

The Duty to Promote Disability Equality

Statutory Code of Practice

Scotland

Disability Rights Commission

The Duty to Promote Disability Equality

Statutory Code of Practice

Scotland

London: TSO

© Disability Rights Commission 2006

All rights reserved.

The information contained in this publication is believed to be correct at the time of manufacture. Whilst care has been taken to ensure that the information is accurate, the publisher can accept no responsibility for any errors or omissions or for changes to the details given.

First published 2006

ISBN 0 11 703606 4

Printed in the United Kingdom for The Stationery Office

Foreword

The Disability Rights Commission (DRC) has written and produced this Code of Practice on the disability equality duty for the public sector. This new duty was introduced in the Disability Discrimination Act 2005 and will come into force in December 2006.

We welcome the Scottish Executive's and Westminster Government's active implementation of the duty, and look forward to working alongside both of them to ensure that they deliver real change for disabled people. This new duty will help drive forward a culture change across the public sector and accelerate the pace of change on disability equality. The duty should end the discrimination which currently can occur when institutions fail to take account of the impact upon disabled people when developing services or policies.

It is essential that this duty leads to real outcomes and practical improvements in the day-to-day life and experience of disabled people. At the heart of the duty is the need to involve disabled people which will increase the effectiveness of public bodies in identifying and prioritising equality initiatives.

I firmly believe that this will not only make a real difference to disabled people but will also be essential for public authorities in their push for high-quality performance.

Bert Massie CBE

Chairman,
Disability Rights Commission

Contents

| | | |
|---|-----------|----------|
| Introduction | 1 | 1 |
| What does equality of opportunity for disabled people mean? | 2 | |
| OVERVIEW AND SUMMARY OF THE CODE | 4 | |
| What does the general duty to promote disability equality mean? [Chapter 2] | 4 | |
| Specific duties under the Act [Chapter 3] | 6 | |
| Scottish Ministers' duties [Chapter 4] | 6 | |
| Which organisations are subject to the general duty? [Chapter 5] | 7 | |
| Enforcement of the Disability Equality Duty [Chapter 6] | 9 | |
| The Appendices | 9 | |
| How will the general duty help public authorities to function better? | 9 | |
| When do the duties come into force? | 13 | |
| Purpose of the Code | 14 | |
| Status of the Code | 14 | |
| How to use the Code | 15 | |
| Examples in the Code | 15 | |
| Changes to the legislation | 16 | |
| Further information | 16 | |
| The General Duty | 19 | 2 |
| Introduction | 19 | |
| How do the different parts of the duty work together? | 20 | |

| | | |
|---|---|----|
| 2 | Overarching goal: Equality of opportunity for disabled persons | 21 |
| | Equality of opportunity | 21 |
| | Disabled people | 21 |
| | Underpinning principle: The need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons | 23 |
| | Discrimination | 26 |
| | Harassment | 27 |
| | Positive attitudes | 29 |
| | Participation in public life | 31 |
| | What does the general duty mean? | 32 |
| | Due regard | 33 |
| | Relevance | 33 |
| | Proportionality | 34 |
| | How to meet the general duty | 38 |
| | Mainstreaming – impact assessment | 39 |
| | Gathering and analysing evidence | 39 |
| | Prioritising remedial actions | 39 |
| | Involvement | 40 |
| | Reporting/Transparency | 42 |
| | Leadership | 42 |
| | Expertise | 43 |
| | Training | 43 |
| | Partnerships | 44 |
| | Procurement | 45 |
| | Effectiveness | 45 |
| | Resources | 45 |

| | |
|--|----|
| PARTICULAR PUBLIC AUTHORITIES AND THE APPROACH TO THE GENERAL DUTY | 46 |
| Advisory bodies | 46 |
| Community councils | 47 |
| Education authorities and schools | 48 |

| | |
|---|-----------|
| Specific Duties | 51 |
| Introduction | 51 |
| What do the regulations require authorities to do? | 52 |
| Involving disabled people | 53 |
| What does involvement entail? | 55 |
| Which disabled people should be involved? | 56 |
| What should be in the Disability Equality Scheme? | 61 |
| Introduction to the Scheme | 61 |
| Involving disabled people | 62 |
| Impact assessment | 62 |
| The action plan | 67 |
| Barriers outside the control of an authority | 70 |
| The first action plan | 71 |
| Gathering information: what is required | 72 |
| How to gather information | 76 |
| SPECIFIC INFORMATION-GATHERING MEASURES WHICH MUST BE INCLUDED IN THE DISABILITY EQUALITY SCHEME | 78 |
| The effect of an authority's policies and practices on recruitment, development and retention of disabled employees | 78 |
| Smaller bodies | 79 |

| | | |
|----------|--|----|
| 3 | The effect of an authority's policies and practices on educational opportunities available to and achievements of disabled pupils and students | 83 |
| | The extent to which services and functions take account of the needs of disabled persons | 86 |
| | Using the information | 89 |
| | Implementation of the Disability Equality Scheme | 92 |
| | Annual reporting | 94 |
| | Revising the Disability Equality Scheme | 95 |
| | PREPARATION OF THE DISABILITY EQUALITY SCHEME | 95 |
| | Who should prepare the Scheme? | 95 |
| | Publishing the Scheme | 96 |
| | Schools | 97 |

| | | |
|----------|------------------------------------|-----------|
| 4 | Scottish Ministers' Duties | 99 |
| | What is the purpose of this duty? | 99 |
| | What areas will the reports cover? | 100 |
| | An overview of progress | 102 |
| | Co-ordination of action | 105 |
| | Reserved government | 106 |
| | Reporting arrangements | 106 |
| | Publishing the report | 107 |

| | | |
|----------|---|------------|
| 5 | Public Authorities | 109 |
| | Who is covered by the disability equality duty? | 109 |
| | Exclusions | 112 |
| | Specific duties | 113 |

| | | |
|--|-----|----------|
| Liability | 114 | 5 |
| Inspecting and auditing public authorities | 114 | |
| Public authorities and partnerships | 114 | |
| Procurement | 116 | |

| | | |
|--|------------|----------|
| Enforcement of the Disability Equality Duty | 119 | 6 |
| Role of the Disability Rights Commission (DRC) | 119 | |
| Helping public authorities to meet their duty | 120 | |
| ENFORCEMENT | 120 | |
| The general duty | 120 | |
| Specific duties | 120 | |
| The role of audit and inspection bodies | 122 | |
| The Equality Bill and the CEHR | 123 | |

| | | |
|--|------------|----------|
| Appendix A: Public authorities subject to the specific duties | 125 | 7 |
| Appendix B: British bodies subject to the specific duties | 129 | |
| Appendix C: The meaning of disability | 133 | |
| Appendix D: The Disability Discrimination (Public Authorities)(Statutory Duties)(Scotland) Regulations 2005 SI No.565 | 139 | |
| Appendix E: The Disability Discrimination Act 1995 | 152 | |
| Appendix F: Glossary | 162 | |
| Index | 168 | |

1 Introduction

1.1 The Disability Discrimination Act 1995 (which will be referred to as 'the Act' throughout this Code) has been amended by the Disability Discrimination Act 2005 so that it now places a duty on all public authorities, when carrying out their functions, to have due regard to the need to:

- promote equality of opportunity between disabled persons and other persons
- eliminate discrimination that is unlawful under the Act
- eliminate harassment of disabled persons that is related to their disabilities
- promote positive attitudes towards disabled persons
- encourage participation by disabled persons in public life; and
- take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons.

1.2 The totality of this duty, covering all elements, is referred to throughout this Code as the 'duty to promote disability equality', the 'disability equality duty', or the 'general' duty.

1.3 The overarching goal of the general duty is to promote equality of opportunity, and the other elements of the duty both support this goal and

s.49A

require due regard in their own right. A full consideration of each of these elements of the duty, and their interaction, can be found in Chapter 2, which gives more detail about the requirements of the general duty.

- 1.4 This chapter begins by providing a brief introduction to the distinctive features of disability equality. It then provides an overview of the contents of this Code, including explaining in general terms what the duty requires of public authorities. The chapter then discusses how compliance with the duty can assist authorities in meeting their responsibilities more generally, and concludes with comments about the status of the Code and where to get more information.

What does equality of opportunity for disabled people mean?

- 1.5 In its report 'Improving the Life Chances of Disabled People' (Strategy Unit, 2005) the Westminster Government sets out its vision of disability equality as follows: 'By 2025, disabled people in Britain should have full opportunities and choices to improve their quality of life and will be respected and included as equal members of society'.
- 1.6 At present disabled people do not have the same opportunities or choices as non-disabled people. Nor do they enjoy equal respect or full inclusion in society on an equal basis. The poverty, disadvantage and social exclusion experienced by many disabled people is not the inevitable result of their impairments or medical conditions, but rather stems from attitudinal and environmental barriers. This is known as 'the social model of disability', and provides a basis for the successful

implementation of the duty to promote disability equality.

- 1.7 Whilst many people have positive attitudes towards disabled people, some express pity, fear, lack of respect and sometimes even contempt. These attitudes are hurtful, can lead to discrimination and can also place unnecessary restrictions on disabled people.
- 1.8 For many disabled people environmental barriers play an even more important role in restricting opportunities than attitudes. Although these barriers may be unintentional, that does not make their impact upon disabled people any less significant. When buildings, services and employment practices are designed in a way that fails to take into account the particular circumstances of disabled people, this excludes and disadvantages them. The same applies when budgets are set for a programme without adequately considering the additional needs of disabled people.
- 1.9 Public authorities can make an enormous contribution towards removing the barriers (both environmental and attitudinal) to equal opportunities for disabled people. They can do this by addressing the way in which they run their own services and employ people, and also by exerting their considerable influence in the community at large. For example, in the way in which they regulate the activities of others, by awarding licenses or planning permission, by providing education to pupils in schools and students in further and higher education institutions, or by inspecting the performance of other organisations. All of these functions of public authorities are subject to the duty to promote disability equality.

- 1.10 Equality for disabled people may mean treating them 'more favourably'. The Act states that the duty requires public authorities to have due regard to the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons. This underlines the fact that equality of opportunity cannot be achieved simply by treating disabled and non-disabled people alike.

A disabled student may need a dedicated car parking space because she is unable to use public transport. Non-disabled users might also want a parking space, but will not suffer the same degree of disadvantage if they do not get one: the disabled student will be prevented from attending the course if she does not have the space, whilst the non-disabled student will merely be inconvenienced. More favourable treatment is necessary to provide equality of access to the course.

- 1.11 This principle has always been recognised in the Act, particularly through the duty to provide reasonable adjustments. The university in the above example will have a duty under the Act to provide such a parking space if, in all the circumstances, it is a 'reasonable' adjustment to make.

OVERVIEW AND SUMMARY OF THE CODE

What does the general duty to promote disability equality mean? [Chapter 2]

- 1.12 The duty does not create new individual rights for disabled people. Rather than providing restitution when a disabled person has been the subject of

discriminatory treatment, the duty provides a framework for public authorities to carry out their functions more effectively and to tackle discrimination and its causes in a proactive way. The duty thus reinforces the pre-existing duties under the Act. With regards to the situation described in paragraph 1.10, the general duty would require the university when planning new facilities to give due regard to the needs of disabled students as well as other disabled users of the facilities (including staff) who may require parking facilities.

- 1.13 The general duty requires public authorities to adopt a proactive approach, mainstreaming disability equality into all decisions and activities. This is framed as a requirement on authorities to have due regard to disability equality in its various dimensions set out in paragraph 1.1.
- 1.14 'Due regard' means that authorities should give due weight to the need to promote disability equality in proportion to its relevance. It requires more than simply giving consideration to disability equality. The term 'due regard' is explained in paragraphs 2.32 to 2.42.
- 1.15 It will not always be possible for authorities to adopt the course of action which will best promote disability equality but public authorities must ensure that they have due regard to the requirement to promote disability equality alongside other competing requirements.
- 1.16 The general duty requires authorities not only to have due regard to disability equality when making decisions about the future. They will also need to take action to tackle the consequences of decisions in the past which failed to give due regard to disability equality. This is best

approached by working towards closing the gaps in service or employment outcomes, so that, for example, disabled and non-disabled people express the same level of satisfaction with their social housing, or achieve a more equal pattern of educational achievement.

Specific duties under the Act [Chapter 3]

- 1.17 In addition to this general duty, certain public authorities are subject to what are known as ‘specific’ duties, laid down in regulations. Bodies covered by the Scottish regulations are listed in Appendix A. British bodies are covered by the regulations for England and Wales and are listed in Appendix B. Some bodies, such as the British Broadcasting Corporation (BBC), are bound by these duties only so far as their public functions are concerned.
- 1.18 The regulations set out steps which must be taken to assist public authorities in fulfilling the general duty.
- 1.19 In particular the specific duties require public authorities which are listed in Appendix A to produce a Disability Equality Scheme, and the duties set out what must be included within that Scheme. Equivalent English and Welsh regulations impose the same specific duties on those bodies listed in Appendix B amongst others.

More details are given on the specific duties in Chapter 3.

Scottish Ministers’ duties [Chapter 4]

- 1.20 As well as placing duties upon public authorities listed in Appendix A, the regulations (which are known as the specific duties regulations) place a

duty upon Scottish Ministers to publish reports which:

- give an overview of progress made by public authorities operating in specific sectors towards equality of opportunity between disabled people and other people; and
- set out proposals for the co-ordination of action by public authorities operating in that sector so as to bring about further progress towards equality of opportunity between disabled people and other people.

1.21 More detail on these duties is given in Chapter 4.

Which organisations are subject to the general duty? [Chapter 5]

1.22 The Act states that the general duty applies to public authorities. The general duty will therefore apply for example to:

s.49A

- Scottish Ministers, Scottish Executive departments and executive agencies (such as the Education department and its executive agency HM Inspectorate of Education, or the Justice Department and the Scottish Court Service)
- local authorities
- governing bodies of higher education institutions, colleges and universities
- education authorities
- NHS boards
- Chief Officers of Police, Police Authorities, the Independent Police Complaints Authority, the Criminal Injuries Compensation Authority

- The Crown Office
- courts and tribunals (for exceptions in relation to courts and tribunals see paragraph 5.10)
- inspection and audit bodies and agencies such as Audit Scotland
- certain publicly-funded museums.

1.23 Equivalent public authorities in England and Wales are also covered by the general duty. Further detail is provided in relation to the duties as they apply to English and Welsh public authorities in the Code of Practice (Disability Equality Duty) England and Wales.

s.49B(1)(a)

1.24 The Act also specifies that the term 'public authority' includes any organisation which exercises some functions of a public nature. For example a private company which is brought in by the Scottish Executive to run a prison would be exercising a function of a public nature.

1.25 There is no definitive list of public authorities to whom the general duty applies, as there is in the amended Race Relations Act 1976 (RRA) (and subsequent regulations made under it). All those who fall within the RRA's lists of authorities covered by the race duty will also be subject to the disability equality duty (unless the subject of an exclusion from the Act, details of which are given in paragraph 5.9). More detail is given in Chapter 5.

Enforcement of the Disability Equality Duty [Chapter 6]

s.49D; s.49E

- 1.26 As indicated above at paragraph 1.12, the duty does not create individual rights for disabled people. However, a breach of the general duty can be the subject of a claim for judicial review of a public authority's action (or inaction). If the specific duties are not met, the Disability Rights Commission can take enforcement action. More detail of this is given in Chapter 6.

The Appendices

- 1.27 Appendix A provides a list of Scottish authorities to which the specific duties described in Chapters 3 and 4 apply.
- 1.28 Appendix B provides a list of British authorities to which the English and Welsh equivalent specific duties apply.
- 1.29 Appendix C sets out the definition of disabled people which is used in the Act.
- 1.30 Appendix D sets out the full text of the specific duty regulations.
- 1.31 Appendix E gives an overview of the Act's non-discrimination provisions in relation to disabled people.
- 1.32 Appendix F provides a glossary of terms used in the Code.

How will the general duty help public authorities to function better?

- 1.33 Westminster Government-sponsored research demonstrates that high performing public and

private sector organisations are also those that integrate equality and diversity into their business culture and processes. This duty is a key element of diversity and will facilitate integration of disability equality into the business culture and processes of public authorities.

1.34 A diversity focus is essential not only for reasons of equal opportunities and fairness but because it makes good business sense to design and deliver better public services which respond to the individual needs of all groups and contribute to effective, efficient and high performing public authorities.

1.35 Overall, effectively meeting this duty will:

- Improve both the effectiveness and the efficiency of public authorities, by ensuring that the resources invested in services actually benefit all those they are aimed at, or who need them. Additionally, making services effective for disabled people can offer benefits to the general population; for instance, improving information access for disabled people generally benefits all service users.
- Enable authorities to make a real, positive change to the lives of disabled people.
- Increase confidence in authorities' ability to deliver first-class services. One in four of the population has a disability and thus a significant section of authorities' customers and staff are disabled. This duty will enable authorities to demonstrate a commitment to improving outcomes for disabled people.
- Enable authorities to better meet the requirements of audit and inspection bodies, which are also required to comply with the

disability equality duty and which will be considering public authorities' performance within their inspections or assessments.

1.36 There are many practical ways in which public authorities will benefit from implementing the requirements of the disability equality duty. Some general examples are:

- better targeted policies
- representation of different groups at all levels
- improvements in perceptions of services, and more satisfaction with services
- greater confidence in services
- filling gaps in services
- better involvement and more participation by service users and members of the public
- better targeted information about public services; and
- better access to public services.

1.37 In terms of policy and service delivery, authorities will be able to:

- encourage policy makers to be more aware of issues concerning particular groups
- encourage better co-ordination across departments and functions (for example, spatial planning and transport infrastructure, or the planning of new schools or health services)
- contribute to more informed decision-making
- ensure that policies are properly targeted

- improve the ability to deliver suitable and accessible services, and to carry out functions so that they meet various needs
- encourage greater openness in policy-making
- increase involvement of disabled people in policy-making
- increase confidence in public services, particularly amongst disabled people.

1.38 Meeting the duty can also bring considerable advantages to public authorities in terms of their employment functions. It can help authorities to:

- achieve a more representative workforce
- attract able staff
- avoid losing or undervaluing able staff
- improve staff morale and productivity
- improve staff management
- identify and develop good practice; and
- avoid claims of unlawful discrimination.

1.39 In relation to education, in successfully applying the duty, education authorities and further and higher education providers will be able to ensure that their disabled pupils and learners can reach their potential by tackling the barriers to their learning. A common characteristic of the highest performing schools and post-16 education providers is an inclusive ethos that focuses on raising achievement for all learners.

1.40 In particular, the duty will:

- provide a framework to consolidate education provision for disabled children

- mesh with the existing development plans and performance improvement strategies of education authorities, schools and post-16 institutions to take account of the particular barriers to achievement for disabled pupils and learners
- help widen participation and retention in further and higher education
- create an emphasis on equality for disabled pupils and give a greater imperative to schools and Education Authorities to implement the planning duties which are imposed by the Education (Disability Strategies and Pupils' Educational Records) (S) Act 2002
- ensure effective transition of disabled young people in choosing routes of education
- lead to an increase in the representation of disabled people in the teaching profession and the retention of staff who become disabled
- help to avoid claims of unlawful disability discrimination
- encourage education institutions to think strategically about other disabled stakeholders, including parents and people using school premises, as well as promoting a greater knowledge and understanding of disability amongst all learners with benefits to society at large.

When do the duties come into force?

- 1.41 The general duty will come into force on 5 December 2006. The specific duties regulations will come into force on 5 December 2005. They contain an obligation for public authorities to

publish a Disability Equality Scheme no later than 4 December 2006.

Purpose of the Code

1.42 This Code of Practice (the Code) gives practical guidance to public authorities on how to meet the general duty to promote disability equality. It includes guidance on both the general duty and the specific duties imposed by way of regulations. The aim of the Code is to help public authorities to promote equality of opportunity and to eliminate disability discrimination. The Code also helps disabled people to understand the duties imposed on public authorities and the role that they can play in them.

s.53A

1.43 The Disability Rights Commission (DRC) has prepared this Code under the Act on the basis of a request by the Secretary of State. It has issued the Code pursuant to powers in section 53A(1C). It applies to authorities in Scotland listed in the Scottish regulations. A similar but separate Code applies to bodies in England and Wales and to British bodies. The Code will take effect from a date to be appointed by the Secretary of State.

Status of the Code

s.53A(8)

1.44 The Code does not impose legal obligations. Nor is it an authoritative statement of the law – that is a matter for the courts and tribunals. It is, however, a ‘statutory’ Code. This means that it has been approved by Parliament and it is admissible as evidence in legal proceedings under the Act. Courts and employment tribunals must take into account any part of the Code that appears to them to be relevant to any question arising in those proceedings. If public authorities follow the guidance in the Code, it may help to avoid an

adverse decision by a court or tribunal in such proceedings.

