

Public Sector Equality Duty: Consultation on Revised Draft Regulations



Response from Lead Scotland (Specialists in Linking Education and Disability)

Lead Scotland is a charity that enables disabled adults and carers to access inclusive learning opportunities. At a local level, we do this by providing direct support to learners¹ through flexible person-centred learning opportunities and individualised guidance and support to help them plan their learning journeys. At a national level, we provide information and advice on the full range of post-school learning and training opportunities, as well as influencing and informing policy development.

Our response to this consultation

Lead Scotland endorses the general principles of the new Public Sector Equality Duty as a means of changing the culture and practice of public authorities regarding their approach to equality. Our response to this consultation focuses on the role of colleges, universities and local authorities, in their capacity both as employers of disabled people and education providers for disabled learners.

Question 1: Do you agree that if a public authority's equality outcomes do not cover all relevant protected characteristics, it should publish the reasons why?

Yes. If public authorities are not required to include equality outcomes for all protected characteristics, Lead Scotland is concerned that they may choose to focus their equalities work in those areas where they can easily measure impact and achieve targets, rather than areas which genuinely need attention.

Given that around 1 in 7 of the working age population in Britain (and 1 in 20 children) are disabled, it is vital that public authorities place a high priority on promoting equality among this significant proportion of the population. It is also important to bear in mind that many disabled people do not declare that they have a disability or impairment. Many public authorities may therefore be unaware that they have any disabled employees or services users and may decide not to produce equality outcomes for disabled people.

Similarly, some public authorities may not have historically employed or provided services to certain protected groups, and may therefore choose not to cover these groups in their equality outcomes. Even if this is the case, it is important that public authorities have equality outcomes in place for all protected groups to ensure that they have considered the way in which they will promote equality and eliminate discrimination for each protected group.

¹ We receive local authority funding to deliver services in Aberdeenshire, Dundee, Fife, Highland, North Lanarkshire, Moray and West Lothian.

This proposal would also encourage public authorities to give appropriate regard to each protected characteristic, rather than simply treating all protected characteristics as a single 'equalities group'. While some authorities may choose to adopt a single-equality approach, this approach should nevertheless ensure that the particular issues affecting each protected characteristic are addressed and documented.

Question 2: Do you agree that a public authority should publish the results of equality impact assessments?

Yes. As there is no longer a requirement for public authorities to produce equality schemes, it is vital that the outcomes of impact assessments are published to allow disabled people to have an input into the policies and practices which are likely to affect them. This is particularly important for policies and practices which disabled people are unlikely to know about it (e.g. if a college is planning a classroom refurbishment it is important that disabled students have the opportunity to have an input into the planning process to ensure that accessibility is taken into account) or for those which the public authority believes will not have an effect on disabled people (e.g. if a university decides to implement a new admissions process which includes compulsory interviews, this may present a significant disadvantage for disabled students with speech problems).

Lead Scotland would also recommend that there should be a requirement to ensure confidentiality of protected characteristic groups when publishing the outcomes of impact assessments.

Question 3: Do you agree that a public authority's impact assessments should consider relevant evidence including any received from people with relevant protected characteristics in relation to the policy or practice in question?

Yes. Individuals within the protected groups will be able to offer invaluable insight and personal experience, as well as a broader understanding of the issues affecting each group. This is particularly important for disabled people where individuals with different impairments will be able to offer a unique perspective on the issues affecting different impairment groups. Lead Scotland would suggest that disabled people (as well as groups and organisations representing disabled people) are involved in the impact assessment process at all stages (e.g. deciding which policies/practices should be impact assessed, setting priorities, etc), rather than simply after the impact assessment has been carried out.

Question 4: Do you agree that a public authority should make arrangements to review and where necessary change or revise existing policies and practices to ensure that these do not have a detrimental effect on its ability to fulfil the general duty?

Yes. With recent improvements to the way in which public authorities promote equality and anti-discriminatory practices, it is likely that many new policies and practices may already take equality issues into account. Older/existing policies and practices are therefore likely to need more attention in terms of 'equality-proofing'. Consideration *must* be given to existing policies and procedures to ensure that there is a mechanism for identifying issues and concerns relating to protected characteristics, and taking action to address these issues.

This is particularly important in an educational setting, whereby education providers should consider impact assessing existing policies and practices where it may not be immediately apparent that these may have an effect on disabled people. This is likely to include policies and practices such as:

- admissions policies
- examinations procedures
- complaints procedures
- information technology

Lead Scotland would recommend that impact assessments for existing policies and practices should be carried out in priority order (e.g. ranked low, medium or high priority, with high priority policies/practices impact assessed first), and that protected characteristic groups should be involved in determining priority level.

Question 5: Do you agree that a public authority should not be required to undertake an impact assessment where the policy or practice in question has no bearing on its ability to fulfil or otherwise the general duty?

No. Removing this requirement could lead to a situation where some public authorities use this exclusion as a justification not to conduct genuine impact assessments. Only by carrying out an impact assessment (with the involvement of disabled people and other protected groups), will a public authority be able to determine the likely actual impact of particular policies or practices on those groups.

Question 6: Do you agree that public authorities subject to the specific duties should be required to take reasonable steps to gather information on the relevant protected characteristics of employees, including information on the recruitment, retention and development of employees?

Yes. This will allow public authorities to respond more quickly to any issues identified during this data collection exercise. For example, if it was identified that a college employed a disproportionately low number of disabled people, or that a large number of disabled employees did not stay in post for long, this would allow the college to identify trends and take action to address these issues. However, it is important for public authorities to consider the way in which they collect this information as many disabled people are reluctant to disclose a disability to their employer. Public authorities will therefore need to ensure that they are clear about why they are collecting this information and how it will be used.

Question 7: Do you agree that public authorities subject to the specific duties should be required to use the employment information which they have gathered to assist progress on the general duty?

Yes – see response to Question 6.

Question 8: Do you agree that public authorities subject to the specific duties should be required to report on progress gathering and using employment information, including an annual breakdown of information gathered, within the mainstreaming report?

Yes – see response to Question 6. Reporting on an annual basis will allow public authorities to identify trends and take prompt action to address any issues affecting protected groups. A longer reporting cycle is likely to encourage poor practice to become embedded within a public authority's day-to-day policies and practices.

Question 9: Do you agree that public authorities with more than 150 employees should publish an equal pay statement, the first covering gender and the second and subsequent statements covering gender, disability and race?

Lead Scotland would recommend that all public authorities should be required to publish equal statements. To maintain employee confidentiality, the figures for smaller employers could be presented as percentages or pay brackets, e.g. disabled employees received 1% less than non-disabled employees, or 5% of disabled employees received salaries in the lowest pay bracket whereas 60% received salaries in the highest pay bracket.

Making such information available publicly would incentivise employers to address any salary inequalities for protected characteristic groups.

Question 12: Do you have any other comments on the proposed draft Regulations?

Lead Scotland would recommend that education providers should be required to publish (within their mainstreaming report) the steps they will take to provide reasonable adjustments for disabled learners. As the provision of reasonable adjustments in education is an *anticipatory* duty, colleges, universities and other learning providers are likely to record such information in any case, which would therefore not impose any further administrative burden. They may also wish to consider publishing similar information for disabled employees to ensure a smooth transition to employment.

Lead Scotland welcomes the opportunity to respond to this consultation, and would be happy to assist the Scottish Government with further developments affecting disabled learners.

**Lead Scotland
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