

From: **[Redacted]**
Directorate for Equality, Inclusion and Human Rights
13 April 2023

Cabinet Secretary for Social Justice
Minister for Equalities, Migration and Refugees

PUBLIC SECTOR EQUALITY DUTY (PSED): MAINSTREAMING REPORT 2023

Purpose

1. To seek clearance from the Cabinet Secretary and Minister on the publication of the Equality Outcomes and Mainstreaming Report 2023, as part of our compliance with the Public Sector Equality Duty (PSED).

Priority

2. Routine – however, a response is needed before 20 April to progress publication by the statutory deadline of 30 April 2023.

Background

3. The PSED is a duty on public bodies, and those carrying out public functions, which was created by [Section 149 of the Equality Act 2010](#). Scottish Ministers have supplemented the general duty by placing detailed requirements on listed Scottish public authorities through the [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012](#).
4. As part of our compliance with these duties, the Scottish Government published our [Equality Outcomes and Mainstreaming Report in 2021](#). We must provide an update to this report within 2 years, and we therefore must publish our 2023 progress report no later than 30 April 2023.
5. The Scottish Governments 2023 reporting requirements are:
 - To report on progress on making the equality duty integral to the exercise of its functions (Regulation 3);
 - To update on the outcomes set in 2021, for our 2021 – 2025 reporting period (Regulation 4);
 - To outline the composition of the workforce, and use of that information (Regulation 6); and
 - Information on the gender pay gap (Regulation 7).
6. We have taken a slightly different approach to reporting this year by creating a summary report that outlines how we have met each reporting duty under the PSED, and what action we will take looking towards the next reporting period. Through this we aim to provide a more accessible overview of the Scottish Government's efforts to mainstreaming equality, inclusion and human rights across all that we do. The summary will be supported by a full report and agencies annex, and will be available in Easy Read format.

7. Both the summary document and full report are split into three sections which require your clearance:
 - Part 1: The Scottish Government as a policy maker;
 - Part 2: The Scottish Government as an employer; and
 - Part 3: Update on progress to meet equality outcomes.
8. The supporting Annex, published alongside this report provides an update on Mainstreaming Equality in Scottish Government Agencies.
9. Given the reporting duties cover the Scottish Government both as a policy maker and an employer, the Permanent Secretary is also clearing Part 2 of both reports from the perspective of the employer.

Bute House Agreement Implications

10. N/A

Financial and Legal Considerations

11. Legal: The Scottish Government has a statutory duty to publish this report no later than 30 April 2023.
12. Financial: No significant financial considerations. The cost of publication is covered within our 2023-2024 budget.

Sensitivities

13. There is a small risk Equality and Human Rights stakeholders could voice concerns that we have not made sufficient progress to date on our 2021-2025 equality outcomes. However, we have outlined clear next steps ahead of the 2025 reporting period that will enable us to achieve outcomes. Furthermore, as part of the review of the Public Sector Equality Duty in Scotland, we are considering specific measures to enable the creation of more effective and measurable equality outcomes, both for Scottish Government and other relevant listed authorities.
14. Overall, this report outlines the extensive work that the Scottish Government has undertaken to embed equality and human rights over the latest reporting period.

Quality Assurance

15. This submission has been approved by **[Redacted]**.

Conclusions and next Steps

16. Officials recommend that the Cabinet Secretary for Social Justice:
 - Note the content of the report and provide any feedback to the Mainstreaming Policy Team by Thursday 20 April.

- Confirm that you are content for the full report and supporting Annexes to be published.

17. Officials recommend that the Minister for Equalities, Migration and Refugees:

- Note the Ministerial Foreword and content of the report, providing any feedback to the Mainstreaming Policy Team by Thursday 20 April 2023.
- Confirm you are content for the full report and supporting Annexes to be published.

18. The Permanent Secretary is also in the process of clearing his statement and Part 2 of the report from an employer perspective.

