

Scottish Council on Deafness

EQUALITY DUTY: PUTTING IT INTO PRACTICE

Consultation Response

Policy & Research Officer
12/01/2010

EQUALITY DUTY: PUTTING IT INTO PRACTICE

CONSULTATION ON PUBLIC SECTOR EQUALITY DUTY SPECIFIC DUTIES

RESPONSE PROFORMA

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

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

Scottish Council on Deafness

Title Mr Ms Mrs Miss Dr

Please tick as

Surname

Reid

Forename

Mandy

2. Postal Address

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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

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

The Scottish Council on Deafness represents ninety organisations working with and on behalf of Deaf Sign Language users, Deafblind, Deafened (People with Acquired Hearing Loss) and Hard of Hearing people in Scotland; and individuals who have an interest in deaf issues or are deaf themselves.

At the present time, there is a “postcode lottery” working in Scotland in terms of equality for deaf people who have need of the services of public authorities and other publicly funded bodies. For example, even with the Disability Equality Duty in place as it is at the present time, many local authorities and health boards appear to be unaware of how many deaf people live in their local area and what, if any, their specific needs are. Once there is a single Equality Act in place, unless there are specific duties on public authorities, there is a danger that people who are already “caught” in the present hierarchy of equality will fall even further from the notice of public authorities. It is imperative that there are specific duties in place.

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

“Is the organisation a significant employer, in terms of either size or impact? Could the organisation, for example in the decisions it takes or the services it delivers, have a significant effect on the lives of people who are protected under the Equality Duty? Does the organisation have significant direct dealings with service users? Is the organisation of a sufficient size to operate the specific duties?”

What is meant by “significant” and “is the organisation of a sufficient size to operate the specific duties”?

SCoD would like to see specific duties applied to all public authorities, no matter their size or impact. At a consultation event on the Scottish Ministers’ duty in May 2009, employment was discussed. Too many deaf people are refused paid employment on Health & Safety grounds due to a lack of deaf awareness; and too many deaf people, especially Deaf BSL users, Deafblind and Deafened people do not receive appropriate services due to a lack of deaf awareness and staff with insufficient communication skills. The constant struggle of Deaf BSL users and Deafblind people to access information and

services in their own language that are culturally aware is well documented. Indeed the Scottish Government Equality Unit has a BSL and Linguistic Access Working Group to look at this very issue. Therefore, in terms of best practice, all public authorities and bodies, and all organisations that receive public monies should have to prove that they are compliant with the proposed Equality Act.

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

YES NO DON'T KNOW

What is meant by “reasonable and practical”?

If this is to be included, then public authorities must provide full, public disclosure on why they cannot fulfil these requirements. The SHRC/EHRC must have the opportunity to challenge any such disclosure; individuals rarely have the means to ask for a judicial review.

Any reasons given cannot simply be made on financial grounds.

For example, a public authority should not be able to refuse to produce information in BSL where it produces that information in a number of community languages solely on the basis that producing information in BSL involves filming, editing, producing DVDs and uploading the information onto a website is more expensive than translating information and producing a leaflet; or

As one local authority stated in a SCoD Freedom of Information request - “The Council spent £5,500 on community languages and £500 on BSL. We (the Council) have 3 social work assistants who are trained in BSL although they are not qualified interpreters; they would assist BSL users across social services.” By using social work assistants that are already being paid, it appears that the Council in question sees this as a means of saving money; whereas it is actually a way of not complying with current legislation and best practice; therefore Deaf people are not receiving an appropriate service from this particular local authority. The full report is available at <http://www.scod.org.uk/pdf/otherpublications/CommunicationSupportFOIReport.pdf>.

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

Equality objectives should be reviewed on a rolling programme. Each public authority/body should have an Equality and Diversity Impact Assessment Working Group (NHS 24 has such a group that reviews all its policies and services on a rolling basis). Such groups can ensure equality objectives are central to the provision of services and policies.

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

It should be mandatory for public authorities to mainstream equality, not just with reference to all the proposed protected characteristics, but in general. In terms of employment, there are already legal reasons to ensure equality in terms of employees, although many employers find other means of exclusion – for example, using Health & Safety as a reason not to employ Deaf BSL users or Deafblind people.

Public authorities have a specific duty under the DED, and yet deaf people still do not have equality of access to goods and services.

By mainstreaming of equality with reference to all the proposed protected characteristics, all services and employment should become more inclusive for all service users and all employees, not just those who have protected characteristics, as organisations will have to provide training in equality and diversity in order to comply with the specific duties. The more people who receive equality and diversity training on a CPD basis, then the greater the likelihood in time that equality for all will become the norm.

“By mainstreaming we mean – integrating an equality perspective into the everyday work of an organisation, involving policy makers, equality specialists and external partners.”

Service users and their supporters/families must also be involved in the mainstreaming of equality, especially in terms of disability, including the “hard to reach” people who are not necessarily involved or consulted, for example, older Deafblind people, deaf people with a learning disability or deaf people from BME communities.

