

EQUALITY DUTY: PUTTING IT INTO PRACTICE

CONSULTATION ON PUBLIC SECTOR EQUALITY DUTY SPECIFIC DUTIES

RESPONSE PROFORMA

The response proforma has 2 parts – a respondent information form and the list of consultation questions. **Both** should be completed.

Response Proforma – Respondent Information Form



Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐

Please tick as

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Permissions

I am responding as...

Individual

☐

Group/Organisation

☐

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

yes ☐ no ☐

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

Yes, make my response available, but not my name and address ☐

Yes, make my response and name available, but not my address ☐

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

yes ☐ no ☐

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate yes ☐ no ☐

Response Proforma – Consultation Questions

Question 1: Do you think that it would be helpful to have in place specific duties on public authorities to assist in the delivery of the Equality Duty?

☒ YES ☐ NO ☐ DON'T KNOW

Specific duties will allow organisations to plan and implement their responses to the general duties more effectively. The specific duties are effectively the operating mechanism for the delivery of the general duty. The specific duties should be explicit for public authorities to require them to demonstrate the achievement of equality outcomes rather than a process driven approach. A focus on outcomes links well with the Scottish Government's existing approach outlined in the National Performance Framework which seeks to set priority outcomes for the Scottish public sector as a whole

The development of the specific duties should be under-pinned by a number of key components to form a cycle of activity to enable public authorities to meet the new equality duty.

These would be:

- Evidencing, through gathering and analysis to identify local needs and priorities
- Objectives, using evidence to develop clear, realistic and measurable objectives to focus on the most significant inequalities
- Actions, to outline the specific steps that they will take to meet their objectives and the wider general duty
- Outcomes, where actions should lead to improvements and change
- Monitoring and reporting, to highlight the impact and effectiveness of their equality actions to meet their wider corporate objectives, and to publicly report on this. This reporting feeds back into evidence base available, and continues the cycle

The involvement of key stakeholders, such as disabled people, is paramount at each stage.

This approach already fits well with the policy-making cycle jointly outlined by the Scottish Government and the Confederation of Scottish Local Authorities (CoSLA).

With regard to transport this provision would apply to all local councils, Government Departments and their agencies, such as Transport Scotland, Passenger Transport Executive bodies, Regional Transport Partnerships and Taxi Licensing bodies. Given the necessary cross-functionality of these authorities it would be inconsistent to apply differing equality expectations. Such shared expectations would enable better policies and practices to eliminate discrimination, harassment and victimisation; promote equality of opportunity, and to nurture good relations.

By showing greater clarity for public authorities on how to enact these legal commitments through measurable outcomes everyone stakeholders, audit and regulatory bodies will be able to assess their progress, and where necessary determine accountability

Coverage

Question 2: Do you think the criteria set out at paragraph 4.4 are the right criteria for considering whether a public authority should be subject to the new specific duties?

☒ YES ☐ NO ☐ DON'T KNOW

The public authorities that are currently covered by the existing equality duties should be covered by the new single duty. The new duty needs to retain the proportionality element of the existing duties. Some small public authorities – such as Regional Transport Partnerships in Scotland – have a significant impact on the lives and opportunities of stakeholders such as disabled people and should be required to meet the specific duties in a manner that is appropriate to their size and resources.

Scottish public authorities who are subject to the general duty would be assisted greatly if any specific duties were applied in a flexible and proportionate way. In other words we would not be

asking some public authorities, or others, to carry out compliance conditions which are unnecessary or unproductive or do not reflect the size, resources and nature of the bodies themselves.

The EHRC is the body responsible for overseeing the compliance for the new legislation and could provide the necessary guidance which would outline the expectations for agencies which may have differing statutory duties and requirements, whilst also being mindful of size and resource considerations. Such guidance would be subject to considerable consultation and negotiation with public authorities, Scottish Government and other stakeholders.

Scottish Ministers have the power to amend the list in respect of Scottish public authorities and we would urge them to apply the general duty as widely as possible throughout Scotland. Consideration should be given to extending the duty to other organisations who are out-sourced and supported through public funding to provide transport information, advice or direct services.

Question 3: Do you think the new specific duties should be imposed on all Scottish public authorities which are subject to the general duty, provided it is reasonable and practical for them to fulfil the requirements?

