

Policy and Sustainability Committee

10.00am, Tuesday, 22 February 2022

The Public Sector Equality Duty (PSED) in Scotland: consultation response on Stage 2 of the review

Executive/Routine	Executive
Wards	All
Council Commitment	36

1. Recommendations

- 1.1 To consider the issues raised in this consultation and to approve the proposed response for submission to the Scottish Government.

Andrew Kerr

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The Public Sector Equality Duty (PSED) in Scotland: consultation response on Stage 2 of the review

2. Executive Summary

- 2.1 This report has been jointly produced by Policy and Insight and Human Resources. It provides the Council's proposed response to the Scottish Government's consultation on the 'Review of the Operation of the Public Sector Equality Duty in Scotland'. It is being considered by Committee in advance of submission with the consultation deadline originally 7 March, now extended to 11 April 2022.
- 2.2 It follows a previous response in 2021 to the Scottish Government's questionnaire regarding the review of the operation of the Public Sector Equality Duty.
- 2.3 The response reflects widespread engagement with colleagues from across the Council and partners who would have a specific interest in aspects of the proposals. It emphasizes the need for equalities to be better aligned to existing strategic planning frameworks, such as Business Plans. It responds to proposals regarding data collection with a balanced perspective between aspirational aims and practical challenges. In particular, the response welcomes reduced bureaucracy, further consideration of the need to embed inclusive communications into our services, the proposal to strengthen equality impact assessment and the proposal to introduce national equality outcomes that support listed authorities to advance equality.
- 2.4 It is expected that as a result of this consultation, the Council's response, and the on-going engagement the Scottish Government will have with listed authorities, that the Council's legal duties under the Equality Act 2010 will be strengthened and better supported. This in turn will strengthen the Council's ability to meet the needs of all our staff and customers, providing a higher quality service and a positive environment for productivity.

3. Background

- 3.1 The Policy and Sustainability Committee approved the Council's Equality and Diversity Framework 2021-2025 at its 20 April 2021 meeting.
- 3.2 The framework is a part of the Council's response to the 'Public Sector Equality Duty', which forms part of the Equality Act 2010. This duty has three components:

- 3.2.1 Eliminate unlawful discrimination, harassment, and victimisation.
- 3.2.2 Advance equality of opportunity between people who share a protected characteristic
- 3.2.3 Foster good relations between people who share a protected characteristic and those who do not.
- 3.3 Alongside this, The Fairer Scotland Duty was introduced in April 2018. These duties are placed on a range of listed authorities, which includes all Scottish local authorities.
- 3.4 The Equality Act 2010 'Specific Duties (Scotland) Regulation 2012' came into force on 27 May 2012 to support the 'Public Sector Equality Duty'. These regulations require listed public authorities in Scotland to:
 - 3.4.1 Report on progress on action to mainstream equality;
 - 3.4.2 Publish equality outcomes and report progress;
 - 3.4.3 Assess and review policies and practices (impact assessment);
 - 3.4.4 Gather and use employee information;
 - 3.4.5 Publish gender pay gap information and an equal pay statement
 - 3.4.6 Consider award criteria and conditions in relation to public procurement; and
 - 3.4.7 Publish all of this in an accessible manner every two years.
- 3.5 It is these regulations that the Scottish Government are now reviewing as a means to support the operation of the public sector equality duty.
- 3.6 A stage one Scottish Government report, setting out the learning from an engagement programme, reflection of equality mainstreaming over COVID-19 pandemic and key improvement proposals was published on 24 March 2021. It identified the current issues with the regime and areas for improvement.
- 3.7 As part of the second stage of its review into the effectiveness of the Public Sector Equality Duty in Scotland, the Scottish Government issued a questionnaire to public bodies, seeking views on a range of proposals for improvement.
- 3.8 A Council response to the Scottish Government questionnaire was approved by the Executive Director of Corporate Services before submission to meet deadlines. It was then noted by the Policy and Sustainability Committee meeting on the 5th October 2021.
- 3.9 The current consultation follows the Scottish Government Stage 1 review report and the Council's questionnaire response.
- 3.10 The key principles which underpinned the questionnaire response were to align and streamline the range of requirements on public bodies; provide a national source of expert support, similar to that provided by the Improvement Service to support

implementation of the Fairer Scotland Duty to help to build knowledge and share good practice, and the need to be mindful of the capacity and skills requirements of officers in public bodies.

- 3.11 This second stage consultation now sets out a series of proposals both for legislative changes to the Scottish Specific Duties and changes to the wider implementation environment. The consultation runs from 13 December to 11 April (extended from the original 7 March deadline) and is mainly targeted to the Scottish public sector and equality advocacy groups.