“We also recognise that to effectively mainstream equality an organisation needs: leadership and commitment to equality; shared ownership across the organisation for the principles and processes of

*mainstreaming equality; the integration of equality with the organisation's business planning; **appropriate equality data, information and research to inform the development of policy and programmes**; policy appraisal and impact assessment; and networks and effective mechanisms of consultation with external bodies and interests."*

And

"how we can ensure that the focus on mainstreaming equality is not limited to those characteristics around which there is greater understanding or familiarity."

When looking at collecting equality data, public authorities should be considering at how this is can be best done. Deaf people will be covered by all the equality strands, not solely disability, therefore it is important in terms of equality for deaf people that monitoring includes the 4 recognised deaf definitions – Deaf BSL users, Deafblind, Deafened and Hard of Hearing. This should be included in any guidance that is produced by the Scottish Government for public authorities. It is equally important that this information is passed back to the Scottish Government as there are no statistics or demographics in Scotland on deaf people; and since the proposed question in the 2011 Census is so general in terms of deafness, this situation is not going to change in the short term.

The Scottish Government should consider what the proposed characteristics for the disability strand will include and ensure that all public authorities/bodies are clear on how data will be gathered; how objectives should be set; and how the processes and objectives must be monitored. There should be clear guidance given on the need for training both at induction and as part of CPD, not only for employees at all levels, but also for members of public authorities/bodies Boards and Secretariats.

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.

Each public authority could have a dedicated web space where it publishes best practice examples on mainstreaming equality in relation to all the proposed protected characteristics. This should be set up in accordance to SAIF guidance. Public authorities should also publish paper reports on a regular basis – again in accordance to SAIF guidance.

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

Yes to both questions – see answer to Q6.

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

If mainstreaming equality is to be successful, then equality objective setting must be included in all aspects of the public body's planning mechanisms, to ensure that all aspects of the public body's "business" is subject to Equality and Diversity Impact Assessment and monitoring.

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

Yes – see answer to Q6.

In addition, all publications – paper and web based, including those on equality objectives, should be subject to monitoring, to ensure that they are accessible and are meeting the needs of the public.

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

See answer to Q4.

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

See answers above.

Public authorities/bodies should also have to report on the outcomes on any judicial reviews or EHRC/SHRC investigations, and how they will put in place any recommendations made.

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

See answers above.

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

YES ✓ NO DON'T KNOW

See answers above.

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

✓ YES NO DON'T KNOW

It is important that there is a standard for reporting for public authorities/bodies to ensure that the public in Scotland can have the same access to information no matter where they live and so that the same monitoring standards can be used for any public authority/body by the EHRC/SHRC.

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

But it should apply to all public authorities/bodies no matter how many staff are employed. An equal pay statement should also include information about the other equality strands, especially in relation to disabled employees and employees from the BME communities.

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

There would be value in all public authorities/bodies reporting on their gender pay gap, especially since there has been legislation in place for 30 years – see answer to Q15.

The reports could be used to plan for financial support for older people in the future in order to decrease the socio-economic gaps and reduce poverty in the over 65s.

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.

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

All public authorities/bodies – no matter how many employees they have – should have to publish occupational segregation information not only for men and women, but also across the other equality strands.

This would then give accurate statistics in Scotland for disabled people, especially deaf people and people with a learning disability, and women from BME communities (the two strands that are known to be in low-paid, low-skilled, mainly part-time positions).

“We think that 150 employees is the right number at which to set the threshold: organisations with fewer employees than this may experience difficulty gathering the information; and the smaller the pool of individuals the less meaningful the data.”

Why would organisations with fewer employees have difficulty gathering the required information? And why the smaller the pool of individuals the less meaningful the data – especially if the information is collated centrally and is Scotland-wide? Surely it is as important to find out who is employed in the smaller public bodies as it is for the larger ones, to ensure that equality of opportunity is on offer throughout public authorities/bodies. This could be especially true in more isolated/rural/island communities where the public authorities could be smaller or in “specialist” bodies, such as the Private Rented Housing Panel or the Land Register.

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

See answer to Q 18.

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

See answers above.

The Scottish Government should set out what and how information is gathered to ensure that it can be monitored on a Scotland-wide basis.

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?

See answers above.

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

See answers above.

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

All policies and services should have an EDIA carried out and this should be published so that employees, the public and service users know what is being done to ensure equality is at the heart of all policies and services. Public authorities must ensure staff are trained in carrying out EDIAs and how to take action on issues highlighted in impact assessments. Local authorities should carry out EDIAs on all the proposed characteristics on all parts of their SOAs.

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

All public authorities/bodies should be required to demonstrate equality and diversity impact assessments on all policies and 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.

All public bodies should be required to publish equality and diversity impact assessments for all the proposed characteristics for all proposals, policies and services to ensure that equality becomes embedded into all services that are paid for by public monies.

EDIAs must be published in accessible formats in accordance with SAIF guidance.

