

Review of the operation of the Public Sector Equality Duty in Scotland

The Scottish Social Services Council is the regulator for the social work, social care and early years workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

We:

- publish the national codes of practice for people working in social services and their employers
- register people working in social services and make sure they adhere to the SSSC Codes of Practice
- promote and regulate the learning and development of the social service workforce
- are the national lead for workforce development and planning for social services in Scotland.
- are an ONS statistics provider

Proposal 1: Creating a more cohesive regime and reducing perceived bureaucracy

Question 1.1: What are your views on the proposal outlined above in relation to the substance of reporting?

Combining all reporting under the PSED into one report would place less of a burden on listed authorities, as would the increased reporting timescale. Given the additional time, our view is that authorities would be in a better position to come up with more thorough plans for how to meet their mainstreaming outcomes, increase engagement with stakeholders and those with lived experience and allow for the production of better, clearer reports.

There is potential that increasing the reporting timescales to four years could also reduce the impact on representative bodies and interest groups. Presently listed authorities who wish to engage meaningfully with such groups on the substance of their reports are often unable to as these groups receive a large volume of requests at the end of the reporting cycle. Increasing the reporting timescales to four years would give public bodies the opportunity to engage with representative groups on an

ongoing basis which could alleviate the pressure on these groups. However, it is not unlikely that increasing the reporting cycle to four years will simply mean that representative groups are faced with a large volume of engagement requests from public bodies in the run up to the end of the reporting cycle every four years, rather than every two years.

Question 1.2: What are your views on the proposal outlined above in relation to the reporting process?

In our view, if reporting is to be fully combined, this would better be done by coordinating mainstreaming reporting duties with other corporate reporting duties. Doing this would allow public sector bodies to more fully incorporate equalities mainstreaming into their other corporate activities.

Question 1.3: What are your views on consolidating the previous sets of amending regulations?

This would make it easier for listed authorities to engage with the SSDs and would increase the confidence they have in reporting. However, proper guidance must be provided on the operation of the all-encompassing set of regulations, with clear expectations of what the Scottish Government expects in relation to them.

Proposal 2: Embedding Inclusive Communications

Question 2.1: What are your views on our proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work?

We believe that the duty of inclusivity in communication should be placed on listed authorities. We already carry out work in relation to inclusivity, for example through the use of plain language in our publications, providing different formats. However, further guidance on how to be more inclusive in our communications would be welcomed and listed authorities will need appropriate resourcing to be able to carry this duty.

The reporting duty on inclusive communication would also allow the SSSC to benchmark its own success in this area against other listed authorities with a view to continually improving the inclusivity of our communications.

One area of concern with the proposed duty is how it overlaps with existing duties in relation to reasonable adjustments. There is concern among public sector bodies that the proposed duty would overlap significantly with these existing duties. Scottish Government should clarify how the proposed duty differs from existing duties, or how existing duties will be brought within the scope of the proposed duty.

Proposal 3: Extending pay gap reporting to include ethnicity and disability

Question 3.1: What are your views on our proposal to require listed authorities to publish ethnicity and disability pay gap information?

We welcome the proposal to introduce a duty on ethnicity and disability pay gap reporting. We voluntarily published our ethnicity and disability pay gap data in our Equality, Diversity and Inclusion Mainstreaming Report 2021-2025 and would like to see this practice become commonplace across all listed authorities. This would allow for appropriate benchmarking and allow for successful approaches to be shared.

Question 3.2: Should the reporting threshold for ethnicity and disability pay gap reporting be the same as the current reporting threshold for gender pay gap reporting (where a listed authority has at least 20 employees)?

We have no view on this proposal.

Question 3.3: What are your views on the respective formulas that should be used to calculate listed authorities' gender, ethnicity and disability pay gaps?

We believe that the formulae used to calculate gender, ethnicity and disability pay gaps should be consistent with those used across the UK. This consistency would allow public bodies to benchmark their progress against other public bodies in Scotland and their counterparts in the rest of the UK.

Proposal 4: Assessing and reviewing policies and practices

Question 4.1: What are your views on the proposal outlined above?

