

Draft Regulations laid before the Scottish Parliament under section 210(2) of the Equality Act 2010, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

EQUALITY

**The Equality Act 2010 (Statutory
Duties) (Scotland) Regulations 2011**

Made - - - - *2011*
Coming into force - - *6th April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 153(3), section 155(1)(c) and section 207 of the Equality Act 2010⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 153(4) of that Act the Scottish Ministers have consulted the Commission for Equality and Human Rights.

In accordance with section 210(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011 and come into force 6th April 2011.

Interpretation

2. In these Regulations—

“equality outcome” means a result intended to be achieved in order to further one or more of the aims mentioned in paragraphs (a) to (c) of section 149(1) of the Equality Act 2010 in relation to equality, as a consequence of action taken by a listed authority;

“employee” is to be construed in accordance with section 83 of the Equality Act 2010;

“listed authority” means a public authority listed in the Schedule to these Regulations⁽²⁾;

“relevant protected characteristics” has the meaning set out in section 149(7) of the Equality Act 2010; and

(1) 2010 c.15.

(2) The Schedule names those bodies listed in Part 3 of Schedule 19 to the Equality Act 2010 which are to be made subject to the duties in these Regulations.

“section 149(1) duty” means the duty under section 149(1) of the Equality Act 2010.

Publication of equality outcomes by listed authorities

3.—(1) Each listed authority must prepare and publish equality outcomes, which must be informed by how those outcomes will assist the authority to fulfil the section 149(1) duty.

(2) In order to fulfil the requirements of paragraph (1) a listed authority must—

- (a) take reasonable steps to involve persons with relevant protected characteristics and any person which appears to the listed authority to represent the interests of those persons; and
- (b) consider relevant evidence relating to persons with relevant protected characteristics and take reasonable steps to involve those persons and any person which appears to the listed authority to represent the interests of those persons in the process of gathering the evidence.

(3) A listed authority must publish its equality outcomes not later than 6th April 2012.

(4) Within each period of four years, beginning with the date of publication of its equality outcomes the listed authority must—

- (a) review progress towards achieving those outcomes;
- (b) publish equality outcomes that comply with the criteria in paragraph (1).

(5) Each listed authority must publish a report on progress in respect of its equality outcomes—

- (a) not later than 6th April 2014; and
- (b) subsequently at intervals of not more than two years beginning with the date of publication of the last report.

Mainstreaming equality

4. Each listed authority must publish a report on the action it has taken and the progress it has made to ensure that, in carrying out its functions, the section 149(1) duty is being taken into account—

- (a) not later than 6th April 2012; and
- (b) subsequently, at intervals of not more than two years, beginning with the date of publication of the last report.

Impact assessment

5. Each listed authority must—

- (a) assess the impact of its proposed policies and practices, including changes to and revisions of its existing policies and practices, on persons with relevant protected characteristics and on its ability to fulfil the section 149(1) duty;
- (b) consider relevant evidence relating to persons with relevant protected characteristics in relation to such assessments of impact; and
- (c) have due regard to the results of such assessments of impact.

Publication of employment information

6.—(1) Subject to paragraphs (3) and (4), paragraph (2) applies where the number of employees that a listed authority has is 150 or more on 6th March in any year.

(2) The listed authority must, not later than 6th April in that year publish—

- (a) employment information on—

- (i) the percentage of its workforce comprised of—
 - (aa) ethnic minority groups;
 - (bb) disabled people;
 - (cc) women; and
 - (dd) men; and
 - (ii) the gender pay gap, which for the purposes of this provision means the percentage difference between men’s average hourly pay (excluding overtime) and women’s average hourly pay (excluding overtime), and
- (b) an equal pay statement specifying—
- (i) the authority’s policy on equal pay between women and men; and
 - (ii) occupational segregation within its workforce, being the concentration of women and men in particular grades and in particular occupations.

(3) Where a listed authority has published employment information under paragraph (2)(a), it must publish such information subsequently at intervals of no more than two years beginning with the date on which the last set of information was published, provided that the number of employees that it has is 150 or more on 6th March in the year in which it decides to publish the information.

(4) Where a listed authority has published an equal pay statement under paragraph (2)(b) it must review that statement and publish a report on it no later than the end of the period of four years beginning with the date of publication of its first equal pay statement and subsequently at intervals of not more than four years, beginning with the date of publication of the last revision of its equal pay statement provided that the number of employees that it has is 150 or more on 6th March in the year on which it decides to publish the report.

(5) A listed authority which is no longer subject to the duties in paragraphs (3) and (4) shall be subject to those duties again if the number of employees that it has is 150 or more on 6th March in any year subsequent to the year in which the duties did not apply with the modification that the information or report referred to in those paragraphs must be published in that year.

Duty on Scottish Ministers

7.—(1) Scottish Ministers must publish proposals for activity which has the purpose of assisting listed authorities to fulfil the section 149(1) duty—

- (a) not later than 31st December 2012;
- (b) subsequently, at intervals of not more than four years, beginning with the date of publication of the last set of proposals.

