

Public Sector Equality Duty - Consultation 2010

Engender

Engender, started in 1992, is an organization founded and funded by women with a goal of researching women's lives and histories. We gather and disperse information through research networks and use the information to campaign to improve women's political, social, economic and personal lives. Engender works in combination with many other women's organizations to make Scotland a fairer, safer place where women can flourish and better contribute to the market economies with dignity, freedom and justice.

Engender appreciates the opportunity to comment on the draft regulation on the specific duties. Our desire is to see this duty progress further than the duty it replaces. We see this duty as an essential and necessary change to mainstream equality for all the protected characteristics and hope that this process only builds on the current steps to protect equality and human rights for all.

1. Do you agree with the proposed list of Scottish public authorities to be added to schedule 19 of the Equality Act 2010 and made subject to the general duty of their functions? If not, please tell us why you disagree and provide your suggestions for changes.

And

2. Do you agree with the proposed list of Scottish Public authorities to be covered by the specific duties? If not, please tell us why you disagree and provide your suggestions for changes.

Engender agrees with the authorities list on both the general and specific duties list provided that the list includes the authorities listed on the previous duty and is only expanding the remit of the previous duty.

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.

Engender agrees that public authorities should be required to publish equality outcomes based on evidence and involvement of equality groups and communities for each of the protected characteristics. Whilst this would include specific gender outcomes we would propose that outcomes for other protected characteristics should be gendered.

We would argue that public authorities should not only publish expected outcomes but also the step that will be taken to achieve them, the indicators they will use to access progress and how and where they will collect and collate evidence (including stakeholder involvement).

In order to achieve the anticipated accountability there should be clear signposts as to where to find the published expected outcomes, the reports on progress and evidence. This should be easily accessible in the public domain and also lodged with the EHRC.

We accept that it is not always relevant for the Government to set outcomes covering all the protected characteristics and so authorities should not be required to do so. However, in such cases authorities are required to produce evidence on how they came to this decision i.e. that they collected, collated and analysed relevant data and where necessary consulted with 'equality groups and communities' **before** making this decision.

Where the authority decides not to set outcomes to do with gender, their decision and associated evidence should be available in the public domain and a report should be submitted to the Equality and Human Rights Commission. This will ensure public authorities take the appropriate consideration of all the protected characteristics as they are obligated to in the general duty, increase transparency in how authorities developed their outcomes, and enhance the public authority's accountability to the public and to the EHRC.

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?

And

Whilst we agree that public authorities should be required to report on progress towards its equality outcomes no later than 2 years after their outcomes are published and then again at intervals of no more than 2 years they should be encouraged to integrate this into their own planning and reporting cycles so that it is not seen as an 'add on'. They should also enable/encourage them to report more regularly on progress towards the steps identified.

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?

The outcomes should be reviewed no later than 4 years after they are initially published and at subsequent intervals of no more than 4 years. This will ensure the progress and outcomes keep up with the changing needs of the people that it services.

However, as with our response to Q4 this should not imply a 4 yearly report, rather they must have reported within the 4 years and integrated the reporting into their usual planning and reporting cycles.

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.

And

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

And

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.

Engender particularly welcomes the requirement to report on action taken to mainstream equality across their policies, procedures and corporate functions. However, we propose that this should also specifically include a requirement to equality assess all budgets. The inclusion of equality across day-to-day systems and practices will ultimately benefit all and the equality proofing of budgets and thus budget monitoring will progress the mainstreaming of equalities.

Whilst it is important that Authorities are required to report on progress in relation to how they are meeting the individual needs of people with protected characteristics it is also important that they report on the wider/strategic duties under s149(1) of the Equality Act 2010:

- The eliminate discrimination
- Advance equality of opportunity
- And foster good relations across all protected characteristics

We agree that the first report should encompass all the characteristics covered by the equality duty, should come no later than April 2012 and the need to apply the rule of no later than every 2 years.

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.

Engender agrees that public authorities should be required to consider the impact that decisions about policies and practices have on equality. We also agree that the use of evidence to inform its impact assessment is essential, but particularly evidence and understanding gleaned from the involvement of the people the decision is most likely to effect. Note: we support the EHRC's concern regarding the need to better define 'equality groups and communities'; From Engender's perspective it is important that equality stakeholder groups are themselves diverse and inclusive.