[Redacted]

Mainstreaming and Strategy Unit

Directorate for Equality, Inclusion and Human Rights

From: [Redacted]
Mainstreaming and Inclusion Division
Directorate for Equality, Inclusion and Human Rights
14 July 2023

Minister for Equalities, Migration and Refugees

REVIEW OF THE OPERATION OF THE PUBLIC SECTOR EQUALITY DUTY (PSED): NEXT STEPS

Priority and Purpose

1. This is a **routine** submission to seek clearance on the proposed next steps in relation to the review of the operation of the Public Sector Equality Duty (PSED) in Scotland. However, a swift reply would be helpful to enable policy development to continue at pace.

Recommendation

2. Officials recommend that you agree to the proposed next steps on the PSED review, which will allow officials to take forward a phased programme of improvements, and specifically to:
 - Progress with the policy development required over the coming months to deliver on two key prioritised regulatory changes, which we believe will be highly impactful in terms of advancing equality in Scotland for some of the most disadvantaged groups, with the aim of implementing these changes by the end of April 2025. It is proposed that the immediate priorities are:
 - 1) **extending the current pay gap reporting** duty to include reporting on ethnicity and disability pay gaps; and
 - 2) **introducing a new duty** on public bodies in relation to their use of inclusive communication.
 - Explore using both Ministers' existing powers under the PSED regime, and the forthcoming Mainstreaming Strategy, to progress other improvements to equality mainstreaming across the public sector, with the aim of improving the lives of the most disadvantaged people in Scotland.

Background

3. The Equality Act 2010 contains the PSED, which obliges public authorities, and those carrying out certain public functions, to have due regard, when exercising their functions, to the need to: Eliminate discrimination; Advance equality of opportunity; and Foster good relations between people who share protected characteristics and people who don't.
4. In 2012, Scottish Ministers placed specific duties on certain Scottish public authorities to help them better perform their PSED. These duties are known as

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the Scottish Specific Duties (SSDs).¹ The Scottish Government is committed to reviewing the operation of the PSED in Scotland, including the SSDs. Further legislative background and progress to date on the PSED review is contained at **Annex A**.

Current context and planning assumptions

5. Since 2021, officials have undertaken a robust review of the PSED regime and the SSDs. This significant progress led to the development of a series of detailed policy proposals which were set out in a [public consultation](#) paper (published December 2021). An [independent analysis of the responses](#) was published in November 2022.
6. This consultation exercise included consulting on a wide range of improvement proposals. These included proposals to introduce a duty on inclusive communications (which would seek to ensure that inclusive communication is embedded proportionately across the work of listed authorities when they are communicating with the public) and to extend gender pay gap reporting to include reporting on pay gaps related to ethnicity and disability. These two proposals originated in the 2021 SNP manifesto; and a commitment to consult on these proposals was subsequently contained in the 2021 Programme for Government.
7. Our consultation on PSED reform stated that our intended timeline would be for any regulatory changes to come into force by the end of April 2025, subject to Committee approval via the affirmative SSI Parliamentary process. This timescale facilitated a lead-in period to ensure that listed authorities would understand what would be required of them under the new regulatory regime, and to allow adequate time for new guidance to be developed. Guidance would be developed by the Equality and Human Rights Commission (EHRC), who produce guidance on all aspects of the Equality Act.
8. The 2025 timeline was initially set to align with the end of the current reporting cycle under the existing regulations, because most listed authorities will be required by the PSED regime to publish a mainstreaming progress report and to set new equality outcomes before 30 April 2025.
9. **[Redacted]**
10. It is important for the Minister to be aware that this work faced a 7-month pause while the PSED review team supported the emergency Ukraine Response. This redeployment/pause of the review was not included in planning assumptions as it was not foreseen. This timeline therefore represents a considerable challenge with the available resource.
11. **[Redacted]**, following a detailed business planning and prioritisation exercise within the directorate, officials are of the view that where possible we should sequence relevant areas of reform to align with the implementation of the Human Rights Bill. This would include the changes to reporting requirements related to

¹ [The Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012 \(legislation.gov.uk\)](#)

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the PSED, which would create a more cohesive regime for duty bearers (which is one of their aspirations) but would be a delay on the timelines previously agreed.