☒ YES ☐ NO ☐ DON'T KNOW

Some very small Scottish public bodies do not employ any paid staff and do not directly control any budgets. These authorities may not even directly engage with members of the public or service users. Such bodies do not have the resources to develop and publish their own complex documents such as equality schemes, so it would not be reasonable to expect them to meet every requirement of the specific duties.

It is however within the capability of even the smallest of public bodies to carry out some specific duty processes to ensure that they have considered equality issues as part of their mainstream activities. For example, all plans and policies should be subject to impact assessment regardless of the size of an organisation. Similarly evidence gathering about equality groups should be at the heart of any organisation's corporate strategy.

Fitting with the electoral cycle

Question 4: Is it appropriate to link the new public sector equality duty specific duties to either the Scottish or local government electoral cycle? (For example, linking the setting, reviewing and reporting on equality objectives to electoral cycles)

☐ YES ☒ NO ☐ DON'T KNOW

There are different electoral cycles in Scotland (and in the rest of the UK). There are also different cycles for appointments to Scottish Government public bodies. It would not be practical to anchor the reporting cycle to just one arbitrary electoral or appointment cycle. Organisations should be free to set the dates for their reporting, scheme publication etc as they see fit, so long as they meet requirements similar to those currently in force (reports at least once annually, Schemes revised at intervals of no

less than three years). This will enable them to set timescales that best suit their own governance or electoral cycles.

Content of the specific duties – delivering on mainstreaming

Question 5: Should public authorities be encouraged to mainstream equality, with reference to all the proposed protected characteristics (see paragraph 2.8 for these), across their services and functions?

☒ YES ☐ NO) ☐ DON'T KNOW

It is essential that public authorities become more effective at mainstreaming equality into their day to day operation. Equality is a matter for everyone – all service users, staff, volunteers, members of governing boards and the wider community. It should not be a separate issue alongside mainstream functions.

The best vehicle for doing so would be setting their equality objectives at the heart of their corporate or business planning. It should be recognised that mainstreaming may not be the fastest route to achieving change but may address some of the inertia around setting separate high level stand alone equality targets that may not necessarily be linked to the immediate work or impact of an organisation unless they are clearly linked to functional outcomes.

It may be however that objectives which are under-pinned by the key principles of new specific duties, such as: use of evidence, consultation and involvement, and transparency may help to create a culture of thinking and delivery around equality. These would be backed up by creating capacity and better leadership through different approaches and better staff support through modelling behaviours, personal development and training.

For disabled people's equality of access there would be higher expectations around their involvement in all aspects of business planning and better feedback data. Disabled people would also require to be considered in terms of their other wider protected characteristics

All of this activity should be linked to clear outcomes and consideration of these objectives in the wider context of local, regional or national priorities which bodies may have to address working through the mechanisms of the National Performance Framework, Community Planning Partnerships or Single Outcome Agreements.

Question 6: How might public authorities best demonstrate they are mainstreaming equality in relation to all the proposed protected characteristics? For example, through reporting on progress.

Public authorities should be required to publish key information that demonstrates the progress they are making towards mainstreaming equality.

This might include:

- Copies of impact assessments
- Equality objectives and outcomes
- Annual reports showing progress against these
- Reports on engagement and involvement.
- Good practice guidance and learning
- Linking equality to better service outcomes and cost-effectiveness

Content of the specific duties – setting equality objectives

Question 7: With reference to the relevant evidence and to wider public authority general Equality Duty obligations, do you think that setting equality objectives would help public authorities to focus their response to the general duty? Should equality objective setting cover all protected characteristics, or not?

☐ YES ☒ NO ☐ DON'T KNOW

It would be preferable for public authorities to identify key equality outcomes they intend to work towards, rather than objectives. Outcomes are preferable because they are end results rather than steps on the way towards end results. It is also easier for members of the public and other external stakeholders to grasp the concept of outcomes.

By having this requirement as a specific duty it would require public authorities to collect, analyse and act on evidence across all protected characteristics. This should include both qualitative and quantitative data sources and would improve internal monitoring and greater transparency.

It would also be necessary for there to be a duty on public authorities to set out the actions they intend to take to achieve their stated equality outcomes or objectives. Such an expectation would make it easier for public authorities to be clear about what they are committed to doing, as well as increase their accountability to the public.

It is important that public authorities consider all relevant evidence in respect of all protected characteristics. Through consistent evidence gathering there is likely to be a better case for dealing with unfamiliar protected characteristics. Similarly where evidence does not exist or is difficult to obtain they may have some basis for being challenged or explaining to relevant stakeholders and others why equality objectives cannot be met.

