

Consultation Questions and Responses

(Response and Additional Comment are in italics)

QUESTION 1

Do you think that it would be helpful to have in place specific duties on public authorities to assist in the delivery of the Equality Duty?

Response: Yes

Additional Comment: Specific duties provide a framework for authorities to address general duties. They are particularly relevant to the process of authorities addressing equalities in their mainstream objectives, policies and processes, and imbedding equality into their organisational culture.

Coverage

QUESTION 2

Do you think the criteria set out at paragraph 4.4 are the right criteria for considering whether a public authority should be subject to the new specific duties?

Response: Yes

Additional Comment: The criteria identify a wide range of authorities and the specific duties will therefore have to be set out in a way which makes them applicable by all of these authorities.

It would be helpful to have further guidance on how the specific duties should be carried forward in Community Planning Partnerships. The principle that CPP are not subject to the public authority duties but 'inherit' the duties of their participant agencies is well established, but further guidance on how this should operate in practice would be welcomed.

QUESTION 3

Do you think the new specific duties should be imposed on all Scottish public authorities which are subject to the general duty, provided it is reasonable and practical for them to fulfil the requirements?

Response: No

Additional Comment: The criteria set out in 4.4 are sufficient as criteria of whether authorities should be subject to specific duties.

Fitting with the electoral cycle

QUESTION 4

Is it appropriate to link the new public sector equality duty specific duties to either the Scottish or local government electoral cycle? (For example, linking the setting, reviewing and reporting on equality objectives to electoral cycles)

Response: On balance, No

Additional Comment: It would be useful for local authorities to have the specific duties tied in with their electoral cycle as a means to strengthen accountability and emphasise the importance of local equality objectives. However, national or local electoral cycles are not directly relevant to all of the authorities which will be subject to the specific duties. There is also some concern that this would over-politicise the equalities agenda, leading to unforeseen outcomes. It may be more appropriate for emphasis to be placed on identifying other means by which the governance of authorities is responsive to their equality duties.

Content of the specific duties – delivering on mainstreaming

QUESTION 5

Should public authorities be encouraged to mainstream equality, with reference to all the proposed protected characteristics (race, disability, gender, sexual orientation, age, religion or belief, pregnancy & maternity, gender reassignment), across their services and functions?

Response: Yes

Additional Comment: Authorities should build on the systems they have developed under the current specific duties in relation to race, disability & gender to find the appropriate means to address the wider range of protected characteristics into their everyday work. However, the same approaches will not be appropriate to all protected characteristics. There will need to be flexibility, attention to proportionality, and reference to local circumstances and priorities.

QUESTION 6

How might public authorities best demonstrate they are mainstreaming equality in relation to all the proposed protected characteristics? For example, through reporting on progress.

Response: Equalities objectives should be integrated into authorities' Best Value arrangements, including objective setting, performance management, scrutiny and reporting.

Content of the specific duties – setting equality objectives

QUESTION 7

With reference to the relevant evidence and to wider public authority general Equality Duty obligations, do you think that setting equality objectives would help public authorities to focus their response to the general duty? Should equality objective setting cover all protected characteristics, or not?

Response: Yes

Additional Comment: Objective setting encourages critical thinking in regard to equalities and enables authorities to respond to the needs and priorities of their community, take into account the resources available, set achievable targets and report on progress. Authorities should be required to be able to demonstrate that they have considered potential objectives covering all protected characteristics, though this may not result in objectives being identified for every protected characteristic. Where objectives are set, they should be proportionate and achievable and be based on knowledge of local circumstances.

QUESTION 8

Do you think equality objective setting should be linked to the corporate and/or business planning mechanisms of public authorities?

Response: Yes

Additional Comment: This should be done as a key element of 'mainstreaming' an equalities perspective into authorities' day to day work. It provides the basis for objective setting, performance management and reporting. It would assist in extending and clarifying accountability within authorities for the equalities agenda.

QUESTION 9

How do you think public authority equality objectives should be publicised? Please provide your suggestions in the box below.

Response: Equality objectives should be publicised as an aspect of wider corporate goals, using the approaches that are established for these. In addition, authorities should consider how equality objectives should be publicised within specific communities eg BME population and the disabled community.

QUESTION 10

Do you think that public authorities should be required to review their objectives every 4 years in order to fit with the electoral cycles of Scottish or local government?

Response: On balance, No

Additional Comment: See Question 4. There is a case for reviews every four years, but not linked to an electoral cycle.

Content of the specific duties – reporting on progress

QUESTION 11

Do you think public authorities should be required to report on progress?

Response: Yes

Additional Comment: Reporting on progress on equality objectives should be part of the normal business cycle of authorities (See Question 7).

QUESTION 12

How frequently should public authorities be required to report on progress?