How to use the Code

- 1.45 Each chapter of the Code should be viewed as part of an overall explanation of the Act's provisions in relation to the general duty and the regulations made under them. In order to understand the law properly it is necessary to read the Code as a whole. The Code should not be read too narrowly or literally. It is intended to explain the principles of the law, to illustrate how the Act might operate in certain situations and to provide general guidance on good practice. The Code is not intended to be a substitute for taking appropriate advice on the legal consequences of particular situations.
- 1.46 References to the Act are shown in the margins. For example, s.1(1) means section 1(1) of the Act and Sch.1 means Schedule 1 to the Act. References to regulations will be references to The Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005 SI No.565 unless otherwise stated.

Examples in the Code

- 1.47 Examples of good practice and how the Act is likely to work are given in boxes. They are intended simply to illustrate the principles and concepts used in the legislation and the ways in which different types of public authorities can comply with the general duty; they should be read in that light. The examples should not be treated as complete or authoritative statements of the law.

- 1.48 While the examples refer to particular situations, they should be understood more widely as demonstrating how the duty is likely to work generally. The examples attempt to use as many different varieties of disabilities and situations as possible to demonstrate the breadth and scope of the Act.

Changes to the legislation

- 1.49 The Code refers to the Disability Discrimination Act as of 5 December 2005. There may be changes to the Act or to other legislation, for example, to the range of people who are considered to be 'disabled' under the Act, which may have an effect on the duties explained in this Code. Public authorities will need to ensure that they keep up-to-date with any developments that affect the Act's provisions. Relevant information can be obtained from the DRC (see below for contact details).

Further information

- 1.50 Copies of the Act and regulations made under it can be purchased from The Stationery Office. Separate Codes covering other aspects of the Act, and guidance relating to the definition of disability are also available from The Stationery Office. The text of all the DRC's Codes (including this Code) can also be downloaded free of charge from the DRC website: www.drc-gb.org
- 1.51 The DRC is also producing guidance on a number of aspects of the disability equality duty and these are all available on the DRC website or from the DRC Helpline.

1.52 Free information about the Act can be obtained by contacting the DRC Helpline, details of which are below.

Telephone: 08457 622 633

Textphone: 08457 622 644

Fax: 08457 778 878

Post: DRC Helpline
FREEPOST
MID 02164
Stratford upon Avon
CV37 9BR

You can email the DRC Helpline from the DRC website: www.drc-gb.org

2 The General Duty

Introduction

2.1 This chapter explains what public authorities need to do to meet the general duty to promote disability equality. The duty is set out in s.49A of the Act and applies to all public authorities, including those only certain of whose functions are functions of a public nature. There are some limited exemptions from the duty, which are detailed in paragraphs 5.9 to 5.11.

s.49A

2.2 The duty requires that every public authority shall in carrying out its functions have due regard to the need to:

- promote equality of opportunity between disabled persons and other persons
- eliminate discrimination that is unlawful under the Act
- eliminate harassment of disabled persons that is related to their disabilities
- promote positive attitudes towards disabled persons
- encourage participation by disabled persons in public life; and
- take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons.

- 2.3 The duty is not absolute but it does require authorities in respect of all their functions to give due regard to disability equality. This is discussed at paragraphs 2.32 to 2.42.
- 2.4 These obligations apply in relation to people who are disabled within the meaning of the Act. Appendix C contains information about this definition of disability.

How do the different parts of the duty work together?

- 2.5 The overarching goal of the duty is to promote equality of opportunity, and the other elements of the duty will both support this goal and require due regard in their own right. Thus eliminating discrimination, combating harassment, and promoting positive attitudes and participation in public life all promote equality of opportunity for disabled people.
- 2.6 The goal of the general duty is the promotion of equality; the underpinning principle is the requirement to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons. The understanding that to deliver true equality of opportunity for disabled people requires more than treating them the same as everyone else underpins the requirements to combat discrimination (notably the Act's requirement to make reasonable adjustments) and to promote equality of opportunity. Below we consider the different elements of the general duty.

Overarching goal: Equality of opportunity for disabled persons

Equality of opportunity

- 2.7 The general duty requires public authorities to give due regard to promoting equality of opportunity between disabled persons and other persons. Chapter 1 discusses in more depth what is meant by equality of opportunity for disabled people. The objective is that disabled people should have full opportunities and choices to improve the quality of their lives, and be respected and included as equal members of society. If such equality were achieved this would mean for example, at a very basic level, that disabled people who rely on additional assistance for their daily living, such as getting up and dressed, would have the same ability to determine the time at which they get up and go to bed as non-disabled people. Where public authorities can, by giving due regard to this goal, facilitate such an outcome they are required to do so.

Disabled people

- 2.8 The definition of disabled persons in the Act is a broad term, and covers people with a wide variety of disabilities. The duty requires due regard to be given to all disabled persons when considering the impact of decisions and functions, and authorities must ensure that they pay attention to the full range of disabled people. The social causes of exclusion are often experienced in common by people with a wide variety of impairments (for example, an unnecessary job requirement for a driving licence will disadvantage people with a wide range of disabilities who are prohibited from driving). In some instances distinct barriers will arise for

groups with a particular type of disability (for example, the employment barriers confronting people with Asperger's syndrome are distinct from those confronting Deaf people).

- 2.9 Public authorities must remember that people who meet the Act's definition of disabled persons are protected whether or not they themselves might consider themselves to be disabled. In addition, the definition includes people whose impairment might not be immediately obvious – for example, people with mental health impairments, learning disabilities, or medical conditions such as cancer. These factors will be particularly important when authorities are communicating with disabled people, seeking the views of disabled people, assessing how well the authority serves disabled people or planning how to improve the authority's performance for disabled people.
- 2.10 As well as having different impairments, disabled people will also have differing experiences depending on their gender, age, sexuality, religion and ethnicity. Public authorities may need to give consideration to whether particular groups of disabled people are experiencing particular disadvantages. For example, when developing programmes to reduce the suicide rate by addressing the unmet needs of people with mental health problems, Health Boards will be conscious that looked after children are particularly at risk.
- 2.11 The mechanisms for ensuring that an authority is complying with its duty should take into account the full range of disabled people. For example, care should be taken to ensure that involvement exercises (see paragraphs 2.50 to 2.54) engage people who have higher support needs, including

the need for advocacy. Similarly, mechanisms for gathering information to measure progress on disability equality (see paragraph 2.48) need to be sensitive to the varying experiences of different groups of disabled people.

- 2.12 Having considered the broad range of experiences, public authorities may wish to prioritise remedial action in relation to certain groups, perhaps on the basis that they experience the greatest degree of exclusion, or because there are other valid reasons connected with operational priorities. For example, a mental health board prioritises recruiting people with mental health problems, both because they have a particularly high unemployment rate and because this will support the board's core function of rehabilitating people with this disability.

Underpinning principle: The need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons

- 2.13 The Act states that the duty requires public authorities to have due regard to the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons. This emphasises the fact that equality of opportunity cannot be achieved simply by treating disabled and non-disabled people alike.

s.49A(1)(d)

A disabled student may need a dedicated car parking space because she is unable to use public transport. Non-disabled users might also want a parking space, but will not suffer the same degree of disadvantage if they do not get

one: the disabled student will be unable to attend the course if she does not have the space, whilst the non-disabled student will merely be inconvenienced. More favourable treatment is necessary to provide equality of access to the course.

- 2.14 This principle has always been recognised in the Act, particularly through the duty to provide reasonable adjustments. The university in the above example will have a duty under the Act to provide such a parking space if, in all the circumstances, it is a 'reasonable' adjustment to make.
- 2.15 It is important to note that unlike other anti-discrimination laws, the Act does not prohibit or restrict positive discrimination in favour of disabled people in any way. This is because under the Act only disabled people are protected against discrimination, and not those who are not disabled.
- 2.16 In some instances giving due regard to disability equality may require additional dedicated services to enable disabled people to access mainstream activities on equitable terms.

An authority is involving disabled people in identifying the main barriers which they experience in relation to its functions, but has been unable to engage many people with learning disabilities. Following discussions with a representative organisation of people with learning disabilities, it becomes apparent that some people with learning disabilities are unable to become involved without the support of

advocates. The authority provides funding for advocates to be employed to support people with learning disabilities at an event which the authority holds as part of its involvement processes, as well as ensuring that the process is accessible by, for example, providing Easy Read documentation.

- 2.17 Moreover, delivering true equality of opportunity can sometimes require additional services to be offered as an alternative alongside a 'mainstream' approach. Even where the mainstream service is fully accessible, disabled people may value a separate space in which to engage in activities. Where a separate service specifically aimed at disabled people is provided alongside a 'mainstream' service this should be provided as a choice, not as an enforced, segregated provision provided purely because disabled people are unable to access the mainstream service.

A local authority leisure centre provides swimming sessions every week which are open only to disabled adults, following discussions with disabled people about the centre's services which highlighted a need for such sessions. These sessions allow disabled people to learn to swim in, what is for some people, a more comfortable and confidence-building environment. Disabled people are also able to attend those sessions aimed at the general public and support is provided to do so where necessary – there is a choice of sessions to attend.

Discrimination

2.18 The Act prohibits discrimination against disabled people broadly in relation to the following areas:

- employment and occupation
- trade associations and qualifications bodies
- education
- general qualifications bodies
- housing
- the provision of goods, facilities and services
- the exercise of a public function
- the use of certain transport vehicles; and
- private clubs.

2.19 Appendix E provides an outline of some of the Act's main provisions.

s.49A(1)(a)

2.20 The general duty requires public authorities to have due regard to the need to eliminate unlawful disability discrimination in the way in which they carry out their functions. This reinforces the reasonable adjustment duties which all the anti-discrimination provisions of the Act contain (further details of which can be found in the relevant Codes of Practice available from the DRC). In particular, it complements and in some cases overlaps with the anticipatory duty to make adjustments. Only some provisions (those relating to the provision of goods, facilities and services, the exercise of a function, the use of transport vehicles, private clubs, and education) contain an 'anticipatory' duty to make adjustments. An anticipatory approach requires adjustments to be made in advance of individual disabled people attempting to use the service or access education.

In relation to employment and occupation, qualifications bodies, and providers of housing, however, the duty to make adjustments is not an anticipatory one. In these circumstances, the duty arises only where the employer or qualifications body knows or could reasonably be expected to know that the person requires particular adjustments; and in the case of housing provision, where a request for an adjustment has been made.

- 2.21 In contexts where the anticipatory reasonable adjustment duty does not apply, the requirement to have due regard to the elimination of discrimination may require authorities to adopt a similarly proactive approach, anticipating the needs of disabled people.

An authority reviews its policy of requiring detailed medical questionnaires to be completed in advance by all applicants for employment. It is concerned that questionnaires may put off disabled applicants, and it decides that medical questions will only be posed to successful job applicants. It tailors its form to the particular requirements of the job, and the investigation of possible reasonable adjustments. The authority finds that not only does this improve the success rate of disabled applicants, but it also reduces costs and produces more focused occupational health reports.

Harassment

- 2.22 The general duty also requires public authorities to have due regard to the need to eliminate harassment of disabled people that is related to their disabilities. Disabled people may be subject to considerable harassment in daily life. This may

s.49A(1)(b)

occur in schools, at work, when receiving services, or at home. Harassment is a very broad concept; it will include harassment which is specifically prohibited by the Act (explicitly in the employment provisions and implicitly in other contexts) and harassment which is made unlawful by the 1997 Protection from Harassment Act. It is not, however, limited to harassment which is unlawful. It can take many forms, from direct verbal abuse to comments which make an individual feel uncomfortable, intimidated or degraded.

- 2.23 For example an authority which implements a policy on harassment (whether in relation to students, tenants, customers, or employees) that does not prohibit harassment on grounds of disability is unlikely to be paying due regard to the need to eliminate harassment. Similarly, an authority which adopts such a policy but fails to implement it effectively will be unlikely to be complying with its general duty.
- 2.24 Authorities will need to consider what steps they can take to comply with this duty within their sphere of influence. For example:
- local authorities and the police can include in their community safety strategy a plan to reduce harassment of disabled people by, for example, working with local authority services, schools and transport operators
 - public authorities can record incidents of harassment against disabled people in relation to their services as well as the way in which the incidents are resolved, and take positive steps to prevent such harassment.

A local mental health charity proposes establishing supported accommodation in the community for mental health service users who are leaving hospital. The local health board works with the charity to ensure that local residents are aware of the nature of the accommodation and the need for it, as well as the positive benefits to the community that the residents will bring. The health board is acting proactively to prevent potential harassment of the mental health service users.

Positive attitudes

- 2.25 The general duty also requires public authorities to have due regard to the need to promote positive attitudes towards disabled people. This part of the duty, as with the other parts, contributes to the overall goal of promoting equality of opportunity. Whilst many people have positive attitudes towards disabled people, some express pity, fear, lack of respect and/or contempt. Demeaning stereotypes, or simply the absence of any representation in public images, both have very negative impacts on disabled peoples' lives.
- 2.26 Such attitudes are not only hurtful, but can lead to discrimination and place unnecessary restrictions on disabled people. When exercising their functions, authorities will need to consider what they can do to eliminate ignorance and prejudice in the wider community.

In addition to building positive attitudes towards disabled people into the ethos of the school, schools may also promote positive attitudes to disability in lessons such as citizenship through

s.49A(1)(e)

discussion of the skills and knowledge that well-known disabled people who are public figures have that enables them to play an active role as citizens. Positive attitudes to disabled people will be particularly promoted if teaching staff ensure that the views and contributions of disabled children are valued, for example by ensuring that disabled children who require support or advocacy to participate in debates receive it.

Scottish Executive Departments may examine their communications strategy to ensure that disabled people are positively portrayed (although promoting positive attitudes is not limited solely to communications policies).

Broadcasters which are subject to the duty through the English and Welsh regulations (the BBC, Channel 4 and Sianel Pedwar Cymru) may examine their programme policies and commissioning strategies to ensure that disabled people, are represented in mainstream news, factual, drama, comedy, lifestyle, and feature programming in more prominent, non-stereotypical roles. This may include setting out clear targets for mainstreaming which provide a useful benchmark for measuring progress. These need to be reviewed and updated at regular intervals with input from disabled people, including young people. This feedback on the extent to which they believe programming is supporting positive attitudes is essential. Guidelines for producers and commissioning editors, backed up by ongoing training, can also be a vital tool to ensure the whole organisation

focuses on the need to promote positive attitudes.

A commissioning strategy could also include funding and plans for specific disability programming designed to give disabled filmmakers an opportunity to bring their diverse perspectives to a wider audience. This can assist in challenging assumptions about disabled people being 'vulnerable' or 'dependant'.

When closing services, authorities should explain why reorganisation is necessary and not allow the impression to be given that such closure is as a result of having to comply with the anti-discrimination provisions of the Act (the Disability Discrimination Act would not require the closure of any service, as the duty to make adjustments requires only what is 'reasonable').

Participation in public life

- 2.27 The general duty also requires public authorities to have due regard to the need to encourage participation by disabled people in public life. This is not an end in itself and will promote equality for disabled people more generally. Not only will disabled people bring valuable experience to public life, but such participation will encourage positive attitudes towards disabled people and in some cases can lead to a reduction in harassment (for example, where disabled people are properly integrated into tenants' associations). Those authorities that succeed in promoting the participation of disabled people in their governing or advisory bodies are also likely to find that this assists them in becoming a disability aware organisation.

s.49A(1)(f)

- 2.28 'Public life' is a very broad term. It incorporates residents' associations; neighbourhood forums; citizens' panels; public bodies' market research focus groups; parent-teacher associations; user groups for a service provided by a public authority; Local Community Planning Partnerships; Scottish Executive public appointments. This is not an exhaustive list.
- 2.29 Public authorities will need to have due regard to encouraging participation in public life not only by, for example, encouraging disabled people to stand for particular forums, but also by ensuring that the framework is in place for them to successfully participate in the selection process and in the work of the forum.
- 2.30 For example selection criteria for public body appointments should be examined to ensure that they do not make it more difficult for disabled people to succeed in applications for such posts. Public authorities should also consider appointing non-executive directors with broader community and customer-focused experience, as this may make the posts more open to disabled applicants.
- 2.31 In an educational setting, disabled pupils can be encouraged to be on any pupil council. Support can also be organised so that disabled pupils can participate in youth forums outside school. Such encouragement should respect the wishes of disabled children, so that they do not feel pushed into activities that they do not wish to take part in.

What does the general duty mean?

- 2.32 The general duty requires public authorities to adopt a proactive approach, mainstreaming disability equality into all decisions and activities. This is framed as a requirement on authorities to

give due regard to disability equality in its various dimensions as set out in paragraph 2.2.

Due regard

2.33 Public authorities are expected to have 'due regard' to the six parts of the general duty. 'Due regard' comprises two linked elements: proportionality and relevance. In all their decisions and functions authorities should give due weight to the need to promote disability equality in proportion to its relevance. This requires more than simply giving consideration to disability equality.

Relevance

2.34 Disability equality will be more relevant to some functions than others. Public authorities will need to take care when assessing relevance, as many areas of their functioning are likely to be of relevance to disabled people.

Whilst refurbishing a staff office may not immediately appear to be relevant to the disability equality duty, it can in fact be of particular relevance to both existing and future staff. Poor colour contrast can affect the mobility of people with visual impairments, whilst the nature of the flooring can have an effect on how easily wheelchair users can move around the office.

Those responsible for purchasing and supplying hospital equipment (the National Services Agency and individual hospital boards) will need to give due regard to the needs of people with a wide range of disabilities. This will require both

s.49A(1)

consideration about ensuring adequate supplies of specialist equipment needed to access hospital services (such as hoists) and also consideration about whether the design of equipment is sufficiently flexible to accommodate as wide a range of disabled people as possible. Involving groups of disabled service users in this process will greatly assist authorities.

Proportionality

- 2.35 Proportionality requires greater consideration to be given to disability equality in relation to functions or policies that have the most effect on disabled people. Where changing a function or proposed policy would lead to significant benefits to disabled people, the need for such a change will carry added weight when balanced against other considerations.

A local authority wishes to adopt a planning policy that a maximum of one car parking space will be allowed per two new housing units built in its area, and in some areas it is considering permitting only car free developments. All new housing will meet the basic access standards for disabled people and some new homes are wheelchair accessible.

This policy on parking and car use is designed to encourage people to use public transport. However, it fails to take account of the inaccessibility of public transport for disabled people in the area and the reliance of many disabled people on cars. The result of this policy is that at least half of new homes are not

appropriate for many disabled people because they cannot have a car parking space near their property.

Having due regard to the promotion of disability equality, given the high degree of relevance which this policy has for disabled people, would require the authority to consider alternative approaches, which, while achieving the desired aim, would avoid this negative impact on disabled people. For example, providing dedicated parking spaces for disabled people.

- 2.36 It will not always be possible for authorities to adopt the course of action which will best promote disability equality but public authorities must ensure that they have due regard to the requirement to promote disability equality alongside other competing requirements.

A national park authority has a commitment to in-service training for staff but its budget is limited. It identifies that only a relatively small number of new staff have ever had disability equality training. It also identifies a range of other training needs including health and safety and IT skills.

The authority assesses the situation and decides that whilst disability equality training for staff would undoubtedly have an impact on promoting disability equality, the authority does not have the resources to undertake this extensively whilst meeting other key training needs. It decides to arrange disability equality training for managers and this is organised in conjunction with several other local public authorities. Following this training it is agreed

that managers will run a feedback session on the next inset day for all staff who can attend.

- 2.37 The general duty requires authorities not only to have due regard to disability equality when making decisions about the future. They will also need to take action to tackle the consequences of decisions in the past which failed to give due regard to disability equality. This will entail working towards closing the gaps in service or employment outcomes, so that, for example, disabled and non-disabled people express the same level of satisfaction with their social housing, or achieve a more equal pattern of educational attainment.
- 2.38 Authorities will not be able to fully review all aspects of their operations, and act to ameliorate all adverse impacts, in a single cycle of improvement. Rather this is a continuing duty on authorities, which should prioritise for review those aspects of their functions which have most relevance to disabled people. It will be of assistance to public authorities to involve disabled people in this process of prioritisation and review.
- 2.39 The technique of impact assessment, discussed below and in Chapter 3 is designed to assist authorities in ensuring that due regard is paid to disability equality in all their decisions and functions.
- 2.40 Having due regard to disability equality will generally require some adaptation to existing or proposed activities. In some instances it may require an authority to consider whether additional, targeted services are required in order to deliver an equal outcome for disabled and non-

disabled people (for more information on this, see the discussion about the meaning of equality for disabled people in Chapter 1 and above at paragraph 2.7).

- 2.41 Ensuring that services give due regard to disability equality may require an authority to consider, in relation to any services delivered specifically to disabled people, whether the way in which they are delivered maximises disabled people's ability to exercise real choice, and promotes their equality more generally.