Question 8: Do you think equality objective setting should be linked to the corporate and/or business planning mechanisms of public authorities?

☐ YES ☒ NO ☐ DON'T KNOW

It is not clear how this could be achieved practically, or enforced. Organisations are too different in their approaches to strategy and planning. However it is sensible to assume that any public body with genuine ambitions to address inequality will consider equality as it develops its mainstream corporate objectives and outcomes. In addition, under the existing equality duties any plan or strategy must be subjected to impact assessment; this requirement should continue to be a part of the specific duties.

Question 9: How do you think public authority equality objectives should be publicised? Please provide your suggestions in the box below.

It is not necessary for public authorities to be told how to publish documents. Organisations will publish these as appropriate to their size, resources and function. If the single duty includes a requirement to engage with stakeholders as part of the process of development of any objectives or outcomes, these individuals will be able to hold the organisation to account.

Question 10: Do you think that public authorities should be required to review their objectives every 4 years in order to fit with the electoral cycles of Scottish or local government?

☐ YES ☒ NO ☐ DON'T KNOW

See answer to Q.4 above. A cycle of 3 years is generally accepted and already embedded in the current equality duties.

Content of the specific duties – reporting on progress

Question 11 : Do you think public authorities should be required to report on progress?

☒ YES ☐ NO ☐ DON'T KNOW

Publishing annual reports provides an important way of demonstrating to governing bodies, service users and the wider public that an authority is making progress.

It is enormously important that communities are informed to maintain public confidence in the performance of public bodies. A commitment to annual reporting would enable them to determine which public authorities are addressing significant inequalities and those which are not.

Question 12 : How frequently should public authorities be required to report on progress? Please provide your suggestion in the box below.

Annually

Public authorities are now familiar with the existing arrangements for preparing and publishing annual reports for the existing equality duties. All authorities will welcome the simplification and harmonisation of reporting requirements. This should be achievable for even the smallest of public authorities. Regional Transport Partnerships and Licensing Boards, for example, have a significant impact on transport for disabled people even though they are small in terms of paid staff and budgets. Annual reports provide a very useful means of demonstrating how progress is being made on equality issues for such organisations, given that they will normally publish annual reports on mainstream activity already.

Question 13: Should reporting on progress be linked to existing processes such as business planning?

☐ YES ☒ NO ☐ DON'T KNOW

Any public authority should see that combining equality annual reporting with mainstream reporting is a sensible and efficient use of resources. As a result it is not necessary for the specific duties to address this as a requirement. It may be more appropriate to include it in any guidance accompanying the legislation.

Question 14: Do you think the Government should prescribe in legislation how Scottish public authorities should report?

☐ YES ☒ NO ☐ DON'T KNOW

The legislation should set reporting timescales, but nothing else is necessary. See answer to Q.9 above.

It would make sense that reporting is linked to existing processes such as business planning through annual reports, for example. However it is best that public authorities determine for themselves which is the best approach without it being prescribed for them. What is more important is that the quality of the reporting is clear and relevant and linked to their objectives and a mainstreaming approach. The Scottish Government doesn't need to prescribe how they should report but there may be some broad requirements which they may expect to meet the needs of the National Performance Framework.

Employment reporting

Question 15: The current gender specific duties require public authorities, with 150 or more employees, to publish an equal pay statement and report on that statement. Do you think this requirement should continue in the new specific duties?

☐ YES ☐ NO ☒ DON'T KNOW

Please provide any additional comments. For example, why you think this current requirement should or should not continue in the new specific duties?

MACS has no opinion on employment issues as these are outwith its remit.

Question 16: Do you think that there would be value in public authorities with 150 or more employees reporting on their gender pay gap?

☐ YES ☐ NO ☒ DON'T KNOW

Please provide any additional comments. For example, why you think there would be value or why you think there would not be value?

MACS has no opinion on employment issues.

Question 17: If the gender pay gap is to be reported on, what method do you think should be used to calculate the gender pay gap? Please give your suggestion in the box below.

MACS has no opinion on employment issues.

Question 18: Do you think public authorities with 150 or more employees should be required to include information on the concentration of women and men in particular grades and in particular occupations (occupational segregation)?

