# EXECUTIVE NOTE

# THE EQUALITY ACT 2010 (STATUTORY DUTIES) (SCOTLAND) REGULATIONS 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 153(3), section 155(1)(c) and section 207 of the Equality Act 2010. The instrument is subject to the affirmative procedure.

## Background

2. The purpose of the instrument is to impose specific duties on listed public authorities in order to enable the better performance by those authorities of the public sector equality duty at section 149(1) of the Equality Act 2010. 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 153(3) of the Equality Act 2010 confers a power on Scottish Ministers that they may by regulations impose on a Scottish authority listed in Part 3 of Schedule 19 such duties as they consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 149(1). Authorities to be subject to the specific duties are listed at Annex A.

4. Section 155(1)(c) allows the Regulations to give Scottish Ministers power to further specify, elsewhere from time to time, matters that a public authority must consider. This power is set out in Regulation 9 and will be exercised by Scottish Ministers if they consider it necessary in the light of experience of the operation of the Regulations

5. The enabling powers came into force on 18 January 2011 and public authorities will be required to comply with the general duty at section 149(1) from 6 April 2011. The above instrument, if approved, will require them to undertake equality impact assessments from that date, and to publish or report on a number of specified actions by 6 April 2012 and at subsequent specified intervals.

## Policy Objectives

6. The specific duties set a framework for supporting the delivery of the general duty at section 149(1) of the Equality Act 2010. They will assist public authorities to comply with the general duty and will have four principal benefits:

- they will help public authorities to understand how they should respond to the general duty at section 149(1) of the Equality Act 2010;
- they will help public authorities focus on improving outcomes;
- they will allow the wider community to see the progress that public authorities are making; and
- they will facilitate enforcement by the Equality and Human Rights Commission.

## Consultation

7. Scottish Ministers consulted twice on the specific duties. The first consultation, on the broad scope of the specific duties, took place between 29 September 2009 and 15 January 2010. A second consultation on the draft regulations took place between 13 September and 26 November 2010. All bodies to be made subject to the specific duties received the consultation documents. The consultation documents are available online at:
http://www.scotland.gov.uk/Publications/2009/09/28154835/0
http://www.scotland.gov.uk/Publications/2010/09/13094828/0

8. In addition, further consultation specifically on the regulations was undertaken with the Equality and Human Rights Commission in accordance with the requirement at section 153(4) of the Equality Act 2010.

## Financial Effects

9. A Business and Regulatory Impact Assessment has been undertaken and published to accompany these regulations.

**Scottish Government**
**January 2011**

**Annex A**

**Scottish Public Authorities to be subject to the specific duties**

**Those already listed in Part 3 of Schedule 19**

*Scottish administration*

- Scottish Ministers
- The Keeper of the Registers of Scotland
- The Keeper of the Records of Scotland
- The Registrar General of Births, Deaths and Marriages
- The Scottish Court Service

*National Health Service*

- A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978
- A Special Health Board constituted under that section

*Local government*

- A council constituted under section 2 of the Local Government etc (Scotland) Act 1994
- 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
- Scottish Enterprise and Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990

*Other educational bodies*

- An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980)
- The managers of a grant-aided school (within the meaning of that section)
- 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)
- 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 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)

*Police*

- A police authority established under section 2 of the Police (Scotland) Act 1967

**Other bodies and offices to be added to Schedule 19 on 6 April 2011**

- Accounts Commission for Scotland
- Audit Scotland
- Bòrd na Gáidhlig

- 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
- A community justice authority
- The Common Services Agency for the Scottish Health Service
- Creative 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
- A regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005
- The Scottish Criminal Cases Review Commission
- Scottish Further and Higher Education Funding Council
- The Scottish Legal Aid Board
- Scottish Natural Heritage
- Scottish Qualifications Authority
- The Scottish Social Services Council
- The Scottish Sports Council
- Scottish Water
- Skills Development Scotland
- Social Care and Social Work Improvement Scotland
- Board of Trustees for the National Galleries of Scotland
- Board of Trustees of the National Museums of Scotland
- The Trustees of the National Library of Scotland
- VisitScotland

