

POLICY NOTE

THE EQUALITY ACT 2010 (SPECIFIC DUTIES) (SCOTLAND) AMENDMENT REGULATIONS 2015

SSI 2015/254

1. The above instrument is proposed to be made in exercise of the powers conferred by section 153(3), 155(1)c and (2) and 207(4) of the Equality Act 2010 (a) (“the 2010 Act”) and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Policy Objectives

Public Sector Equality Duty

2. The public sector equality duty in section 149(1) of the 2010 Act requires public authorities to have due regard, when exercising their functions, to the need to:

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

3. Those bodies and office holders subject to the public sector equality duty are listed in in Part 3 of Schedule 19 to the 2010 Act.

Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

4. Section 153(3) of the 2010 Act enabled Scottish Ministers to impose specific duties on a listed public authority by regulations. Scottish specific duties came into force on 27 May 2012. These set a robust and proportionate supporting framework for the duty in the 2010 Act, based on data collection and evaluation, transparency and accountability. In this way they help public authorities to perform the public sector equality duty better. The new framework required listed public authorities to:

- publish a set of Equality Outcomes and report on progress;
- publish a mainstreaming report to show how authorities are integrating the equality duty into their core business activities;
- undertake equality impact assessment of new policies and practices;
- publish information on the gathering and use of employment information
- consider equality within public procurement, where relevant and proportionate;
- publish their gender pay gap and an equal pay statement (if they have over 150 employees);
- the Scottish Ministers must also set out proposals to assist Scottish public authorities to better perform the public sector equality duty.

The required reports are cyclical and were first required by April 2013 with initial progress reports due by April 2015.

5. The draft amendment regulations propose to add the following public authorities and office holders to the Schedule to the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 to make them subject to the Scottish specific equality duties:

(i) Historic Environment Scotland

The Historic Environment Scotland Act 2014 provides for the establishment of a new Non Departmental Public Body, Historic Environment Scotland. This body will replace the Royal Commission on the Ancient and Historical Monuments of Scotland (a public body established by Royal Warrant) and Historic Scotland (an Executive Agency within the Scottish Government). The 2014 Act gives Historic Environment Scotland the general function of investigating, caring for and promoting Scotland's historic environment. To this end, it transfers to the new body responsibilities currently undertaken under the Royal Warrant and also a range of duties previously undertaken by the Scottish Ministers under other legislation, principally the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. The 2014 Act also provides for certain continuing Ministerial functions in relation to properties and collections to be delegated (but not transferred) to the new body.

(ii) An integration joint board

The Public Bodies (Joint Working) (Scotland) Act 2014 provides arrangements for integrating adult health and social care, in order to improve outcomes for patients, service users, carers and their families. Health Boards and local authorities will be required to enter into joint working arrangements in respect of certain of their statutory functions relating to health and social care services. Section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014 Act provides for the establishment of integration joint boards to which Health Boards and local authorities may delegate functions for the purpose of these joint working arrangements.

(iii) Regional board

Among other things, the Post-16 Education (Scotland) Act 2013 amended the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act") to establish regional strategic bodies. There are currently three regional strategic bodies – the Regional Board for Glasgow Colleges, New College Lanarkshire and the University of the Highlands and Islands. The functions of a regional strategic body include funding and planning college provision in regions with more than one college of further education.

Schedule 2A to the 2005 Act establishes two types of regional strategic body: "regional boards" which are a type of regional strategic body that is a

standalone organisation listed in Part 1; and “other regional strategic bodies” which are publicly funded colleges or universities listed in Part 2.

The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2015, SSI 2015/83 added a regional board to Schedule 19 to the 2010 Act to make such a board subject to the public sector equality duty. Provision was already made in Schedule 19 to the 2010 Act for the regional strategic bodies that are listed in Part 2 of Schedule 2A to the 2005 Act.

(iv) Children’s Hearings Scotland

The Children’s Hearings (Scotland) Act 2011 provides for the establishment of a new Non Departmental Public Body, Children’s Hearings Scotland (“CHS”).

Under the Act, CHS’s main statutory functions are to assist the National Convener of Children’s Hearings Scotland in carrying out that officer’s statutory functions and facilitate the carrying out of those functions including, for example, the National Convener’s functions associated with the appointment, selection, training, retention and support of panel members.

(v) Revenue Scotland

The Revenue Scotland and Tax Powers Act 2014 provided for the establishment of Revenue Scotland as the tax authority with responsibility for the collection and management of devolved taxes. Revenue Scotland came into being on 1 January 2015 as a body corporate and an office-holder in the Scottish Administration and will become fully operational on 1 April 2015 when the devolved taxes come into effect. These are Land and Buildings Transaction Tax and Scottish Landfill Tax. In addition to its general function, which is the collection and management of the devolved taxes, Revenue Scotland’s particular functions include providing information and advice to taxpayers, their agents and other persons relating to the devolved taxes; efficiently resolving disputes relating to the devolved taxes; and protecting the revenue against tax fraud and tax avoidance.

(vi) Foods Standards Scotland

Food Standards Scotland was established by the Food (Scotland) Act 2015. Its objectives are to protect the public from risks to health from food, to improve the extent to which the public have diets which are conducive to good health and to protect the other interests of consumers in relation to food. Its public functions include developing policy on food and feed matters, advising and informing the Scottish Ministers, other public authorities and the public on food matters and monitoring the performance of enforcement authorities in enforcing food legislation. The Food (Scotland) Act 2015 (Consequential provisions) Order 2015 makes Food Standards Scotland part of the Scottish Administration.

6. The draft amendment regulations also propose to substitute “post-16 education body” for existing references to “fundable body” in the Schedule to the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 to ensure that all publicly funded colleges which are assigned to a regional strategic body continue to be subject to the specific duties following their removal from schedule 2 to the 2005 Act. The term “post-16 education body” is defined in section 35(1) of the 2005 Act and includes both fundable post-16 education bodies (bodies listed in schedule 2 to the 2005 Act) and also colleges assigned to a regional strategic body. No amendment is required to Schedule 19 to the 2010 Act as the public sector equality duty applies to a college whether or not it is listed in schedule 2 to the 2005 Act.

Consultation and Consent

7. In keeping with provisions at section 153(4) of the 2010 Act, the Equality and Human Rights Commission was consulted on the draft regulations.

Impact Assessments

8. The draft regulations propose to make the listed authorities and office holders subject to Scottish specific equality duties to enable the better performance of the public sector equality duty.

Financial Effects

9. The Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights confirms that no BRIA is necessary, as the instrument has no financial effects on the Scottish Government, local government or business.

Scottish Government
20 April 2015