

Public Sector Equality Duty – Revised Draft Regulations

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Stonewall Scotland

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ *Please tick as appropriate*

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3. Permissions

I am responding as...

Individual	/	Group/Organisation
<input type="checkbox"/>		<input checked="" type="checkbox"/>
<i>Please tick as</i>		

- (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)?

Please tick as appropriate

☐ 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

Consultation Questions

Question 1: Do you agree that if a public authority's equality outcomes do not cover all relevant protected characteristics, it should publish the reason(s) why?

☒ Yes ☐ No ☐ Don't Know

The rationale of a single public sector duty was to make sure that all protected characteristics covered by the Equality Act 2010 were afforded equal weight; organisations must be transparent about why they have set particular equality outcomes, based on evidence and involvement. There is a concern that because the amount of evidence for some protected characteristics is lower, LGBT issues may 'fall behind' other strands because of this lack of evidence or a lack of community groups to involve. This is converse to the underlying principle behind establishing the single public sector duty.

There is a lack of evidence in the LGBT sector and while we are working hard to increase this, evidence available is often based on small sample sizes. This is due to the invisibility of the LGBT community, but this factor should not be a deterrent for public services addressing the barriers. We would caution that without an organisation taking preparatory steps to build trust with LGBT service users, organisations are likely to struggle with collecting this type of evidence. We would recommend that advice and guidance be developed to help organisations who have not worked on LGBT issues before and that the Scottish Government take account of these factors when designing the new duties.

Public authorities will have to consider all protected characteristics in order to meet their obligations under the general duty. We would like to see a requirement for organisations to make public the steps they will take to achieve their outcomes, how progress is being made towards the desired outcome, and how it will be measured. This will ensure accountability and transparency so that there is the opportunity for stakeholders to challenge decisions and hold public authorities to account. Organisations must be transparent about why they have set particular equality outcomes, based on evidence and local need, and via consultation with community groups. We would wish to avoid a situation where a public body sets equality outcomes that overlook certain groups and equality areas based on an assumption that no barriers exist, due to lack of knowledge.

Stonewall Scotland would recommend that the strands which are considered newer, and where an element of invisibility exists when evidencing and involving communities in order to inform outcomes, must not be overlooked in favour of setting outcomes for protected characteristics which are more widely acknowledged and more readily evidenced, such as gender, race and disability. Clear reasons for equality outcomes that do not cover all protected characteristics are vital, and it must be made clear what is considered a 'good' or valid reason for not covering a particular protected characteristic.

Question 2: Do you agree that a public authority should publish the results of equality impact assessment?

☒ Yes ☐ No ☐ Don't Know

Stonewall Scotland has always championed the requirement to assess the impact of policies and practices on protected characteristics, as we know from our research and work that all too often there is a divergence between what is written in a policy document and what actually happens in practice. A comprehensive EQIA programme can help to take into account the unintentional discrimination which can often happen through a lack of awareness or understanding of the specific issues and barriers for LGBT people. We see this as a very positive step towards ensuring that policy and practice are more aligned, and we believe that this will lead to better policy-making, better decision-making and ultimately better services for everyone.

We feel strongly that organisations should be publishing the outcome of assessments as a matter of course. We know that a public commitment to equality matter to LGBT people, with 71%¹ saying it would make them feel more comfortable accessing a public service. We feel that transparency and accountability is crucial and will allow service users and other stakeholders to see that organisations are considering impact and what they have done to amend the service as a result.

Publishing the results of these impact assessments sends a very clear message to LGBT people that services have been designed and planned with their needs in mind. Our research has shown that LGBT people are more likely to feel comfortable using a public service if that service has a clear visible commitment to equality and inclusion – the publication of EQIA information is another way for organisations to achieve this.

Question 3: Do you agree that a public authority's impact assessments should consider relevant evidence including any received from people with relevant protected characteristics in relation to the policy or practice in question?

☒ Yes ☐ No ☐ Don't Know

Some organisations, such as the NHS, have in recent years begun to operate a comprehensive EQIA programme which involves contributions from third-sector partner organisations who represent protected characteristics. Programmes such as this have enabled organisations to identify policies and practices that have a large differential impact on LGBT people and therefore require significant amendments. Evidence from service users with relevant protected characteristics, or organisations representing and campaigning for those with relevant protected characteristics, are an efficient way of making sure nothing is missed from the EQIA process and that all protected characteristics are covered.

