progress equality; authorities were putting policies and practices in place

which focussed on recruiting and retaining a diverse workforce and promoting greater partnership working with equalities groups.

<http://www.equalityhumanrights.com/scotland/projects-and-campaigns/capturing-the-gains/>

- The Scottish Ministers' reports in 2009 on the progress made on disability stated the Disability Equality Duty has been helpful in providing a focus and framework for the work on disability equality and highlighted areas where there has been a marked progress in relation to the position of disabled people in Scotland in the context of the six Government ministerial portfolios.  
<http://www.scotland.gov.uk/Topics/People/Equality/disability/disabilityministersdut>
- Audit Scotland (2008) reported on the impact of the race equality duty on council services. It concluded that councils need to build better understanding of the needs of their minority communities; mainstream their approach to race equality; and give more priority to race equality in delivering their services. In addition, it noted that councils took steps to improve their understanding of their minority ethnic communities through for example, commissioning or undertaking in-house research – with some evidence of new services tailored to minority ethnic communities and increased use of existing services as a result.  
<http://www.audit-scotland.gov.uk/media/article.php?id=90>

6. Equality is a key element of the National Performance Framework and we have a specific national outcome to have tackled the significant inequalities in Scottish society (National Outcome 7). The public sector equality duty helps us to deliver this outcome.

## **CONSULTATION**

### **Consultation within Government**

7. All Directorates General within the Scottish Government were consulted on the development of the proposals. There was agreement that the proposed specific duties represent a flexible, proportionate and outcome based approach.

### **Public Consultation**

8. Public consultation has been undertaken three times. Between September 2009 and January 2010 we consulted on the broad scope of the proposals (160 responses were received). We consulted again between September and November 2010 on detailed proposals and draft Regulations (122 responses were received). Further consultation on revised draft Regulations took place between September and November 2011 (140 responses were received). The draft BRIA was included within the consultation document.

9. In relation to the most recent consultation, the majority of respondents agreed with the questions in the consultation. Respondents submitted detailed responses which indicated broad support for the proposed draft Regulations and which reflected the interest in, and importance of, equality issues amongst organisations, authorities and individuals in Scotland.

### **Business**

10. The Regulations do not place additional requirements on business. Business was however engaged through the consultation process. This included specific targeting of the Federation of Small Business Scotland, CBI Scotland, Scottish Chambers of Commerce, the Institute of Directors, the Scottish Council for Development and Industry and Scottish Financial Enterprise.

11. The proposed inclusion of procurement within the draft Regulations is intended to clarify the previous and current position. Contracting authorities can already build in equality-related factors within contracts where considered relevant and proportionate. From the private sector perspective there is therefore no change and we anticipate no additional costs to the private sector.

## OPTIONS CONSIDERED

### Option 1

#### **Maintain the Previous Framework**

12. Public bodies already have systems/mechanisms in place to comply with the duties. They will not incur familiarisation costs.

13. Cons:

- Public authorities will remain subject to three different sets of complex Regulations, which all have different requirements, timescales, and reporting mechanisms.
- The three sets of specific duties are highly prescriptive and driven by processes.
- Compliance with the existing duties incurs significant costs.
- The additional protected characteristics protected by anti-discrimination legislation would not be included.

### Option 2

#### **Remove the Previous Framework**

14. There would be no Regulations, resulting in less burden on public authorities in context of financial constraints.

15. Cons:

- Public authorities will not consistently design policies and deliver services in a way which meets the needs of equality groups and communities.
- Barriers to accessing services may not be proactively identified and addressed.
- Inequality, discrimination and exclusion lead to poorer health and wellbeing, poorer educational attainment and employment opportunities and increased costs in terms of services, support and intervention. Tackling inequality, discrimination and exclusion will have a cost saving in the longer term.
- Public authorities are not yet ready for the legislative imperative to be removed entirely as this would undermine the progress that has been made to date.

### Option 3

#### **Simplification, streamlining and focussing on outcomes – Chosen Option.**

16. *Simplification*: replace three separate set of Regulations which impose different, process laden requirements, which must be met at different times with one set of streamlined duties. For instance, research from Schneider- Ross suggested that the requirements to produce equality schemes under the existing duties are considered a significant burden, and public bodies routinely ask external contractors to draw up their equality schemes. Once published these schemes are rarely used but the cost to the public sector of producing the current schemes for race, disability and gender is substantial.

17. Focus on Outcomes: proposals remove bureaucratic requirements and ensure that public authorities focus on achieving improved equality outcomes by setting and working towards evidence based outcomes.
18. Proportionate and flexible: there is less prescription and the flexibility for public authorities to decide for themselves how to respond to aspects of the duties.
19. Goes with the grain: the duties are designed to operate within public authority's existing systems and frameworks.
20. Cons:
  - Regulatory burden: The new package will still impose a regulatory burden, even though it will be substantially reduced compared with the previous three sets of specific duties.

