

Equality and Human Rights Commission

Mainstreaming the Public Sector Equality Duty

A guide for public authorities
in Scotland

Contents

1 Introduction.....	3
Context for this guide.....	3
Legal status of this guide	3
Aim of this guide	4
Who this guide is for	4
Content of this guide.....	4
2 Mainstreaming the equality duty	6
The General Equality Duty.....	6
The Specific Duties.....	7
What the Specific Duties require on mainstreaming the equality duty	7
3 What does ‘mainstreaming the equality duty’ mean?	9
4 The mainstreaming duty in practice.....	10
Evidence and information to support the mainstreaming duty	12
The mainstreaming duty and employment.....	12
The mainstreaming duty and service provision.....	13
Success factors	13
Staff awareness and understanding	14
5 Reporting	15
When to publish	16
Contacts	17

1 | Introduction

Context for this guide

This guide is one of a series written by the Equality and Human Rights Commission (the Commission) to explain how public authorities can meet the requirements of the Equality Act 2010 (the Act), which harmonises and replaces previous equalities legislation. The Act includes a public sector equality duty which replaced the separate duties relating to race, disability and gender equality. The public sector equality duty came into force on 5 April 2011.

There are eight guides giving advice on the public sector equality duty in Scotland:

1. Essential guide to the public sector equality duty
2. Equality outcomes and the public sector equality duty
3. Evidence and the public sector equality duty
4. Involvement and the public sector equality duty
5. Assessing impact and the public sector equality duty
6. Mainstreaming the equality duty
7. Employee information and the public sector equality duty
8. Board diversity and the public sector equality duty

The *Essential Guide* gives an overview of the requirements of the public sector equality duty.

The other seven documents provide additional practical advice. Further information can be found on the Commission's website: www.equalityhumanrights.com.

If you require this guide in an alternative format and/or language please contact us to discuss your needs. Contact details are available at the end of the publication.

Legal status of this guide

This guide gives advice on how to meet the public sector equality duty. It will help public authorities to comply with their legal duties under:

- Section 149 of the Equality Act 2010 (the public sector equality duty), and
- The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended.

Aim of this guide

This guide aims to help authorities subject to the public sector equality duty to implement the duty as it relates to mainstreaming. This guide provides more detailed advice to supplement the information set out in the *Essential Guide to the Public Sector Equality Duty*.

Who this guide is for

This guidance provides advice to two types of public authority: those that are subject only to the public sector equality duty and those that are also subject to the specific duties under the 2012 regulations mentioned above ('listed authorities'). The different requirements for each type of public authority are set out clearly throughout this guide.

The guide is aimed at those responsible for implementing the public sector equality duty in public authorities in Scotland. It will be of interest to staff right across public authorities, but particularly those responsible for mainstreaming the equality duty, as well as those engaged in business planning, procurement, analysis, performance management, human resources, grant making, governance and scrutiny.

The guide will also assist those who have an interest in the work of public authorities such as service users, voluntary bodies, unions, and equality organisations.

Content of this guide

This guide:

- Explains the obligations of listed authorities to report progress on mainstreaming the public sector equality duty under The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (the specific duties) as amended.
- Explains the purpose of mainstreaming the equality duty and how this relates to the other requirements of the public sector equality duty
- Provides advice on how to go about mainstreaming the equality duty.

This guidance is for public authorities in Scotland. Separate guidance on the public sector equality duty is available for public authorities in England (and bodies with non-devolved functions in Scotland and Wales) and public authorities in Wales. These reflect the differences in the specific duties for England and Wales.

2 | Mainstreaming the equality duty

The public sector equality duty is here referred to as the ‘general equality duty’ and is set out in the Equality Act. If you are listed in The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended you are also covered by specific duties, which are designed to help listed authorities meet the general equality duty. Further information on the public sector equality duty can be found in our *Essential Guide to the Public Sector Equality Duty*.

The General Equality Duty

The general equality duty requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

This guidance refers to these three elements as the three ‘needs’ mentioned in the general equality duty and so when we discuss the general equality duty we mean all three needs.

The public sector equality duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The public sector equality duty also covers marriage and civil partnerships, with regard to eliminating unlawful discrimination in employment.

The ban on age discrimination in services and public functions came into effect on 1 October 2012. As the ban does not extend to people under 18 this limits the scope of the duty to have due regard to the need to eliminate ‘unlawful discrimination’ under the first need of the duty (although it does not limit the other two needs).

The Specific Duties

The purpose of the specific duties in Scotland is to help those authorities listed in the Regulations in their performance of the general equality duty.

For a complete list of listed authorities and their reporting cycles, see our publication “Public Authorities in Scotland – Who is covered by the Specific Duties?” which can be found <http://www.equalityhumanrights.com/en/publication-download/public-authorities-scotland-who-covered-specific-duties>

What the Specific Duties require on mainstreaming the equality duty

Public authorities covered by the Specific Duties

The specific duties require a listed authority to publish a report on the progress it has made in integrating the general equality duty into the exercise of its functions, so as to better perform that duty. These reports should be published at intervals of not more than two years.

