

Measuring Up?

Monitoring Public Authorities
performance against the Scottish
Specific Equality Duties
June 2013

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In May 2013 the EHRC in Scotland examined listed public authorities performance against the requirements to publish information set out in The Equality Act (2010) (Specific Duties) (S) Regulations 2012.

Overall publication rates are relatively high, demonstrating that Scottish public authorities have responded to their duties and committed themselves to achieve outcomes that are intended to advance equality for their service users and employees.

All 259 public authorities were required to publish a set of equality outcomes, a mainstreaming report containing employee information, and where an authority had 150 staff or more, a statement on equal pay and occupational segregation and gender pay gap information. The Commission found that 83% of public authorities published everything that was required of them.

The findings detailed in this report reflect the information that the Commission held on 10 June 2013, over one month after public authorities were required to publish their information.

Introduction

Under the Equality Act 2006, the Equality and Human Rights Commission has a statutory remit to protect, enforce and promote equality across nine protected characteristics which are set out in the Equality Act 2010. This includes regulating the Public Sector Equality Duty (PSED).

The Public Sector Equality Duty is a positive duty on public authorities and others carrying out public functions. It requires that public authorities consider equality in their day to day work in shaping policy, delivering services and in their employment practices. The PSED operates in two linked parts – the general equality duty and specific duties.

The general equality duty is set out in S149 of the Equality Act 2010 and 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 prohibited conduct
- 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

The Specific Duties are set out in The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. They came into force on 27 May 2012¹ and are intended to assist listed authorities² to meet the three needs of the general equality duty (see Appendix 1).

In May 2013 the Commission monitored the performance of all listed Scottish public authorities against the Specific Duties Regulations requirements to publish a set of equality outcomes, a mainstreaming report which contains employee information and, for authorities with more than 150 staff, an equal pay statement and gender pay gap information, all by 30 April 2013.

This report concerns the most basic form of ‘compliance’ with the duties, that of publication. It does not give any detail about the quality or content of public authorities’ publications.

¹ Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012
<http://www.legislation.gov.uk/sdsi/2012/9780111016718/contents>

² Listed authorities are authorities in Scotland who are listed within the Specific Duties Regulations and must meet those Regulations <http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/public-authorities-in-scotland-who-is-covered-by-the-specific-duties/>

It does not provide a detailed analysis of outcomes or a breakdown of employee information themes such as composition, recruitment, retention and development. This analysis will be carried out in the second stage of the Commission's monitoring work which will take place during the summer of 2013.

Our approach to monitoring the public sector equality duty in 2013/14

This monitoring programme is being conducted in 3 stages. The findings of stage 1 are detailed in this report.

Stage 1 May 2013

Monitor the performance of listed public authorities against the requirements to publish information as required by the following duties:

- Duty to report progress on mainstreaming the equality duty
- Duty to publish equality outcomes and report progress
- Duty to gather and use employee information
- Duty to publish gender pay gap information
- Duty to publish statements on equal pay
- Duty to publish in a manner that is accessible

Stage 2 June - September 2013

Assess the performance of public authorities with regards to the duty to gather and use information on the composition of their work force and their recruitment, development and retention of employees, in relation to the relevant protected characteristics.

Publish a report providing an assessment of the sets of outcomes published by public authorities, including a qualitative and quantitative analysis, broken down by sector.

Stage 3 September 2013 - March 2014

Use evidence and analysis collected during stages 1 and 2 to inform practice and improve performance across public authorities:

- Provide information and analysis to Scottish Ministers to assist in the performance of their own specific duty to "publish proposals for activity to enable a listed authority to better perform its equality duty"
- Review and update non-statutory guidance for public authorities and work in partnership with other organisations to promote good practice

Methodology for stage 1

By monitoring the performance of public authorities against the requirements to publish, the Commission aims to:

- establish a robust baseline against which future performance can be measured
- identify public authorities who have not published as required by the Regulations and carry out further investigation to assess their compliance

A team of EHRC staff checked the websites of 259 Scottish public authorities between 1 and 10 May 2013, using a pro-forma with set questions (see Appendix 2) and key search terms. Staff were allocated a maximum of 15 minutes per authority. This time limit was designed to test the accessibility and transparency of the information published. This mirrors the approach taken by EHRC staff in England when conducting an assessment of compliance with the English specific duties in 2012.³

Following the assessment, the Commission wrote to 80 public authorities whose publications could not be found during the website checks or who had published their reports only in draft. As a result:

- 43 authorities responded to the Commission's letter demonstrating that they had published as required
- 11 authorities had published some of the information required but other information was published in draft only. The Commission agreed a timescale with these bodies in which to finalise publication
- 6 authorities did not reply to the Commission's letter at all

A total of 26 authorities (including the 6 who did not reply to our initial contact) were subject to further investigation by the Commission.

