

REPORT TO: East Lothian Integration Joint Board

MEETING DATE: 25 February 2016

BY: Chief Officer

SUBJECT: Equalities Legislation and the Integration Joint Board

1 PURPOSE

- 1.1 The purpose of this report is to provide the Integration Joint Board (IJB) with an understanding of what is required of them under the Equality Act 2010, the Equality Act (Specific Duties) (Scotland) Regulations 2012, and the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015.

2 RECOMMENDATIONS

- 2.1 The IJB is asked to note and approve the contents of this report, and to embrace and implement the principles of the Equality Act 2010 and its associated Regulations which include the Equality Act (Specific Duties) (Scotland) Regulations 2012, and the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015.
- 2.2 The IJB is asked to note that following this report an Equality Outcomes and Equality Mainstreaming Report will be laid before them for approval at their meeting of 28 April 2016.

3 BACKGROUND

- 3.1 In October 2010 the Equality Act 2010 (the Act) came into force. This was a consolidating piece of legislation gathering together 40 years of previous discrimination legislation.
- 3.2 On 05 April 2011 the Public Sector Equality Duty (PSED) came into force. The PSED replaced the separate duties on public bodies relating to race, disability and gender equality.
- 3.3 The new PSED extended the scope of equality legislation to include not only race, disability and gender but also age, gender re-assignment,

marriage and civil partnership, pregnancy and maternity, religion or belief, and sexual orientation.

- 3.4 These nine categories are now known as the protected characteristics.
- 3.5 The PSED as set out in the Act is known as the 'general equality duty' (GED).
- 3.6 The GED requires public listed authorities in the planning and exercising of their public duties and functions to have 'due regard' to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
 - Advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
 - Foster good relations between people who share a relevant protected characteristic and those who do not.
- 3.7 These three areas are sometimes known as the 'three needs'.
- 3.8 Having 'due regard' in relation to advancing equality of opportunity includes:
 - Removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic;
 - Taking steps to meet the needs of persons with protected characteristics that are different from persons who do not share it; and
 - Encouraging participation in public life and other areas where representation is disproportionately low
- 3.9 Having 'due regard' in relation to the need to foster good relations includes:
 - Tackling prejudice; and
 - Promoting understanding
- 3.10 As previously noted there are nine protected characteristics and there is no hierarchy to those nine. In alphabetical order they are:
 - Age
 - Disability (learning difficulties, mental health, physical and sensory)
 - Gender re-assignment
 - Marriage and civil partnership (restricted to elimination of unlawful discrimination in employment)

- Pregnancy and Maternity
 - Race
 - Religion or Belief
 - Sex (formerly known as gender)
 - Sexual orientation
- 3.11 On 27 May 2012 the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 came into force.
- 3.12 These Regulations imposed duties on listed public bodies for the purpose of enabling the better performance by the listed authority of the duty imposed by section 149(1) of the Equality Act 2010, the PSED.
- 3.13 These duties are to:
- Report progress on mainstreaming the equality duty;
 - Publish equality outcomes and report progress;
 - Assess and review policies and practices;
 - Gather and use employee information;
 - Publish gender pay gap information;
 - Publish statements on equal pay, etc;
 - Consider award criteria and conditions in relation to public procurement;
 - Publish in a manner that is accessible, etc;
 - Consider other matters; and
 - Scottish Ministers to publish proposals to enable better performance
- 3.14 The 2012 Regulations dictate when reports and progress reports have to be published (outcome reports every four years, progress reports every two years starting on 30 April 2013). The Regulations also state that all new and/or revised policies must be impact assessed against the needs of the GED, and that workforce profiling, gender pay gap and equal pay statements should form part of the mainstreaming report for organisations who have more than 150 employees at prescribed times. Finally, the Regulations look for listed bodies to improve their procurement activities and to publish all materials in a manner that is accessible to all.
- 3.15 On 11 June 2015 the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015 came into force.