4. Main report

- 4.1 The first section of the consultation sets out 7 key proposals regarding the following:
- 4.1.1 Creating a more cohesive regime and reducing perceived bureaucracy
 - 4.1.2 Embedding inclusive communications
 - 4.1.3 Extending pay gap report to include ethnicity and disability
 - 4.1.4 Assessing and reviewing policies and practices
 - 4.1.5 A new equality outcome setting process
 - 4.1.6 Improving duties relation to Scottish ministers
 - 4.1.7 Procurement
- 4.2 Further areas are explored in Section 2: Intersectional and disaggregated data analysis; Intersectional gender budget analysis; Coverage; Guidance; and Positive action.
- 4.3 The third section invites respondents to detail any overall reflections.
- 4.4 The Council's response welcomes the reduction of bureaucracy with the proposal of only reporting every 4 years rather than 2 years to meet the duty but highlights the need to report regularly in between by incorporating equality outcomes into existing strategic plans such as the business plan. This would ensure the robust framework for planning and performance is adopted for equality outcomes in the same way as the other business plan outcomes. This approach would also support the mainstreaming of equality.
- 4.5 We suggest that employment duties are best reported, analysed and action taken annually to ensure progress is made over the 4 year period. We usually publish this in October, and we request that flexibility allows us to continue in this way, with the duty being met by signposting and a summary contained in the 4-year equality strategic plan.
- 4.6 The proposal to report on all duties in the same place is similar to the approach the Council has adopted already. However, the Council believes the 4 year equality strategic plan that is proposed provides an opportunity to be more concise, pulling

together all relevant information from different published documents, containing necessary links or signposts to show how the Council meets its duties along with any summary or examples to support this.

- 4.7 We support the proposal that Equality Impact Assessments may be strengthened with a requirement to involve those with lived experience in certain circumstances and envisage these circumstances to be similar to those set out for the Fairer Scotland Duty (i.e. strategic decisions). We believe that all decisions should continue to be equality impact assessed but that a proportionate response is essential.
- 4.8 The consultation proposes to introduce a duty to publish ethnicity and disability pay gap information alongside the current duty to publish gender pay gap information. This is welcomed and fits with the intention of the Council to do this anyway.
- 4.9 The consultation seeks views on the role of Scottish Ministers, and in particular, in aligning the delivery of a statement and debate on Gender policy Coherence 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. We welcome this but highlight the need for this to also be aligned with 'Equality Safe: Scotland's Strategy for Preventing and Eradicating Violence Against Women and Girls'.
- 4.10 The consultation seeks views on gathering and using intersectional data including intersectional gender budget analysis. Although we support this as an aim, we highlight some practical difficulties in making this a duty at present.
- 4.11 We respond to the question about reporting on positive action with a reminder that this is a power not a duty and therefore there should be no duty to report on it.
- 4.12 Throughout the response we stress the need for providing listed authorities with flexibility and the importance of being able to access a central resource for support and training. This is particularly important for equality impact assessments and the proposal to introduce a duty to embed inclusive communication. We also agree with the recognised need for strengthened leadership, designated equality officers and training,

5. Next Steps

- 5.1 Following approval from Committee, the response will be submitted to be included in the Scottish Government's consultation. The City of Edinburgh Council will continue to have representation on the Scottish Council Equality Network and stay abreast with developments from Scottish Government.
- 5.2 No further consultation is anticipated but the Scottish Government wish on-going engagement with local authorities. Intentions will be put to the Scottish Parliament in the summer. It is intended that regulations will be introduced by the end of 2022.

It is anticipated that the regulations would not come into force until 2025 (i.e. local authorities would publish their new equality strategic plan meeting new/revived duties in 2025). This would align with the current reporting cycle and mean that The City of Edinburgh Council will be expected, the meantime, to work towards its progress report in 2023 and its final progress report in 2025 with regard to our current 'Equality and Diversity Framework 2021-2025'.

6. Financial impact

- 6.1 There are no direct financial costs arising from this report. Any financial costs arising from new regulations may need to be considered when regulations are introduced.

7. Stakeholder/Community Impact

- 7.1 The Council's Equality and Diversity Framework 2021-2025 is the mechanism by which the Council seeks to meet its legal Public Sector Equality Duty and corresponding Scottish Specific duties. An integrated Impact Assessment was undertaken on this Framework during its development. Should the Framework be revised or replaced in light of new legislative duties following the consultation, an Integrated Impact Assessment will be undertaken again.
- 7.2 Invitation to input to this response was made widespread across the Council. This included the following groups or service areas:
- 7.2.1 Equality Outcome leads Implementation Group (representation across all outcomes in the Council's Equality and Diversity Framework 2021-2025)
- 7.2.2 Equality, Diversity and Rights Advisors (representation across all service areas and with an interest in equality impact assessments)
- 7.2.3 All Council staff forums (Black, Asian and Minority Ethnic Network; Black and Minority Ethnic Equality Workers Forum; Forces Family Colleague Network; Network Engagement for Women's Support; SPARC network; STRIDE Network; Sustainability Network)
- 7.3 Colleagues were also directly contacted where it was anticipated there might be an interest in specific parts of the proposal. This included: Corporate Services, the Edinburgh Health and Social Care partnership; Equally Safe Edinburgh Committee; Licensing Board; and, Education and Children's Services.
- 7.4 In addition to widespread input from colleagues internally, this consultation was discussed with members of the Scottish Council Equality Network (SCEN) and later, directly with Scottish Government in a specially held meeting for SCEN members.