When preparing individual community care plans, a local authority should have due regard to the need to promote disability equality. Disability equality is of particular relevance in this context. This would mean, for example, that the range and manner of assistance provided takes into account the need for a disabled person to have access to social and leisure activities, and, where relevant, employment.

- 2.42 The general duty may also require public authorities to review the ways in which they prioritise, resource and implement their functions that are specifically intended to benefit disabled people, such as care and support services. Public authorities should expect to be more carefully scrutinised and accountable for their performance of disability-focused functions.
- 2.43 Because the general duty requires authorities to give due regard to disability equality in every aspect of their activities it may, depending on the nature and remit of the particular authority, require a public authority to consider what action it can take to dismantle attitudinal and environmental barriers within its sphere of

influence. For example, licensing authorities should review any licensing conditions to ensure that they are not unnecessarily restrictive of disabled people's access, and that staff draw attention to prospective licensees' responsibilities to make reasonable adjustments on an anticipatory basis, and provide appropriate advice.

How to meet the general duty

2.44 Set out below are steps that will assist a public authority to comply with its general duty. A number of these steps are discussed in more detail in Chapter 3, which explains what is required of those authorities who are subject to the specific duties. Whilst only those authorities listed in Appendix A are required to carry out the actions set out in the specific duties, the key mechanisms required by that duty provide a useful framework for all authorities seeking to comply with the general duty. These actions are:

- mainstreaming – impact assessment
- gathering and analysing evidence
- prioritising remedial actions
- involving disabled people; and
- public reporting – transparency.

2.45 In addition, we consider below some other important mechanisms for successful compliance with the new duty:

- leadership
- staff expertise and training
- attention to working with others: partnerships and procurement

- focusing on effective change; and
- efficient use of resources.

2.46 Smaller organisations will have fewer resources and this will affect the steps which they take to ensure compliance with the general duty. The steps set out in the rest of this chapter are designed to assist authorities, not to prescribe a particular approach which they are obliged to take.

Mainstreaming – impact assessment

2.47 The general duty requires public authorities to adopt a proactive approach, mainstreaming disability equality into all decisions and activities.

2.48 The specific duty requirement to conduct impact assessments is designed to provide a mechanism for ensuring that due regard is given to disability equality in decision-making and activities. The technique of impact assessment is described in paragraphs 3.28 to 3.42.

Gathering and analysing evidence

2.49 Authorities will require evidence in order to assess the impact of their activities on disabled people and to measure progress towards disability equality. The information provided in Chapter 3 at paragraphs 3.56 to 3.107 on the specific duty requirement in relation to information gathering will provide a useful framework for authorities in relation to evidence gathering.

Prioritising remedial actions

2.50 Action to review existing activities to ensure that they have due regard to disability equality, and

actions to remedy any deficiencies, will need prioritising. The specific duty requirement to draw up action plans (discussed in paragraphs 3.43 to 3.51) provides a framework for this process.

Involvement

2.51 The specific duties expressly require the involvement of disabled people in the development of the Disability Equality Scheme. Even those authorities not subject to these duties are likely to find that the involvement of disabled people is key to compliance with the general duty. Public authorities will be unable to identify and prioritise equality initiatives effectively unless disabled people and, where appropriate, disabled children and their parents, have been involved in that identification and prioritisation.

As part of its continued communication with parents, a primary school sends a newsletter to all parents about the duty to promote disability equality. The newsletter highlights the school's responsibilities towards disabled parents as well as disabled students in the school. A definition of disability is also given so that parents who may not immediately identify as being disabled see the broad coverage of the definition. The newsletter states that the school would be very interested to hear disabled parents' views on any school matter. Disabled parents who want to give information are asked to contact the deputy head to arrange an informal discussion.

2.52 Taking active steps to ensure the involvement of disabled people is particularly important given the under-representation of disabled people generally in positions which determine policies and priorities of public authorities. The requirement to

give due regard to the need to promote participation in public life requires that steps are taken to ensure that the formal structures of governing and advising bodies are accessible to and inclusive of disabled people, for example, health boards and Local Community Planning Partnerships.

- 2.53 Community involvement, in the sense of consultation and participation, is already a core requirement of many public authorities' functions. For example, health boards are legally required to involve and consult the local public on service development and delivery.
- 2.54 Authorities will need to ensure the inclusion of disabled people within mainstream consultation strategies as part of their general duty to have due regard to disability equality in relation to all their functions. For example, there will be disabled people who may not be able to travel independently, who do not feel comfortable in open meetings or who cannot access information in certain forms. Suitable measures should be taken to reach such people, just as authorities will be seeking to enable people to participate in consultation activity irrespective of their gender, ethnic group or other characteristic. Schools will also wish to ensure that they involve disabled pupils and their parents, as well as disabled parents and staff.

A health board decides to consult with users of its ophthalmic services. In order to ensure that their consultation is as accessible as possible, they use the Scottish Accessible Information Forum (SAIF) standards to produce their consultation documents.

2.55 More information is given on involvement in paragraphs 3.7 to 3.24.

Reporting/Transparency

2.56 Public confidence is essential so that any public authority can effectively serve its population. To ensure confidence from all parts of the community, people need to be able to see what has been done by that authority and why. In relation to the general duty, authorities should be in a position to explain why a decision has been made, and to indicate how its impact upon disabled people has been assessed.

2.57 Those subject to the specific duties will have an opportunity to provide this transparency by way of carrying out impact assessment and reporting on an annual basis (see paragraphs 3.28 to 3.42 and 3.111 to 3.114 for details of these measures). Those not subject to the specific duties will need to consider how to ensure transparency, building on their current practices, such as reporting on progress in their annual reports.

Leadership

2.58 Change starts at the top. Strong, clear and consistent leadership is the key to achieving change in the public sector. Senior management and governing bodies need to take visible ownership of the disability equality duty, for example by requiring reports on its implementation and delivering clear messages to staff about its importance. People feel permitted to do the right thing when the person at the top is saying that they want them to do that. Articulating outcomes for disability equality, setting appropriate targets, running awards schemes and other incentives can practically demonstrate the

importance attached by an authority to successful implementation of the duty.

- 2.59 Senior management will be responsible for ensuring that the necessary resources and expertise are made available within the organisation.

Expertise

- 2.60 Compliance with the general duty will require public authorities to access expertise, and depending on the size and remit of an authority it may be necessary to employ identified staff members with such expertise.
- 2.61 The National Audit Office Report (Delivering Public Services to a Diverse Society 2004) makes the following recommendation regarding responding to diversity: 'In deciding whether or not a standalone unit to oversee diversity is required, government bodies need to consider the existing depth and breadth of their experiences with, and need for, serving diverse customers. A strategy that removes such units is only appropriate for organisations that already exhibit a strong culture and proven history of addressing diversity in all areas of their business.'

Training

- 2.62 For the duty to be effective in promoting disability equality, staff will need to be trained in relation to the duties. Basic disability equality training should form part of any training on the duties. Staff will need to be aware of what the duties are, and why they are necessary, as well as being equipped with the necessary skills to implement the duties. Training will also be needed in the necessary skills for carrying out their jobs with due regard for

disability equality. Public authorities will need to consider what staff at various levels need to know about the general and specific duties, before giving them the training they need.

Partnerships

- 2.63 Disability equality is often dependent on different public bodies working together effectively. Authorities may need to look beyond the specific services which they provide to working with other authorities, and developing appropriate partnerships, to deliver disability equality.

For example in November 2001 Forth Valley Primary Care Trust Disability Department worked jointly with Central Scotland Police to tackle bogus callers targeting vulnerable people. It became clear from that initiative that more joint working was required. The Primary Care Trust, the Acute Trust, police, fire and ambulance services and the Disability Rights Commission came together to work to improve services to disabled people. These bodies organised a 'Blue Light Event', taking the views of those on the NHS Forth Valley Disability Group as well as other statutory agencies who directly deliver services to the public. A formal report from the event was then published.

A health board has a smoking cessation strategy with central and local targets aimed at reducing the number of smokers in its area by 20 per cent in five years. The authority gathers evidence which finds that people with mental health conditions are more likely to smoke when compared with the general population, and that the existing programme is failing to reach or effect change amongst this group. The authority

develops partnerships with local mental health groups to develop both its general and specific cessation programmes aimed at ensuring that the programme has equitable impact across all groups.

Procurement

- 2.64 Public authorities enter into large numbers of contracts with private and voluntary organisations for goods, works, services and staff. As procurement is a function of authorities, they will need to ensure that in procuring services etc, they comply with all aspects of the Act, including the general duty. Authorities will need to consider whether the way in which services etc are procured promotes equality of opportunity. Further information is provided on procurement in Chapter 5.

Effectiveness

- 2.65 It is important that public authorities use the disability equality duty to achieve outcomes, otherwise they are likely to find it difficult to establish that they have had due regard to the disability equality duty. It is also important that authorities consider carefully how effective their actions will be in achieving outcomes, bearing in mind that the easiest way of doing something will not necessarily be the most effective.

Resources

- 2.66 The National Audit Office Report (Delivering Public Services to a Diverse Society 2004) provides some guidance on resources and diversity. It states that addressing diverse needs is

often about varying existing resources to meet the needs of a wider customer base rather than injecting additional resources to meet a specific need. Initiatives to improve how services are delivered to diverse customers can be successful while being modest in terms of scale and resources required. It is however necessary to plan and arrange resource requirements to cover the whole-life costs of such initiatives, including maintenance, ongoing evaluation and improvements. The successful design and implementation of diversity initiatives also takes time, and there is value in recognising this by developing initiatives in an incremental fashion and allocating resources accordingly so that lessons can be taken on board.

- 2.67 Resources should be targeted to initiatives that have well-focused objectives. Although an abundance of resources does not guarantee an initiative success, a lack of resources is a formula for failure.

PARTICULAR PUBLIC AUTHORITIES AND THE APPROACH TO THE GENERAL DUTY

Advisory bodies

- 2.68 Advisory bodies provide independent and expert advice to ministers on particular topics of interest. For advisory bodies to meet the duty effectively, they will need to consider:
- mainstreaming the duties
 - from time to time, considering disability equality as a specific issue
 - impact assessing future proposals to avoid adverse impact upon disabled people and to

ascertain how proposals can actively promote equality of opportunity.

- 2.69 Those responsible for appointing the members of advisory bodies should attempt to ensure that the membership reflects all aspects of the population, including disabled people. In addition, the advisory committee should consider whether disabled people would be affected differently by a particular proposal; and whether this is an issue upon which advice should be sought from someone with expertise in disability issues.

For example, Scottish Executive Advisory Committees' functions are, broadly, to:

- consider relevant materials
- scrutinise proposals from the Executive
- provide advice on specific subjects.

In relation to all three functions, committees will need to take into account the principles in the disability equality duty.

In addition, they may need to build in a particular point in each project at which the committees ask the question 'what is the impact of this upon disability equality?' Depending on the terms of reference of the committees, they may report at regular intervals on the impact of what the relevant executive department is doing in relation to disability equality generally.

Community councils

- 2.70 Community councils are very significant bodies within their local communities. They will need to consider disability equality in relation to any staff

they may employ. There will also be important services that they are responsible for, or activities that they undertake, which will be very relevant to disability equality, such as running community centres, being responsible for playing fields or commenting on planning applications.

Community councils should consider how they can ensure that these activities contribute towards increasing disability equality.

A small community council decides that it has little knowledge of disabled people using the facilities in the local area. After putting an article in the local paper they are clear that there is a particular problem with lack of benches on the local recreation ground and an uneven path.

In order to improve this situation, the council ask the local authority to provide a bench and repair the path. They also obtain advice from the local access panel on further improvements to the recreation ground and other facilities.

The council then decides to include information about the progress it has made in its newsletter and annual report.

Education authorities and schools

2.71 The general duty will build on existing responsibilities under disability legislation in relation to schools, including the duties to make reasonable adjustments, and to plan strategically to increase access to schools over time. Education authorities can implement the general duty by actively reviewing all their policies, procedures and planned access improvements in schools, to remove barriers with a view to greater recruitment and retention of disabled staff; and greater

participation of disabled pupils, disabled parents and disabled people in all aspects of school life, in the wider community and in the non-educational services a school might provide.

To promote equality of opportunity, an education authority reviews its accessibility plans to ensure that its planned developments will benefit other disabled users of school premises such as teachers, parents and other members of the local community who might use the school premises.

2.72 Schools will use the framework of the particular regulation which obliges education authorities to make arrangements to facilitate schools to help them meet their specific duties, to structure their information gathering and impact assessment in relation to the duty. Involving disabled people and where appropriate both disabled parents and parents of disabled children in setting the school development plans and conducting the daily running of the school is likely to be necessary for the general duty to be effectively met.

An education authority highlights its main priorities for raising standards in its accessibility strategy. Priorities for improvement that are identified in the strategy are reported on annually, at the same time as the education authority reports on its Disability Equality Scheme. Disabled stakeholders are involved in identifying the priorities of the school's development plan as well as the priorities of the Disability Equality Scheme.

3 Specific Duties

Introduction

- 3.1 All the public authorities that are listed in Appendix A are subject to the specific duties described in this chapter. The Appendix contains the full list of authorities that are contained in the regulations made under the Act. Those in Appendix B are British bodies with Scottish functions subject to similar duties contained in the English and Welsh regulations. Further regulations may be issued from time to time which will add new authorities to these lists and remove others. The authorities referred to in this chapter are only those which are listed in Appendix A and are obliged to comply with the specific duties.
- 3.2 The duties set out a framework to assist authorities in planning, delivering and evaluating action to meet the general duty and to report on these activities. At the heart of this framework is the Disability Equality Scheme (the Scheme), which is explained below. When developing and implementing the Scheme, authorities should bear in mind that the Scheme is a means of meeting the various elements of the general duty.
- 3.3 The duties are intended to provide a flexible framework to guide public authorities to meet their general duty in the most appropriate way and so may apply differently, depending on the size and nature of the organisation.

The Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005, SI No.565, Sch.1

What do the regulations require authorities to do?

3.4 The specific duty regulations require authorities to produce and publish a Disability Equality Scheme, to implement certain aspects of the Scheme and to report on it. The Scheme may be included in another document or plan (see paragraph 3.121 for further details). The full text of the regulations is set out at Appendix D but in summary, they state that:

- a public authority should publish a Disability Equality Scheme demonstrating how it intends to fulfil its general and specific duties
- a public authority should involve disabled people in the development of the Scheme
- the Scheme should include a statement of:
 - the way in which disabled people have been involved in the development of the Scheme
 - the authority's methods for impact assessment
 - steps which the authority will take towards fulfilling its general duty (the 'action plan')
 - the authority's arrangements for gathering information in relation to employment, and, where appropriate, its delivery of education and its functions
 - the authority's arrangements for putting the information gathered to use, in particular in reviewing the effectiveness of its action plan and in preparing subsequent Disability Equality Schemes

- a public authority must, within three years of the Scheme being published, take the steps set out in its action plan (unless it is unreasonable or impracticable for it to do so) and put into effect the arrangements for gathering and making use of information
- a public authority must publish a report containing a summary of the steps taken under the action plan, the results of its information gathering and the use to which it has put the information.

3.5 The first Scheme must be published by 4 December 2006 and will have to cover the following three years. Where authorities are added to the list by further regulations, these regulations will specify the applicable date by which Schemes must be published.

3.6 All listed authorities are required to comply with the same specific duties. In contrast to the duties under the Race Relations Act 1976, which have different requirements depending upon the area of activity, there are no separate provisions for the education sector or employment sectors, other than in relation to information gathering (see paragraphs 3.56 to 3.107 for details of this). However, it should be noted that schools are not covered by the specific duty in their own right, but there are specific regulations detailing how education bodies must make arrangements for schools under their authority to carry out certain tasks (see paragraphs 3.124 to 3.126 for details).

Involving disabled people

3.7 The specific duties require a public authority to involve disabled people who appear to the authority to have an interest in the way it carries

reg.2(6)

reg.2(2)

out its functions in the development of the Disability Equality Scheme.

- 3.8 In addition, the Disability Equality Scheme must include a statement of the way in which disabled people have been involved in its development.
- 3.9 These requirements reflect the fact that public authorities will not be able to identify and prioritise equality initiatives effectively unless they consider the views of disabled people.
- 3.10 Disabled people should be involved in all key aspects of the development of the Scheme, such as:
- identifying the barriers faced by disabled people and unsatisfactory outcomes
 - setting priorities for action plans
 - assisting planning activity.
- 3.11 The regulations specifically require the involvement of disabled people in the development of the Scheme. However, the involvement of disabled people in the implementation of the various aspects of the Scheme (such as conducting impact assessments and gathering evidence) will also be critical to the successful implementation of the duty. For example, involving disabled people in monitoring the success of initiatives throughout the duration of the Disability Equality Scheme will assist with evaluation, and will be critical when the time comes to review and revise the Scheme.
- 3.12 In order to be fully effective, the involvement process should:

- **be focused** – the process should be clear about where the listed authority has scope to make changes, and what resources are available
- **use accessible mechanisms** – it is possible for a wide range of disabled people to participate
- **be proportionate** – the approach taken should be commensurate with the size of the public authority
- **be influential** – people outside the organisation should be able to see how the involvement has affected the public authority's plans; and
- **be transparent** – to maintain ongoing commitment to involvement by disabled people they need to know that it has been influential, not merely tokenistic. This requires reporting on the results of involvement. It would be helpful for the statement on involvement in the Disability Equality Scheme to include an indication of any changes which have been made as a result of the involvement of disabled people.

What does involvement entail?

- 3.13 The specific duties require the 'involvement' of disabled people. 'Involvement' requires a more active engagement of disabled stakeholders than 'consultation'.
- 3.14 The National Audit Office Report ('Delivering Public Services to a Diverse Society 2004' – 'the NAO report') offers the following guidance on engaging diverse stakeholders in the context of identifying their different service delivery needs: 'Long-term, supported engagement with stakeholders is required to help government

bodies identify differing service delivery needs that may exist across diverse customer groups, and develop the most appropriate ways of delivering these services'. It advises public authorities to 'engage with stakeholders at an early stage, but after sufficient preparation. This means that bodies are prepared and equipped to address all perspectives at an early stage, leading to positive outcomes for all parties. Sustain the links established with stakeholders during the design and development of services throughout their implementation and review.'

- 3.15 The NAO report also recommends that budgets for engaging with disabled people must take realistic account of the often significant costs associated with ongoing communication and collaboration.

Which disabled people should be involved?

- 3.16 The duty requires public authorities to involve those disabled people who appear to have an interest in the way in which an authority carries out its functions. This may include former, current and potential service users, staff and the wider community. It is important to consider the full diversity of disabled people – in terms of the type of impairment, as well as other dimensions such as ethnicity, age, gender, sexual orientation and religion or belief.

A hospital has received several complaints from disabled women about their antenatal services. It decides to undertake an investigation and through the local disabled parents' network identifies a group of disabled women to involve in this. Through a series of meetings and visits to the maternity unit the disabled women are able

reg.2(2)

to highlight a range of barriers which the hospital has not previously noticed. These include the inaccessibility of information including leaflets which were not available in Easy Read, videos with no subtitling and parenting classes which took no account of issues for disabled parents. The hospital decides to undertake disability equality training for the midwives and obstetricians undertaking the parenting programme and to review the accessibility of the information materials.

- 3.17 In many cases it will be appropriate for an authority to involve representative groups of disabled people in the development of the Disability Equality Scheme. Representative groups can provide considered thoughts and proposals based on good knowledge of what public authorities provide and what users want. These groups may already exist at a local or national level, and in some instances, for example Centres for Independent Living, will represent disabled people with a particular interest.
- 3.18 It will generally be important for a public authority seeking to involve representative groups in this way to view the process as a partnership. The NAO report advises: 'Local stakeholder groups, which are often voluntary or charitable organisations with limited staff and resources, require government bodies to make an ongoing commitment to build capacity in the consultation process rather than drop in and out to meet their immediate requirements.'
- 3.19 In some cases it may be appropriate to create and support a specialised forum of disabled people where none exists.

The police service agrees to work with local disabled people to set up a Disability Independent Advisory Group. The group is not intended to replace engagement with local representative groups of disabled people, but rather to provide a pool of expertise on issues relating to disability and policing. The goal is to recruit a group of disabled people, with diverse impairments and reflecting a broad cross-section of community experience, who have a track record in working on police and community safety issues. Job descriptions and person specifications are drawn up reflecting these requirements, and in consultation with disabled people. Application packs are provided in alternative formats, including Easy Read. The vacancies are widely advertised, taking into account the best routes for attracting the attention of disabled people. Over a hundred applications are received and members are selected by independent consultants against an agreed criteria. These criteria include a requirement to reflect a broad range of diversity experience. Application forms request applicants to disclose gender, age, religion, sexuality and race as well as indicate the nature of their impairment. The group appoints its own chair, sets its own agenda and can co-opt additional members. Group members are paid an attendance fee, as well as expenses, for attending the meetings.