☐ YES ☐ NO ☒ DON'T KNOW

Please provide any additional comments. For example, why you think public authorities should be required to publish information on occupational segregation or, why you think public authorities should not be required to do so?

MACS has no opinion on employment issues.

Question 19: Do you think it would help public authorities to monitor progress on equality and be more transparent if they were required to publish their ethnic minority employment rate and disability employment rate?

☐ YES ☐ NO ☒ DON'T KNOW

Please provide any additional comments. Why you think it would help public authorities or, why you think it would not help?

MACS has no opinion on employment issues.

Employment reporting – other characteristics

Question 20: Should public authorities be asked to outline how they intend to gather information on employment rates for the other characteristics protected under the new Equality Duty?

☐ YES ☐ NO ☒ DON'T KNOW

Please provide any additional comments. For example, why you think public authorities should outline their intention to gather information. Whether you think, and explaining why, information should be gathered on all or only some of the other protected characteristics?

MACS has no opinion on employment issues.

Question 21: How frequently should public authorities be required to publish information on the gender pay gap, their ethnic minority employment rate and their disability employment rate?

Please provide any additional comments. For example, should gender pay gap reporting and ethnic minority and disability employment rates be reported at the same time (or not at the same time)? Why?

MACS has no opinion on employment issues.

Question 22: Should reporting on employment information be linked to other aspects of reporting on progress on equality, such as reporting on equality objectives?

☐ YES ☐ NO ☒ DON'T KNOW

Please provide any additional comments. For example, why you think reporting should be linked to equality objective reporting or another reporting mechanism?

MACS has no opinion on employment issues.

Demonstrating the impact on equality of policies and services

Question 23: Do you think public authorities should be required to demonstrate how they have considered the impact of equality on their policies and services?

☒ YES ☐ NO ☐ DON'T KNOW

Impact assessment is a straightforward tool with demonstrable benefits for both impact on equality and the wider organisation. All public authorities, big and small, will now be familiar with the concept of impact assessment even if practice may not yet be as uniform as certain stakeholders (such as disabled people) or the Equality & Human Rights Commission might wish.

The specific duty should continue the requirement to carry out impact assessment on all policies, functions and plans currently embedded in all three existing equality duties. The new specific duties should broaden the requirement to include those protected characteristics not currently covered by the present duties.

Question 24: Do you think a public authority should only be required to demonstrate equality impact assessment of key policies and services?

☐ YES ☒ NO ☐ DON'T KNOW

MACS is concerned that if it is left to public authorities to decide on which policies, functions and plans are “key”, the impact of the specific duty will be watered down. Authorities who do not wish to commit to the spirit of the single duty will find it easier to avoid their responsibilities. In addition, it is frequently the case that those plans which do not immediately appear to impact on equality can have a disproportionate effect once they are examined in detail. Transport policies are a case in point, where the needs of disabled travellers may not be taken into account in seemingly irrelevant mainstream transport strategies. There is too much at risk for organisations to be left to choose the extent to which they apply the impact assessment process.

Question 25: What information should a public body be asked to provide or publish to demonstrate that consideration has been given to the impact on equality of key proposals, policies or services? Please provide your suggestions in the box below.

The public authority should publish a report detailing how it has assessed the impact of the plan or function on equality. This should include impact on each protected characteristic. The report should also show how the organisation intends to take action to address any negative impacts identified in the assessment. In addition the report should show timescales and how the organisation will measure progress towards equality outcomes identified in the report.

Question 26: Should public authorities be required to take action in response to issues identified through impact assessment?

☐ YES ☒ NO ☐ DON'T KNOW

There is a risk attached to this suggestion, that if authorities are required to act on the findings of impact assessments, their impact assessment findings for potentially contentious policies or plans may not be as robust as they could otherwise be. MACS is concerned that this would devalue the impact assessment process. It may also result in public authorities becoming reluctant to involve external stakeholders (such as disabled transport users) in impact assessments.

It is far more constructive for organisations to carry out open, honest impact assessment discussions and for the duty to require these to be published. An effectively-managed organisation will take action in response to such impact assessments and will build the objectives from these into its mainstream plans on its own initiative.

Involvement and consultation

Question 27: Do you think public authorities should have a specific duty, when setting their equality objectives, to take reasonable steps to involve and consult employees, service users and other relevant groups – or where appropriate their representatives – who have an interest in how the authority carries out its functions?