8. Background reading/external references

- 8.1 [Council response to questionnaire for Stage 2 Review of the Operation of the Public Sector Equality Duty in Scotland: Consultation paper](#)
- 8.2 [Scottish Government 'Review of the operation of the Public Sector Equality Duty in Scotland: Consultation paper'](#)
- 8.3 [Scottish Government 'Public sector - understanding equality data collection: main report'](#)

9. Appendices

- 9.1 Appendix 1: City of Edinburgh Council's response to the Scottish Government 'Review of the operation of the Public Sector Equality Duty in Scotland: Consultation paper'.

CONSULTATION REF 21/12/1455 - PUBLIC SECTOR EQUALITY DUTY

Respondent: The City of Edinburgh Council

Question	Proposal Area	Response
Creating a more cohesive regime and reducing perceived bureaucracy		
1.1:	What are your views on the proposal outlined above in relation to the substance of reporting?	<p>The City of Edinburgh Council already publishes an Equality and Diversity Framework that sets out how it meets its Scottish Specific Duties (SSDs) in relation to Regulation 4, 5, 6, 7, 8, and 9 (evidence gathering, involvement of those with lived experience, setting equality outcomes, mainstreaming actions, carrying out equality impact assessments, mainstreaming equality into procurement, gathering and using employee information, publishing an Equal Pay Statement, and Gender Pay Gap information).</p> <p>We would agree with the proposal to make the ‘mainstreaming reporting duty more prescriptive and require listed authorities to produce a report every 4 years, which would include:</p> <ul style="list-style-type: none"> • Publishing a strategic plan that sets out how the listed authority intends to meet all of the SSDs; • Publishing all of the information required by other SSDs; • Reporting on listed authorities’ implementation of the SSDs, over the previous 4 years; and • Reporting on how listed authorities have used lived experience, or the organisations representing people with lived experience, throughout their implementation of the duties. <p>We would ask that a format for a plan and the guidance that supports planning for meeting the SSDs takes into account how key areas/departments and indeed, other listed authorities that work closely if not, within, the local authority , e.g. Education and licensing can or should go about meeting this duty.</p> <p>Publishing a strategic plan that sets out how the listed authority intends to meet all of the SSDs</p> <p>There needs to be clarification on what is meant by ‘strategic plan’? Does this mean including it in the authority’s Business or Strategic Plan rather than having a standalone Equality Plan?</p> <p>Whilst a separate equality strategic plan helps to raise the profile of equalities and makes it easier to find all relevant information, it is imperative that relevant duties are embedded in other strategic plans that require more regular monitoring to ensure implementation over the 4-year period.</p>

It would make sense to include Equality Outcomes in the Business Plan or a similar Corporate plan (e.g. Local Outcome Improvement Plan) if possible, and for reporting on these outcomes to be on an annual basis. Doing this would depend on reporting cycle requirements. If reporting on outcomes was only at the end of the 4 years, there is a risk that implementation would lose momentum. Similarly, the purpose of employment reporting would also be lost if it was only every 4 years and so again, this needs to be reported on annually. A 4-year report (or strategic plan) that pulls together how the authority meets all its duties may be more about signposting to where more information can be found on each relevant duty.

Publishing all of the information required by other SSDs

It is important to note that Integrated Impact Assessments (IIAs) are required to be published “within a reasonable period”. The ‘plan’ would include the process for assessing and reviewing policies and practices and any progress reports would include a summary of the process and any improvements made to the process.

Reporting on listed authorities’ implementation of the SSDs, over the previous 4 years

At present we are required to publish a 4-year plan and report on this every 2 year (Regulation 3 and 4). Whilst the reduction of reporting from 2 years to 4 years is welcomed as it would reduce the bureaucratic nature of the duty it is imperative that momentum and focus is kept up in implementation of the duties. Therefore, we would recommend that there is an expectation for equalities reporting to be incorporated into annual reporting of other strategic plans (e.g. an organisation’s business plan).

If reporting deadlines are adjusted to ensure they do not align with the end of the financial year, then the Scottish Council Equality Network have previously suggested end of September as a suitable alternative. Retaining flexibility would enable organisations to choose their own preferred time of year though and enable reporting to be aligned to the other strategic plans in which equality outcomes may be embedded.

It is important to note that publishing how an organisation has met the duty to assess has been interpreted to mean a description of how the organisation carries out that duty and a link to where impact assessments can be found – NOT the publishing of all impact assessments in a report. Similarly, the proposals have been interpreted to mean that details of involving people with lived experience may be contained within impact assessments and only a strategic overview of the inclusive approach taken would be described in a published report.

Reporting on how listed authorities have used lived experience, or the organisations representing people with lived experience, throughout their implementation of the duties

We are happy with a proposal that there is a duty to report on how listed authorities involve people with lived experience in developing outcomes. It would also be useful to involve people with lived experience in other areas where relevant but a recommendation in guidance to do this may be more appropriate than a duty. Further clarification on what this proposal means would be helpful. This proposal does not take away the importance of consultation and engagement on equality impact. However, a strategic and mainstreamed approach may be more practical and workable.

