

## **EAST AYRSHIRE COUNCIL**

**CABINET 13 JANUARY 2010**

### **EQUALITY BILL AND CONSULTATION ON PUBLIC SECTOR EQUALITY SPECIFIC DUTIES**

#### **Report by Depute Chief Executive / Executive Director of Corporate Support**

#### **1. PURPOSE OF REPORT**

- 1.1** The purpose of this report is to provide Cabinet information on the new Equality Bill and a draft response to the Scottish Government's Consultation on Public Sector Equality Duty Specific Duties.

#### **2. BACKGROUND**

- 2.1** Over the last ten years the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disability Discrimination Act 1995 have been strengthened and expanded.
- 2.2** New legislation has also been introduced to cover discrimination on the grounds of religion or belief, sexual orientation and age.
- 2.3** In February 2005, the Government announced the establishment of the Discrimination Law Review (DLR) which considered the opportunities for creating a clearer and more streamlined discrimination legislative framework on discrimination which produces better outcomes for those who currently experience disadvantage.

#### **3. THE EQUALITY BILL**

- 3.1** In order to deliver the recommendation of the DLR in respect of the current legislation framework, an Equality Bill was published in April 2009 which distils nine major pieces of legislation and around 100 statutory instruments with their connected rules and regulations.
- 3.2** The Equality Bill will replace all current equality legislation with a single Act, which will form the basis of straightforward practical guidance for employers, service providers and public bodies.
- 3.3** As part of this change in legislation, a new general Equality Duty will be introduced which will require public authorities to be active in promoting equality, eliminating unlawful conduct and fostering good relations.
- 3.4** Scottish Ministers can place additional duties on public authorities to assist the delivery of the general duty in the form of developing a suite of specific duties for Scotland.

3.3 As well as streamlining the law, the Act will have plain English explanations alongside each clause to clarify what the provisions mean.

#### **4. POLICY PROPOSALS FOR SPECIFIC DUTIES**

4.1 The Scottish Government has set out proposals for consultation for a set of specific duties to support better performance of the new Equality Duty.

4.2 The main proposals of the new Equality Bill are:

- Public Bodies will no longer require to publish discrete equality schemes, but will require to set equality objectives and set out steps they will take towards achieving them. There will be an expectation to report progress on the equality objectives, as the Council sees fit, for example in corporate publications such as annual reports. The requirement to review the equality objectives every three years may remain.
- It is proposed to move away from an emphasis on describing process to requiring Public Bodies to demonstrate, in a transparent and accountable manner, outcomes and impact. There will be a requirement to demonstrate how Public Bodies have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives, and what difference this has made.
- There will be no requirement for equality training under the new duty. However, that does not prevent the Public Bodies delivering such training courses; it merely means this will not be mandatory.
- In respect of procurement, contracting authorities may 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.
- Contracting authorities may also require to consider incorporating equality-related award criteria where they relate to the subject matter of the contract and are proportionate.
- To establish a national equality standard which could be used in the procurement process.
- Not to extend the requirement to report employment rates for all the characteristics protected under the Equality Bill, mainly, sexual orientation, religion or belief and, and gender-reassignment, although some organisations may decide to do this voluntarily as a matter of good practice.

## **5. STRENGTHS OF THE EQUALITY BILL**

5.1 The Equality Bill aims to strengthen equality law by:

- Introducing a new Public Sector Duty to consider reducing socio-economic inequalities;
- Putting a new Equality Duty on public bodies;
- Using public procurement to improve inequality;
- Introducing gender pay and equality reports;
- Banning age discrimination outside the workplace;
- Extending the scope to use positive action;
- Strengthening the powers of Employment Tribunals;
- Protecting Carers from discrimination;
- Protecting breastfeeding mothers;
- Banning discrimination in private members' clubs; and
- Strengthening protection from discrimination for disabled people.

## **6. INTRODUCING A NEW PUBLIC SECTOR DUTY TO CONSIDER REDUCING SOCIO-ECONOMIC INEQUALITIES**

6.1 The Equality Bill will place a new duty on Government Ministers, departments and key Public Bodies such as local authorities and the NHS to consider what action they can take to reduce the socio-economic inequalities people face.

6.2 The duty will affect how public bodies make strategic decisions about spending and service delivery. It will enshrine in law, the role of key Public Bodies in narrowing gaps in outcomes resulting from socio-economic disadvantage.

6.3 The duty will apply only to strategic decisions. It will not affect front line decisions taken by service providers which relate to individuals. For example, it would not require a doctor to prioritise a patient from a disadvantaged area.

6.4 A separate consultation was carried out in Scotland on the inclusion of a socio-economic duty and it was recently announced that this duty will apply in Scotland and will form part of the devolved duties for Scotland.