We agree with the Scottish Government's proposal. If the assessment of policies is to meaningfully promote the PSED duties, assessment should be carried out at the earliest opportunity. However, the reality of the development of some policies, etc. is that assessment cannot always be carried out as early as would be desirable, and further guidance from the Scottish Government would be welcomed.

Our current policy in relation to EqIAs is that they should be conducted, where appropriate, prior to a decision being made as to whether to progress the policy, etc. We also advise that assessment should include engagement with stakeholders. However, we are currently in the process of revising our EqIA process to ensure that we engage meaningfully in assessment of impact at the earliest stage of a project as possible.

Work we are carrying out on involving people should also assist with engaging with lived experience.

Question 4.2: The Scottish Government recognises that improving the regime around assessing and reviewing policies and practices will take more than regulatory change. How else could improvements be made?

The most important improvement that is required in the assessment regime is guidance. Listed authorities require greater guidance on what to assess and how assessments should be carried out. Presently these decisions are in practice left to the discretion of the listed authorities which means that the assessment landscape across Scotland is not consistent. Additional information and examples of best practice or case studies should be provided to assist listed authorities in the exercise of this duty.

Question 4.3: What are your views on the current scope of policies that should be assessed and reviewed under regulation 5?

The scope of what policies are to be assessed is not clear from the wording of regulation 5. Similarly the guidance issued by the EHRC is very broad. We believe that clarification of which types of policy should be subject to the assessment duty under regulation 5 should be provided. Further, this guidance should come from the Scottish Government, rather than the EHRC.

Proposal 5: A new equality outcome setting process

Question 5.1: What are your views on our proposal for the Scottish Government to set national equality outcomes, which listed authorities could adopt to meet their own equality outcome setting duty?

The proposal that the Scottish Government set national equality outcomes would alleviate pressure on listed authorities. However, should the Scottish Government take on this role centrally, there is a risk that listed authorities will no longer engage fully in, or assess the equality issues pertinent to their own areas of expertise. Given that the Scottish Government proposes to extend all equality reporting cycles to four years, it does not appear necessary for the Scottish Government to take on this role, as listed authorities would have more time to analyse their own equality data and devise equality outcomes based on them. That being said, the Scottish Government's proposal would allow listed authorities to develop more comprehensive plans for how they intend to address these outcomes.

Proposal 6: Improving duties relating to Scottish Ministers

Question 6.1: What are your views on the Scottish Government's proposal to simplify the regulation 6A process?

We welcome this proposal.

Question 6.2: What are your views on the proposal in relation to regulations 11 and 12?

We agree with the proposals in relation to regulations 11 and 12. If the Scottish Government take on the responsibility of setting national equality outcomes, the powers in regulations 11 and 12 would allow them to address any areas of concern specific to individual listed authorities. Even if the Scottish Government decide not to take responsibility for setting national equality outcomes, these powers should be retained to ensure arising issues are properly dealt with.

Question 6.3: In 2019, the First Minister's National Advisory Council on Women and Girls recommended that Scottish Ministers deliver an Annual Statement, followed by a debate, on Gender Policy Coherence to the Scottish Parliament. In our response to this we said we would: "Consider the merits of aligning the delivery of a statement and debate with the existing legal duty on Scottish Ministers to publish a report on progress to better perform the PSED under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012". What are your views on this?

We welcome this proposal.

Proposal 7: Procurement

Question 7.1: What are your views on our proposal and call for views in relation to procurement?

We have no view on this proposal.

8. Intersectional and disaggregated data analysis

Question 8.1: The First Minister's National Advisory Council on Women and Girls called for the Scottish Government to place an additional duty on listed authorities to "gather and use intersectional data, including employment and service-user data, to advance equality between protected groups, including men and women"?

(a) What are your views on this?

(b) How could listed authorities be supported to meet this requirement?

We agree that intersectional data should be used to advance equality between protected groups. The use of intersectional data will allow a

clearer picture of the equality landscape in Scotland to emerge and provide better insight into how issues may be addressed.

Question 8.2: [Question directed specifically to listed authorities]

(a) If there was a requirement for your organisation to “gather and use intersectional data, including employment and service-user data, to advance equality between protected groups, including men and women”, would you be confident your organisation could comply with it? YES/NO
Routing depending on answer to part (a).