The report must include (if not published previously):

- an annual breakdown of the information it has gathered under its duty to gather and use employee information, and
- details of the progress that it has made in gathering and using that information to enable it to better perform the general equality duty.

A number of listed authorities must also publish the number of men and women members of the authority (or board of management), and report on the steps they have taken, and intend to take, towards ensuring diversity in relation to the protected characteristics of those members.

If you have existing public performance reporting systems you must, as far as practicable, use these to publish your report on mainstreaming the equality duty. The report must also be accessible to the public.

Public authorities covered only by the General Equality Duty

Although there is no specific requirement under the general equality duty to mainstream the equality duty, the principle behind mainstreaming may help authorities ‘pay due regard’ to the general equality duty in the exercise of

their functions.

3 | What does ‘mainstreaming the equality duty’ mean?

Mainstreaming the equality simply means integrating equality into the day-to-day working of an authority. This means taking equality into account in the way the authority exercises its functions. In other words, equality should be a component of everything an authority does.

Mainstreaming the equality duty has a number of benefits including:

- equality becomes part of the structures, behaviours and culture of an authority
- an authority knows and can demonstrate how, in carrying out its functions, it is promoting equality
- mainstreaming equality contributes to continuous improvement and better performance.

4 | The mainstreaming duty in practice

A listed authority must report on the progress it has made to make the general equality duty integral to the exercise of its functions so as to better perform that duty.

This means that the three needs of the general equality duty must be considered in exercising your business functions and processes, including budget setting and project planning.

You can integrate equality into your business, using tools such as equality impact assessment, and by ensuring that equality features appropriately in business planning templates, committee or other decision-making reports and other policy development mechanisms. Please see our guide *Assessing impact and the public sector equality duty* for further information.

It is for authorities themselves to determine how best to mainstream the equality duty in their day-to-day functions. A suggested approach to addressing the mainstreaming duty is to consider what your functions are and to ask 'how can the general equality duty be performed in the exercise of this function?'

An authority is likely to have functions concerned with service provision and with employment. For each of your functions, consider how this function can be exercised in a way which helps the authority to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

For each need of the general equality duty, consider each of the protected characteristics.

In considering how the exercise of the function can help you to eliminate unlawful treatment, you should consider whether there is evidence to indicate that the exercise of the function:

- may result in less favourable treatment for particular groups;
- may give rise to indirect discrimination;
- may give rise to unlawful harassment or victimisation;
- may lead to discrimination arising from disability;
- may fail to build in reasonable adjustments where these may be needed.

If the exercise of a function gives rise to unlawful treatment, the way that function is exercised must be changed to prevent this.

In considering how the exercise of this function can contribute to advancing equality of opportunity, you should consider whether it can help you to:

- remove or minimise disadvantage;
- meet the needs of different groups;
- encourage increased participation of particular groups; and
- take account of disabled people's impairments.

Similarly, in determining how the exercise of this function can affect good relations, you should consider whether it can help you to:

- tackle prejudice; and
- promote understanding.

Example: Mainstreaming the equality duty in prison rehabilitation

A prison service exercises a rehabilitation function. It looks for opportunities to further each of the needs of the general equality duty in the way it exercises this function.

Within each of the needs of the general equality duty it considers evidence available for each protected characteristic. For example it seeks opportunities to advance equality of opportunity for female, and/or disabled and/or minority ethnic and/or older prisoners, by attempting to ensure that the particular needs of prisoners from these groups are met in the way that the rehabilitation function is exercised.

The service recognises established findings that female prisoners have significantly higher rates of poor mental health compared to both the general female population and male prisoners. It identifies that women's prisons must operate a rehabilitation function that routinely provides a higher level of access to mental health professionals in order for the service to deliver successful outcomes for women.

Evidence and information to support the mainstreaming duty

Central to mainstreaming is the gathering and consideration of relevant data. Authorities should assess their existing available evidence and also consider what other evidence they might need to help them make progress in meeting the general equality duty.

You may wish to consider putting in place processes which enable you to monitor and record the profile of your service users and service activity, with respect to all of the protected characteristics. In the same way you may wish to analyse other outcomes; for example, the educational attainment of different groups.

Mainstreaming the equality duty may also involve integrating equality into general consultations and engagement activities. You may wish to consider introducing processes to help monitor the engagement of protected groups and to ensure that any data you collect can be disaggregated for each of the protected characteristics.

It is important that any staff carrying out an analytical role receive appropriate training and support on equality. You may choose to establish mechanisms to help ensure that equality is considered in the design and operation of any research activities, and that research briefs contain an equality dimension where appropriate.

Again, having these processes in place will support you in meeting your other specific equality duties, particularly in setting equality outcomes and assessing the equality impact of your policies and practices.

