

Equalities

Equality Duty Revised Draft Regulations Analysis of consultation findings

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A consultation was carried out by the Scottish Government between September and the end of November 2011 on the Public Sector Equality Duty Revised Draft Regulations. The new Public Sector Equality Duty, contained in the Equality Act 2010, has two parts: a General Duty, and provision for Specific Duties to be made by Scottish Ministers through Regulations, and imposed on Scottish Public Authorities. Scottish Ministers intend to make Specific Duties, and a set of draft Regulations were introduced to the Scottish Parliament in 2011, then re-examined. The proposed revisions to the draft Regulations were the subject of this consultation. 140 responses were received and this paper summarises the findings.

Main findings

- Overall, a large majority of respondents expressed agreement with all aspects of the revised draft Regulations.
- There was a high level of support for the proposed amendment relating to whether a public authority should have to publish reasons if equality outcomes do not cover all protected characteristics, and 93%¹ of those who addressed the yes/no element stated “yes”.
- There was a high level of support for the proposed amendments relating to assessment and review, including that: the results of impact assessment should be published (90% stated “yes”); an authority should consider relevant evidence received from equality groups (94% stated “yes”); there should be a duty to make arrangements to review existing policies and practices (90% stated “yes”); and impact assessment should not be required when a policy or practice has no bearing on the General Duty (80% of respondents stated “yes”).
- There was a high level of support for the proposals relating to employment information, including that: information should be gathered across all relevant protected characteristics (96% of respondents stated “yes”) and used to assist progress on the General Duty (95% of respondents stated “yes”); information gathered should be reported (87% stated “yes”); and the equal pay statement should extend beyond gender to include race and disability (86% stated “yes”).
- There was a high level of support for the proposals relating to specific procurement duties, including that: where an authority proposes to enter an agreement on the basis of the most economically advantageous offer it must have due regard to whether the award criteria should include considerations relevant to performance of the General Duty (85% stated “yes”); and where it proposes to stipulate conditions, it must have due regard to whether these should include considerations relevant to performance of the General Duty (87% stated “yes”).
- Many additional comments were made at each question, and although there were variations by issue, a number of common themes emerged. In all cases, comments covered: perceived benefits or general support for the proposals; issues or concerns; and suggestions or perceived requirements for the way forward. A number focused on benefits and suggestions, while comments on issues or concerns were the least common.

¹ The proportions given here and in the rest of the summary are of those who answered “yes”, “no” or “don’t know”.

Background

The new Public Sector Equality Duty, contained in the Equality Act 2010, has two parts: a General Duty, and provision for Specific Duties to be made by Scottish Ministers through Regulations, and imposed on Scottish Public Authorities. The General Duty came into force in April 2011, and requires public authorities to have due regard to the need to eliminate unlawful conduct; advance equality of opportunity across all relevant protected characteristics; and foster good relations across all relevant protected characteristics.

The Specific Duties will set out a framework to assist public authorities to meet the General Duty, and draft Regulations were introduced to the Scottish Parliament in 2011. The Equal Opportunities Committee did not support them, and they were re-examined. The proposed revisions were the subject of this consultation.

The consultation

The proposed revisions related to: equality outcomes; assessment and review; employment monitoring and reporting; and public procurement. The changes sought to increase transparency and accountability and provide more details in the Regulations rather than in guidance. The Scottish Government issued a consultation paper with details of the proposed amendments, and this contained 12 questions, most of which involved a “yes”/“no”/“don’t know” option, and space for further comments.

140 written responses were received and the most common type of respondent was equality organisations (29%). Also common were responses from local authorities, departments and representative bodies (19%) and education (16%). Other respondents included “other” public bodies covered by the Regulations (13%); NHS (9%); trade unions / professional bodies (8%); individuals (4%); “other” organisations covered by the Regulations (2%); and multi-agency partnerships (1%). A total of 76 respondents (54%) were covered by the Regulations, and 64 (46%) were not covered. A very high proportion of respondents answered “yes”, “no” or “don’t know” in each case. A large majority made additional comments, focusing on perceived benefits or general support; issues or concerns; and suggestions or perceived requirements for the way forward.