Consideration must be given to how people with lived experience are rewarded for their engagement, particularly when in their own time. Fatigue and consultation overload are risks for specific groups in which there may be low numbers. We recognise that those with lived experience may have a number of barriers in their lives that make it more difficult to find the time or prioritise having their voice heard. Many could benefit from assistance to develop skills that allow them to share their views in the best way to influence change. Additional methods are required to facilitate the engagement of some groups. All these issues require additional resource. Therefore, this proposal should be considered alongside consideration of this and resource implications for organisations.

We believe engagement of stakeholders on general matters can be strengthened to ensure views around equality on any issue being consulted is proactively and explicitly sought and taken account of. In addition, those with lived experience should be actively sought out for engagement. The views of a minority but recognised disadvantaged group should be given appropriate weighting.

The Council currently funds an external organisation to facilitate an equality and rights network. This network has proved helpful to gather views from those with lived experience and those who represent equality interests. However, they are not contacted directly on everything that the Council consults on nor regarding every impact assessment that is undertaken. Instead, they are usually asked to engage on strategic matters and issues with high equality relevance. Service areas will often engage with their own stakeholders (including those with lived experience) on more specific issues.

1.2:	What are your views on the proposal outlined above in relation to the reporting process?	We agree in principle with the proposal in relation to the reporting process to: <ul style="list-style-type: none">• Simplify the regime so that there is only one reporting cycle for all of the duties;
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- Allow listed authorities to satisfy all of their reporting duties in one report, reinforce the flexibility of reporting requirements and encourage listed authorities to report on their duties as part of their own operational reporting cycles;
- Ensure that reporting deadlines do not align with the end of the financial year; and
- Require reports to be published at a minimum of every 4 years.

It makes sense to have one reporting cycle and to have a longer cycle for reporting. The requirement to publish the plan with actions and timescales across the 4 years would support work being taken forward across the 4-yr period. Consideration needs to be given as to how to ensure progression across the 4-year plan (and beyond).

Currently the Council provides a report in relation to employment duties annually in October whilst the equality outcomes and mainstreaming progress reporting is usually in the spring. The progress report will usually refer and signpost to the October reports rather than duplicate the information from the October report. Flexibility for authorities to continue to publish at a time that suits them for each SSD would be desired.

Similarly, impact assessments are published separately and throughout the year in a timely fashion. Rather than include them in the report, the Council signposts to where these can be found. IIAs should continue to be published once signed off. Again, flexibility to continue to do this would be desired.

Providing flexibility is imperative to ensure equality duties are integrated into strategic plans, such as a business plan, at the point of creation and consequently have an increased chance of being implemented with the intended mainstream approach. A separate report on outcomes etc separates rather than mainstreams equality work from the rest of business. Ideally, equality outcomes will be presented and part of an organisation’s strategic business plan or framework. The Council believes that the duty to report every 4 years should be about signposting to where evidence of meeting the relevant duties can be found and a summary of progress in each area pulled together to be found in one place.

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

We agree with the proposal to consolidate all previous sets of regulations relating to the SSDs, in one new all-encompassing and clear set of regulations.

Embedding Inclusive Communications

<p>2.1:</p>	<p>What are your views on our proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work?</p>	<p>We welcome the proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work. Clear and accessible communications are central to the equalities and human rights agendas. Among the benefits are increased engagement from groups to develop outcomes, priorities and to reflect on progress and challenges.</p> <p>Public authorities are already striving to meet accessibility standards for their websites that came into force for public sector bodies on 23 September 2018. This includes adherence to the <u>international WCAG 2.1 AA accessibility standard</u> and publishing an accessibility statement that explains the accessibility of our website.</p> <p>Work at Scottish Govt level to support this outcome is required. Consideration needs to be given to support for implementation and resources to local authorities. Support that would be helpful would include updated guidance on how to produce accessible documents, training, webinars, tutorial videos which can be used on Council learning platforms and best practice examples. Perhaps a National Resource Centre could be considered. There may be a role for the <u>Inclusive Communications Hub</u></p> <p>It is critical to know what the Scottish Government define as ‘accessible’ and ‘inclusive’.</p> <p>What is meant by ‘Proportionately’ is also of crucial significance and a clear explanation is required. What is a proportionate response to ensure BSL users receive the same information any other customer requires, but with consideration to budget costs? Clarity around translation services and BSL around reasonable adjustments (this is already a general duty) for community languages is required.</p> <p>There is already a lot of information about accessible and inclusive communication available. One problem is not having a central place to locate this, but another problem is the ability to understand requirements without wading through excess information.</p> <p>It would be helpful to have a standard for inclusive communication with guidelines to ensure consistency across Councils. A central source of clear and simple requirements and perhaps a guide on levels for progression would be helpful. E.g. step 1 could be ensuring all information published on a website is in plain English including reports to boards or committees that are also available to the public. We would suggest that the government drive a campaign for Plain English. Scottish Government could also support public information that encourages service-user use of digital technologies to support communication.</p>
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		<p>In addition to meeting accessibility standards on websites, assuring access to web-based information is important for people with sensory impairments, and the SG could consider increased application of funding to support tech access (devices, skills, addressing data poverty) for people with sight loss and deaf people</p> <p>It should be noted that generic accessibility standards do not always best meet the communication needs of specific groups (e.g. embedded captions in videos made for BSL users). Taking this into account will mean ensuring involvement of those with lived experience in the development of any national guidance.</p> <p>We would welcome consideration of the expansion of Contact Scotland BSL to form a full video remote interpreting service (VRI) to replace the video relay service (VRS) currently operating.</p> <p>Awareness raising (of the scope and purpose) and training are needed throughout organisations, as well as targeted training. Staff capacity (time to undertake any training necessary and changing current ways of working) is also required. One of the main challenges is embedding and mainstreaming awareness of requirements and support to develop the skills needed to support improvements. Therefore, the proposal is likely to require further resources and funding to implement and the duty would need to be clear which protected characteristics this is aimed at.</p>
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Extending pay gap reporting to include ethnicity and disability

