

## Public Sector Equality Duty – Revised Draft Regulations

### RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

##### Organisation Name

Mobility & Access Committee for Scotland

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ *Please tick as appropriate*

##### Surname

Glover

##### Forename

James

#### 2. Postal Address

Transport Scotland

2-D Dockside

Victoria Quay

Edinburgh

Email: c/o [James.glover@nhslothian.scot.nhs.uk](mailto:James.glover@nhslothian.scot.nhs.uk)

Postcode EH6 6QQ

Phone 0131 465 5720

### 3. Permissions

I am responding as.....

Individual ☐ / Group/Organisation ☒  
Please tick as

(a) Do you agree to your response being made available to the public (in Scottish Government library

(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

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?

☐ No **Please tick as appropriate** ☒ Yes

## Consultation Questions

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

☒ Yes    ☐ No    ☐ Don't Know

Please provide further information

All public authorities should be able to objectively justify their choice of equality outcomes. This should include being able to say why they chose not to address particular protected characteristics in setting their priorities. Public authorities will naturally consider a wide range of factors in prioritising certain outcomes over others, such as the views of stakeholders with an interest in particular protected characteristics, the range of data they have available, the extent to which an outcome supports their mainstream aims and the practical feasibility of taking action to work towards the outcome. It should not therefore be burdensome to publish the reasons why they may choose not to cover a particular characteristic.

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

☒ Yes    ☐ No    ☐ Don't Know

Please provide further information

Publishing the findings of impact assessments is a straightforward way of improving transparency and accountability, particularly as public authorities have increasingly challenging decisions to make in relation to efficiency which can impact on disabled transport users in sometimes indirect ways.

**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    ☒ No    ☐ Don't Know

Please provide further information

This may not actually be necessary, as public bodies already have to do this under the general duty. An authority would be in breach of this general duty if it did not pay due regard to a relevant and material item of evidence in its impact assessment or decision making process. There has been significant litigation in this area of late (e.g. Birmingham and London Councils judgements).

**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    ☐ No    ☐ Don't Know

Please provide further information

Competent and well-managed public authorities should already have robust arrangements in place to ensure that policies, plans and functions are reviewed regularly and subjected to impact assessment where necessary. However including this as a requirement under the regulations will encourage them to further mainstream impact assessment into policy revision arrangements.

**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 (eg, purely technical or scientific matters)?

☐ Yes    ☒ No    ☐ Don't Know

Please provide further information

It is not always immediately obvious where a proposal might or might not have an impact on equality. For authorities to determine this effectively they would need to do a screening impact assessment anyway, as is currently the case. Including this as a requirement adds no additional value and may have the negative effect of allowing some authorities to adopt a default position of "no impact" where they may seek to

claim that many policies and plans are of a technical nature when in fact they are not. Seeing as most authorities have developed pragmatic approaches to impact assessment whereby they avoid expending significant resources on assessing in detail those proposals unlikely to have an impact on equality, we would suggest maintaining established approaches whereby a policy or plan is deemed to have a potential impact until demonstrated otherwise.

Given the challenges that some public bodies with transport responsibilities have in taking into account the needs of disabled transport users, we would strongly argue that the previous specific duty is retained, to impact assess all functions, policies and plans where there is the possibility of impact on people with protected characteristics.

**Question 6:** Do you agree that 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    ☐ No    ☐ Don't Know

Please provide further information

While this issue does not necessarily impact directly on the work and interests of MACS, it is sensible and reflects widespread developments in workforce monitoring. There is still significant work to do to develop approaches to routine gathering of more sensitive data such as religion and sexual orientation, and it is unlikely that it will ever be pragmatic for authorities to routinely gather Transgender status from all employees, but the emphasis on "reasonable" is noted and supported.

**Question 7:** Do you agree that 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    ☐ No    ☐ Don't Know

Please provide further information

MACS believes that it is sensible for authorities to use this workforce data to support those equality outcomes that relate to their function as an employer.

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

☒ Yes    ☐ No    ☐ Don't Know

Please provide further information

It is sensible to include progress in these areas in an authority's mainstreaming report. This will increase expectations of monitoring across all protected characteristics to avoid a hierarchy of equality. However the duty should be sensitive to the need to allow time to develop robust data systems in place for this.

**Question 9:** Do you agree that 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?

☐ Yes    ☒ No    ☐ Don't Know

Please provide further information

The regulations should not be as specific as in the consultation document. Authorities should be required to publish equal pay statements on protected characteristics other than gender as they develop their workforce monitoring approaches for those characteristics. It will take some time to develop these approaches, as discussed above in the answer to question 6. The emphasis should be on publishing equal pay statements for characteristics other than gender after a reasonable amount of time.

**Question 10:** Do you agree that where a listed authority is a contracting authority and proposes to enter into a relevant agreement on the basis of an offer which is the most economically advantageous it must have due regard to whether the award criteria should include considerations relevant to its performance of the general duty?

☐ Yes    ☒ No    ☐ Don't Know

Please provide further information

Public authorities are already required to pay due regard to the general duty in

carrying out their procurement and commissioning functions, and will be required to apply the specific duty to these functions in terms of impact assessment and monitoring. This proposal does not add value and is unnecessary.

**Question 11:** Do you agree that where a listed authority is a contracting authority and proposes to stipulate conditions relating to the performance of a relevant agreement it must have due regard to whether the conditions should include considerations relevant to its performance of the general duty?

☒ Yes    ☐ No    ☐ Don't Know

Please provide further information

It is sensible that all an authority's contracts should ensure that the access needs of people with protected characteristics are routinely considered to ensure equitable access to services. This will help to mainstream the general duties into all aspects of the work of public authorities. It is very important in terms of tackling health inequality and also supporting the building of more inclusive and cohesive communities.

Procurement and commissioning provide important levers for ensuring that contractors and suppliers engaged by the public sector work towards the spirit of the general duty. This is particularly the case for issues relating to transport and transport infrastructure, where many functions are subject to outsourcing. The procurement duty should complement other aspects of sustainability as aspects of securing best value. This would ensure that securing local employment and quality of service were not sacrificed.

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

Please provide further information

We are inviting responses by **25 November 2011**.

Please send this questionnaire with the completed Respondent Information Form to:

[equalityduty@scotland.gsi.gov.uk](mailto:equalityduty@scotland.gsi.gov.uk)

or by post to:

Graeme Bryce  
Equality Unit  
The Scottish Government  
Area 2G  
Victoria Quay  
Edinburgh  
EH6 6QQ