3.20 Depending on the size of the authority and the extent of its direct service delivery functions, it may also be desirable to commission research in the community, to secure the views of a wide range of disabled people. This range of people should include those who do not identify

themselves as disabled (for example, older people and those with long-term medical conditions). In addition, those who are harder to reach, perhaps because of their high level of support needs or because they are members of minority ethnic communities, should be included. The representative disability group may be able to assist with or provide such research.

- 3.21 Where action is proposed on employment issues, the involvement of workplace trade unions will help ensure that all relevant issues are addressed. Many unions will have networks or groups of disabled members able to provide relevant advice and information as well as links to local communities of disabled people. They may thus also be able to assist with identifying suitable actions in relation to the service delivery element of the Disability Equality Scheme.
- 3.22 Authorities may find it helpful to consider developing user involvement protocols for both commissioning and monitoring services, in consultation with disabled people.
- 3.23 For some smaller public authorities, this approach may be disproportionate, and they might make effective use of existing mechanisms of consultation.
- 3.24 Similarly, authorities with a particular focus of activities may find it useful to make use of existing channels. A social work department might involve its service user forum; while an NHS Board might use its patients' forum.

A public sector housing provider, such as a local authority, may wish to set up a specific Tenant Participation Compact for disabled tenants.

Compacts are agreements between council landlords and tenants setting out how tenants will be involved in decisions affecting their homes and communities. Many housing providers already have these Compacts or Tenant Participation Strategies in relation to specific issues such as community safety or for particular groups like black and minority ethnic communities. A specific Compact for disabled people could provide a structured and effective way of involving disabled people in a range of key decisions.

A local authority is undertaking a complete review of its library services. It decides that this is highly relevant for disabled people and that it will undertake a full impact assessment of this review. There are library users groups but these only contain a few disabled people. So the Head of Library Services puts in place a series of actions to encourage more disabled people to become involved in the overall users group. This includes outreach work with local disability organisations, increasing the accessibility of meetings, providing accessible transport to meetings and advertising this. This leads to a significant increase in the number of disabled people participating and the group is able to effectively engage in the review, including assessing the potential impact on disabled people at an early enough stage to address any problematic issues. The group puts forward a series of proposed actions, including improved accessibility of IT equipment, better representation of disabled people in promotional materials about the libraries and an increase in the amount of information within the library which utilises the social model of disability.

What should be in the Disability Equality Scheme?

3.25 The following sections set out what should be in the Disability Equality Scheme and the recommended approach to the different elements of the Scheme. They cover:

- the introduction to the Scheme (paragraph 3.26)
- involving disabled people (paragraph 3.27 and see paragraphs 3.7 to 3.24)
- impact assessment (paragraphs 3.28 to 3.42)
- the action plan (paragraphs 3.43 to 3.55)
- gathering information (paragraphs 3.56 to 3.102)
- using the information gathered (paragraphs 3.103 to 3.107)
- implementing the Scheme (paragraphs 3.108 to 3.110)
- annual reporting (paragraphs 3.111 to 3.114)
- the next version of the Disability Equality Scheme (paragraph 3.115)
- who should prepare the Scheme (paragraphs 3.116 to 3.119)
- publishing the Scheme (paragraphs 3.120 to 3.123)
- the role of schools (paragraphs 3.124 to 3.126).

Introduction to the Scheme

3.26 The Disability Equality Scheme will benefit from an introduction which provides information about the public authority which is producing the

reg.2(3)

Scheme, its broad values and objectives, as well as a statement of its current position in relation to disability equality.

Involving disabled people

reg.2(3)(a)

3

- 3.27 The Disability Equality Scheme must include a statement of the ways in which disabled people have been involved in its development. Authorities will need to consider the mechanisms of involvement set out at paragraphs 3.7 to 3.24. The DRC may issue other relevant guidance on involving disabled people.

Impact assessment

reg.2(3)(b)

- 3.28 A public authority must include in its Disability Equality Scheme a statement of the authority's methods for assessing the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality for disabled persons.
- 3.29 'Policies and practices' covers all the proposed and current activities which the authority carries out.
- 3.30 The purpose of impact assessment is both to ensure that an authority's decisions and activities do not disadvantage disabled people, and also to identify where they might better promote equality of opportunity, including consideration of where the different parts of the disability equality duty (such as promoting positive attitudes) might be built into those policies and practices.
- 3.31 Where a negative impact, or missed opportunity to achieve a more positive impact, is identified this indicates to the authority that it should have

due regard to the need to modify the policy or practice.

3.32 Impact assessment is not an end in itself but is merely the process which an authority will go through in order to identify and act on the need to modify policies and practices to have better regard to the need to promote disability equality.

3.33 The following paragraphs explain how a public authority should decide what to impact assess; how to go about it; and what to do with the information once it has done such an assessment.

3.34 Public authorities are already experienced in impact assessment for equality, as it is required by the specific duties to promote race equality. Authorities may consider that the most effective way to conduct impact assessments is to consider all the possible equality impacts of an activity at once. Nevertheless, impact assessment needs to be focused on the different issues arising for different aspects of equality. For example, in disability, impact assessment is likely to be a broader process, embracing many policy, technical and/or procedural aspects of activity.

Although the colours and artwork chosen for a publication may not appear to impact on equality issues, they will nevertheless be of particular importance to people with visual impairments.

Similarly, a decision to make changes to a public sector pension scheme may not appear to impact on equality issues, but may nevertheless be of particular importance to disabled people whose impairment may mean that they cannot work until the requisite retirement age.

3.35 The specific duties do not prescribe a particular method of impact assessment – approaches are likely to vary depending upon the nature of the public authority and the degree of relevance of the function for disabled people. Where the relevance of a function is high, this indicates the need for the authority to take particular care to be able to demonstrate that it has given due regard to the general duty in exercising that function. In these circumstances a full impact assessment will assist in this. Where it is clear that the relevance is low, authorities may wish to have a system for identifying and recording the reasons for the decision not to move to a full impact assessment. Consideration should still be given to any small improvements which do not require a full impact assessment.

A Scottish Executive department is considering its policy in relation to issuing contracts for the provision of stationery. The department has criteria, which it has involved disabled people in drawing up, for determining relevance to disability equality. This policy is determined to be of low relevance. However, staff issuing such contracts are made aware that they should still consider disability equality and ensure that the companies are able to source a wide range of stationery on request. This might be necessary where, for example, a visually impaired person requires printed material on a particular colour of stationery.

3.36 In considering whether to conduct a full impact assessment, public authorities will need to develop criteria which enables them to determine whether:

- the policy is a major one in terms of scale or significance for the authority's activities; or
- there is a clear indication that, although the policy is minor, it is likely to have a major impact upon disabled people. This is not a question merely of the numbers of disabled people affected but of the degree of impact. A policy which has an extremely negative impact on a small number of disabled people will be of greater relevance than one which has only a minor impact on a large number of disabled people.

3.37 If the policy fits into either of these categories, authorities are likely to need to conduct a full impact assessment. In general a full impact assessment is likely to involve:

- consideration of available data and research
- assessment of impacts – what effect will this policy/decision etc have upon disabled people
- consideration of measures which might mitigate any adverse impact and alternative policies which might better achieve the promotion of equality of opportunity for disabled people
- a decision by the public authority
- publication of the results of the impact assessment
- arrangements for monitoring for future adverse impact.

3.38 Involvement of disabled people will be of great assistance in drawing up criteria for deciding whether or not to conduct a full impact assessment and in actually conducting a full impact assessment.

3.39 Such assessment will allow authorities to design arrangements that ensure the full and fair participation of disabled people from the start. It will avoid the need for expensive remedial work when experience proves that untested new initiatives have adverse consequences for disabled people.

Scottish Executive departments will find impact assessments to be an important tool in carrying out their duties when developing major policy documents, and in the design of new ways of delivering services.

3.40 Given that there will be a significant 'back catalogue' of existing policies and activities which will need to be assessed, a public authority may find it helpful to set out a timetable for assessing the impact of its principal activities over the period covered by its Disability Equality Scheme. These will need to be prioritised, with the involvement of disabled people, and should be published in the Disability Equality Scheme.

3.41 Once an impact assessment has been carried out, public authorities will need to consider changes to reflect the findings of the assessment. There may also be actions arising from the assessment which can be taken forward in the action plan.

3.42 Authorities will need to ensure the effectiveness of their impact assessment process for providing due regard to disability equality. They will need to review the effectiveness of this process when revising their Disability Equality Scheme every three years, and should consider doing this on a more regular basis, particularly in the early stages. It will be particularly important to capture improvements made as a result of impact

assessment. Publishing this information (perhaps in an annual report) will build community confidence in the robustness of the authority's approach to disability equality.

The action plan

- 3.43 The Disability Equality Scheme must also include a statement of the steps that a public authority proposes to take to ensure the fulfilment of the general disability equality duty within the period of time covered by the Scheme. These steps are referred to in this Code as an 'action plan'.
- 3.44 The action plan sets out key actions which an authority will take to promote disability equality. The steps must be sufficient to demonstrate that the public authority is complying with the general duty ie having due regard to disability equality. Appropriate weight must be given to the different elements of the duty, as set out in paragraph 2.2 above.

Where relevant, public authorities should consider whether their advertising and marketing functions could do more to promote positive attitudes towards disabled people and set out steps relating to this in the action plan.

- 3.45 The actions that authorities propose to take should take full account of the needs of disabled people who are potential employees, volunteers or service users, as well as those disabled people who are already employees, volunteers and service users.

Users of a local authority-run leisure centre, which has been made fully accessible, show

great satisfaction with the service in customer surveys. However, there are very few disabled people actually using the facilities. This would suggest that the authority needs to consider what barriers other than the accessibility of the building may be preventing or deterring disabled people from using the service (for example, a lack of transport; a busy road with no crossing outside the centre) and consider what action can be taken to address these barriers.

3.46 The action plan in a highly effective Disability Equality Scheme will reflect:

- the priorities of disabled people, as elicited through involvement
- the strategic priorities of the authority, including business milestones and major projects to be implemented over the timescale of the Scheme
- evidence of where the problems and priorities lie
- specific outcomes which the authority wishes to achieve to promote disability equality set out against a realistic timetable
- measurable indicators of progress towards those outcomes
- lines of accountability.

A Scottish Executive department that is planning to procure a new IT system should ensure that its action plan includes the work it will do to ensure that the new system is suitable for use by disabled employees. The action plan should also

indicate the way it will develop the specification so that the system delivers the right products for disabled customers. This might include having a means of identifying those customers and their requirements, which could lead to being able to, for example, print notifications and letters in accessible formats for visually impaired people.

- 3.47 Some of the actions in a plan will be linked to other areas of the Scheme. This might include: undertaking qualitative research to look in depth at the problems for disabled service users (or potential or discouraged service users); or conducting retrospective impact assessments on priority policies or practices.
- 3.48 The action plan is also likely to include specific measures to strengthen the capacity of the organisation to work towards disability equality, such as training for staff in the disability equality dimension of their work, human resources policies, and the development and implementation of effective harassment policies.
- 3.49 Setting specific targets can play a useful role in ensuring that due regard is paid to disability equality in key employment or service delivery areas. Scottish Executive departments either as part of their own Disability Equality Scheme or under the Scottish Ministers duty discussed in Chapter 4 could usefully take the lead in setting targets for public authorities to meet.
- 3.50 The NAO report advises that 'Clear objectives and targets, linked to Public Services Agreements, focus departments on setting and aligning related targets throughout the delivery chain, and equally on encouraging staff at all organisational levels to

take ownership and allocate resources appropriately. Even where specific diversity-related Public Services Agreement targets do not exist, government bodies should include diversity in their more generic targets, to improve service delivery for all customers.'

A health board, as part of its business plan, sets a target of ensuring an increase in breast cancer screening. This target is set to improve take-up of screening which, according to nationally collected statistics, is at 76 per cent for women in the UK. Those same statistics state that take-up by women with learning disabilities is up to 52 per cent. The authority discusses with women with learning disabilities the possible reasons for this low take-up and how more women with learning disabilities could be encouraged to attend. Following this involvement, and as part of its action plan in the Disability Equality Scheme, the authority states that it will:

- produce information in Easy Read format aimed at women with learning disabilities
- distribute the information via local groups of disabled people
- hold outreach sessions at a local organisation of people with learning disabilities.

3.51 Public authorities will also be able to use the Scottish Ministers' reports (see Chapter 4) to identify areas in which actions need to be taken by them.

Barriers outside the control of an authority

3.52 Authorities may identify barriers to equality of opportunity which are outside their control – for

example, a local authority may identify a barrier which falls within the control of a Scottish Executive department. Whilst steps may be identified in the action plan to address the barriers so far as the authority is able to do so, the authority could also draw these barriers to the attention of the Scottish Ministers, so that they can be addressed in the Ministers' reports (see Chapter 4 for details of the Scottish Ministers' reporting requirements).

The first action plan

- 3.53 The first action plan which an authority prepares will inevitably be different from those following it. The first step in drawing up the initial action plan is for authorities to assess whether they possess sufficient information upon which to formulate an action plan.
- 3.54 Most authorities will already have some information available on disability. An important element of an initial action plan may be to plan new mechanisms for gathering evidence on the authority's performance in relation to disability equality. However, it is essential that authorities do not wait for this information to be available before making plans to improve their performance on disability equality. Generally, even where an authority has not collected evidence on disability, it will be possible to identify the key actions for an initial action plan. This can be done through:
- involvement of disabled people
 - considering existing research in relation to similar authorities; and
 - commissioning qualitative research specifically to inform the development of an action plan.

3.55 Authorities may need to include in their first action plan steps to adapt existing measures or the adoption of new measures, to enable adequate measurement of progress against the general duty to promote disability equality.

Gathering information: what is required

3.56 The Disability Equality Scheme must include a statement of the authority's arrangements for gathering information on the effect of its policies and practices on disabled persons. 'Policies and practices' is a very broad term and covers every aspect of a public authority's activities and functions.

3.57 The specific duty requires authorities to set out in the Scheme a statement of their arrangements as follows:

- every authority must set out arrangements for gathering information on the effect of its policies and practices on the recruitment, development and retention of its disabled employees

- educational bodies specified in Parts II and III of Schedule 1 in Appendix A must set out their arrangements for gathering information on the effect of their policies and practices on the educational opportunities available to, and on the achievements of, disabled pupils and students; and

- every authority other than educational bodies specified in Parts II and III of Schedule 1 in Appendix A must set out its arrangements for gathering information on the extent to which the services it provides, and those other functions it performs, take account of the needs of disabled persons.

- 3.58 It is important to understand that information gathering is not an end in itself but that the information obtained must be analysed and used as the basis for preparing disability action plans, and reviewing the effectiveness of those actions taken (paragraphs 3.103 to 3.107 provide further details on the use of information). The information gathered is in fact evidence of an authority's progress in relation to disability equality. For this reason the Disability Equality Scheme is also required to include a statement of the public authority's arrangements for making use of the information gathered in these ways and in particular its arrangements for reviewing on a regular basis the effectiveness of the action plan and preparing subsequent Disability Equality Schemes.
- 3.59 The evidence gathered by public authorities should be sufficient to inform them whether their action plan and their activities and functions more generally are delivering greater equality for disabled people, and whether the priorities underlying the action plan are the right ones.
- 3.60 Where a public authority has a broader community role it will need to consider appropriate mechanisms for measuring the extent to which it is promoting disability equality in this regard.

The Building Standards Agency is responsible for national functions relating to building standards, including the standards which relate to access for disabled people.

In order to analyse the effectiveness of these standards in promoting equality for disabled people the agency may need to consider

requesting local authorities and approved verifiers to collate information on the application and effectiveness of these standards in delivering accessible buildings.

This information would need to clearly identify any occasion on which the standards were not fully met or were met by an alternative method. This information could then be collated to compile a picture of the application and effectiveness of the standards which could be utilised to inform policy developments or revisions of guidance.

Local authorities will also then have the opportunity to use this information to consider how effective the building regulations are locally in promoting disability equality and delivering accessible buildings. Through this process if they discover that there are areas in which the regulations are not proving effective they will then have an opportunity to remedy these problems.

Statutory Performance Indicators for Scottish councils at present include measures of the proportion of top earners who are women. A similar measure could be included with regard to those who have a disability. Equally the SPI relating to learning centre and learning access point users could disaggregate the number of disabled people using these services.

3.61 In some circumstances, the way in which information is gathered will itself prove valuable in meeting the duty to promote disability equality.

The current lack of information in many localities about both the availability of adapted and accessible properties and the numbers of disabled people requiring them means that disabled people in unsuitable housing wait longer than necessary for an accessible home. Disabled people may also be put into residential care or face longer periods in hospital because of a failure to identify suitable accommodation; whilst existing adaptations to housing may be removed and housing which has been specifically designed and built to be accessible for disabled people may not be put to best use. Only three Councils were able to tell Audit Scotland what proportion of their housing stock was adapted. This approach to the allocation of adapted property does not promote equality of opportunity for disabled people. This position could be substantially improved. Just over 50 per cent of local authorities maintain a register of adapted properties – covering dates, type and cost of adaptation. Less than a third keep information on both private and socially rented housing. Local authorities who presently fail to keep full registers including information on all properties in their area, could begin to do so. All authorities could also maintain a database of disabled people who require accessible housing and exactly what features they require, then create a service to match the two lists. This approach is designed to ensure that disabled people are able to move into appropriate accessible housing and is one way to promote disability equality. The information contained on the register will also be valuable in determining local and regional housing strategies and developing planning policies for housing development in the area.

How to gather information

3.62 As information gathering is intrinsic to performance improvement, all public authorities will already monitor many of their key activities. For example:

- further and higher education institutions record examination results
- local authorities record the length of time it takes them to make decisions on planning applications.

3.63 Some information already relates to disabled people's particular experiences.

3.64 In addition to these quantitative measures, authorities generally use more qualitative measures to inform their improvement activity, including:

- staff surveys
- customer surveys
- feedback from staff network groups
- analysis of complaints; and
- research.

3.65 Authorities are likely to need to establish measures which identify the range of barriers which disabled people face (such as inaccessible buildings) as well as those which measure successful outcomes (eg more disabled people using and expressing satisfaction with a service or improved educational attainment by disabled people). The former is an analytical tool for monitoring the barriers to disability equality whilst the latter identifies progress on disability equality. Both measures will often be necessary.

- 3.66 Disabled people with different impairments can experience fundamentally different barriers, and have very different experiences according to their impairment type. It will often be necessary therefore to monitor outcomes according to impairment type to capture this information.
- 3.67 Whether or not it is appropriate to collect information according to impairment group will depend upon whether an authority is ready and able to make use of that information. Collecting excessive statistical evidence which is not put to use can divert energy from an authority. In addition, the collection of sensitive personal information can only be justified under the Data Protection Act 1998 if it is going to be used for specified purposes.
- 3.68 Different measures are likely to be needed depending on the authority collecting the evidence and the purpose for which it is being collected. However, Scottish Executive Departments and other agencies with lead roles in a sector could usefully produce guidance for a policy sector so that key evidence collection is standardised, allowing comparisons across a sector. For example, overarching bodies such as funding councils could publish the results of their nationally collected data.
- 3.69 As well as quantitative measures, authorities will need to consider qualitative measures. Sometimes qualitative evidence gathering will be more effective in providing a 'snapshot' of how an authority is operating and how the carrying out of its functions is affecting disabled people.
- 3.70 In addition to analysing data obtained from their own sources authorities can obtain useful information by comparing similar datasets.

If an authority conducted an exercise to estimate the number of its staff who were disabled, it should compare estimates of the number of disabled people in the local area in order to have a better understanding of its performance. If the authority had a much smaller number of disabled staff than the proportion of disabled people in the local labour market, it would need to find out why that was and consider ways in which it could be improved. This could be fed into subsequent Disability Equality Schemes and business planning.

- 3.71 In order to gather information effectively, staff will need to be trained so that they are aware of the reasons for the collection of data, and the use to which it will be put. If collection of data is simply viewed as bureaucratic, it will be unlikely to generate data of sufficient quality to inform decision-making.

SPECIFIC INFORMATION-GATHERING MEASURES WHICH MUST BE INCLUDED IN THE DISABILITY EQUALITY SCHEME

The effect of an authority's policies and practices on recruitment, development and retention of disabled employees

- 3.72 The specific duties require authorities to have information gathering systems established in relation to recruitment, development and retention of their disabled employees. The information is needed to ensure that employers are able to ascertain the effect of their functions and policies on the recruitment, training and retention of their disabled employees. Generally this will involve collecting and analysing statistical

data about the experiences of applicants and employees.

