What is the purpose of the briefing note series?

The Improvement Service (IS) has developed an Elected Members Briefing Series to help elected members keep pace with key issues affecting local government.

Some briefing notes will be directly produced by IS staff but we will also make available material from as wide a range of public bodies, commentators and observers of public services as possible.

We will use the IS website and elected member e-bulletin to publicise and provide access to the briefing notes. All briefing notes in the series can be accessed at www.improvementservice.org.uk/elected-members-development.

This briefing note has been prepared by the Equality and Human Rights Commission Scotland.
What is the issue?

Scotland is not an equal society. Many inequalities may seem obvious — poverty, deprivation and underemployment affect many communities, reducing people’s life span and limiting their opportunities.

However, the impact of other inequalities can remain partially hidden or underexplored. For example, low or unequal pay for women can depress family incomes, disabled people can be excluded from work or civic life by transport problems, and access to social care for ethnic minority communities can be hampered by ideas that they deal with such problems within the community itself.

Statistics reflect these themes:

- The gender pay gap is 13.9%.¹
- Almost half (40%) of Scotland’s local authorities are not including an accessibility requirement in their taxi licensing regulations. This is often felt most acutely in remote areas, where, as a result, disabled people may not have access to fully participate in civic life, or even get to work.²
- In Scotland, only 30% of Pakistani respondents participated in sport, compared to a national average of 49%.³

The Equality Act was introduced in 2010 to help make Britain a fairer society. The Act places particular duties on public authorities (and other bodies when exercising public functions) to reflect the pivotal role they can play in dismantling inequality and driving up positive outcomes for all.

This brief guide explains how the equality duties apply to your role as an elected member and how they can benefit your local authority. This guide does not cover poverty/economic inequality.

The public sector equality duty (referred to as the general equality duty) came into force on 5 April 2011 and covers the ‘protected characteristics’ of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Those bodies subject to the general duty are required to demonstrate ‘due regard’ to the need to:

- eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;

¹ Close the Gap, ‘What is the pay gap?’. www.closethegap.org.uk/what-is-the-pay-gap.html
• advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
• foster good relations between persons who share a relevant protected characteristic and those who do not share it.

To assist public bodies in meeting the general duty, further Scottish specific duties came into force on 27 May 2012 and require listed authorities to carry out the following activities:

• report on mainstreaming the equality duty;
• publish equality outcomes and report progress;
• assess and review policies and practices;
• gather and use employee information;
• publish gender pay gap information;
• publish statements on equal pay;
• consider award criteria and conditions in relation to public procurement.

All local authorities and education authorities are covered by the general and the specific duties.
Why does it matter?

As the statutory regulator for equality, the Equality and Human Rights Commission is keen to ensure that public authorities are making good progress in embedding the equality duties in their day-to-day work. The public sector duties represent a positive opportunity for elected members as public authority leaders to ensure that they make better decisions, based on robust evidence.

The duties will provide the council with a better understanding of its service users’ needs and its workforce, which should lead to better decision-making and, ultimately, to genuine cultural change and tangible equality outcomes. The duties also promote transparency in decision-making and should lead to a reduction in instances of discrimination and the resulting claims.

Used appropriately, the duties will support local authorities as they work towards local outcomes agreed through Single Outcome Agreements. The duties are also relevant to National Outcome 7 — “to reduce the most persistent inequalities in Scotland” — but can assist in meeting other national outcomes in education, employment, health, and when considering the modernisation and reform of public services.

Example

A local authority customer survey indicated that a below average proportion of people from ethnic minority backgrounds were using its sports and exercise facilities. It sets ‘improving the health of ethnic minority communities’ as an objective when publishing its equality outcomes ahead of the 30 April 2013 deadline. This outcome runs parallel with key local targets amongst its Single Outcome Agreement and National Outcome to “live longer, healthier lives”.
What is the challenge for elected members?

As an elected member, you have an important role to play in championing equality within the council, as well as a scrutiny role to ensure that equality considerations are included in the decision making and governance of the council.

Your role in leading, supporting, defending and advocating for the people and communities you represent means it is important that you have a solid grasp of how equality feeds into the day to day workings of the council. Understanding the equality duty will leave you better placed to respond to enquiries from local people and to signpost effectively when more detailed knowledge is required.

The specific duties are tools that will help you to identify the difference that the council will make to the lives of the people it serves. The specific duties for *mainstreaming*, *equality impact assessment* and *outcomes* will be most relevant to your role as an elected member and are set out below.

**Mainstreaming**

You should consider whether equality is *mainstreamed* effectively in the council’s policies and practices. *Mainstreaming* equality simply means integrating the general equality duty into the day-to-day working of an organisation so that every decision is informed by the need to minimise discrimination, promote the best possible inclusion and to reflect on how the aim could increase or decrease unfairness in the community. It is for each individual organisation themselves to determine how best to mainstream equality in its day-to-day functions.

*Example*

A local authority decides to include, in its mainstreaming report, progress made on fostering good relations within the housing needs assessment, which it has been carrying out in partnership with neighbouring local authorities. Following work to bring together settled and Gypsy/Traveller communities, it is able to cite a 20 per cent reduction in complaints relating to unlawful encampments as evidence of progress made in fostering good relations.

**Equality Impact Assessment**

In exercising your duties as an elected member, you will have to make many decisions which shape the practice and policies of the council. You have to ensure that the relevant equality implications are considered in decision making processes within the council. You will also have to ensure that you have sufficient information to satisfy the legal requirement to pay ‘due regard’ to equality.