# Business and Regulatory Impact Assessment

# Public Sector Equality Duty Specific Duties

## PURPOSE AND INTENDED EFFECT

### Objectives

1. The Regulations are intended to:
   - simplify and streamline the equality duties placed on public authorities
   - reduce the complexity and bureaucracy of the current framework
   - minimise process and encourage public authorities to concentrate on outcomes for service users
   - set out a clear framework that will enable the better performance of the general public sector equality duty in the Equality Act 2010, leading to improved outcomes, opportunities and life experience for those who experience prejudice and discrimination

### Background

2. There are currently 3 separate public sector equality duties covering race, gender and disability. The Equality Act 2010 replaces these with a new single duty and extends the scope to cover sexual orientation, age, religion or belief, pregnancy and maternity, and gender reassignment.

3. Like the current duties, this new single equality duty has two parts – a general duty in the Act itself, and provision for specific duties to be made through Regulations.

### Rationale for Government intervention

4. One common set of specific duties will provide a simpler, more efficient and more cost effective framework than the existing regime of 3 separate duties.

5. The public sector equality duties contribute to the delivery of improved public services, *Best Value* and better outcomes for the people of Scotland; and there is evidence in this respect. For example:

- The Government Equality Office at Westminster commissioned work by Schneider-Ross which highlighted the value of the existing public sector equality duties in raising the profile of equality, tackling discrimination and disadvantage, assisting authorities to tackle equality issues and increasing commitment and leadership http://webarchive.nationalarchives.gov.uk/20100212235759/http://www.equalities.gov.uk/research,_facts_and_figures/research/specific_duties.aspx

- *Capturing the Gains* (2009), a report by the Equality and Human Rights Commission provided positive examples of the developments which had taken place as a result of the current duties in Scotland. For example: many authorities had taken steps to develop systems to collect better qualitative and quantitative data to progress equality; authorities were putting policies and practices in place which focussed on recruiting and retaining a diverse workforce and promoting greater partnership working with equalities groups.
  http://www.equalityhumanrights.com/scotland/projects-and-campaigns/capturing-the-gains/

- the Scottish Ministers' reports in 2009 on the progress made on disability stated the Disability Equality Duty has been helpful in providing a focus and framework for the work on disability equality and highlighted areas where there has been a marked progress in relation to the position of disabled people in Scotland in the context of the six Government ministerial portfolios.
  http://www.scotland.gov.uk/Topics/People/Equality/disability/disabilityministersduty

- Audit Scotland (2008) reported on the impact of the race equality duty on council services. It concluded that councils need to build better understanding of the needs of their minority communities; mainstream their approach to race equality; and give more priority to race equality in delivering their services. In addition, it noted that councils took steps to improve their understanding of their minority ethnic communities through for example, commissioning or undertaking in-house research – with some evidence of new services tailored to minority ethnic communities and increased use of existing services as a result.
  http://www.audit-scotland.gov.uk/media/article.php?id=90

6. Equality is a key element of the National Performance Framework and we have a specific national outcome to have tackled the significant inequalities in Scottish society (National Outcome 7). The public sector equality duty helps us to deliver this outcome.

## CONSULTATION

### Consultation within Government

7. All Directorates General within the Scottish Government were consulted on the development of the proposals. There was agreement that the proposed new specific duties represent a flexible, proportionate and outcome based approach.

### Public Consultation

8. Public consultation was undertaken twice.

***On the overall scope of the duties***

9. Between September 2009 and January 2010 we consulted on the broad scope of the proposals. 160 responses were received. The main points made by respondents were:

- the need for measurable results;
- the need for flexibility;
- the need for specific duties to be crafted in a way that helps public authorities to deliver the general duty in the Equality Act 2010;
- the need for duties which can operate within public authorities
- existing systems and frameworks.

