



The Scottish  
Government

# Equality Duty Revised Draft Regulations Analysis of Consultation Findings

Equalities



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**EQUALITY DUTY REVISED DRAFT REGULATIONS**  
**ANALYSIS OF CONSULTATION FINDINGS**

**Reid Howie Associates**

Scottish Government Social Research  
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## **EXECUTIVE SUMMARY**

This report presents the findings of a consultation carried out by the Scottish Government on the Public Sector Equality Duty Revised Draft Regulations between September and the end of November 2011.

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 are intended to set out a framework to assist public authorities to meet the requirements of the General Duty, and can only be placed on public authorities listed in Schedule 19 of the Equality Act. Scottish Ministers intend to make such Specific Duties, and a set of draft Regulations was introduced to the Scottish Parliament in 2011. However, the Equal Opportunities Committee did not support them, and these were re-examined. The proposed revisions to the draft Regulations were the subject of this consultation.

### **The consultation process**

The consultation focused only upon the proposed revisions, relating specifically 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 consultation process involved the Scottish Government issuing a paper with details of the proposed amendments to the Regulations, with 12 questions, most of which involved a “yes” / “no” / “don’t know” option, and space for further comments.

A total of 140 written responses were received. The most common type of respondent overall 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 not 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. The consultation generated a large amount of material and the findings are summarised below.

### **Overall findings**

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.

Overall, a large majority of respondents expressed agreement with all aspects of the revised draft Regulations, with 80% or more answering “yes” in each case (and in many cases, 90% or over). The question where there was the highest level of disagreement was question 5, relating to whether impact assessment should not be required when a policy or practice has no bearing on the General Duty. In this case, 17% stated “no”, and there was a difference in the level of agreement between respondents covered by the Regulations (95% of whom answered “yes”) and those not covered by the Regulations (36% of whom stated “no”).

### **Proposals relating to equality outcomes / assessment and review**

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. A total of 133 respondents (95%) addressed this question, and almost all of these (130) addressed the “yes”, “no” or “don’t know” part of the question. There was a high level of agreement, and 93% of these respondents<sup>1</sup> answered “yes”, with virtually no difference between those covered and not covered by the Regulations.

Question 2 asked whether respondents agree that a public authority should publish the results of equality impact assessment. A total of 133 respondents (95%) addressed this question, and almost all (130) answered the “yes”, “no” or “don’t know” part. There was a high level of agreement, both among respondents covered and not covered by the Regulations. A total of 90% of respondents who addressed the yes/no element answered “yes”, while 8% stated “no” and 2% “don’t know”.

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. A total of 133 respondents (95%) addressed the question, and almost all of these (131) answered the “yes”, “no” or “don’t know” part. There was a high level of agreement with the proposal both among respondents covered and not covered by the Regulations, with 94% of respondents who addressed the yes/no element indicating “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. 133 respondents (95%) addressed this question, and almost all of them (132) addressed the “yes”, “no” or “don’t know” part. 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. A total of 90% of respondents who addressed the yes/no element 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

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<sup>1</sup> Where such proportions are given, they refer to the proportion of those respondents who stated “yes”, “no” or “don’t know”.

technical or scientific matters). A total of 132 respondents (94%) addressed this question, almost all of whom (127) addressed the “yes”, “no” or “don’t know” part. There was a high level of overall agreement, and 80% of respondents who addressed the yes/no element answered “yes”. Just under a fifth (17%) stated “no” and 4% “don’t know”. There was a high level of agreement from respondents covered by the Regulations (95% of whom answered “yes”), while the views of those not covered were more mixed, with more than a third (36%) who stated “no”. Among the respondents who stated “no” the largest number were equality organisations.

A large majority of respondents made additional comments at all of these questions. These focused on three main areas: perceived benefits or general support for the proposals; issues or concerns; and suggestions or perceived requirements for the way forward. The most common themes were generally the identification of benefits and the identification of suggestions / perceived requirements for the way forward, with fewer respondents identifying issues or concerns.

In relation to equality outcomes, 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<sup>2</sup>. Issues or concerns raised related to: collection of data; the substance of the Regulation or the way it was worded; the potential impact of the requirement; 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.

In relation to the proposals relating to assessment and review, perceived benefits or expressions of general support focused on: perceptions of these 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 nature 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 and nature of implementation; the nature, purpose and use of evidence; the perceived need for, or content of guidance; and the overall type of approach seen to be required.

### **Proposals relating to 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. A total of 133 respondents (95%) addressed the question, and almost all (128) answered the “yes”, “no” or

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<sup>2</sup> Where reference is made to a perceived impact on equality, this should be taken to cover equality and / or equalities work in each case.

“don’t know” part. There was a high level of agreement, both among respondents covered by the Regulations and those not covered, and 96% of respondents who addressed the yes/no element 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. A total of 132 respondents (94%) addressed this question, and almost all of these (129) addressed the “yes”, “no” or “don’t know” part. There was a high level of agreement both among those covered by the Regulations and those not covered, and 95% of respondents who addressed the yes/no element 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. This question was addressed by 133 respondents (95%) and almost all (130) addressed the “yes”, “no” or “don’t know” part. There was a high level of agreement both among respondents covered by the Regulations and those not covered, with 87% of respondents who addressed the yes/no element stating “yes”. Only 7% stated “no” and 6% answered “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. A total of 131 respondents (94%) addressed this question, and almost all of these (120) addressed the “yes”, “no” or “don’t know” part. There was a high level of agreement both among respondents covered by the Regulations and those not covered. A total of 86% who addressed the yes/no element stated “yes”, 10% stated “no” and 4% answered “don’t know”.

As with the previous questions, a large majority of respondents made additional comments at all of the questions on the proposals relating to employment information. Again these focused on the three main areas identified previously: perceived benefits or general support for the proposals; issues or concerns; and suggestions or perceived requirements for the way forward. Again fewer respondents identified issues or concerns than made other types of comments.

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.

## **Proposals relating to 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. A total of 131 respondents (94%) addressed this question and almost all of these (128) addressed the “yes”, “no” or “don’t know” part. There was a high level of agreement among both respondents covered by the Regulations and those not covered, with 85% of respondents who addressed the yes/no element stating “yes”. A total of 7% stated “no” and 8% answered “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. A total of 129 respondents (92%) addressed this question, and almost all of these (123) addressed the “yes”, “no” or “don’t know” part. There was a high level of agreement among both respondents covered by the Regulations and those not covered, and 87% who addressed the yes/no element stated “yes”. A total of 7% stated “no” (all of which were drawn from among those covered by the Regulations) and 7% “don’t know”.

Again, a large majority of respondents made additional comments on the proposals relating to public procurement, focusing on the same three broad areas: perceived benefits or general support for the proposals; issues or concerns; and suggestions or perceived requirements for the way forward. Again fewer respondents identified issues or concerns than made other types of comments.

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 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.

A number of respondents made additional comments about the consultation. Among these, several welcomed the consultation, or the opportunity to respond, while one stated that they considered the consultation unnecessary and a “nonsense exercise”. Several provided additional details about the nature of the respondent. A small number of respondents also provided details of the nature of their response to the consultation. A few respondents commented on the nature of the consultation process (e.g. wording and the need for plain English; the need for appropriate analysis and presentation) or made suggestions for future consultations (e.g. to require organisational respondents to identify the provenance of their response; and to review the design and use of Respondent Information Forms (RIFs)).

## **SECTION 1: THE CONSULTATION**

1.1 This report presents the findings of a consultation carried out by the Scottish Government on the Public Sector Equality Duty Revised Draft Regulations. The consultation document was issued in September 2011 and closed on 25<sup>th</sup> November 2011.

1.2 The report is in 5 sections. This section details the background to the consultation and the nature of this, as well as giving a brief outline of the methods of analysis and the pattern of respondents. Sections 2-5 provide an analysis of the responses in terms of the findings relating to proposals for changes at:

- Regulations 3 and 5 covering equality outcomes; and assessment and review (Section 2).
- Regulations 6,7 and 8 covering employment information (Section 3).
- Regulation 9, covering public procurement (Section 4).

1.3 Any additional comments and issues raised are presented in Section 5. The questions are set out in Annex 1. Annex 2 contains a list of respondents to the consultation.

### **Background to the consultation**

1.4 The Equality Act 2010 brought together a range of previous equalities legislation into a single approach, and sought to strengthen protection and advance equality. Under the Act, three previous duties (the race equality duty, disability equality duty and gender equality duty) were replaced by a new single equality duty, and coverage was extended to additional 'protected characteristics' (i.e. those which may lead to prejudice and discrimination). This provided protection not only for ethnic minority groups; disabled people and women and men (as had previously been the case), but for a wider range of equality groups, including Lesbian, Gay, Bisexual and Transgender (LGBT) people; older and younger people; religious and faith groups. Although the issues facing these additional equality groups had been recognised previously by the Scottish Government and Scottish Parliament in their work, they were now included in the legislation.

1.5 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 are intended to set out a framework to assist public authorities to meet the requirements of the General Duty, and can only be placed on public authorities listed in Schedule 19 of the Equality Act. Enforcement of the Public Sector Equality Duty is by judicial review or through the Equality and Human Rights Commission (EHRC).

1.6 Scottish Ministers intend to make Specific Duties to enable better performance of the General Duty, and two previous consultations have already taken place to help Scottish Ministers determine the form of these. The first explored the broad scope of

the duties and reported in 2010<sup>3</sup>. The second focused on the draft Regulations and reported in early 2011<sup>4</sup>. A number of themes emerged from these consultations, with broad support for Specific Duties as well as for particular aspects of the approach, such as: mainstreaming; demonstrating equality impact; equality outcomes and reporting; and employment monitoring and reporting. There were also a number of related themes which were identified as important, including the perceived need for: flexibility and proportionality (i.e. being fair and reasonable); action and measurement; using existing systems and processes; consulting service users and equality groups, and using evidence. Draft Regulations were prepared, informed by the findings.

1.7 When the draft Regulations were introduced to the Scottish Parliament and considered by the Equal Opportunities Committee in 2011, the Committee did not support them. Scottish Ministers withdrew the draft Regulations and agreed to re-examine them. The proposed revisions to the Draft Regulations were the subject of this consultation, carried out at the end of 2011.

### **The consultation process**

1.8 The consultation focused only upon proposed revisions, which relate specifically to:

- Equality outcomes (that authorities should publish reasons if their equality outcomes do not cover all relevant protected characteristics).
- Assessment and review (that the results of impact assessment should be published; that an authority should consider relevant evidence received from equality groups; that there should be a duty to make arrangements to review existing policies and practices; and that impact assessment is not required when a policy or practice has no bearing on the General Duty).
- Employment monitoring and reporting (that information should be gathered across all relevant protected characteristics; that it should be used to assist progress on the General Duty; that the information gathered should be reported; and that the equal pay statement should extend beyond the traditional arena of gender to include race and disability).
- Public procurement (that there should be specific procurement duties which make clear how the General Duty applies to procurement).

1.9 The changes sought to increase transparency and accountability and provide more details in the Regulations rather than in guidance.

1.10 Written responses were invited, along with the completion of a Respondent Information Form (RIF). The consultation contained 12 questions, most of which involved a “yes” / “no” / “don’t know” option, and space for further comments.

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<sup>3</sup> Scottish Government (2010) Consultation on Public Sector Equality Duty Specific Duties Analysis of Responses Edinburgh: Scottish Government.

<sup>4</sup> Scottish Government (2011) *Public Sector Equality Duty Draft Regulations and Order Analysis of Responses to the Scottish Government Consultation on Public Sector Equality Duty Draft Regulations and Order* Edinburgh: Scottish Government.

changes (summarised above), and to provide further information. Question 12 invited any other comments on the proposed draft Regulations. The consultation closed on 25th November 2011, and generated a large amount of qualitative material (along with quantitative data from the closed responses). A list of the questions is provided at Annex 1.

## Submissions and respondents

1.11 A total of 140 responses to the consultation were received and included. These were grouped into broad categories for the purpose of analysis. This provided a useful indication of the types of respondents, although it is acknowledged that this required some subjective judgement.

1.12 Table 1 (below) summarises the numbers and proportions of respondents by category.

**Table 1. Respondents by category**

| Type of respondent                                   | Number     | % total <sup>5</sup> |
|--|------------|----------------------|
| Equality   | 41         | 29                   |
| Local authority, department or representative body   | 26         | 19                   |
| Education  | 22         | 16                   |
| Other public bodies (covered by the Regulations)     | 18         | 13                   |
| NHS  | 12         | 9                    |
| Trade Unions / Professional Bodies                   | 11         | 8                    |
| Individual   | 5          | 4                    |
| Other organisations (not covered by the Regulations) | 3          | 2                    |
| Multi-agency partnerships                            | 2          | 1                    |
| <b>Total</b>   | <b>140</b> |                      |

1.13 As can be seen from table 1, respondents spanned a number of categories. The most common type of respondent overall was equality organisations, with 41 (29%). A total of 26 local authorities, departments or representative bodies responded (19% of all responses). The other main sector represented was education (22 or 16%). A total of 18 “other” public bodies (covered by the Regulations) responded (13%). As far as can be ascertained, 6 respondents requested confidentiality. In consultation with the Scottish Government, it was identified that a total of 76 respondents (54%) were covered by the Regulations, with 64 (46%) not being covered<sup>6</sup>.

1.14 Most of the respondents addressed all of the specific questions, while some addressed a smaller number of the questions or provided a more general response. Where a respondent did not address the questions directly, or did not use the form provided, it was generally possible to discern which question a comment related to and to include the material at the appropriate point in the report. Additionally, there

<sup>5</sup> Table does not sum to 100 due to rounding

<sup>6</sup> CoSLA and ACPOS, although not covered by the Regulations as specific individual organisations, were included with those covered on the basis that their responses relate to a number of organisations named in the Regulations.

and to include the material at the appropriate point in the report. Additionally, there were some cases where information provided in response to one question was relevant to issues covered elsewhere in the consultation. Again, this material has been presented in the report at the appropriate points.

## **Analysis of the data**

1.15 The analysis of the data involved a number of stages, as follows:

- An Access database was designed to include the data by question.
- The information was input verbatim to the database.
- Responses where respondents stated “yes”, “no” or “don’t know”, and provided additional comments were analysed.
- A quantitative report was prepared and submitted to the Scottish Government.
- A series of Word documents containing all of the qualitative material in the responses to each of the questions was generated.
- Key themes and sub-themes for each question were identified, and the detailed comments organised into a series of issue-based “books”.
- This report was prepared, summarising the findings.

## **The report**

1.16 The quantitative and qualitative material in the responses has been analysed fully and has generated a very large amount of information which is summarised in this report. For the quantitative information, the proportions of respondents who addressed each question, and those who specifically stated “yes”, “no” or “don’t know” have been identified. Where a respondent did not tick one of the boxes provided these have not been included in the quantitative material, but their comments have been reflected in the qualitative analysis. It would be inappropriate to assign a closed category (“yes”, “no” or “don’t know”) to these responses, as it must be assumed that the respondent made a choice to provide only qualitative material. Any emergent patterns by type of respondent have also been identified.

1.17 For the qualitative material, the focus of the presentation of the information is upon highlighting the themes and issues which emerged in response to each question, and the range and depth of views expressed, rather than the numbers expressing particular views. It is neither appropriate nor possible to provide definitive numbers of respondents who expressed particular views in the qualitative data. There are a number of reasons for this, including that: not all of the respondents used the form for their response; some points were made at a number of different questions or overlapped different themes; comments about one issue were sometimes made in relation to another; some responses were submitted on behalf of organisations and represented the views of a number of respondents; and there was inevitably a need for some judgement about where to include particular material in the report.

1.18 For all of these reasons, the focus is on qualitative presentation, combined with the basic quantitative material discussed above. Broad proportions of respondents are given in relation to the identification of the overall themes at each question, along with a general indication of the range of sub-themes within each of

the main themes. Within these themes and sub-themes, qualitative terms are used, such as “a number”; “several”; “a small number” and “a few”. It should be borne in mind that these terms are intended only to provide a sense of where there were common issues within the themes and sub-themes, and, although they have been used consistently, should not be seen to represent particular numbers, nor to provide a means of direct comparison within or between questions. It should also be borne in mind that, within the themes and sub-themes, the actual number of respondents making specific points (whichever of the terms is used) will not be a large proportion of the total respondents overall. It is also important to recognise that the purpose of a consultation such as this is not “weigh” the qualitative views, but to use the views expressed to help to identify issues and to inform consideration of the way forward. The means of presentation of the data is therefore consistent with the purpose of the consultation as being to identify overall views of the proposals, along with details of the additional themes and issues raised.

1.19 In many cases, in the qualitative material, similar views were expressed by a range of different types of organisations and by individuals. It would be impossible to note, for each issue, all of the types of respondent, as this would often involve lengthy lists. Instead, variations by type of respondent (for example, between respondents covered by the Regulations and those not covered) have generally been identified only where there appeared to be a clear difference of view related to this. As will become clear, the levels of overall agreement in this consultation were such that few meaningful differences by category / sector could be identified.

1.20 It should be noted that where the term “respondent” is used, this refers to one response, even where that response may represent the views of more than one contributor.

1.21 In presenting the qualitative data, the wording sometimes follows the wording in a response, to preserve the sense of the point (even though it is not presented as a “quote”). The use of the original wording helps reflect respondents’ intended messages, and it is generally clear to respondents that their comments will form the basis of a report.

1.22 The report cannot present all of the individual points made by every respondent, nor can it provide a compendium of material. The individual non-confidential responses are available in full, and can be viewed on the Scottish Government website<sup>7</sup>.

### **Summary of issues: The consultation**

1.23 In summary, the main points relating to the consultation are as follows:

- A Scottish Government consultation on the Public Sector Equality Duty Revised Draft Regulations took place between September and November 2011.
- 140 written responses were received. The most common type of respondent overall was equality organisations (29%). Also common were responses from local authorities, departments and representative

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<sup>7</sup> [www.scotland.gov.uk/Publications/2012/01/1910](http://www.scotland.gov.uk/Publications/2012/01/1910)

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 not 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.

- The analysis of the data involved: design of an Access database; input of the responses; analysis of “yes”, “no” or “don’t know” responses; identification of key themes and sub-themes for each question from the qualitative material; and preparation of the report.
- The report presents the quantitative findings along with the detailed qualitative material, including the themes which emerged and the range and depth of views expressed.
- The full responses are available for inspection on the Scottish Government website.