There is an onus on elected members to ensure that equality impact assessments are sufficiently robust...
and given appropriate weighting in decision-making processes. This is not a ‘box ticking’ exercise, and merely noting that an equality impact assessment has been conducted is not enough. You will have to be able to show how you, as a councillor, gave “due regard” to equality when you made a decision. Having council officers carry out an impact assessment, though necessary, is not the end of the duty. Elected members are obliged to consider equality implications and act on the findings of the impact assessments.

Policies and practices should therefore be assessed for impact across the three parts of the public sector duty (eliminate unlawful treatment, advance equality of opportunity and foster good relations). Consideration should be given to each of the ‘protected characteristics’ when you consider impact in this way.

This is not simply about ensuring that the council does not discriminate. Equality impact assessing also helps the council to identify ways in which equality could be advanced for those who are in most need, and also asks the council to consider the broader “good relations” impacts of a new policy — for example, a new housing allocations policy.

**Example**

A local authority runs a public library service with four libraries in its area. Facing reduced budgets combined with a reduced number of users, it is considering several possible changes to the service including installing computers which could be used by library users, changing opening hours or providing a mobile library service. As it develops each option, the local authority is assessing costs/benefits, environmental impact and the extent to which the option is likely to enable it to eliminate discrimination, advance equality of opportunity and foster good relations for persons with protected characteristics, which includes the workforce as well as current and potential users. This enables it to arrive at a decision that will strike the best balance between the needs of the local authority and those of users or potential users of library services.

Financial proposals relevant to equality – such as those likely to result in closures of services or the means in which a service is provided, are likely to have equality impacts and should be assessed.

**Equality Outcomes**

Equality outcomes are results intended to achieve specific and identifiable improvements in people’s life chances. An equality outcome is the result an organisation aims to achieve in order to further one or more of the needs of the general equality duty.

**Example**

A local authority finds, in analysing its annual staff survey, that staff identifying as lesbian, gay bisexual or transgender (LGBT) are less likely than other staff to rate both the organisation and their own managers as responsive to their needs. In order to advance equality of opportunity for its employees, the authority sets the outcome, ‘Our organisation is responsive to the needs
of LGBT staff'. It intends to reduce the difference in staff experience within two years and will measure progress using the staff survey.

The table below outlines the information that councils were required to publish on 30 April 2013 under the public sector equality duty, along with the publication frequency.

<table>
<thead>
<tr>
<th>Duty</th>
<th>First publication - no later than</th>
<th>Progress report - no later than</th>
<th>Subsequent publication - no later than</th>
</tr>
</thead>
<tbody>
<tr>
<td>Publish report on mainstreaming including employee information</td>
<td>30 April 2013</td>
<td>Within two years of last report</td>
<td></td>
</tr>
<tr>
<td>Publish equality outcomes</td>
<td>30 April 2013</td>
<td>Within two years of last report</td>
<td>Within four years of last set of outcomes</td>
</tr>
<tr>
<td>Publish gender pay gap information</td>
<td>30 April 2013 where 150+ employees</td>
<td></td>
<td>Every two years</td>
</tr>
<tr>
<td>Publish equal pay statement</td>
<td>30 April 2013 where 150+ employees</td>
<td></td>
<td>Every four years</td>
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</table>
What does ‘good practice’ look like in this area?

The Equality and Human Rights Commission has produced new technical guidance\(^4\) to explain the needs of the public sector equality duty, outline the requirements of the Equality Act 2010 and the specific duty regulations, and provide practical approaches to complying with the public sector equality duty. The guidance provides an authoritative and comprehensive explanation to the detail of the law and will give you the information you need to understand the Act and meet your responsibilities in the most straightforward way.

The Commission has also produced a suite of user friendly, non-statutory guidance\(^5\) to help you get to grips with the duties.

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Key issues/questions to consider

Key points to think about when making decisions about new policies or approaches to service delivery and employment or amendments or changes to existing policies are as follows:

- What is the intended aim of the policy?
- Does the policy proposal take every opportunity to eliminate discrimination? Have opportunities been considered which could advance equality of opportunity or good community relations?
- Could the policy impact differently on different groups in the community – for example, people with mobility problems, people from the Pakistani community, or women?
- Have you been given sufficient information to make this assessment of differential impact?
- If there is a negative or disproportionate impact on one section of the community are you satisfied that the proposed mitigation is enough?
- Are there other ways that the council could achieve the same aim without differential impacts?
- Are the proposals for monitoring the policy sufficient to ensure that elected members will know in future if the policy is impacting differently on different groups?
Summary

- As an elected member, you have a unique position to play in making Scotland a more equal society. By mainstreaming equality, you will help to ensure the council complies with its Public Sector Equality Duties which will help reduce discrimination and make its services more responsive to the communities it serves.

- In order to comply with the ‘due regard’ principle, the general duty should be seen as a support which underpins the day to day operation of the council. The specific duties will support the council to meet the requirements of the general duty.

- The equality duties will help the council to reduce inequalities as part of its Single Outcome Agreement and contribute towards the National Planning Framework.

- As well as council officers carrying out equality impact assessments, elected members are obliged to give “due regard” to equality in the decisions you make and you must be able show clearly that you have done so.
Further support and contacts


- Equality and Human Rights Commission Scotland. [www.equalityhumanrights.com/scotland](www.equalityhumanrights.com/scotland) Email: scotland@equalityhumanrights.com. Tel: 0141 228 5910
The Improvement Service is devoted to improving the efficiency, quality and accountability of public services in Scotland through learning and sharing information and experiences.