- 3.16 This set of Regulations increased the number of listed bodies who are required to adhere to the Act and includes **Integration Joint Boards** established by order under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014 (3).
- 3.17 This means that the **East Lothian Integration Joint Board (ELIJB) is now subject to the duties and responsibilities of the Equality Act 2010 and its subsequent Regulations** with the following tight timeline in place:
- Report progress on mainstreaming the equality duty to make it integral to the exercise of the functions of the ELIJB by **30 April 2016 and every two years thereafter** ;
 - Publish equality outcomes that the ELIJB sets in order to better perform the GED by **30 April 2016** and report progress by **30 April 2018**. Set a new set of Outcomes by **30 April 2018** and report progress by **30 April 2020** and so on;
 - Assess and review all new or revised policies and practices against the needs of the GED, **ongoing**;
 - Gather and use employee information with regard to the workforce composition, recruitment, development and retention once the ELIJB employs 150 and more employees ;
 - Publish gender pay gap information subject to the 150 plus employee rule;
 - Publish statements on equal pay, etc subject to the 150 plus employee rule;
 - Consider award criteria and conditions in relation to public procurement giving due regard to whether the reward criteria should include equality considerations to permit the ELIJB to do a better job; and
 - Publish in a manner that is accessible to all members of our communities
- 3.18 At present the ELIJB has no Equality, Diversity and Human Rights Officer who would normally be responsible for the development and production of statutory reports, mainstreaming activities, equality training and communications, equality impact assessing and development and co-ordination of equality initiatives which would ensure the ELIJB is compliant-plus in terms of the Act and subsequent Regulations.
- 3.19 NHS Lothian currently has no such Officer in place but East Lothian Council does.
- 3.20 Informal discussions have taken place with East Lothian Council and it has been agreed that the Council's Corporate Equality, Diversity &

Human Rights Officer will undertake the above duties on behalf of the ELIJB in the interim.

- 3.21 It may be that a more formal discussion would be of benefit to both parties in the long-term.
- 3.22 The Council's Corporate Equality, Diversity & Human Rights Officer has now started preparing the Equality Outcome and Equality Mainstreaming Reports which are due to be published by 30 April 2016.
- 3.23 The Equality Officer is also currently developing three equality initiatives for East and Midlothian Councils. One is regarding mental health issues, one contact with the Lesbian, Gay, Bisexual and Transgender (LGBT) community, and one regarding Transgender issues faced by individuals in the workplace.
- 3.24 The ELIJB has been asked if they would consider being involved in these projects as this would certainly demonstrate their commitment to mainstreaming equality. Approval at this meeting is sought in order that these initiatives can be written into the 2016 Mainstreaming report.
- 3.25 The Equality Outcome and Equality Mainstreaming report in final draft form will be brought to the ELIJB with a recommendation for approval on 28 April 2016.

4 POLICY IMPLICATIONS

- 4.1 Compliance with the Equality Act 2010 and its subsequent Regulations in 2012 and 2015 is mandatory for East Lothian Integration Joint Board. Compliance-plus as outlined in this report will demonstrate that the Board is fully committed to embracing and implementing the principles and ethos of the Act and subsequent Regulations in 2012 and 2015.

5 EQUALITIES IMPLICATIONS

- 5.1 This report is a position statement relating to the Equality Act 2010, the Equality Act (Specific Duties) (Scotland) Regulations 2012, and the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015. As such no Integrated Impact Assessment is required at this stage. Actions resulting from this report will be subject to an Integrated Impact Assessment.

6 RESOURCE IMPLICATIONS

- 6.1 None – time required by East Lothian Council's Corporate Equality, Diversity & Human Rights Officer to develop the reports will be borne by East Lothian Council

- 6.2 It should be noted that failure to comply with the Equality Act 2010, the Equality Act (Specific Duties) (Scotland) Regulations 2012, and the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015 would result in possible court action, heavy fine and reputational damage.

7 BACKGROUND PAPERS

- 7.1 None

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DATE	17 February 2016