## SECTION 2: FINDINGS – PROPOSALS RELATING TO EQUALITY OUTCOMES; AND ASSESSMENT AND REVIEW

2.1 This section presents the findings on proposals relating to equality outcomes; and assessment and review (covered by Regulations 3 and 5).

### Publication of reasons when outcomes do not cover all relevant protected characteristics

2.2 The revised proposals involve the addition of a requirement to publish reasons if an authority’s equality outcomes do not cover all relevant protected characteristics. Question 1 asked:

*“Do you agree that if a public authority’s equality outcomes do not cover all relevant protected characteristics, it should publish the reason(s) why?”*

**Table 2. Responses to yes/no/don’t know element of Question 1**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 121         | 86                   | 93                                 |
| No           | 6           | 4                    | 5                                  |
| Don't know   | 3           | 2                    | 2                                  |
| Not answered | 10          | 7                    |                                    |
| Total        | 140         |                      |                                    |

2.3 This question was addressed by 133 respondents (95%). Almost all of these (130) addressed the “yes”, “no” or “don’t know” element of the question, with a high level of agreement. Of those who addressed this element of the question, a total of 93% indicated “yes”, and only 5% stated “no” and 2% “don’t know”<sup>8</sup>, with virtually no difference between those covered and not covered by the Regulations. Among the small number who answered “no” or “don’t know” however, almost all were from organisations covered by the Regulations.

2.4 A small number of respondents (6) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that 3 agreed with the proposal, at least in principle, 1 disagreed and 2 made comments from which their overall view could not be inferred<sup>9</sup>.

2.5 A large majority (87%)<sup>10</sup> of the respondents who addressed this question made additional comments, as did a few others who made relevant comments

<sup>8</sup> These proportions, throughout the report, are of those who ticked “yes”, “no”, or “don’t know”.

<sup>9</sup> Where such responses are identified throughout this report, it should be noted that this required an element of judgement. In each case, comments were only included where they related clearly to the substance of a specific question. They were only identified as inferring “yes” or “no” when agreement or disagreement appeared clear.

<sup>10</sup> These proportions, throughout the report, are of those who addressed the question.

elsewhere<sup>11</sup>. Additional comments focused on three main areas: perceived benefits or general support for publishing reasons; issues or concerns with the proposal or its implications; and suggestions or perceived requirements for the way forward.

### ***Perceived benefits of publishing reasons***

2.6 The most common additional comments related to perceived benefits or general support for publishing the reasons if a public authority's equality outcomes do not cover all relevant protected characteristics. A high proportion of respondents<sup>12</sup> highlighted some perceived benefits or expressed general support. These were of three main types: general 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 or equalities work<sup>13</sup>.

2.7 A number of respondents expressed general agreement with, or support for the proposal, or welcomed the requirement to publish reasons. Several expressed the view that there may be instances in which there may be a valid reason for outcomes not covering all relevant protected characteristics (e.g. the local context and priorities; data difficulties), although a few suggested that this would be relatively rare (and one respondent from an equality organisation stated that they could not imagine such a situation). Where such a situation arose, however, it was suggested that it should be explained, and this proposal provided the opportunity. A small number of respondents made reference to the current requirements of the General Duty, with a few (most of which were covered by the Regulations) stating specifically that, in their view, this amendment would not increase the administrative burden upon public authorities. Some issues in current practice which required to be addressed were also identified (e.g. a perceived lack of focus on some characteristics, or a potential lack of equality objective setting without this).

2.8 A further broad theme in the identification of benefits of publishing related to a perceived positive impact on aspects of the overall approach / ways of working in public authorities. The impact identified most commonly was increased transparency of the process (and the need for this), and several respondents also mentioned increased accountability, or the opportunity for scrutiny and challenge. Further benefits identified were the provision of a clear evidence base for outcomes, the need to demonstrate that all of the issues have been considered, and improved decision making (e.g. more robust and strategic, and improved planning).

2.9 Several perceived benefits of the proposal for equality were also highlighted, and these included: the general promotion of equality and fairness; delivery of the General Duty; increased engagement with, and mainstreaming of the issues; consideration and promotion of equality across all protected characteristics and avoidance of a "hierarchy"; improved engagement with, and involvement of equality groups; demonstration of a public authority's commitment to equality and

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<sup>11</sup> Where references are made in the report to additional comments, these may include comments from respondents who specified "yes", "no" or "don't know", as well as from those who provided comments alone at this question, or made comments elsewhere.

<sup>12</sup> Where references are made in the qualitative material to proportions of respondents, these are proportions of those respondents who made comments.

<sup>13</sup> Where reference is made in the report to a perceived impact on equality, this should be taken to cover equality and / or equalities work in each case.

engagement; the identification of gaps in equality outcomes, evidence and work; and the development of work, outcomes and evidence to address the gaps.

### ***Issues or concerns raised – publishing reasons***

2.10 Around a third of those who made additional comments raised issues for consideration, or expressed concerns with some aspect of the proposal or its implications, although most of these respondents agreed with the principle overall. Most, although not all of those who raised such issues were organisations covered by the Regulations. Issues or concerns raised related to: data; the substance or wording of the Regulation; the potential impact of the requirement; and, in a small number of cases, the perceived relevance of, or need for the Regulation.

2.11 The most common issues raised related to data (at least in the short term) and almost all of these comments were made by those covered by the Regulations, particularly local authorities. These included: a lack of, or limited data (national and local) relating to some of the protected characteristics; data collection issues (raised particularly by local authorities); and capacity issues for equality groups. One education respondent, who did not support the proposal, raised concerns about interpretation, and comparing compliance between different authorities.

2.12 Several respondents (most, but not all of which were equality organisations) identified specific concerns relating to the substance of the proposed Regulation (although the numbers in each case were small). The most common related to the perceived lack of a clear definition of an equality outcome and the difference between the definition in the Regulations and other definitions used by the Scottish Government, local partners and other public bodies in Scotland. Other issues relating to the substance of the proposed Regulation included: the lack of a requirement to publish outcomes for all protected characteristics; a concern that the wording might imply that the listed authority has the discretion of whether to publish the equality outcomes which further the objectives of the Duty under s.149 of the Equality Act or not; and a concern about the inclusion of the word “relevant”. One respondent, who disagreed with the proposal, disagreed with an approach focusing on equality outcomes.

2.13 A small number of respondents, most of whom were covered by the Regulations (including some who disagreed with the proposal), raised issues or concerns with the potential impact of the proposal. These related to: the impact on action (e.g. the potential for inappropriate action; to detract from the “strategic message”; to hinder positive action or mainstreaming; or to detract from other work); the impact on resources (e.g. as a burden on administrative and other resources). A small number of respondents raised issues with the need for, effectiveness or relevance of the proposed change. Reasons cited, for example included: the other requirements of the General and Specific Duties; a perceived need to focus on working towards identified outcomes; or concerns about the effectiveness of the requirement in increasing transparency / accountability.

### ***Suggestions for the way forward – publishing reasons***

2.14 There were some overlaps between the issues or concerns raised and suggestions or perceived requirements for the way forward, identified by over half of

those who made comments and by respondents of different types. A common theme was the perceived need for guidance and support, while other broad themes were: the substance of the Regulation; the overall type of approach seen to be required; and some implementation issues.

2.15 A number of those who made suggestions (mostly, but not only those covered by the Regulations) made comments on guidance and support. Several suggested a general need for clear and detailed guidance, or a need for this to be “timely”. The largest number of comments focused upon issues perceived to be required in guidance, and these included: definition of an equality outcome (the most common suggestion); setting and measuring equality outcomes; evidence requirements and acceptable reasons; and how to engage with and involve groups, including co-production methods. One respondent stated that the guidance should highlight the need to consider issues relating to refugees and asylum seekers, as they are not protected characteristics under the Equality Act. A small number of respondents identified other support requirements, such as capacity building for equality groups; and support from the Equality and Human Rights Commission (EHRC).

2.16 A number of suggestions were made in relation to the specific substance of the Regulation. Some of these (identified particularly, but not only, by equality organisations) related to issues which respondents believed should be required for inclusion for publication, such as: the decision process; the nature of evidence; involvement of persons with relevant protected characteristics; whether those involved agree with the published reasons; consideration of multi-factorial dimensions of equality and personal characteristics; an action plan to address issues in the future; target dates; steps to achieve outcomes; and measurement of progress. One health respondent suggested a need for consideration of both workforce and service delivery issues in equality outcomes.

2.17 Other views expressed (by small numbers of respondents in each case, and particularly those from equality organisations) were that: their preference would be for a requirement that public authorities set outcomes covering all protected characteristics; there should be a requirement to work jointly with equality groups; and those with (or representing those with) relevant protected characteristics should be able to consider the evidence before outcomes are finalised. One local authority respondent stated that the proposal should be “repackaged” with a more positive emphasis on outcomes being based on good information, local evidence and consultation. One respondent (who disagreed with the proposal) suggested that there should be a requirement on public bodies to demonstrate how they take account of each characteristic in mainstreamed activity. A small number of issues for clarification were also identified by respondents covered by the Regulations, including: the publication requirements (extent and mechanisms); and what would constitute “reasonable steps”. A few wording amendments were also suggested, and one equality organisation respondent expressed the view that outcomes should be defined in the Regulations.

2.18 Comments were also made on the type of overall approach required to support the proposal, and some respondents stressed a need for: a proportionate approach (the most frequent suggestion and made by organisations covered by the Regulations); flexibility; an evidence base; meaningful engagement / involvement (e.g. of equality groups, representatives and trade unions); and co-production (with

these suggestions made generally, but not only by equality organisations); and reporting in, or alongside, the authority’s structures.

2.19 In terms of implementation issues, suggestions were made about the need for: data and information sharing; engagement; scrutiny of published reasons; a mechanism to challenge decisions (e.g. without going to court); and resources and support. A small number of local authority respondents stated that it would be beneficial to align equality outcomes to other outcomes, and one equality organisation stated that outcomes for all other protected characteristics should be gendered.

### **Publication of the results of Equality Impact Assessment**

2.20 The revised proposals involve the addition of a duty on authorities to publish the results of Equality Impact Assessment (EQIAs). Question 2 asked:

*“Do you agree that a public authority should publish the results of equality impact assessment?”*

**Table 3. Responses to yes/no/don’t know element of Question 2**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 117         | 84                   | 90                                 |
| No           | 10          | 7                    | 8                                  |
| Don't know   | 3           | 2                    | 2                                  |
| Not answered | 10          | 7                    |                                    |
| Total        | 140         |                      |                                    |

2.21 This question was addressed by 133 respondents (95%) and almost all of these (130) addressed the “yes”, “no” or “don’t know” element. There was a high level of agreement with the proposal, both among respondents covered and not covered by the Regulations. Of those who addressed this element of the question, a total of 90% indicated “yes”, while 8% stated “no” (over half of which were from the education sector, although a variety of reasons were given for their views) and 2% “don’t know”. Almost all of those who answered “no” or “don’t know” were from organisations covered by the Regulations. A small number of respondents (6) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that 4 agreed with the proposal, at least in principle, 1 disagreed and 1 made comments from which their overall view could not be inferred.

2.22 A large number (90%) made additional comments, again of three main types: perceived benefits or general support (the most common theme); issues or concerns (the least common); and suggestions or perceived requirements for the way forward.

### ***Perceived benefits of publishing results of EQIAs***

2.23 Around three quarters of those who made comments identified perceived benefits of, or expressed general support for publishing the results. These included general expressions of support, and more specific comments, within which the most

common themes identified related to a perceived positive impact on: the nature of the overall approach / process of the public authority and aspects of practice; equality; and groups and the community.

2.24 Among the general expressions of support, comments included respondents expressing their overall agreement; identifying publication of EQIAs as part of the organisation's current approach (a point made particularly by organisations covered by the Regulations); or identifying the overall importance of this (a point made particularly by some equality organisation and trade union / professional bodies respondents). A small number (of equality organisation and individual respondents) identified specific problematic aspects of the current situation which the requirement could address (e.g. a lack of EQIAs; delays in publication; or the persistence of discrimination).

2.25 A number of respondents of different types commented on the perceived positive impact of this proposal upon the overall approach / process of a public authority, particularly in terms of transparency and accountability, or stressed the importance of these issues. It was also suggested that it could improve: scrutiny; consistency; information sharing; decision making; responsiveness to needs; and quality assurance. A small number of respondents (mostly covered by the Regulations) expressed the view that it would be consistent with Freedom of Information (FOI) legislation, may reduce the number of FOI requests, or assist with responding to these. A few respondents identified a positive impact on staff / partners.

2.26 A number of respondents of different types who highlighted benefits identified a positive impact of the proposal on equality, particularly the performance of the General Duty (an issue raised particularly by organisations covered by this). It was suggested that active consideration of the likely impact of policies, procedures and practices on people with protected characteristics, informed by evidence, is inherent to having "due regard" to meeting the General Duty. It was also seen to be a means of evidencing progress and commitment to this work. Other perceived types of impact on equality were that the proposal would: ensure an emphasis on equality issues; enhance and raise the profile of EQIAs; enable benchmarking; identify gaps; prompt action; promote change; assist mainstreaming; and promote good practice.

2.27 A number of respondents (including some from equality organisations and trade unions / professional bodies, as well as from organisations covered by the Regulations) also identified a positive impact on other interested parties, such as: people with protected characteristics; equality organisations; staff associations; and others in the community. This included issues such as, for example: assurance that equality has been taken into account; improved information and awareness of processes, policy decisions and services; increased confidence and reduced scepticism; more information about the outcome of participation / involvement; opportunity for scrutiny and challenge; and increased likelihood of future engagement and involvement.

### ***Issues or concerns raised – publication of results of EQIAs***

2.28 A smaller proportion of respondents (around a fifth of those who made comments) identified perceived drawbacks or issues for consideration relating to this

proposal. These comments were made by a mix of those who agreed with the proposal, and some who did not, or stated “don’t know” or did not tick a box. Most were made by organisations covered by the Duty, and themes on which comments were made related to: the nature of EQIAs and evidence gathering; demands of the proposal; the substance of the proposal / Regulation; and the perceived need for, or effectiveness of the proposal.

2.29 The most common concerns (raised largely by respondents who supported the proposal) related to the nature of EQIAs or to evidence gathering. These included: the sensitive nature of some information (personally or commercially) and its potential unsuitability for publication; the timing and potential volume of publication requirements; the lack of quality standards for EQIAs; data collection problems; and limitations to data.

2.30 Comments on the demands of the proposal were made largely (but not only) by respondents who disagreed with it, or did not express a definitive view. These included that: the proposal would have general resource implications; involve administrative time and work; have cost implications; place an added burden on authorities; and that these resources could be better targeted.

2.31 A small number of comments were made on the substance of the proposal, including the wording (e.g. the subjectivity of “reasonable” in relation to the time period); and the suggestion by one respondent that it might conflict with the principles of proportionality and flexibility and would be unlikely to “embed” equality. A small number of respondents (none of whom expressed agreement with the proposal) raised questions about the need for, or effectiveness of the proposal. Comments included: that EQIAs are already publicly available on request; that the proposal would lead to process-driven activity which may not have increased impact; and that it could deter carrying out EQIAs in some situations.

### ***Suggestions for the way forward – publication of results of EQIAs***

2.32 Over half of the respondents who made comments identified suggestions or requirements for the way forward, and these were made by various respondents with differing views of the proposal overall and from different types of respondents. The most common suggestions related to the nature and means of publication, or other aspects of the substance of the Regulation. A further group of comments focused on the perceived need for, or content of guidance. A further issue on which comments were made was the overall type of approach seen to be required. A small number of additional observations were also made.

2.33 In terms of the nature and means of publication, several respondents of a range of types provided views of issues which should be included in the material published. Suggestions included: the purpose of the proposed policy or practice; the evidence considered and nature of assessment; the involvement of stakeholders; the anticipated impact; evidence of changes or action taken; actions planned; and plans for monitoring / review.

2.34 Several commented on the means of publishing, and several suggested a need for clarification of what to publish. A small number, for example, suggested that all assessments should be published in draft and fully consulted on, or made available

unpublished, then a final version published. A small number of others suggested that they should be published when approved, while it was also suggested that they should be published within a short time of completion. Another respondent, however, stated that there should not be “episodic” publication of the results.

2.35 A range of views were expressed about whether assessments should be published: in full; in summary form; as a list; in a single report; within another report; or in a form to be determined by the public authority. One respondent suggested that there should be more focus in the Duty on a “targeted” approach to EQIA, with those relevant being on open view. A small number of respondents suggested that there should be exemptions for some restricted policies and practices. Two suggested that follow-up reports should be published. A small number (who disagreed with the proposal or stated “don’t know”) stated that publication should be an option, not a requirement (e.g. with a requirement to make them available on request). It was also suggested that the required approach should be made explicit.

2.36 A number of respondents made suggestions about the nature of the published information. Many of these comments related to the need for it to be accessible, (an issue raised frequently, but not only by equality organisations) and, in the view of some, for this to be expressly stated. There was seen to be a need for the information to be: in a range of formats; easily located at a range of outlets; up to date; in plain language; using appropriate text style and formatting; concise; and disseminated to relevant stakeholders. It was also suggested that published information should protect confidentiality. In terms of other aspects of the substance of the Regulation, other suggestions included: that the EQIA Regulation should specifically include reference to key policies and procedures that affect service users; and a proposed wording amendment. It was also suggested that a pro forma / template for EQIAs could be issued.

2.37 A number of respondents (mostly, but not only those covered by the Regulations) commented on the need for, or content of guidance or the provision of other support. Most of the comments identified issues for inclusion in guidance, such as: the EQIA process; the application of the “standard” for assessment; types / formats and content of publishing that would satisfy the requirement (see above); what is meant by “results”; clarification of the notion of policy (either in the guidance or Regulations); how to resolve complexities relating to the timing of publication; how to translate the requirement into practice (with case studies suggested); and the need to consider issues relating to asylum seekers and refugees (raised by one of the equality organisations).