***On detailed proposals and draft Regulations***

10. We consulted again between September and November 2010 on detailed proposals and draft Regulations. 122 responses were received. The majority of the respondents agreed with most of the questions in the consultation. Respondents submitted detailed responses which indicated broad support for the proposed Regulations and which reflect the interest in, and importance of, equality issues amongst organisations, authorities and individuals in Scotland.

| **Respondent Groups** | **Number of Responses** |
|---|---|
| Organisations or agencies within the education sector (education) | 17 |
| Organisations or agencies dealing with equality issues (equality) | 24 |
| Local authorities (local authority) | 24 |
| Miscellaneous public authorities (misc. public authority) | 20 |
| Organisations or agencies within the health or social care sector (health/social care) | 10 |
| Police or fire bodies (police/fire) | 8 |
| Miscellaneous non-public authorities (other) | 4 |
| Individuals (individual) | 15 |
| **TOTAL** | |

## Business

11. The Regulations do not impact on business. Business was however engaged through the consultation process. This included specific targeting of the Federation of Small Business Scotland, CBI Scotland, Scottish Chambers of Commerce, the Institute of Directors, the Scottish Council for Development and Industry and Scottish Financial Enterprise.

## OPTIONS CONSIDERED

### Option 1

**Maintain the existing duties**

12. Public bodies already have systems/mechanisms in place to comply with the duties. They will not incur familiarisation costs.

13. Cons:
- Public authorities will remain subject to three different sets of complex regulations, which all have different requirements, timescales, and reporting mechanisms.
- The three sets of specific duties are highly prescriptive and driven by processes.
- Compliance with the existing duties incurs significant costs.
- The additional protected characteristics protected by anti-discrimination legislation would not be included.

### Option 2

**Remove Existing Duties**

14. There would be no regulations, resulting in less burden on public authorities in context of financial constraints.

15. Cons:
- Public authorities will not consistently design policies and deliver services in a way which meets the needs of equality groups and communities.
- Barriers to accessing services may not be proactively identified and addressed.
- Inequality, discrimination and exclusion lead to poorer health and wellbeing, poorer educational attainment and employment opportunities and increased costs in terms of services, support and intervention. Tackling inequality, discrimination and exclusion will have a cost saving in the longer term.
- Public authorities are not yet ready for the legislative imperative to be removed entirely as this would undermine the progress that has been made to date.

### Option 3

**Simplification, streamlining and focussing on outcomes – Chosen Option.**

16. *Simplification*: replace three separate set of regulations which impose different, process laden requirements, which must be met at different times with one set of streamlined duties. For instance, research from Schneider-Ross suggested that the requirements to produce equality schemes under the

existing duties are considered a significant burden, and public bodies routinely ask external contractors to draw up their equality schemes. Once published these schemes are rarely used but the cost to the public sector of producing the current schemes for race, disability and gender is substantial.

17. *Focus on Outcomes*: proposals remove bureaucratic requirements and ensure that public authorities focus on achieving improved equality outcomes by setting and working towards evidence based outcomes.

18. *Proportionate and flexible*: there is less prescription and the flexibility for public authorities to decide for themselves how to respond to aspects of the duties.

19. *Goes with the grain*: the duties are designed to operate within public authority's existing systems and frameworks.

20. Cons:

- *Regulatory burden*: The new package will still impose a regulatory burden, even though it will be substantially reduced compared with the cost of complying with the existing three sets of regulations.

**Sectors and groups affected**

21. The public sector.

## COSTS AND BENEFITS

**This section summarises the costs and benefits of the proposed new duties.**

| Current duties | Proposed new duties | Cost implication |
|---|---|---|
| Publish 3 separate, complex, stand-alone schemes every 3 years | Publish equality outcomes every 4 years | Significant reduction |
| Publish separate annual reports | Report every 2 years using existing systems | Significant reduction |
| Gather complex data on impact of policies | Simplification and streamlining | Significant reduction |
| Complex employment monitoring and reporting | Simplification and streamlining | Significant reduction |