## **7.0 THE NEW EQUALITY DUTY ON PUBLIC BODIES**

7.1 Building on the success of the existing Public Sector duties, the Equality Bill will create a new single public sector Equality Duty which will continue to cover race, gender, and disability but will extend to cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender-reassignment.

7.2 The new Equality Duty will require the Council to consider the needs of diverse groups in the community when designing and delivering public services so that people can get fairer opportunities and better public services. For example:

- In respect of Age, the Council putting extra park benches in local parks so older people can enjoy spaces as well as younger people;
- In respect of Sexual Orientation, a school adapting its anti-bullying strategy to explicitly address bullying of gay and lesbian school children;
- In respect of Religion or Belief, the Council looking for a provider of meals on wheels that delivers culturally diverse food including Halal and Kosher meals.

## **8. USING PUBLIC PROCUREMENT TO IMPROVE EQUALITY**

8.1 The Equality Bill makes it clear that Public Bodies can use procurement to drive equality. It will enable Ministers to set out how the Council should go about doing so. For example:

- Using procurement to promote and support equality could mean pre-qualification questionnaires to assess the suitability of potential suppliers to be invited to tender, including requiring disclosure of breaches of the equality legislation;
- Where a Council is commissioning a significant building project, in the context of a large social regeneration scheme, in an area where women are particularly affected by disadvantage and the work requires plumbers, joiners and plasterers, trades in which women are under-represented nationally than the contract for this work could include a condition that the contractor runs a positive action programme to train women in these skills.

## **9. BANNING AGE DISCRIMINATION OUTSIDE THE WORKPLACE**

9.1 Age discrimination in the workplace was banned in 2006, but the Government believe this needs to be extended to outside the workplace. The number of people over 85 is set to double over the next two decades. There is a need to ensure that older people are treated fairly, have fulfilling lives and are able to play a full part in society.

9.2 The Equality Bill will make it unlawful to discriminate against someone aged 18 or over because of age when providing services or carrying out public functions.

9.3 The Equality Bill will not affect products or services for older people where age-based treatment is justified or beneficial, for example,

priority flu vaccinations for the over 65s. The law will only stop age discrimination where it has a negative or harmful consequence.

## **10. GENDER PAY AND EQUALITY REPORTS**

10.1 The Equality Bill will contain a requirement to report on the gender pay gap by employers with 250 or more employees. However, the Government will not use this requirement before 2013 and it will only be used if sufficient progress on reporting has not been made. This requirement is already in place for the Council and the Equal Pay Policy and statement was adopted by Cabinet on 19 September 2007.

10.2 The Equality and Human Rights Commission will develop a set of metrics for gender pay reports in consultation with business, unions, and others during 2010.

10.3 The Equality Bill also includes powers for Ministers to require public authorities to report on equality issues. The Government will consult on the precise details over the summer but anticipate that Public Bodies with over 150 employees will be required to publish annual details of:

- their gender pay gap;
- their ethnic minority employment rate; and
- their disability employment rate.

10.4 The Equality Bill will ban pay secrecy or 'gagging' clauses which may stop employees discussing their pay with their colleagues.

10.5 The Government has asked the Equality and Human Rights Commission to conduct two enquiries – the first inquiry, which is underway, focuses on sex discrimination in financial services sector, and the second inquiry will focus on opportunities for ethnic minority workers in the construction industry.

10.6 The Commission will then examine the evidence to find out what is causing the inequality in both sectors and to make recommendations accordingly. The inquiries will support the measures contained in the Equality Bill to increase transparency in the workplace.

## **11. POSITIVE ACTION**

11.1 Positive action in the workplace will allow employers to make their workplace more diverse if they want to. It can already be used in some circumstances, for example, when placing adverts to attract a more diverse range of job applicants, or training employees from under-represented groups to help them compete for promotion.

11.2 The Equality Bill will expand the way positive action can be used so that employers can select someone for a job from an under-represented group when they have the choice between two or more candidates who

are equally suitable, provided they do not have a general policy for doing so in every case.