2.38 Several respondents (particularly, but not only equality organisations) identified the overall type of approach required, and this included a perceived need for: proportionality; relevance (i.e. that the content of the assessment be confined to an analysis of equality issues and the impact in relation to the General Duty); and the inclusion of communities in the process. Other suggestions included: a need for benchmarking; sharing lessons learned; and taking action on the results of assessments. One individual respondent suggested a wording addition to Regulation 4, to require details of the progress that the authority has made in using the outcomes from impact assessments to assist in performing the General Duty.

## Evidence from equality groups

2.39 The revised proposals involve making explicit that an authority must consider relevant evidence received from equality groups. Question 3 asked:

*“Do you 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?”*

**Table 4. Responses to yes/no/don’t know element of Question 3**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 123         | 88                   | 94                                 |
| No           | 5           | 4                    | 4                                  |
| Don't know   | 3           | 2                    | 2                                  |
| Not answered | 9           | 6                    |                                    |
| Total        | 140         |                      |                                    |

2.40 This question was addressed by 133 respondents (95%) and almost all of these (131) answered the “yes”, “no” or “don’t know” element. There was a high level of agreement with the proposal both among respondents covered and not covered by the Regulations, with 94% of those who addressed this element indicating “yes”, 4% “no” and 2% “don’t know”. Almost all of the small number who answered “no” or “don’t know” were from organisations covered by the Regulations. A small number of respondents (5) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that 3 agreed with the proposal, at least in principle, and 2 made comments from which their overall view could not be inferred.

2.41 A large number of respondents (89%) made additional comments at this question, along with a few made elsewhere. As at previous questions, these were grouped broadly into perceived benefits or general support; issues or concerns; and suggestions or perceived requirements for the way forward. Similar proportions identified benefits and suggestions, and a smaller number identified issues or concerns.

### ***Perceived benefits of considering relevant evidence from equality groups***

2.42 Around two thirds of those who made additional comments, including respondents of different types, identified perceived benefits of this proposal or expressed general support. As at previous questions, some expressed their overall agreement with the changes, while others identified more specific benefits. Among the latter, the most common themes were: the impact on the overall approach and process in public authorities; and the impact on equality. Additional benefits identified

related to the perceived positive impact on groups and the community; and on services.

2.43 Where respondents expressed overall agreement, the types of comments included: a number of respondents stated that they agreed, agreed strongly, or welcomed this; and small numbers who stressed the importance of this, stated that they agreed subject to other comments, or specifically welcomed the requirement to pay due regard to the findings of such assessments. A few stated that it was consistent with their own principles or practice, and a few highlighted current problems, such as a lack of understanding on the part of policy makers of issues for people with protected characteristics.

2.44 As noted, a number of the comments focused on the impact of the proposal on the overall approach and process in public authorities, with comments made by respondents of a range of different types. Benefits highlighted included, for example: using the experience and expertise of individuals with protected characteristics, as well as equality organisations; identifying local issues; a more robust, evidence-based approach with a range of sources (raised particularly by several organisations covered by the Regulations); the need for higher quality evidence (raised particularly by a small number of trade unions / professional bodies); better consideration of the evidence; fewer gaps in evidence; well-informed and improved decision making; and better assessments overall. A small number of respondents identified a positive impact on transparency and accountability or on general good practice. A few suggested that the proposal was consistent with issues raised in the Christie Commission report<sup>14</sup>.

2.45 A further common issue raised in terms of perceived benefits, again by a number of respondents of different types, was that the proposal would have a positive impact on equality, particularly in terms of the impact on EQIAs, which a number of respondents, including some local authorities, “other” public bodies, trade unions / professional bodies and equality organisations stated would be enhanced, legitimised, more robust and more meaningful. A further suggestion was that it would contribute to meeting the General Duty and help demonstrate this. It was also suggested that it would help to: identify issues and gaps; prevent discrimination; improve consistency across protected characteristics; increase commitment to the agreed policy / practice; and have a positive impact on mainstreaming.

2.46 A small number of respondents of different types highlighted the positive impact of this proposal on groups and the community, in terms of: increased involvement and engagement; increased involvement in developments; and better relationships. A similar small number (particularly, but not only, equality organisations) identified a positive impact on services / provision, in terms of: general improvements; removal of barriers / promotion of inclusive services; responsiveness to needs; and cost effectiveness.

### ***Issues or concerns raised – evidence from equality groups***

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<sup>14</sup> Public Services Commission (2011) *Commission on the Future Delivery of Public Services* Edinburgh: Scottish Government

2.47 Around a third of those who made comments (including respondents with differing views of the proposal overall) identified issues or concerns with the proposal. These were most commonly, although not only made by those covered by the Regulations. The most common issues or concerns raised related to resources and the collection of evidence and data issues. Other themes, identified by small numbers in each case, included: the substance of the Regulation; the implications for other work; and the perceived relevance of, or need for, the Regulation.

2.48 Several respondents (generally, but not only, those who supported the proposal and would be covered by the Regulations) raised issues or concerns about resources. These included general concerns about limited funding for the work, or stretched resources in the current climate, as well as concerns about capacity issues (the most common theme relating to resources, and raised by several respondents, from local authorities and other categories). It was suggested, for example, that the capacity for community engagement does not always exist, and that there is a danger of “over-consultation” with small groups. A small number of respondents suggested implications for administration and other resources.

2.49 Several respondents raised issues or concerns about evidence-gathering and data (again mostly organisations covered by the Regulations), the most common of which related to perceived challenges in undertaking meaningful engagement with, or involvement of people with protected characteristics. Within this, the issue of “involvement fatigue” (described variously) was identified by several respondents (and relates to some points made above about resources). It was also suggested that it can be difficult to find groups to engage with (e.g. because of local demography and / or geography). Other issues with data were also raised by organisations covered by the Regulations, including: general problems in obtaining evidence; current gaps in data (national and local); issues with the representativeness of data; and issues with protection of confidentiality and anonymity.

2.50 A small number of respondents identified issues relating to the clarity or wording of the Regulation. For example, it was suggested that the scope of the requirement is unclear, and that this could raise expectations that could not be met. It was also suggested by an equality organisation respondent that it is unclear whether an authority has to seek the information before submitting a report, or whether this is just considered good practice. It was also suggested by a trade union / professional body that the use of the word “relevant” in Regulation 5 (2) could cause confusion by introducing a “wide element of discretion prematurely”.

2.51 A small number of respondents (most of whom did not express agreement with the proposal and most of which were education respondents) identified negative implications for other work; questioned the impact of the proposal; or suggested that it would be burdensome. One suggested that managing the process could be problematic in a large public authority. A small number of respondents (all who disagreed with the proposal) stated that the Regulation is not required, as public bodies already have to do this, and legal remedies are in place where it does not happen.

### ***Suggestions for the way forward – evidence from equality groups***

2.52 Around two thirds of those who made comments, including respondents of different types, made suggestions or identified requirements for the way forward. The largest number focused on the nature, purpose and use of evidence. These issues were raised largely by equality organisations, trade unions / professional bodies and an individual respondent, but also by some of those covered by the Regulations. Other common themes were the nature of the approach required by public authorities, and the provision of guidance. A small number of other suggestions relating to the Regulation were made, and a few examples provided of practice considered relevant to this proposal.

2.53 Most of the suggestions about the inclusion of evidence from equality groups related to the means of engagement / involvement. Several respondents, particularly from equality organisations and trade unions / professional bodies, suggested who should be involved in providing evidence, and those identified included: people with protected characteristics; representatives of people with protected characteristics; organisations that work with, support and / or enable participation by people with protected characteristics; trade unions and staff associations. One respondent stated that where employees provide evidence for impact assessments, this should also be included. A few stressed a perceived need to avoid “selective” involvement or to ensure that evidence is representative. Several respondents commented on the importance of a range of sources of evidence, the need to include quantitative and qualitative material and the need for evidence to be up to date.

2.54 Comments were also made about the process of involvement. These included that it should be: “active”; timely; and allow a sufficient period for participation. A few respondents stated that people with protected characteristics should be involved at all stages of an impact assessment, or that a co-production approach should be adopted. Several respondents suggested mechanisms for involvement, most of which involved a specific focus on groups with protected characteristics. Suggestions included: generally developing means of gathering information; building on existing structures; outreach; provision of support; and working with local organisations of and for people with protected characteristics. One education respondent, however, argued that the Scottish Government should acknowledge that the use of mainstream consultation mechanisms is acceptable for EQIAs, with specific mechanisms targeted in response to issues arising. A local authority respondent stated that it must be understood that the Duty will not require “bespoke” consultation and engagement for each EQIA project. A small number of differing views were expressed about whether involvement should be facilitated by public authorities or groups in the community and representative bodies.

2.55 A small number of respondents (largely from equality organisations) suggested that there should be a duty to actively seek evidence from people with protected characteristics (although, conversely, a small number of respondents covered by the Regulations argued that relevant evidence should not be mandatory). A few respondents suggested that the scope of the proposed requirement should be more explicit (e.g. to include service users and others affected). It was also suggested that, where evidence relating to one or more characteristic is lacking, there should be a duty to take steps to gather additional evidence, or actions identified. A few equality organisation respondents stated that public authorities should be required to set out details of what the engagement process entailed. A small number of

suggestions were also made by respondents of different types about aspects of the use of evidence, including: that information and knowledge should be considered and shared; and whether the actual comments from the process should be published. One respondent stated that they would welcome further dialogue about aspects of the use of evidence.

2.56 A further broad theme on which a number of respondents made suggestions (particularly, but not only organisations covered by the Regulations) was the nature of the approach required by public authorities. The most common of these (raised largely by those covered by the Regulations) was the perceived need for proportionality (e.g. to the scale of issues; demographic issues; and the significance of policy or practice in terms of equality). It was also suggested that the approach should be relevant, and should recognise data issues. One local authority respondent stated that the notion of “relevant” evidence and “relevant” protected characteristics should be strengthened. An education respondent stated that it should be explicitly acknowledged that it is acceptable that impact assessments might not include evidence relating to every protected characteristic. Other suggestions from equality organisation respondents were that the approach should: involve partnership; involve co-production; and be based on empowerment. A small number of respondents stated that resources would be required to provide support and to enable capacity building.

2.57 A number of respondents (particularly, but not only by those covered by the Regulations) also made comments on guidance. A few stated the general need for this, but most identified issues for inclusion. The most common suggestions were for guidance on: evidence requirements / what constitutes relevant evidence; how relevance is determined (with two respondents, for example, suggesting that guidance should state that the organisation should determine this); what is “proportionate”; effective engagement; and requirements for this. A small number of respondents suggested additional forms of support, particularly the further development of a national and local evidence base, and access to this.

2.58 A small number of other suggestions relating to the Regulation were made. Several respondents (largely local authorities) suggested a need for greater clarity about compliance. A few respondents from trade unions / professional bodies stated that there should be an obligation to consult with trade unions when carrying out impact assessments. A small number of respondents suggested a need for clarification of other terms in the Regulation (e.g. “due regard”; and “reasonable”). A small number of wording suggestions were also made, including changes to: include a requirement to seek evidence; delete “relevant”; enable the involvement of those who represent the interests of those with protected characteristics; and require authorities to demonstrate having given priority to identifying and addressing the root causes of any inequalities identified.

### **Review of existing policies and practices**

2.59 The revised proposals involve the addition of a duty to make arrangements to review existing policies and practices. Question 4 asked:

*“Do you 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?"*

**Table 5. Responses to yes/no/don't know element of Question 4**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 119         | 85                   | 90                                 |
| No           | 12          | 9                    | 9                                  |
| Don't know   | 1           | 1                    | 1                                  |
| Not answered | 8           | 6                    |                                    |
| Total        | 140         |                      |                                    |

2.60 This question was addressed by 133 respondents (95%) and almost all of these (132) addressed the “yes”, “no” or “don’t know” element. There was a high level of agreement with the proposal 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. A total of 90% of those who addressed this element answered “yes”, while 12 respondents (9%) stated “no” (almost half of which were from the education sector) and 1% “don’t know”. A small number of respondents (3) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. It could be inferred that all 3 agreed with the proposal, at least in principle.

2.61 A large number of respondents (89%) made additional comments at this question, and a few additional comments were made elsewhere. As at previous questions, the broad themes identified in comments were: the perceived benefits and general support; issues and concerns; and suggestions or perceived requirements for the way forward (comprising the largest number of comments).

***Perceived benefits of review of existing policy and practice***

2.62 Over half of the respondents who made comments, including respondents of different types, highlighted perceived benefits or expressed general support. Common themes were expressions of overall support, and the identification of relevant aspects of current practice; and issues relating to the positive impact of the proposal upon equality (particularly meeting the General Duty and the general promotion of such work). Other themes (with comments from small numbers of respondents) were a perceived positive impact upon: the approach / process in public authorities; equality groups / community members; and services.

2.63 A number of respondents expressed their general agreement, stating that it is a welcome, or positive requirement or stressing the importance of this (e.g. particularly in relation to “newer” protected characteristics). Several, in expressing their general agreement, identified aspects of current practice which they felt supported this view. Such comments included, for example, the view that this is something that public authorities are already expected to do, or respondents noting that their own

organisation was doing so. Comments (made particularly, but not only by equality organisations) also included issues that were seen to need to be addressed (e.g. that existing or older policies or practices may never have been assessed, may not take equality issues fully into account, or may no longer be “fit for purpose” in relation to equality). Other comments identified potential consequences of not having such a requirement (e.g. that it could be some time until review took place or that policy and practice could have a discriminatory impact).

2.64 The other main type of perceived benefit identified at Question 4 was a positive impact on equality, particularly in relation to the General Duty. Comments (particularly, but not only from local authorities) included the relevance of existing policies and practices to the implementation of this, or the view that the proposal would help to ensure compliance. A few respondents stated that a lack of review could undermine the General Duty. Several respondents of different types also stated that the proposal could have a positive impact on the general prevention of discrimination and promotion of equalities work (and specific aspects of this), that it could encourage action and identify progress. A few suggested that it would promote and encourage mainstreaming.

2.65 A small number of respondents of different types highlighted a positive impact on the approach or process in public authorities, in terms of issues such as: engagement; consistency; transparency and accountability; an evidence-based approach; good practice and continuous improvement. Several respondents suggested that there would be a positive impact upon equality groups and other community members, in, for example: identifying issues impacting on them; and developing improved policies and services to meet their needs. A small number of respondents suggested a positive impact on the general delivery of services by public authorities.

### ***Issues or concerns raised – review of existing policy and practice***

2.66 Over a quarter of respondents identified issues and concerns with this proposal, almost all of which were organisations covered by the Regulations. Themes related to: perceived potential implications of implementation, particularly the impact on resources; concerns (expressed by most of those who disagreed with the proposal, including the small group of education respondents) about whether the proposal is necessary, proportionate or effective; and a small number of other concerns about its potential impact on other work.

2.67 A number of respondents (including some who agreed and most of those who disagreed with the proposal) raised issues relating to the implications of this proposal. The most common concerns related to resources or the volume of work, and was raised largely by those in support of the proposal. A small number of local authority respondents, for example, raised concerns about staffing levels, while issues were also raised about capacity, administrative requirements and other resources, which it was suggested could impact on the timescales for fulfilling this. A small number of respondents who disagreed with the proposal stated that it would be time-consuming and unnecessary. Other concerns included the views that it could: be onerous; be impractical; become a “tick box” exercise and reduce the quality of assessments; detract from development of new policies and practices; encourage inappropriate action; raise industrial relations problems; or hinder progress.

2.68 Several respondents (almost all of which were those who disagreed with the proposal) questioned the relevance, need for, or effectiveness of the proposal. Comments included that: review would take place anyway over time, or when an issue was raised; that the proposal was not considered to be proportionate or realistic; or that it may not have the desired impact.

### ***Suggestions for the way forward – review of existing policy and practice***

2.69 The largest number of comments made at Question 4 (by around two thirds of those who made comments, and by respondents of different types) were suggestions or perceived requirements for the way forward. The most common theme related to the means and nature of review, particularly: the perceived need for this to be proportionate and relevant; how to determine the nature, order and timing of review; the review processes to be employed; the need to involve others; and the timescale. Other themes included comments on issues for guidance or clarification and a small number of suggested changes to the nature or wording of the proposal.

2.70 A number of respondents (particularly, but not only, local authorities and “other” public bodies) stated that the requirement should be proportionate, relevant and reasonable (including, for some, the timescale). One local authority respondent specifically stated that there should be more emphasis on this, suggesting that it should be defined by the listed authority’s published equality outcomes. Several respondents of different types also identified a need to prioritise the review process, and some ways of undertaking this were suggested. These included: identifying policies and practices likely to have the greatest impact or risk; focusing on “key” policies; focusing on policies most likely to have an impact on fulfilling the General Duty; using the Equality and Human Rights Commission or other guidance; involving equality groups in identifying priorities; and screening all policies. One respondent from an equality organisation suggested taking a “first among equals” focus on disability issues. Another respondent stated that those affecting procurement decisions should also be revised on a planned basis, while a further respondent stated that the cumulative effect of different policies should be acknowledged. A small number of respondents suggested that review should only be required by exception, or be applicable only to policies likely to have an impact on people with protected characteristics.

2.71 One respondent stated that a requirement for initial EQIA screening was missing from the revised Regulations. A small number of equality organisations and individual respondents argued that authorities must use EQIAs for this process and these must be published (or the reasons for not doing so published, as with equality outcomes). One education respondent stated that public authorities should be required to demonstrate efficient systems and processes being in place, as well as outcomes and targets and progress.

2.72 Several respondents who would be covered by the Regulation stated that organisations’ existing review processes should be used for this, or that it should be integral to policy and practice development. A small number expressed the view that the exception would be where concerns raised or evidence suggested a need for assessment outwith this, or where other factors such as changes to legislation or strategy might impact. Such views (with some variations in emphasis) were expressed both by some respondents who answered “yes” and some who answered

“no” to the overall question. Several respondents covered by the Regulations also stated that public authorities should have the discretion to set priorities.

2.73 Several respondents (particularly equality organisations and trade unions / professional bodies) also argued that there is a need to involve others in the process of prioritisation and / or review. Suggestions included: groups of and for people with protected characteristics and organisations working with them; others with a clear understanding of equality issues; trade unions and workplace representatives; local communities; and other interested stakeholders.