(2) Scottish Ministers must publish a report on progress in relation to the activity—

- (a) not later than 31st December 2014; and
- (b) subsequently, at intervals of not more than four years beginning with the date of publication of the last report.

Compliance with publication duty

8.—(1) A listed authority must comply with its duty to publish under regulations 3, 4 and 6 in a manner that is reasonably accessible to the public.

(2) At least three months prior to publishing under regulations 3, 4 and 6, a listed authority must state where and when it will publish its equality outcomes, any report or, as the case may be, information.

(3) A listed authority must, so far as practicable, comply with its duty to publish under regulations 3, 4 and 6 by employing an existing means of public performance reporting.

Duty to consider other matters

9. In carrying out its duties under these Regulations, a listed authority may be required to consider such matters as may be specified from time to time by Scottish Ministers.

St Andrew's House,
Edinburgh

A member of the Scottish Executive

SCHEDULE

Regulation 2

List of Public Authorities in Part 3 of Schedule 19 to the
Equality Act which are to be made subject to the specific duties

Scottish administration

- Scottish Ministers.
- The Keeper of the Registers of Scotland.
- The Keeper of the Records of Scotland.
- The Registrar General of Births, Deaths and Marriages.
- The Scottish Court Service.

National Health Service

- A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.
- A Special Health Board constituted under that section.

Local government

- A council constituted under section 2 of the Local Government etc (Scotland) Act 1994.
- A joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973.
- A joint fire and rescue board constituted by a scheme under section 2(1) of the Fire (Scotland) Act 2005.
- A licensing board established under section 5 of the Licensing (Scotland) Act 2005, or continued in being by virtue of that section.
- A National Park authority established by a designation order made under section 6 of the National Parks (Scotland) Act 2000.
- Scottish Enterprise and Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990.

Other educational bodies

- An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980).
- The managers of a grant-aided school (within the meaning of that section).
- The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992).
- In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.
- The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992).

Police

- A police authority established under section 2 of the Police (Scotland) Act 1967.

Other bodies and offices added to Part 3 of Schedule 19 to the Equality Act 2010 on 6th April 2011

- Accounts Commission for Scotland.
- Audit Scotland.

Bòrd na Gàidhlig.

A Chief Constable of a police force maintained under section 1 of the Police (Scotland) Act 1967.

A chief officer of a community justice authority.

A chief officer of a relevant authority appointed under section 7 of the Fire (Scotland) Act 2005.

Commissioner for Children and Young People in Scotland.

A community justice authority.

The Common Services Agency for the Scottish Health Service.

Creative Scotland.

Healthcare Improvement Scotland.

Learning and Teaching Scotland.

The Mental Welfare Commission for Scotland.

A regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005.

The Scottish Criminal Cases Review Commission.

Scottish Further and Higher Education Funding Council.

The Scottish Legal Aid Board.

Scottish Natural Heritage.

Scottish Qualifications Authority.

The Scottish Social Services Council.

The Scottish Sports Council.

Scottish Water.

Skills Development Scotland.

Social Care and Social Work Improvement Scotland.

Board of Trustees for the National Galleries of Scotland.

Board of Trustees of the National Museums of Scotland.

The Trustees of the National Library of Scotland.

VisitScotland.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose specific duties on the Scottish public authorities listed in the Schedule, which derive from the list in Part 3 of Schedule 19 of the Equality Act 2010 as amended by S.S.I. 2011/XXX. They are made under sections 153(3), 155(1)(c) and 207 of that Act. The purpose of the specific duties is to ensure better performance by those authorities of the duty imposed

by section 149 of that Act to have regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act, to advance equality of opportunity, to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Regulation 3 requires listed authorities to prepare and publish equality outcomes by 6th April 2012, to review them within the four year period after the initial publication date and to report on progress made according to a set timescale.

Regulation 4 requires listed authorities to report on a two yearly cycle on progress made in ensuring that the duty in section 149(1) of the Act is being taken into account.

Regulation 5 requires listed authorities to assess the impact of their proposed policies and practices on those with relevant protected characteristics, to consider relevant evidence relating to those persons and to have due regard to the results of such impact assessments.

Regulation 6 requires listed authorities, where there are more than 150 employees, to report and publish specified employment data and an equal pay statement, which has to be reviewed to a specified timetable.

Regulation 7 imposes a duty on Scottish Ministers, to publish proposals for activity which will assist other listed authorities to fulfil the section 149(1) duty and to report on progress and review them according to a specified timetable.

Regulation 8 outlines what listed authorities must do to comply with the publication duties.

Regulation 9 provides that listed authorities may be required to consider matters specified elsewhere by Scottish Ministers in relation to the specific duties imposed by the Regulations.

The Schedule lists the Scottish public authorities to be made subject to the specific duties.