It is important to include change and redesign to the remit of impact reporting because there are new protected characteristics that have never had to be assessed in terms of the impact of policies on, for example, age, sexual orientation or religious belief. This new duty allows for the discussion of these protected characteristics under the same legislation.

Equality impact assessment processes and conclusions should be recorded and made easily accessible in the public domain as a means of progressing transparency and accountability.

It is particularly important to assess the potential equality impacts of changing or redesigning policy, practice, services and provision as this is mainstreaming in practice. In the current economic climate the equality impact assessment of any change is crucial to ensuring that the most vulnerable do not bear the brunt of the recession.

Additionally, when public authorities decide to enter into partnerships e.g. CHCPs, and there is a lack of clarity in the duty, equality proofing of a shared budget can be used as a mechanism to ensure that the requirements of the public sector duty is carried out in all public services provided.

We would like to see more emphasis on the need to consider the equality intersections e.g. gender and disability, into consideration. Many people may experience discrimination on multiple grounds and it is important to consider when assessing the impact that decisions about policies have on equality. Public authorities must also outline how gender issues impact the other characteristics.

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

We struggle with the use of the word 'proportionality' finding it very ambiguous. We worry that this may offer a loophole in the reporting procedures for public authorities. We do not wish to see flexibility turned into a way for public authorities to report on areas where action to mainstream has been taken and opt out of reporting on areas where little to no progress has been made. 'Key areas' in the public authority should be decided through evidence gathering and involvement of equality 'communities' as key areas for the authority and those of the public may differ and this must be reconciled. Engender would like to see flexibility and proportionality of the response to be further clarified and would welcome the opportunity to consult the government on the regulation drafting in the future.

Additionally, we believe that the regulation should be amended to include a requirement for authorities to publish outcomes of any assessment in the public domain. This will ensure greater transparency and accountability, allowing the public to see how the authority has considered what the impact will be on them and what effect the assessment has on informing the authority's policy and procedure.

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.

And

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.

We agree that public sector employers who employ 150 staff or more should report on employment data starting from April 2010 and no later than every 2 years after. However, we would like to see the regulation more clearly define 150 staff.

Engender would like to see the regulation amended to say, 150 staff in total including full and part time staff members. Reporting on headline employment data is used to discuss minority ethnic employment rates, disability employment rates and the employment rates of women and men, all of which are groups that are more likely to occupy part time positions. To cite just one figure, the gender pay gap between a full time male and a part time female is over 30%. Without the inclusion of public authorities that employ any combination of full and part time staff up to 150, these disproportionately effected minority groups once again get over looked. This suggested amendment does not infringe the resource and confidentiality justifications under regulation 6, 4.15 for the 150 staff threshold.

The amendment we suggest also applies to the requirement that public authorities of 150 staff publish an equal pay statement in April 2012. The contents of this report will greatly affect part time employees for many of the same reasons discussed above. Therefore, public authorities of 150 staff in total should report information on equal pay policies for the organisation and occupational segregation. This should be completed no more than every four years following the initial publication and all reports should be published in the public domain

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

And

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.

Scottish Ministers have a key role in providing the leadership and commitment to equality that will drive forward change. Therefore, it is essential that they determine national equality priorities to help set the overall goals for the public sector in Scotland.

Ministers must also have the responsibility of ensuring that the leadership in the government is well versed in equality issues and know what they need to know regarding addressing equality policy and procedure. Their leadership in this sense is vital to the success of national equality priorities.

We would like to see the Ministers follow the same procedures as the public authorities when framing their priorities by considering relevant stakeholders and gathering information from equality communities. Engender would also like to see the

Ministers publish the steps they will take towards achieving these priorities and how they will measure their progress. In the interest of accountability and transparency that should all be published in the public domain and the publication destination should be announced prior.

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.

And

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.

Again, we struggle with the use of flexible and proportionate. However, we agree that public authorities should report on progress on the specific duties within the existing public performance reporting systems, as this will ensure that equality issues are included in normal practice. They should be required to state in advance where this will be reported and to aid transparency and accountability, they should publish in the public domain.

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.

Engender agrees that the proposed regulation for the specific duties is an outcome based approach. There has been an emphasis on flexibility and proportionate responses and look forward to seeing the code and guidance that is to be developed with the EHRC.