- 11.3 The Equality Bill will not allow positive discrimination, which will remain unlawful. Positive discrimination means employing or promoting people just because they are from an under-represented group, even if they are less suitable. The Equality Bill will not allow this to happen and will not allow employment quotas.
- 11.4 Positive action is not about banning certain groups from certain jobs. It is about allowing employees to increase diversity if they want their workforce to better reflect the local community or customer base.
- 11.5 The Equality and Human Rights Commission will publish clear, user-friendly guidance on the new positive action measures to illustrate a range of actions which employers will be able to take.
- 11.6 The Equality Bill will also extend positive action in political life. All women shortlists for selection of parliamentary candidates have increased the number of women MPs from 60 in 1992 to 128 in 2005. But women still only account for one in five MPs despite making up 51% of the population.
- 11.7 The Equality Bill will also enable political parties, as part of their process of selecting candidates, to take positive measures to bring on candidates from under-represented groups. This could include reserving a specific number of places on every electoral short-list for ethnic minority candidates, or organising mentoring schemes for lesbian, gay and bisexual candidates.
- 11.8 The Equality Bill will also allow the Council to take positive action measures to meet particular needs of disadvantaged groups. For example, a local sexual health centre holding a weekly session just for young women.

## **12. STRENGTHENING THE POWERS OF EMPLOYMENT TRIBUNALS**

- 12.1 Currently, Employment Tribunals can make recommendations where an employer is found to have discriminated against someone, but only if the recommendation would benefit the individual who brought the claim. This presumes that he or she is employed with the organisation. However, because 70% of employees involved in discrimination cases leave the organisation, this ties the hands of the Tribunals.
- 12.2 The Equality Bill will allow Employment Tribunals to make recommendations in discrimination cases which benefit the whole workforce and not just the individual who won the claim. This will help to prevent similar types of discrimination occurring in the future. Failure to comply with the recommendation could be used as evidence to support subsequent similar discrimination claims.

### **13. PROTECTING CARERS FROM DISCRIMINATION**

- 13.1 It is currently unlawful to discriminate against or harass someone because they are 'linked' or 'associated' with a person who is of another sexual orientation, race, religion or belief. But the same protection does not apply in respect of age, disability, sex or gender reassignment. So the same employer could lawfully discriminate against someone because they were married to a disabled person.
- 13.2 The Equality Bill will strengthen the law, protecting people from discrimination when they are associated with someone who is protected themselves, for example, as their Carer.

### **14. OFFERING NEW MOTHERS STRONGER PROTECTION WHEN BREASTFEEDING**

- 14.1 The Equality Bill will make it clear that it is unlawful to force breastfeeding mothers and their babies out of public places like coffee shops, public galleries and restaurants.

### **15. PRIVATE MEMBERS' CLUBS**

- 15.1 The Equality Bill will make it unlawful for associations, including private member's clubs, to discriminate against members, or guests of members invited to a club.

### **16. IMPROVING PROTECTION FROM DISABILITY DISCRIMINATION**

- 16.1 The Equality Bill will make it easier for disabled people who live in homes with common areas, like hallways and stairs, to be able to use these areas. It will place a new duty on landlords and managers of residential properties to make alterations for disabled people where it is reasonable to do so.
- 16.2 The Equality Bill will make it unlawful to knowingly treat a disabled person in a particular way which amounts to poor treatment, unless the treatment can be justified. For example, a woman with a learning disability is asked to leave a restaurant because she is eating in a messy way, which is caused by her disability. If the restaurant owners could reasonably be expected to know that she is disabled and could not justify asking her to leave, this would be unlawful discrimination.

### **17. THE IMPACT OF THE EQUALITY BILL**

- 17.1 The Equality Bill will mean some important changes for the way the Council operates as an employer and a provider of services.

- 17.2 The Equality Bill will introduce a new duty on the Council to consider reducing socio-economic inequalities. The duty will affect how the Council make strategic decisions about spending and service delivery. It is has been recently announced that this will now be part of the devolved specific duties for Scotland.
- 17.3 The Equality Bill will require the Council to publish annually, details of our ethnic minority and disability employment rate and our gender pay gap. It should be noted that the Council currently produces and publicises much of this information.
- 17.4 The Equality Bill makes it clear that the Council can use procurement to drive equality forward.
- 17.5 The Equality Bill will make it unlawful to discriminate against someone aged 18 or over when providing services or carrying out public functions.
- 17.6 The Equality Bill extends the use of positive action in the workplace so the Council will be able to address under-representation when, for example, recruiting employees. This will help to create a more diverse workforce in the Council. Account will require to be taken of this in the Council's Recruitment and Selection Policy and Procedures.
- 17.7 The Equality Bill extends the use of positive action in service delivery so the Council will be able to take positive action measures to meet particular needs of disadvantaged groups. Departments will require to take account of this in Service planning and delivery.

## **18. CONSULTATION ON PUBLIC SECTOR EQUALITY DUTY SPECIFIC DUTY**

- 18.1 Scottish Ministers favour placing specific duties on Scottish public authorities and are consulting for views on a number of issues which will help them decide what form the specific duties may take.
- 18.2 The consultation process has taken two forms; round table discussion event facilitated by the Equality and Human Rights Commission in which the Council was represented and the Scottish Government's consultation questionnaire which is attached as Appendix 1.

