

## **EAST AYRSHIRE COUNCIL**

**CABINET – 20 APRIL 2011**

### **EQUALITY ACT 2011 – PUBLIC SECTOR EQUALITY DUTY REGULATIONS AND ORDER**

#### **Report by the Executive Director of Finance and Corporate Support**

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

- 1.1** The purpose of this report is to provide Cabinet with information on the Equality Act 2010 in particular regarding recent decisions taken by the Scottish Government in respect of the Public Sector Equality Duty Draft Regulations and Order.

#### **2. BACKGROUND**

- 2.1** The Equality Act 2010 received Royal Assent in April 2010 and simplified and consolidated approximately 116 pieces of separate equality legislation and 40 years of case law into one Equality Act.
- 2.2** Prior to the Equality Act 2010, there were 3 separate public sector duties covering race, disability and gender. The Equality Act 2010 replaced these with a new single equality duty covering the protected characteristics of race, sex, disability, sexual orientation, religion and belief, age, gender reassignment and pregnancy and maternity.
- 2.3** The duty is in 2 parts – a general duty in the Equality Act 2010 itself, and specific duties which are placed on some public authorities by Scottish Ministers. The purpose of the specific duties is to enable the better performance of the general duty.
- 2.4** The new general Equality Duty will require public authorities to be active in promoting equality, eliminating unlawful conduct and fostering good relations.

#### **3. POLICY PROPOSALS FOR GENERAL AND SPECIFIC DUTIES**

- 3.1** Last year, Scottish Ministers consulted on a draft Order to amend the Equality Act 2010 to increase the range of Scottish public authorities covered by the general duty for all their functions, and on draft Regulations which set out the content of the specific duties.
- 3.2** The final drafts of the Order and Regulations were laid before the Scottish Parliament at the end of January 2011 and were considered by the Scottish Parliament's Equal Opportunities Committee (EOC). The Order and Regulations are subject to the affirmative procedure, which need the approval of the Scottish Parliament before they can come into force.
- 3.3** The Equal Opportunities Committee recommended to the Scottish Parliament that the draft Order should be approved, but recommended that the draft Regulations should not be approved. This position was accepted by Parliament and as a

consequence the draft Regulations have been formally withdrawn and will not now proceed.

#### **4. INTERIM MEASURES**

- 4.1** The new general duty in the Equality Act 2010 will come into force on the 5 April 2011 and the existing race, disability and gender equalities duties will be repealed. These repeals and commencement are the responsibility of the UK Government at Westminster.
- 4.2** With effect from 5 April 2011 Scottish public authorities, including East Ayrshire Council, will be subject to the new general duty, in the Equality Act 2010. Under this general duty the Council must have 'due regard' to the need to eliminate unlawful discrimination, promote equality of opportunity and foster good relations.
- 4.3** Scottish public authorities **will not** be subject to any specific duties from 5 April 2011. However, the Scottish Government expects to undertake further consultation and to make Regulations to implement new specific duties later this year.
- 4.4** In the meantime, the Scottish Government has stated that it expects public authorities to continue to embed equality into their work and to build on the systems and good practice which have been developed to date under the existing duties.

#### **5. EQUALITY AND HUMAN RIGHTS COMMISSION GUIDANCE**

- 5.1** As a consequence of the position set out at 3.3 above, The Equality and Human Rights Commission (EHRC) has issued guidance for public authorities and communities:
  - Public authorities will still be required to show due regard to the elimination of discrimination, the advancement of equality of opportunity and the fostering of good relations (the 'general duty') on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex and sexual orientation. The protected characteristic of marriage and civil partnership is covered by the elimination of discrimination only.
  - Public authorities are encouraged to continue using their existing systems for the time being whilst extending their consideration to encompass all of the protected characteristics, until greater clarity about the substance, requirements and timescales of the revised specific duties are available from the Scottish Government.
  - Existing specific duties on race, disability and gender will cease on 5 April 2011. The EHRC has issued temporary guidance which will aim to assist public authorities on best practice in the interim.

#### **6. IMPLICATIONS FOR THE COUNCIL**

- 6.1** The delay in implementation of the specific duties means that there is no requirement to develop a new Equality Scheme and a list of outcomes in relation to equality, as set out in the consultation on the specific duties, or to equality impact assess policies.

- 6.2** The Council had agreed to publish a new single Equality Scheme in June 2011, however, with no specific duties on how to set out the scheme, this will now delay development and implementation.
- 6.3** The guidance from the EHRC and the Scottish Government states that public authorities should continue to build on the systems and good practice which have been developed from the existing duties and to embed equality into all aspects of work.
- 6.4** There is also a recommendation that, where appropriate, public authorities undertake equality impact assessments and focus on delivering better outcomes for people who experience discrimination, disadvantage and exclusion.

## **7. PROPOSALS**

- 7.1** The Council has been developing good practice in relation to the public sector duties since 2002 to embed equalities into policies and practice and should continue to do so.
- 7.2** The Council has also developed effective engagement structures to consult with equality groups in order to utilise equality evidence and continued engagement. This structure is of great benefit in enabling and understanding the needs and experiences of communities and assisting in policy development and service delivery. This structure should continue to be supported.
- 7.3** The Council has also significantly progressed in the development of equality impact assessments (EQIA) for new and revised policies and it is recommended that there be no change to these arrangements.
- 7.4** The Council should delay implementation of its Single Equality Scheme until the draft Regulations have been approved by the Scottish Government.
- 7.5** These proposals will demonstrate the Council's continuing commitment to meeting the new general duty in the Equality Act 2010 which covers the wider range of protected characteristics outlined in paragraph 2 above.

## **8. SUMMARY**

- 8.1** In summary it is recommended that in order to ensure the general duty of the Equality Act 2010 is met, the Council continue to:
- engage and consult with equality groups in order to utilise equality evidence;
  - carry out equality impact assessment of all new and revised policies;
  - collate and publish equality monitoring information on employment data; and
  - defer publication of the Council's Single Equality Scheme until new Regulations have been approved by the Scottish Government.

## **9. LEGAL IMPLICATIONS**

**9.1** The proposals outlined in this report will assist the Council to meet its general duty as set out in the Equality Act 2010.

**10. COMMUNITY PLANNING**

**10.1** The proposals outlined in this report support all aspects of the Community Plan.

**11. RISK MANAGEMENT**

**11.1** There are no direct risk issues arising from this report

**12. FINANCIAL IMPLICATIONS**

**12.1** There are no financial implications arising from this report.

**13. RECOMMENDATIONS**

**13.1** Cabinet is recommended:

- i. approve the proposals set out in Sections 7 and 8 above; and
- ii. otherwise note the content of the report.

**Alex McPhee**  
**Executive Director of Finance and Corporate Support**  
**6 April 2011**

**LIST OF BACKGROUND PAPERS**

1. The Equality Act 2010
2. Consultation on Draft Regulations and Order

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