2.74 A number of respondents (of different types but generally those in support of the proposal) made comments relating to the timescale. Suggestions included: to establish a timetable or timescale for completion (with the additional suggestion that this should be set out in the Regulation or clarified in guidance); that this should be “reasonable”; that it should fit with planned timescales (while allowing exceptions); and that, where there is no review date, this should be set. A small number of respondents from equality organisations and a local authority suggested that, in establishing the timescale, issues such as the size of organisation and number of policies should be taken into account.

2.75 As at previous questions, several respondents identified issues for inclusion in guidance or for further clarification in the Regulation, and these were: timescales (as noted above); arrangements needed; what would constitute a proportionate response; what “practices” means; the process of prioritisation; and the use of EQIAs in the process. In terms of other support, two respondents from “other” public bodies suggested that staff should be kept up to date with changes to equalities legislation.

2.76 Among the small number of other suggestions relating to the substance or wording of the Regulations made at Question 4 were: a change to the wording to refer to the need to not just avoid ‘detrimental effect’ but also to explore positive opportunities; the need for a consistent method; more flexible and pragmatic Regulations on EQIAs; consideration of whether to ask authorities to report completion to the Scottish Government; a requirement to publish details of the arrangements made; and better integration of Regulation 5(4) with the overall Regulation to impact assess.

### **Impact assessment where a policy or practice has no bearing on a public authority’s ability to fulfil the General Duty**

2.77 The revised proposals involve the addition of an element that impact assessment is not required when a policy or practice has no bearing on the General Duty. Question 5 asked:

*“Do you 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)?”*

**Table 6. Responses to yes/no/don't know element of Question 5**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 101         | 72                   | 80                                 |
| No           | 21          | 15                   | 17                                 |
| Don't know   | 5           | 4                    | 4                                  |
| Not answered | 13          | 9                    |                                    |
| Total        | 140         |                      |                                    |

2.78 This question was addressed by 132 respondents (94%) and almost all of these (127) addressed the “yes”, “no” or “don’t know” element. There was a high level of overall agreement, and 80% of those who addressed this element answered “yes”. Just under a fifth (17%) stated “no” and 4% “don’t know”. There was a high level of agreement from respondents covered by the Regulations (95% of whom answered “yes”), while the views of those not covered were more mixed, with more than a third (36%) who stated “no”. Overall, among the respondents who stated “no” the largest number were equality organisations, along with a small number of trade unions / professional bodies, and another respondent not covered by the Regulations. Only two organisations covered by the Regulations (both of which were health respondents) answered “no”.

2.79 A small number of respondents (7) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that 2 agreed with the proposal, at least in principle, 4 disagreed and 1 made comments from which their overall view could not be inferred.

2.80 A large number of respondents (83%) made additional comments at this question, and a few additional comments were made elsewhere. These again were of three main types: benefits or general support; issues and concerns; and suggestions or perceived requirements for the way forward, with the largest number of comments focusing on the latter.

***Perceived benefits – no impact assessment when no bearing***

2.81 Around half of those who provided additional comments (mostly, but not only respondents who answered “yes” and mostly, but not only organisations covered by the Regulations) identified benefits of this proposal, or expressed general support. The themes identified included: expressions of overall support; benefits relating to the nature of the approach; a perceived positive impact on resources; and a perceived positive impact on equality.

2.82 Again, several of these respondents highlighted their overall support (although a small number stated that this was qualified by, or conditional on addressing concerns or suggestions, which are presented below). A few stated that they believed that the situation might arise where a policy or practice has “no bearing”, and a few stated that the existing impact assessment process already provides for this approach.

2.83 The most common benefits identified in relation to this proposal related to the nature of the approach implied by the proposal. A number of respondents stated variously that it would be: proportionate; relevant; appropriate / sensible; helpful in prioritising; or that it would avoid a “tick box” approach. Comments also included: the perceived importance of the type of approach and the view that to expect otherwise would reduce EQIAs to a meaningless bureaucratic exercise, or would be unnecessary.

2.84 Linked to this, a further theme which emerged was that several respondents believed that the proposal would have a positive impact on resources (or at least avoid a negative impact). It was suggested, for example, that to carry out impact assessments where a policy or practice has no bearing on the General Duty would be wasteful of resources, would risk diluting these, or would be burdensome. A few respondents also stated that the proposal would allow resources to be directed to where they are most needed and where the impact is most important. One stated that it makes sound business sense.

2.85 A small number of respondents (but only one equality organisation) identified a positive impact on equality, particularly in terms of focusing work on key issues / areas which make a difference, and improving the quality of the impact assessments carried out. It was also suggested that it would help to prevent “over consultation” with organisations.

#### ***Issues or concerns raised – no impact assessment when no bearing***

2.86 Over a third of those who provided comments identified issues and concerns with the proposal. The majority, but not all of the respondents making these comments were equality organisations, and over half of all of the equality organisation respondents raised concerns with this proposal. Issues were also raised by respondents from trade unions / professional bodies; others not covered by the Regulations; education, health, local authority and “other” public bodies. Concerns were expressed in relation to the following themes: the potential negative impact on equalities issues; the potential negative impact on authorities’ processes; the substance of the Regulation; and a perceived lack of need for the proposal.

2.87 The most common concerns related to the possibility of excluding relevant policies and practices from impact assessment, and the potential impact on equalities issues. Several respondents, for example, argued that a situation where a policy or practice has no bearing on the General Duty would be difficult to envisage, or very rare. Comments included that: equalities issues are relevant to all functions of public authorities; most policies and practices have a bearing on the General Duty; and it is not always the case that policies and practices for technical and scientific matters will not have an impact on equality (with examples given). It was also suggested that the impact of such policies and practices may not be immediately apparent, and those making decisions may not recognise the impact, or may lack evidence. Other related comments included that: a policy or practice may lead to unintentional discrimination; a change may have an impact by default; and there may be “untested assumptions” and subjective decisions about whether policies and practices have a bearing. It was also suggested that the impact of a policy or practice cannot be known until impact assessment is carried out, and a few

respondents argued that mainstreaming requires all policy and practices to be assessed.

2.88 Several respondents also raised issues relating to the perceived impact of the proposal on public authorities' processes. It was suggested that it could create a "loophole"; provide a reason not to carry out impact assessment; or be used to avoid or exempt necessary impact assessments. It was also argued that, where public money has been spent, impact assessment should take place. Small numbers of respondents raised issues relating to a potential negative impact on: transparency; objectivity; and consistency. One stated that, in its current form, the proposed approach is not proportionate, targeted or cost effective.

2.89 Several respondents made general comments on the substance of the Regulation, and almost all of these related to a perceived lack of clarity or potential confusion in the current wording, particularly the ambiguity of "no bearing" and the lack of definition of this, and the lack of clarity / criteria relating to how the decision would be made. These issues are linked to other concerns noted above. One trade union / professional body respondent also stated that the discretion may leave public authorities open to challenge that they failed to assess the impact of a policy or practice which did transpire to have a bearing on the authority's ability to meet the General Duty. A small number of respondents argued that the proposal is unnecessary, and brings no additional value.

### ***Suggestions for the way forward – no impact assessment when no bearing***

2.90 The largest number of additional comments focused on suggestions or perceived requirements for the way forward. These were made by respondents of a range of types, and by a high proportion of local authority and equality organisation respondents. Common themes related to: the substance of the Regulation and the process of identifying policies and practices with "no bearing"; other perceived requirements for implementation; and issues for guidance.

2.91 In relation to comments on the substance of the Regulation and the process of identifying policies and practices with "no bearing", a number of these respondents suggested a need for some initial screening of all policies and practices to determine their relevance. It was suggested that this would: allow a public authority to demonstrate the structured assessment; provide a clear and consistent approach; and reduce the possibility of challenge; as well as that most authorities have already developed such an approach (e.g. assuming potential impact until demonstrated otherwise).

2.92 A small number of respondents suggested the removal of Clause 5 (5), with the additional suggestion (from a few of these) that issues of screening for relevance could be addressed in the Equality and Human Rights Commission's Code and non-statutory guidance.

2.93 Several respondents (largely, but not only from equality organisations) suggested that the reasons and evidence for not carrying out impact assessment (e.g. on existing or proposed policies and practices) should be recorded and / or published, with some additional suggestions made about what should be included

within this information. A few respondents suggested that it should be subject to scrutiny, tracking and review, or the need for mechanisms for challenge.

2.94 Amongst a small number of other suggestions about the substance of the Regulation and process of identification were: clearer definition / wording of the Regulation; the identification of a mechanism to agree exemptions (subject to agreement from local stakeholders and with a process of appeal); and the specific suggestion from one respondent that organisations should be required to demonstrate how their investment decisions facilitate or hinder compliance.

2.95 In terms of other perceived requirements for implementation, suggestions included comments on the means of screening or decision making. Some of these comments related to suggestions about the basis of the decision: e.g. the identification of policies and practices affecting people in any way; the use of evidence; inclusion of people with protected characteristics / other stakeholders; use of a checklist or a template. One local authority respondent suggested a further review of the EQIA specific duty to place more emphasis on an authority's published list of equality outcomes as the primary driver for EQIA activity. Some suggestions related to conditions for decision making, such as the need for: awareness and understanding of issues; common sense; flexibility for public authorities; and clear and objective standards.

2.96 A number of respondents (particularly from amongst those covered by the Regulations, but also some equality organisations) made comments about guidance, including the general need for clear, consistent and robust guidance and a Code of Practice. Most of the suggestions, however, focused on respondents identifying issues for inclusion in guidance. Most related to screening and how to determine relevance, an issue raised by local authorities and some others. Other suggestions for issues to cover in guidance included: what qualifies as "technical"; what to do if it is not considered necessary to do an impact assessment; and what falls into the categories of "policies and practices".

### **Summary: Findings – proposals relating to Regulations 3 and 5: equality outcomes; and assessment and review**

2.97 In summary, the main points relating to Section 2 are as follows:

- In relation to Question 1, there was a high level of agreement that if a public authority's equality outcomes do not cover all relevant protected characteristics, it should publish the reason(s) why, with 93% of respondents indicating "yes", and virtually no difference between those covered and not covered by the Regulations.
- In relation to Question 2, there was a high level of agreement that a public authority should publish the results of equality impact assessment, both among respondents covered and not covered by the Regulations. A total of 90% of respondents who addressed the yes/no element indicated "yes", while 8% stated "no" (over half of which were from the education sector).
- In relation to Question 3, there was a high level of agreement both among respondents covered and not covered by the Regulations 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. A total of 94% of respondents who addressed the yes/no element indicated “yes”, 4% “no” and 2% “don’t know”.

- In relation to Question 4, there was a high level of agreement 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, with 90% of respondents who addressed the yes/no element answering “yes”, 9% “no” and 1% “don’t know”. A high level of agreement was found across respondents, although the small number who disagreed were virtually all organisations covered by the Regulations.
- In relation to Question 5, there was a high level of agreement 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, and 80% of respondents who addressed the yes/no element answered “yes”. Just under a fifth (17%) stated “no” and 4% “don’t know”. There was a high level of agreement from respondents covered by the Regulations (and 95% stated “yes”), while the views of those not covered were more mixed, and more than a third (36%) stated “no”. Among the respondents who stated “no” the largest number were equality organisations.

## SECTION 3: FINDINGS – PROPOSALS RELATING TO EMPLOYMENT INFORMATION

3.1 This section presents the findings on proposals relating to employment information (covered by Regulations 6,7 and 8).

### Gathering information on protected characteristics of employees

3.2 The revised proposals involve making explicit that all authorities (with employees) subject to the Specific Duties must gather information across all relevant protected characteristics of employees. Question 6 asked:

*“Do you 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?”*

**Table 7. Responses to yes/no/don’t know element of Question 6**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 123         | 88                   | 96                                 |
| No           | 4           | 3                    | 3                                  |
| Don't know   | 1           | 1                    | 1                                  |
| Not answered | 12          | 9                    |                                    |
| Total        | 140         |                      |                                    |

3.3 This question was addressed by 133 respondents (95%), and almost all of these (128) addressed the “yes”, “no” or “don’t know” element. There was a high level of agreement, both among respondents covered by the Regulations and those not covered, and 96% of those who addressed this element stated “yes”. Only 4 (3%) stated “no” and 1 answered “don’t know”. A small number of respondents (6) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that 3 agreed with the proposal, at least in principle, and 3 made comments from which their overall view could not be inferred.

3.4 A large number of respondents (90%) made additional comments at this question, and a few additional comments were made elsewhere. These again focused on: perceived benefits of the proposal or general expressions of support; issues and concerns; and suggestions or requirements for the way forward, the latter being the most common theme.

### ***Perceived benefits of gathering information***

3.5 Around two thirds of respondents who made comments, including respondents of different types identified benefits of this proposal, or stated their support for it. Most of these comments either provided general support, or focused on the perceived impact on equality. A further theme (identified by a smaller number of respondents) related to benefits in terms of the impact on aspects of the approach / process in public authorities.

3.6 General expressions of support included a number of respondents who expressed agreement or strong agreement, or stated that this was “reasonable” or “sensible”. Several stated that they welcomed the proposal, or specific aspects of it (e.g. strengthening the Regulation; the extension of the Duty to gather information about employees to a broader range of indicators; the inclusion of all protected characteristics; the recognition of the need for sensitivity in collecting the data; and, for two respondents, the inclusion of the word “reasonable”, although others expressed disagreement with this). A small number of respondents from organisations covered by the Regulations stated that they already took the proposed approach, and could extend it to all protected characteristics. A small number identified problems with the current situation (e.g. a “two tier” system of equality groups; and the existence of barriers and discrimination). One respondent from a trade union / professional body identified that, as a result of forthcoming organisational changes, there would be a need for those compiling the information to gain a detailed understanding of the workforce.

3.7 A number of respondents identified benefits of the proposal in terms of the impact on equality. One of the most common ways in which this was seen to be the case was the view that it would provide evidence to support equalities work, measure progress, evaluate the impact of policies and practices, and demonstrate achievements (including to regulatory bodies). Linked to this, other common benefits identified were that it would: highlight barriers, gaps and discrimination in employment (including multiple discrimination); prevent discrimination; and prompt and support action to address this. Several respondents also stated that it would help to advance the General Duty, aid compliance with this, support impact assessment and demonstrate implementation of the General Duty. It was also stated that it would ensure that the whole employment cycle is addressed, and provide more meaningful information. For one organisation, it was suggested that it would provide them with service user information (with their service users being the employees of other public bodies).

3.8 Among the smaller number of comments about a perceived positive impact on aspects of the approach / process in public authorities were that it would: enable scrutiny; improve transparency and accountability; provide an evidence base; enable benchmarking; improve consistency; emphasise the importance of data collection; assist decision-making and enable appropriate use of resources.

### ***Issues or concerns raised – gathering information***

3.9 The smallest proportion of additional comments related to issues or concerns, and these were identified by around a third of respondents who made comments. These were raised by respondents of different types, and particularly, but not only, those covered by the Regulations. The main themes were: data collection and storage (the most common issue); aspects of the substance of the Regulation; and the perceived impact on practice.

3.10 The most common issues raised related to data collection and storage. Several respondents stated generally that gathering accurate and meaningful equality data is a challenge for public authorities or identified more specific perceived challenges in gathering data including: sensitivity of data relating to some protected characteristics (although it was suggested that this should not be seen as a reason not to try to

gather information); difficulties in gathering information from existing employees; reliance on voluntary disclosure (although the importance of protecting the right to choose not to disclose was also stressed); concerns among employees and unwillingness to disclose (particularly for some protected characteristics); and difficulties in gathering information about “development”.

3.11 A small number of respondents highlighted difficulties with the retention and use of information, including: data protection implications and confidentiality; robustness of the data where numbers are small; and the potential for unfair comparisons to be made between different public authorities. A few respondents stated that their support for the proposal was subject to particular conditions relating to data (e.g. that the information is kept securely, accessed and disposed of appropriately, and used to effect change and assist in the performance of the General Duty).

3.12 Several respondents raised issues or concerns with the substance of the Regulation. Among these were perceived gaps, such as: the lack of an explicit requirement to gather data on service users (an issue raised by a small number of respondents from education organisations); lack of reference to internal Human Resources activity; lack of mention of job applicants; and lack of a cross-reference to the publishing duty in Regulation 4. One respondent from a trade union / professional body stated that 6(1)(b) is ambiguous and that it is not clear exactly what information authorities are required to collate, nor how it will be gathered. It was also suggested that the timescale is inconsistent with other requirements (e.g. Regulation 8). A small number of wording issues were also raised, including that: “reasonable steps” is insufficient and open to interpretation; and that “development” is very wide and could pose problems for employers to monitor.

3.13 A small number of concerns were also highlighted by a few respondents relating to the perceived impact on practice. These included that: the effect may be to deter information gathering, detract from equality objectives or other work; there would be an increase in administration and bureaucracy; and the proposal would have cost and other resource implications. A small number of respondents questioned the effectiveness of the Regulation (e.g. in increasing accountability and transparency) or its relevance. A small number stated that the Regulation is not necessary (e.g. as it is already implicit in the General Duty).

### ***Suggestions for the way forward – gathering information***

3.14 The largest number of comments, made by respondents of different types, focused upon suggestions or perceived requirements for the way forward. Comments related to the following themes: the means of implementation; aspects of the substance of the Regulation; and guidance.

3.15 A number of respondents made comments on the means of implementation. Several, for example, expressed views that the emphasis should be on “reasonable” steps and relevant information, that it should respect employees’ right not to report, or that it should use existing arrangements. It was also suggested that the approach should be clear and proportionate and should take account of existing data gathering and reporting requirements. A small number of respondents of different types suggested the importance of undertaking some preparation / support work (e.g.

keeping staff informed and supported to understand the requirement; training for staff; work to ensure that employees are clear about why the information is required; wider awareness raising; and the development of a culture of trust, respect and accountability). It was also suggested that the Scottish Government should provide a clear lead. One equality organisation respondent suggested that unions should strengthen their monitoring and reporting of discrimination in the workforce. Another stated that they would not support the inclusion of information about development without further information / resources, and another that practical resources would be required for implementation.

3.16 Several respondents (particularly, but not only from equality organisations) made suggestions about types of data for collection, and issues for inclusion. In terms of types of data, suggestions included: quantitative and qualitative data; surveys; longitudinal data; and data to reflect the complexity of people's beliefs. Additional issues identified for inclusion in the data gathered included: those who "prefer not to answer" and nil responses; leavers, and reasons for leaving employment; applicants; those shortlisted; interviewees; appointees; those promoted; those changing positions; application of workforce practices; training; grievances; disciplinary procedures; individuals' refugee status; gaps between groups with different protected characteristics; and information broken down by other factors.