³ Publishing equality information: Commitment, engagement and transparency (EHRC), 2012

Findings - publication rates

Overall publication rates are relatively high, demonstrating that Scottish public authorities responded to their duties committing themselves to achieving better outcomes for their employees and service users.

All 259 public authorities were required to publish a mainstreaming report, employment information and equality outcomes. The Commission found that 83% of public authorities achieved this. The tables below show the publication rates for individual duties.

Mainstreaming report	
Published	89% (231)
Not published	7% (17)
Published in draft	4% (11)

Equality outcomes	
Published	90% (232)
Not published	6% (16)
Published in draft	4% (11)

Employee information⁴	
Published	92% (239)
Not published	5% (13)
Published in draft	3% (7)

⁴ Some listed public bodies have small numbers of staff and in these circumstances did not publish employee information for Data Protection reasons.

Public authorities with more than 150 staff

There are 169 public authorities with more than 150 staff who, in addition to publishing a mainstreaming report containing employee information and a set of equality outcomes, are required to publish an equal pay statement and gender pay gap information.

Equal Pay Statements

The first time a listed authority publishes a statement on equal pay, it is required to specify its policy on equal pay between women and men alongside information about sex based occupational segregation within its workforce. The Commission found that the publication rate for Equal Pay Statements was very high at 96%.

Equal Pay Statement	
Published	96% (162)
Not published	2% (3)
Published in draft	2% (4)

Although this is positive, the Commission found that many public authorities did not include occupation segregation information within their statements. It appears from a preliminary investigation that occupational segregation is contained within other reports.

The following table provides an overview of those who have published Equal Pay Statements who have included occupation segregation information.

Equal Pay Statements published which include occupational segregation information (broken down by sector)	
Health Boards	59%
Local Authorities	78%
Education Authorities	81%
Further & Higher Education Bodies	65%

This finding raises a question about how accessible occupational segregation information is to the general public. This is something that the Commission will look at further and consider when reviewing and updating non-statutory guidance later in the year.

Gender pay gap information

Listed public authorities with more than 150 employees must also publish information on the percentage difference between men’s average hourly pay (excluding overtime) and women’s average hourly pay (excluding overtime). The pay gap figures published by public authorities varied hugely across sectors. However, the publication rate of a pay gap figure was high at 95%.

Gender pay gap	
Published	95% (161)
Not published	4% (6)
Published in draft	1% (2)

Publication rates across key Scottish sectors

It appears that large public authorities have performed better than smaller authorities in terms of publishing the information required by the Scottish Specific Duties.

Sector	% published as per the requirements (mainstreaming report, employment information, equality outcomes, equal pay statement and gender pay gap)
Health Boards	91%
Local Authorities	91%
Education Authorities	91%
Further & Higher Education Bodies (with more than 150 staff)	96%

Sector	% published as per the requirements (mainstreaming report, employment information & equality outcomes)
Community Justice Authorities	63%
Grant Aided Schools	25%
Joint Boards	83%
Transport Partnerships	71%
Licensing Boards	68%

Conclusions and next steps

Overall the findings of this first phase have been positive:

- 83% of public authorities published their reports as per the requirements
- Of the public authorities with more than 150 staff, 96% published an Equal Pay Statement and 95% published gender pay gap information.
- A small minority of 16 public authorities out of a potential 259 will be subject to further investigation by the Commission

Scottish public authorities have performed well in terms of basic compliance with the requirements to publish their information in a transparent and accessible manner. This report only provides headline information about whether or not relevant information has been published. What has yet to be determined is the quality and focus of what public authorities have produced.

The impact of the work they carry out to meet their outcomes and to use their employee information will not be known for another two years, at which time public authorities are required to report against their outcomes and show how their employee information was used.

The Commission will continue to use the evidence it collects during this monitoring programme to develop guidance and support to ensure that public authorities meet the requirements of the Public Sector Equality Duty.

For further information about the PSED monitoring programme go to:

<http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/>

Appendix 1

The Requirements of the Specific Duties

Duty to report on mainstreaming the equality duty

A listed authority is required to publish a 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.

The report must be published not later than 30 April 2013, and subsequently at intervals of not more than two years.

The report must include (if not published previously) an annual breakdown of the information the authority has gathered under its duty to gather and use employee information, and details of the progress that it has made in using that information to enable the authority to better perform the general equality duty.

Duty to publish equality outcomes and report progress

A listed authority is required to publish a set of equality outcomes which it considers will enable it to better perform the general equality duty, by no later than 30 April 2013.

In preparing a set of equality outcomes, the authority must take reasonable steps to involve people who share a relevant protected characteristic and anyone who appears to the authority to represent the interests of those people.

The authority must also consider relevant evidence relating to people who share a relevant protected characteristic.

If an authority's set of outcomes does not further the needs of the general equality duty in relation to every relevant protected characteristic, it must publish the reasons for this.