## **19. LEGAL IMPLICATIONS**

- 19.1 There are no legal implications arising from this report.

## **20. FINANCIAL IMPLICATIONS**

- 20.1 There are no financial implications arising from this report.

## **21. RECOMMENDATIONS**

22.1 Cabinet is asked to:

- a. note the content of the report and;
- b. agree the response to the Scottish Government on the Consultation on Public Sector Equality Duty Specific Duties.

**Elizabeth Morton**

**Depute Chief Executive/Executive Director of Corporate Support**

**18 December 2009**

## **APPENDICES**

Any person wishing further information on this report should contact Martin Rose, Head of Human Resources on 01563-576092.



Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

### 1. Name/Organisation

#### Organisation Name

East Ayrshire Council

Title: Mr  Ms  Mrs  Miss  Dr

Please tick as

#### Surname

Zaheed

#### Forename

Alyia

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### 3. Permissions

I am responding as...

<p><b>Individual</b> <input type="checkbox"/></p> <p><i>Please tick as appropriate</i></p>	<p><b>Group/Organisation</b> <input type="checkbox"/> <b>Organisation</b> <input type="checkbox"/></p>
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**(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

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

### 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 which are 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?

At present, the current arrangements imposed by the specific duties requiring a separate duty to Licensing Boards presents practical problems for the Council.

It would be considered more practical that Licensing Boards be subject to the general duty, however, given the relationship a Council has with its Licensing Board, the specific duties should be covered within the Council's specific duties.

### **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?

The cycle should be link the Community Planning cycle

**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

**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.

Through Progress Reports and Equality Impact Assessments, there should also

Be an alignment to BV2 and the SOA which provide a framework for delivering and measuring outcomes.

### **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.

Objective setting within the Council's business planning framework will help focus the Councils response to the general duty.

Objective setting should cover all protected characteristics, and also allow scope to identify objectives suitable to local circumstances.

**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?

Such an approach is consistent with the objective of mainstreaming. Corporate/business planning is a key business process within public authorities.

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

Public authorities should do this through all mechanisms they use currently and in all relevant reports.

**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?

Aligned to the reporting of Best Value 2 framework.

**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.

On the equality objectives.

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

Every 2 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.

This should be consistent with the mainstreaming objective.

**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?

The objective should be that public authorities should use their current methods which meet their and their communities' needs.  
Information should be made available in Plain English, Easi-Read, translation and alternative accessible format.

## **Employment reporting**

**Question 15:** The current gender specific duties require public authorities, with 150 or more employees, to publish an equality 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?

This would ensure transparency within public authorities.

**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.

This should be calculated by grades rather than as an average across the grades and be a nationally recognised method.

**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?

The provision of this information is consistent with the overall objective of producing an equality statement.

**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?

The Council publishes this information both annually and as part of its Equality Schemes. However, it is essential that publications of data do not become subject of league tables.

### **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?

Providing this information will allow the reader/user of the information to be aware of the collection and collation arrangements which have been used.

**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?

The ethnic minority and disability should be published annually. Gender pay gap information should be published every 3 years as this would assist in analysing any trends which would not be apparent from an annual review.

**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?

Not necessarily as information can be provided more frequently than every 4 years if that was the set period for review of the equality objectives.

**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?

This would align with the objectives of mainstreaming and on achieving equality objectives.

**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?

If impact assessment is carried out effectively on key policies and services then this will set whatever actions follow in an equality context.

**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.

The current arrangements are sufficient and suitable.

**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?

How public authorities consult should be defined by the topic area and the consultation mechanism which they have in place.

### **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.

But only where proportionate and relevant to the specific requirement.

**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.

Please refer to answer 31.

**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

This would be most appropriate route to capture and appraise compliance.

**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.

The tender selection PQQ stage could include an addition to the “crooks” declaration to include breaches of the Equalities Act. However, consideration would be required as to some scales of breaches (i.e. perhaps breaches within the past three years would disqualify the company).

### **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 are in a position to provide leadership on equality by:

- overseeing the national agenda; and
- influencing key agencies and stakeholders

**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?

The priorities should be such that they allow public authorities with different constituencies to approach their general and specific duties in a way which reflects their constituency and local needs.

**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?

This approach is consistent with the overall policy objective of involvement and consultation.

**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.

Statistical information, policy statements and equality impact assessments would be the basis of the documentation requires.

**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?

This approach would allow each authority to deal with this matter in accordance with its set arrangements e.g. its arrangements for Public Performance Reporting.

### **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.

The EHRC should consult with scrutiny bodies to ensure that mechanisms developed for scrutiny are consistent with approaches developed such as Best Value 2

**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.