

Fairer Scotland Duty

Introduction

The Fairer Scotland Duty (part 1 of the Equality Act 2010) came into force in April this year. The Scottish Government has published interim guidance for public bodies to support them in meeting their obligations under the Act. The aim of the duty is to “put tackling inequality genuinely at the heart of key decision making.” This means that the Act and the guidance could be useful tools for UNISON branches when it comes to fighting austerity and protecting jobs and public services.

Fairer Scotland Duty

The Act now places a legal duty on public bodies to “actively consider how they can reduce inequalities of outcome caused by socio economic disadvantage when making strategic decisions”. In its consultation stage this was referred to as a “socio economic duty. We are at the start of a three year implementation phase of this new duty. This is why the guidance is at this stage “interim”. Public Bodies must now:

- Actively consider how they could reduce inequalities of outcome in any major strategic decisions that they make
- Publish a written assessment showing how they have done this

The duty does not override other considerations like the wider equalities duties or best value but is still a key duty “underpinned by statute”. The EHRC is charged with ensuring the duty is met.

Public Bodies Covered By the Duty

Scottish Ministers

Local Authorities

All Health Boards

Integration Joint Boards

Scottish Police Authority

Highlands and Islands Enterprise

Scottish Enterprise

Revenue Scotland

Food standards Scotland

The Keeper of Records Scotland

The Keeper of Registers
Scotland

Scottish Courts and Tribunals
Service

Interim Guidance

The guidance outlines how the government expects the duty to work in practice. The duty is set at a strategic level. There will be a range of actions involved including directly tackling poverty and inequality.

Examples of strategic decisions include: preparation of local development plans, City Deals and major investment plans, budget setting, procurement, commissioning of services, preparing local improvement plans and preparation of the corporate plan. There will be a national co-ordinator post in the Improvement Service working on the duty and child poverty.

KEY POINTS:

- The Fairer Scotland Duty (part 1 of the Equality Act 2010) came into force in April this year. This briefing covers the interim guidance.
- The duty can be a useful tool in fighting cuts to jobs and services which have a disproportionate impact on those in poverty and at socioeconomic disadvantage
- Branches should engage with employers to ensure they are meeting their obligations under the Act



Contact UNISON's Bargaining & Campaigns team:

Dave Watson
d.watson@unison.co.uk

Kay Sillars
k.sillars@unison.co.uk

0141 342 2819
0845 355 0845

The Guidance

The Act states that public bodies have a legal duty to have “due regard” and “actively consider how that can reduce inequalities of outcome” the guidance therefore gives more detail on what active consideration and due regard mean in practice. It also states that this is not a “tick box exercise”. It suggests that an appropriate officer must be involved in any assessment under the duty. The guidance also has a section on meeting the duty day-to-day, with a flow chart and some case studies with a before and after the duty outline. These include the development of an urban housing plan, planning a city region deal with multiple public sector partners, investment decisions within an economic development strategy.

UNISON View

UNISON is supportive of the principle of equality duties and in fighting for equality. Achieving change requires more than changing the law. To be successful the Act must be fully implemented and mainstreamed into the way decisions are made and public services are delivered. Rights are only rights if citizens are able to access those rights. UNISON has been disappointed in the way the previous duties have been implemented and is concerned that this new duty may be no more effective. For example the equalities impact assessment for the post-16 education reform bill did not indicate the obvious impact on women or people with disabilities of reducing the number of part-time places available in further education. Equalities impact assessments are seldom detailed and are often produced at the end rather than the beginning of a consultation process if they are produced at all. UNISON hopes that this duty will be more effective and urges branches to ensure that employers are fulfilling their obligations under the Act. It is collective bargaining by trade unions that will deliver real change.

Action for Branches

Branches have a key role to play in ensuring that their employers are meeting their responsibilities under the Fair Scotland Duty. Employers' policies and plans should be checked to ensure that they have given “due regard” to this duty. Proposals for budget cuts and job losses in particular should be scrutinised with regard to their impact on those who are already socio-economically disadvantaged. If cuts are likely to push people into poverty or further increase their poverty then the duty offers an opportunity to challenge those decisions. The duty could also be useful in challenging privatisation and outsourcing. As a first step branches should check that the proposal include equalities impact assessments checking the impact of the proposals on those with protected characteristics. (age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation as well as the new duty. The duty to have due regard to the need to eliminate discrimination also covers marriage and civil partnerships in relation to employment issues.) If there has been no impact assessment then employers must undertake one before they can move forward. Branches can also challenge the quality of the impact assessment if they can identify issues that have not been identified in any assessments. So if services are closed deprived areas, and people on low incomes are expected to travel to access that service elsewhere, that has a clear impact on those who are already at a socio economic disadvantage. Low pay for staff or attempts to change terms and conditions could also be challenged under the new duty if they have an impact on members who are at a socioeconomic disadvantage.

Branches are encouraged to raise the Fairer Scotland Duty with employers. Used effectively this could be a vital tool in protecting members' jobs, pay and terms and conditions. Contact Kay Sillars in the Bargaining and Campaigns team if you require further information.

Further info

Interim Guidance for Fairer Scotland Duty

<http://www.gov.scot/Publications/2018/03/6918/3>

UNISON response to original consultation

<http://www.unison-scotland.org/2017/09/12/soci-economic-duty/>

Guidance on General public sector equalities duties

<https://www.equalityhumanrights.com/en/advise-vice-and-guidance/guidance-scottish-public-authorities>



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k.sillars@unison.co.uk

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