Reporting on this work will help you demonstrate to your staff, service users and other stakeholders that you are taking steps to mainstream the equality duty into the exercise of the functions of your organisation.

The mainstreaming duty and employment

A listed authority is required to take steps to gather information on the composition of its workforce and on the recruitment, development and retention of employees with respect to, in each year, relevant protected characteristics. It must use this information to better perform the general equality duty. In its report on progress made in mainstreaming the equality duty, the authority must include (if not published previously) an annual breakdown of the information it has gathered, and details of the progress that it has made in gathering and using this information to enable it to better perform the general equality duty.

Analysis of your employee information will allow you to identify any gaps in your organisation's performance of as an employer. This will enable you to investigate the causes of these gaps and take steps, including positive action initiatives, to address or mitigate the causes.

Please see our guide *Employee Information and the Public Sector Equality Duty* for more information.

The mainstreaming duty and service provision

Understanding how different people use services is an important step in mainstreaming the equality duty in your service delivery functions, and so gathering and using evidence is crucial to gaining this understanding.

As the needs of protected groups are understood, it will be easier to train staff, develop policy and deliver services that are tailored to different needs. The steps your organisation takes to meet the requirements of the general equality duty in service delivery should be included in your mainstreaming report.

Please see our guide *Evidence and the public sector equality duty* for more information.

Success factors

Mainstreaming the equality duty is an organisational responsibility and leadership and staff awareness will be central to success.

Leadership

Leadership helps to shape the culture of an organisation and is extremely important in the context of the mainstreaming duty. Senior managers should give clear and consistent messages about the importance of the public sector equality duty, to ensure that it is given an appropriate profile and emphasis.

Actions to establish visible leadership on equality might include, for example: ensuring equality is reflected in corporate reporting, corporate plans and target setting, or adopting and promoting a zero tolerance approach to discriminatory behaviour.

Example: Linking personal performance to the corporate vision

A university expresses its own objectives for equality in its Mission Statement and its Corporate Plan. The Corporate Plan drives the departmental operational plans and so equality objectives are routinely included in these departmental operational plans, and these in turn shape personal development targets for individual staff members. This enables equality objectives to be implemented and connected from strategic to individual level.

You may also want to ensure that the formal structures of your governing and advisory bodies have an appropriate sex and age balance, reflect the ethnic and religious diversity of the community and are accessible to and inclusive of disabled people, lesbians and gay men and transsexual people.

Staff awareness and understanding

Mainstreaming the equality duty provides the opportunity to build the capacity of all staff to consider and promote the public sector equality duty in their own roles. Building expertise across the authority will help ensure that equality is considered routinely, without the need for prompting from equality-specific staff.

You should ensure all staff have access to appropriate training to develop the knowledge and skills they require. Training does not always entail formal, off-the-job courses, but may also involve tailored workshops, mentoring or on-the-job support.

Staff should be able to recognise the relevance of the public sector equality duty to their own role and how, in doing their job, they will take equality into consideration. Training on the duty is likely to be most effective if it is tailored to the particular work or responsibilities of staff.

5 | Reporting

The duty requires an authority to report on the progress it has made to make the general equality duty integral to the exercise of its functions so as to better perform that duty.

Reporting offers authorities the opportunity to present all of their work on equality in one place and to demonstrate accountability and transparency to their staff, stakeholders and service users. Reporting is not intended to be a bureaucratic process but rather an opportunity for your authority to communicate meaningfully how it is meeting the general equality duty.

The mainstreaming duty is specifically linked to the general equality duty, as your report should be. You should take an overview of your authority's functions and describe how these have contributed to eliminating discrimination and other unlawful conduct; to advancing equality of opportunity; and to fostering good relations.

In practical terms, reporting across an authority's functions requires a strategic corporate view of progress towards meeting the general equality duty. This approach recognises that the contributions of individual departments and services do not work in isolation; you should consider cumulative impact and progress across the whole authority.

This strategic approach to reporting may also lend itself to partnership reporting. Your authority may wish to consider reporting along with its public sector partners on how the area or partnership is delivering the general equality duty in its work.

It is important to remember that the general equality duty does not apply to the partnership, but instead to the individual public authority partners, so any joint report should recognise this.

If you have existing public performance reporting systems you must, as far as practicable, use these to publish your report on mainstreaming the equality duty. The report must also be accessible to the public. Linking your equality reporting to existing public performance reporting systems will also help reduce the reporting burden by directly providing audit, scrutiny and regulatory bodies with the material they require.

When to publish

Reports should be published at intervals of not more than two years. A listed authority may choose to report more frequently, say on an annual basis.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website www.equalityadvisoryservice.com

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)
10:00 to 14:00 (Saturday)

Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: scotland@equalityhumanrights.com. The Commission welcomes your feedback.

Alternative formats

This guide is available as a PDF file and as a Microsoft Word file from www.equalityhumanrights.com. For information on accessing a Commission publication in an alternative format, please contact: scotland@equalityhumanrights.com

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