

EQUALITY DUTY: DETAILED PROPOSALS

CONSULTATION ON PUBLIC SECTOR EQUALITY DUTY DRAFT REGULATIONS AND ORDER

RESPONSE PROFORMA

The response proforma has 2 parts – a respondent information form and the list of consultation questions. **Both** should be completed.

The final date for responses is **26 November 2010**.

Response Proforma – Respondent Information Form



Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Equality Challenge Unit

Title Mr Ms Mrs Miss Dr *Please tick as*

Surname

Forename

2. Postal Address

7th floor, Queens House

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London

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Phone 02074381010

Email equalityact@ecu.ac.uk

3. Permissions

I am responding as...

Individual

Please tick as appropriate

Group/Organisation

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?
yes no

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Please tick ONE of the following boxes

Yes, make my response, name and address all available

Yes, make my response available, but not my name and address

Yes, make my response and name available, but not my address

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

yes no

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?
Please tick as appropriate yes no

Response Proforma – Consultation Questions

Coverage of the General Duty

Question 1

Do you agree with the proposed list of Scottish public authorities (pages 16-17 of the consultation document) to be added to schedule 19 of the Equality Act 2010 and made subject to the **general duty** for all of their functions? If not, please tell us why you disagree and provide your suggestions for changes.

YES **NO** **DON'T KNOW**

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

Equality Challenge Unit (ECU) welcomes the addition of the Scottish Further and Higher Education Funding Council to schedule 19 of the Equality Act 2010.

Coverage of the Specific Duties

Question 2

Do you agree with the proposed list of Scottish public authorities (pages 19-21 of the consultation document) to be covered by the **specific duties**? If not, please tell us why you disagree and provide your suggestions for changes.

YES **NO** **DON'T KNOW**

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU welcomes the inclusion of the Scottish Further and Higher Education Funding Council and governing bodies of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992).

Content of Specific Duties

Question 3

Do you agree that a public authority should be required to publish equality outcomes which are informed by evidence, informed by the involvement of equality groups and communities, and informed by how the outcomes will assist the authority to meet the general duty? If you do not agree, please let us know why.

YES **NO** **DON'T KNOW**

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU welcomes the requirement to set equality outcomes across all protected characteristics, which are informed by evidence and by the involvement of equality groups and communities. However, clear guidance on the development of equality outcomes will be essential to ensure that public sector organisations set equality outcomes that are both achievable and result in real change.

Where a public body does not set an outcome for a protected characteristic, ECU recommends that evidence must be provided of how they are meeting the Public Sector Equality Duty for that characteristic, and so welcomes the further proposal to report on mainstreaming equality.

In addition, ECU recommends that there is a requirement for public bodies to outline the actions that they will take to achieve equality outcomes. Setting out the actions required to achieve an equality outcome is part of business planning, and will help to improve transparency. A requirement to make public the actions that a public authority will take to meet its outcomes will also help to ensure accountability and will allow for wider public engagement in the achievement of the outcomes set. While flexibility is important, having a process to achieve an aim is equally important. In ECU's experience, action plans, as required by the race, gender and disability equality duties, have been instrumental in improving transparency and furthering equality in the higher education sector.

Questions 4

Do you agree that a public authority should be required to report on progress towards its equality outcomes no later than 2 years after the outcomes are published and at subsequent intervals of no more than 2 years?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU agrees that every 2 years is a reasonable timeframe for reporting on progress towards equality outcomes, given the duties place a responsibility to mainstream equality, publish equality outcomes, impact assess and publish data.

Question 5

Do you agree that a public authority should be required to review its equality outcomes no later than 4 years after the outcomes are published and at subsequent intervals of no more than 4 years?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

The regulations stipulate the setting of equality outcomes every 4 years, with reporting every 2 years in line with other data requirements. This appears to be a reasonable timeframe, as it allows time for public bodies to achieve equality outcomes.

Question 6

Do you agree with the proposed duty that an authority must report on action taken to 'mainstream' equality, across all protected characteristics, into day to day systems and practices? If you do not agree, please let us know why.

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU welcomes this suggestion. ECU has found that mainstreaming of equality will mean that policies and procedures will become less and less likely to have a negative impact on minority groups. ECU particularly welcomes the proposal for mainstreaming in relation to the protected characteristics where evidence may currently be limited.

