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Consultation on Public Sector Equality Duty Specific Duties

Response from the Council of Ethnic Minority Voluntary Sector Organisations (CEMVO) Scotland

The Council of Ethnic Minority Voluntary Sector Organisations (CEMVO) Scotland is a national intermediary organisation and strategic partner of The Scottish Government working to provide support to the Scottish Ethnic Minority (EM) voluntary sector. CEMVO established its operations in Scotland in March 2003, with the aim of building the capacity and sustainability of the country's EM voluntary and community sector. We currently have a network of over 600 EM voluntary sector organisations and community groups throughout Scotland to which we provide a range of programmes to help build its capacity. The wide-ranging work of CEMVO Scotland reflects the diverse needs of the groups it serves, varying from socio-economic regeneration such as social enterprise, life-long learning, civic and democratic participation and representation to organisational development, policy and research.

CEMVO Scotland welcomes the opportunity to contribute to the consultation on the public sector equality duty specific duties. We have based our comments and responses on our extensive experience working with ethnic minority voluntary organisations, community groups and public bodies through our role as the national intermediary organisation of the EM voluntary sector.

We believe that the introduction of specific equalities duties on public authorities is an important part of building new structures that embed equalities considerations into all aspects of the work of public authorities. Public authorities differ a great deal in the areas that they cover and the way in which they impact on people's lives. Thereby CEMVO Scotland support the principles set out in the consultation document that the specific duties should be transparent and flexible enough to provide meaningful structure to the diverse organisations covered by the duty. CEMVO Scotland believes that in order for the specific duties to assist in the delivery of the general Equality Duty, it is important that they are formulated in a way that is clear and measurable. Furthermore, it is vital that lack of compliance to the specific duties has consequences.

Priority and objective setting are important but need to be backed by robust monitoring and evaluation. CEMVO Scotland support the view set out in the consultation document that gathering evidence is essential for public

authorities to identify needs and develop evidence based policies (paragraph 3.14). It is also essential that information is part of a process used to set outcome-based objectives, plan action towards achieving these objectives and monitor progress. We would also like the specific duties to encourage the use of evidence gathering and analysis as part of the decision making process. In particular, CEMVO Scotland would like evidence of impact on groups covered under the Duty to be considered when public authorities are making decisions on the allocation of resources.

One of the key concerns regarding the effectiveness of specific duties on progress against reducing inequality is the level of awareness of equalities issues and their level of training to undertake the tasks such as Equality Impact Assessments.

The consultation document mentions objectives and priorities, but CEMVO Scotland feel that a requirement for public bodies to clearly set out the *actions* and the desired outcomes of these actions is equally, if not more important. Without such clarity and focus, we believe that monitoring progress in equality would be restricted.

Specific Duties (Q1)

CEMVO Scotland supports the development of specific duties in Scotland. In order for them to be effective we feel that they should be placed in a framework that encourages transparency and accountability.

Coverage (Q2-Q3)

In general, CEMVO Scotland agrees with the criteria set out in paragraph 4.4 of the consultation document and we believe that the duties should apply as widely as possible.

The current list of public authorities that are subject to the general Equality Duty does not take into account that an increasing number of key decisions are made by partnerships. As these partnerships are made up of public authorities that are individually covered by the Duty, such as the Community Planning Partnerships (CPPs), but these partnerships do not exist as legal entities in their own right. Clarification is needed as to how the general Equality Duty and specific duties will apply to them. Guidance on reporting and accountability for partnerships that make key decisions is also required.

Fitting with the electoral cycle (Q4 and Q35)

CEMVO Scotland feels that in many cases linking the specific duties to the electoral cycle would be beneficial. In the case of central and local government, we feel that synchronising target setting and reporting with the relevant electoral cycle would strengthen accountability, as those reporting will be the ones who have made the decisions that contributed to the outcomes. However, for many other public bodies it is unclear which electoral cycle would be appropriate as public bodies cover such a wide range of functions and

objective setting/business planning may be influenced by more than one electoral cycle.