12. [Redacted]

Assessment of options considered

13. [Redacted]

Non-regulatory improvements

25. Some improvements could be made to the PSED regime and wider mainstreaming landscape without the need for regulatory change. There are two key routes for this:

- Using existing powers under the Scottish Specific Duties (SSDs); and
- The forthcoming Equality and Human Rights Mainstreaming Strategy.

Using existing legislative powers under the Scottish Specific Duty regime:

14. [Redacted]

29. Additionally, in line with the proposal in the PSED review consultation on setting national equality outcomes, Scottish Ministers could explore using a non-regulatory route to improve the current equality outcome-setting process for 2025, subject to resource and capacity, and to dialogue with stakeholders about their expectations in regard to future outcome setting work.

The forthcoming Equality and Human Rights Mainstreaming Strategy:

30. The establishment of an Equality and Human Rights Mainstreaming Strategy across the public sector is a Policy Prospectus commitment. **[Redacted]**

31. Officials are of the view that, at a minimum, the Mainstreaming Strategy will help support improvement in terms of some of the key issues identified in the PSED consultation paper, including:

- a. Strengthening leadership and accountability and enhancing capability, capacity and culture; and
- b. Assessing and reviewing policies and practices (EQIAs).

Activity to progress over a longer timeline:

32. A key proposal contained in the consultation paper was to create a more cohesive regime and reduce the perceived bureaucracy of the regime (perceived by duty-bearers). This proposal mainly relates to the reporting requirements for listed authorities.

33. Officials will seek to ensure that any reporting requirements under the PSED regime will align with any new reporting requirements under the forthcoming Human Rights Bill, e.g., by allowing listed authorities to report under both regimes at the same time. While stakeholders may be disappointed if this proposal is

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delayed, it is important that reporting cycles can be aligned. We will take a similar approach to coverage (reviewing which listed authorities should be covered by the SSD regime) to also ensure alignment.

34. [Redacted]

Financial and Legal Considerations

35. [Redacted]

36. Once officials move to the policy development stage, we will work closely with finance colleagues to cost any of the proposals for change that will require financial resource. At this stage we expect minimal costs to be occurred associated with the regulatory changes.

Sensitivities and interdependencies

37. Stakeholder reaction to the recommended option will be a key sensitivity. However, it is important to note the two distinct groups of stakeholders: in general terms, equality advocacy groups are more likely to advocate for stronger and more ambitious regulatory changes; whereas listed public authorities are more likely to advocate for pragmatic change, highlighting that more guidance and support would help improve the regime, rather than, what they would describe as further “bureaucratic” regulatory changes.

38. The general thrust of equality advocacy groups’ position can be illustrated by a letter co-signed by 26 organisations.² In the letter, they called for the Scottish Government to be more ambitious with the review and to undertake intensive stakeholder engagement in the next stage of the review.

39. [Redacted] However, we will be making demonstrable progress on two key regulatory changes, of which stakeholders are broadly supportive, and which could be highly impactful for some of the most disadvantaged groups in Scotland. Some stakeholders may still regard this as further evidence of a “lack of ambition” in relation to the review. Taken together with [Redacted] and the forthcoming mainstreaming strategy, we believe this is a credible package of demonstrable and significant improvement, in the context of a phased approach.

40. In relation to stakeholder engagement, officials plan to engage further with key stakeholders after receiving feedback on this advice. Officials are exploring how stakeholder consultation and working groups on the Human Rights Bill, the Mainstreaming Strategy and this work can be aligned to ensure efficiency for SG and stakeholders.