<p>3.1:</p>	<p>What are your views on our proposal to require listed authorities to publish ethnicity and disability pay gap information?</p>	<p>We welcome the new proposals however we would note that a number of Local Authorities, including Edinburgh, already publish this information. Discussions have started across Local Authorities in Scotland, led by The Society for Personnel and Development Scotland (SPDS), to progress this further and build consistency in what is reported. We would ask Scottish Government to keep abreast with developments taken forward by this group.</p> <p>Scottish Government should consider the benefit of data to demonstrate the pay gap (if any) for individuals who hold intersecting protected characteristics beyond sex and gender. For example, the impact of being a woman from a minority ethnic background, or a woman with a disability and the earnings of individuals who have those characteristics compared to those who do not. Women in particular from minority ethnic backgrounds and/or those who have a disability are likely to be disproportionately affected by the gender pay gap (or non-gender-based pay gap) due to additional extraneous factors, such as visa requirements and benefit eligibility. This is also referred to in section 8 of the response.</p>
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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)	The City of Edinburgh Council has not had experience of publishing data with low employee numbers that may be below 20 so cannot comment on the risks or challenges that this might pose.
3.3	What are your views on the respective formulas that should be used to calculate listed authorities' gender, ethnicity and disability pay gaps?	<p>The formulas need to be clear and consistent across authorities. In particular, we like your suggestion that</p> <p>'Standardisation in this context could include:</p> <ul style="list-style-type: none"> • Being specific in the duties as to what formulas listed authorities should use to calculate pay gaps; • Agreed data gathering questions and answer options; and • A template for reporting which could enable better consistency of presentation and comparability, enable improved progress monitoring and minimise bureaucracy.' <p>As noted in 3.1 Local Authorities are already discussing how we can build a consistent approach to reporting. Part of the work that the SPDS portfolio group is undertaking includes a draft proposal of how we report on intersectional impact on pay gap.</p>
Assessing and reviewing policies and practices		
4.1	What are your views on the proposal outlined above?	<p>The Scottish Government proposes to adjust the duty to assess and review policies and practices to emphasise that assessments must be undertaken as early as possible in the policy development process and should aim to test ideas prior to decisions being taken to ultimately make better policy for people.</p> <p>We agree with the proposal that that there should be an emphasis that assessments must be undertaken as early as possible in the policy development process. The Council's Integrated Impact Assessment (IIA) process already recognises this.</p> <p>Further clarification is needed on what is meant by 'test ideas'. Improvement science is used in some areas of work, e.g. Education, and often includes tests of change. The Council's impact assessment process does test ideas by considering any potential positive or negative impacts of the proposal and if this is what is meant by the proposal, we would support this.</p> <p>The Scottish Government also proposes to strengthen the duty to assess and review policies and practices to require the involvement of people with lived experience, or organisations who represent them, in certain circumstances, like where the policy being assessed is a strategic level decision (of the type that engage the socio-economic duty in part 1 of the Equality Act 2010). This is also explored in proposal 7</p>