Smaller bodies

- 3.73 Collecting detailed information will not always be possible for smaller employers, such as those with fewer than 150 employees. The size of such small organisations may mean that statistical analysis cannot be robust. In addition, in a small organisation, collecting such information can lead to privacy concerns.
- 3.74 Such public authorities will need to consider what proportionate and effective information gathering mechanisms they can put in place. They should mainstream disability equality into any existing mechanisms they use to measure staff satisfaction and employment practice more generally – for example including a question in any staff survey designed to identify any potential problems that staff might be aware of in relation to employing disabled people. Other measures which they might take include:
- sending out equal opportunities monitoring forms with application forms, and analysing the returns
 - having exit questionnaires and analysing the results
 - setting up a dedicated email address or other mechanism that allows staff to raise concerns about development/retention.
- 3.75 Larger authorities will need to collect more detailed information. In relation to recruitment, information will need to be collected about applicants and successful applicants. Information could include the monitoring of each stage of

recruitment to find out what happens to disabled applicants.

- 3.76 In relation to 'development', information will need to be collected about training (such as who applies for training, who is offered training, and what types of training) and promotion (such as success rates of disabled employees). 'Development' can also cover performance reviews, workplace benefits and facilities, as well as treatment generally, including harassment, discrimination, grievance and disciplinary action.
- 3.77 In relation to 'retention', information will need to be collected about termination (such as redundancies, resignations, dismissals, end of fixed terms etc).
- 3.78 Employers should analyse any differentials in these areas between disabled and non-disabled staff; investigate the reasons for them; and take action to remedy them.
- 3.79 Many public authorities will already be familiar with collection of information on such areas as a requirement of the duties under the amended Race Relations Act 1976. Systems which are already in place for gathering information in relation to race can be adapted to collect information in relation to disability.
- 3.80 Some public authorities currently gather information on at least some of their employment processes to track the progress of disabled applicants and employees. Some also request additional information to allow analysis by impairment type.
- 3.81 Disclosure of disability is often low. This may be because many people do not identify themselves

as disabled and it will be helpful, where gathering information on this basis, to explain what is meant by 'disabled'. In addition, the willingness of employees to disclose information about their disability will be influenced by their degree of trust in the organisation. Many disabled employees and applicants fear that if they reveal a disability this information will be used against them. A guarantee of confidentiality will be essential for successful information gathering, but beyond this organisations have found that information returns increase as general confidence in the organisation as a disability-friendly one improves.

- 3.82 Another factor which will lead to a significant improvement in staff's willingness to disclose a disability is if they understand why the information is needed and how it will be used to address the different barriers being faced by disabled people. Authorities may need to demonstrate to staff the ways in which this information will actually be used to improve the public authority's employment practices.
- 3.83 Authorities should, as a minimum, collect information on the basis of self-reporting against the question, 'do you consider yourself to be disabled?' In many instances it will be helpful to collect more refined information, broken down by impairment type. However, as discussed at 3.67, the collection of information of this level of sensitivity is only appropriate where an organisation makes active use of the results.

For example a health board undertakes comprehensive monitoring/measurement of performance in relation to the employment of disabled people.

It discovers that visually impaired people are under-represented amongst applicants for posts and employees. To allow this disparity to go unquestioned would be contrary to the authority's duty to promote disability equality. Following consultation with existing staff, trade unions and with groups representing blind and partially sighted people the board sets itself a realistic but challenging target of doubling the number of visually impaired people applying for posts within the next five years. The board proposes to specifically target people with visual impairments by using an advertising strategy utilising radio advertising and other media which the local organisation of blind and partially sighted people has recommended. Regular monitoring and applicant feedback to assess the effectiveness of these plans is also undertaken.

3.84 In any event, employers will need to record their arrangements for using the information which they have collected.

3.85 Once a statistical pattern has become apparent (for example, a trend to adverse appraisals for disabled staff) it is essential to investigate the reason for this pattern. It may for example be linked to a failure to ensure that disabled staff have the reasonable adjustments which they require to carry out their job. Investigation of the cause should enable action which will result in improved performances by disabled staff.

In the example at paragraph 3.83, there is a year on year increase in the numbers of visually impaired applicants but after two years the authority recognises the need to put further

measures in place to ensure that it will meet its target.

Further training on disability equality and reasonable adjustments in relation to visual impairment for all staff involved in recruitment is provided. In addition, a reasonable adjustment strategy is drawn up.

- 3.86 Collecting information on a statistical basis about disabled staff and applicants measures the outcomes of employment processes. It does not explain why these outcomes occur, or what needs to be done to remedy them. Gathering information about barriers to employment will be helpful as a supplement to collecting statistical information about employees. For example, questions in a staff survey may ask about what staff feel impedes their progress, or disabled staff they know, from giving and getting the best out of employment with the organisation. Such surveys can also be repeated to indicate whether subjectively staff are experiencing a more 'disability-friendly' culture.

The effect of an authority's policies and practices on educational opportunities available to and achievements of disabled pupils and students

- 3.87 Certain public authorities must also gather information on the effect of their policies and practices on the educational opportunities available to, and on the achievements of, disabled pupils and students. Those authorities are:
- education authorities

reg.2(3)(d)(ii)

- the managers of a grant-aided school (within the meaning of section 135 of the Education (Scotland) Act 1980)
- fundable bodies within the meaning of Section 6 and Schedule 2 of the Further and Higher Education (Scotland) Act 2005
- the managers of a central institution (within the meaning of section 135 of the Education (Scotland) Act 1980).

3.88 These obligations are in addition to those relating to employment, outlined above at paragraph 3.72 onwards.

3.89 'Educational opportunities' should be interpreted broadly, to include aspects across the breadth of activities made available by the education provider.

3.90 In all education sectors, it may include gathering information on harassment and bullying, as well as information on the promotion of positive attitudes towards disabled students and pupils and the encouragement of their participation in public life.

3.91 'Achievements' should be interpreted to include not only the attainment of formal qualifications, but also a range of other achievements such as improving attendance or achieving positions of responsibility.

3.92 Many further and higher educational establishments, as well as education authorities, will already be collecting information on disability. They will need to ensure that this evidence is both appropriate and sufficient to enable them to consider the impact which their policies and practices are having upon their general duty to promote disability equality.

A university is collecting a wide range of information, much of which is based on disaggregation of current information collected, such as end of year results, student complaints and the breakdown of students offered places in halls of residence. They also look at take-up of the Disabled Students Allowance (DSA) and how this relates to the number of disabled students in different departments, although recognising that not all students who are disabled for the purposes of the Act will be in receipt of DSA.

- 3.93 Schools compile and receive a substantial amount of information about their pupils. This includes information about admissions, exclusions, test scores and bullying. It may also include, from time to time, specific information about the broader aspects of school life such as participation in school trips. Schools will need to disaggregate the information relating to disabled pupils and analyse any differentials between disabled and non-disabled pupils. Schools may also need to consider collating relevant data which is kept in a pupil's progress file. This will allow schools to assess the impact of the majority of school policies and practices without requiring further information-gathering exercises.

A primary school is collecting information in relation to disabled pupils on areas such as test results and exclusions. It decides to look at ways of ensuring that other information is captured, including nominating a member of staff for parents or pupils to contact if they have a concern in relation to their participation at school due to their disability.

A large secondary school has a wide range of information collection mechanisms and it has ensured that these are disaggregated on the basis of disability rather than just the basis of Additional Support for Learning needs. It also looks at various other aspects of wider participation in school including the participation of disabled pupils in areas of responsibility such as prefects or mentoring schemes and their use of key services such as careers advice.

3.94 The definition of disability under the Act is different from the eligibility criteria for additional support for learning provisions. This means that disabled pupils may, or may not, have additional support for learning needs. Schools will need to bear in mind that information collected on pupils based on additional support for learning categories will not necessarily capture all those pupils who are disabled.

3.95 Schools, in particular, are likely to find that taking the views of responsible family members may assist them to understand how well they are performing for disabled children. However, they should not assume that disabled people necessarily share the views of family members, or that they are incapable of representing themselves.

reg.2(3)(d)(iii)

The extent to which services and functions take account of the needs of disabled persons

3.96 In addition to the requirement to gather information in relation to employment, public authorities must also gather information on the extent to which the services they provide and the

functions they perform take account of the needs of disabled persons.

- 3.97 Although education bodies are, under the general duty, required to take into account the needs of disabled service users, such as disabled parents and other disabled adult users of school premises, this requirement to gather information in relation to services and functions does not apply to them, although they may wish to observe it.
- 3.98 An authority which is taking account of the needs of disabled persons will be narrowing any gaps in outcomes between disabled people and non-disabled people.

A local authority's information-gathering indicates that parents with a learning disability are more likely to have their children taken into care than parents who do not have a learning disability. To tackle this the authority, in conjunction with the local health board, establishes a parenting service which aims to work positively with parents with learning disabilities. The service develops a parental assessment tool which focuses on parents' capacity and what support and training would assist them in parenting effectively. It offers both home-based and group-based programmes as well as running courses for parents with learning disabilities.

- 3.99 Authorities will need to consider the full range of services which they provide and those functions they perform. This will include disability-specific services. For example, where an authority is providing respite care for disabled children, the authority will need to consider to what extent any waiting list for such care means that the service

adequately takes account of the needs of disabled people. If it does not, the authority will need to consider whether due regard is being paid to disability equality in its budget allocation.

3.100 Many public authorities employ a variety of mechanisms, both qualitative and quantitative, for assessing the appropriateness of their services and effectiveness of their functions. Authorities will need to ensure that these mechanisms are designed to provide information about the extent to which their services and functions take account of disabled people's needs. Authorities may need to:

- ensure that disabled people are properly represented in customer surveys and local focus groups; and
- ensure that the results are analysed to identify areas where there is a gap between the satisfaction of disabled people and non-disabled people so that policies can be implemented to address these gaps.

3.101 As described in paragraph 3.66, a breakdown in terms of impairment type will often be useful. In addition to building disability considerations into mainstream service assessments, it will sometimes be appropriate to devise some disability-specific monitoring mechanisms. In some instances it may be useful to track processes for improving the quality of service to disabled people as an indicator that steps are being taken which will lead to more equal outcomes. For example, the proportion of service provider staff that have received disability equality training, the proportion of accessible buildings and the prevalence of adjustments, such as loop systems

and alternatives to email and telephone, for contacting the service provider.

3.102 Additional qualitative research into barriers faced by disabled people may need to be specifically commissioned. This may include, for example, mystery shopping.

Using the information

3.103 A public authority must also include in its Disability Equality Scheme its arrangements for making use of the information obtained and in particular, its arrangements for:

- reviewing on a regular basis the effectiveness of the steps set out in the action plan; and
- preparing subsequent Disability Equality Schemes.

3.104 Additional investigation will often be required to understand what the data which an authority has collected might mean. For example, when police gather evidence about the numbers of incidents of hate crime, reports may initially be low but rise in subsequent years. This may be a result of an increase in prevalence of such crime but it may also be the result of greater awareness of, and confidence in, reporting procedures on the part of victims.

3.105 Some authorities may not be able to identify any disabled staff or users. For example, a school might not have any disabled teachers or pupils at a particular point in time. In such situations, schools need to consider whether this is simply statistical – that is, that the school is so small that the lack of disabled people is simply due to chance – or whether potential staff and pupils are

actively avoiding the school. Engaging with the wider community – through disability groups, other schools or the local authority will help schools to understand their position.

- 3.106 In particular, a public authority will need to review its action plan on a regular basis. This will be at a minimum of every three years, the period within which a revised Disability Equality Scheme must be drawn up. However, there may be some situations where it is appropriate to review particular steps set out in the action plan at more frequent intervals. An analysis of the information collected should inform the authority as to whether the action plan is in fact delivering greater equality.

In the example at paragraph 3.50, regarding the uptake of breast cancer screening amongst women with learning disabilities, the health board may need to consider the take-up statistics after a period of 18 months, when the actions have had time to have some effect. It will need to consider whether different particular steps are required to reach the goal of increasing uptake. If, for instance, particular groups of women with learning disabilities are not being reached, such as those from black and minority ethnic groups, additional steps may need to be taken.

A local authority which has set up a Direct Payments Support Service to address the lack of take up of direct payments amongst disabled people finds that there is low take-up of direct payments amongst older people within the Bangladeshi community. The Service works with Bangladeshi community workers to increase take-up amongst this part of the community.

3.107 As well as reviewing the action plan, the analysis of the information will also inform the development, and subsequent revision of, the Disability Equality Scheme, something which must be done every three years.

A local authority is reviewing services and provision for looked-after children in conjunction with local health services and other partners. It is aware of national statistics which show that a disproportionate number of looked-after children and young people also have disabilities. Research findings also indicate a range of barriers which are restricting the life chances of these children and young people. To ensure that the authority is meeting its disability equality duty, it decides to gather information on the experiences, views and concerns of looked-after disabled children and young people. This information-gathering is focused on identifying what the children and young people feel could be done to improve their well-being, and their ability to access the same opportunities and choices as other children. The authority commissions an organisation with specific expertise in advocacy for looked-after children to organise consultation with disabled young people in each type of care setting, with suitable advocacy and communication support. The organisation also makes recommendations for action. A member of the authority is also aware of public concern about the level of specialist qualifications of staff working with disabled children in care. A survey is undertaken of current levels of specialist qualification and training opportunities available which would support equal citizenship. The authority undertakes to draw up and implement an action plan based on these recommendations and

findings as part of its Disability Equality Scheme. It also undertakes to feed back activity and outcomes to the relevant Scottish Executive departments to support national action where necessary.

Implementation of the Disability Equality Scheme

3.108 A public authority must, within the period covered by the Disability Equality Scheme:

- take the steps which it has set out in the Scheme (the action plan); and
- put into effect its arrangements for (i) gathering information and (ii) making use of such information.

3.109 If a public authority does not comply with any duty imposed by the specific regulations, including implementing the Disability Equality Scheme elements indicated above, the DRC may issue a compliance notice (see Chapter 6 for further information about enforcement). However, the authority will not be under an obligation to implement the Scheme elements referred to at paragraph 3.108 if, in all the circumstances of the case, it would be unreasonable or impracticable for it to do so. This provision is not intended to allow an authority to simply change the Disability Equality Scheme contents at will, as the Scheme will have been constructed in such a way as to comply with the specific duties regulations. Rather, the words 'unreasonable' and 'impracticable' are intended to relate to particular and unforeseen circumstances, for example:

- where there are particular difficulties with implementing steps in the Scheme but these difficulties could not have been foreseen, then it is likely to be unreasonable to have to implement them;
- where costs associated with an action unexpectedly escalate so as to be out of proportion to the duty, then it is unlikely to be practicable to implement the action.

A public authority has in its action plan a step to alter an IT system to assist in evidence-gathering, having been advised by its IT staff that this would be possible with minor changes and at relatively minimal cost. On commencing the work, however, it becomes apparent that this could not be done without the entire system having to be re-engineered. In these circumstances, it would not be reasonable to take this step at this time, but rather it should be deferred to a planned replacement of the whole system. A clerical count can be done in the interim.

3.110 It is important, however, that public authorities consider other solutions where it is not reasonable or practicable for it to carry out a particular part of the Disability Equality Scheme. Once barriers to equality have been identified, an authority will need to address them, considering alternative methods of overcoming them if those proposed originally are not practicable or reasonable.

Annual reporting

- 3.111 A public authority must, on an annual basis, publish a report containing a summary of:
- the steps it has taken to fulfil its disability equality duty (the action plan); what has the authority done over the past year to eliminate discrimination and promote equality of opportunity and is it meeting its targets?
 - the results of the information-gathering which it has carried out – what evidence has been obtained and what does it indicate?
 - what the authority has done with the information gathered – what actions will be taken as a result of what the information indicates?
- 3.112 Publishing this information demonstrates an authority's commitment to making progress on equality for disabled people, and will allow the authority's employees and the community to assess how successful the authority is at delivering disability equality.
- 3.113 Publishing annually means that authorities can use other documents which they publish on an annual basis, such as an annual report, as a vehicle for the report. This will provide transparency without unnecessary additional bureaucracy.
- 3.114 Authorities will need to consider how the information is made accessible to the whole community. This is likely to involve producing it in accessible formats, such as large print and/or audiotape.

Revising the Disability Equality Scheme

- 3.115 Public authorities have an obligation to revise the Disability Equality Scheme every three years. The revision should take into account the information gathered, and what that information indicates, as well as what areas need to be focused on in the following three years. In addition to making use of the evidence gathered, the impact assessments carried out, and the involvement of disabled people, authorities can draw on the Scottish Ministers' reports (see Chapter 4) for indications as to what should be incorporated into their Scheme.

reg.2(4)

3

PREPARATION OF THE DISABILITY EQUALITY SCHEME

Who should prepare the Scheme?

- 3.116 It is important to ensure that the Disability Equality Scheme demonstrates commitment at the very highest level of the listed authority. The introduction could be signed by the Chief Executive or equivalent.
- 3.117 In addition, it would be beneficial for a senior member of staff – a board member or equivalent – to take overall responsibility for the implementation of the disability equality duty and thus the Scheme.
- 3.118 In general, public authorities are likely to find it easier to meet their duties under the Act if they employ someone with disability expertise to coordinate the drawing up, monitoring and reviewing of the Disability Equality Scheme. Such expertise is particularly important when considering impact assessment, but will be valuable when considering all aspects of the

Scheme and in advising managers and staff generally.

3.119 Where an authority has within it distinct units with discrete areas of activity it will be appropriate for those units to have separate action plans within a generic Disability Equality Scheme for that authority. In a local authority, for example, the housing, education, highways and social work departments might each have a separate action plan.

Publishing the Scheme

3.120 The specific duty regulations specify that the Disability Equality Scheme (and the revised Scheme) must be published. Authorities will need to ensure that it is accessible to the whole community.

reg.2(5)

3.121 The regulations specify that the Scheme may be set out within another published document or a number of other published documents. The Disability Equality Scheme can therefore form part of, for example, a comprehensive equality scheme or a business plan. Nevertheless, to ensure transparency it will generally be appropriate to publish the Scheme as a whole so that stakeholders can view its different elements together.

3.122 In some situations it may be appropriate to publish details in relation to an element of the Disability Equality Scheme within another document. Even where this is appropriate, it will nevertheless be important to cross-refer clearly in the main Disability Equality Scheme to the additional document, and to make the package as a whole available in one place to the public, for reasons of transparency.

3.123 Regardless of where the Disability Equality Scheme is published, it must be clearly identifiable and presented in such a way as to enable all interested stakeholders to readily access it.

Schools

3.124 As local authority schools are not legal bodies, they are not referred to in Part II or Part III of Schedule 1 and are therefore not directly covered by the specific duty. However, education authorities, as well as being covered in their own right by the specific duty, also have a duty in relation to the schools under their management.

The duty is to make arrangements for each school to:

- assess the impact of its policies and practices, or likely impact of proposed policies and practices on equality for disabled pupils
- gather information on the effects of its policies and practices and the educational opportunities available to, and on the achievements of, disabled pupils
- provide an authority with an annual report in respect of the two above matters
- carry out such steps which the authority proposes to take towards the fulfilment of its section 49A(1) duty; and
- maintain a copy of the authorities' Scheme.

3.125 These arrangements will ensure that schools are fully involved in working with education authorities to meet both the authorities' general and specific duties. They will also ensure that the

reg.3

3

impact of the disability equality duty will be felt directly both by schools and by disabled pupils.

3.126 The information contained in this Code in relation to assessment, information gathering and reporting are as relevant in assisting schools to meet the education authorities' requirements, as they are to the education authorities themselves.

4 Scottish Ministers' Duties

4.1 The specific duty regulations introduce a new duty on the Scottish Ministers. From December 2008, the Scottish Ministers will have to publish reports every three years that:

- give an overview of the progress made by public authorities in relation to disability equality
- set out proposals for co-ordination of action by public authorities so as to bring about further progress on disability equality.

For arrangements in England and Wales, reference should be made to the Disability Equality Duty (England and Wales) Code of Practice.

What is the purpose of this duty?

- 4.2 As discussed in Chapter 1, the Westminster Government, along with the Scottish Executive, has set out a vision for disability equality. This duty is an opportunity to work towards meeting this vision and to track progress against it.
- 4.3 The purpose of this duty is to prompt leadership on disability equality across key elements of the public sector. The object is to ensure that a strategic view is taken, by identifying gaps in provision or particular trends, and opportunities for public authorities to work more effectively in partnership with each other to deliver highly effective services.

The Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005, SI No.565, reg.6

- 4.4 Issues that the duty may address include key areas where disabled people experience gaps in services or where a difficulty in one area impacts on another. For example, the continuity of provision of specialist equipment between university and work where separate systems from different Scottish Executive departments and agencies/authorities may lead to breaks in provision; or the impact of a shortage of trained Occupational Therapists to do assessments for housing adaptations on the ability of local authorities to provide a prompt adaptations service. This in turn may lead to difficulties with the health sector in relation to delayed transfers of care and disabled people remaining unnecessarily in hospital; as well as impacting on social work services by increasing the amount of personal care required.
- 4.5 The reports will also improve transparency by providing information regarding the effectiveness of the public sector in delivering disability equality. This will enable the wider community to judge more easily whether public services are improving, and assist bodies subject to the duty to identify the priorities that they should address in their improvement work.