41. [Redacted]

² [1649685255_PSED-review-equality-stakeholders-common-concerns-April-2022.pdf](#)
(engender.org.uk)

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42. Key interdependencies relate to the development of the Mainstreaming Strategy and the forthcoming Human Rights Bill. Officials in the Mainstreaming Policy team will continue to work closely with teams leading on these areas.

Quality Assurance

43. This Submission has been approved by **[Redacted]** for Mainstreaming and Inclusion.

Conclusions and next Steps

44. Officials recommend that the Minister agrees to undertake a phased programme of improvement to the regime and its operation; we pursue **[Redacted]** for the PSED review timeline, **[Redacted]**.

45. The next steps, if this is agreed, will be to draft policy instructions at pace; to communicate this decision to stakeholders; and to continue to explore means of improving the operation of PSED through the routes discussed above.

[Redacted]

Mainstreaming Policy and Engagement, Mainstreaming and Inclusion Division

PSED BACKGROUND

1. The PSED is a duty on public bodies, and those carrying out public functions, which was created by section 149 of the Equality Act 2010 (the Act) and came into force in April 2011. It was developed to consolidate specific duties in respect of race, gender and disability that were all previously contained in separate Acts and extended it to other relevant protected characteristics. The PSED obliges public authorities, and those carrying out certain public functions, to have due regard, when exercising their functions, to the need to:
 - Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2. Although the subject matter of the Act is largely reserved to the UK Parliament, Scottish Ministers have the power (under section 153 of the Act) to supplement the PSED by placing specific duties on certain Scottish public authorities. Scottish Ministers used these powers to make the Scottish Specific Duties (SSDs) in 2012.
3. The SSDs are intended to provide a supporting framework to enable certain public authorities to better perform their PSED, through enhanced data collection and evaluation, and greater transparency and accountability. In this way, the specific duties help authorities to better perform their duty to have 'due regard' to the 3 needs of the PSED, and to mainstream equality in their everyday work.

Progress to-date

46. When the SSDs were introduced in 2012, the Business and Regulatory Impact Assessment³ contained a commitment to review the regulations within 5 years. However, the review has experienced repeated delays since 2017 due to resource and capacity issues, as well officials pivoting to support the Scottish Government's crisis responses, e.g., to COVID-19, and most recently the Ukraine Resettlement work.
47. Since 2021 officials have made significant progress, and developed a series of detailed policy proposals which were set out in a [public consultation](#) paper (published December 2021). An [independent analysis of the responses](#) was published in November 2022.
48. This included consulting on proposals to introduce a duty on inclusive communications and to extend gender pay gap reporting to include ethnicity and disability. These proposals originated in the 2021 SNP manifesto, and a

³ [Microsoft Word - Public Sector Equality Duty - Regulations - Final - BRIA - signed 20 March 2012_2_.doc \(legislation.gov.uk\)](#)

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commitment to consult on these proposals was subsequently contained in the 2021 PfG.

49. The consultation paper built on the evidence received through extensive stakeholder engagement, including 1-1 meetings with equality advocacy groups and listed public authorities, as well as an initial written consultation exercise undertaken in Summer 2021. Officials also undertook an extensive programme of engagement while the consultation was live.

50. **[Redacted]**

51. In June 2022, while the responses were being analysed, the team members working on the review were re-deployed to support the Ukraine resettlement work, due to the urgency of that situation. Officials returned to DEIHR in late January 2023, since which time officials have developed and published the 2023 Equality Outcome and Mainstreaming report (a statutory requirement which therefore had to be prioritised over policy development); commissioned a literature review on international best practice in relation to equality duties to help inform policy development; and undertaken planning for the next stages of the PSED review, on which we are now seeking your agreement.

**PSED REVIEW CONSULTATION PROPOSALS: SUGGESTED PRIORITISATION
ASSESSMENT TABLE**

[Redacted]

REGULATION 6(a): BACKGROUND

Background:

Regulation 6(a) requires that Scottish Ministers from time to time take steps to gather information on the relevant protected characteristics of members of a listed authority and to provide that information to the authority. An authority must use information received to better perform the PSED and certain authorities must set out specified details in any report on progress on mainstreaming the equality duty (under regulation 3 of the SSDs).