There is often great potential for certain characteristics being overlooked, and the 'newer' strands are likely to suffer the most as there is less understanding about the issues on the ground. Organisations that collate or conduct research or campaign for those with relevant protected characteristics have a greater understanding of the issues as well as expertise on how to apply this knowledge to the policy or practice which is being impact assessed.

Involvement of external organisations and/or service users will also contribute to fulfilling elements of the general duty relating to engagement and community involvement.

Question 4: Do you agree that a public authority should make arrangements to review and where necessary change or revise existing policies and practices to ensure that these do not have a detrimental effect on its ability to fulfil the general duty?

☒ Yes ☐ No ☐ Don't Know

There has been much debate about the value of impact assessments, and we are aware that in some quarters it is considered to be nothing more than political correctness. However, we know that people experience day-to-day discrimination and that includes when accessing public services; Stonewall Scotland believes that whilst proportionality is a concern, impact assessments need to exist in order to develop policies that meet the needs of all the users and to ensure sound decision-making and policy-making.

We know that impact assessments can be a very useful and positive tool, and would like to see impact assessments more closely linked with the general duty and the concept of due regard. We therefore welcome this provision to review existing policies and practices as part of a wider EQIA programme, making sure all policies and practices within an organisation are held to the same high standard. There is a great deal still to be done in terms of developing understanding of the issues and barriers for LGBT people accessing public services.

We believe that truly embedding equality into the heart of public services would be very difficult without first ensuring that all staff have an understanding of what LGBT issues have to do with their policies and practices, and it is therefore advisable that public authorities think about the equality impacts of their work across all their relevant functions as a matter of routine.

Question 5: Do you agree that a public authority should not be required to undertake an impact assessment where the policy or practice in question has no bearing on its ability to fulfil or otherwise the general duty (eg, purely technical or scientific matters)?

X Yes ☐ No ☐ Don't Know

As mentioned above, there has been much debate about the value of impact assessments, and we are aware that in some quarters it is considered to be nothing more than political correctness. Assessing the impact of policies and practices that do not concern service users would be inefficient and place a greater administrative burden on organisations that are already struggling due to increased workloads and staff cuts. However, we would caution that most policies and practices will have some impact on the service delivered by an organisation and it is important that all policies and practices are thoroughly scrutinised as to whether they do have an effect on the authority's ability to fulfil the general duty. We envisage only a very small amount of policies will fall into this category.

Question 6: Do you agree that authorities subject to the specific duties should be required to take reasonable steps to gather information on the relevant protected characteristics of employees, including information on the recruitment, retention and development of employees?

X Yes ☐ No ☐ Don't Know

Organisations frequently cite a lack of evidence of employees with protected characteristics as a reason for not proactively dealing with any issues surrounding this. Stonewall Scotland has been encouraging and advising organisations on the best way to gather information about employees' sexual orientation and gender identity for a number of years, and organisations are increasingly recognising this as being the best way to ensure that LGBT employees do not experience disadvantages in the workplace. Gathering data on the protected characteristics of employees will go some way towards helping public authorities to meet the provisions of the general duty.

The purpose of the Equality Act 2010 and the public sector duty was to ensure that no one protected characteristic was given prominence above others. Protected characteristics that are 'newer', such as sexual orientation and gender identity, risk being given less credence and it will be difficult for organisations to meet the requirements of the general duty if no effort is made to gather evidence across all protected characteristics. We are concerned that public bodies with more than 150 employees will have to report on their gender pay gap, ethnic minority employment rate and their disability employment rate but not report on employment of lesbian, gay and bisexual staff. This does not seem to be in keeping with a single public duty that covers all equality strands. However, we recognise that not all organisations are sufficiently skilled in order to monitor sexual orientation and gender identity, and may need to undertake significant preparatory work before they are ready to begin

monitoring on all protected characteristics.

We would like to see public authorities setting a commitment to taking initial steps in preparation for commencing monitoring sexual orientation of employees and (where relevant) service users as soon as they are reasonably able, with a view to beginning monitoring on these protected characteristics within the next 2 years. There are very clear benefits to monitoring both staff and service users and Stonewall Scotland would strongly urge the Government to give a very clear steer to encourage public bodies to monitor, continuing to lead by example and setting outcomes to help to work towards it.

It is our strong view that organisations cannot set objectives and measure progress if they are not gathering evidence on who they recruit and who they retain. We would expect public bodies to be able to demonstrate what steps they are taking to work towards monitoring, including consulting and involving representatives of lesbian, gay and bisexual communities, their employee network groups and sharing best practice with partner organisations or those in the same sector or industry.

