

EQUALITY DUTY: PUTTING IT INTO PRACTICE

**CONSULTATION ON PUBLIC SECTOR EQUALITY DUTY SPECIFIC
DUTIES**

RESPONSE PROFORMA

Response Proforma – Consultation Questions

Question 1: Do you think that it would be helpful to have in place specific duties on public authorities to assist in the delivery of the Equality Duty?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think it would be helpful or, why you think it would not be helpful?

Engender holds that it is vitally important to keep focus on mainstreaming to ensure that equalities is integrated into key decisions in such a way that public bodies are both able to focus on areas of specific relevance to their stakeholders as well as being accountable to them.

There should be national priorities but also local priorities (following the Single Outcome Agreement framework) generated by the body, its staff, its role and its service users. Data collection/gathering and indicators should link to the Equality Measurement Framework.

Coverage

Question 2: Do you think the criteria set out at paragraph 4.4 are the right criteria for considering whether a public authority should be subject to the new specific duties?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think the criteria are right or why you think the criteria are not right?

Question 3: Do you think the new specific duties should be imposed on all Scottish public authorities subject to the general duty, provided it is reasonable and practical for them to fulfil the requirements?

✓ YES NO DON'T KNOW

Please provide any additional comments. For example, why do you think they should not be imposed?

Fitting with the electoral cycle

Question 4: Is it appropriate to link the new public sector equality duty specific duties to either the Scottish or local government electoral cycle? (For example, linking the setting, reviewing and reporting on equality objectives to electoral cycles)

✓ YES NO DON'T KNOW

Please provide any additional comments. For example, why you think the new specific duties should be linked to national or local government electoral cycles?

Engender believes that there should be a move to a 4-year cycle of reporting rather than annually but with periodic reviews and updates.

Content of the specific duties – delivering on mainstreaming

Question 5: Should public authorities be encouraged to mainstream equality, with reference to all the proposed protected characteristics (see paragraph 2.8 for these), across their services and functions?

✓ YES NO DON'T KNOW

Please provide any additional comments

As comments in Question 1, Engender is keen to encourage mainstream equality. There is a need for a better method of sharing good practice and data in Scotland which would allow for more effective impact assessments.

Question 6: How might public authorities best demonstrate they are mainstreaming equality in relation to all the proposed protected characteristics? For example, through reporting on progress.

Please provide additional comments – for example, on whether public authorities should report on progress on mainstreaming.

It is vitally important for equalities objectives to have been generated by the public authorities in consultation with communities across all the characteristics and based on evidence. These should be built into strategic plans.

Content of the specific duties – setting equality objectives

Question 7: With reference to the relevant evidence and to wider public authority general Equality Duty obligations, do you think that setting equality objectives would help public authorities to focus their response to the general duty? Should equality objective setting cover all protected characteristics, or not?

✓ YES NO DON'T KNOW

Please provide any additional comments. For example, why you think equality objective setting would help public authorities? Or, why you think equality objective setting would not help? You may also want to comment on whether objective setting should cover all protected characteristics or not.

At Engender we do have some concerns around objectives in that there may be a focus on 'key' equality objectives which may exclude other areas or disregard characteristics which may be considered to already have been 'done' (e.g. gender)

We remain keen that we do not lose the focus and emphasis on impact assessment but perhaps consider taking a broad thematic focus such as employment and then disaggregate by characteristic.

Question 8: Do you think equality objective setting should be linked to the corporate and/or business planning mechanisms of public authorities?

✓ YES NO DON'T KNOW

Please provide any additional comments. For example, why you think equality objectives should be linked to either corporate or business planning (or both planning mechanisms)? Or, why you think equality objectives should not be linked to these planning mechanisms?

Question 9: How do you think public authority equality objectives should be publicised? Please provide your suggestions in the box below.

We would suggest using the Web.

Question 10: Do you think that public authorities should be required to review their objectives every 4 years in order to fit with the electoral cycles of Scottish or local government?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you agree with reviewing objectives every 4 years? Or, if you disagree, what time-period do you suggest instead?

As Question 4, we would support a move to a 4-year cycle of reporting with periodic reviews and updates.

Content of the specific duties – reporting on progress

Question 11 : Do you think public authorities should be required to report on progress?

YES NO DON'T KNOW

Please provide any additional comments. You may wish to comment on what reports should cover - for example, progress on equality objectives, or other relevant issues.