Considerations:

[Redacted]

SGLD Provisional Timeline for option 2

[Redacted]

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From: [Redacted]
Mainstreaming and Inclusion Division
Directorate for Equality, Inclusion and Human Rights
11 August 2023

Minister for Equalities, Migration and Refugees

REVIEW OF THE OPERATION OF THE PUBLIC SECTOR EQUALITY DUTY (PSED): REGULATION 6A OF THE SCOTTISH SPECIFIC DUTIES REGULATIONS

Priority and Purpose

1. This is a **routine** submission to seek clearance on the proposed next steps in relation to regulation 6A of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended) (“the SSDs”), [Redacted]
2. Although this is routine, a swift reply would be helpful, as this would enable work to continue at pace [Redacted].

Recommendation

3. [Redacted]

Background

4. The Scottish Government has the power to impose specific duties for the purpose of enabling listed public bodies to better perform their PSED. These are imposed by way of regulations. In 2016, a new regulation 6A was inserted into the SSDs. This regulation was brought forward by the Scottish Government with the purpose of improving Public Board diversity through a new process for reporting requirements in relation to members’ characteristics. Notably, regulation 6A(1) imposed a requirement on Scottish Ministers rather than on listed bodies. Full text of the regulation is at **Annex A**.
5. Regulation 6A(1) of the SSDs requires that “The Scottish Ministers must from time to time take steps to – (a) gather information on the relevant protected characteristics of members of a listed authority; and (b) provide information gathered by them to the listed authority in question”. A listed authority must use information received to better perform the PSED; and certain authorities must set out specified details in any corresponding report on progress on mainstreaming the PSED (under regulation 3 of the SSDs).
6. Since regulation 6A was enacted, officials have taken steps to gather information from public boards required by this duty, on behalf of Scottish Ministers. However, there have been barriers to this, due to the challenges around how the data collection requirement is framed, and the process for Scottish Ministers to collect information directly from board members. One key challenge is that due to the small number of members on some public boards,

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there are concerns that individuals could be identified on the basis of their protected characteristics, whether this is the publishing of the Mainstreaming Report or by individuals having access to the information.

7. As part of the ongoing review of the operation of the PSED in Scotland, officials have been considering amendments to the current duties [see Ministerial Submission 14 July 2023], including to regulation 6A of the SSDs.

Current context and planning assumptions

8. [Redacted]
9. One important development since regulation 6A was enacted is the passing of the Gender Representation on Public Boards (Scotland) Act 2018. This Act makes provision about gender representation on boards of Scottish public authorities. The intention of the Act is to help address the historic and persistent under-representation of women in public life. [Redacted]
10. There have also been other initiatives aimed at achieving greater Board diversity, including specific schemes targeted at under-represented groups. This has included work with a Disabled People's Organisation and workshops with minority ethnic communities on board applications.
11. [Redacted]
12. [Redacted]
13. We would then wish to continue considering possible future means of achieving the intended policy outcomes as part of the ongoing PSED Review, and our ongoing dialogue with the Public Appointments Team.
14. [Redacted]

Financial and Legal Considerations

15. [Redacted]
19. At this stage we expect minimal costs to be occurred associated with the regulatory changes.

Sensitivities and interdependencies

20. [Redacted]

Quality Assurance

21. This submission has been approved by [Redacted] for Mainstreaming and Inclusion.

Conclusions and next Steps

22. Officials recommend that the Minister agrees:

[Redacted]

[Redacted]

Mainstreaming Policy and Engagement Team Leader
Mainstreaming and Inclusion Division

Full text: Regulation 6A of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended)

Use of member information

6A.—(1) The Scottish Ministers must from time to time take steps to—

- (a) gather information on the relevant protected characteristics of members of a listed authority; and
- (b) provide information gathered by them to the listed authority in question.