Content of the specific duties – delivering on mainstreaming (Q5, 6 and 24)

CEMVO Scotland supports efforts to encourage public authorities to mainstream equalities; thereby providing high quality, accessible services. However, we have concerns about the evidence base used to decide whether needs are best met with mainstream or specialist provisions and that the transition from specialist to mainstream provision is often not adequately planned for. It is vital that the principle and the process of mainstreaming equality should be evidence based, transparent and accountable.

The term mainstreaming implies that equalities should be integrated into all aspects of the public authority's work. This includes the initial concept and at the point of allocation of resources.

We recommend that public authorities be required to follow best practice in service planning by:

1) Completing a full EQIA to identify unmet needs and priorities. To date no local authority or NHS Board in Scotland has undertaken such a task. Analysis should give weight to the level of need as well as the numbers of people; therefore a small number of people with high needs can be given equal priority to a large number of people with relatively low needs.

2) Setting clear targets with timeframes and outlining the actions that will be undertaken to achieve these targets.

3) Regular, transparent and accessible reporting on progress. Report on decisions to mainstream or not to mainstream services based on evidence that includes the involvement of key stakeholders in general and service users protected under the Equality Duty in particular.

3) To plan and support transition from specialist services/functions to mainstream ones. This includes a requirement to set clear targets and monitor the impact of the decision in the medium term. For example, if a decision is made to close a specialist service supporting ethnic minorities, data on the number and proportion of ethnic minorities accessing mainstream services should be gathered and analysed on a quarterly basis. If very few of the people accessing the specialist service move to the mainstream service within 6 months of its closure, the public authority should review and take steps to facilitate this transition or review the decision entirely.

Content of the specific duties – setting equality objectives (Q7-10)

CEMVO Scotland agrees that setting equality objectives would be beneficial to help focus the work of public authorities. We feel that it is essential to set evidence based, outcome-orientated objectives across all protected characteristics. We accept that the functions of public authorities vary a great deal and some may believe that setting objectives in certain areas would be an inappropriate use of resources. CEMVO Scotland believe that if a public authority wish to be exempt from setting an objective in a particular area, they

must present evidence and a strong argument to justify this exemption every year it is exempt. We believe that this evidence should be based on a thorough analysis of the level of need (see section on mainstreaming above) and not only on numbers of people.

CEMVO Scotland agree with the view espoused by the EHRC that the requirement for robust evidence in objective setting should be made explicit and a specific evidence gathering duty is needed¹. In particular, we feel that evidence on the needs of ethnic minorities should be collected and analysed each year. As patterns of internal migration and immigration can transform the profile of needs in a given area within a relatively short period of time, this information is an important part of strong evidence-based planning.

In order to avoid duplication, we believe that it would be appropriate to integrate equality objectives into existing corporate/business planning processes. We believe that it would not be constructive to create an additional layer of bureaucracy and meetings. Integration with existing systems will also ensure that equalities issues are properly considered and resourced at the start of the planning cycle/financial year. Furthermore, separate equalities structures could possibly reinforce the perception that equalities are a "specialist" issue or an "add on", as opposed to an integral part of the work of public authorities.

We believe that public authority equality objectives should be publicised as widely as possible in an easily identifiable and accessible manner. A minimum standard should be set that includes communicating the objectives to the voluntary sector and other stakeholders, as well as making information publicly available in as many mediums as is possible (electronic and hard copy). In CEMVO Scotland's experience, we have found that distributing information in a written format has limited impact in reaching the ethnic minority voluntary sector and community groups. This is because the EM sector is characterised by a large number of small groups/organisations with limited resources and capacity. We would recommend that public authorities wishing to disseminate information across Scotland within the ethnic minority voluntary sector should use platforms such as the Ethnic Minority Civic Congress (EMCC) and the Black Leadership Network (BLN) which have been specifically created to facilitate such engagement.