We welcome the proposal to gather information on employees at all stages of the employment cycle. This will allow gaps to be monitored at stages where LGBT employees are often overlooked, such as career development.

Question 7: Do you agree that authorities subject to the specific duties should be required to use the employment information which they have gathered to assist progress on the general duty?

☒ Yes ☐ No ☐ Don't Know

Employee monitoring data can provide a vital insight into the experiences of LGBT people in the workplace, and strong data will be able to directly influence an employer's work around eliminating discrimination which is unlawful, advancing equality of opportunity and fostering good relations between staff. Monitoring allows an organisation to see where the strengths and gaps are, meaning that diversity work can be targeted to the parts of the organisation that need it the most and good practice can be applied from the parts of the organisation that currently do well. Collecting data on the protected characteristics of employees is an excellent way to assist progress towards the general duty.

Question 8: Do you agree that authorities subject to the specific duties should be required to report on progress on gathering and using employment information, including an annual breakdown of information gathered, within the mainstreaming report.

☒ Yes ☐ No ☐ Don't Know

It is important that individuals and organisations can easily access reporting information in one place, such as a business report or equality report. In order to truly mainstream equality, it seems sensible to enable organisations to build implementation into their own business cycles, helping to place equality and diversity issues at the core of the organisation's work. This would help to negate the risk of equality reporting becoming an isolated process. Existing reporting mechanisms already in place, such as those that apply to schools or local authorities, could provide a useful means of reporting on progress.

Stonewall Scotland agree that equality should be embedded across all policies, procedures and corporate systems and that organisations should be able to choose how best to do this whilst adhering to clear timescales. Mainstreaming mustn't become simply a tick-box exercise, but should be an extra measure to ensure that the appropriate action is being taken. We recommend that a public authority should report on its gathering and usage of employment monitoring information within its existing public performance reporting systems. This will encourage compliance and reduce the burden on staff; the duty should not be an administrative burden but a means of unlocking better quality services.

Along with the recommendations laid out in the response to Question 6 and 7 above, we would recommend that an analysis of available data is also produced along with requirements to report on and publish employment information, as this demonstrates a wider commitment to equality.

Question 9: Do you agree that authorities with more than 150 employees should publish an equal pay statement, the first covering gender and the second and subsequent statements covering gender, disability and race?

☒ Yes ☐ No ☐ Don't Know

Question 10: Do you agree that where a listed authority is a contracting authority and proposes to enter into a relevant agreement on the basis of an offer which is the most economically advantageous it must have due regard to whether the award criteria should include considerations relevant to its performance of the general duty?

☒ Yes ☐ No ☐ Don't Know

The financial leverage businesses and authorities exercise with suppliers and contractors can be critical to lowering costs and delivering better services. Many

organisations are aware that this leverage can also be used to advance equality. An organisation that is providing services on behalf of or under the auspices of a contracting authority should give due regard to equality and diversity issues as part of meeting the general duty.

Organisations' efforts to be inclusive and deliver the best services can be undermined by suppliers, partners or contractors who do not share these values; in many cases, a contracting authority will bear responsibility for the behaviour and conduct of contracted staff. This means that an organisation's values and commitment to inclusion must be of a similar level to those held by the contracting authority, in order to protect public authorities' reputations, provide the best services and deliver these services in a better way.

Question 11: Do you agree that where a listed authority is a contracting authority and proposes to stipulate conditions relating to the performance of a relevant agreement it must have due regard to whether the conditions should include considerations relevant to its performance of the general duty?

☒ Yes ☐ No ☐ Don't Know

Question 12: Do you have any other comments on the proposed draft Regulations?

We agree with the timescales on the publishing of equality outcomes, mainstreaming reports and employment information by the end of 2012. Public authorities have been aware of the requirements on publication for some time and we see no reason why these timescales could not be met, as many public authorities are already working on their outcomes and publish their employment information as a matter of course.

We are inviting responses by **25 November 2011**.

Please send this questionnaire with the completed Respondent Information Form to:

equalityduty@scotland.gsi.gov.uk

or by post to:

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ⁱ Stonewall Scotland research, Service with a Smile, carried out, by the Good Practice Programme in 2008
http://www.stonewall.org.uk/documents/stonewall_service_with_a_smile.pdf