### Costs Summary

(figures £m per year)

| | Ongoing cost of **existing duties** | Ongoing cost of **new duties** | **Cost saving** |
|---|---|---|---|
| NHS | 0.393-0.504 | 0.189-0.259 | 0.204-0.245 |
| LA | 0.525-0.672 | 0.252-0.345 | 0.273-0.327 |
| FE/HE | 0.399 | 0.143 | 0.256 |
| Other public authorities | 0.719 | 0.241 | 0.478 |
| Central Government | 0.039 | 0.026 | 0.013 |
| **Total** | **2.075-2.333** | **0.851-1.014** | **1.224-1.319** |

22. One-off familiarisation costs of between 0.407-0.672 result in a total cost for year 1 of the new duties of 1.258-1.686. This is still less than the estimated cost of continuation of the existing duties (2.075-2.333).

**Methodology**

23. We have calculated costs using a similar methodology to the Government Equality Office at Westminster.

New Duties – ongoing costs – methodology

Larger public authorities (NHS and local authorities)

Outcomes, mainstreaming and reporting requirements

- Equality manager: 1-2 weeks per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 1-2 weeks per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs).

Impact assessment

- Equality manager: 1-2 weeks per year.

Research work

- Estimated at £5,000 per year in line with GEO estimate.

Smaller public authorities (further and higher education)

Outcomes, mainstreaming and reporting requirements

- Equality manager: 1 week per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 1 week per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs).

Impact assessment

- Equality manager: 0.5 week per year.

Smaller public authorities (police, fire, NDPBs etc)

Outcomes, mainstreaming and reporting requirements

- Equality manager: 1 week per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 1 week per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs).

Impact assessment

- Equality manager: 0.5 week per year.

Scottish Government

Outcomes, mainstreaming and reporting requirements

- Equality manager: 2 weeks per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 2 weeks per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs).

Impact assessment

- Equality manager: 2 weeks per year.

Research/analysis work

- Estimated at £20,000 per year

24. We have calculated the ongoing costs to the public sector of the new duties to be:

(figures £m per year)

| | Lower estimate | Higher estimate |
|---|---|---|
| NHS | 0.189 | 0.259 |
| LA | 0.252 | 0.345 |
| FE/HE | 0.143 | 0.143 |
| Other public authorities | 0.241 | 0.241 |
| Central Government | 0.026 | 0.026 |
| **Total** | **0.851** | **1.014** |

New Duties –one-off familiarisation costs – methodology

25. For listed public bodies covered by the specific duties there will be some one-off implementation and familiarisation costs. These costs will largely consist of an employee's time spent familiarising themselves for the authority with the new legislation/guidance and drawing up the relevant requirements under the new specific duties, including engagement with equality groups and communities.

26. The amount of time spent by an employee will vary depending on the size of the authority, with smaller bodies spending relatively less time. However, consideration has been given to the fact that the time spent by an employee of a smaller organisation could have a disproportionate impact on the overall time spent by the organisation.

27. We estimate education bodies, health bodies and others (such as police and the fire service) would spend between 1.5 and 2.5 weeks familiarising themselves with and implementing the new duties. Similarly, large bodies such as local authorities, health bodies are expected to spend between 8 weeks to 12 weeks to implement the new duties; the Scottish Government 12 to 16 weeks. The implementation costs of the new duties will arise from undertaking steps such as gathering evidence, engaging with communities and based on this publishing equality outcomes.

28. However, like the GEO we assume the new one-off costs will not apply to all public authorities covered by the specific duties because many have already extended their equality schemes beyond current legislation to cover all equality strands. Around half of the respondents to the research conducted by Schneider-Ross on behalf of the Government Equalities Office, "Assessing the Cost and Cost Effectiveness of the Race, Disability and Gender Equality Duties", reported that they had already started to publish combined equality schemes going beyond current legislation to cover the additional equality strands. We expect this number to have increased since then as, whilst reviewing their gender and disability equality schemes during 2010, most bodies have opted for a single equality scheme including the additional protected characteristics which will be covered under the new single Equality Duty.