Equality outcomes

Question 1 asked whether respondents agree that if a public authority’s equality outcomes do not cover all relevant protected characteristics, it should publish the reason(s) why. There was a high level of agreement among those who answered “yes”, “no”, or “don’t know”, and 93% of these respondents answered “yes”, with virtually no difference between those covered and not covered by the Regulations.

Perceived benefits or general support for the proposal focused on: views of the proposal as an appropriate requirement; the positive impact upon the overall approach / ways of working in public authorities; and the positive impact upon equality. Issues or concerns raised related to: the collection of data; the wording of the Regulation; the potential impact; and the perceived relevance of, or need for the Regulation. In terms of suggestions or requirements, a common theme was the perceived need for guidance and support, while other themes included: the substance of the Regulation; issues for clarification; the overall type of approach seen to be required; and some implementation issues.

Assessment and review

Question 2 asked whether respondents agree that a public authority should publish the results of equality impact assessment. Of those who addressed the yes/no element, 90% answered “yes”, 8% stated “no” and 2% “don’t know”. There was a high level of agreement, both among respondents covered and not covered by the Regulations.

Question 3 asked whether respondents agree that a public authority’s impact assessments should consider relevant evidence including any received from people with relevant protected characteristics in relation to the policy or practice in question. There was a high level of agreement with the proposal both among respondents covered and not covered by the Regulations. Of those who addressed the yes/no element, 94% indicated “yes”, only 4% “no” and 2% “don’t know”.

Question 4 asked whether respondents agree that a public authority should make arrangements to review and where necessary change or revise existing policies and practices to ensure that these do not have a detrimental effect on its ability to fulfil the General Duty. There was a high level of agreement both among respondents covered and not covered

by the Regulations, although virtually all of those who disagreed were drawn from those covered by the Regulations. Of those who addressed the yes/no element, 90% stated “yes”, 9% “no” and 1% “don’t know”.

Question 5 asked whether respondents agree that a public authority should not be required to undertake an impact assessment where the policy or practice in question has no bearing on its ability to fulfil or otherwise the General Duty (e.g. purely technical or scientific matters). There was a high level of overall agreement. Of those who addressed the yes/no element, 80% answered “yes”, with just under a fifth (17%) stating “no” and 4% “don’t know”. There was a high level of agreement from respondents covered by the Regulations (95% of whom answered “yes”). The views of those not covered were mixed, with more than a third (36%) who stated “no”. Among the respondents who stated “no”, the largest number were equality organisations.

Perceived benefits or expressions of general support focused on: perceptions of the proposals as appropriate; the overall approach / process of the public authority; aspects of practice; equality; groups and the community; and services. Issues or concerns related to: evidence gathering and data issues; the substance of Equality Impact Assessments (EQIAs); demands of the proposals; potential negative implications of the proposals; resources; the substance of the Regulation; lack of clarity of some issues; and the perceived relevance, need for, or effectiveness of the Regulation. Suggestions or perceived requirements related to: the substance of the Regulation and requirements; issues for clarification; the method of implementation; the purpose and use of evidence; the perceived need for, or content of guidance; and the overall type of approach seen to be required.

Employment information

Question 6 asked whether respondents agree that authorities subject to the Specific Duties should be required to take reasonable steps to gather information on the relevant protected characteristics of employees, including information on the recruitment, retention and development of employees. There was a high level of agreement, both among respondents covered by the Regulations and those not covered. Of those who addressed the yes/no element, 96% stated “yes”.

Question 7 asked whether respondents agree that authorities subject to the Specific Duties should be required to use the employment information which they have gathered to assist progress on the General Duty. There was a high level of agreement both among those covered by the Regulations and those not covered. Of those who addressed the yes/no element, 95% stated “yes”.