Response: Reporting tied to authorities' business process will involve annual reports. In addition, final reports tied to a four year cycle of the scheme could be used to present achievements over the period of the scheme, with the potential for a 'mid term' report after two years.

QUESTION 13

Should reporting on progress be linked to existing processes such as business planning?

Response: Yes

Additional Comment: Reporting should be linked to business planning and should be supplemented by reporting arrangements which will be targeted at specific audiences eg BME groups and disabled community, and be designed to promote awareness and support for equality across the whole community.

QUESTION 14

Do you think the Government should prescribe in legislation how Scottish public authorities should report?

Response: No

Additional Comment: Any prescription should only be in general terms, leaving authorities to tailor reporting arrangements to meet own situation in line with the approaches outlined in response to Question 13. Authorities would benefit from guidance on best practice in reporting.

Employment reporting

QUESTION 15

The current gender specific duties require public authorities, with 150 or more employees, to publish an equality statement and report on that statement. Do you think this requirement should continue in the new specific duties?

Response: Yes

Additional Comment: It is important that authorities make a clear statement of intent in relation to their objectives for equality in employment and this should be extended beyond gender to cover all protected characteristics, taking account of the need for proportionality and achievability.

QUESTION 16

Do you think that there would be value in public authorities with 150 or more employees reporting on their gender pay gap?

Response: Yes

Additional Comment: This would allow authorities the means to make progress in tackling the issue of equal pay, which has been in legislation for nearly 40 years, and occupational segregation, which has been identified as a Scottish Government priority.

QUESTION 17

If the gender pay gap is to be reported on, what method do you think should be used to calculate the gender pay gap?

Response: Clear national guidelines should be established on reporting as there are at least three measures currently in use: full-time workers median pay; part-time workers median pay; and median pay for all employees. A consistent approach, supported by effective guidance, is required and should be one which provides comparison across public authorities.

QUESTION 18

Do you think public authorities with 150 or more employees should be required to include information on the concentration of women and men in particular grades and in particular occupations (occupational segregation)?

Response: Yes

Additional Comment: This would help organisations benchmark with others and identify patterns of segregation and areas for potential action.

QUESTION 19

Do you think it would help public authorities to monitor progress on equality and be more transparent if they were required to publish their ethnic minority employment rate and disability employment rate?

Response: Yes

Additional Comment: The Equality Bill provides an opportunity for 'levelling-up' the approaches taken in regard to different equality 'strands' and extending employment monitoring to take account of race and disability would be a step forward which would allow authorities to assess how their staffing patterns reflect the communities they serve and provide the basis for potential actions. However, the duty would have to take account of the obstacles to accurate reporting eg willingness of employees to provide information.

Employment reporting – other characteristics

QUESTION 20

Should public authorities be asked to outline how they intend to gather information on employment rates for the other characteristics protected under the new Equality Duty?

Response: Yes

Additional Comment: Authorities should be required to consider how employment information should be gathered in respect to other protected groups. Quantitative analysis should not be regarded as the only source of information on employment outcomes, and authorities should be required to consider how qualitative information on employment segregation can contribute to their knowledge base.

QUESTION 21

How frequently should public authorities be required to publish information on the gender pay gap, their ethnic minority employment rate and their disability employment rate?

Response: Annually

Additional Comment: They should be reported at the same time as part of a comprehensive analysis of equality in employment and as the basis for analysis of the interconnection between different equality strands.

QUESTION 22

Should reporting on employment information be linked to other aspects of reporting on progress on equality, such as reporting on equality objectives?

Response: Yes

Additional Comment: Equalities monitoring should not consist of de-contextualised lists of figures that provide little comparison over time, place or circumstance. It should be presented in the context of authorities' equality objectives and provide the basis for progress toward these objectives.

Demonstrating the impact on equality of policies and services

QUESTION 23

Do you think public authorities should be required to demonstrate how they have considered the impact of equality on their policies and services?

Response: Yes

Additional Comment: Impact assessment should be regarded as a central component of equalities work and should be retained as a specific duty.

QUESTION 24

Do you think a public authority should only be required to demonstrate equality impact assessment of key policies and services?

Response: Yes

Additional Comment: The requirement for impact assessment in all relevant policies and functions is counter-productive, and account needs to be taken of proportionality and the contribution of policies and services to authorities' key equality objectives (see Question 7). Assessments should not be limited to high level strategy but should have a direct bearing on the services provided by authorities. This will require careful consideration and clear guidance.

QUESTION 25

What information should a public body be asked to provide or publish to demonstrate that consideration has been given to the impact on equality of key proposals, policies or services? Please provide your suggestions in the box below.