At a recent meeting the idea of an equality accounting template was put forward as a way for public authorities to reveal the thinking behind their decisions and report on how it was happening. Content would include organisations' long term objectives, range of indicators and evidence/outcomes. We believe that to improve accountability this could be linked to the electoral cycle and in the case of local government and Community Planning Partnerships it would work alongside the Single Outcome Agreements and Concordat.

Reporting should cover all equality strands and if 'not applicable' then reasons for this must be given.

Question 12 : How frequently should public authorities be required to report on progress? Please provide your suggestion in the box below.

As above, every 4 years.

Question 13: Should reporting on progress be linked to existing processes such as business planning?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think existing processes are the best mechanisms for reporting or, why you think they are not the best? Please provide suggestions of other reporting mechanisms you think would be better.

A national programme of reporting would press bodies to collect data, thus enabling gaps to be reported and common themes to be identified.

Currently schemes are regarded as focussing on process rather than outcomes. A shift to reporting on outcomes would be more in line with what is occurring more widely with the Concordat and the National Performance Framework.

Question 14: Do you think the Government should prescribe in legislation how Scottish public authorities should report?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think reporting should or should not be prescribed in legislation?

Employment reporting

Question 15: The current gender specific duties require public authorities, with 150 or more employees, to publish an equal pay statement and report on that statement. Do you think this requirement should continue in the new specific duties?

✓ YES NO DON'T KNOW

Please provide any additional comments. For example, why you think this current requirement should or should not continue in the new specific duties?

Question 16: Do you think that there would be value in public authorities with 150 or more employees reporting on their gender pay gap?

✓ YES NO DON'T KNOW

Please provide any additional comments. For example, why you think there would be value or why you think there would not be value?

Question 17: If the gender pay gap is to be reported on, what method do you think should be used to calculate the gender pay gap? Please give your suggestion in the box below.

Engender holds that it would be useful for the scrutiny bodies to investigate what information they would require to conduct equal pay reviews in Scotland's public authorities.

We believe that the method used to calculate the gender pay gap should allow for the part-time pay gap to be seen.

Question 18: Do you think public authorities with 150 or more employees should be required to include information on the concentration of women and men in particular grades and in particular occupations (occupational segregation)?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think public authorities should be required to publish information on occupational segregation or, why you think public authorities should not be required to do so?

Question 19: Do you think it would help public authorities to monitor progress on equality and be more transparent if they were required to publish their ethnic minority employment rate and disability employment rate?

YES NO DON'T KNOW

Please provide any additional comments. Why you think it would help public authorities or, why you think it would not help?

Employment reporting – other characteristics

Question 20: Should public authorities be asked to outline how they intend to gather information on employment rates for the other characteristics protected under the new Equality Duty?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think public authorities should outline their intention to gather information. Whether you think, and explaining why, information should be gathered on all or only some of the other protected characteristics?

Question 21: How frequently should public authorities be required to publish information on the gender pay gap, their ethnic minority employment rate and their disability employment rate?

Please provide any additional comments. For example, should gender pay gap reporting and ethnic minority and disability employment rates be reported at the same time (or not at the same time)? Why?

We would like to see gender pay gap and ethnic minority and disability employment rates reported on annually.

Question 22: Should reporting on employment information be linked to other aspects of reporting on progress on equality, such as reporting on equality objectives?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think reporting should be linked to equality objective reporting or another reporting mechanism?

Demonstrating the impact on equality of policies and services

Question 23: Do you think public authorities should be required to demonstrate how they have considered the impact of equality on their policies and services?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think public authorities should be required to demonstrate or, why you think they should not be?

Question 24: Do you think a public authority should only be required to demonstrate equality impact assessment of key policies and services?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think impact assessment should only be on key policies/services?

Question 25: What information should a public body be asked to provide or publish to demonstrate that consideration has been given to the impact on equality of key proposals, policies or services? Please provide your suggestions in the box below.

As Question 11 reporting should cover all equality strands and if 'not applicable' reasons for this must be given.

Public procurement can be used to deliver equality outcomes and for this to happen there must be robust guidance and clear regulations. Relevant impact assessments should be carried out for all procurement activities to see if equalities is relevant to the contract with evidence for all decisions made and any additional costs associated built into the specification.