Content of the specific duties – reporting on progress (Q11-Q14)

CEMVO Scotland believes that it is essential that public authorities be required to report on their progress. We feel that annual reporting requirements would be appropriate for external publication, but progress should be internally monitored on a more frequent basis. In particular, equalities schemes should be published every year, in paper form and available on the internet.

¹ Consultation on Public Sector Equality Duty Specific Duties: Response from the Equality and Human Rights Commission in Scotland (EHRC, December 2009), p10.

As stated earlier, CEMVO Scotland believes that equalities work should be integrated into existing planning and monitoring structures such as the business planning process. Public authorities should be encouraged to gather and internally report information on progress at quarterly intervals in order to be able to take appropriate action if objectives are not being met or needs are not being addressed.

It is not beneficial to be too prescriptive on how public bodies report on progress. However, CEMVO Scotland believes that a basic framework, unified terminology² and a minimum standard of reporting should be prescribed in legislation. This will raise the standards in certain public bodies without providing a disincentive to others that already have high standards of reporting in place.

Employment reporting (Q15-Q19)

In general, CEMVO Scotland supports all the requirements for public authorities to provide information on employment inequalities. However, we are concerned that the threshold of "150 or more employees" stipulated in this section is too high and should be significantly lower. The requirements should not exempt smaller public authorities that also have significant impact on people's lives (such as Registered Social Landlords) from these requirements. Equality of employment opportunities is important in its own right, but we believe that it is also important for the public sector to reflect the population that it serves.

CEMVO Scotland believes that a requirement for public authorities to publish their ethnic minority employment rate and disability employment rate would be very helpful. However, we feel relying on a single statistic to measure progress on reducing inequality can, in itself, cause policy to become skewed in a particular direction. Therefore, we feel that the publication of ethnic minority and disability employment rates is the minimum level of information that is required. In addition, we feel that the following information should also be published:

- Breakdown of employment by level of seniority/grade
- Information of retention of employees from equalities groups – how many have been employed for 2 years or more?
- Details of the recruitment selection process
 - How many people from equalities groups applied for employment as well as how many were actually employed?
 - How are vacancies advertised?
 - How do the organisations recognise qualifications and/or experience obtained in other countries?
- Information on trends in recruitment over time and details of what actions they will undertake on the basis of this information? What positive action are they taking to address issues?

² By unified terminology we mean that required documents should be called the same thing, even if they are in slightly different formats. It is often confusing and frustrating for organisations and members of the public to access the correct information if every organisation produces it in an entirely different format and calls it something different.

Employment reporting – other characteristics (Q20-Q22)

CEMVO Scotland feels that public authorities should be required to report on employment rates of all characteristics protected under the Equality Duty.

We believe that reports on employment rates should be submitted to the government annually. CEMVO Scotland feels that this information should be kept separate from other reporting tackling inequality as there are many issues that exclude people from the labour market and equality of employment is a relatively high standard. An organisation can make huge improvements in combating the most serious effects of inequality and discrimination, but have little impact on employment rates.

In addition, as noted above, we believe that a variety of employment statistics need to be produced to give a fuller picture of progress towards reducing inequality in employment. As this is likely to create rather complex statistical reports, this would make reports too cumbersome when combined with other reporting. Therefore, reporting on employment rates should be undertaken separately.

Demonstrating the impact on equality of policies and services (Q23-Q26)

CEMVO Scotland strongly supports a requirement for public authorities to demonstrate how they have considered the impact of their policies and services on equality. We also fully support a requirement for public authorities to take action in response to the issues identified by their impact assessments.

