

Annex G | Legal Duties

This appendix sets out the various legal duties which are relevant to, and reflected in, this strategy. Rather than imposing additional obligations or burdens on the Scottish Government and public bodies, the recommended actions in the strategy are designed to help all parties meet their existing legal duties.

1. The Scottish Government, the Commissioner and all public bodies are subject to the general duties to eliminate unlawful discrimination and promote equality on the grounds of race, disability and gender.¹
2. The Scottish Government and most public bodies also have more specific duties regarding race, disability and gender equality, including setting and achieving equality objectives, reporting annually and reviewing their progress every three years.² In particular, there are new duties on the Scottish Ministers to produce reports every three years (starting by December 2008 and December 2010 respectively) which provide an overview of progress made by public bodies in terms of disability and gender equality.
3. The specific duties also require listed public bodies to publish Equality Schemes outlining how they intend to fulfil their general and specific duties, including their methods for assessing the impact of all their policies and practices on race, disability and gender equality. This includes assessing and monitoring any adverse impact at every stage of the public appointments process. Although not a formal legal requirement, evidence of commitment to equality at board level is likely to be considered evidence of effective practice which will contribute to meeting these duties.
4. These duties to promote equality across a number of areas are likely to be combined into a single cohesive duty in the near

¹ See s76A Sex Discrimination Act 1975, as amended by Equality Act 2006; s49A Disability Discrimination Act 1995, as amended by the Disability Discrimination Act 2005; s71 Race Relations Act 1976, as amended by Race Relations (Amendment) Act 2000

² Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005; The Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007; The Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002

future, and possibly extended to include the other three equality strands (sexual orientation, religion or belief and age) following the UK Government's proposals for a single Equality Act.³

5. There are of course existing legal duties which prohibit discrimination across all six equality strands in the making of public appointments, and the terms on which they are offered.⁴
6. The Commissioner has an additional statutory duty to ensure that, 'so far as reasonably practicable, all categories of person are afforded an opportunity to be considered for appointment'.⁵
7. In addition to these legal duties, the promotion of equal opportunities is central to the duty of Best Value which is a statutory obligation for local authorities and which has been extended administratively to the Scottish Government, the Commissioner and all public bodies with accountable officers which are subject to audit by the Auditor General for Scotland. Best Value is about continuous improvement in performance taking into account the balance of quality and cost.

³ *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*, Discrimination Law Review consultation paper, June 2007

⁴ see for example, The Employment Equality (Sexual Orientation) Regulations 2003; The Employment Equality (Age) Regulations 2006

⁵ s2(9) Public Appointments and Public Bodies etc (Scotland) Act 2003