

Response to Call for Views

The Operation of the Public Sector Equality Duty in Scotland – Call for Views

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Equalities Law sub-committee welcomes the opportunity to consider and respond to the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament Call for views “The operation of the Public Sector Equality Duty in Scotland”¹. The sub-committee has the following comments to put forward for consideration.

Questions

1. To what extent do you think that listed public authorities understand the terms and the aims of the PSED in Scotland?

Ans: We have no comments to make

2. Is the PSED in Scotland delivering on its aims to improve outcomes for people with protected characteristics?

Ans: We have no comments to make

3. Do you think the Scottish Government’s proposed reforms will assist listed authorities in embedding an equalities focus and in turn improve outcomes for people with protected characteristics?

We note that the then Minister for Equalities, Migration and Refugees Emma Roddick MSP in her letter to stake holders published 23 December 2023² proposed the following reforms

Revised Pay Gap Reporting

By extending the current requirement to report on pay gaps between men and women to include reporting on pay gaps related to disability and ethnicity, we can encourage public bodies to take more effective action on equality issues affecting their disabled and ethnic minority staff.

¹ [The operation of the Public Sector Equality Duty in Scotland - Scottish Parliament - Citizen Space](#)

² [Public sector equality duty: stakeholder letter - gov.scot](#)

As we said in our 2022 response: Although it is recognised that data on employees' ethnicity / disability may not be as available to listed authorities as data on gender, it is considered that requiring listed authorities to publish ethnicity and disability pay gap information is an important step for advancing disability and race equality.

We would note however that pay-gap reports should not be seen in isolation and the effect of the intersectionality should be considered when considering these protected characteristics. It is also noted that such pay gap reporting may be challenging for listed authorities when publishing such data due to the risk of identifying individuals. Any guidance in relation to the proposals should deal with such a risk.

We note that the then Minister in her letter to stake holders published 23 December 2023 stated that "reducing the perceived reporting burden was a key concern in many consultation responses and are keen to make that a reality" Introducing additional duties to report on ethnicity and disability pay gaps and inclusive communication will not in themselves assist listed authorities to embed equalities, and there is a risk that in relation to pay gap reporting adds to the reporting burden. It should be considered whether the added administrative burden is going to be proportionate to the proposed impact on embedding equality it is likely to have.

Longer-term changes

We note that the then minister in her letter to stake holders referred to above set out some longer term changes as follows:

Reporting

Further legislative changes will be considered over the longer-term; this includes how we create a more cohesive regime. This phased approach enables us to very deliberately work towards increasing alignment with other changes which are currently proposed regarding the mainstreaming of equality and human rights – such as the introduction of the Human Rights Bill which is currently out for consultation. We recognise that reducing the perceived reporting burden was a key concern in many consultation responses, and are keen to make that a reality.

Ans: We have commented on the specific proposals above, and would repeat our comments on the need to avoid adding to the reporting burden on authorities without also addressing the need for training, guidance and improved capacity to improve the operation of the PSED within public authorities. We suggest that the focus should be on helping public authorities to comply with their existing duties. As we stated in our response³ to the Scottish Government's Equality and human rights mainstreaming strategy: consultation⁴ we consider that the requirement to equality impact assess is not well understood across public authorities and there

³ [25-02-05-equ-chr-equality-and-human-rights-mainstreaming-consultation-response-1.pdf](#)

⁴ [Equality and human rights mainstreaming strategy: consultation - gov.scot](#)



continues to be very poor practice and low levels of knowledge about what constitutes discrimination under the Equality Act 2010. We consider that providing guidance, resources and suitable capacity to guide train and support people working in public authorities in these areas should be a priority.

Outcome setting

We note the plans as set out in the letter and have no further comments to make at this stage.

Many consultation responses supported the Scottish Government taking on more of a leadership role in setting national equality outcomes, which would inform the outcomes of listed authorities. I have asked my officials to further explore the appetite for this, using a non-regulatory route to improve the current equality outcome-setting process, subject to resource and capacity, and dialogue with relevant policy teams and stakeholders about their expectations in regard to future outcome-setting work. The new National Performance Framework, which is currently under development, will be a key element in our thinking.

Learning from International Best Practice

We note the plans as set out in the letter and have no further comments to make at this stage.

Many consultation responses supported the Scottish Government taking on more of a leadership role in setting national equality outcomes, which would inform the outcomes of listed authorities. I have asked my officials to further explore the appetite for this, using a non-regulatory route to improve the current equality outcome-setting process, subject to resource and capacity, and dialogue with relevant policy teams and stakeholders about their expectations in regard to future outcome-setting work. The new National Performance Framework, which is currently under development, will be a key element in our thinking.

4. What are your views on the Scottish Government's revised approach to assisting listed public authorities to embed inclusive communication?

In our response⁵ to the consultation in 2022⁶ we indicated that we are generally in favour of the proposal. Providing 'a clear definition of what communicating in an inclusive way means' and 'a set of national standards and a robust monitoring system' will be important to support listed authorities. We remain of the view that any proposed duty would need to be supplemented with guidance on proportionality especially with regard to resources. In addition, we recommend that it should be supplemented with guidance and training on what constitutes inclusive communication across all the protected characteristics.

We also suggest that there should be a focus on including people with lived experience in developing guidance. This will help to develop a duty that makes

⁵ [22-4-11-equ-public-sector-equality-duty-a-consultation.docx](#)

⁶ [Public sector Equality Duty in Scotland: consultation - gov.scot](#)



sense in its practice, its scope and is relevant to the stakeholders engaging with each listed authority.

That said, as stated in our response to question 3, we consider that adding to the duties all public authorities are required to comply with will not assist in embedding equalities in isolation. We reiterate our suggestion that the focus should be on helping public authorities to comply with their existing duties and on improving knowledge and practice in authorities by providing suitable training and guidance and improved capacity.

5. How effective do you think the Equality and Human Rights Commission is at regulating public authorities' performance against the PSED?

We have no comments to make.



For further information, please contact:

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