EXECUTIVE NOTE

THE EQUALITY ACT 2010 (SPECIFICATION OF PUBLIC AUTHORITIES) (SCOTLAND) ORDER 2011

S.S.I. 2011/XXXX

1. The above instrument will, if approved, be made by the Scottish Ministers in exercise of the powers conferred by section 151(3) of the Equality Act 2010 ("the Act"). The instrument is subject to the affirmative procedure.

Background

2. The purpose of the instrument is to amend Part 3 of Schedule 19 to the Act to add to the list of Scottish public authorities which are subject to the public sector equality duty at section 149(1) of the Act. The section 149(1) duty (the general duty) was introduced by the Westminster Parliament and requires public authorities to have due regard, when exercising their functions, to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

3. Section 151(3) of the Act confers a power on Scottish Ministers that they may by Order amend Part 3 of Schedule 19. Before making an Order, section 152(3)(a) requires Scottish Ministers to obtain the consent of a Minister of the Crown.

4. The enabling powers came into force on 18 January 2011 and the general duty at section 149(1) will come into force on 6 April 2011. The duty will apply to public authorities listed in Schedule 19 and by virtue of section 149(2) it will apply to any person who exercises public functions but is not listed in Schedule 19.

Policy Objectives

5. Part 3 of the Act already contains a list of Scottish public authorities. The Order will add to that existing list. Both the existing list and proposed additions are set out in Annex A. Listing Scottish public authorities in Part 3 of Schedule 19 has a number of benefits:

- the main benefit of listing a public authority in Schedule 19 is that it allows Scottish Ministers to impose specific duties on that authority;
- listing also makes clear that an authority is subject to the section 149(1) duty for all of its functions;

Consultation and Consent

6. Scottish Ministers consulted on the draft Order between 13 September and 26 November 2010. All bodies to be listed in Part 3 of Schedule 19 received the consultation document. The consultation document is available online at: http://www.scotland.gov.uk/Publications/2010/09/13094828/0

7. In addition, further consultation specifically on the Order was undertaken with the Equality and Human Rights Commission in accordance with the requirement at section 152(3)(b) of the Equality Act 2010.

8. Scottish Ministers have received the consent of a Minister fo the Crown before making this Order, in accordance with the requirement at section 152(3)(a).

Financial Effects

9. The general duty is imposed by Westminster and applies to public functions regardless of whether the authority is listed in Schedule 19. The general duty is discussed in the UK Government's Regulatory Impact Assessment for the Equality Act 2010 which is available online at: http://www.equalities.gov.uk/equality_bill.aspx

Scottish Government
January 2011

Annex A

Scottish Public Authorities already listed in Part 3 of Schedule 19

- An office-holder in the Scottish Administration (within the meaning given by section 126(7)(a) of the Scotland Act 1998).
- A community council established under section 51 of the Local Government (Scotland) Act 1973.
- A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.
- An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980).
- In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.
- The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992).
- The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992).
- The managers of a grant-aided school (within the meaning section 135(1) of the Education (Scotland) Act 1980).
- A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.
- A joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973.
- A joint fire and rescue board constituted by a scheme under section 2(1) of the Fire (Scotland) Act 2005.
- A licensing board established under section 5 of the Licensing (Scotland) Act 2005, or continued in being by virtue of that section.
- A National Park authority established by a designation order made under section 6 of the National Parks (Scotland) Act 2000.
- A police authority established under section 2 of the Police (Scotland) Act 1967.
- Scottish Enterprise and Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990.
- A Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.

Other bodies and offices to be added to Part 3 of Schedule 19on 6 April 2011

- Accounts Commission for Scotland.
- Audit Scotland.
- Board of Trustees of the National Galleries of Scotland.
- Board of Trustees of the National Museums of Scotland.
- Board of Trustees of the Royal Botanic Garden, Edinburgh.
- Bòrd na Gàidhlig.
- A Chief Constable of a police force maintained under section 1 of the Police (Scotland) Act 1967.
- A chief officer of a community justice authority.

- A Chief Officer of a relevant authority appointed under section 7 of the Fire (Scotland) Act 2005.
- Commissioner for Children and Young People in Scotland.
- Commission for Ethical Standards in Public Life in Scotland.
- The Common Services Agency for the Scottish Health Service.
- A community justice authority.
- Creative Scotland.
- The Crofters Commission.
- The General Teaching Council for Scotland.
- Healthcare Improvement Scotland
- Learning and Teaching Scotland.
- The Mental Welfare Commission for Scotland.
- A Passenger Transport Executive within the meaning of Part II of the Transport Act 1968.
- The Police Complaints Commissioner for Scotland.
- Quality Meat Scotland.
- A regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005.
- Risk Management Authority.
- Royal Commission on the Ancient and Historical Monuments of Scotland.
- Scottish Children's Reporter Administration.
- Scottish Commission for Human Rights.
- The Scottish Criminal Cases Review Commission.
- Scottish Environment Protection Agency.
- Scottish Further and Higher Education Funding Council.
- Scottish Futures Trust Ltd.
- Scottish Information Commissioner.
- The Scottish Legal Aid Board.
- The Scottish Legal Complaints Commission.
- Scottish Natural Heritage.
- The Scottish Police Services Authority.
- Scottish Public Services Ombudsman.
- Scottish Qualifications Authority.
- The Scottish Road Works Commissioner.
- The Scottish Social Services Council.
- The Scottish Sports Council.
- Scottish Water.
- Skills Development Scotland.
- Social Care and Social Work Improvement Scotland.
- The Standards Commission for Scotland.
- The Trustees of the National Library of Scotland.
- VisitScotland.
- A Water Customer Consultation Panel.
- The Water Industry Commission for Scotland