3.17 Comments were also made about the use of data, by respondents of different types, including that: the evidence should be embedded into employment policies and practices; the information should be published; confidentiality must be protected; authorities should have discretion about how to present the information; there should not be "league table" comparisons; and there should be guarantees about security of storage. One equality organisation respondent stated that public bodies should have a duty to explain what the information is being collected for and how it will be used. Another stated that plans for any corrective action should be made public. A few respondents (equality organisations and an individual) suggested the need for monitoring and enforcement of the Regulation. One respondent identified an example of practice which they stated could be shared, while another suggested the value of this type of dissemination of experience.

3.18 Some comments were made by respondents (particularly, but not only who were covered by the Regulations) about the timing for implementation. Suggestions included: the general view that a timeframe should be set, or that the timescale should be "reasonable" and sufficient notice provided. Specific suggestions included: a 2, 3 or 4 year timeframe (by different respondents); and some form of "staggered" approach to implementation, with requirements relating to specific protected characteristics being introduced over a number of years. A small number of respondents (particularly, but not only trade unions / professional bodies and equality organisations) also identified the need for involvement of specific organisations in the collection of data, the identification of aims and methods, and subsequent changes. Suggestions included trade unions, equality organisations, employee networks and other relevant stakeholders (e.g. organisation-specific).

3.19 A small number of additional changes or wording amendments were suggested. Several respondents (largely from equality organisations and trade unions / professional bodies) suggested that the word "reasonable" should be

removed, and the alternative “take all necessary steps” was also suggested. A smaller number of respondents suggested the removal of “relevant” or the replacement of “development” with more specific wording. It was also suggested that reference to the Regulation 4 publishing duty should be made in Regulation 6 and one equality organisation respondent suggested that there should be an annual requirement to publish. A further trade union / professional body respondent argued that there should be a threshold of 150 employees for this information.

3.20 Other suggestions included that: there should be a specific requirement to set employment targets and adopt positive action measures to counter under-representation in employment; reasons for any lack of success and plans for improvement to information collection should be provided; and that there should be explicit reference to the whole employment cycle. It was also stated that it should be made clear that there are circumstances in which an authority may legitimately withhold some data from publication. A small number of respondents stated that service users should be included in these Regulations. One respondent stated that the Duty should make reference to gathering information relevant to all public appointments, whether remunerated or not, and whether regulated or not.

3.21 A number of comments were made about guidance, particularly, but not only by those covered by the Regulations. These included the overall need for clear and appropriate guidance, and suggested issues for inclusion or further clarity. In relation to the latter, the issues highlighted for inclusion or clarity were: what constitutes reasonable steps; what information to gather; what methodology to use; terminologies and categories; what are “relevant” protected characteristics; what is “development”; what is “retention” and the implications of this data; how data should be recorded, stored, used and published; data protection issues; and generally translating the Regulation into practice. One respondent from an equality organisation suggested that guidance should emphasise that all of the information in the mainstreaming report should be able to be read on its own. A few respondents suggested that the Scottish Government should work with public authorities, equality groups and the Equality and Human Rights Commission to develop guidance. A small number suggested the development of a proforma or template, or the general provision of more support with implementation.

### **Use of employment information gathered**

3.22 The revised proposals involve making explicit that all authorities (with employees) subject to the Specific Duties must use the employment information gathered to assist progress on the General Duty. Question 7 asked:

*“Do you 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?”*

**Table 8. Responses to yes/no/don't know element of Question 7**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 122         | 87                   | 95                                 |
| No           | 5           | 4                    | 4                                  |
| Don't know   | 2           | 1                    | 2                                  |
| Not answered | 11          | 8                    |                                    |
| Total        | 140         |                      |                                    |

3.23 This question was addressed by 132 respondents (94%) and almost all of these (129) addressed the “yes”, “no” or “don’t know” element. There was a high level of agreement both among those covered by the Regulations and those not covered, and 95% of those who addressed this element stated “yes”. Only 5 (4%) stated “no” and 2 answered “don’t know”. Among the small number who stated “no” were 3 education respondents. A small number of respondents (3) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that all three agreed with the proposal, at least in principle.

3.24 A large number of respondents (86%) made additional comments at this question. Again, these identified: benefits of using the employment information gathered in this way; issues and concerns; and suggestions or perceived requirements for the way forward. Most of the comments focused on benefits or expressions of support, with few comments on issues and concerns; and relatively few on suggestions or requirements. Some mentioned previous comments at Question 6, which will not be reiterated here.

***Perceived benefits – use of employment information gathered***

3.25 Around three quarters of respondents who made comments identified benefits of, or support for this proposal. These were made by respondents of different types. Themes included: expressions of overall support; a perceived positive impact on equality; and a perceived positive impact on the approach / process within public authorities.

3.26 The largest number expressed their overall support, welcomed the proposal or made general comments about the value or importance of this. Several of these respondents expressed the view that this is an appropriate, logical and sensible use of the data, or that it constitutes good practice. Several also stated that this should be the reason for gathering the information, or that there is little point in collecting the data unless it is used to promote the General Duty and improve outcomes for equality groups. A small number of respondents made reference to aspects of the current situation which support the proposal (e.g. the existence of a “two tier” system of equalities; the lack of analysis and use of data in some cases; and, in some cases, positive or relevant practice already taking place).

3.27 Related to this, a further common theme was the perceived positive impact of the proposal on equality. This was identified particularly by equality organisations and local authorities, as well as some other respondents. The largest number of comments suggesting this type of impact focused on the perceived impact on the

General Duty. Comments included, for example, that the proposal is consistent with the requirements of the Duty (which covers public authorities as employers, service providers and influencers of relationships between people with different protected characteristics), or that the use of the information is necessary in order to address the Duty.

3.28 Closely linked to this, several respondents (particularly, but not only from equality organisations) argued that the proposal would promote action to identify and tackle discrimination and inequality in employment, by: highlighting any adverse / negative trends in the data; reflecting local circumstances (along with other equalities information); supporting impact assessment; informing improvement measures; assisting planning; and helping to target work. Comments also included that the proposal will help to assess the progress that public authorities make in relation to achieving positive outcomes, or that it will help demonstrate to employees and other stakeholders how the employer meets the General Duty. A small number also suggested that the proposal is consistent with mainstreaming equality, helping to embed this in workplace practice.

3.29 Several respondents identified a positive impact of this requirement on the approach / process within public authorities, in terms of: consistency; parity; a proportionate approach; transparency, accountability and scrutiny; an evidence-based approach; and improved involvement of people with protected characteristics and their organisations. A small number of respondents identified a positive impact on employees, in terms, for example, of improved engagement, the reassurance that the information will be used positively, and awareness of how the employer addresses the General Duty. A few respondents made reference to the proposal being a good use of resources, or making business sense (e.g. in terms of attracting and retaining a wide and diverse pool of applicants, and impacting on the local labour market). One local authority respondent stated that, if the data was not used for the purpose proposed, the authority could be in breach of the Data Protection Act.

### ***Issues or concerns – use of employment information gathered***

3.30 Around a fifth of respondents who made additional comments raised issues or concerns relating to using the employment information gathered. Almost all of these comments were made by respondents from organisations covered by the Regulations, and generally by respondents in support of the proposal. Most focused on the collection and use of data, although other themes identified were: the potential impact of the proposal on other issues; the effectiveness or need for this; and some other specific concerns.

3.31 In relation to data, a small number of respondents (particularly some local authorities), for example, stated that there are still challenges in the collection of such employment information (e.g. lack of standardisation; insufficient staff; definitional issues; and inadequate systems) and in the storage of this. A further data issue raised related to perceived gaps in the data, such as low self-disclosure rates and concerns about robustness. A few respondents also raised concerns about the use of data, such as difficulties of comparison, and presentation without contextual commentary.

3.32 Comments about the potential impact of the proposal on other issues, or the effectiveness or need for the proposal were made largely (but not only) by respondents who disagreed with the requirement. In terms of the impact on other issues, the concerns raised (by small numbers in each case) related to a potential negative impact on: the level of bureaucracy; resources (e.g. administration, time and other resources); staff perceptions; and other aspects of equalities work (e.g. discouraging information gathering, losing the focus on compliance with the General Duty, or leading to the adoption of “quotas”).

3.33 A small number of respondents questioned the effectiveness of the proposal (e.g. on accountability and transparency), or the relevance of the information gathered. A small number of respondents suggested that a specific Regulation is not required, either because it is already implicit in the General Duty, or because the respondent believed that it should be the responsibility of public authorities to decide how best to use the employment information they have gathered, without the need for a specific duty to ensure this.

3.34 A small number of other issues were raised. It was suggested, for example (as previously) that service users, and particularly students in the case of higher and further education, should be included. One individual respondent raised an issue with the use of the wording “should be required” at Question 7, stating that compliance with the Duty is one of the prime reasons for requesting personal information.

### ***Suggestions for the way forward – use of employment information gathered***

3.35 Around a third of respondents of different types who made comments identified suggestions or perceived requirements relating to using the information gathered to assist progress on the General Duty. The largest number of these comments focused on issues relating to the data and the use of data, although comments were also made about other aspects of implementation, and issues for inclusion in guidance.

3.36 In relation to data, suggestions were made about specific types of data for collection (covered at the previous question). Suggestions were also made about the use of data. These included that data collection should not be an end in itself, should be used in a relevant way, and should be analysed and used to inform: current and future workplace policies; strategic workforce planning; organisational restructuring; future positive action work; and equality objective setting. One respondent from an equality organisation suggested that the Regulation should be more meaningful than a requirement to “use” the data. It was also suggested by an education respondent that employment monitoring duties should require public authorities to take action on the evidence they collect to reduce inequality in the workplace. Other respondents stated that information gaps should be identified and used to inform further action / progress and that the information gathered should be considered alongside other data where appropriate.

3.37 Comments were also made on reporting and publication of the information. It was suggested, for example, that reporting of progress could include asking authorities what they have used employment data for in terms of change. A small number of respondents highlighted a perceived need for the information to be

publicly available, or made comments on issues for inclusion in published information. A small number stated that there is a need to capture or publish why any information which points to a need for remedial action is not acted on. A specific suggestion from an individual respondent was that the reports required under draft Regulation 4(2)(b) must include reference to gaps, shortfalls, or targets the authority has identified in its employment profile, to evidence meeting the General Duty. A small number of respondents suggested that the extent to which the information is taken into account, and the presentation of the information, should be matters for discretion by the public authority.

3.38 A small number of respondents (particularly, but not only from organisations covered by the Regulations) highlighted the need for care in evaluation, interpretation and presentation of the data. One individual respondent stated that, if an authority has gained private and confidential information about an employee other than directly from the employee concerned, that confidentiality should be protected. In terms of presentation of the data, the need to comply with data protection requirements and protect confidentiality was again stressed. As at Question 6, a few respondents specifically qualified their support for the proposal with requirements relating to the use of data, including the need for the information to be handled sensitively, kept securely, accessed and disposed of appropriately, and used to effect change.

3.39 A small number of comments were made about other aspects of implementation of the proposal, by a small number of respondents. It was suggested, for example, by a health respondent that this would be a long term process. One respondent stated that information should be gathered and published on an annual basis. Another suggested that it is important to ensure that all policies are fair to all employees. A further respondent stated that monitoring employees should not be the only measure of fostering good relations, with a perceived need for inclusive commissioning of services with voluntary sector providers. One local authority respondent stated that resources and system amendments will be required to implement the proposal. Another respondent argued that the threshold should be reintroduced.

3.40 Several respondents (particularly, but not only some respondents from local authorities and “other” public bodies), commented on issues for guidance or clarity. In terms of issues suggested for inclusion in the guidance, these were: what data is required to demonstrate this; how to collect and manage the information; how to use the data to assist progress; limitations to data; data protection; and the importance of positive action, setting equality targets and outcomes. In addition, a small number of issues for clarity were suggested, including: the employment information which should be collected and published; what exactly an authority is obliged to report upon; what is intended by “progress”; and whether or not the data would inform actions clearly.

3.41 A small number of comments were made on other forms of support that would be useful, with a small number of local authorities stating that some of the data issues would be best tackled through a national strategic approach. They expressed the view that the Scottish Government, supported by relevant strategic partners, should continue to consider ways of tackling these problems and take appropriate steps to ensure effective compliance with this requirement. A further respondent

from one of the “other” public bodies stated that there would be benefit in information sharing between public authorities.

### **Reporting on progress on gathering and using employment information**

3.42 The revised proposals involve making explicit that the information gathered should be reported. Question 8 asked:

*“Do you 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?”*

**Table 9. Responses to yes/no/don’t know element of Question 8**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 113         | 81                   | 87                                 |
| No           | 9           | 6                    | 7                                  |
| Don't know   | 8           | 6                    | 6                                  |
| Not answered | 10          | 7                    |                                    |
| Total        | 140         |                      |                                    |

3.43 This question was addressed by 133 respondents (95%) and almost all of these (130) addressed the “yes”, “no” or “don’t know” element. There was a high level of agreement both among respondents covered by the Regulations and those not covered, with 87% of those who addressed this element stating “yes”. Only 7% stated “no” and 6% answered “don’t know”. Around two thirds of those who stated “no” or “don’t know” were from organisations covered by the Regulations, and around a third were from respondents not covered. A small number of respondents (3) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that 2 disagreed with the proposal, or a specific aspect of this, while 1 made comments from which their overall view could not be inferred.

3.44 A large number of respondents (84%) made additional comments at this question. These focused on the benefits of this proposal and general expressions of support (the largest proportion), issues and concerns (a smaller proportion) and suggestions or perceived requirements for the way forward.

### ***Perceived benefits of reporting on progress with employment information***

3.45 The largest number of additional comments, made by respondents of different types, focused on perceived benefits, or general support for this proposal (around two thirds). Among these, the most common themes related to expressions of general agreement, or views that there would be a positive impact on equality. A number of respondents also identified a positive impact on the overall approach / process within public authorities, and a small number of respondents identified benefits relating to resources.

3.46 A number of respondents made general comments. These included stating that: they welcomed or supported the proposal; or that it would be useful, logical or appropriate to do this; or that it is important to report on the employment information gathered and the use of this. Some references were made to previous comments, which have already been included and will not be reiterated here. A small number of respondents from organisations covered by the Regulations stated that public bodies are already doing this, or expressed this view that the proposal is consistent with their current practice / commitment (although some added that it can be reinforced through the Specific Duties). A small number also stated specifically that it is sensible to include this within the mainstreaming report.

3.47 The most common benefits identified at Question 8 related to the perceived positive impact of the proposal on equality, raised particularly, but not only by equality organisations and local authorities. Several respondents highlighted the potential impact on mainstreaming. For example, comments included that this requirement was an important part of mainstreaming equalities, or would make action to mainstream equalities into the employment function more likely. A small number of local authority respondents also stated that it is in employment that inequalities are often most glaring. It was also suggested that the proposal would: demonstrate what is involved in mainstreaming; ensure that links can be made to the progress on actions and outcomes in the mainstreaming report; and help to monitor progress on mainstreaming.

3.48 A further perceived benefit in relation to equality was that the proposal would generally help to promote and target such work. Examples, from respondents of different types, included the views that it would be important in order to: raise awareness of the role of employers in promoting equality; give a high profile to equalities work; encourage the use of the information to advance equality; identify trends and concerns; prompt action; and identify good practice. It was also suggested that, in relation to equality in employment, the proposal would help to: benchmark achievements; review and analyse trends; and monitor, record and highlight progress or regress. Several respondents stated that the proposal would have a positive impact on addressing and demonstrating implementation of the General Duty. Other comments included that the proposal would prevent tokenism, prevent a hierarchy of equalities work and provide evidence of a commitment to equality.

3.49 A number of respondents of different types also made comments about the benefits of the proposal in terms of other aspects of a public authority's approach or process. The most common was the view that it would lead to greater transparency and openness and would allow interested parties to identify the position in relation to equality. Other perceived benefits relating to the approach or process included a positive impact upon: accountability; consistency and parity; engagement; consideration and interpretation of evidence; and the accessibility of information. A few respondents from organisations covered by the Regulations identified benefits relating to business, management or resource issues, stating that: it makes sound business sense; is easier to manage in one report; and ensures that the task is not too onerous.

### ***Issues or concerns raised – reporting on progress with employment information***

3.50 Around a fifth of respondents who made comments raised issues and concerns with this proposal. These were largely (although not only) drawn from respondents who disagreed with the proposal, or who stated “don’t know”, and were made by respondents of different types. Issues or concerns were raised about: reporting; data; resource implications and effectiveness; or specific wording in the Regulation.

3.51 In relation to reporting, comments included a perceived lack of clarity about: why this area of reporting would be included in the mainstreaming report; the nature and purpose of the mainstreaming report; and whether the data to be published should be a snapshot or rolling total. One respondent questioned whether the distinction between a biennial mainstreaming report and the proposed annual breakdown of information was intentional. A small number of respondents expressed doubts about including this information in the mainstreaming report, and one expressed disagreement with having a mainstreaming report and the compulsion to report on information gathering. A few respondents expressed concerns about the requirement for annual information.

3.52 A small number of respondents, from education, health and “other” public bodies, identified issues or concerns relating to data, including: perceived weaknesses or gaps in data; data collection issues; data protection; and concerns about interpretation of the data (e.g. that progress or lack of it may not indicate failure to meet the General Duty; and the potential for unfair comparison).

3.53 Two education respondents raised concerns relating to resource implications (e.g. increased administrative requirements; and a preference for targeting resources at analysis of evidence and implementation of action rather than report writing), or, in one case, a perception that the proposal would have limited effectiveness in increasing transparency and accountability.

3.54 In terms of wording, a small number of respondents (from the categories of trade union / professional bodies and “other” public bodies) identified a lack of clarity about the use of the term “progress” in the consultation document. It was suggested that it seems to mean different things at different questions without a full definition at each. In relation to Question 8 specifically, it was suggested that it was unclear whether the term referred to steps undertaken to try and capture the data, as well as the steps taken to address potential discriminatory practices.