29. The one-off costs therefore represent half of the public bodies, who would have to implement new processes to comply with the requirements. We have assumed a personnel/equality manager would be responsible for this initial implementation. The wage cost is taken to be the hourly rate of a manager as given in the Annual Survey of Hours and Earnings 2009 code 1135, up rated by 21 per cent to include non-labour costs.

30. Summary of public sector one-off cost of familiarisation with new duty (figures £m per year)

| | Lower estimate | Higher estimate |
|---|---|---|
| NHS | 0.114 | 0.171 |
| LA | 0.152 | 0.227 |
| FE/HE | 0.049 | 0.098 |
| Other public authorities | 0.078 | 0.157 |
| Central Government | 0.014 | 0.019 |
| **Total** | **0.407** | **0.672** |

Costs of Existing Duties – Methodology

31. In order to get a true understanding of the cost of the new duties we need to consider the ongoing costs of the 3 existing duties. Doing this will identify the potential savings of the new requirements. To do this accurately the same methodology needs to be used to cost both the existing duties and the proposed new duty.

32. To calculate the cost of the existing duties we have taken the cost of the new duties and added the costs of the additional elements which form part of the existing duties – publication of schemes and action plans, and complex annual reporting. For larger authorities we have assumed 6 weeks every 3 years of equality manager and admin time preparing a scheme and action plan, and 2 weeks every year of equality manager and admin time in preparing and publishing an annual report. In line with the assumptions made earlier, that 50% of public authorities have moved to single schemes, we have multiplied the cost of scheme production and reporting by 3 (race, disability and gender) for only 50% of authorities.

33. We have calculated the ongoing costs to the public sector of the existing public sector equality duties to be:

(figures £m per year)

| | Lower estimate | Higher estimate |
|---|---|---|
| NHS | 0.393 | 0.504 |
| LA | 0.525 | 0.672 |
| FE/HE | 0.399 | |
| Other public authorities | 0.719 | |
| Central Government | 0.039 | |
| **Total** | **2.075** | **2.333** |

## Scottish Firms Impact Test

34. The duties fall only on the public sector. They place no requirements on the private sector.

Costs to the Private Sector

35. In line with the Regulatory Impact Assessment published by the Government Equalities Office at Westminster for its specific duties in August 2010, we anticipate no additional costs to the private sector.

36. There are no familiarisation costs as the duties relate to the public sector and not to the private sector. Contracting authorities can already build in equality-related factors within contracts where considered relevant and proportionate and from the private sector perspective there is therefore no change.

## Competition Assessment

37. No competition impacts are anticipated. This BRIA was discussed with the Office of Fair Trading.

## Test run of business forms

38. No business forms will be involved in implementation of the regulations.

## Legal Aid Impact Test

39. No new rights created and no legal aid implications anticipated as a result of the specific duties which can only be enforced through the Equality and Human Rights Commission (EHRC). This BRIA was discussed with the Scottish Legal Aid Board.

## Enforcement, sanctions and monitoring

40. The specific duties do not create individual rights for people. Enforcement of the specific duties is only through the Equality and Human Rights Commission who may serve a compliance notice on public authorities. If an authority fails to respond to the compliance notice the EHRC may apply to the Courts to force the authority to comply.

**Declaration and Publication**

"*I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland* ".

**Cabinet Secretary for Health and Wellbeing**

……

Date ……..

**Contact point for enquiries and comments**

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# Business and Regulatory Impact Assessment

# Public Sector Equality Duty Specific Duties

## PURPOSE AND INTENDED EFFECT

### Objectives

1. The Regulations are intended to:
   - simplify and streamline the equality duties placed on public authorities
   - reduce the complexity and bureaucracy of the current framework
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### Background

2. There are currently 3 separate public sector equality duties covering race, gender and disability. The Equality Act 2010 replaces these with a new single duty and extends the scope to cover sexual orientation, age, religion or belief, pregnancy and maternity, and gender reassignment.

3. Like the current duties, this new single equality duty has two parts – a general duty in the Act itself, and provision for specific duties to be made through Regulations.

### Rationale for Government intervention

4. One common set of specific duties will provide a simpler, more efficient and more cost effective framework than the existing regime of 3 separate duties.