As we have outlined in the section on delivering on mainstreaming above, we feel that public authorities should be required to undertake a full EQIA as part of a needs assessment, which can then be used as a basis for evidence-based planning. We feel that only completing EQIAs on “key services and policies”, could possibly perpetuate oversights or “gaps” in existing policies and services. If the term “key services and policies” is to be used in the specific duty, we believe that it needs to be more clearly defined as to what will be assessed and at what stage. CEMVO Scotland supports the specific mention of assessing the impact of key spending decisions in the consultation document. We believe that the duty would be significantly strengthened if it specified that an EQIA should be completed *during* the decision making process, as in our experience, EQIAs are often undertaken once the decision has been made and therefore are of limited benefit.

There is some concern about the level of awareness of, and training in, equalities issues of those who will be completing EQIAs. We feel that there needs to be an accompanying requirement for public bodies to annually audit the skills and knowledge of their policy/decision-makers and undertake any training that is identified from this audit.

We believe that in order to demonstrate that consideration has been given to the impact on equality of key proposals, policies or services a public body should:

- Undertake a full EQIA and mapping exercise of existing services

- Provide evidence that a strategy is in place to meet the unmet needs identified in the mapping exercise
- Publish their criteria on how they have prioritised needs that are to be addressed. This should take into account the number of people who have unmet needs and the level of need, i.e. priority can be given to small numbers of people who have high levels of need
- Show that they have consulted with stakeholders in general and service users in particular
- Ensure that policy/decision-makers are properly trained and up-to date with equalities issues

Involvement and consultation (Q27)

CEMVO Scotland believes that there should be a specific duty for public authorities to *involve* stakeholders in all relevant areas of the Equality Duty, not just on setting priorities. In particular, we feel that stakeholders should be involved in the monitoring and evaluation of progress.

Procurement (Q28-Q31)

CEMVO Scotland is in favour of the introduction of specific duties on contracting authorities in relation to their public procurement activities. We feel that this is a good mechanism to promote equality which has not been utilised to its maximum potential to date.

CEMVO Scotland support the recommendation made by the Equality and Human Rights Commission in Scotland for a separate, additional requirement on “progressively widening supplier diversity, which would require contracting authorities to consider how best to encourage under-represented firms”³ such as social enterprises, in particular those social enterprises supporting equalities groups themselves.

Ethnic Minority Organisations on CEMVO Scotland’s Social Enterprise Capacity Building Programme have voiced concerns that the procurement process is not transparent and favours large organisations. We feel that third sector organisations in general, and social enterprises in particular, have a great deal to contribute to public bodies and procurement would be an excellent channel for that contribution. Therefore, there is a need to support and capacity build small and mediums sized firms and social enterprises to be able to participate in the procurement process.

In order to widen the range of suppliers to public bodies the following measures should be taken:

- Much wider promotion and dissemination of the tender
- Transparency and reporting on tenders submitted and how decisions are made

³ Consultation on Public Sector Equality Duty Specific Duties: Response from the Equality and Human Rights Commission in Scotland (EHRC, December 2009), p24-25.

- Monitoring equalities policies and practices of those awarded the contracts
- Encourage participation of smaller social enterprises through partnerships and subcontracting. For example, if an organisation has a contract to improve the activity levels of older people in the community, but they have no experience of supporting ethnic minority older people in that area, we believe that the tender should specify that an ethnic minority organisation should be integrated into the bid as a partner/sub-contractor.

CEMVO Scotland generally supports the introduction of a specific duty on using proportionate equality-related award criteria. However, we would like there to be further consultation with a broad cross section of stakeholders and equalities organisations on how these criteria will be defined.

The condition that equality-related award criteria will only be applied to contracts directly connected to equalities is extremely restrictive. CEMVO Scotland believes that equality is a matter for all organisations and the public sector should lead by example. In a climate where services are increasingly being mainstreamed, it is vital that the procurement process include criteria that are designed to ensure that "best value" is provided to all, not just the majority. The new duty should clearly stipulate that the procurement process is not a mechanism for achieving the lowest price, but a wider concept of value for money that includes social impact.