(2) A listed authority in receipt of information provided to it under paragraph (1) must use the information to better perform the equality duty.

(3) Each relevant listed authority is to include in any report published by it in accordance with regulation 3 details of—

- (a) the number of men and of women who have been members of the authority during the period covered by the report; and
- (b) the way in which—
 - (i) the information provided to it under paragraph (1) has been used; and
 - (ii) the authority proposes to use the information,

in taking steps towards there being diversity amongst the authority's members so far as relevant protected characteristics are concerned.

(4) Paragraph (3) does not apply in relation to a report published before 1st May 2016 by an authority listed in sub-paragraphs (a), (b) and (d) to (f) of regulation 2A(1).

(5) In paragraph (3), a “relevant listed authority” means any listed authority the members of which, or the board of management of which, include or includes at least one appointed member, but none of the following is a “relevant listed authority”—

- (a) the Scottish Ministers;
- (b) a council;
- (c) a joint board;
- (d) a licensing board;
- (e) an education authority;
- (f) an individual holder of a public office.

(6) Where a listed authority is not made up of members but has a board of management, paragraphs (1)(a) and (3) have effect as if a member of the board of management were a member of the authority.

MINISTER FOR EQUALITIES, MIGRATION AND REFUGEES

PUBLICATION OF RESEARCH FINDINGS: INTERNATIONAL EQUALITIES LEGISLATION

Purpose

1. To update the Minister on the publication of independent research findings commissioned on international equalities legislation.

Priority

2. Routine.

Background

3. From May 2023, the Scottish Government commissioned research to further inform policy decisions regarding Scottish Government's current review of [The Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012](#).
4. The aim of the work specified was to provide the Scottish Government with timely, robust information on International Equality Duties to enable a strong evidence base to help inform, futureproof and ensure robust revised regulations as we review the Public Sector Equality Duty in Scotland.
5. Research looked at practice to advance equality in countries who were progressing work with a focus on similarities, differences, gaps, and opportunities in equality legislation. Six countries were investigated as part of this research, which include; Belgium, Canada, New Zealand, South Africa, Sweden and Wales.
6. Following a successful procurement process, independent researchers [Leading Kind LTD](#) were awarded the contract. They have since produced a final report which is ready for publication.

Key Findings

7. Leading Kind used a three-phase, multi method approach that included evidence from six countries; analysing 22 pieces of legislation and supporting guidance; conducted an extensive literature review; and interviewed 10 organisations.
8. Six key learnings, which are useful to the review of the Public Sector Equality Duty in Scotland, were highlighted:

- CONSCIOUS SCRUTINY - Governance at every level, along with a clear understanding of responsibility to monitor progress and challenge inaction has significant impact.
- INFORMED EVIDENCE - Improving data sets and augmenting these with evidence from the lived experiences of people subject to disadvantage to enhance impact.
- EQUALITY OUTCOMES - Using evidence and insight to set equality outcomes that support sectors and regions prioritise action to tackle the most persistent inequalities helps drive progress.
- CONSIDERING IMPACT - Enhancing approaches to equality impact assessment, using evidence, and linking to scrutiny is an effective combination.
- TACKLING PAY GAPS - We can see the efficacy of providing clarity on methodology and committing to actions that address pay gaps.
- INCLUSIVE COMMUNICATIONS - Expanding our understanding of accessibility could have far reaching impact. We are learning that Inclusive Communications is about more than font size and format. It's about embracing cultures and helping to break down barriers.

9. Officials will be reviewing this research and feeding in outputs to the policy instructions to help inform immediate and future phases of the Public Sector Equality Duty Review.

Conclusions and next Steps

10. Officials recommend that you:

- Confirm you are content for the full report and supporting Annexes to be published.

[Redacted]

Mainstreaming and Inclusion Division
Directorate for Equality, Inclusion and Human Rights