		<p>We agree with the importance of involving people with lived experience, or organisations who represent them. So, a requirement in certain circumstances is positive. We would also note that in some circumstances (e.g. employment policies) it is also important to work in partnership with Trade Unions. We would request further clarification on ‘strategic level decisions’ when this would apply.</p> <p>As set out in Proposal 1, the Scottish Government proposes to require listed authorities to report on how they have implemented all of their SSDs as part of their overarching mainstreaming reporting duty. This will include assessing and reviewing policies and practices. This could be illustrated through case studies and examples.</p> <p>We agree that listed authorities report on how they have implemented all of their SSDs as part of their overarching mainstreaming reporting duty. We believe this should include signposting to impact assessments but not publishing of the impact assessments themselves in the equality strategic plan – these should already have been published in a timely manner. We do not consider that there would an additional benefit in having a duty to include case studies and examples.</p> <p>Completed IIAs are published on the Council’s website and this link is made available in the Council’s equality and diversity framework progress reports. The Impact assessments will already have been published and used to inform decisions and will all be publicly available. We believe authorities should choose to include case studies where they deem it useful.</p>
<p>4.2</p>	<p>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?</p>	<p>We feel the following improvements could be made:</p> <p>A central resource for guidance and support in complying with all SSDs, similar to the Improvement Service’s Fairer Scotland Duty resources and knowledge hub providing a “go to” person and peer networking. Examples and case studies across different sectors of how good EQIA/IIAs can lead to better services and create opportunities to advance equality could be located here. Advice on improving ‘EQIA capability’ and sharing practice across local authorities would also be of benefit.</p> <p>Listed authorities need to ensure sufficient capacity and human resource to cover:</p> <ul style="list-style-type: none"> • Training and Quality assurance; • Implementing recommendations arising from assessments; and, • Monitoring progress with implementation of impact assessment recommendations

		Additional funding should be considered to support listed Authorities to allocate dedicated internal resources that ensure the improvements are embedded.
4.3:	What are your views on the current scope of policies that should be assessed and reviewed under Regulation 5?	The current scope covers all policies and practices, but the assessment should be proportionate and appropriate to the policy/practice being assessed and reviewed. We agree that all policies etc should be assessed. Further clarification could be provided on what is expected with regard to different 'Relevance and proportionality'.

Question	Proposal Area	Response
A new equality outcome setting process		
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?	<p>We are broadly in support of the proposal that Scottish Government take on a leadership role in setting national equality outcomes. There is currently no expectation on how many equality outcomes authorities are expected to have. There is also the possibility that national equality outcomes will not apply to some authorities. (e.g. education or housing outcomes may not apply to health organisations – though they may have a role to play). We would suggest that authorities are expected to have no less than 3 and no more than 5 equality outcomes. (This does not limit mainstreaming actions) This would help with focus, specificity and chance of success. We also believe that national outcomes may be broad and overarching (more like priorities) and may need to be amended to suit a local situation, to become focused and specific and measurable.</p> <p>Whilst there are issues that seem to span across the country and authorities it makes sense to set national outcomes and would increase the chance of seeing visible and measurable success. It would also avoid repetitive and duplicate gathering of evidence and involvement of stakeholders. Authorities would still need to focus on what these mean locally. The requirement to produce outcomes has never prevented an organisation from doing other activity to promote equality and meet the public sector equality duty. This would still be the case and be welcomed. Similarly, we would agree that the proposal does also allow for authorities not to adopt the national outcomes.</p>
Improving duties relating to Scottish Ministers		
6.1	What are your views on the Scottish Government's proposal to simplify the regulation 6A process?	<p>This proposal does not affect our authority. In principle, we are happy for the proposal to be simplified. However, the representation on public boards and ensuring diversity is very important so only changes that will strengthen this aim are desired.</p> <p>The Gender Representation on Public Boards (Scotland) Act 2018 should remain in place.</p> <p>Regarding Regulation 6A, there is a risk that the protected characteristics of board members could unintentionally be disclosed due to the small numbers of people who sit on such boards.</p> <p>As noted in the stage one report, there can be a disconnect between the gathering of data and the setting of outcomes, which in itself can create unintended consequences that go against the spirit of the legislation. Accordingly, great consideration should be given as to the purpose of gathering the data of board members, what benefits it brings to an understanding of equalities and what can be done to ensure that sensitive information is not disclosed.</p>

<p>6.2</p>	<p>What are your views on the proposal in relation to regulations 11 and 12?</p>	<p>Regulation 11 allows for Scottish Ministers to direct listed authorities to consider other matters, when carrying out their duties under the SSDs. Regulation 12 allows for the Scottish Government to take a leadership role and drive continuous improvement in relation to listed authorities' performance of the general equality duty.</p> <p>We have no objection for sections 11 and 12 to be retained.</p>
<p>6.3:</p>	<p>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?</p>	<p>It seems practical and useful to align the statement and debate with the existing duty. The alignment would give increased attention to gender equality issues. Consideration should be given to how to ensure due attention to all protected characteristics (which relate to the PSED). Consideration could be given to an intersectional approach. The Fair Work Framework should also also be taken into account.</p> <p>We would also highlight that any statement, debate and review on policy coherence also needs to be in line with Equally Safe: Scotland's Strategy for Preventing and Eradicating Violence Against Women and Girls. Particular attention has to be paid to areas where local policy can contradict the PSED as well as Equally Safe (one such example is the current debate and pending decision on the licensing of Sexual Entertainment Venues-this directly contravenes the PSED and Equally Safe).</p>
<p>Procurement</p>		
<p>7.1:</p>	<p>What are your views on our proposal and call for views in relation to procurement?</p>	<p>Regarding the publication aspect being proposed, we are assuming the proposal is to incorporate this requirement into the current statutory requirements to produce a procurement strategy and report on this on an annual basis. If so, this could be incorporated, and all procurement obligations contained and published in one place. Alternatively, a reference to Equality specific published report, incorporating the procurement actions could be included in the procurement annual report for completeness.</p> <p>Regarding stakeholder recommendations the Council agrees with Scottish Government that this continues to apply where it is proportionate to the subject matter. Should this requirement and 'specific examples' become a 'mandatory' element on all award and tender specification it would require additional training/funding to support authorities and suppliers and be clear about how it meets proportionality. Any changes to the current requirements should also be communicated through a Scottish Procurement Policy Note with additional guidance.</p> <p>Integrated Impact Assessments are currently applied to identify PSED and incorporate into specifications for inclusion in award decisions.</p>