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6. Equality is a key element of the National Performance Framework and we have a specific national outcome to have tackled the significant inequalities in Scottish society (National Outcome 7). The public sector equality duty helps us to deliver this outcome.

## CONSULTATION

### Consultation within Government

7. All Directorates General within the Scottish Government were consulted on the development of the proposals. There was agreement that the proposed new specific duties represent a flexible, proportionate and outcome based approach.

### Public Consultation

8. Public consultation was undertaken twice.

***On the overall scope of the duties***

9. Between September 2009 and January 2010 we consulted on the broad scope of the proposals. 160 responses were received. The main points made by respondents were:

- the need for measurable results;
- the need for flexibility;
- the need for specific duties to be crafted in a way that helps public authorities to deliver the general duty in the Equality Act 2010;
- the need for duties which can operate within public authorities
- existing systems and frameworks.

***On detailed proposals and draft Regulations***

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| **Respondent Groups** | **Number of Responses** |
|---|---|
| Organisations or agencies within the education sector (education) | 17 |
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| Miscellaneous public authorities (misc. public authority) | 20 |
| Organisations or agencies within the health or social care sector (health/social care) | 10 |
| Police or fire bodies (police/fire) | 8 |
| Miscellaneous non-public authorities (other) | 4 |
| Individuals (individual) | 15 |
| **TOTAL** | |

## Business

11. The Regulations do not impact on business. Business was however engaged through the consultation process. This included specific targeting of the Federation of Small Business Scotland, CBI Scotland, Scottish Chambers of Commerce, the Institute of Directors, the Scottish Council for Development and Industry and Scottish Financial Enterprise.

## OPTIONS CONSIDERED

### Option 1

**Maintain the existing duties**

12. Public bodies already have systems/mechanisms in place to comply with the duties. They will not incur familiarisation costs.

13. Cons:
- Public authorities will remain subject to three different sets of complex regulations, which all have different requirements, timescales, and reporting mechanisms.
- The three sets of specific duties are highly prescriptive and driven by processes.
- Compliance with the existing duties incurs significant costs.
- The additional protected characteristics protected by anti-discrimination legislation would not be included.

### Option 2

**Remove Existing Duties**

14. There would be no regulations, resulting in less burden on public authorities in context of financial constraints.

15. Cons:
- Public authorities will not consistently design policies and deliver services in a way which meets the needs of equality groups and communities.
- Barriers to accessing services may not be proactively identified and addressed.
- Inequality, discrimination and exclusion lead to poorer health and wellbeing, poorer educational attainment and employment opportunities and increased costs in terms of services, support and intervention. Tackling inequality, discrimination and exclusion will have a cost saving in the longer term.
- Public authorities are not yet ready for the legislative imperative to be removed entirely as this would undermine the progress that has been made to date.

### Option 3

**Simplification, streamlining and focussing on outcomes – Chosen Option.**

16. *Simplification*: replace three separate set of regulations which impose different, process laden requirements, which must be met at different times with one set of streamlined duties. For instance, research from Schneider-Ross suggested that the requirements to produce equality schemes under the

existing duties are considered a significant burden, and public bodies routinely ask external contractors to draw up their equality schemes. Once published these schemes are rarely used but the cost to the public sector of producing the current schemes for race, disability and gender is substantial.

17. *Focus on Outcomes*: proposals remove bureaucratic requirements and ensure that public authorities focus on achieving improved equality outcomes by setting and working towards evidence based outcomes.

18. *Proportionate and flexible*: there is less prescription and the flexibility for public authorities to decide for themselves how to respond to aspects of the duties.

19. *Goes with the grain*: the duties are designed to operate within public authority's existing systems and frameworks.

20. Cons:

- *Regulatory burden*: The new package will still impose a regulatory burden, even though it will be substantially reduced compared with the cost of complying with the existing three sets of regulations.