Question 26: Should public authorities be required to take action in response to issues identified through impact assessment?

YES NO DON'T KNOW

Please provide any additional comments.

Involvement and consultation

Question 27: Do you think public authorities should have a specific duty, when setting their equality objectives, to take reasonable steps to involve and consult employees, service users and other relevant groups – or where appropriate their representatives – who have an interest in how the authority carries out its functions?

✓ YES NO DON'T KNOW

Please provide any additional comments. For example, who do you think public authorities should consult and why? Why you do not agree with a specific duty on involvement and consultation?

Procurement

Question 28: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?

✓ YES NO DON'T KNOW

Please provide any additional comments.

As Question 25

The area of procurement is important as 'contracting out' can be a way of public bodies abdicating their equalities responsibilities.

Question 29: Do you think that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities to help contribute to the delivery of those objectives?

YES NO DON'T KNOW

Please provide any additional comments.

Equalities should be included in specifications as part of the procurement process, similar to carbon foot printing. This will ensure that contractors who have included this dimension will not be disadvantaged by potential higher costs.

Question 30: Do you think that contracting authorities should be required to consider using proportionate equality-related award criteria where they relate to the subject matter AND performance of the contract?

YES NO DON'T KNOW

Please provide any additional comment

Question 31: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?

YES NO DON'T KNOW

Please provide any additional comments.

Engender would like to see a push for the private sector to change and comply with discrimination law. We would like to insist that a private business wanting to bid for a contract must carry out an equal pay review. More needs to be done to reveal bad practice on the part of business e.g. gather data across race/gender tribunals and make details of employment tribunal cases available and relevant for making decisions around contracts.

Leadership by Scottish Ministers

Question 32: What do you consider to be the role of Scottish Ministers in providing leadership on equality?

Please add additional information on the role of Scottish Ministers in providing leadership on equality

Scottish Ministers need to be clear in their communications to public bodies so that the focus is on outcomes. The point must be made that impact assessment is about how services actually deliver on the ground and who they deliver to. Better decisions need to be made around spend.

The role should be about identifying priorities and reporting on these

Question 33: Should Scottish Ministers set equality priorities for the public sector in Scotland, determined jointly with local government in the spirit of the Concordat?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think equality priorities should be determined jointly or, why you think they should not be?

Question 34: Do you think Scottish Ministers' equality priorities should be based on evidence and informed by reasonable and proportionate involvement of stakeholders and equality interests??

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think relevant stakeholders and equality interests should be involved or, should not be involved?

Question 35: Should Scottish Ministers set their equality priorities at the end of the year in which the Government is elected and report on these within the electoral cycle?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think Ministers priorities should be set and reported on within the electoral cycle? Or, if you disagree, please suggest alternative timeframes for priority setting and reporting.

Documentation

Question 36: What documentation do you think should be required of public authorities to publicise their equality objectives? Please provide your response in the box below.

Web-based - outcomes expected and reported on

Question 37: Do you think that the mechanism(s) – whether through a Scheme or otherwise - for public authorities to publicise their equality objectives and report on progress should be left to each individual authority?

YES NO DON'T KNOW

Please provide any additional comments. For example, why you think this should be left to each individual authority or, why not?

The localisation agenda is a problem - equality is global not local.

There should be national comparable data evidence rather than postcode lotteries.

Enforcement

Question 38: What role should bodies with a scrutiny and improvement function in Scotland play in monitoring and improving the extent to which Scottish public authorities advance and promote equality, foster good relations between different communities and groups, and take steps to prevent unlawful discrimination?

YES NO DON'T KNOW

Please provide any additional comments.

Scrutiny bodies should lead by example by applying duties to their own work. It is important to know who checks and monitors what the scrutiny bodies do.

There needs to be remedial action taken to go beyond the individual scrutiny incident and challenges other organisations.

Question 39: Should that role be set out in specific duties placed on bodies with a scrutiny and improvement function? If so, which bodies? What would you see as the costs and benefits of such an approach? Are there any risks associated?

YES NO DON'T KNOW

Please provide any additional comments.

We would like to see a duty that public bodies publish information about tribunals and cases against them. Scottish Ministers' duties should be around sharing information and the scrutiny process would be meaningless if not followed up with remedial action as appropriate.

Risks associated would be where public bodies are small, underfunded and/or lacking a 'joined up' approach.