However, as noted in the consultation document, there will be flexibility in the operation of this duty. While flexibility is important, clear guidance on how to achieve this without losing sight of the general duty will be required – otherwise there is a risk that this duty will become tokenistic.

Question 7

Please tell us your views on how we can build appropriate proportionality into the requirements around mainstreaming.

The mainstreaming duty, in conjunction with the other specific duties, should ensure institutions meet the general duty. As institutions will be working across all their corporate systems and functions, and equality characteristics, there will need to be a system of prioritisation, and priority may therefore be afforded to mainstreaming equality areas which may not be explicitly outlined in other data requirements, for example work around gender identity. ECU has found the approach of the Welsh Assembly Government's guidance on inclusive policy making helpful in explaining proportionality in relation to the existing equality duties.

Question 8

Do you agree that the first report on progress on the action taken to 'mainstream' equality should be in April 2012, with subsequent reports no later than every 2 years? If you do not agree, please let us know why.

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU welcomes the proposal that public authorities must publish their first report on the actions that they have taken to mainstream equality in April 2012 and that subsequent reviews of progress should take place every 2 years, as this will give higher education institutions (HEIs) sufficient time to be able to demonstrate that their equality work is delivering outcomes .

Question 9

Do you agree that a public authority should be required to consider the impact on equality of new policies and practices, including changes or redesign of policies, practices, services and provision; to use evidence to inform its impact assessment; and have regard to the outcome of assessment? If you do not agree, please let us know why.

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU welcomes the inclusion of impact assessment in the proposed specific duties. This will be particularly important moving forward with any financial allocations and redundancy decisions.

As the proposals do not include the need to impact assess existing policies, impact assessment as a tool for mainstreaming will need to be emphasised in guidance to encourage public authorities to change or redesign existing policies that despite the current Race, Gender and Disability Equality Duties, have not been impact assessed.

The consultation outlines a move away from a prescribed process for impact assessment. While public bodies need flexibility in deciding how best to assess the impact of their policies, ECU's work with the higher education sector has shown that a broad common framework has helped HEIs conduct impact assessments and in some cases, mainstream impact assessment into their existing systems.

The current prescribed process has helped to further equality within the sector. Examples of impact assessments conducted in the higher education sector are included in ECU's briefing 'Equality in admissions: equality impact assessments in higher education'. Most importantly, as was seen in the case of R (Kaur and Shah) v London Borough of Ealing, the current prescribed process has assisted the public in holding public sector bodies to account when they have failed to adequately consider equality in policy development.

ECU's work with the sector has found that there are areas of the sector that lack confidence in impact assessment, and subsequently not all HEIs are routinely conducting impact assessments. HEIs will require continued guidance to assist them in effectively conducting impact assessments and in understanding proportionality. ECU strongly recommends that within the regulation there is a need to set out considerations, on which guidance can be based, for assessing impact in accordance with the Public Sector Equality Duty.

Further, ECU considers that a publishing requirement should be placed on public bodies regarding impact assessments to further transparency.

Question 10

Please tell us your views on how we can build appropriate proportionality into the requirements around impact assessment.

Emphasising the objectives of the public sector equality duty will help to build appropriate proportionality into the requirement to impact assess policies. In ECU's experience, the overarching purpose of impact assessment can be lost in the desire for compliance. Consideration of the relevance of the policy to the public sector equality duty will help public authorities determine the resources that they commit to individual impact assessments or to mainstream impact assessment into areas of their work that are key to equality, for example student admissions and staff recruitment and progression. ECU has found the approach of the Welsh Assembly Government's guidance on inclusive policy making helpful in explaining proportionality in relation to impact assessment and the existing equality duties.

Question 11

Do you agree that a public authority with 150 or more full time staff should report on employment data starting from April 2012 and no later than every 2 years? Employment data are – the minority ethnic employment rate, the disability employment rate, the employment rates for women and men and the gender pay gap? If you do not agree, please let us know why.

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

The proposed employment data requirements laid out in the document are not extensive enough to fulfil the stated aim of helping HEIs as public authorities to take action to eliminate discrimination, promote equality and foster good relations in a streamlined way.

Firstly, ECU recommends the inclusion of an explicit requirement to collect data on students. The regulations underpinning the current race equality duty requires monitoring the 'admission and progress of students'. This has proved to be fundamental for the sector to understand systemic failures in equality as evidenced for example by work on reducing the degree attainment gap between BME and white students (further details can be found on the ECU website - <http://www.ecu.ac.uk/our-projects/ethnicity-and-degree-attainment>). Without a broad framework and a clear duty to publish, monitor and act on data on students, there will be no way of identifying collective and systemic failures in the higher education sector.