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

YES NO DON'T KNOW

Yes – otherwise the impact assessments will be meaningless. Actions to be taken should also be published to ensure the whole process is clear and transparent.

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

It is essential that public authorities/bodies involve employees, service users and other relevant groups/people in the equality and diversity impact assessments and in the setting of equality objectives.

Public authorities/bodies will have to become more creative in how they consult and involve people, especially the “more hard to reach” and vulnerable people that use their services, etc. This may involve training frontline staff to help collect information from older people, people who are housebound, people with a learning disability, women from BME communities, Deafblind people, and people in isolated areas.

There should be a specific duty on public authorities/bodies to explain why they do not involve the “more hard to reach” people in their work on the setting of equality objectives.

What are considered to be “reasonable steps”?

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

If public monies are being used to provide a service through procurement activities, then each stage of the process must be equality impact assessed. Any organisation/company that is successful in the tendering process must be able to provide policies that show they too apply the proposed equality characteristics in their service provision and employment contracts. They should also be able to demonstrate what training in equality and diversity all their boards/managers and other staff receive. This is especially important to ensure that the needs of deaf people are considered and taken on board – services users and employees (including Board members). All these should be available for public scrutiny and there should be an opportunity for challenge if a contract is awarded to an organisation/company that cannot provide this information.

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

See answer above

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

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?

Suppliers who breach discrimination law and were prevented from bidding for contracts would have to embed equality in their policies and services in order to apply in the future. These suppliers would have to provide evidence of this. By ensuring this is Best Practice, equalities can be thoroughly mainstreamed throughout all services (in the broadest sense of the word) that are provided for by public money.

Leadership by Scottish Ministers

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

Scottish Ministers should be providing leadership on equality to ensure that equality is mainstreamed from the top down, starting with all sections of the Scottish Government. Each Directorate and Division within the Directorates should produce and publish their own equality schemes, equality impact assessments and the processes they intend to go through to ensure equality objectives are set, recorded and monitored.

The National Framework for the SOAs and the Concordat between National and Local Government should be subject to EDIA on all the proposed characteristics to ensure that equality underpins the Framework and the Concordat.

Scottish Ministers should also have a duty to gather information centrally for all the strands including those relevant to employment; in order to monitor the collection of data.

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

Equality priorities set by Scottish Ministers would ensure equality throughout Scotland, but there are also priorities that would be required to be set on a local level.

*“The involvement and dialogue with people who are affected and interested in a particular policy or service is something which public authorities in Scotland have been actively pursuing for some time. It is essential if public authorities are to understand the needs, experiences and aspirations of their communities and if the problems that people may have are to be known and understood. Responsive services cannot be delivered without this degree of understanding and engagement. **Sometimes however, those that most need to be heard are not.** The public sector equality duties have encouraged greater engagement with communities, employees and trade unions and the involvement of equality interests. We believe that the new single equality duty should continue to support this approach.”*

Scottish Ministers have a duty to ensure all public authorities/bodies can prove that “those that most need to be heard” are heard, listened to and their needs taken on board when setting equality objectives.

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

What is meant by “reasonable and proportionate involvement of stakeholders and equality interests”?

How will the Scottish Ministers ensure that involvement takes place with the “hard to reach” groups of people, including older Deafblind people, deaf people with a learning disability, deaf people with a mental health problem, Deaf BSL users, and deaf people from the BME communities, including asylum seekers and refugees?

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

Equality priorities should be set as soon as possible after the Government is elected as this must provide the focus for all public authorities/bodies and what equality objectives they set. It is extremely important that there is continuity throughout the process of setting public equality objectives and the monitoring of these.

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.

All public authorities/bodies, including the Scottish Government Directorates/Divisions, should publish their Equality schemes – in accessible formats (using SAIF guidance) – so that comparisons can be made between public authorities/bodies and across individual remits.

Without the need to publish equality schemes – with a standard format – how can the public judge whether or not outcomes are being reached.

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

Scottish Ministers should set up the mechanisms required to publicise equality objectives and report on progress and these must be mandatory for all public authorities/bodies to ensure consistency throughout Scotland and to ensure that these are fully accessible and meet the needs of the public.

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?

There must be a mechanism in place that allows challenge to unlawful discrimination that is more accessible than a judicial review.

Scrutiny and improvement bodies must be subject to the same equality standards as those of other public authorities/bodies – leading by example; and must include individuals from the different equality strands.

At the present time, how many of the scrutiny bodies have deaf people in their organisations? How many Deaf BSL users, Deafblind people, Deafened people and Hard of Hearing people?

If enforcement is left to a single organisation, for example the EHRC, there is a danger that the group or groups that “shout the loudest” will get better treatment than the more hard to reach people/groups or those such as deaf people who are possible not as political as others.

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

If it is decided that bodies with a scrutiny and improvement function should have the ability to take steps to prevent unlawful discrimination, then it is essential that the people who are tasked with this function receive comprehensive equality and diversity training on a CPD basis.

Also see answer to Q 38.