### **Sectors and groups affected**

21. The public sector.

## COSTS AND BENEFITS

22. We calculated costs using a similar methodology to the Government Equality Office at Westminster.<sup>1</sup> More detail can also be found in our consultation document.<sup>2</sup>

### Summary of Costs of the proposed new duties

#### Total Ongoing Costs

(figures £m per year)

	Lower estimate	Higher estimate
NHS	0.236	0.324
LA	0.315	0.431
FE/HE	0.179	0.179
Other public authorities	0.301	0.301
Central Government	0.033	0.033
<b>Total</b>	<b>1.064</b>	<b>1.268</b>

#### Total One-off Familiarisation Costs

	Lower estimate	Higher estimate
NHS	0.143	0.214
LA	0.190	0.282
FE/HE	0.061	0.123
Other public authorities	0.098	0.196
Central Government	0.018	0.024
<b>Total</b>	<b>0.510</b>	<b>0.839</b>

### Summary of Costs of Maintaining Previous Duties

(figures £m per year)

	Lower estimate	Higher estimate
NHS	0.393	0.504
LA	0.525	0.672
FE/HE	0.399	
Other public authorities	0.719	
Central Government	0.039	
<b>Total</b>	<b>2.075</b>	<b>2.333</b>

<sup>1</sup> GEO methodology can be found in Annex C of the UK Government consultation document entitled "Equality Bill: Making it work: Policy proposals for specific duties"  
<http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/news/equality%2%A0duties.aspx>

<sup>2</sup> Public Sector Equality Duty - Consultation on Public Sector Equality Duty Revised Draft Regulations  
<http://www.scotland.gov.uk/Publications/2011/09/09134605/0>

## Cost and Benefit Summary

23. This section summarises the costs and benefits of the proposed new duties.

Previous duties	Proposed new duties	Cost implication
Publish 3 separate, complex, stand-alone schemes every 3 years	Publish equality outcomes every 4 years	Significant reduction
Publish separate annual reports	Report every 2 years using existing systems	Significant reduction
Gather complex data on impact of policies	Simplification and streamlining	Significant reduction
Employment monitoring and reporting	Employment monitoring and reporting	Slight increase

## Costs Summary

(figures £m per year)

	Ongoing cost of existing duties	Ongoing cost of new duties	Cost saving
NHS	0.393-0.504	0.236-0.324	0.157-0.180
LA	0.525-0.672	0.315-0.431	0.210-0.241
FE/HE	0.399	0.179	0.220
Other public authorities	0.719	0.301	0.418
Central Government	0.039	0.033	0.006
<b>Total</b>	<b>2.075-2.333</b>	<b>1.064-1.268</b>	<b>1.011-1.065</b>

24. One-off familiarisation costs of between 0.510-0.839 result in a total cost for year 1 of the new duties of 1.574-2.107. This is still less than the estimated cost of continuation of the previous duties (2.075-2.333).

## **Scottish Firms Impact Test**

25. The duties fall only on the public sector. They place no requirements on the private sector.

26. The duties relate to the public sector and not to the private sector. Although we have added procurement to the draft Regulations, contracting authorities can already build in equality-related factors within contracts where considered relevant and proportionate and from the private sector perspective there is therefore no change. Our proposed procurement duties clarify the position.

## **Competition Assessment**

27. The draft BRIA has been shared with the OFT. No competition impacts are anticipated.

## **Test run of business forms**

28. No business forms will be involved in implementation of the Regulations.

## **Legal Aid Impact Test**

29. No new rights created and no legal aid implications anticipated as a result of the specific duties which can only be enforced through the Equality and Human Rights Commission (EHRC).

## **Enforcement, sanctions and monitoring**

30. The specific duties do not create individual rights for people. Enforcement of the specific duties is only through the Equality and Human Rights Commission who may serve a compliance notice on public authorities. If an authority fails to respond to the compliance notice the EHRC may apply to the Courts to force the authority to comply.

## **Implementation and Delivery Plan**

31. We expect the Regulations will come into force in May 2012. Post implementation review will be carried out within 5 years of the Regulations coming into force.



## Summary and Recommendations

32. Public consultation showed strong support for the proposals. The Scottish Government considers that the Regulations will help to deliver better outcomes for the people of Scotland and that the streamlining of the previous duties will result in cost savings for public authorities. It is therefore recommended that option 3 is adopted.

## Declaration and Publication

*"I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland".*

**Cabinet Secretary for Health and Wellbeing**



Date - 20.3.2012

## Contact point for enquiries and comments

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