

Scottish Government PSED Review

Equality Stakeholders' Submission on Common Concerns

April 2022

“Overall, there was limited evidence of change for people with protected characteristics. Authorities are required to comply with the statutory requirements of the duties which apply to them. It is possible for authorities to meet the requirements of the duties, without investing substantially in producing or demonstrating change”.

EHRC ‘Effectiveness of the PSED Specific Duties in Scotland’ 2018

Organisations in Scotland’s equality sector welcomed the Scottish Government’s intention to reform the Scottish Specific Public Sector Equality Duties. Many have been engaging with the Scottish Government on the Review for several years. Reform has the potential to create meaningful change for people with protected characteristics, and our organisations are therefore keen to ensure the Review process is as effective as possible.

A number of signatories to this submission will make their own detailed responses to the current consultation round ending 11th April 2022. However, there are specific cross-cutting issues on which we broadly agree. These relate to the policy development process and to the direction of travel within the proposals.

This submission sets out these common concerns, in brief, and asks that the next steps in revising the Scottish Specific Public Sector Equality Duties are carried out in close collaboration with relevant equality stakeholders. This should include the drafting of revised regulations.

Policy development process

- The impression given is that the Scottish Government is seeking to make minimal legislative changes to address loopholes, and will rely on non-statutory approaches to redress many other persistent issues.
 - This will be insufficient to drive the change that is required.
 - PSED reform needs to be evidence based and rights based, prioritising effective means of creating change in the lives of people with protected characteristics rather than simply making compliance simpler and marginally more effective.
- Until this most recent stage, the policy development process has been lengthy but light on involvement with equality stakeholders.
 - Input provided by equality stakeholders since the process began in 2018 has not been reflected to an adequate extent.
 - The involvement process so far has not been conducted in a way that makes the best use of expertise within the equality sector.

- Closer involvement, ideally with meaningful co-production methods to ensure positive change for people with protected characteristics, would be a more appropriate way of engaging equality stakeholders with particular relevant experience.
- The lack of evidence on the effectiveness of the mainstreaming, equality impact assessment and procurement duties has not yet been addressed.
 - This issue is consistently raised by organisations in the equality sector.
 - The resulting evidence gaps impact on the Scottish Government's ability to make effective proposals and stakeholders' ability to effectively contribute to the Review.
 - This much-needed research should be undertaken after the consultation responses have been analysed and used to inform the next phase of development.

Present proposals

- The proposals are, for the most part, light touch; they do not reflect the extent of reform needed to address deep-seated and long-standing inequalities in Scotland.
- Many of the proposals for reducing bureaucracy are already permitted by the existing regulations, e.g. aligning to organisational reporting cycles and publishing in a single report.
 - Experience suggests that, for many public bodies, the main driver of reporting difficulties is the lack of activity they have to report on, rather than bureaucracy within the reporting process itself. Without action to improve implementation, this perceived bureaucracy will not necessarily be reduced.
- Whilst measures to improve intersectional approaches to the PSED are necessary, it is important to acknowledge that many public bodies are still not gathering data on all protected characteristics.
 - It is critical that any duty to gather and use intersectional data does not simply replicate the issues we have seen with the existing duties on employee data and gender pay gap information.
 - Without action to enforce reporting of data, it will not be possible to improve intersectional approaches.
- The intention to drive forward national equality outcomes has benefits but also creates significant risks that local needs will remain unmet.
 - The requirement to involve people with protected characteristics and their representatives is already poorly met by many authorities.
 - The need to ensure a balance of strategic expertise and lived experience input must be reflected; both are necessary for a robust understanding of the causes, consequences and solutions to inequalities
- The proposals on extending pay gap reporting to ethnicity and disability are insufficient to create change for people with these protected characteristics, and are likely to replicate existing problems with the current duty on gender pay gap reporting.

- Despite persistent pay gaps, a majority of public bodies are still not taking action to tackle their gender pay gap, and few public bodies have set outcomes on gender and employment.
 - Any revised duty on pay gap reporting must require that public bodies take action on their pay gaps.
 - There is a need for careful consideration of how public bodies could meaningfully report pay data on ethnicity and disability.
- Strengthening the procurement duty has significant potential to impact the lives of people with protected characteristics. However this would require a prescriptive approach with support to embed changes.
 - Other financial processes such as grant funding and service level agreements also have significant impacts.
 - Inconsistent and often non-compliant approaches to areas of the duties such as data collection and equality impact assessment suggest that more prescriptive requirements are needed.
 - These could include greater specificity in legislative requirements and provision of templates where appropriate.
 - Levers for positive action are crucial to addressing inequalities for many protected characteristic groups.
 - These need to be meaningful and to require public bodies to report evidence of impact rather than simply reporting on action taken.
 - Further consideration is needed on potential statutory means of ensuring leadership and accountability.
 - Experience to date suggests that without strong legislation, accountability and enforcement, many bodies will not effectively meet their legal obligations.
 - The critical issues of adequate resourcing of equalities work and improved organisational / staff capacity to implement this also tie into leadership and accountability.

As can be seen from the above, we have serious concerns about the direction of the current consultation on the review of the effectiveness of the Public Sector Equality Duty in Scotland. We are keen to work with the Scottish Government in ensuring that any revised duties are as robust as necessary and will lead to real improvements in the lives of people with protected characteristics.

As such, we call on the Scottish Government to adopt a fully-fledged collaborative process, working with equality stakeholders in drafting the revised regulations.

This will be essential if we are to, as Cabinet Secretary Shona Robison outlines in her foreword to the consultation, “create an effective regime and wider implementation environment that will make a stronger contribution to improving the lives of people in Scotland, by embedding equality considerations at the very heart of the public sector”.

Signatories:

