

Bringing Equality to Scotland: The Three Public Sector Duties

A joint publication by the Commission for Racial Equality,
Disability Rights Commission and Equal Opportunities
Commission in Scotland



Introduction

The Race Relations (Amendment) Act first introduced the concept of a positive race equality duty to public bodies in 2001. A new public sector duty on disability equality came into effect in December 2006. A duty on gender equality comes into effect from April 2007.

For the purpose of this guidance these individual pieces of statutory legislation are collectively referred to as 'the Duties'.

The three Duties have a common aim of ensuring that the public sector works to promote equality and eliminate discrimination in all its activities. However, each piece of legislation is focused on delivering equality in the most appropriate way for disabled people, for different ethnic groups, or for women and men in our society. Each Duty places distinct legal obligations on the public sector.

It is likely that, in the future, equalities legislation will be brought together and will create duties on the public sector to promote equality and eliminate discrimination on the grounds of age, religion and belief, and sexual orientation. The focus on delivering outcomes for equality, rather than achieving process requirements, will continue to be central to any future duties.

This paper looks at the commonalities and differences between the three public sector Duties on race, disability and gender. It has been produced by the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission in Scotland as a response to the increasing number of public authorities planning to implement the three Duties together.

Our aim in producing this paper is to support public bodies to meet each equality Duty in the most effective way. It is not intended to provide guidance on producing a single equalities scheme or suggest that a single scheme is necessarily the best way for public bodies to meet the three equality Duties.

The Commissions in Scotland share a common vision and expectation that the Duties will lead to a significant acceleration of public bodies' work to deliver equalities, and continuous improvement thereafter.

Background

The three Commissions in Scotland published a Joint Statement in November 2005 underlining our common approaches to the three public sector Duties. That statement is available on all our websites, as is this document. We are continuing to work closely together in Scotland to develop an agreed approach to the three Duties which supports public bodies to minimise duplication, while recognising the legal differences between each Duty.

Examples of single equality schemes have been collected and analysed by the EOC. Early indications show that where authorities have produced such a scheme, they have focused largely on the Race Equality Duty, and extended those arrangements to differing degrees for disability and gender. Given the different legal requirements, such an approach would not ensure a public body meets all three Duties.

The Commissions' advice to public bodies who plan to produce single equality schemes is therefore that, where they choose to develop a single equality scheme, they should refer to the three Duties, and where one has a more demanding requirement, consider meeting this requirement for all the equality strands covered by their scheme.

There should be no assumption that application of any arrangements which meet one general Duty will meet all. Nor should this advice prevent public bodies from exploring other creative means of meeting the Duties individually.

Differences

Differences in the **general Duties** illustrate the differences in the nature of discrimination experienced by the different groups involved. The table reproduced on page 8 shows these differences in summary form. For example, the Disability Equality Duty includes a duty to promote positive attitudes towards disabled people, and the Race Equality Duty requires the promotion of good relations between people of different racial groups.

The Disability Equality Duty is the only Duty which requires public authorities to take account of the needs of a particular group of people, even where that involves treating them more favourably than others. Race relations and sex discrimination legislation provides scope for positive action to meet the needs of under-represented groups in training or employment, but does not allow positive discrimination, and the Race and Gender Equality Duties do not change this.

The **specific Duties** clearly require different approaches, as summarised in the table on pages 9–11. For example, the Race Equality Duty strongly focuses on particular requirements, including a race equality scheme, race impact assessments, employment monitoring and the publishing of information. The gender and disability Duties are more comparable, with fewer specific requirements, placing the onus more on public bodies to set their own priorities as to the means to achieve change.

However the disability Duty does also include significant additional requirements on public bodies, including the requirement to involve disabled people in developing the disability equality scheme and action plan. The gender Duty requires specific action to narrow the gender pay gap, including the publication of an equal pay statement in addition to a gender equality scheme.

Each of the requirements of each Duty will need to be separately met and evidenced in a clearly identifiable way, either within a single equalities scheme or within three separate schemes.

Common activities

In our position statement published in 2005, we set out the benefits of a joined-up approach to the three equality Duties. In particular, we suggested that the three-way approach that the Commissions are taking to the Duties will help public sector bodies achieve sustainable and joined up solutions without causing duplication. We also pointed out that the specific skills and processes needed to deliver individual Duties can be translated across to achieve the highest standards for race, disability and gender equality and to provide a solid foundation for other equality areas such as sexual orientation, religion and belief, and age.

Although each Duty has its own legal requirements, there are certain elements of process within the three sets of specific Duties that lend themselves well to joint working or a generic approach, to minimise duplication by public bodies, and to promote harmonisation across equality strands. These are suggested below.

Evidence

Gathering and analysing evidence is crucial to writing equality schemes and action plans. As well as strand-specific evidence, information that can be disaggregated across equality strands (and within equality strands) is advisable. Without this, it will be very difficult to set priorities for action.

Gathering evidence for all three Duties is something that can usefully be done as part of one exercise as long as the legal requirements of each Duty are met. This will save time, money and effort and reduce the likelihood of 'participation fatigue'.