What areas will the reports cover?

reg.6(3)

- 4.6 The Scottish Ministers are jointly responsible for producing the reports required by this duty. However, it is expected that individual reports will be produced covering the areas which fall within an individual Minister's remit at the time of preparing the reports.
- 4.7 There will be a need, at the outset, for the Ministers to consider which areas they will need to report on. In many cases this will be very

evident. For example, since there is at present a Minister for Tourism, Culture and Sport, Scottish Ministers would be expected to report on progress in relation to tourism.

- 4.8 This duty is significantly different to the responsibility of the Scottish Executive under the specific duties to produce a Disability Equality Scheme.
- 4.9 The Disability Equality Scheme will focus on specific actions in relation to the disability equality duty. It will feed into the more extensive reports from the Ministers, which deal with an overall view of the Executive. The Ministers' reports will also look outside the Scottish Executive, be broader in focus and would focus on achieving improved equality of opportunity for disabled people. This will involve consideration of the progress made across all Scottish Executive departments as well as a range of other public bodies which have a key role.

Housing is a policy sector for the Housing division of the Scottish Executive but there are a range of other Scottish Executive divisions and public bodies who are closely involved in or who have an impact on housing. Some of the organisations that the Ministers' report on housing may need to look at are: local authorities (planning and building standards, social services and housing departments), Communities Scotland, those responsible for heating grants, Housing Associations and Audit Scotland.

The Ministers, when producing their report covering Education and Young People, would need to take an oversight of the information available in relation to disabled children.

The report would not only cover education, but also areas such as the effectiveness of programmes for disabled children such as Sure Start Scotland, and also disabled children's access to leisure.

- 4.10 The Scottish Executive will need to ensure that they make suitable arrangements for supporting the Ministers in their reporting duty. These arrangements will need to take proper account of the differences between this duty and the Executive's own responsibility to implement a Disability Equality Scheme and produce an action plan.

An overview of progress

- 4.11 The duty requires the reports to give an overview of progress made by public authorities in relation to disability equality. Again, the different reports produced will be expected to report on progress by authorities operating in specific areas.
- 4.12 A starting point for the reports is likely to be a mapping exercise of the current information and evidence available to Ministers in relation to Scottish Executive departments, other relevant bodies and other public authorities involved in that area.
- 4.13 It may, however, require specific action to ensure that adequate and consistent information is collected in that area. Ministers will already have access to information collected by some departments or other organisations, which will provide the necessary evidence of progress. In some situations there may be a requirement for improved mechanisms to review progress such as

the Ministers providing guidance to standardise the mechanisms within an area for collecting evidence, or establishing new mechanisms for this.

The Ministers, when considering what evidence is required to report in the sector of Education and Young People, could establish a monitoring system to collect information about the outcomes of Disability Discrimination Act (DDA) cases dealing with education and heard in the Sheriff Court.

The Justice Department could ensure that data is collected on the number of disabled people who are the subject of an anti-social behaviour order.

- 4.14 The Ministers are likely to find it easier to produce reports every three years if disability equality is built into departmental and public authority evaluation strategies across all departments.

The Scottish Executive Environment and Rural Affairs Department (SEERAD) would need to take a strategic overview of the accessibility of the rural environment and the role it was playing in promoting disability equality. This would require consideration of the available evidence and progress of a large number of bodies ranging from the National Park authorities, Scottish Natural Heritage, the Scottish Environmental Protection Agency as well as the Development Department of the Scottish Executive. In looking at progress in Environment and Rural Development, Ministers might identify best practice which could be shared across these

bodies and/or patterns of poor progress in furthering disability equality.

- 4.15 The purpose of collecting information and reviewing progress is in order to inform proposals for further action, particularly in relation to co-ordinated action (see paragraph 4.17 onwards). To translate this review of progress into further action, the Ministers may wish to conduct surveys and research to investigate systemic problems and propose solutions.

In relation to access to the rural environment, different agencies may be collecting different categories or type of data and others may not be collecting information about disabled people at all. Where there is data it may indicate a tendency for authorities to focus on improving accessibility for people with mobility impairments, whilst little progress is being made for other disabled people such as people with learning disabilities. The Ministers could make recommendations for strategies to co-ordinate action across the bodies to bring about further progress for people with learning disabilities.

- 4.16 It may well be effective for Ministers to focus on particular elements or actions which can be instrumental in improving equality for disabled people. Any such decisions will need to be made carefully, in light of the available evidence and with clear justification.

In relation to the problem of a lack of adequate accessible housing stock for disabled people

identified by the Communities Scotland Scottish Housing Conditions Survey, the report for this may for example propose further provisions around accessibility in the Scottish Quality Housing Standard. In addition, it may propose liaising with the Scottish Executive Health Department and the Enterprise, Transport and Lifelong Learning Department to address the critical shortage of Occupational Therapists which is creating severe delays in local authorities making adaptations to improve accessibility of homes.

Co-ordination of action

- 4.17 The duty requires the reports to set out the Ministers' proposals for the co-ordination of action by public authorities in each area, with the aim of bringing about further progress towards disability equality. This co-ordinating role will be influential in improving the effectiveness of a wide range of organisations in relation to disability equality.
- 4.18 To ensure co-ordinated action, leading to improvement, the Ministers may wish to consider performance indicators or targets.
- 4.19 The range of action and proposed co-ordination will vary significantly from area to area depending on issues which have been identified and mechanisms for improvement. In many instances this is likely to involve initiating action on strategic issues with other key departments or agencies.

The Minister for Education and Young People, along with HMIE, the Care Commission and Social Work Inspection Agency should work

reg.6(2)(b)

together, with others, to ensure that the Scottish Social Services Council is capable of fully meeting the needs of disabled children. This work should take full account of the changing profile of disabled children, and should include the full spectrum of professionals.

Reserved government

- 4.20 Certain Secretaries of State in the Westminster Government have duties similar to those on the Scottish Ministers. In order to provide a comprehensive picture of progress on disability equality it is essential that all such Secretary of State reports look across Great Britain for non-devolved issues. The National Assembly of Wales will report on devolved issues for Wales.
- 4.21 For arrangements in England and Wales, reference should be made to the Disability Equality Duty (England and Wales) Code of Practice.

Reporting arrangements

- 4.22 The first reports will be due no later than 1 December 2008, one year after public authorities have published their first report on progress in relation to their own Disability Equality Schemes. Following that, the Scottish Ministers will have to report every three years.
- 4.23 Public authorities will be able to draw on the information and proposals contained in the reports when revising their Disability Equality Schemes.

Publishing the report

- 4.24 The regulations do not specify how or where the reports should be published. It is important, however, that public authorities, disabled people and the wider community are able to access the reports. This might include putting them onto departmental websites and producing them in a range of formats, such as large print or audiotape.

5 Public Authorities

Who is covered by the disability equality duty?

5.1 The general duty (outlined in Chapter 2) applies to every 'public authority'. All public authorities, bar the exceptions listed in paragraph 5.9 below, will be subject to the duty. The Act does not define a public authority other than to say that it includes any person certain of whose functions are functions of a public nature. This is the same approach as that contained in the Human Rights Act 1998, which similarly applies to every 'public authority'. In many cases it will be obvious whether or not an authority is a public authority. Where there is doubt, however, in particular in relation to whether certain of a body's functions are of a public nature, this will be a matter which is determined by the courts. Paragraphs 5.5 to 5.7 provide further details of this.

5.2 As indicated above, there is no list of public authorities to whom the general duty applies, as there is in the amended Race Relations Act 1976 (and subsequent regulations made under it). However, all of the authorities listed in Schedule 1A of the Race Relations Act (as amended) will be 'public authorities' for the purpose of the disability equality duty. The general duty will therefore apply for example to:

- Scottish Ministers, Scottish Executive departments and executive agencies (such as the Education department and its executive

s.49A; s.49B

agency HM Inspectorate of Education, or the Justice Department and the Scottish Court Service)

- local authorities
- governing bodies of higher education institutions, colleges and universities
- NHS boards
- Chief Officers of Police, Police Authorities, the Independent Police Complaints Authority, the Criminal Injuries Compensation Authority
- the Crown Office
- courts and tribunals (though see exceptions below at paragraph 5.10)
- inspection and audit agencies such as Audit Scotland
- certain publicly-funded museums.

5.3 Equivalent public authorities in England and Wales are also covered by the general duty. Further detail is provided in relation to the duties as they apply to English and Welsh public authorities in the Code of Practice (Disability Equality Duty) England and Wales.

5.4 As mentioned in paragraph 5.1, as well as stating that the general duty applies to ‘public authorities’, the Act also states that ‘public authority’ includes any person certain of whose functions are functions of a public nature. A person will be exercising a ‘public function’ where they are in effect exercising a function which would otherwise be exercised by the state – and where individuals have to rely upon that person for the exercise of the governmental function.

s.49B(1)(a)

A private company which has contracted with the Scottish Executive to run a prison establishment will be carrying out functions of a public nature in relation to the running of the prison.

5.5 Whether or not an organisation is exercising a function of a public nature will ultimately be a matter for the courts. As the law presently stands, a private body is likely to be held to be performing public functions and thus subject to the disability equality duty if:

- its structures and work are closely linked with the delegating or contracting-out State body; or
- it is exercising powers of a public nature directly assigned to it by statute; or
- it is exercising coercive powers devolved from the state.

5.6 Additional factors which may be relevant in determining whether or not an authority is carrying out a function of a public nature include:

- the fact of delegation from a state body
- the fact of supervision by a state regulatory body
- public funding
- the public interest in the functions being performed; or
- motivation of serving the public interest, rather than profit.

5.7 In relation to a particular act, a person is not a public authority if the nature of the act is private

(for example, the private company running the prison referred to in the example at paragraph 5.4 above will not be covered by the duty in relation to its private activities such as providing security guards for supermarkets).

- 5.8 It is recommended that those authorities that are not sure whether or not they fall within the definition of ‘public authority’, but who may be carrying out functions of a public nature, should conduct themselves in relation to those functions as though covered by the general duty. It may also be advisable to seek legal advice on whether or not the disability equality duty applies in such a situation.

Exclusions

- 5.9 The Act excludes a number of authorities from the general duty. These exemptions are:
- both Houses of Parliament
 - a person exercising functions in connection with proceedings in Parliament
 - the Scottish Parliament
 - a person, other than the Scottish Parliamentary Corporate Body, exercising functions in connection with proceedings in the Scottish Parliament
 - the Security Service
 - the Secret Intelligence Service
 - the Government Communications Headquarters
 - units of the armed forces required to assist Government Communications Headquarters.

5.10 In addition, there are certain actions of public authorities which the Act excludes from being subject to the duties. The general duty outlined in Chapter 2 does not apply to:

- a judicial act (whether done by a court, tribunal or other person)
- any act done on the instructions or on behalf of a person acting in a judicial capacity
- any act of, relating to, or making or approving of, an Act of Parliament, an Act of the Scottish Parliament or an Order in council.

5.11 The aspects of the duty relating to the need to have due regard to the need to promote equality of opportunity between disabled people and other people, and the need to take steps to take account of disabled persons' disabilities, do not apply to:

- any act done in connection with recruitment to any of the naval, military or air forces of the Crown
- any act done in relation to a person in connection with service by him as a member of any of those forces.

Specific duties

5.12 As discussed in Chapter 3 above, in order to assist certain public authorities to comply with the general duty, the Scottish Executive has set out in regulations a list of specific duties.

s.49C(1)(2)

s.49C(3)

**The Disability
Discrimination
(Public
Authorities)
(Statutory
Duties)
(Scotland)
Regulations
2005, SI
No.565**

- 5.13 These duties apply only to those authorities which are listed in the regulations. The full list of authorities at the time of printing the Code is contained in Appendix A of this Code of Practice. There may be changes to this list in the future and details of changes will be available on the DRC website.

Liability

- 5.14 Public authorities are responsible for meeting their general and specific duties. Within each public authority, this responsibility will rest with the groups or individuals who are liable (legally responsible) for the authority's acts or failure to act.

Inspecting and auditing public authorities

- 5.15 Agencies that audit or inspect public authorities are, as public authorities themselves, bound by the duty to promote disability equality in all aspects of this work. Further detail about the role of inspecting and auditing bodies is given in Chapter 6 on enforcement.

Public authorities and partnerships

- 5.16 Public authorities may be involved in partnerships in order to better deliver their services – for example, community safety partnerships, or early years development and childcare partnerships. Where those partnerships do not have a separate legal identity in their own right, they will not be bound collectively by the disability equality duty. Whilst such partnerships will not be bound collectively by the disability equality duty, the partners will individually, so far as they are public authorities or are bodies certain of whose functions are functions of a public nature, have to

comply with the general and, where applicable, specific duties. Those authorities with duties under the Act must ensure that they give due regard to disability equality in relation to the work of the partnership by ensuring that it takes forward work to promote disability equality.

A city-based community safety partnership brings together a number of organisations to improve the safety and security of the city's residents. It includes a number of authorities which are subject to both the general and specific duties – for example, the local council, the local police force, and the board of the local health board. The main aims of the partnership include:

- making the partnership accountable to its residents and stakeholders
- reducing crime and the fear of crime
- tackling racist violence
- tackling violence against marginalised groups.

The authorities in the partnership which are subject to the duty to promote disability equality ensure that the disability equality duty is built into the partnership's plans and activities. After involving local disabled people and disability organisations, the partnership commissions a report into the experiences of disabled people in the city. The report indicates that harassment against disabled people is a considerable concern and of high priority. The partnership makes tackling harassment against disabled people one of its main objectives. Another finding of this report is that no agencies have systems for sharing information on harassment of disabled people, or for co-ordinating their

work in this area. The report recommends that more multi-agency work is needed to support victims of crime based on disability. The partnership applies for central funding to establish a centre that would enable agencies to share information confidentially.

Procurement

- 5.17 Public authorities enter into large numbers of contracts with private and voluntary organisations for goods, works, services and staff.
- 5.18 Sometimes the nature of a function which is contracted out will mean that the contractor is itself carrying out the public authority function, as discussed in paragraph 5.4 above. In such a case, the public authority will be responsible for meeting the duty in relation to the procurement process, and the monitoring of the contract. The contractor itself will be bound by the general duty in relation to its carrying out of the function.
- 5.19 In many situations, however, the contractor will not be performing a public function, but will merely be providing services on behalf of the public authority. In such situations, the obligation to comply with the duty in relation to the function remains with the public authority that contracts out the function. This means that public authorities will need to build relevant disability considerations into the procurement process, to ensure that the public authority is meeting the disability equality duty in relation to this function. Steps which will assist public authorities in ensuring that they meet their obligations include:

- revising any standard terms and conditions which they have for contracting their services to include information about the Disability Discrimination Act 2005 ensuring that relevant Scottish Executive guidance on social or equality issues in procurement is considered
- including a requirement in every contract that the contractor must comply with the anti-discrimination provisions of the Act
- where relevant, specifying what evidence the contractor may need to gather for the authority to demonstrate its compliance with the general or specific duties
- ensuring that disability equality is appropriately reflected, and given due weight, in the specification, selection and award criteria, and contract conditions, in a way which is consistent with EC and UK procurement rules, in the selection of tenderers and in the award of the contract where relevant
- ensuring that contractors fully understand any disability equality requirement of the contract
- monitoring performance of disability equality where relevant to the contract
- providing training for all staff involved in procurement work so that they fully understand the provisions of the Act and the relevance of the disability equality duty to their area of work.

The Head of Information Technology in a Scottish Executive department is overseeing the redesign of the department's website, which is being contracted out to a web designer. The head of information technology ensures that the

tender documents include reference to the disability equality duty and in particular the need to ensure that the website is fully accessible to disabled people. The standard terms of contract are revised to reflect the fact that any updating and/or maintenance work on the website must ensure access for disabled people, in order to ensure that the department is meeting its disability equality duty.

6

Enforcement of the Disability Equality Duty

Role of The Disability Rights Commission (DRC)

6.1 The DRC was set up as an independent statutory agency under the Disability Rights Commission Act 1999. The duties of the DRC, as set out in the Act, are to:

- work towards the elimination of discrimination against disabled people
- promote the equalisation of opportunities for disabled persons
- take such steps as it considers appropriate with a view to encouraging good practice in the treatment of disabled persons; and
- keep under review the working of the Disability Discrimination Act 1995 and the Disability Rights Commission Act 1999.

6.2 The DRC has promotional and enforcement powers, and both apply to its work on the duty to promote disability equality. This chapter explains how the DRC will use these powers to help promote disability equality. It also briefly explains the implications of the Equality Bill for the duties and in particular the role of the Commission for Equality and Human Rights (CEHR).

Disability Rights Commission Act 1999 s.2(1)

Helping public authorities to meet their duty

6.3 The DRC will:

- work with main parts of the public sector, including the inspectorates, to develop good practice
- monitor and spread good practice; and
- provide practical guidance.

6.4 The DRC is issuing non-statutory supplementary guides to this Code, for, amongst others, public authorities and further and higher education institutions – details of these are available from the DRC website (www.drc-gb.org).

ENFORCEMENT

The general duty

6.5 If a public authority does not comply with the general duty, its actions, or failure to act, can be challenged by means of a claim to the Court of Session for judicial review. A claim for judicial review could be made by a person with an interest in the matter, or by the Disability Rights Commission (but see also paragraphs 6.15–6.16 on the enforcement powers of the CEHR).

Specific duties

6.6 If a public authority does not comply with its specific duties, including the Scottish Ministers provisions detailed in Chapter 4, it could face enforcement action by the Disability Rights Commission under section 49E of the Act. This section empowers the DRC to serve a compliance notice on that authority. The notice will state that

s.49E

the authority must meet its duties and tell the DRC, within 28 days, what it has done or is doing, to comply.

- 6.7 In the compliance notice, the DRC can also ask the authority to give it written information showing that it has met its duty. The notice will state the time by which the DRC should receive the information (which should not be later than the end of the three months beginning with the day on which the notice is served). The DRC cannot ask for more information than a public authority would have to provide during proceedings in the Court of Session. For example, information subject to legal privilege, such as correspondence between a public authority and its solicitors relating to a discrimination claim brought by an individual against the authority, would not have to be provided.
- 6.8 If a public authority on which a notice has been served fails to provide the DRC with any information required by the notice, or the DRC has reasonable cause to believe that a public authority on whom a notice has been served does not intend to furnish the information required by the notice, the Commission may apply to the sheriff court for an order requiring the authority to furnish the information required by the notice.
- 6.9 If, three months after a compliance notice has been served, the DRC considers that the authority has still not met one or more of its specific duties referred to in the notice, the DRC can apply to the sheriff court for an order requiring the authority to comply with the duty.
- 6.10 The sheriff court may grant the order in the terms that the DRC applied for, or in more limited terms. If the court makes an order and the authority does

s.49F

not abide by it, the authority may be found to be in contempt of court.

The role of audit and inspection bodies

- 6.11 Agencies that audit or inspect public authorities are bound by the duty to promote disability equality in all aspects of this work.
- 6.12 What would be required of an inspection body in fulfilling the duty will depend upon the role and scope of the body. For example, it would not be appropriate for the Health and Safety Executive to advise authorities on the development of an effective Disability Equality Scheme, as this would be beyond its remit. Similarly, an inspection body with tightly-defined powers in law may not be able to spend money on advising public authorities on disability equality.
- 6.13 Where audit or inspection bodies have a broader role such as the inspection or assessment of the general performance of an authority in relation to its service provision, they will need to ensure that the duty is built into their inspection regimes. They will need to ensure that how well the authority meets the disability equality duty becomes part of the inspection/audit process. In particular, and where appropriate, they will need to outline the action they intend to take to:
- review inspection and auditing methods to ensure that they have due regard to the duty and identify whether authorities are effectively complying with their duties
 - advise public bodies on developing effective Disability Equality Schemes and monitoring arrangements

- identify and disseminate best practice in respect of the duty to promote disability equality; and
- improve research surveys and data collection in order to provide useful data for public bodies to consider when analysing their performance of the duty.

6.14 These steps will not be appropriate for all audit and inspection bodies. Whether or not they are will depend upon the role and scope of the body.

The Equality Bill and the CEHR

6.15 At the time of publication of this Code, the Equality Bill is passing through Parliament. The Bill, once passed, would create a Commission for Equality and Human Rights (CEHR). The CEHR would replace the DRC, as well as the other statutory equality commissions. It would take over all the powers and functions of the DRC, including the ability to make a claim for judicial review in relation to the general duty.

6.16 In relation to the disability equality duty, the Equality Bill states in particular that the CEHR will be able to:

- assess the extent to which, or the manner in which, an authority has complied with the general or specific duties
- issue a compliance notice where it thinks that an authority has failed to comply with either the general duty or the specific duties.

Appendix A: Public authorities subject to the specific duties

As set out in the Disability Discrimination (Public Authorities)(Statutory Duties)(Scotland) Regulations 2005.

