

Equality and Human Rights Commission Consultation Response: Draft Regulations Relating to Public Bodies (Joint Working) (Scotland) Act 2014 – Sets 1 & 2

Introduction

The Equality and Human Rights Commission (EHRC) is the National Equality Body (NEB)¹ for Scotland, England and Wales, working across the nine protected grounds set out in the Equality Act 2010: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. We are an “A-status” National Human Rights Institution (NHRI)², and share our human rights mandate in Scotland with our colleagues in the Scottish Human Rights Commission (SHRC).

The EHRC welcomes the opportunity to comment on the draft regulations which will underpin the provisions of the Public Bodies (Joint Working) (Scotland) Act 2014. The Commission previously submitted evidence at Stage One of the Act’s passage in the Scottish Parliament³. In that evidence we highlighted the Bill’s links to the wider public service reform agenda, and emphasised that the proposed institutional and legal arrangements must be properly aligned with the existing statutory and regulatory drivers for equality and human rights in Scotland, if the Bill’s policy outcomes are to be realised.

Before commenting on the draft regulations, it is worth in particular summarising again the requirements of the public sector equality duty. The general equality duty requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

¹ www.equineteurope.org/-Equality-bodies-

² www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx

³ [www.scottish.parliament.uk/S4_HealthandSportCommittee/Public%20Bodies%20Joint%20Working%20Scotland%20Bill/PBJW0067 - Equality and Human Rights Commission.pdf](http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Public%20Bodies%20Joint%20Working%20Scotland%20Bill/PBJW0067_-_Equality_and_Human_Rights_Commission.pdf)

Key public bodies in Scotland, including, councils and health boards, are also subject to devolved regulation⁴, setting out the steps they must take to meet the requirements of the general duty. These include:

- Reporting on progress on mainstreaming the equality duty
- Publishing equality outcomes and reporting on progress (taking reasonable steps to involve people who share a relevant protected characteristic in developing these outcomes)
- Assessing and reviewing policies and practices for their impact on individuals and groups who share one or more protected characteristic
- Gathering and using employee information on areas such as staff composition, recruitment, retention and development
- Publishing gender pay gap information
- Publishing statements on equal pay

There are therefore clear parallels between existing requirements – to, for example, involve and engage outside groups and monitor staff development – and proposed requirements in the draft regulations (see below). Co-ordination will help avoid gaps or unnecessary duplication and aid the effective interrogation of existing data.

A further important general point is that, although we understand that Ministers are seeking to amend Schedule 19 of the Equality Act 2010 to ensure that Integration Joint Boards (IJBs) are subject to the general equality duty, there are no plans at the moment to similarly extend the coverage of the devolved specific equality duties. This means that, in effect, in some parts of the country, integration authorities will not be covered by the specific equality duties (i.e. those areas where the IJB, rather than the health board or council is the integration authority). As is the case with Community Planning Partnerships, it is not always clear that the most effective arrangement is for public authorities to translate their individual duties to multi-agency working. The EHRC would welcome a commitment from Ministers to keep this under review and to consider extending coverage of the devolved specific equality duties to IJBs in the future.

Comments on Draft Regulations Set 1

Integration Schemes – prescribed matters and prescribed information: we note that the prescribed matters include plans for workforce development, and details of who has been consulted – and how – in the development of the

⁴ www.legislation.gov.uk/sdsi/2012/9780111016718/contents

integration scheme. In areas where councils or health boards take on the role of integration authority, they should have a range of evidence available from the data gathered under the specific equality duties on staff development, as well as the evidence from the equality outcomes set with the involvement of people who share a relevant protected characteristic.

We would anticipate at least a degree of read-across from these equality outcomes and the kinds of issues being raised during the consultations on integration, for example from older and/or disabled people and their organisations. However, other factors may also be relevant. Areas with large BME populations may need to consider the particular health needs of, for example, South Asian communities which experience a significantly higher incidence of heart disease, or which may require tailored and culturally appropriate social care arrangements. Areas with established gypsy/traveller populations may need to consider how to engage with a community which experiences ingrained health inequalities and barriers to accessing health and social care services⁵.

National Health and Wellbeing Outcomes: these reflect a range of wider policy principles and goals which the EHRC strongly supports, such as respect for human dignity, prevention, independent living and the rights of carers. However, there is no clear commitment to delivering independent living beyond what is “reasonably practicable”. What constitutes the “reasonably practicable” will vary with circumstance, but there is a danger that assumptions regarding resources might work against realising the wider goals of freedom, choice, dignity and control which constitute independent living.

Rather than framing an outcome on independent living in this way, it may be more productive to adapt the approach set out in international human rights instruments, such as the UN International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶, and aim for the “progressive realisation” of rights, including the “right to the highest attainable standard of physical and mental health” (Art 12). The UN Convention on the Rights of Persons with Disabilities (CRPD)⁷ also commits states to take effective actions to realise the right of disabled people “to live in the community, with choices equal to others” and ensure “their full inclusion and participation in the community” (Article 19).

⁵ See, for example, the 2012 report of the Scottish Parliament’s Equal Opportunities Committee, “Gypsy/Travellers and Care”,

www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/54885.aspx

⁶ www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

⁷ www.un.org/disabilities/default.asp?id=259

The assumption should always be that there are ways of progressively realising these rights, not that independent living is only attainable where “reasonably practicable”.

The outcomes also make no reference to the involvement of service users in the design and delivery of the services on which they depend. Health and social care service users are the real experts on their conditions and impairments, and how these would best be managed. There is a wealth of expertise on how to use co-production principles in the design and delivery of services, such as the toolkit developed by the Scottish Government-supported Independent Living in Scotland project (ILiS)⁸

Comments on Draft Regulations Set 2

Our comments on Set 2 of the draft regulations reflect similar issues and concerns as Set 1, specifically in relation to user involvement/co-production, and equality impact assessment.

Prescribed consultees for new/revised integration schemes and for draft strategic plans: service users and carers are among the groups listed—correctly— as required participants in these processes. In line with the comments above however, attention should be paid to how these voices are heard in the wider mix of council and health board staff, health and social care professionals, public, private and voluntary sector care providers, and others which make up the list of prescribed consultees. In our Stage 1 evidence on the Bill (see above) we underlined the anxieties felt by some that the proposed changes were overly focused on professionals and structures rather than service users – care should be taken to avoid this situation in the working arrangements for consultation under the new Act.

List of groups who must be involved if there is a decision which may be taken that might significantly affect service provision: we agree that service users and carers must be involved in these decisions, and it is worth stressing that the better the involvement, the better the end decision.

There is however a wider point regarding alignment with existing regulatory duties. Where an integration authority is a council or health board, and therefore subject to the devolved specific equality duties (see above) it should have already conducted an equality impact assessment of any proposed

⁸ www.ilis.co.uk/get-active/publications/co-production-toolkit

significant changes to service provision. We would expect the evidence gathered by the impact assessment to inform the involvement process.

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