Involvement/Consultation

In order to produce equality schemes, the Gender Equality Duty and the Race Equality Duty require **consultation** of relevant stakeholders and the Disability Equality Duty requires **involvement** of disabled people.

Involvement requires a different approach from consultation. Learning from the required involvement of disabled people, involving different sections of the community would be good practice for the

development of all three equality schemes. This could require greater resources and planning than consultation, but the benefits could be significant in terms of better service delivery and design.

The Gender Equality Duty specifically requires that public bodies consult with service users, employees, trade unions and other stakeholders, as well as taking national policies, research and information into account, in developing gender equality schemes. This consultation and evidence gathering could usefully be carried across and joined up by public authorities in designing their race and disability schemes, although it should not in any way undermine the importance of involving disabled people.

Impact Assessments

Where good quality evidence has been gathered, the impact assessment process will be made easier. Public authorities will need disaggregated data in order to conduct impact assessments on all the strands. As long as a generic equality scheme clearly demonstrates how each of the equality duties is complied with independently, and how impact assessment processes will meet the expectations of each Duty, a generic equality impact assessment tool is acceptable.

Equality impact assessment may reveal that there are some policies that have greater relevance for one or other of the three strands. Alternatively, it may reveal that a policy has a negative (but possibly different) impact on a number of strands. In this case, action must be taken to mitigate the impact on each group covered by a positive Duty, rather than prioritising one over another.

Equality impact assessment may reveal that a policy has a positive impact on one group, but a negative impact on another. Given that all three Duties require the promotion of equality as well as the elimination of discrimination, a solution would need to be found to maximise the positive impacts of the policy while eliminating the negative for all groups. During this process, the involvement of members of relevant equality groups would be critical.

To meet the three general Duties, any equality impact assessment tool must support policy-makers and service planners to identify opportunities to **promote** equality for different ethnic groups, for disabled people and for women and men, as well as eliminating discrimination.

Impact assessments are only a tool; they are the first step to achieving change and not an end in themselves.

Monitoring Outcomes

The aim of all three equality Duties is to accelerate positive change, therefore it is important to focus on the outcomes of equality schemes and action plans.

There needs to be demonstrable change and improvement in all equality areas; therefore it could be practical for public authorities to set high level goals for the promotion of equality across the board. However schemes will need to ensure that there are clear and evidence-based gender equality, disability equality and race equality goals.

Action to achieve these goals is required over a three year period, and public bodies will be required to demonstrate what change has been achieved. For this reason, it may be sensible for public bodies to set up standard monitoring processes for all three Duties.

Report & Revise

Gender and disability equality schemes need to be reported against annually, and all three equality schemes must be reviewed and revised every three years. With annual reporting, and ongoing monitoring and impact assessment, it may be possible for public authorities, if they wish, to gradually harmonise the review process so that each scheme could be reviewed and revised together every three years, leading to a single three yearly timetable.

Conclusion

The Commissions in Scotland accept that there are key processes where a joined-up approach might be beneficial to the implementation of all three Duties; however there are also crucial differences between the Duties' legal requirements, which must be taken into account and clearly met by each public body as it is obliged by law to do. The difference in methods and evidence needed for the implementation of the different Duties, as well as the complexities of multi-equality approaches, may mean that some authorities choose to have separate equality schemes, while other public bodies may feel that there is value in bringing equality strands together.

The aim of the Commissions is to ensure real, measured, positive outcomes for all our communities, recognising the different needs and experiences of women and men, different ethnic groups, and disabled people, as our different legislative frameworks do.

Structure

General Duties

Gender Equality Duty	Disability Equality Duty	Race Equality Duty
<p data-bbox="111 544 411 629">Due regard to the need to:</p> <ul data-bbox="111 651 518 920" style="list-style-type: none"><li data-bbox="111 651 518 779">● Eliminate unlawful discrimination and harassment<li data-bbox="111 790 518 920">● Promote equality of opportunity between men & women.	<p data-bbox="558 544 874 629">Due regard to the need to:</p> <ul data-bbox="558 651 997 1995" style="list-style-type: none"><li data-bbox="558 651 997 824">● Promote equality of opportunity between disabled persons and other persons<li data-bbox="558 835 997 1104">● Eliminate discrimination that is unlawful under the Disability Discrimination Act 1995<li data-bbox="558 1115 997 1288">● Eliminate harassment of disabled persons that is related to their disabilities<li data-bbox="558 1299 997 1657">● Take steps to take account of disabled persons' disabilities, even where that means treating disabled persons more favourably than other persons<li data-bbox="558 1668 997 1803">● Promote positive attitudes towards disabled people<li data-bbox="558 1814 997 1995">● Encourage participation by disabled people in public life.	<p data-bbox="1021 544 1337 629">Due regard to the need to:</p> <ul data-bbox="1021 651 1428 1021" style="list-style-type: none"><li data-bbox="1021 651 1428 736">● Eliminate unlawful racial discrimination<li data-bbox="1021 748 1428 833">● Promote equality of opportunity<li data-bbox="1021 844 1428 1021">● Promote good relations between persons of different racial groups.