(b) If yes, why?

(b) If no, what would you need to ensure you could comply by 2025?

Yes, the SSSC is presently carrying out work in relation to the way we gather and store data. This work will allow us to more effectively analyse data on our staff and our registrants in an intersectional way. In order for the SSSC to more fully comply with such an obligation, however, we would need to increase disclosure rates among our registrants as the data we hold for this group is presently less complete than the data we hold on our own staff.

9. Intersectional gender budget analysis

Question 9.1: The First Minister’s National Advisory Council on Women and Girls’ called for the Scottish Government to integrate intersectional gender budget analysis into the Scottish Budget process, and to place this on a statutory footing. What are your views on this?

We have no view on this proposal.

Question 9.2: The First Minister’s National Advisory Council on Women and Girls’ called for the Scottish Government to place an additional duty on listed authorities to integrate intersectional gender budget analysis into their budget setting procedures. (a) What are your views on this? (b) How could listed authorities be supported to meet this requirement?

We do not have a view on this. Should this duty be placed on us, we would require training and guidance on how to introduce intersectional gender budgeting.

Question 9.3: [Question directed to listed authorities] (a) If an additional duty was placed on your organisation to integrate intersectional gender budget analysis into its budget setting procedures, would you be confident your organisation could comply with it? YES/NO
Routing depending on answer to part (a).

(b) If yes, why?

(b) If no, what would you need to ensure you could comply by 2025?

Yes, the SSSC would seek to comply with intersectional budget analysis duties, should such a duty be placed on us. However, at present it is not clear whether we would currently have the capacity to meet this duty. Should placing such a duty on public bodies be desirable, it would be necessary that Scottish Government provide clear training and guidance to support public bodies to meet this duty.

10. Coverage

Question 10.1: (a) In your view, are there any Scottish public authorities who are not subject to the PSED or the SSDs that you think should be? YES/NO (b) If YES, please give detail on which Scottish public authorities you think should be subject to the PSED or SSDs.

We have no view on this.

Question 10.2: EHRC has expressed the view that regulatory bodies, as part of their own compliance with the SSDs, should be encouraged to do more to improve PSED performance within their sector. What are your views on this?

The SSSC believes that encouraging regulatory bodies to do more to promote PSED performance within their sectors could be beneficial. However, it is important to note that there will be differences in the extent to which the various regulatory bodies in Scotland will have capacity to do this. While regulatory bodies with oversight of organisations and employers may be well placed to encourage and promote PSED compliance in their respective sectors, it is unclear how this could be applied to the SSSC. The SSSC has regulatory responsibility for the social work, social care and early years workforces in Scotland, rather than their employers. If an obligation to improve PSED performance within respective sectors were applied to all regulatory bodies, this would mean individual workers in the social work, social care and early years sectors would be being encouraged to improve PSED performance in the sector, rather than this duty falling to their employers. Therefore, we feel that there should be further consideration of the impact the proposed requirement would have on individuals before such a duty is implemented.

11. Strengthening leadership and accountability and enhancing capability, capacity and culture

Question 11.1: The Scottish Government will consult on the issues in this section further through the mainstreaming strategy. However, if you think any of these matters could be addressed through the PSED review, please give details here.

N/A.

12. Guidance

Question 12: What would you like to see in improved revised guidance for the SSDs?

The SSSC would like to see examples of good reporting or assessment under the SSDs included in any future guidance. The current approach to guidance has led to confusion about how best to meet the SSDs and means that significant effort is put into reviewing compliance procedures which could be better used in addressing equality issues.

13. Positive action

Question 13: EHRC has expressed the view that listed authorities should report on how they have used positive action under section 158 of the Equality Act 2010, as part of their reporting obligations. What are your views on this?

A requirement to report on instances of positive action would be welcomed to the extent that it would provide listed authorities with precedent for when positive action may be employed effectively.

14. Overall reflections

Question 14.1: Overall, what are your reflections on the proposals set out by the Scottish Government and the further areas explored?

N/A

Question 14.2: Please use this box to provide any further information that you think would be useful, which is not already covered in your response.

N/A