Again, CEMVO Scotland would like to emphasise the need for transparency as to how the decision is made that 'proportionate equality related criteria' are applicable.

CEMVO Scotland strongly supports the imposition of a requirement that excludes suppliers who have breached discrimination law. We feel that this would show the priority that equalities are given and clarify what the obligations are to the contractor. If such a provision is not included, then we risk perpetuating institutional discrimination.

Leadership by Scottish Ministers (Q32-Q35)

CEMVO Scotland believes that Scottish Ministers have an essential role to play in providing leadership on equality both by shaping policy and through their own department's practice. We agree that Scottish Ministers should set equality priorities for the public sector in Scotland in the spirit of the concordat. However, we feel that this should not only include local government but should also consult with the wider Scottish public sector that is also subject to the equality duties.

CEMVO Scotland believe that it is essential that Scottish Ministers' equality priorities are based on evidence and informed by reasonable and proportionate involvement of stakeholders and equality interests.

Priorities are important but they need to be backed by a robust monitoring and evaluation system. CEMVO Scotland would like to see leadership by Scottish ministers setting a framework for reporting on these priorities that includes actions and key outcome-based performance indicators that are reported and published annually.

Leadership by Scottish Ministers is essential but not sufficient to drive the equalities agenda forward. Scottish Ministers are accountable to the Scottish Parliament and therefore we believe that it should be the Parliament that holds the ultimate responsibility and provides leadership on equality. Furthermore, CEMVO Scotland believes that leadership on equalities should be reinforced at many levels including at MSP, councillor and chief executive level. We feel that the Equality Duty is not about the aim of individuals but a collective effort. It is only through such a collective and co-ordinated effort that Scotland will be able to combat institutional racism and other forms of discrimination that have become embedded into its institutions.

In order to strengthen leadership we believe the following should be undertaken at all levels:

- Audit of how aware of and committed to, equalities issues Ministers/senior staff in public authorities are
- Regular training on equalities issues
- Specific duty for Ministers to report on progress against priorities

CEMVO Scotland believes that it would be beneficial for ministerial equality priorities to be linked to their electoral cycle, allowing ministers to be held truly accountable for their achievements in tackling inequality.

Documentation (Q36-Q37)

CEMVO Scotland believes that equalities is integral to all policies, therefore references must be made to actions, outcomes and performance against equalities priorities in all major documents, i.e. in the corporate plan etc.

As stated earlier when discussing reporting on progress, CEMVO Scotland believes that a basic framework (providing a unified use of terminology) and a minimum standard of reporting should be prescribed in legislation. We would like this framework to include some compulsory performance indicators which cover all equalities strands, so it is possible to compare public bodies and monitor change over time.

We accept that some public authorities find the production of equalities schemes cumbersome, but their role of pulling together all equalities policies in one place is vital. It is considerably more cumbersome for organisations reviewing equalities policy such as ours, to obtain all of the information separately. CEMVO Scotland believes that public authorities should be required to follow best practice for transparency and accountability by:

- Publishing all major documents on the internet. Ideally all documents should be searchable electronically.

- All documents mentioning equalities policies should signpost to the (race) equality scheme and vice versa.
- Publishing a summary of the evidence they have collected and its analysis that forms the basis of their planning/decision making

Enforcement

CEMVO Scotland supports the inclusion of a specific equality duty on scrutiny and improvement bodies. We accept that organisations with such functions will be covered by the specific duties themselves and will therefore be required to promote equalities through all of their functions, including inspecting other organisations. However, we feel that equalities need to be given a higher priority in the work of organisations that audit and inspect public bodies.

Although the role of *enforcing* the responsibilities under the general equality duty and the specific duties will remain with the EHRC, we feel that the following organisations could have a role in monitoring compliance and promoting good practice in equalities:

- Housing Regulator – in particular for scrutinising Registered Social Landlords
- Audit Scotland
- Accounts Commission

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