Specific Duties

Gender Equality Duty	Disability Equality Duty	Race Equality Duty
<p>A listed public authority must prepare and publish a Gender Equality Scheme.</p> <p>The Scheme must set out the overall objectives the public body has set to allow it to meet its general duty. The public body must consider the need to have an objective to address the causes of any unequal pay for men and women staff related to their sex.</p> <p>The scheme must also set out the actions it has taken or intends to take to:</p> <ul style="list-style-type: none"> ● Gather information on the effect of its policies and practices on men and women, in particular the extent to which they promote equality between male and female staff, and the extent to which the services it provides and the functions it performs take account of the needs of men and women 	<p>A listed public authority must involve disabled people in the development of a Disability Equality Scheme which demonstrates how it intends to fulfil its general and specific duties and which includes a statement of:</p> <ul style="list-style-type: none"> ● The way in which disabled people have been involved ● The methods for impact assessment ● Steps which the authority will take towards fulfilling its general duty (the Action Plan) ● The arrangements for gathering information in relation to employment and, where appropriate, its deliver of education and its functions ● The arrangements for putting the information gathered to use, in particular in review the effectiveness of its action plan and in preparing subsequent DES. 	<p>Listed public authorities must publish a Race Equality Scheme setting out functions and policies that are relevant to the general duty on race and arrangements for:</p> <ul style="list-style-type: none"> ● assessing and consulting on the likely impact of proposed policies on the promotion of race equality ● monitoring policies for any adverse impact on the promotion of race equality ● publishing the results of such assessments, consultation and monitoring ● ensuring public access to information and services which it provides ● training staff in connection with the duties imposed by the Race Equality Duty.

Specific Duties (continued)

Gender Equality Duty	Disability Equality Duty	Race Equality Duty
<ul style="list-style-type: none"> ● Make use of the information it has gathered to meet the duty and review the effectiveness of its scheme and the actions taken ● Assess the impact of its policies and practices on men and women, and use the results to inform its work ● Consult employees, service users, trade unions and others ● Achieve the objectives it has set. <p>The public authority must put the scheme, and the actions identified, into effect within three years. It must report annually on the actions it has taken.</p> <p>It must review the scheme and publish a revised scheme within three years .</p> <p>Listed public bodies with at least 150 full time equivalent staff must publish an equal pay policy statement, and report on this every three years.</p>	<p>Within 3 years of the Scheme being published, take the steps set out in its action plan and put into effect the arrangements for gathering and making use of information.</p> <p>Publish an annual report containing a summary of the steps taken under the action, the results of its information gathering and the use to which it has put the information.</p> <p>From December 2008, Scottish Ministers will have to publish reports every 3 years that:</p> <ul style="list-style-type: none"> ● Give an overview of the progress made by public authorities in relation to disability equality ● Set out proposals for co-ordination of action by public authorities so as to bring about further progress on disability equality. 	<p>Employers are required to monitor by reference to racial group staff in post and applicants for employment, training and promotion. Where the employer employs 150 or more full-time staff it must also monitor the numbers who receive training, benefit or suffer detriment from performance assessment reviews, are involved in grievance procedures, are the subject of disciplinary procedures or cease employment.</p> <p>Listed educational authorities must prepare a race equality policy, and have and fulfill arrangements to:</p> <ul style="list-style-type: none"> ● assess the impact of its policies, including its race equality policy, on pupils, staff and parents of different racial groups, including, in particular, the impact on attainment levels of pupils

Specific Duties (continued)

Gender Equality Duty	Race Equality Duty
<p>Scottish Ministers must publish reports every three years, in addition to the Scottish Executive's equality scheme and equal pay statement. These reports will set out the priority areas which Ministers have identified for advancement of equal opportunities across the public sector, and provide a summary of progress made in these priority areas by the public sector.</p>	<ul style="list-style-type: none">● monitor the impact of the operation of such policies on such pupils, staff and parents, including, in particular, their impact on attainment levels of pupils● take steps to publish annually the results of its monitoring. <p>Where the race equality policy is prepared by an education authority, that authority should ensure that each school under its management complies with the arrangements in the race equality policy.</p> <p>Further and higher education institutions must prepare a race equality policy, and have and fulfill arrangements to:</p> <ul style="list-style-type: none">● assess the impact of its policies, including its race equality policy, on students and staff of different racial groups, including, in particular, the impact on attainment levels of pupils● monitor, by reference to those racial groups, the admission and progress of students and the recruitment and career progress of staff● include in its written statement of its race equality policy an indication of its arrangements for publishing that statement and the results of its assessment and monitoring● take steps to publish annually the results of its monitoring.

These show that there are clear differences between the duties. Any work done in a 'generic' fashion must therefore clearly demonstrate how all the elements of all the duties have been fulfilled.

Document developed by the CRE, DRC and EOC in Scotland in January 2007 – this document should be read in conjunction with the relevant legislation and statutory guidance.

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