SCHEDULE 1

PART I

The Accounts Commission for Scotland

Audit Scotland

Bord na Gaidhlig (Alba)

The Cairngorms National Park Authority established under section 6 of the National Parks (Scotland) Act 2000

The Criminal Injuries Compensation Authority in respect of its Scottish functions

A Chief Constable of a police force maintained under section 1 of the Police (Scotland) Act 1967

NHS National Services Scotland

A council constituted under section 2 of the Local Government etc (Scotland) Act 1994

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

A joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973

The Keeper of the Records of Scotland

The Keeper of the Registers of Scotland

The Law Society of Scotland, in respect of its public functions

The Loch Lomond and the Trossachs National Park Authority established under section 6 of the National Parks (Scotland) Act 2000

A licensing board constituted under section 1 of the Licensing (Scotland) Act 1976

The Board of Trustees for the National Galleries of Scotland established under section 3 of the National Galleries of Scotland Act 1906

The Trustees of the National Library of Scotland, constituted under section 1 of the National Library of Scotland Act 1925

The Board of Trustees of the National Museums of Scotland established by the National Heritage (Scotland) Act 1985

A Passenger Transport Executive within the meaning of Part II of the Transport Act 1968(d) for a passenger transport area within Scotland

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

The Registrar General of Births, Deaths and Marriages for Scotland

The Scottish Arts Council

Scottish Natural Heritage

Scottish Screen

Sportscotland

Scottish Water

The Scottish Commission for the Regulation of
Care

Scottish Enterprise and Highlands and Islands
Enterprise established under the Enterprise and
New Towns (Scotland) Act 1990

The Scottish Further and Higher Education
Funding Council

The Scottish Legal Aid Board

The Scottish Ministers

The Service Authority for the National Criminal
Intelligence Service in respect of its Scottish
functions

The Scottish Qualifications Authority

The Scottish Social Services Council

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

Visitscotland

PART II

Education authorities

The managers of a grant-aided school (within the meaning of section 135 of the Education (Scotland) Act 1980)

PART III

Fundable bodies within the meaning of Section 6 and Schedule 2 of the Further and Higher Education (Scotland) Act 2005

The managers of a central institution (within the meaning of section 135 of the Education (Scotland) Act 1980)

Appendix B: British bodies subject to the specific duties

Taken from The Disability Discrimination (Public Authorities)(Statutory Duties) Regulations 2005

The Advisory, Conciliation and Arbitration Service

Any of the naval, military or air forces of the Crown (except in relation to employment in the armed forces)

The Arts and Humanities Research Council

The Big Lottery Fund

The Biotechnology & Biological Sciences Research Council

The British Broadcasting Corporation, in respect of its public functions

The British Council

The British Tourist Authority

The British Transport Police

The British Waterways Board

The Channel Four Television Corporation, in respect of its public functions

The Chief Constable for the Ministry of Defence Police appointed by the Secretary of State under

section 1(3) of the Ministry of Defence Police Act
1987

The Commission for Racial Equality

The Council for the Central Laboratory of the
Research Councils

The Criminal Injuries Compensation Authority

The Director-General of the National Crime Squad

The Disability Rights Commission

The Economic & Social Research Council

The Electoral Commission

The Engineering & Physical Sciences Research
Council

The Equal Opportunities Commission

The Financial Services Authority

The General Dental Council

The General Medical Council

The Health and Safety Commission

The Health and Safety Executive

The Heritage Lottery Fund

The Human Fertilisation and Embryology
Authority

The Independent Review Service

The Information Commissioner

The Medical Research Council

A Minister of the Crown or government
department

The National Consumer Council

The National Lottery Commission

The Natural Environment Research Council

The Nursing and Midwifery Council

Ofcom

The Particle Physics & Astronomy Research
Council

Remploy Limited

Royal Mail Group

The Scottish Parliamentary Corporate Body

The Service Authority for the National Crime
Squad

The Service Authority for the National Criminal
Intelligence Service in respect of its Scottish
functions within the meaning given by section L.2
of Part II of Schedule 5 to the Scotland Act 1998

The Strategic Rail Authority

Student Loans Company Ltd.

UK Film Council

UK Sport

The UK Sports Council

Appendix C: The meaning of disability

This appendix is included to aid understanding about who is covered by the Act. A Government publication 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' is also available from The Stationery Office.

When is a person disabled?

A person has a disability if he or she has a physical or mental impairment, which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.

What about people who have recovered from a disability?

People who have had a disability within the definition are protected from discrimination even if they have since recovered.

What does 'impairment' cover?

It covers physical or mental impairments; this includes sensory impairments, such as those affecting sight or hearing.

Are all mental impairments covered?

The term 'mental impairment' is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities.

What is a 'substantial' adverse effect?

A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

What is a 'long-term' effect?

A long-term effect of an impairment is one:

- which has lasted at least 12 months, or
- where the total period for which it lasts is likely to be at least 12 months, or
- which is likely to last for the rest of the life of the person affected.

Effects which are not long-term would therefore include loss of mobility due to a broken limb which is likely to heal within 12 months and the effects of temporary infections, from which a person would be likely to recover within 12 months.

What if the effects come and go over a period of time?

If an impairment has had a substantial adverse effect on normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur; that is if it is more probable than not that the effect will recur.

What are 'normal day-to-day activities'?

They are activities which are carried out by most people on a fairly regular and frequent basis. The

term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or a sport, to a professional standard or performing a skilled or specialised task at work. However, someone who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition. The test of whether an impairment affects normal day-to-day activities is whether it affects one of the broad categories of capacity listed in Schedule 1 to the Act. They are:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand, or
- perception of the risk of physical danger.

What about treatment?

Someone with an impairment may be receiving medical or other treatment which alleviates or removes the effects (though not the impairment). In such cases, the treatment is ignored and the impairment is taken to have the effect it would have had without such treatment. This does not apply if substantial adverse effects are not likely to recur even if the treatment stops (ie the impairment has been cured).

Does this include people who wear spectacles?

No. The sole exception to the rule about ignoring the effects of treatment is the wearing of spectacles or contact lenses. In this case, the effect while the person is wearing spectacles or contact lenses should be considered.

Are people who have disfigurements covered?

People with severe disfigurements are covered by the Act. They do not need to demonstrate that the impairment has a substantial adverse effect on their ability to carry out normal day-to-day activities.

Are there any other people who are automatically treated as disabled under the Act?

Anyone who has HIV infection, cancer or multiple sclerosis is automatically treated as disabled under the Act. In addition, people who are registered as blind or partially sighted, or who are certified as being blind or partially sighted by a consultant ophthalmologist are automatically treated under the Act as being disabled. People who are not registered or certified as blind or partially sighted will be covered by the Act if they can establish that they meet the Act's definition of disability.

What about people who know their condition is going to get worse over time?

Progressive conditions are conditions which are likely to change and develop over time. Where a person has a progressive condition he or she will

be covered by the Act from the moment the condition leads to an impairment which has some effect on the ability to carry out normal day-to-day activities, even though not a substantial effect, if that impairment is likely eventually to have a substantial adverse effect on such ability.

Are people with genetic conditions covered?

If a genetic condition has no effect on the ability to carry out normal day-to-day activities, the person is not covered. Diagnosis does not in itself bring someone within the definition. If the condition is progressive, then the rule about progressive conditions applies.

Are any conditions specifically excluded from the coverage of the Act?

Yes. Certain conditions are to be regarded as not amounting to impairments for the purposes of the Act. These are:

- addiction to or dependency on alcohol, nicotine, or any other substance (other than as a result of the substance being medically prescribed)
- seasonal allergic rhinitis (eg hayfever), except where it aggravates the effect of another condition
- tendency to set fires
- tendency to steal
- tendency to physical or sexual abuse of other persons
- exhibitionism
- voyeurism.

Also, disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing, are to be treated as not having a substantial adverse effect on the person's ability to carry out normal day-to-day activities.

Appendix D: The Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005 SI No.565

2005 No.565

DISABLED PERSONS

The Disability Discrimination (Public Authorities)
(Statutory Duties) (Scotland) Regulations 2005

Made 9th November 2005

Laid before the Scottish Parliament
10th November 2005

Coming into force 5th December 2005

The Scottish Ministers, in exercise of the powers conferred upon them by sections 49D(3) and (4) of the Disability Discrimination Act 1995(a), and all other powers enabling them in that behalf, having consulted with the Disability Rights Commission and the Secretary of State hereby make the following Regulations:

Citation, commencement and interpretation

1. – (1) These Regulations may be cited as the Disability Discrimination (Public Authorities)

(a) 1995 c.50. Section 49D was inserted by section 3 of the Disability Discrimination Act 2005 c.13 which was commenced by Article 2(2)(b) of the Disability Discrimination Act 2005 (Commencement No.1) Order 2005 (S.I. 2005/1676).

(Statutory Duties) (Scotland) Regulations 2005 and shall come into force on 5th December 2005.

(2) In these Regulations-

“section 49A(1) duty”, in relation to a public authority, means its duty under section 49A(1) of the Disability Discrimination Act 1995;

“school” has the meaning given by section 135 of the Education (Scotland) Act 1980**(b)** but excluding independent schools and in addition includes a place, other than a school, at which an education authority provides school education for pupils who are under school age, other than such a place at which school education is being provided by a person with whom that authority has, by virtue of section 35 of the Standards in Scotland's Schools etc Act 2000**(c)**, entered into arrangements for the provision of that education; where “independent school”, “school education”, “pupil” and “school age” have the meanings given by section 135 of the Education (Scotland) Act 1980.

Preparation and Publication of a Disability Equality Scheme

2. – (1) A public authority specified in Parts I to III of the Schedule to these Regulations shall, on or before the relevant publication date, publish a Disability Equality Scheme (“Scheme”), that is, a scheme showing how it intends to fulfil its section 49A(1) duty and its duties under these Regulations.

(b) 1980 c.44.

(c) 2000 asp 6.

(2) Such an authority shall involve in the development of the Scheme those disabled persons who appear to that authority to have an interest in the way it carries out its functions.

(3) The Scheme shall include a statement of -

- (a) the ways in which such disabled persons have been involved in its development;
- (b) that authority's methods for assessing the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality for disabled persons;
- (c) the steps which that authority proposes to take towards the fulfilment of its section 49A(1) duty;
- (d) that authority's arrangements for gathering information on the effect of its policies and practices on disabled persons and in particular its arrangements for gathering information on -
 - (i) their effect on the recruitment, development and retention of its disabled employees,
 - (ii) their effect, in the case of an authority specified in Parts II or III of the Schedule, on the educational opportunities available to, and on the achievements of, disabled pupils and students; and
 - (iii) the extent to which, in the case of an authority other than one specified in Parts II or III of the Schedule, the

services it provides and those other functions it performs take account of the needs of disabled persons; and

(e) that authority's arrangements for making use of such information to assist it in the performance of its section 49A(1) duty and, in particular, its arrangements for -

(i) reviewing on a regular basis the effectiveness of the steps referred to in sub-paragraph (c), and

(ii) preparing subsequent Schemes.

(4) Such an authority shall review its Scheme and publish a revised Scheme -

(a) no later than the end of the period of three years beginning with the date of publication of its first Scheme; and

(b) subsequently at intervals of not more than three years beginning with the date of publication of the last revision of the Scheme.

(5) Such an authority may comply with the duty to publish under paragraph (1) or (4) by setting out its Scheme as part of another published document or within a number of other published documents.

(6) In this regulation, "the relevant publication date" means 4th December 2006.

Education bodies or persons

3. – It shall be the duty of a body or person specified in Part II of the Schedule to make

arrangements for each school under its management to -

- (a) assess the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality for disabled pupils;
- (b) gather information on the effects of its policies and practices and the educational opportunities available to, and on the achievements of, disabled pupils;
- (c) provide such a body or person with an annual report in respect of the matters contained in paragraphs (a) and (b);
- (d) carry out such steps which that body or person proposes to take towards the fulfilment of its section 49A(1) duty; and
- (e) maintain a copy of the Scheme.

Implementation of the Disability Equality Scheme

4. – (1) A public authority specified in Parts I to III of the Schedule shall within the period of three years beginning with the date when a Scheme prepared for the purposes of regulation 2 is published -

- (a) take the steps which it is required to as set out in the Scheme by virtue of regulation 2(3)(c);
- (b) put into effect its arrangements, which it has been required to set out in the Scheme by virtue of regulations 2(3)(d) and (e), for -

- (i) gathering information, and
- (ii) making use of such information.

(2) Nothing in this regulation imposes any duty on an authority where, in all the circumstances of the case, it would be unreasonable and impracticable for it to perform the duty.

Annual Reporting

5. – (1) A public authority specified in Parts I to III of the Schedule shall publish a report -

- (a) not later than the end of the period of one year beginning with the date of publication of its first Scheme: and
- (b) subsequently at intervals of not more than one year beginning with the date of publication of the last report.

(2) The report shall contain a summary of -

- (a) the steps it has taken for the purposes of regulation 4(1)(a);
- (b) the results of the information-gathering it has carried out for the purposes of regulation 4(1)(b)(i);and
- (c) the use it has made of the information it has gathered for the purposes of regulation 4(1)(b)(ii).

(3) Such an authority may comply with the duty to publish under paragraph (1) by setting out its report within another published document.

Duty on Scottish Ministers

6. – (1) The Scottish Ministers shall publish reports -

(a) not later than 1st December 2008; and

(b) subsequently not later than the end of each successive period of three years beginning with 1st December 2008.

(2) The reports shall -

(a) give an overview of progress towards equality of opportunity between disabled persons and other persons made by public authorities; and

(b) set out the Scottish Ministers proposals for the coordination of action by public authorities so as to bring about further progress towards equality of opportunity between disabled persons and other persons.

JOHANN M LAMONT

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,
Edinburgh

9th November 2005

SCHEDULE 1

PART I

The Accounts Commission for Scotland

Audit Scotland

Bord na Gaidhlig (Alba)

The Cairngorms National Park Authority
established under section 6 of the National Parks
(Scotland) Act 2000(**a**)

The Criminal Injuries Compensation Authority in
respect of its Scottish functions

A Chief Constable of a police force maintained
under s.1 of the Police (Scotland) Act 1967(**b**)

NHS National Services Scotland

A council constituted under section 2 of the Local
Government etc (Scotland) Act 1994(**c**)

A Health Board constituted under section 2 of the
National Health Service (Scotland) Act 1978(**d**)

A joint board within the meaning of section 235(1)
of the Local Government (Scotland) Act 1973(**e**)

A joint fire and rescue board constituted by a
scheme under section 2(1) of the Fire (Scotland)
Act 2005(**f**)

(a) 2000 asp 10.

(b) 1967 c.77.

(c) 1994 c.39.

(d) 1978 c.29.

(e) 1973 c.65.

(f) 2005 asp 5.

The Keeper of the Records of Scotland

The Keeper of the Registers of Scotland

The Law Society of Scotland, in respect of its public functions

The Loch Lomond and the Trossachs National Park Authority established under section 6 of the National Parks (Scotland) Act 2000

A licensing board constituted under section 1 of the Licensing (Scotland) Act 1976(**g**)

The Board of Trustees for the National Galleries of Scotland established under section 3 of the National Galleries of Scotland Act 1906(**h**)

The Trustees of the National Library of Scotland, constituted under section 1 of the National Library of Scotland Act 1925(**i**)

The Board of Trustees of the National Museums of Scotland established by the National Heritage (Scotland) Act 1985(**j**)

A Passenger Transport Executive within the meaning of Part II of the Transport Act 1968(**k**) for a passenger transport area within Scotland

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

The Registrar General of Births, Deaths and Marriages for Scotland

(**g**) 1976 c.66.

(**h**) 1906 c.50.

(**i**) 1925 c.73.

(**j**) 1985 c.16.

(**k**) 1968 c.73.

The Scottish Arts Council

Scottish Natural Heritage

Scottish Screen

Sportscotland

Scottish Water

The Scottish Commission for the Regulation of Care

Scottish Enterprise and Highlands and Islands Enterprise established under the Enterprise and New Towns (Scotland) Act 1990^(I)

The Scottish Further and Higher Education Funding Council

The Scottish Legal Aid Board

The Scottish Ministers

The Service Authority for the National Criminal Intelligence Service in respect of its Scottish functions

The Scottish Qualifications Authority

The Scottish Social Services Council

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

Visitscotland

(I) 1990 c.35.

PART II

Education authorities

The managers of a grant-aided school (within the meaning of section 135 of the Education (Scotland) Act 1980)(**m**)

PART III

Fundable Bodies as defined in Schedule 2 of the Further and Higher Education (Scotland) Act 2005(**n**)

The managers of a central institution (within the meaning of section 135 of the Education (Scotland) Act 1980)

(**m**) 1980 c.44.

(**n**) 2005 asp 6.

Explanatory note

(This note is not part of the Order)

These Regulations impose duties on specified public authorities with the aim of assisting them to perform better their duties to promote equality of opportunity for disabled persons under section 49A(1) of the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005).

Regulation 2 requires specified public authorities to publish by 4th December 2006 a Disability Equality Scheme and prescribes the various components of such a Scheme. The authorities are required to publish a revised scheme every three years thereafter.

Regulation 3 requires certain education bodies listed in Part II of the Schedule to make arrangements for each school under its management to do certain tasks including providing it with an annual report in relation to those matters.

Regulation 4 requires the public authorities to implement stipulated components of the Disability Equality Scheme they published pursuant to regulation 2.

Regulation 5 requires those same public authorities to report annually on the implementation of their Disability Equality Scheme.

Regulation 6 requires the Scottish Ministers to publish annual reports with an overview of progress made towards equality of opportunity for disabled persons. The first report is to be published no later than 1st December 2008 and every three years thereafter.

The Schedule has three parts listing the authorities to whom the specific duties will apply.

A full regulatory impact assessment of the effect this instrument will have on the costs of business is available from the Scottish Parliament Information Centre, Scottish Parliament, EH99 1SP.

Appendix E: The Disability Discrimination Act 1995

This appendix provides a very brief overview of some of the main provisions of the Disability Discrimination Act 1995, as amended by the Disability Discrimination Act 2005. Further details of the provisions can be found in the Acts themselves and regulations made under them, as well as the relevant Codes of Practice, copies of which are available to download from the DRC website (www.drc-gb.org).

Part 2 – Employment and occupation

Scope

The Act prohibits discrimination against a disabled person in all aspects of employment and occupation (bar the armed forces), from recruitment and selection to dismissal.

Discrimination

Discrimination may be

- direct (such as the imposition of a blanket ban)
- disability-related (less favourable treatment for a reason relating to disability); or
- the failure to make a reasonable adjustment.

There can be no justification for direct discrimination or a failure to make a reasonable adjustment. Disability-related discrimination will be justified if there is a material and substantial reason for the treatment, although if the reasonable adjustment duty applies, and an adjustment has not been made which would have removed the reason for treatment, then this cannot be relied upon.

Duty to make reasonable adjustments

The duty is owed to an individual disabled person, and applies where a provision, criterion or practice applied by or on behalf of an employer, or any physical feature of premises occupied by the employer, places the disabled person concerned at a substantial disadvantage with persons who are not disabled. In these circumstances, the employer has a duty to take reasonable steps to prevent the provision, criterion or practice or physical feature from having that effect.

Part 3 – The provision of goods, facilities, services and premises

Scope

The Act prohibits discrimination in the provision of goods, facilities, services and premises by service providers. 'Service providers' can include anyone from a local authority to a church. It also covers transport providers, but specific, separate provisions apply where a transport provider discriminates in not providing or providing a disabled person with a vehicle or in not providing or providing a disabled person with services when travelling in a vehicle. These separate provisions are not set out here, but can be found in the

relevant supplementary DRC Code of Practice on Transport Vehicles.

Discrimination

Discrimination will occur:

- where for a reason which relates to the disabled person's disability, a service provider treats him or her less favourably than he or she treats or would treat others to whom that reason does not or would not apply, without justification
- where a service provider fails to comply with the duty to make reasonable adjustments, without justification.

In order for treatment to be justified, the service provider must hold a genuine belief that one of the specified conditions applies and it must be reasonable for him to hold that belief.

Duty of providers of services to make adjustments

The duty to make adjustments is an anticipatory duty, owed to disabled persons at large. There are three parts to the duty to make adjustments:

(1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to –

- (a) remove the feature
- (b) alter it so that it no longer has that effect
- (c) provide a reasonable means of avoiding the feature; or
- (d) provide a reasonable alternative method of making the service in question available to disabled persons.

(4) Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would –

- (a) enable disabled persons to make use of a service which a provider of services provides, or is prepared to provide, to members of the public; or
- (b) facilitate the use by disabled persons of such a service,

it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to provide that auxiliary aid or service.

Part 3 – Public authorities exercising functions

Scope

The Act prohibits discrimination by public authorities in carrying out their functions (these are activities which are not already covered by the goods, facilities and services provisions, such as arresting an individual). 'Public authority' includes any person certain of whose functions are functions of a public nature. There are certain exceptions (such as the exercise of a judicial act).