☒ YES ☐ NO ☐ DON'T KNOW

Public authorities should have a specific duty when setting their equality objectives to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how the authority carries out its functions. We have ample evidence from the existing Disability Equality Duty as to how important that involvement has been in shaping policies and service provision. Current Scottish Government initiatives on independent living for disabled people are a good example and there could be much learning from this model for transport policy makers and service providers. MACS itself is another good example of how disabled people can become involved at an advisory level.

It may also be helpful to clarify the differences between active ongoing involvement and necessary decision-making consultation both however should be meaningful and proportionate to the task in hand. Within the planning cycle outlined within our introduction it is clear that relevant stakeholders should be involved at each stage. It would be helpful if greater clarity could be outlined around what 'taking reasonable steps' means if the spirit of involvement is to be upheld. We would not wish disabled people to be excluded on the grounds of costs for example if they required considerable support needs to be able to participate.

It would be really helpful if public authorities were charged with demonstrating through publication and activity how they have actually consulted and involved their communities.

Involvement and engagement with staff, service users and other key stakeholders is essential to ensure that public authorities identify appropriate outcomes, objectives and priorities. This should take place when an authority is setting its equality

objectives and when it is developing any Scheme that is required by the specific duty.

Some public bodies – such as MACS – do not directly engage with service users but will still be able to find ways of involving such stakeholders in discussions to develop equality outcomes, objectives and Schemes. This may be achieved through partnership work with other small public authorities, or via involvement activities carried out by a sponsor Directorate in the Scottish Government.

Procurement

Question 28: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?

☐ YES ☒ NO ☐ DON'T KNOW

Procurement is currently covered by the existing equality duties, in that public authorities are required to consider the procurement of goods and services as a public function. This means that they must meet the responsibilities to carry out impact assessment, equality monitoring, use of equality information etc and pay due regard to race, disability and gender equality when carrying out their procurement activities. However, many public authorities have yet to fulfil their responsibilities effectively with regards to procurement.

Meanwhile, many transport services that affect disabled people are provided by the private and voluntary sectors on a contracted basis to local authorities, NHS Boards etc. MACS believes that effective application of the specific duties as they currently stand (although obviously extended to cover all of the protected characteristics) is sufficient.

Question 29: Do you think that contracting authorities should be required to state how they will ensure equality factors are

considered as part of their procurement activities to help contribute to the delivery of those objectives?

☒ YES ☐ NO ☐ DON'T KNOW

Note that these powers are already contained in the existing equality duties and need only be extended to cover all the protected characteristics. See answer to Q.28.

Question 30: Do you think that contracting authorities should be required to consider using proportionate equality-related award criteria where they relate to the subject matter AND performance of the contract?

☒ YES ☐ NO ☐ DON'T KNOW

Note that these powers are already contained in the existing equality duties and need only be extended to cover all the protected characteristics. See answer to Q.28.

A new duty should make it clear that contracting authorities should consider equality when determining the weighting given to the award criteria as another factor when the contract is being considered.

Contracting authorities should be required to include equality related contract conditions into their contracts, which are relevant and proportionate, which would highlight the significance that the body has placed on equality considerations in the development of a public tender and consequential delivery

Question 31: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?

With regard to breaches of discrimination law by transport providers this would enable more effective complaints processes around discriminatory service provision to be tackled with a higher level of seriousness. Any record of breaches of discrimination law must be reported as a duty and actions to address these being demonstrated where such breaches have occurred. A pro-active approach towards planning and setting equality objectives and outcomes would be the most effective way of addressing any risk-management issues which may arise.

Note that these powers are already contained in the existing equality duties and need only be extended to cover all the protected characteristics. See answer to Q.28.

Leadership by Scottish Ministers

Question 32: What do you consider to be the role of Scottish Ministers in providing leadership on equality?

The current arrangements for gender and disability are effective and should be continued in the new duty. MACS believes that Scottish Ministers have a powerful role to play in leading national work to make progress towards equality, as has been demonstrated by the Ministerial reports in response to the disability & gender equality duties. Ministers' national leadership inevitably impacts on policies and plans at all levels in Scotland, including those relevant to disabled people such as Regional Transport Strategies and local transport plans.

Question 33: Should Scottish Ministers set equality priorities for the public sector in Scotland, determined jointly with local government in the spirit of the Concordat?