Question	Proposal Area	Response
Intersectional and disaggregated data analysis		
<p>8.1:</p>	<p>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”?</p> <p>(a) What are your views on this?</p> <p>(b) How could listed authorities be supported to meet this requirement?</p>	<p>a) We agree that this needs to be the way forward and is essential if we are to make meaningful changes. This is a good aspiration. <i>it would be beneficial for us (and others) to provide intersectional analysis on employee data. The work referred to in section 3 will support this outcome.</i></p> <p>However, we don’t think many authorities are in a position to do this presently. The focus at present should be collecting complete full data to meet existing duties, ensuring effective analysis is undertaken correctly and action is taken as a result. We believe many authorities are not confident that we are consistently using single protected characteristic data yet. There is a capacity issue regarding this aspiration and authorities would need support and time to become ready to implement this.</p> <p>The collection of <i>service-user</i> data is already fraught with difficulties, time consuming and onerous. This proposal would have to apply to third sector organisations etc whose services are publicly funded as well as authorities’ own services. We are doubtful that, at this present time, the service-user data collected would be used in a meaningful way. We are concerned that this, in fact, could be damaging unless the reasons why the data is showing what it is showing, is fully investigated. This problem is compounded when you consider the many different factors which contribute to what the data actually means.</p> <p>b) Scottish Government taking a lead on this themselves in the first instance would help. Examples, clear guidance on what authorities need to consider if low numbers risk identification would help. The intersectionality aspect may produce such low numbers.</p> <p>The SG is in the process of establishing an Equality Data Improvement Programme (EDIP) which will be designed to improve and strengthen data on the protected equality characteristics collected and utilised across the public sector. With regard to the Equality Data Improvement Programme:</p>

		<ul style="list-style-type: none"> • Could Scottish Government experts and systems support analysis? • Could Scottish Government provide support to local authorities to improve processes for data collection?
<p>8.2:</p>	<p>[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?</p>	<p>a) No. From an employment perspective we could provide this information but would benefit from templates and guidance as outlined in section 3. From a service-user data perspective we don’t think this should be an additional duty. We think many authorities would make efforts to comply without benefiting from being able to carry this out properly at this present time. Authorities that contract out work to third parties would need to require those third parties to comply with the same duties. This could be problematic for smaller third sector organisations.</p> <p>b) Examples of organisations, such as the Scottish Government that had already done this, clear guidance on what authorities need to consider, including if low numbers risk identification would help.</p> <p>We are also limited to what we can report on due to the system that we use (SEEMiS) not having the required functionality to allow this data to be collected and stored. As this is a system used nationally across Scotland, it could be that SG could influence changes to allow this reporting to be undertaken.</p>
<p>Intersectional gender budget analysis</p>		
<p>9.1:</p>	<p>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?</p>	<p>In principle, yes, we strongly agree with working towards an intersectional approach.</p> <p>Yes, we agree that intersectional gender budget analysis should be integrated into the Scottish Budget process. At the same time, further work should be carried out to progress and further improve the quality of data in the Equality Data Improvement Programme and promote the use of this.</p>

		<p>Taking forward this proposal would signal a step forward and allow listed authorities to have an example that could be followed in due course.</p>
<p>9.2:</p>	<p>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.</p> <p>(a) What are your views on this?</p> <p>(b) How could listed authorities be supported to meet this requirement?</p>	<p>a) We think gender budget analysis would be a positive step forward and perfectly feasible at this present time. However, we don’t think there is a need for an additional statutory requirement. The Council carries out IIAs for individual budget proposals which include an assessment on gender. In addition to individual IIAs, a cumulative IIA is also undertaken.</p> <p>Authorities require more information on what this means over and above the duty to assess equality impact on budget proposals. The implications of the intersectional aspect are unclear. This may be a second step in the process that could be considered in the future. Applying the intersectional part of the requirement may not be suitable for smaller organisations.</p> <p>b) It would be extremely useful if national training was provided which would ensure consistency of understanding across all listed authorities. More data being provided by the SG as a central resource via the Equality Data Improvement Programme would help.</p>
<p>9.3:</p>	<p>[Question directed to listed authorities]</p> <p>(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).</p> <p>(b) If yes, why?</p> <p>(b) If no, what would you need to ensure you could comply by 2025?</p>	<p>a) Yes, the City of Edinburgh Council could comply with this duty although it would depend on the level of detail required. However, as above, we don’t think an additional statutory duty at this stage is appropriate. Training, support and encouragement for authorities to adopt this approach is required before introducing a duty. This would include clear guidance to senior managers and elected members/board members. Any data used for this would need to be from the Equality Data Improvement Project.</p> <p>b) Equality should already be a consideration in budget setting. Budget IIAs are usually completed with extremely tight deadlines. Usually budget setting is aligned to business and</p>