Response: As a reflection of openness and accountability in authorities' approach to equalities, reports on the progress of their equality objectives should include reference to the coverage and outcomes of impact assessments. Summary reports of individual assessments should be available.

QUESTION 26

Should public authorities be required to take action in response to issues identified through impact assessment?

Response: Yes

Additional Comment: The identification of achievable and proportionate actions to address equality issues should be a component part of the assessment itself.

Involvement and consultation

Do you think public authorities should have a specific duty, when setting their equality objectives, to take reasonable steps to involve and consult employees, service users and other relevant groups – or where appropriate their representatives – who have an interest in how the authority carries out its functions?

Response: Yes

Additional Comment: The current duty to "involve" disabled people is the most commonly cited example of how the new legislation will 'level-up' public authorities' approach to equality across all strands. This is correct in principle, but the specific duty and the guidance which will accompany it should take account of the different circumstances and challenges that involving all protected groups would entail.

Guidance on a duty in regard to involvement and consultation should aim to achieve a balance between engagement with specific equalities interest groups and picking up on equalities issues in the context of the wider public. Dialogue with specific equalities interest groups should also inform consultation approaches in the wider context.

Procurement

QUESTION 28

Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?

Response: Yes

Additional Comment: Many services provided by public authorities are contracted out and should be included in their equality duties. There should be a specific duty to address equalities in procurement, but this should take account of the relevance of the contract to equality issues and be proportionate to the size of the contract.

Guidance on equality in procurement should make clear how this relates to other, potentially conflicting, procurement principles eg Best Value and other regulations, including those from EU.

QUESTION 29

Do you think that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities to help contribute to the delivery of those objectives?

Response: Yes

Additional Comment: See Question 28

QUESTION 30

Do you think that contracting authorities should be required to consider using proportionate equality-related award criteria where they relate to the subject matter AND performance of the contract?

Response: Yes

Additional Comment: Authorities are already required to ensure that contracted services reflect their duty to provide equality of service, and the award criteria should reflect this.

QUESTION 31

What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?

Response: There is a place for public authorities to ask about breaches of discrimination law in the Pre-Qualification Questionnaire. However, it would be inappropriate at this time for public authorities to be used as a primary means of ensuring that commercial companies comply with equality legislation.

Authorities should be provided with guidance on how they can promote equal opportunities through contracting with 'social firms'.

Leadership by Scottish Ministers

QUESTION 32

What do you consider to be the role of Scottish Ministers in providing leadership on equality?

Response: Ministers should have a lead role identifying national equality issues, providing supporting information and examples of good practice for public authorities.

QUESTION 33

Should Scottish Ministers set equality priorities for the public sector in Scotland, determined jointly with local government in the spirit of the Concordat?

Response: Don't know

Additional Comment: Ministers should have a role in identifying key equality issues nationally, but there are some dangers in determining priorities for the public sector as a whole as it may cut across authorities' capacity to identify objectives which meet local circumstances and needs.

QUESTION 34

Do you think Scottish Ministers' equality priorities should be based on evidence and informed by reasonable and proportionate involvement of stakeholders and equality interests?

Response: Yes

QUESTION 35

Should Scottish Ministers set their equality priorities at the end of the year in which the Government is elected and report on these within the electoral cycle?

Response: Don't know

Documentation

QUESTION 36

What documentation do you think should be required of public authorities to publicise their equality objectives?

Response: Some form of scheme or equality strategy is required to draw together the many elements that contribute to an authority's work to promote equality. There is the danger that it can become unwieldy, particularly if it is to demonstrate community involvement. This should be summarised for the purpose of reporting and publicity.

QUESTION 37

Do you think that the mechanism(s) – whether through a Scheme or otherwise - for public authorities to publicise their equality objectives and report on progress should be left to each individual authority?

Response: Yes

Additional Comment: Authorities have their own arrangements for reporting and publicity of performance. The duty should be limited to the requirement to publish objectives and performance effectively and, in doing so, to take account of the needs of the whole community to access and respond to information.

Enforcement

QUESTION 38

What role should bodies with a scrutiny and improvement function in Scotland play in monitoring and improving the extent to which Scottish public authorities advance and promote equality, foster good relations between different communities and groups, and take steps to prevent unlawful discrimination?

Response: A co-ordinated role in which there is a clearly assigned and defined remit for scrutiny of public authorities' responsibilities. A role which avoids duplication of scrutiny into authorities' equality duties.

QUESTION 39

Should that role be set out in specific duties placed on bodies with a scrutiny and improvement function? If so, which bodies? What would you see as the costs and benefits of such an approach? Are there any risks associated?

Response: On balance. Yes

Additional Comment: If specific duties are imposed these should reinforce a co-ordinated approach to scrutiny, avoiding replication of demands on public authorities.