☒ YES ☐ NO ☐ DON'T KNOW

See the answer to Q.32. MACS believes that this would be helpful. However, in pointing out the value of the Ministerial reporting duties it is also equally important to emphasise the need for actions and outcomes rather than just a reporting duty

Whilst it is important that Scottish Ministers work closely with local government in the spirit of the Concordat this may lead to the exclusion of other public authorities who are similarly responsible for setting equality priorities and are also working towards similar priorities (again trying to make links with RTP's and CPP's and SOA's)

Question 34: Do you think Scottish Ministers' equality priorities should be based on evidence and informed by reasonable and proportionate involvement of stakeholders and equality interests??

☒ YES ☐ NO ☐ DON'T KNOW

See answer to Q.27. Ministers should develop their equality priorities following involvement and consultation with a wide range of external and internal stakeholders.

Question 35: Should Scottish Ministers set their equality priorities at the end of the year in which the Government is elected and report on these within the electoral cycle?

☒ YES ☐ NO ☐ DON'T KNOW

MACS believes that this is sensible. However MACS is also mindful that in practice this still may not fit with a range of public authorities' planning cycles.

Documentation

Question 36: What documentation do you think should be required of public authorities to publicise their equality objectives? Please provide your response in the box below.

Authorities should publish a Scheme

Schemes are complex, comprehensive documents that offer stakeholders an opportunity to see not only what the public authority's priorities are for the next 3 years, but also how the authority intends to work towards these. If authorities are only required to publish where they are aiming to be and not how they intend to get there, it will be more difficult for stakeholders to hold them to account.

MACS is particularly concerned about the impact on strategic public authorities such as Regional Transport Partnerships if there is no need to publish a scheme. As these organisations do not directly provide services to disabled people and others with an interest in equality, they are more distant from stakeholders. This means that it is more difficult for disabled people to see how these bodies are addressing inequality in their public functions if there is no equality scheme.

MACS understands that public authorities are now well used to developing equality schemes and the quality of these has improved over the last 8 years since the race duty became law in 2002. Authorities will welcome the simplification of their equality responsibilities that come from reducing the number of schemes required to one from 3, but MACS believes that removing the need for a scheme altogether leaves too sparse a regulatory framework.

Question 37: Do you think that the mechanism(s) – whether through a Scheme or otherwise - for public authorities to publicise their equality objectives and report on progress should be left to each individual authority?

☒ YES ☐ NO ☐ DON'T KNOW

At present, the three existing equality duties set out differing requirements for publishing reports and objectives. The requirements set out in the gender equality duty (2007) are most appropriate. They are less process-based than the race duty and more focused than the disability duty. MACS believes that authorities should be informed by the duty as to what is expected in their scheme, and that it should then up to the authorities themselves to decide how they develop their scheme around these requirements.

Enforcement

Question 38: What role should bodies with a scrutiny and improvement function in Scotland play in monitoring and improving the extent to which Scottish public authorities advance and promote equality, foster good relations between different communities and groups, and take steps to prevent unlawful discrimination?

The existing arrangements should be built upon

At present, scrutiny bodies have the same duties as other public authorities in respect of equality. They must pay due regard to the need to address race, disability and gender inequality. As their scrutiny functions are public functions, they must apply the existing specific duty requirements to impact assess, monitor, use information and consult with stakeholders to these.

MACS believes that these arrangements do provide scrutiny bodies with significant responsibilities which will be helpful in encouraging the wider public sector to develop its equality policy and practice. These should be continued in the new single equality duty, although obviously they should include all the protected characteristics.

In addition, scrutiny processes would benefit from the adoption of certain key principles from the Crerar Review of scrutiny bodies which published its report in 2007. In particular this should include a requirement on scrutiny bodies to share information, which will allow streamlining of audit and scrutiny regimes.

Question 39: Should that role be set out in specific duties placed on bodies with a scrutiny and improvement function? If so, which bodies? What would you see as the costs and benefits of such an approach? Are there any risks associated?

☒ YES ☐ NO ☐ DON'T KNOW

See the answer to Q.38. Although scrutiny bodies already have significant responsibilities under the current equality duties, the new specific duty should also pass on some key elements of the Crerar Review.

However to name scrutiny bodies that are subject to the new duty runs the risk of some bodies with a scrutiny function being left off such a list if it is not their primary function. The new duty should ensure that any such list of authorities with primary or secondary scrutiny functions is maintained accurately and in a timely fashion.