Question 8 asked whether respondents agree that authorities subject to the Specific Duties should be required to report on progress on gathering and using employment information, including an annual breakdown of information gathered, within the mainstreaming report. There was a high level of agreement among respondents covered by the Regulations and those not covered. Of those who addressed the yes/no element, 87% stated “yes”. Only 7% stated “no” and 6% “don’t know”.

Question 9 asked whether respondents agree that authorities with more than 150 employees should publish an equal pay statement, the first of these covering gender and the second and subsequent statements covering gender, disability and race. There was a high level of agreement both among respondents covered by the Regulations and those not covered. Of those who addressed the yes/no element, 86% stated “yes”, 10% “no” and 4% “don’t know”.

Perceived benefits and general expressions of support relating to employment information focused on: overall support and the perceived value and importance of these proposals; the positive impact on equality; the positive impact on aspects of the approach / process in public authorities; and on resources. Issues and concerns identified with the proposals about employment information related to: data collection, storage and use; reporting issues; aspects of the substance of the Regulation; a lack of clarity of some issues; the perceived impact on practice and resources; and a perceived lack of need for aspects of the proposals, or concerns about their effectiveness. Suggestions and perceived requirements for the way forward focused on comments about: the means of implementation (including aspects of the approach required, data collection and use, reporting and timing); the substance of the Regulation; issues for clarification; other aspects of implementation; and the provision of guidance and other support.

Public procurement

Question 10 asked whether respondents agree that 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 relevant to its performance of the General Duty. There was a high level of agreement among both respondents covered by the Regulations and those not covered. Of those who addressed the yes/no element, 85% stated “yes”, with 7% stating “no” and 8% “don’t know”.

Question 11 asked whether respondents agree that 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 relevant to its performance of the General Duty. There was a high level of agreement among both respondents covered and not covered by the Regulations. Of those who addressed the yes/no element, 87% stated “yes”, 7% “no” and 7% “don’t know”.

Perceived benefits and expressions of general support for the proposals about public procurement focused on: consistency with existing developments and the importance of such requirements; a positive impact on equality; benefits relating to the contracting relationship; and a positive impact on the approach/process in public authorities. Issues and concerns raised about the proposals about public procurement related to: the substance of the Regulation; lack of clarity of some issues; aspects of implementation and / or the demands of this; and, for a small number, a lack of perceived need for the proposals. Suggestions and perceived requirements for the way forward in relation to public procurement focused on: the substance of the Regulation; issues for clarification; aspects of implementation; wider developments to support implementation; and the need for, or content of guidance.

Other comments

Question 12 asked respondents for any other comments on the proposed draft Regulations. A total of 99 respondents (71%) made other comments at Question 12 and 21 made additional comments at other points in their response (with some overlaps). The comments covered similar broad themes to those identified at specific questions (i.e. perceived benefits or general support; issues or concerns; and suggestions or perceived requirements), with the addition of some comments on aspects of the consultation.

Within the broad themes, some of these covered similar issues to those raised in response to specific questions. For example, perceived benefits or general expressions of support focused on: overall support, or support for specific aspects of the proposals; a perceived positive impact of the proposals on equality; and a perceived positive impact on the approach / process in public authorities.

In terms of issues or concerns, the main themes which emerged related to aspects of the substance of the Regulations, and challenges with equality issues. Additional comments were made about data issues or about the perceived impact / effectiveness of the proposals.

Suggestions or perceived requirements for the way forward included comments on: issues for emphasis or inclusion; the substance and implementation of the Regulations; developments to equalities work; the need for, or content of guidance; and other support perceived as beneficial.

Additional comments were made about the consultation, covering: respondents’ overall views; the nature of the respondent or response; the consultation process; and suggestions for future consultations.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 7560.