**Sectors and groups affected**

21. The public sector.

## COSTS AND BENEFITS

**This section summarises the costs and benefits of the proposed new duties.**

| Current duties | Proposed new duties | Cost implication |
|---|---|---|
| Publish 3 separate, complex, stand-alone schemes every 3 years | Publish equality outcomes every 4 years | Significant reduction |
| Publish separate annual reports | Report every 2 years using existing systems | Significant reduction |
| Gather complex data on impact of policies | Simplification and streamlining | Significant reduction |
| Complex employment monitoring and reporting | Simplification and streamlining | Significant reduction |

### Costs Summary

(figures £m per year)

| | Ongoing cost of **existing duties** | Ongoing cost of **new duties** | **Cost saving** |
|---|---|---|---|
| NHS | 0.393-0.504 | 0.189-0.259 | 0.204-0.245 |
| LA | 0.525-0.672 | 0.252-0.345 | 0.273-0.327 |
| FE/HE | 0.399 | 0.143 | 0.256 |
| Other public authorities | 0.719 | 0.241 | 0.478 |
| Central Government | 0.039 | 0.026 | 0.013 |
| **Total** | **2.075-2.333** | **0.851-1.014** | **1.224-1.319** |

22. One-off familiarisation costs of between 0.407-0.672 result in a total cost for year 1 of the new duties of 1.258-1.686. This is still less than the estimated cost of continuation of the existing duties (2.075-2.333).

**Methodology**

23. We have calculated costs using a similar methodology to the Government Equality Office at Westminster.

New Duties – ongoing costs – methodology

Larger public authorities (NHS and local authorities)

Outcomes, mainstreaming and reporting requirements

- Equality manager: 1-2 weeks per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 1-2 weeks per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs).

Impact assessment

- Equality manager: 1-2 weeks per year.

Research work

- Estimated at £5,000 per year in line with GEO estimate.

Smaller public authorities (further and higher education)

Outcomes, mainstreaming and reporting requirements

- Equality manager: 1 week per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 1 week per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs).

Impact assessment

- Equality manager: 0.5 week per year.

Smaller public authorities (police, fire, NDPBs etc)

Outcomes, mainstreaming and reporting requirements

- Equality manager: 1 week per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 1 week per year. (Hourly rate Annual Survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs).

Impact assessment

- Equality manager: 0.5 week per year.

Scottish Government

Outcomes, mainstreaming and reporting requirements

- Equality manager: 2 weeks per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 1135, up rated 21% to include non-labour costs).
- Admin: 2 weeks per year. (Hourly rate Annual survey of Hours and Earnings 2009, Code 41, up rated 21% to include non-labour costs).

Impact assessment

- Equality manager: 2 weeks per year.

Research/analysis work

- Estimated at £20,000 per year

24. We have calculated the ongoing costs to the public sector of the new duties to be:

(figures £m per year)

| | Lower estimate | Higher estimate |
|---|---|---|
| NHS | 0.189 | 0.259 |
| LA | 0.252 | 0.345 |
| FE/HE | 0.143 | 0.143 |
| Other public authorities | 0.241 | 0.241 |
| Central Government | 0.026 | 0.026 |
| **Total** | **0.851** | **1.014** |

New Duties –one-off familiarisation costs – methodology

25. For listed public bodies covered by the specific duties there will be some one-off implementation and familiarisation costs. These costs will largely consist of an employee's time spent familiarising themselves for the authority with the new legislation/guidance and drawing up the relevant requirements under the new specific duties, including engagement with equality groups and communities.

26. The amount of time spent by an employee will vary depending on the size of the authority, with smaller bodies spending relatively less time. However, consideration has been given to the fact that the time spent by an employee of a smaller organisation could have a disproportionate impact on the overall time spent by the organisation.

27. We estimate education bodies, health bodies and others (such as police and the fire service) would spend between 1.5 and 2.5 weeks familiarising themselves with and implementing the new duties. Similarly, large bodies such as local authorities, health bodies are expected to spend between 8 weeks to 12 weeks to implement the new duties; the Scottish Government 12 to 16 weeks. The implementation costs of the new duties will arise from undertaking steps such as gathering evidence, engaging with communities and based on this publishing equality outcomes.