Secondly, simply reporting on the numbers of employees from particular protected characteristics is a regressive step from the current duties and will not be sufficient to fulfil the recommendations of the Macpherson Report. For example, the regulations underpinning the current race equality duty contain a requirement, to 'monitor, by reference to those racial groups... the recruitment and career progress of staff.' Similar broad requirements are still needed. In its report, The Macpherson Report – Ten Years On (2009), the House of Commons Home Affairs Committee recognises the tremendous strides that have been made, as a result of the implementation of Macpherson's recommendations, in improving the service provided by the police to ethnic minority communities and combating racism in the workforce. However, it highlights that work to combat systemic discrimination needs to continue.

Finally, ECU recommends that data is not published in isolation. At an institutional level there are concerns about the level of robustness required when reporting data to ensure that data are valid and not open to misinterpretation by the public or media. Therefore, ECU recommends that headline data is accompanied by an analysis of key trends, commentary on changes from previous years and information on what the data actually shows. Although reporting is every 2 years, analysis should contain year-on-year data.

Question 12

Do you agree that a public authority with 150 or more full time staff should be required to publish an equal pay statement in April 2012 containing information on equal pay policy within the organisation and occupational segregation within the organisation and should report on the statement no later than every 4 years? If you do not agree, please let us know why.

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU welcomes the above proposal which will support existing efforts in the higher education sector to improve pay equality. The higher education sector

has already made significant progress in improving pay equality as a result of the Joint Negotiating Committee for Higher Education Framework Agreement www.ucea.ac.uk/en/New_JNCHES/.

Question 13

Do you agree that Scottish Ministers should determine national equality priorities? If you do not agree, please let us know why.

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU agrees that Scottish Ministers should determine national equality priorities to support the work of the public sector. However, it is important that national priorities inform and do not determine local priorities. Proper mainstreaming can only take place if organisations identify and develop their own equality outcomes. The higher education sector consists of a hugely diverse group of organisations with different priorities, audiences and functions. For example, a campus institution located away from a city is likely to find it harder to attract black and minority ethnic (BME) students so that ensuring a balance in the participation of BME staff and students may be much more of a priority than for a metropolitan university where numbers of BME students may already be high.

Question 14

Do you agree that Scottish Ministers should publish their national equality priorities in June 2012 and report on them after no later than December 2014? Subsequent priorities would then be set in June 2016 with a report in December 2018 and at 4 year intervals thereafter. If you do not agree, please let us know why.

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

Question 15

Do you agree that a public authority should report on progress on the specific duties within its existing public performance reporting systems, and should be required to state in advance where it will report and its intended timescale? If you do not agree, please let us know why.

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU agrees with the proposal that public bodies be allowed to report on progress within their existing public reporting systems.

Question 16

Do you agree that a public authority should be required to state in advance where it will publish its equality outcomes? If you do not agree, please let us know why

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

ECU supports the proposal that public authorities should be required to state in advance where they will publish their equality outcomes. This will help to ensure greater transparency and accountability and will assist the Equality and Human Rights Commission Scotland in its regulatory role.

Question 17

Do you agree that the proposed regulations for the specific duties set out a flexible, proportionate and outcome based approach? If you do not agree, please let us know why and tell us what changes you would make.

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree or disagree, or your suggestions for changes.

While the approach outlined is generally flexible and outcome based, in ECU's experience, it is not proportionate in the context of higher education.

Higher education institutions will not be required to publish data on their student body; neither will they be required to consider equality when commissioning services from third parties. The role of third parties in the higher education sector is often significant as they can have responsibility for the delivery of front line student services, in particular security, catering and the management of halls of residence. ECU recommends that HEIs are required to publish data on their student body and to consider equality when commissioning services from third parties. The latter requirement should be proportional and designed to support HEIs meet the general public sector equality duty and third party harassment provisions of the Equality Act.

In addition, ECU recommends that public authorities are required to outline the steps that they will take to achieve their equality outcomes (see response to question 3).

Question 18

Do you have any other comments on the proposed regulations?

Question 19

Do you have any evidence or data that would help us to develop our draft Business and Regulatory Impact Assessment?