### ***Suggestions for the way forward – reporting on progress with employment information***

3.55 Over half of the respondents (of different types) who made comments at this question identified suggestions or perceived requirements for the way forward (most, but not all of whom answered “yes” at this question). The largest number of suggestions related to reporting requirements, or the provision of guidance. Other themes (with smaller numbers of comments) related to data issues, and to other aspects of implementation.

3.56 In relation to reporting requirements, the most common suggestions related to timing issues, or to the nature of the report and issues for emphasis or inclusion. In terms of timing, a small number of respondents particularly, but not only from equality and education organisations, expressed the view that the information should be published on an annual basis (e.g. to: increase transparency; allow “timely” analysis of equality issues; provide a regular update for dissemination; enable assessment of the effectiveness of the Specific Duties; and identify action needed). Conversely, a small number of other respondents from organisations covered by the Regulations suggested that there should not be an annual requirement, or expressed a preference for a two year timescale (e.g. to allow better analysis of trends and progress over time; enable meaningful conclusions and improvement plans; and align with the mainstreaming report timescale).

3.57 A small number of additional suggestions were made relating to timescales. These included a perceived need for time to develop robust data systems (with one health respondent, for example, stating that a four year timeframe would allow this, while recognising that some authorities already have processes in place). It was also suggested that it would be helpful for public bodies to report in line with their usual business cycle, rather than waiting to report separately. Other suggestions were that current systems and mechanisms should be used to support the requirement and that reporting requirements should be kept to a minimum. One respondent raised a question about whether the report could be merged with another document, while another stated that existing duties to gather and report data should be acknowledged.

3.58 Several respondents made comments on the nature of the report, or suggested issues for emphasis or inclusion. In terms of the nature of the report, comments included that it should be: simple; evidence-based; accessible; and consistent (both across authorities and with existing reporting duties). A few respondents, largely from among those covered by the Regulations, stated that public bodies should have discretion to determine how and / or when the information is presented, and, as noted above, a few respondents stated that the information should not be included in the mainstreaming report. One respondent from an equality organisation suggested that the report should be able to stand alone. A small number of respondents suggested that public authorities should be asked to publish all material covered by the Regulations in their existing public performance reporting (e.g. in a discrete section) or in the same way as impact assessment. As noted, it was also suggested by a few respondents that public authorities should build this into their business cycles.

3.59 Several respondents suggested specific additional issues for inclusion in reporting, and these were: the information gathered and the reasons; contextual information (with one respondent, for example, suggesting that there needs to be an accepted means of comparing organisations’ workforce with the local labour market); analysis of available data; gaps in knowledge; and planned future actions. A small number of respondents suggested the inclusion in the mainstreaming report of service delivery as well as employment objectives and outcomes reporting. One health respondent suggested a change of wording to require to “report on the outcome as a result of gathering and using employment information”. As noted

above, there was also seen to be a need for clarity about some aspects of reporting, identified previously.

3.60 A small number of respondents made comments on data issues and some of these also related to issues for inclusion (in this case, types of data). Suggestions included: the number for whom no relevant data is held; headline data, key trends and changes; and a breakdown by characteristic (and covering all protected characteristics). One respondent stated that reporting should include information on other characteristics such as refugee status, while another argued that there should be specific reference to the gathering and use of information relevant to all public appointments, with information extended to include Board members.

3.61 A small number of comments were also made about data use, generally by organisations covered by the Regulations. Comments included: the importance of adhering to the Data Protection Act and protecting confidentiality in publishing employee information; the need to use data contextually; and appropriate data handling and use. It was also suggested that there should be proportionality in the amount of breakdown required, and that the local context must be factored in to any understanding of the data. A small number of comments were also made on other aspects of implementation. For example a few organisations suggested that they would be keen to assist in the monitoring of progress made in data collection methods. A small number stated that they would like to see information on how the Equality and Human Rights Commission would monitor this and / or take action should the situation not improve over a reasonable period of time, or to know what the repercussions would be for those who fail to report.

3.62 A number of respondents (largely, but not only respondents covered by the Regulations), raised issues relating to the provision of guidance, with some stating the need for this. Suggestions were also made about the nature of guidance, and several suggested common standards and styles and / or a reporting template. One suggested a minimum basic data set. Additional issues highlighted for inclusion in guidance or further clarity were: the nature, form and content of a mainstreaming report; what “mainstreaming” involves; the timing of reporting; data gathering and analysis; and how to use the information to make change. A few respondents identified other forms of support which would also be helpful, such as: a national review and report; data and support from equality bodies; Government leadership and resources and wider culture change in data collection.

### **Equal pay statements**

3.63 The revised proposals involve making explicit that the equal pay statement should extend beyond gender, to include disability and race. Question 9 asked:

*“Do you agree that authorities with more than 150 employees should publish an equal pay statement, the first covering gender and the second and subsequent statements covering gender, disability and race?”*

**Table 10. Responses to yes/no/don't know element of Question 9**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 103         | 74                   | 86                                 |
| No           | 12          | 9                    | 10                                 |
| Don't know   | 5           | 4                    | 4                                  |
| Not answered | 20          | 14                   |                                    |
| Total        | 140         |                      |                                    |

3.64 This question was addressed by 131 respondents (94%) and almost all of these (120) addressed the “yes”, “no” or “don’t know” element. There was a high level of agreement both among respondents covered by the Regulations and those not covered, with 86% of those who addressed this element stating “yes”. A total of 10% stated “no” and 4% answered “don’t know”. Around two thirds of those who stated “no” or “don’t know” were from organisations covered by the Regulations, and around a third were from respondents not covered. Several respondents (11) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that 5 agreed with the proposal, at least in principle, while, in the remainder of cases, their overall views could not be inferred.

3.65 A large number of respondents (82%) made additional comments at this question. Common themes were the identification of benefits or support; issues or concerns; and, most commonly, suggestions or perceived requirements for the way forward.

***Perceived benefits – inclusion of disability and race in equal pay statements***

3.66 Around half of respondents of different types who made additional comments identified perceived benefits of, or expressed general support for the proposal. General expressions of support were most common, but comments were also made on themes relating to: a perceived positive impact on equality; or on the approach / process in public authorities.

3.67 In terms of general expressions of support, a number of respondents welcomed the extension of the equal pay statement to include race and disability, or stated their agreement, or strong agreement with this. A small number specifically welcomed the recognition of the additional time needed to gather data relating to disability, race and pay or the phased approach. One trade union / professional body respondent expressed overall support for the principle of reporting on occupational segregation across different protected characteristics. Several respondents made comments on the existing situation. These included, for example the views that: there are existing pay gaps and employment discrimination affecting these groups, as well as multiple employment barriers for some (points made particularly, but not only by some equality organisations); relevant arrangements are likely to be in place already; and this is consistent with current work / commitments, good practice and previous legislative requirements (points made particularly, but not only, by organisations covered by the Regulations).

3.68 A further common theme (highlighted particularly, but not only by equality organisations) was that the proposal would have a perceived positive impact on equality, in a number of ways. These included that it would help to: identify pay gaps and issues that need to be addressed (on a regular basis), not only between women and men, but other protected characteristics; focus attention on these issues; promote work to improve pay equality; and develop good practice. It was also suggested that it would demonstrate progress made, as well as the implementation and monitoring of pertinent legislation and duties. A few respondents also stated that it would demonstrate a commitment to equal pay beyond gender.

3.69 A small number of respondents suggested a positive impact of this proposal on the approach / process of a public authority, in terms of ensuring transparency and accountability. One respondent stated that the proposal makes sound business sense.

### ***Issues or concerns raised - inclusion of disability and race in equal pay statements***

3.70 Over a third of the respondents of different types who made additional comments identified issues or concerns with the proposal, and the most common related to aspects of the substance of the Regulation. Other themes about which issues were raised (by smaller numbers) related to: data issues; demands of implementation; and doubts about the perceived need for, or effectiveness of the proposal.

3.71 In terms of the issues raised about the substance of the Regulation, several respondents raised concerns about the exclusion of other protected characteristics (although some of these respondents supported the proposal overall). Comments included a general concern that the Regulation is confined to three characteristics, as well as that there was a danger of a hierarchy between protected characteristics. A few local authorities stated that the impression given that groups with other protected characteristics (which are not included) do not experience a pay gap is “unfortunate”.

3.72 Several respondents (particularly, but not only from equality organisations and trade unions / professional bodies) also expressed concerns about the threshold for the requirement (e.g. that there should be a threshold at all; the view that the figure of 150 is too high; or, in one case “somewhat arbitrary”). It was suggested that equality should not be limited by the size of the public body, that many smaller public bodies would be excluded (and one respondent stated that a third would be exempt), and that they would have no impetus to improve standards. A small number of respondents stated that it is not clear who would be considered an “employee” for the purposes of the Regulation.

3.73 A small number of respondents expressed concerns about the timing, with suggestions that: the timeframe between first and second statements is too long; the intention to have two stages creates a hierarchy; the period anticipated between first and second statements is unclear; the date for the publication of pay gap information is unclear; and there are inconsistencies in timescales between the employment information requirements (Regulation 6) and the requirements relating to equal pay. A concern was also expressed that draft Regulation 8 could be interpreted as only

requiring public authorities to publish equal pay statements alone on ethnicity and disability, and not go on to publish pay gaps between those groups and others.

3.74 In terms of other themes among the issues and concerns raised, several respondents covered by the Regulations made comments on data (some of which have been discussed previously). Broadly, these included: data collection difficulties; gaps in information; weaknesses in the data (e.g. accuracy; robustness; representativeness; difficulties of interpretation and comparison); and data protection concerns. Two health respondents made comments on the demands or implications of implementation. Such concerns included that the extension of equal pay statements may: be onerous; increase the risk of litigation; and dilute the focus on gender pay inequality. A small number of respondents (largely, but not only those who answered “no” to this question) made comments on the perceived need for, or effectiveness of the proposal. It was suggested that: the requirement is unnecessary or that it would be ineffective (e.g. in terms of the ability of a public authority to bring about equal pay; or with the value of an equal pay statement alone being perceived as limited).

### ***Suggestions for the way forward - inclusion of disability and race in equal pay statements***

3.75 Around two thirds of respondents of different types identified suggestions or perceived requirements for the way forward, and most reflected the issues or concerns raised above. Themes included: the substance of the Regulation; the presentation of data; other aspects of implementation of the proposal; and issues relating to guidance.

3.76 In terms of the substance of the Regulation, several respondents of different types stated that they believed that equal pay statements should cover all protected characteristics (with varying suggestions about the timescale for inclusion). Among the reasons given for the perceived need for inclusion of the other protected characteristics were: a view that discrimination and pay inequality also existed for other equality groups; avoidance of a hierarchy; promotion of a single approach to equality; consistency with the collection and analysis of information on all protected characteristics from April 2012; and the provision of an impetus for work to address pay inequality. One respondent stated that, should the statement remain purely gender, disability and race, then transgender identity must be included in the gender statement.

3.77 Several (particularly, but not only respondents from equality organisations and trade unions / professional bodies) made comments on the threshold, with most suggesting that it should be removed, and a small number suggesting that it should be revised to a lower figure, or kept under review. Among the reasons for such views were that: capacity should not govern equality; there should be a single approach to equality; discrimination takes place in smaller authorities; smaller authorities employ people with protected characteristics and should be covered; and this would allow workforce information to be gathered across Scotland. A small number of respondents suggested phasing in an extension of the proposal to smaller authorities (e.g. on an incentivised voluntary basis, or over a specified time period). A few other specific amendments were suggested, either relating to the removal of reference to 150, or in order to clarify who is included as an “employee” (to cover, for example:

directly employed persons and / or persons otherwise charged with delivery of service of that listed authority; partnership bodies or arms length organisations involved in this; full and part time staff members; and temporary and / or sessional workers).

3.78 Some comments were made about timing, including that: this could be achieved in a 2 or 3 year timescale, or in a generally shorter timescale; interim reporting would be beneficial; the protected characteristics should be included from the first equal pay statement; or the information should be presented where readily available. One respondent from an equality organisation stated that Regulation 8(a) should specify a date (e.g. 31st December 2012 or 2013). A small number of respondents reiterated the proposed timescale, and a few suggested that the Regulation should not be as specific in relation to timing (e.g. requiring equal pay statements for characteristics other than gender after a reasonable amount of time). One local authority respondent stated that, if organisations are to be required to publish information on pay gaps by December 2012, this should be deferred for at least a year. A further specific suggestion was that it should be made explicit in Regulations 7 and 8 that pay gap information on the basis of ethnicity and disability will require to be published within 2 years of these equal pay statements.

3.79 A small number of other suggestions were made relating to the substance or wording of the Regulation. One education respondent, who disagreed with the proposal, stated that, at most, a general equal pay statement should be required. A suggestion by another education respondent was that it is more important that an authority set an equal pay outcome if it has a significant pay gap for a particular protected characteristic. A further education respondent expressed the view that, as equal pay is a specific term relating to women and men, it would be clearer to ask for a pay statement relating to race and disability in terms of occupational segregation.

3.80 Suggestions were also made about information that should be presented, and a few respondents believed that the nature of this should be made clear within the Regulation. Suggestions (made largely, but not only by equality organisations) for the types of information to be presented were: a wider range of indicators to help ensure that inequalities in specific areas of some organisations were not obscured by the use only of "headline" figures; information on horizontal and vertical occupational segregation; pay scales and comparison between groups; information on interaction between protected characteristics; and information on progress. One equality organisation respondent expressed a specific preference for the use of the mean. Another stated that information on disabled employees must be sufficiently specific (in terms of their impairment type) to ensure targeted and effective action. A few respondents suggested that there may be ways of reporting to avoid the identification of individuals, while one education respondent stated that, in relation to the statement covering disability and race, it should be acknowledged that broad figures could be provided to maintain anonymity. A further respondent stated that, while statements are required, data and information are not required.

3.81 Other suggestions about the presentation of information included a perceived need for: a narrative / commentary; SMART<sup>15</sup> objectives in relation to addressing pay gaps; data gathering; full analysis; the identification of action; and positive

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<sup>15</sup> Specific, Measureable, Achievable, Realistic, Time-bound.

action. Again, a small number suggested that such issues should be required or specified in the Regulation. Additional suggestions included the perceived need for: development of understanding of the reasons for data collection; sensitive interpretation of any data; a consistent approach; a fair and transparent methodology; a flexible methodology to factor in local structures and circumstances; and discretion for individual public authorities to determine the format and content of the statement.

3.82 Several respondents (generally, but not only from organisations covered by the Regulations) commented on other aspects of implementation of this Regulation. These included the perceived need for: other actions to tackle occupational segregation; the Scottish Government to publish plans to address the identification of a pay gap for other protected characteristics; and Scottish Ministers to release a statement demonstrating differences by equality group for remunerated and unremunerated Board positions by Chair and Member positions. Other suggestions were that: current systems and mechanisms should be used to support the requirement; all reports should be published; and action should be relevant and proportionate.

3.83 Several respondents (particularly, but not only from organisations covered by the Regulations) made suggestions about issues for inclusion in guidance, covering: how to address the Regulation generally; what to report on; data required; intersectionality and the interplay of factors; format and presentation of information; and protection of privacy. Additional issues for clarification from respondents of different types were highlighted as: how “150” should be defined (in terms of, for example, headcounts or full time equivalents); definition of “employee”; the inclusion of partnership bodies or arms length organisations in the quota; the definition of “statement”; the timescale required; how to assess the equal pay gap; requirements where staffing levels fluctuate; the reasons for the exclusion of other protected characteristics; and any plans to include these in the future. One local authority respondent stated that it should also be made clear that publishing information should not carry an expectation that this, in itself, will lead to the gap being reduced (given the influence of other factors).

### **Summary: Findings – proposals relating to employment information**

3.84 In summary, the main points relating to Section 3 are as follows:

- In relation to Question 6, there was a high level of agreement both among respondents covered by the Regulations and those not covered, 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. A total of 96% of respondents who addressed the yes/no element stated “yes”.
- In relation to Question 7, there was a high level of agreement both among those covered by the Regulations and those not covered, 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. A total of 95% of respondents who addressed the yes/no element stated “yes”.

- In relation to Question 8, there was a high level of agreement both among respondents covered by the Regulations and those not covered 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. A total of 87% of respondents who addressed the yes/no element stated “yes”, 7% stated “no” and 6% answered “don’t know”.
- In relation to Question 9, there was a high level of agreement both among respondents covered by the Regulations and those not covered that authorities with more than 150 employees should publish an equal pay statement, the first covering gender and the second and subsequent statements covering gender, disability and race. A total of 86% of respondents who addressed the yes/no element stated “yes”, while 10% stated “no” and 4% “don’t know”.
- Additional comments made at all of these questions focused on three main areas: perceived benefits or general support; issues or concerns with the proposal; and suggestions or perceived requirements for the way forward.

## SECTION 4: FINDINGS - PROPOSALS RELATING TO PUBLIC PROCUREMENT

4.1 This section deals with the findings on proposals relating to public procurement (covered in Regulation 9). The revised proposals involve specific procurement duties to make clear when and how a contracting authority should have due regard to the General Duty.

### Award criteria

4.2 Question 10 asked:

*“Do you 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?”*

**Table 11. Responses to yes/no/don’t know element of Question 10**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 109         | 78                   | 85                                 |
| No           | 9           | 6                    | 7                                  |
| Don't know   | 10          | 7                    | 8                                  |
| Not answered | 12          | 9                    |                                    |
| Total        | 140         |                      |                                    |

4.3 This question was addressed by 131 respondents (94%) and almost all of these (128) addressed the “yes”, “no” or “don’t know” element. There was a high level of agreement both among respondents covered by the Regulations and those not covered, with 85% of those who addressed this element stating “yes”. A total of 7% stated “no” and 8% answered “don’t know”. Around three quarters of those who stated “no” or “don’t know” were from organisations covered by the Regulations, and around a quarter were from respondents not covered. A small number of respondents (5) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that 3 agreed with the proposal, at least in principle, 1 disagreed, and in 1 case, their overall view could not be inferred.

4.4 A large number (82%) made additional comments at this question, and a few were made elsewhere. The comments again focused on perceived benefits of, or general support for the proposal (the largest number); issues or concerns (the smallest number); and suggestions or perceived requirements for the way forward.