Discrimination

Discrimination will occur:

- where there is less favourable treatment, for a reason relating to disability, without justification
- where there is a failure to make adjustments, without justification.

Treatment will be justified where the public authority has a genuine belief that one of the specified conditions in the Act applies, and it is reasonable to hold that belief. Treatment will also be justified where it is a proportionate means of achieving a legitimate aim.

Reasonable adjustments

The duty to make adjustments is an anticipatory duty, owed to disabled persons at large – it is based on the duty in relation to goods, facilities and services. Broadly speaking, public authorities must make adjustments to the way in which they carry out their functions so that disabled people are not disadvantaged by the way in which those

functions are carried out. There are three parts to the duty to make adjustments:

- a duty to take reasonable steps to change a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled people to receive any benefit which may be conferred; or unreasonably adverse for disabled persons to experience being subjected to a detriment to which a person is or may be subjected by the carrying out of a function
- a duty to take reasonable steps to remove, alter, provide a reasonable means of avoiding, or adopting a reasonable alternative method of carrying out a function, where a physical feature makes it impossible or unreasonably difficult for disabled persons to receive any benefit that is conferred; or unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subject, by the carrying out of a function by a public authority
- a duty to take reasonable steps to provide an auxiliary aid or service where it would enable persons to receive or facilitate the receiving by disabled persons of any benefit conferred or reduce the extent to which it is adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected by the carrying out of a function by a public authority.

Part 3 – Discrimination in relation to premises

Scope

The Act prohibits discrimination against a disabled person in all aspects of the rental or purchase cycle – from initial disposing of premises, the keeping of any list in relation to premises, to the way in which access to facilities in premises are afforded and in evicting a disabled person.

Discrimination

Discrimination will occur:

- where there is less favourable treatment, for a reason relating to disability
- where there is a failure to make reasonable adjustments, without justification.

Treatment will be justified if the premises provider has a genuine belief that one of the conditions specified in the Act applies, and it is reasonable to hold that belief.

Reasonable adjustments

The Act requires reasonable adjustments to be made in certain circumstances in relation to a disabled person to whom premises are let, or who is lawfully occupying the premises. These may take the form of the provision of an auxiliary aid or service (such as the provision of rental statements on tape or in Braille); or the making of changes to policies, practices or procedures which make it impossible or unreasonably difficult for a disabled person to enjoy the premises or make

use of any benefit or facility (such as a 'no dogs' policy).

Education – pre-16

Scope

The pre-16 education provisions prohibit discrimination in education, from admission through to exclusion, as well as in relation to education and associated services.

Discrimination

Discrimination can occur:

- where there is less favourable treatment, for a reason relating to disability, without justification
- where there is a failure, to the detriment of the disabled person, to make reasonable adjustments, without justification [there will be no discrimination if the body shows that it did not know, and could not reasonably have been expected to know, that the person was disabled and that its failure to take the step was attributable to that lack of knowledge].

Treatment will be justified where it is the result of a permitted form of selection or if the reason for it is both material to the circumstances of the particular case and substantial.

Reasonable adjustments

The duty to make adjustments is an anticipatory duty, owed to disabled persons at large. The responsible body must take reasonable steps to ensure that:

- in relation to arrangements for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage compared to persons who are not disabled
- in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage compared to pupils who are not disabled.

The duty does not require the removal or alteration of a physical feature, or the provision of an auxiliary aid or service.

Post-16 education

Scope

The post-16 education provisions prohibit discrimination in education, from admission through to exclusion, as well as in relation to student services (some forms of training will be covered by Part 3 of the Act – see the relevant Code of Practice for further details). This Code is based on the Act as at December 2005. The post-16 provisions will be changed in 2006 to reflect the changes necessary as a result of implementing the European Employment Framework Directive. Details of these changes will be available on the DRC website.

Discrimination

Discrimination will occur:

- where there is less favourable treatment, for a reason relating to disability, without justification

- where there is a failure, to the detriment of the disabled person, to make reasonable adjustments, without justification (there will be no discrimination if the body shows that it did not know, and could not reasonably have been expected to know, that the person was disabled and that its failure to take the step was attributable to that lack of knowledge).

Treatment will be justified where, in relation to less favourable treatment, it is necessary in order to maintain academic standards or if the reason for it is both material to the circumstances of the particular case and substantial. Treatment in relation to reasonable adjustments will be justified where the reason for it is both material to the circumstances of the case and substantial.

Reasonable adjustments

The duty to make adjustments is an anticipatory duty, owed to disabled persons at large. The responsible body must take reasonable steps to ensure that:

- in relation to the arrangements it makes for determining admissions to the institution, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled
- in relation to student services provided for or offered to students by it, disabled students are not placed at a substantial disadvantage in comparison with students who are not disabled.

Appendix F: Glossary

Action plan

The regulations containing the specific duties do not contain the term 'action plan' but this term is used in this Code of Practice to reflect the requirement for a Disability Equality Scheme to set out the steps which an authority proposes to take to fulfil its general duty.

Compliance notice

The Disability Rights Commission can, if a public authority does not comply with its specific duties, serve a compliance notice on that authority. The notice will state that the authority must meet its duty and tell the DRC, within 28 days, what it has done or is doing to meet its duty. Three months after issuing the compliance notice the Disability Rights Commission can apply to the county court or sheriff court for an order requiring the authority to comply with the duty.

Disability equality

Full opportunity and choices for disabled people to improve their quality of life and be respected and included as equal members of society.

Disability Equality Scheme

The Statutory Duties Regulations (known and referred to in the Code as the specific duties regulations) require authorities to produce and

publish a Disability Equality Scheme which demonstrates how it intends to fulfil its general and specific duties.

Due regard

The requirement to give due weight to the need to promote equality of opportunity in proportion to its relevance to disability.

Functions

The full range of a public authority's duties and powers.

Gathering evidence/information

The Disability Equality Scheme must include a statement of the authority's arrangements for gathering information, in particular about: the effect of an authority's policies and practices on recruitment, development and retention of disabled employees; educational opportunities available and achievements of disabled pupils and students; and the extent to which services and functions take account of the needs of disabled persons. Gathering information should be sufficient to inform authorities whether their action plan and their activities and functions are delivering greater equality for disabled people. The Scheme must further specify the arrangements for making use of the information to assist in satisfying the general duty, in reviewing on a regular basis the effectiveness of its action plan and preparing subsequent Disability Equality Schemes.

General duty

The requirement on public authorities, when carrying out their functions, to have due regard to the need to: promote equality of opportunity between disabled persons and other persons; eliminate discrimination that is unlawful under the Act; eliminate harassment of disabled persons that is related to their disabilities; promote positive attitudes towards disabled persons; encourage participation by disabled persons in public life and to take steps to take account of disabled persons' disabilities even where that involves treating disabled persons more favourably than other persons.

Impact assessment

Impact assessment is the process which enables an authority to identify and act on the need to modify policies and practices to have due regard to the need to promote disability equality. The specific duty regulations set out the requirement for an authority to include in the Disability Equality Scheme its methods for impact assessment.

Involvement

An active engagement with disabled stakeholders using accessible mechanisms which must be focused, proportionate, influential and transparent. 'Involvement' requires more active engagement of disabled stakeholders than 'consultation'.

Judicial Review

A claim to the Court of Session or English High Court asking the court to review the way a public authority or certain other bodies made a decision. The court can quash a decision and so require the authority to reconsider the matter.

Non-devolved authorities

Public authorities in Scotland whose functions and powers remain the responsibility of the Westminster Parliament rather than the Scottish Parliament.

Policies and practices

All proposed and current activities which the authority carries out.

Policy sector

In relation to the Scottish Ministers' specific duties, a policy sector is a sector of public activity in which the Scottish Ministers carry out public functions.

Public authority

All bodies certain of whose functions are functions of a public nature.

Public procurement

The contractual or other arrangements that a public authority makes to obtain goods, works or services from an outside organisation.

Scottish Ministers' Duty

The specific duty regulations introduce a new duty on the Scottish Ministers from December 2008 to produce a report every three years. The report must give an overview of the progress made by public authorities towards equality of opportunity between disabled persons and other persons; and set out the Ministers' proposals for the co-ordination of action by public authorities so as to bring about further progress towards equality of opportunity between disabled persons and other persons.

Social model of disability

The poverty, disadvantage and social exclusion experienced by many disabled people is not the inevitable result of their impairments or medical conditions, but rather stems from attitudinal and environmental barriers. This is known as 'the social model of disability', and provides a basis for the successful implementation of the duty to promote disability equality.

Specific duties

Certain public authorities listed in regulations (and in Appendix A of this Code) are required to comply with specific duties which are set out in the Statutory Duties regulations (known as the specific duties regulations). There are separate English and Welsh regulations and the British bodies covered by those regulations are listed in Appendix B. These duties are intended to assist authorities in complying with the general duty to promote disability equality. The duties also impose an obligation on Scottish Ministers to report on disability equality – see Scottish Ministers' Duty above.

Statutory Code of Practice

A document such as this one, which offers practical guidance on the law, has been approved by Parliament and which is admissible in evidence in a court of law.

Index

- action plan 2.49, 3.4, 3.43-3.51, Appendix F
 - annual reporting 3.111
 - initial 3.53-3.55
 - reviewing 3.103, 3.106
- Additional Support for Learning 3.93
- advisory bodies 2.67-2.68
- annual reporting
 - Disability Equality Scheme 3.111-3.114
 - schools 3.124
- anti-social behaviour orders 4.13
- armed forces 5.9, 5.11
- audit and inspection bodies *see* inspection and audit bodies
- Audit Scotland 1.22, 5.2

- broadcasters 2.26
- Building Standards Agency 3.60
- bullying 3.90, 3.93
 - see also* harassment

- car parking 1.10, 2.13, 2.34
- central institutions 3.87, Appendix A
- children 3.107, 4.9, 4.19
- co-ordinated action 4.15, 4.17-4.19
- colleges *see* further education institutions
- commencement dates
 - general duty 1.41
 - Scottish Ministers' duty 4.1
 - specific duties 1.41
- Commission for Equality and Human Rights (CEHR) 6.2, 6.15-6.16
- community care plans 2.40
- community councils 2.69
- community involvement 2.52

- compliance notice 6.6-6.9, Appendix F
- contractors 5.17-5.19
- court orders 6.8-6.10
- courts 1.22, 5.2
- criminal justice 1.22, 5.2

- Data Protection Act 1998 3.67
- Delivering Public Services to a Diverse Society (NAO)
 - 2.60, 2.65, 3.14-3.15, 3.18, 3.50
- disability
 - breadth of coverage 2.4, 2.8-2.9, Appendix C
 - social model 1.6, Appendix F
- disability equality 1.5-1.11, Appendix F
- disability equality duty *see* general duty; specific duties
- Disability Equality Scheme 1.19, 3.2, 3.4, Appendix F
 - action plan 3.43-3.51
 - annual reporting 3.111-3.114
 - commencement dates 1.41
 - contents 3.25
 - gathering information 3.56-3.102
 - impact assessment 3.28-3.42
 - implementation 3.108-3.110
 - introduction 3.26
 - involving disabled people 2.50, 3.7-3.24, 3.27
 - publication dates 3.5
 - publishing 3.120-3.123
 - revising 3.115
 - and Scottish Ministers' duty reporting arrangements
 - 4.8-4.10, 4.22-4.23
 - using the information gathered 3.103-3.107
 - who should prepare 3.116-3.119
- Disability Rights Commission (DRC) 1.26, 1.43, 1.50-1.52, 5.13, 6.15
 - compliance notice 3.109, 6.6-6.9
 - court orders 6.8-6.10
 - helping public authorities 6.3-6.4
 - judicial review 6.5
 - partnerships 2.62
 - role 6.1-6.2
- disabled people *see* involving disabled people

discrimination 2.2, 2.18-2.21, Appendix E
due regard 1.14, 2.32, 2.35-2.42, Appendix F
 proportionality 2.34
 relevance 2.33

education
 Disability Discrimination Act 1995 Appendix E
 gathering information 3.57, 3.87-3.95
 Scottish Ministers' duty 4.13
 see also schools

education authorities 1.22, Appendix A
 gathering information 3.87, 3.92
 general duty 2.70-2.71
 specific duties 3.124-3.126

Education (Disability Strategies and Pupils' Educational Records) (S) Act 2002 1.40

effectiveness 2.44, 2.64

employment
 benefits of general duty 1.38, 1.40
 Disability Discrimination Act 1995 Appendix E
 gathering information 3.57, 3.70, 3.72-3.86

enforcement 1.26
 general duty 6.5
 inspection and audit bodies 6.11-6.14
 specific duties 6.6-6.10

England 1.23, 1.43, 4.1, 4.21
 public authorities 5.3

Equality Bill 6.2, 6.15-6.16

equality of opportunity 1.5-1.11, 2.7

executive agencies 1.22, 5.2

expertise 2.44, 2.59-2.60

functions of a public nature 5.4-5.8

further education institutions 1.22, 5.2, Appendix A
 benefits of general duty 1.39-1.40
 gathering information 3.62, 3.87, 3.92

gathering evidence/information 2.11, 2.43, 2.48, 3.4, 3.6,
 Appendix F
 annual reporting 3.111

- costs 3.109
- disabled pupils and students 3.87-3.95, 3.124
- how to gather 3.62-3.71
- recruitment, development and retention of disabled employees 3.72-3.86
- services and functions 3.96-3.102
- using the information 3.103-3.107
- what is required 3.56-3.61
- general duty 1.1-1.3, 1.12-1.16, 2.1-2.4, 2.31, Appendix F
 - action plan 3.44
 - advisory bodies 2.67-2.68
 - commencement date 1.41
 - community councils 2.69
 - discrimination 2.18-2.21
 - due regard 2.3, 2.34-2.42
 - education authorities and schools 2.70-2.71
 - enforcement 1.26, 6.5, 6.15, 6.16
 - equality of opportunity 2.7-2.17
 - exclusions 5.9-5.11
 - goals 2.5-2.6
 - harassment 2.22-2.24
 - how to meet 2.43-2.66
 - organisations subject to 1.22-1.25
 - participation in public life 2.28-2.30
 - positive attitudes 2.25-2.26
 - purpose of the Code 1.42
 - who is covered 5.1-5.8
- governing bodies 1.22, 2.57, 5.2
- grant-aided schools 3.87, Appendix A

- harassment 2.2, 2.22-2.24, 3.90
 - see also* bullying
- health boards 1.22, 2.10
 - action plan 3.50, 3.106
 - involving disabled people 2.52, 2.53, 3.24
 - partnerships 2.62
- Health and Safety Executive 1.22, 5.2, 6.12
- higher education institutions 1.22, 5.2, Appendix A
 - benefits of general duty 1.39-1.40
 - gathering information 3.62, 3.87, 3.92

HM Inspectorate of Education 1.22, 5.2
hospitals 2.33, 3.16
housing 3.24, 3.61
 Scottish Ministers' duty 4.9, 4.16
Human Rights Act 1998 5.1

impact assessment 2.38, 2.43, 2.47, 3.28-3.42, Appendix F
 Disability Equality Scheme 3.4
 schools 3.124
 transparency 2.56
information gathering *see* gathering
 evidence/information
inspection and audit bodies 1.22, 1.35, 5.2, 5.15
 enforcement role 6.11-6.14
involving disabled people 2.43, 2.50-2.54, Appendix F
 Disability Equality Scheme 3.4, 3.7-3.24, 3.27
 impact assessment 3.38

judicial acts 5.10
judicial review 1.26, 6.5, 6.15, Appendix F
Justice Department 1.22, 4.13, 5.2

leadership 2.44, 2.57-2.58, 4.3
learning disabilities 2.16, 3.50, 3.98, 3.106, 4.15
libraries 1.22, 3.24, 5.2
licensing authorities 2.42
local authorities 1.22, 5.2
 community councils 2.69
 Disability Equality Scheme 3.119
 gathering information 3.60, 3.62
 harassment policy 2.24
looked-after children 3.107

mainstreaming 1.13, 2.31, 2.43, 2.46-2.47
mental health service users 2.24
ministers *see* Scottish Ministers
Ministers' duty *see* Scottish Ministers' duty
monitoring *see* gathering evidence/information
museums 1.22, 5.2

National Audit Office (NAO), Delivering Public Services to a Diverse Society 2.60, 2.65, 3.14-3.15, 3.18, 3.50
NHS Boards *see* health boards
NHS Quality Improvement Scotland 1.22, 5.2
non-devolved authorities Appendix F

participation in public life 2.2, 2.28-2.30, 2.51
 gathering information 3.90, 3.93
partnerships 2.44, 2.62, 5.16
police forces 1.22, 5.2
 gathering information 3.104
 harassment policy 2.24
 involving disabled people 3.19
 partnerships 2.62
positive attitudes 2.2, 2.25-2.26, 3.90
post-16 education
 Disability Discrimination Act 1995 Appendix E
 see also further education institutions; higher education institutions
private bodies 1.24, 5.4-5.5, 5.7
procurement 2.44, 2.63, 5.17-5.19, Appendix F
proportionality 2.32, 2.34, 3.12
Protection from Harassment Act 1997 2.22
public authorities Appendix F
 benefits of general duty 1.33-1.40
 Disability Discrimination Act 1995 Appendix E
 disability equality 1.9
 exclusions from general duty 5.9-5.11
 inspecting and auditing 5.15
 liability 5.14
 partnerships 5.16
 procurement 5.17-5.19
 subject to general duty 1.22-1.25, 5.1-5.8
 subject to specific duties 3.1, 5.12-5.13, Appendix A, Appendix B
public functions *see* functions of a public nature
public life *see* participation in public life
public reporting 2.43, 2.55-2.56

Race Relations Act 1976 (RRA) 1.25, 3.6, 3.79, 5.2

- relevance 2.32, 2.33
- reporting
 - annual 3.111-3.114
 - transparency 2.43, 2.55-2.56
- reserved government 4.20-4.21
- resources 2.44, 2.65-2.66

- schools
 - benefits of general duty 1.39-1.40
 - disabled pupils' participation in public life 2.30
 - gathering information 3.87, 3.93-3.95, 3.105
 - general duty 2.70-2.71
 - involving disabled people 2.50, 2.53
 - positive attitudes to disabled people 2.26
 - specific duties 3.123-3.126, Appendix A
- Scottish Accessible Information Forum (SAIF) 2.53
- Scottish Court Service 1.22, 5.2
- Scottish Executive 4.2
 - and Scottish Ministers' duty 4.8-4.10
- Scottish Executive Advisory Committees 2.68
- Scottish Executive departments 1.22, 5.2
 - action plan 3.46, 3.49, 3.52
 - gathering information 3.68
 - impact assessment 3.35, 3.39
 - positive attitudes 2.26
- Scottish Executive Environment and Rural Affairs Department (SEERAD) 4.14
- Scottish Ministers 1.22, 5.2
- Scottish Ministers' duty 1.20-1.21, 3.52, 4.1, Appendix F
 - areas covered 4.6-4.10
 - co-ordination of action 4.17-4.19
 - date of first report 4.22
 - Disability Equality Scheme 3.115
 - overview of progress 4.11-4.16
 - publishing the report 4.24
 - purpose 4.2-4.5
 - reporting arrangements 4.22-4.23
 - requirement to produce report on policy sector 4.1
 - reserved government 4.20-4.21
- sheriff courts 6.8-6.10

social model of disability 1.6, Appendix F
specialist staff 2.59
specific duties 1.17-1.19, 3.1-3.3, Appendix F
 commencement dates 1.41
enforcement 1.26, 6.6-6.10, 6.16
 public authorities subject to 5.12-5.13, Appendix A,
 Appendix B
 purpose of the Code 1.42
 regulations 3.4-3.6, Appendix D
 schools 3.123-3.126
 see also Disability Equality Scheme

targets 2.57, 3.49, 3.50, 4.18
trade unions 3.21
training 2.35, 2.44, 2.61, 5.19
transparency
 involving disabled people 3.12
 publishing the Disability Equality Scheme 3.121
 reporting 2.43, 2.55-2.56, 3.111-3.114
 Scottish Ministers' duty 4.5
tribunals 1.22, 5.2

universities *see* higher education institutions

visual impairment 3.34, 3.83, 3.85

Wales 1.23, 1.43, 4.1, 4.20, 4.21
 public authorities 5.3

Copies of this publication can be downloaded from the Disability Rights Commission website: www.drc-gb.org.

Copies of this publication in Braille, audio CD and CD-ROM formats are also available from The Stationery Office.

For information and advice from the Disability Rights Commission visit the DRC website at: www.drc-gb.org.

You can also contact the DRC Helpline between 08:00 and 20:00, Monday to Friday.

Telephone: 08457 622 633

Textphone: 08457 622 644

Fax: 08457 778 878

Web: www.drc-gb.org

Post: DRC Helpline
FREEPOST
MID 02164
Stratford upon Avon
CV37 9BR

You can email the DRC Helpline from our website: www.drc-gb.org.



www.tso.co.uk