An authority must publish a fresh set of equality outcomes within four years of publishing its previous set.

By no later than 30 April 2015 and every two years thereafter, an authority must publish a report on the progress made to achieve the equality outcomes it has set.

Duty to assess and review policies and practices

A listed authority is required to assess the impact of applying a proposed new or revised policy or practice, against the needs of the general equality duty, in so far as is needed to meet the general equality duty.

In making the assessment, an authority must consider relevant evidence relating to people who share a protected characteristic (including any evidence received from those people).

In developing a policy or practice, an authority must take account of the results of their assessment of that policy or practice.

If an authority decides to apply the policy or practice in question, it must publish the results of the assessment, within a reasonable time.

An authority must also make arrangements to review and, where necessary, revise any existing policies or practices.

An authority's consideration of whether or not an assessment of impact is needed cannot be treated as an assessment itself.

Duty to gather and use employee information

A listed authority is required to take steps to gather information on the composition of its employees (if any), as well as annual information on the recruitment, development and retention of employees with respect to the number and relevant protected characteristics of employees.

Importantly, the authority must use this information to better perform the general equality duty.

An authority's mainstreaming report (see above) must include an annual breakdown of the information gathered. It must also include details of the progress that the authority has made in gathering and using the information to enable it to better perform the general equality duty.

As noted above, the first report on mainstreaming the general equality duty must be published not later than 30 April 2013, and subsequently at intervals of not more than two years.

Duty to publish gender pay gap information

A listed authority with 150 or more employees is required to publish information on the percentage difference, among its employees, between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime), no later than 30 April 2013, and every two years thereafter.

The information published must be based on the most recent data available for a date when the authority had at least 150 employees. No publication is necessary if, since these regulations came into force or since publication was last due, the authority has not had 150 employees at any point.

Duty to publish statements on equal pay

A listed authority with 150 or more employees is required to publish a statement on equal pay, no later than 30 April 2013, and every four years thereafter.

An equal pay statement must contain the authority's policy on equal pay, as well as information on occupational segregation (the concentration of groups in particular grades and in particular occupations).

The first such report needs to contain information relating to women and men. However, in subsequent reports (due within four years of the first), a listed authority is also required to publish its equal pay information in relation to people who are disabled and people who are not, and people who are members of a minority racial group and people who are not.

The same 150 employee threshold applies to this duty as to the duty to publish gender pay gap information.

Duty to consider award criteria and conditions in relation to public procurement

Where a listed authority is carrying out a public procurement exercise and proposes to enter an agreement on the basis of an offer which is the most advantageous, it must have due regard to whether its award criteria should include equality considerations which will help it to better perform the equality duty.

Where it proposes to stipulate performance conditions in its procurement agreement, it must have due regard to whether the conditions should include equality considerations which will help it to better perform the equality duty.

Duty to publish in a manner that is accessible

If it has existing public performance reporting systems, a listed authority is required to use these, as far as practicable, to publish:

- a report on mainstreaming the equality duty
- a set of equality outcomes and a report on progress made to achieve these outcomes
- gender pay gap information
- a statement on equal pay and occupational segregation.

The reports must also be accessible to the public.

Duty of the Scottish Ministers to publish proposals to enable better performance

Scottish Ministers must publish proposals for activity to enable a listed authority to better perform the general equality duty not later than 31 December 2013 and subsequently every four years.

This timing will allow Scottish Ministers to take account of the information published by Scottish listed authorities in their mainstreaming reports, equality outcomes, gender pay gap information and statements on equal pay and occupational segregation.

Scottish Ministers must publish a report on progress in relation to this activity not later than 31 December 2015 and subsequently every four years.

The Commission published non-statutory guidance to support public authorities to implement the Specific Duties. This is available on the Commission website: [http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/non-statutory-guidance-for-scottish-public-authorities'](http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/non-statutory-guidance-for-scottish-public-authorities)

Appendix 2

PSED monitoring questions, May 2013	
Duty to report progress on mainstreaming the equality duty	Has the authority published a mainstreaming report by the 30 April?
	Within the mainstreaming report, has the authority provided an annual breakdown of the composition of its staff?
	Within the mainstreaming report, has the authority provided an annual breakdown of its recruitment of staff?
	Within the mainstreaming report, has the authority provided an annual breakdown of staff retention levels?
	Within the mainstreaming report, has the authority provided an annual breakdown of the development of its staff?
Duty to publish equality outcomes and report on progress	Has the authority published a set of outcomes by the 30 April?
Duty to publish statements on equal pay, etc. (for organisations with over 150 staff)	Has the authority published an equal pay statement by 30 April 2013?
	Has the authority published information about occupational segregation within its equal pay statement?
Duty to publish gender pay gap information (for organisations with over 150 staff)	Has the authority published information about its gender pay gap by 30 April 2013?

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