### ***Perceived benefits – inclusion of considerations in award criteria***

4.5 Around two thirds of those who made additional comments, including respondents of different types, identified perceived benefits or highlighted support for this proposal. The most common involved expressions of general support, or a perceived positive impact on equality. Other themes included specific benefits

relating to the contracting relationship, and perceived benefits relating to the approach / process in public authorities (highlighted by a small number).

4.6 Among the general comments, a number welcomed the inclusion of the proposal, or restated their agreement (or strong agreement) with the question, sometimes stressing the importance of the proposed requirement, or the general value of its inclusion in the Regulations. The relevance of equality to procurement, and the opportunity to influence practice was also highlighted. Several respondents from organisations covered by the Regulations stated that they were already taking this type of action, expressed their commitment to this, or stated that the requirement was consistent with other work, good practice and wider developments. A small number of respondents also identified issues that require to be addressed in the current situation.

4.7 A further common theme was the identification of a positive impact on equality, particularly in terms of consistency with the General Duty (an issue raised particularly, but not only, by respondents from organisations covered by the Regulations), helping to ensure compliance with this and helping to ensure that it is not undermined. Other suggested benefits included: ensuring consideration of equality; avoiding discrimination; promoting equalities work (including in relation to employment of staff); promoting mainstreaming; demonstrating leadership; and using procurement as a lever for change. Several respondents, including a number from equality organisations, suggested the opportunity for impact through this Regulation, and the potential to extend the coverage of the General Duty to other sectors.

4.8 In terms of the contracting relationship, a small number of perceived benefits were also highlighted by respondents of different types. These included the prevention of negative or discriminatory practices, such as: the use of contracting to “dodge” Regulations; the exclusion of some groups from the process; an assumption that finance and procurement policy and practice take precedence over equality considerations; failure to deliver the General Duty; and undermining public authorities’ equalities work.

4.9 Other perceived benefits of the proposal included: generally making business sense; protecting authorities’ reputations; removing barriers to bidding and broadening opportunities; and widening supplier diversity. It was also suggested that it would help: ensure adherence to the same rules by contractors, including “arm’s length” organisations; develop understanding of equality standards among contractors; highlight the importance of procurement to equality issues; improve services; and develop contractors’ reputations. A few respondents (including some equality organisations and an individual respondent) stated that organisations supported with public funds should require high standards of equality practice. It was also suggested by a local authority respondent that “best value” involves taking account of the wider impact and benefits of a contract.

4.10 A small number of comments were made about perceived benefits relating to the overall approach / process in public authorities, and these related to: promoting transparency and accountability; and promoting overall good practice in procurement.

### ***Issues or concerns raised – inclusion of considerations in award criteria***

4.11 Around a quarter of respondents who made comments raised issues or concerns with this proposal. These were raised by respondents of different types, and related to: aspects of the substance of the proposal (the most common theme); a perceived lack of need for the proposal; and other aspects of its implementation.

4.12 The largest number of issues or concerns raised related to the substance of the requirement, and particularly concerns that Section 9(1) restricts “due regard” to consideration of agreements on the basis of an offer which is “most economically advantageous”. This issue was raised particularly by equality organisations and trade unions / professional bodies and comments included that this could: narrow the understanding of how equality and other considerations influence procurement; encourage listed authorities to discount equality and other social considerations in favour of a more cost-focused analysis; negate the added value of factors such as peer support and empowerment of minority groups; introduce further complexity to equalities and procurement; and undermine the need to embed equality in the procurement process. One health respondent also stated that “best value” is not always the same as “economically advantageous” and a few respondents stated that a range of factors should be taken into account.

4.13 A small number of issues were raised by organisations covered by the Regulations relating to a perceived lack of clarity with aspects of the Regulation. For example, it was suggested that it is not clear: what is required; how it would translate into practice; whether using the award criteria, as opposed to other methods, is the most appropriate; and whether it will require the contracting body to build in considerations relevant to the General Duty in award criteria for all contracts, or only those where potential impact is assessed to be relevant. One respondent from a trade union / professional body stated that the term “due regard” is not defined in the draft Regulations. One of the “other” public bodies stated that there is a lack of clarity about how to apply the rule of relevance and proportionality. One education respondent stated that the obligations are weakened without clarity for a public authority on what it “must” do in any given situation. The same respondent raised a specific question about how to treat contracts underway prior to April 2012, but not let until afterwards.

4.14 In terms of other aspects of the substance of the proposal, a small number of respondents expressed concerns about the stage at which consideration is required (i.e. after an offer has been assessed as most economically advantageous). One education respondent stated that creating a separate specific duty for procurement suggests that considering equality within this function is more important than in other functions, which, they argued, is not always the case.

4.15 A small number of respondents (generally, although not only those who disagreed with the proposal) suggested that this proposal is not required. One education respondent stated that they did not consider it necessary to create a separate specific duty as a public authority is required to give due regard to equality within all of its functions, including procurement. A small number of other respondents argued that there is not enough evidence of need for the Regulation, or that public authorities are already required to pay due regard to the General Duty in carrying out their procurement functions. One individual respondent (who agreed

with the proposal) stated that the argument used for inclusion of the Regulation was weak, and that the key issue is the role of procurement as a driver for change.

4.16 A small number of other concerns were raised about aspects of the implementation of the proposal. These included that this could: be difficult to evidence and monitor; introduce confusion where such compliance does not form part of the agreement in other areas of the UK; bring legal complications, including raising issues with other European legislation on procurement. It was also suggested that it could: introduce the expectation that the public sector will “police” the private sector in respect of equality; have a negative impact on carrying out core duties; introduce irrelevant factors; and be onerous for smaller suppliers and contracting authorities.

### ***Suggestions for the way forward – inclusion of considerations in award criteria***

4.17 More than half of the respondents who made comments identified suggestions or perceived requirements for the way forward in relation to this proposal. These related broadly to: aspects of the substance of the proposal; aspects of implementation of the Regulation; and the need for guidance. Again, some of these reflected the concerns identified previously, and they were made by respondents of different types.

4.18 In relation to aspects of the substance of the proposal, a small number of respondents (particularly from equality organisations) suggested the removal or rewording of “most economically advantageous”, or stated that there is a need to focus on added value and social responsibility as well as economics, for the reasons noted above.

4.19 Other suggestions were also made about the substance of the Regulation. For example, a few respondents from equality organisations stated that the requirement should apply to all procurement activity and at all stages, and one suggested that the contracting authority should be required to give due regard to whether the procurement process itself considers the needs of equality groups. One local authority stated that there would be benefits in having a pre-qualification requirement to meet the required equality standards before submitting a tender. One education respondent argued that the Regulation should only apply when contracting for services to be provided on behalf of the organisation, but not in procurement for other work, services or supplies.

4.20 Further suggestions, made by small numbers in each case, were that the Regulation should: be “more robust”; and highlight and reinforce the European Regulations that state organisations can and should apply preference to disabled people’s organisations in procurement. It was also suggested that “due regard” is not adequate, and that this must be mandatory and part of the contract. One respondent stated that they would have preferred the Duty in full, like the Welsh one, and another that there should be a more explicit requirement for contracting authorities to include equality related contract conditions. A small number of respondents suggested the inclusion of a clause, the use of appropriate clauses within European procurement Regulations, or the inclusion in all formal tender processes of a general undertaking to highlight the need to comply with relevant legislation (and explicitly the Equality Act 2010).

4.21 One education respondent stated that, if the aim is to build consideration of equality into procurement processes, the Scottish Government should consider placing duties on private sector providers directly. A small number of suggestions were also made about the approach in the Regulation, which stated that it should be: flexible in implementation; proportionate; compatible with European Union Public Procurement Rules; reasonable; measureable and monitored, with the findings reported and published. It was also stated that links could be made to the EQIA process. One respondent, however, stated explicitly that they would prefer to follow existing United Kingdom procurement requirements.

4.22 A small number of respondents sought additional clarification of specific issues. One questioned whether the substance of the contract should meet the contracting organisation's obligations of the General Duty, or whether the contracted organisation should uphold the spirit of the General Duty in the way it goes about its business (and how to evidence the latter). Another asked whether, where existing contracting arrangements are in place, there is scope for introduction of the additional review criteria to ensure performance in relation to the General Duty. Another stated that they would welcome discussion of the practical aspects of demonstrating that "due regard" has been taken, as well as an explicit description of what "considerations" should consist of in relation to the award criteria.

4.23 A number of respondents also made suggestions about aspects of the implementation of the Regulation. A small number of respondents (largely local authorities) suggested that the requirement implies at least a screening exercise to determine the relevance to equalities of the subject matter of the contract. It was also suggested that compliance with the General Duty should be one of a number of criteria. One respondent from an equality organisation stated that there is a need for a robust method of regulation (suggesting that details of this should be open to consultation) and another that a mechanism should be available to challenge whether "due regard" has been taken, that stops short of a legal challenge.

4.24 Suggestions were also made for wider developments, such as: a form of "kitemark" equality assurance; capacity building in the Black and Ethnic Minority (BME) sector; inclusion of the Regulations in wider relevant Regulations on public procurement. One respondent commented on the relevance of the role of a specific organisation. A few organisations covered by the Regulations suggested that the Regulation should not be implemented at present, but that the experience in Wales should be monitored, and that it may also be more appropriate to wait until the new procurement law is drafted.

4.25 A number of respondents (particularly, but not only from organisations covered by the Duty), as at previous questions, identified the need for guidance or issues to cover in this. These included: general procurement and equality; what contracting bodies can and must do (including non-local authority institutions); the level of consideration and detail of award criteria; implementation and monitoring; questions for screening / how to determine relevance; what is proportionate; the implications of European Union procurement law and other regulatory frameworks and practices; and reporting and publishing issues. A small number of comments were made on the nature of guidance (e.g. that it should contain examples, be clear and simple, and usable). Two respondents from "other" public bodies suggested that procurement should be considered in a separate paper with more specific guidance, clarification

and consultation for public authorities. A small number of respondents recommended that the Scottish Government work with public authorities and other relevant bodies to develop clear guidelines, or identified examples from their own field that could inform the way forward.

## Conditions

4.26 Question 11 asked:

*“Do you 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?”*

**Table 12. Responses to yes/no/don't know element of Question 11**

| Response     | Respondents | % of all respondents | % of respondents addressing y/n/dk |
|--------------|-------------|----------------------|------------------------------------|
| Yes          | 107         | 76                   | 87                                 |
| No           | 8           | 6                    | 7                                  |
| Don't know   | 8           | 6                    | 7                                  |
| Not answered | 17          | 12                   |                                    |
| Total        | 140         |                      |                                    |

4.27 This question was addressed by 129 respondents (92%) and almost all of these (123) addressed the “yes”, “no” or “don't know” element. There was a high level of agreement both among respondents covered by the Regulations and those not covered, and 87% of those who addressed this element stated “yes”. A total of 7% stated “no”, all of which were drawn from among those covered by the Regulations. A total of 7% answered “don't know”. A small number of respondents (6) did not tick any of the boxes provided, but made comments (here or elsewhere) relating directly to this question. Of these, it could be inferred that 3 agreed with the proposal, at least in principle, and in the other cases, the respondent's overall view could not be inferred.

4.28 A large number of respondents (79%) made additional comments at this question. Most related to perceived benefits or general support. A small number related to issues or concerns, and some focused on suggestions or perceived requirements for the way forward.

### ***Perceived benefits - inclusion of considerations in conditions***

4.29 Around three quarters of those who made comments, including respondents of different types, identified perceived benefits of this proposal, welcomed it, or expressed their general support. Some of the comments made reference to previous answers (particularly relating to Question 10) which will not be reiterated in detail here. Themes included: overall expressions of support; a perceived positive impact on equality; and business benefits.

4.30 While several respondents expressed general support, a small number of organisations covered by the Regulations also stated that they already take the proposed approach; that it is consistent with their commitment to fairness and transparency; or that it is consistent with other developments. A small number of respondents also identified the requirement as being particularly important given the increasing role of contracting out / procurement in the provision of public services, or perceived problems with the use of this.

4.31 A further common theme among perceived benefits and reasons for supporting the proposal related to the potential for a positive impact on equality. Most of these comments related to either the overall promotion of equality, or the specific implications for meeting the General Duty. It was suggested, for example, that the proposal would: provide a clear direction to procurement officers and ensure appropriate consideration of equality issues; prevent discrimination and encourage more equitable practices in other sectors; raise awareness of relevant issues; and promote positive change. Other issues highlighted were: the perceived relevance of equality issues to procurement; the opportunity to make change in this way; or the view that the proposal would highlight the importance of procurement to equality issues. A few also suggested that it would provide opportunities to additional potential contractors, or help to ensure equitable access to services. One respondent also identified benefits for the supplier (e.g. better attendance, productivity and retention of employees).

4.32 Several respondents made specific reference to addressing the General Duty, with suggestions including that the proposal would: support implementation of this; avoid a public authority circumventing their duties; ensure that contractors are aware of the requirements; and support mainstreaming of the General Duty. It was also stated that: it would be consistent with good practice and with other developments; that it would allow monitoring and corrective action; and that it would enable public authorities to hold suppliers to account.

4.33 A small number of respondents from organisations covered by the Regulations identified benefits in terms of good business sense and practice, and enabling maximum value to be extracted from the contract.

#### ***Issues or concerns raised - inclusion of considerations in conditions***

4.34 Around a tenth of respondents who made comments raised issues or concerns with this proposal. These comments were made largely by organisations covered by the Regulations, and two trade unions / professional bodies. A small number of these respondents made reference to their comments at Question 10 which will not be reiterated here. Other issues and concerns were raised by small numbers in each case (and mostly, but not only by respondents who disagreed with the proposal). These related to: aspects of the substance of the requirement; a perceived lack of need for the Regulation; implications of the requirement; and a small number of other specific concerns.

4.35 In terms of the substance of the requirement, it was suggested that there was a lack of clarity about what is required. In terms of the need for the Regulation, it was suggested that there is a lack of specific evidence that this is necessary. In terms of the implications of the requirement, concerns related to: the potential administrative

burden or unrealistic expectation on the contractor; the perceived onerous task for third sector bodies and small and medium enterprises (SMEs); difficulties of implementation and monitoring; and potential confusion in relation to other parts of the United Kingdom.

4.36 In terms of other issues and concerns, respondents from a small number of trade unions / professional bodies stated that current work has indicated wide variation in the information held by public authorities about contractors, and inconsistent use of a shared definition of Arms Length External Organisations. Another respondent from an equality organisation expressed a general concern that some public bodies appear to assume that competitive tendering is the most appropriate way to procure all services.

### ***Suggestions for the way forward - inclusion of considerations in conditions***

4.37 Around a third of respondents (including respondents of different types, most of whom agreed with the proposal) identified suggestions or perceived requirements for the way forward. Themes on which suggestions were made included: aspects of the substance of the proposal; aspects of implementation; and issues relating to guidance.

4.38 Several of the suggestions related to the substance of the proposal, including that the impact should be monitored and the findings published. It was also suggested that: contracts / Service Level Agreements should outline the clear expectations (or a condition) relating to delivery of the General Duty; and contractors should provide their policies and procedures to demonstrate compliance. One respondent stated that, where private contractors are contracted to provide public services or duties, a more specific obligation to comply with the General Duty should be considered by the contracting authority.

4.39 A small number of respondents suggested that all contracted work and services should be included, or that all contracts should stipulate that the service provided is equitable and reflects the target groups for which it is being procured. Suggestions were also made, however, that the proposed action should not be required where it is irrelevant (a suggestion made by a local authority), or that the Regulation should apply only when contracting for services to be provided on behalf of the organisation (a suggestion made by an education respondent). A small number of respondents stated that they would prefer this Regulation not to be implemented (e.g. until the revised Procurement Regulation is drafted, or to enable the experience in Wales to be monitored).

4.40 A small number of specific extensions to the Regulation were suggested. These included the suggestion by a local authority respondent that all sub contracted work (if applicable), must also be able to demonstrate due regard. Another respondent from an equality organisation suggested that partnerships such as Community Health and Care Partnerships, where non-public authority partners may be present, should be included where they deliver public services. Another respondent from an equality organisation suggested a penalty of being taken off the tendering list of providers for the future if suppliers do not adhere to the considerations, and a further respondent from an equality organisation suggested that there could be a requirement to consider how best to encourage under-represented firms to

participate in the public procurement process. It was also suggested that the contracting authority should be required to give due regard to whether the procurement process itself considers the needs of equality groups; and that contracting authorities should be required to include consideration of their general duties in all public procurement activities and in entering into relevant agreements. One respondent from an equality organisation stated that “due regard” is not adequate.

4.41 A small number of issues for clarification were raised, including how this would work in practice, and the perceived benefits. A small number of comments were made relating to other aspects of implementing or taking forward the Regulation. In terms of its overall nature, suggestions included that it should be: flexible; reasonable and proportionate. One respondent stated that it should recognise that authorities already try to ensure that services delivered by a contracted external service provided are consistent with the General Duty requirements. It was also suggested that performance of the General Duty should not be the only criteria when assessing performance of an agreement. One further suggestion made was that, as the Scottish Government considers its priorities in the proposed Sustainable Procurement Bill, there is an opportunity to integrate the considerations on equality.

4.42 Several respondents of different types stressed the general need for clear and usable guidance on procurement, or identified specific issues to cover in this. These included: generally, how to translate this into practice; options and powers; the definition of “due regard”; what “considerations” might mean in practice; how to feature equality requirements in service contracts (e.g. in terms and conditions); implementation of the Public Sector Equality Duty by partnerships; performance indicators, the need for monitoring and measurement and the ability to confirm compliance (taking account of the varying size of contracts); and the need for reporting. Two respondents provided examples from their own fields (education and health) of relevant work that they suggested could inform practice.

### **Summary: Findings – proposals relating to public procurement**

4.43 In summary, the main points relating to Section 4 are as follows:

- In relation to Question 10, there was a high level of agreement both among respondents covered by the Regulations and those not covered 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. A total of 85% of respondents who addressed the yes/no element stated “yes”, while a total of 7% stated “no” and 8% answered “don’t know”.
- In relation to Question 11, there was a high level of agreement both among respondents covered by the Regulations and those not covered, 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. A total of 87% of respondents who addressed the yes/no element stated “yes”,

while 7% stated “no” (all of which were drawn from among those covered by the Regulations).