		<p>strategic plans that require equality impact assessments. Therefore, there should already be steps that are taken in this process. There would need to be a period allowed for improvement over the first few years as authorities became familiar with what was expected. Additional resources should also be considered. By 2025 they may be in a position to meet this duty.</p>
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Question	Proposal Area	Response
Coverage		
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.	a) Yes, b) The Education Authority think HMIE, GTCS and SSSC could be considered to become subject to the duties.
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?	If regulatory bodies adopted a supportive approach to help guide and assist authorities to understand and meet the duties where relevant to their own area of regulation this would be welcomed. It is good that Audit Scotland include best value audits on how well local authorities perform in equality and rights. However, the Equality and Human Rights Commission is the regulatory body for the Public Sector Equality Duty and the Scottish Government is the regulatory body for the Scottish Specific Duties and these two organisations should remain the regulatory bodies. There is a danger of conflicting understanding or instruction from different agencies. There is also a danger that the EHRC loses its credibility as the regulatory body. If regulatory bodies, as part of their own compliance with the SSDs do more to improve PSED performance within their sector, this should be in strong collaboration with the EHRC and Scottish Government and resource may need to be considered in order to do this well.
Strengthening leadership and accountability and enhancing capability, capacity and culture		
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.	We welcome consideration of the Strengthening of leadership and accountability and enhancing capability, capacity and culture. We agree with the proposal that further exploration is given of the following areas: <ul style="list-style-type: none"> • Funding: Ensuring there is long-term funding for the public and third sectors for equality and human rights; • Training: Ensuring that there is effective equality training, particularly for senior leaders and public appointments;

		<ul style="list-style-type: none"> • Equality accountable officers: Requiring public bodies to appoint an accountable officer, who would provide internal advice, guidance and competence building; • Improved forums or portals to share best practice: Improving existing forums to share best practice across the public sector or establishing a new online portal to share consolidated guidance, best practice and publications. <p>We agree that leadership is critical to the success of implementing the SSDs. A designated senior equality champion or executive sponsor can be an incredibly supportive resource. Strong leadership needs to be supported by clear and straightforward processes with an emphasis on meaningful change and culture rather than compliance. An equality accountable officer at senior management level would improve leadership. However, it may be other staff with a designated equalities role in the organisation (depending on size) providing internal advice, guidance and competence building.</p> <p>We have recommended elsewhere in this response (section 4.2) that a central resource would be helpful such as that on the Knowledge Hub used for the Fairer Scotland Duty.</p>
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Guidance

<p>12:</p>	<p>What would you like to see in improved revised guidance for the SSDs?</p>	<p>We would like to see coverage of all three points from engagement to date.</p> <p>These calls included:</p> <ul style="list-style-type: none"> • More prescriptive step-by-step technical guidance; • Consolidating guidance and increased use of clearer language throughout all supporting documents; and • Strategic guidance which reaffirms how compliance with the duties relates to the general PSED <p>Case studies, examples of best practice, access to central resource (Equality Data Improvement), Toolkits and case studies are welcomed in addition to a link person/team (EHRC) that listed authorities can approach for any PSED related queries/ support.</p>
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Positive action

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?	Positive action is a power not a duty. Authorities should be encouraged to share how they have used this power in order to help others but there should be no obligation to report on this. The best place to share information may be in the 4-year mainstreaming report where all other duties are reported on. The advantage of reporting on this would be the opportunity to share good practice in utilising the positive action power.
14. Overall reflections		
14.1:	Overall, what are your reflections on the proposals set out by the Scottish Government and the further areas explored?	<p>The proposals and further areas explored are all positive. We welcome the Scottish Government's commitment to explore the following issues further:</p> <ul style="list-style-type: none"> • Funding: Ensuring there is long-term funding for the public and third sectors for equality and human rights; • Training: Ensuring that there is effective and mandatory equality training, particularly for senior leaders and public appointments; • Equality accountable officers: Requiring public bodies to appoint an accountable officer, who would provide internal advice, guidance and competence building; • Improved forums or portals to share best practice: Improving existing forums to share best practice across the public sector or establishing a new online portal to share consolidated guidance, best practice and publications. <p>We would welcome being involved in the consultation in 2022 on the mainstreaming strategy where these issues will be presented with further consideration. Senior Leadership and commitment on progressing equality in listed authorities is critical to all of the above issues being addressed.</p>
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.	<ul style="list-style-type: none"> • How will the responses to this consultation be collated? • Will the considerations of the 9 protected characteristics and intersectionality be part of the analysis of the responses (relevant for individual responses/organisations representing)? • Are there any further steps planned if there is/or thought to be a limited response from a wide cross section? (protected

		characteristics and intersectionality) – recognising that the main audience for this consultation is public bodies.
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