28. However, like the GEO we assume the new one-off costs will not apply to all public authorities covered by the specific duties because many have already extended their equality schemes beyond current legislation to cover all equality strands. Around half of the respondents to the research conducted by Schneider-Ross on behalf of the Government Equalities Office, "Assessing the Cost and Cost Effectiveness of the Race, Disability and Gender Equality Duties", reported that they had already started to publish combined equality schemes going beyond current legislation to cover the additional equality strands. We expect this number to have increased since then as, whilst reviewing their gender and disability equality schemes during 2010, most bodies have opted for a single equality scheme including the additional protected characteristics which will be covered under the new single Equality Duty.

29. The one-off costs therefore represent half of the public bodies, who would have to implement new processes to comply with the requirements. We have assumed a personnel/equality manager would be responsible for this initial implementation. The wage cost is taken to be the hourly rate of a manager as given in the Annual Survey of Hours and Earnings 2009 code 1135, up rated by 21 per cent to include non-labour costs.

30. Summary of public sector one-off cost of familiarisation with new duty (figures £m per year)

| | Lower estimate | Higher estimate |
|---|---|---|
| NHS | 0.114 | 0.171 |
| LA | 0.152 | 0.227 |
| FE/HE | 0.049 | 0.098 |
| Other public authorities | 0.078 | 0.157 |
| Central Government | 0.014 | 0.019 |
| **Total** | **0.407** | **0.672** |

Costs of Existing Duties – Methodology

31. In order to get a true understanding of the cost of the new duties we need to consider the ongoing costs of the 3 existing duties. Doing this will identify the potential savings of the new requirements. To do this accurately the same methodology needs to be used to cost both the existing duties and the proposed new duty.

32. To calculate the cost of the existing duties we have taken the cost of the new duties and added the costs of the additional elements which form part of the existing duties – publication of schemes and action plans, and complex annual reporting. For larger authorities we have assumed 6 weeks every 3 years of equality manager and admin time preparing a scheme and action plan, and 2 weeks every year of equality manager and admin time in preparing and publishing an annual report. In line with the assumptions made earlier, that 50% of public authorities have moved to single schemes, we have multiplied the cost of scheme production and reporting by 3 (race, disability and gender) for only 50% of authorities.

33. We have calculated the ongoing costs to the public sector of the existing public sector equality duties to be:

(figures £m per year)

| | Lower estimate | Higher estimate |
|---|---|---|
| NHS | 0.393 | 0.504 |
| LA | 0.525 | 0.672 |
| FE/HE | 0.399 | |
| Other public authorities | 0.719 | |
| Central Government | 0.039 | |
| **Total** | **2.075** | **2.333** |

## Scottish Firms Impact Test

34. The duties fall only on the public sector. They place no requirements on the private sector.

Costs to the Private Sector

35. In line with the Regulatory Impact Assessment published by the Government Equalities Office at Westminster for its specific duties in August 2010, we anticipate no additional costs to the private sector.

36. There are no familiarisation costs as the duties relate to the public sector and not to the private sector. Contracting authorities can already build in equality-related factors within contracts where considered relevant and proportionate and from the private sector perspective there is therefore no change.

## Competition Assessment

37. No competition impacts are anticipated. This BRIA was discussed with the Office of Fair Trading.

## Test run of business forms

38. No business forms will be involved in implementation of the regulations.

## Legal Aid Impact Test

39. No new rights created and no legal aid implications anticipated as a result of the specific duties which can only be enforced through the Equality and Human Rights Commission (EHRC). This BRIA was discussed with the Scottish Legal Aid Board.

## Enforcement, sanctions and monitoring

40. The specific duties do not create individual rights for people. Enforcement of the specific duties is only through the Equality and Human Rights Commission who may serve a compliance notice on public authorities. If an authority fails to respond to the compliance notice the EHRC may apply to the Courts to force the authority to comply.

**Declaration and Publication**

"*I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland* ".

**Cabinet Secretary for Health and Wellbeing**

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Date ……..

**Contact point for enquiries and comments**

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