- Additional comments made at both of these questions focused on three main areas: perceived benefits of the proposal and expressions of general support; issues or concerns with the proposal; and suggestions or perceived requirements for the way forward.

## **SECTION 5: FINDINGS – OTHER COMMENTS**

5.1 This section presents the findings relating to Question 12, in which respondents were invited to make any other comments on the proposed draft Regulations. Additionally, any other issues which were raised in responses (e.g. in covering letters etc.) have been included, and are summarised here.

### **Identification of other issues**

5.2 Question 12 asked:

*“Do you have any other comments on the proposed draft Regulations?”*

5.3 A total of 99 respondents (71%) made other comments at Question 12. Additionally 21 respondents made additional comments at other points in their response (with some overlaps with those who addressed Question 12). These comments have also been included here. The comments were made by respondents of different types, and covered similar broad themes to those identified at specific questions (perceived benefits or general support; issues or concerns; and suggestions or perceived requirements), with the addition of some comments on aspects of the consultation.

### ***Perceived benefits of the proposals***

5.4 Around half of those who made comments identified perceived benefits of the proposals overall or expressed general support. These comments covered similar issues to those identified at various points in the report, and were in three broad areas: 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.

5.5 Expressions of general support included several respondents who welcomed the revised document, or argued that it was better and / or stronger than the previous version (a point made by respondents who were not covered by the Regulations, including equality organisations, trade unions / professional bodies and individuals, as well as by respondents covered by the Regulations). Several respondents of different types stated that they particularly welcomed specific aspects of the revised Regulations, including: the additional detail; clarity; and streamlining of duties; as well as the focus on: impact assessment; outcomes; employment data; and mainstreaming. Other aspects which were identified as being welcomed were: the reporting and publication requirements; aspects of timescales; the criteria for inclusion of public bodies; the commitment to monitoring and amendment if required; and the proposal to produce guidance.

5.6 Several respondents made comments in support of the Scottish Government’s perceived commitment to equality, commitment to strengthening the draft Regulations, willingness to listen and to take on board many of the concerns raised previously. Several comments were made on the overall substance of the Regulations, including that they were: acceptable; proportionate; simplified; competent; fair; positive; coherent; balanced; and a useful framework for promoting

equality. Other comments made included an expressed commitment to implementation of the specific duties, or more generally to equality and human rights.

5.7 Several respondents both covered and not covered by the Regulations suggested that the proposals would have a positive impact on equality or argued that they would: promote and drive equalities work; support the implementation of the General Duty; embed equality within systems and practices; deliver better equalities outcomes; and support public authorities' work. It was also suggested that the proposals would have wider benefits in contributing to: taking forward the recommendations of the Christie Commission; building a fairer Scotland; and making equality a reality.

5.8 A further common perceived benefit of the proposals overall was that they would have a positive impact on the overall approach in public authorities, including in terms of: clarity; transparency; openness and accountability.

### ***Issues or concerns***

5.9 Around a third of those who made comments at Question 12, or additional comments elsewhere, raised issues or concerns. These were raised by respondents of different types, including those covered and not covered by the Regulations. The main themes which emerged related to aspects of the substance of the Regulations, and challenges with equality issues. A small number of additional comments were made about data issues or about the perceived impact / effectiveness of the proposals.

5.10 In terms of issues or concerns about particular aspects of the Regulations, several respondents expressed concerns about the coverage of the requirements. These included: the lack of inclusion of service users and those affected by policies and practices (raised particularly by a number of education respondents); perceived limitations in relation to some protected characteristics and the potential for a "two tier" approach; the absence of socio-economic status as a source of discrimination; exclusion of Housing Associations from the listed public bodies; inclusion of grant aided special schools; inclusion of Licensing Boards; and the lack of duties on private sector providers.

5.11 Other issues, concerns and challenges identified in relation to the overall substance of the Regulations (expressed by small numbers in each case) included: how public authorities who do not meet the Regulations will be held to account; reporting issues (e.g. that reports do not reflect the situation; or will divert resources to more process driven measures); and timescale issues (e.g. the absence of Specific Duties for over a year; specific timing issues for particular organisations; the impact of data limitations on meeting timescales; and dislocation of equality reporting from corporate reporting for some bodies). A small number of respondents also suggested that there was a lack of clarity of some issues (discussed earlier and below). One education respondent stated that the revised Regulations remove the pragmatism and flexibility offered by the previous proposals, while another respondent from an equality organisation highlighted perceived dangers of flexibility (e.g. as providing a means of avoiding some duties). One respondent reiterated concerns about the specific duty relating to EQIA (discussed earlier).

5.12 Several respondents (particularly equality organisations) identified continuing challenges and concerns with equality issues and equalities work. These included some concerns relating to equality legislation, such as: the adoption of policies and approaches that are tokenistic and ignored; the generation of regulatory and compliance-based activities; the promotion of expectations that concerns will be met; the lack of learning from reports on the impact of previous legislation; and the potential loss of focus on individual equality strands with the single Public Sector Equality Duty.

5.13 Other concerns and issues raised relating to equalities work included challenges in the overall context for this (e.g. the influence of senior decision makers; structural and social influences; continuing discrimination; and the lack of capacity and / or resources for equality organisations); and issues for specific groups. A few respondents suggested difficulties in translating policies into practice; and challenges with monitoring and data collection. One respondent expressed concern with the proposal for Scottish Ministers to set out priorities and the potential for implying a hierarchy. Another expressed regret that, at the time of the consultation, the Government had been unable to secure the publication of the Section 31 Inquiry by the Equality and Human Rights Commission (EHRC) into how government has been using impact assessments in forming policy.

5.14 A small number of respondents from organisations covered by the Regulations expressed concerns about the impact of the proposals (e.g. increased administration requirements; resources); or a perceived lack of effectiveness (e.g. on outcomes; increasing transparency; or accountability).

### ***Suggestions for the way forward***

5.15 Around two thirds of those who made additional comments identified suggestions or perceived requirements for the way forward. These were made by respondents of different types, and themes included: issues for emphasis or inclusion; aspects of the substance and implementation of the Regulations; the way forward for equalities work; and issues relating to guidance and other forms of support.

5.16 Issues suggested for emphasis or inclusion were: the importance of impact assessing financial decisions; reference to service users; a general requirement to assess whether people are treated fairly and according to facts and evidence; and a requirement for involvement and engagement. One respondent reiterated previous comments on the specific duty on Equality Impact Assessments (EQIAs). Other specific suggestions included: that the Duty on Scottish Ministers should be extended to explicitly refer to their obligation to report on equality outcomes in respect of all Ministerial Public Appointments; that Education Scotland be listed specifically in Schedule 19; and that there should be additional emphasis on the need for public authorities to identify where new policies might be required. A small number of specific comments / suggestions were also made about Regulations 4, 10 and 11.

5.17 Suggestions relating to other aspects of the substance or implementation of the Regulations (largely from a small number of organisations covered by the Regulations) included that they should be: realistic; manageable; flexible;

reasonable; proportionate; and efficient. One respondent from an “other” public body expressed a preference for Regulations more in line with England. Another respondent (responding as an individual) expressed disappointment that it is still uncertain whether the Regulations will include procurement duties. An education respondent stated that the Specific Duties should require public authorities to have in place robust evaluation processes that clearly demonstrate outcomes in relation to equalities, and demonstrate that equalities is fully embedded in the organisation (rather than having to complete EQIAs for every policy and function). Several respondents made comments about timescales, and these included expressions of agreement and particular suggestions. These included to: address the lack of Specific Duties urgently; align reporting dates with financial year reporting, annual reporting or other existing corporate schedules; take account of issues facing specific organisations; and provide a reasonable timescale.

5.18 Several respondents (particularly, but not only respondents not covered by the Regulations) stressed or supported the need for monitoring and review, with amendment if necessary. Suggestions included that there should be more explicit reference to monitoring, and that review should be built into the Regulations. It was also suggested that stakeholders (including the public sector; equality groups and representatives; and trade unions) should be involved in review. A few respondents suggested that a review date should be set and / or suggested the means of undertaking review. It was also suggested that there is a need for enforcement.

5.19 Several issues for clarity were suggested. These included definitions of terms such as: “reasonable steps”, “relevant”; “accessible” and “equality”. Other issues for clarity included: links to human rights; the scope and level of outcomes; consideration of costs of implementation; capacity building and effective involvement; proposals for review; timescale for the mainstreaming report; the position relating to Licensing Boards; the intention of Regulation 12; and the role of the EHRC in guiding, monitoring and compliance. One respondent made a specific suggestion about the timescale for reporting pay gap information.

5.20 A number of respondents (particularly, but not only equality organisations and others not covered by the Regulations) made comments about ways of working to take the Regulations forward, including, for example, taking a partnership approach (or a co-production approach). Several respondents specified who should be involved in taking the Regulations forward, and suggestions included: equality groups and organisations; third sector organisations; service users; trade unions; and public sector organisations. A small number made specific comments about the nature of the roles of specific bodies / organisations, and a small number identified their own potential role. It was also argued that the Scottish Ministers have a role in assisting and supporting the fulfilment of the Public Sector Equality Duty; and that there is a need for clear direction and leadership from the Scottish Government.

5.21 One respondent from an equality organisation suggested that there is a need for an effective structure, an arbitration / appeals process (without requiring legal action), and a clear approach to be set out. Other suggestions were that there is a need for effective, accessible and inclusive communication, and that reports should be linked to formal or Government reporting processes. One respondent identified a need for staff training.

5.22 Several respondents (particularly, but not only from equality organisations) made comments relating to the way forward for equalities work (linked to taking the Regulations forward). A range of issues were raised (by small numbers in each case) relating to: the importance of legislation and regulation; the need for an outcome focus; work to tackle issues for specific groups; improved involvement and engagement; the need to develop information and data; and the need for publication of information, ensuring accessibility. Other suggestions included: national equality objectives to support a cohesive approach to all strands; a move from Ministers setting priorities to more detailed instructions about priorities (or, in the view of another respondent, consultation with public authorities to determine these); wider work to address discrimination and inequalities in Scotland.

5.23 A number of respondents of different types made comments about guidance, including several who stressed the need for Codes of Practice or guidance. Suggestions were also made that guidance should be: timely; clear; accessible; specific to Scotland; and that it should support existing responsibilities and public sector frameworks. Issues suggested for inclusion were: core requirements of EQIA; publication requirements; the nature of mainstreaming reports; setting equality outcomes; monitoring; the role of regulation bodies; engagement; links to human rights; data collection and reporting; governance and accountability; application of flexibility; the need for strand by strand analysis; and how to promote change. It was suggested that best practice examples would be helpful.

5.24 Other forms of support identified as beneficial were: common definitions and categories; and centralised access to case studies / test cases. A small number of examples of practice or developments in organisations were given. Two respondents acknowledged the debate about how much needs to be explicit in Regulations and how much can be implied or hosted in guidance.

### ***The consultation***

5.25 Around a fifth of respondents who made additional comments provided additional information or expressed views about the consultation. These comments were made by respondents of all types, but particularly by respondents from equality organisations. Themes included: general views of the consultation; details of the respondent organisation or the nature of the response; and the nature of the consultation process.

5.26 In terms of general views, several respondents welcomed the consultation, or the opportunity to respond, while one individual respondent stated that they considered the consultation unnecessary and a “nonsense exercise”.

5.27 Several respondents provided additional details about the nature of their organisation. Information included details of: the type of respondent organisation; membership or who is represented by the organisation; funding; aims and objectives; the nature of their work and its relevance to equality issues and the issues in the consultation; and specific areas of expertise. A small number of respondents also provided details of the nature of their response to the consultation (e.g. whose views are represented; how the response was produced; and particular areas of interest or focus of the response).

5.28 A few respondents commented on the nature of the consultation process. Issues raised included the views that: the consultation could have been written in simpler format using plain English; Questions 10 and 11 are not well-worded and could be confusing. One individual respondent commented on the analysis and stated that lessons must be learned from flaws in the previous round (e.g. the lack of distinction between the positions taken by those to whom the Regulations apply and those representing the views of those whom the Regulations are intended to protect; and the perceived lack of properly objective analysis and transparent presentation). It was suggested that future consultations should require organisational respondents to identify the provenance of their response; and that the design and use of Respondent Information Forms should be reviewed, to remove the sense conveyed that a respondent must complete it for their views to be considered.

### **Summary: Findings – Other comments**

5.29 In summary, the main points relating to Section 5 are as follows:

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

## ANNEX 1 THE CONSULTATION QUESTIONS

**Question 1:** Do you agree that if a public authority's equality outcomes do not cover all relevant protected characteristics, it should publish the reason(s) why?

Yes       No       Don't know

Please provide further information

**Question 2:** Do you agree that a public authority should publish the results of equality impact assessment?

Yes       No       Don't know

Please provide further information

**Question 3:** Do you 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?

Yes       No       Don't know

Please provide further information

**Question 4:** Do you 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?

Yes       No       Don't know

Please provide further information

**Question 5:** Do you 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 (eg, purely technical or scientific matters)?

Yes       No       Don't know

Please provide further information

**Question 6:** Do you 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?

Yes       No       Don't know

Please provide further information

**Question 7:** Do you 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?

Yes       No       Don't know

Please provide further information

**Question 8:** Do you 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.

Yes       No       Don't know

Please provide further information

**Question 9:** Do you agree that authorities with more than 150 employees should publish an equal pay statement, the first covering gender and the second and subsequent statements covering gender, disability and race?

Yes       No       Don't know

Please provide further information

**Question 10:** Do you 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?

Yes       No       Don't know

Please provide further information

**Question 11:** Do you 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?

Yes       No       Don't know

Please provide further information

**Question 12:** Do you have any other comments on the proposed draft Regulations?

Please provide further information

## **ANNEX 2 THE RESPONDENTS**

The table below provides a list of the respondents.

### Education

Ayr College  
City of Glasgow College  
Dundee College  
Edinburgh Napier University  
Equality Challenge Unit  
Glasgow Caledonian University  
John Wheatley College  
Motherwell College  
Reid Kerr College  
Royal Blind  
Scotland's Colleges  
Scottish Funding Council for Further and Higher Education  
Stow College  
The Open University  
University of Aberdeen  
University of Edinburgh  
University of Glasgow  
University of St Andrews  
University of Stirling  
University of Strathclyde  
University of the West of Scotland  
West Lothian College

### Equality

BEMIS (Black and Ethnic Minority Infrastructure in Scotland)  
British Naturism  
Capability Scotland  
CEMVO (Council of Ethnic Minority Voluntary Sector Organisations Scotland)  
Children in Scotland  
Close the Gap  
Coalition for Racial Equality and Rights  
Deaf Connections Ishara Project  
East Dunbartonshire Access Panel  
ECAS  
Edinburgh & Lothians Regional Equality Council  
Engender  
Equal and Diverse  
Equality and Human Rights Commission (EHRC)  
Fife Independent Disability Network  
FRAE Fife

Inclusion Scotland  
Independent Living in Scotland Project  
Lead Scotland  
LGBT Youth Scotland  
MACS (Mobility and Access Committee Scotland)  
Muslim Women's Influencing Group (MWIG) Scotland  
National Aids Trust  
SAMH (Scottish Association for Mental Health)  
Scottish Accessible Transport Alliance (SATA)  
Scottish Alliance of Regional Equality Councils  
Scottish Arab Federation (SAFE)  
Scottish Council on Deafness  
Scottish Disability Equality Forum  
Scottish Independent Advocacy Alliance  
Scottish Refugee Council  
Scottish Women's Aid  
Scottish Women's Budget Group  
Scottish Women's Convention  
Sense Scotland  
Stonewall Scotland  
The Christian Institute  
Voices of Women  
West of Scotland Regional Equality Council  
Youthlink Scotland  
YWCA Scotland

Local authority, department or representative body

Aberdeen City Council  
Aberdeenshire Council  
Angus Council  
Argyll and Bute Council  
City of Edinburgh Council  
Clackmannanshire Council  
Comhairle nan Eilean Siar  
COSLA (Convention of Scottish Local Authorities)  
Dumfries and Galloway Diversity Group  
Dundee City Council  
East Ayrshire Council  
East Dunbartonshire Council  
East Renfrewshire Council (Corporate Equality Unit)  
Fife Council  
Glasgow City Council  
Inverclyde Council  
Midlothian Council  
North Ayrshire Council

North Lanarkshire Council  
Perth and Kinross Council  
Renfrewshire Council  
Scottish Councils Equality Network  
South Ayrshire Council  
The Highland Council  
West Dunbartonshire Council  
West Lothian Council

Multi-agency partnerships

East Ayrshire Community Planning Partnership  
Orkney Community Planning Partnership

Health

Healthcare Improvement Scotland  
NHS 24  
NHS Ayrshire and Arran  
NHS Education for Scotland  
NHS Forth Valley  
NHS Greater Glasgow and Clyde  
NHS Health Scotland  
NHS Lanarkshire  
NHS Lothian  
NHS National Services Scotland  
NHS Tayside  
Scottish Ambulance Service

Other organisations (not covered by the Regulations)

Commission for Ethical Standards in Public Life  
Glasgow Housing Association  
OSCR (Office of the Scottish Charity Regulator)

“Other” public bodies (covered by the Regulations)

ACPOS (Association of Chief Police Officers in Scotland)  
Care Inspectorate  
Education Scotland  
Highlands and Islands Enterprise  
Lothian and Borders Police  
National Galleries of Scotland  
Nestrans  
Scottish Courts Service  
Scottish Enterprise  
Scottish Natural Heritage

Scottish Prison Service  
Scottish Social Services Council  
SEPA (Scottish Environment Protection Agency)  
Skills Development Scotland  
sportscotland  
SQA (Scottish Qualifications Authority)  
Strathclyde Fire and Rescue  
Strathclyde Partnership for Transport

#### Trade Union / Professional Bodies

Association of Scottish Police Superintendents  
CFOAS (Chief Fire Officers Association Scotland) Equality & Diversity Group  
Educational Institute of Scotland  
Employment Lawyers Association  
Law Society of Scotland  
PCS Scotland (Public and Commercial Services Union)  
Scottish Trade Union Congress  
Society of Personnel Directors  
SOLAR (Society of Local Authority Lawyers & Administrators in Scotland)  
UCU Scotland (University and College Union Scotland)  
Unite

Responses were also received from 5 individuals.

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