

Consultation Response

Equality and Human Rights Mainstreaming Strategy

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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 and Constitutional Law and Human Rights sub-committees welcome the opportunity to consider and respond to the Scottish Government consultation: Equality and human rights mainstreaming strategy: consultation¹. The sub-committee has the following comments to put forward for consideration.

¹ [Equality and human rights mainstreaming strategy: consultation - gov.scot](https://www.gov.scot/publications/consultations/2022/equality-and-human-rights-mainstreaming-strategy/consultation/1/)

1 Proposed vision and objectives

Vision

To support the continued growth of strong communities across Scotland, built on a solid foundation where everyone enjoys realisation of their human rights. These communities will be diverse, inclusive, empowered, resilient and safe. We are committed to tackling the persistent and entrenched systemic inequalities that still exist in Scotland.

Through this we will advance and improve Scotland's position as a global leader in equality and human rights.

Objectives

In order to achieve this vision, the Strategy objectives are to:

- remove systemic barriers;
- improve how policy decisions are made and delivered;
- establish the leadership, capability, capacity, culture and practice that ensures Government and public sector policy and service delivery are focused on equality and human rights.
- embed transparency so it is easier for those affected by decisions to hold Scottish Government and the wider public sector to account.

1. Do you agree with the vision?

- **Yes**
- No
- Don't know

Please explain your answer provide further information

N/A

2. Do you agree with the objectives?

- **Yes**
- No
- Don't know

Please explain your answer or provide further information

Whilst we agree with the objectives in broad terms, we would query whether adding more obligations on public authorities to create 'mainstreaming plans' is a good use of time and resources.

We would favour assisting public authorities to comply with their existing duties, in particular in relation to the Public Sector Equality Duty ("PSED"),

rather than creating another layer of compliance that is not necessarily meaningful in terms of addressing inequality in practice.

We suggest that an additional objective be added: To support communities in becoming diverse, inclusive, empowered, resilient, and safe. This objective will align with the other proposed objectives concerning policy decisions, establishing leadership, and embedding transparency.

2 Strengthening leadership

The aim of this key driver is to support Scottish Government and public sector leaders to:

- motivate, guide and challenge others
- increase their own knowledge and understanding, while supporting others to do the same, to ensure equality and human rights is a fundamental aspect of policy making and operational delivery
- take a leadership role to ensure equality and human rights are fundamental across policy and delivery, directing focus, attention and resources to protect them
- proactively assessing progress in mainstreaming and ultimately advance equality and human rights across the board

This includes leadership at all levels – Political, Scottish Government executive and across public sector.

3. Do you agree that strengthening leadership is a key driver for mainstreaming equality and human rights?

- **Yes**
- No
- Don't know

Please explain your answer or provide further information

Investment in leadership and skilled resources are essential to support the transformation of mainstreaming equalities.

4. Do you agree with the focus on different levels of leadership?

- **Yes**
- No
- Don't know

Please explain your answer or provide further information

We agree with the focus on different levels of leadership. Effective transformation towards mainstreaming equalities requires a multi-layered

approach to leadership. By engaging leaders at various levels, from senior executives to frontline managers, we ensure that the commitment to equality permeates the entire organisation. This layered leadership approach helps to drive the cultural change needed to embed equality into all aspects of public sector activities. [A RACI Matrix](#) should be integral to supporting the successful implementation of this strategy.

5. [Have we captured the core elements of strengthening leadership within the context of mainstreaming?](#)

- **Yes**
- No
- Don't know

Please explain your answer or provide further information

The strategy emphasises the importance of engaging leaders at various levels to ensure a multi-layered approach to leadership. This approach helps drive cultural change, ensuring equality is embedded in all aspects of public sector activities. Additionally, it highlights the need for improved understanding of discrimination, training on relevant acts, and the development of standard templates for impact assessments. This comprehensive strategy supports the long-term integration of equality and mainstreaming within the public sector.

6. [What actions would you recommend to ensure strengthening leadership as outlined above will contribute to mainstreaming?](#)

Please give us your views

We consider that it is extremely important to improve understanding within public authorities in relation to the meaning of discrimination under the Equality Act and an appreciation of an authority's duties under PSED, Fairer Scotland Duty ("FSD") and United Nations Convention on the Rights of the Child ("UNCRC").

We suggest that training on the Equality Act 2010, Human Rights Act 1998, the UNCRC and on when and how to conduct impact assessments should be included. We also suggest that developing a standard template that public authorities can adapt for the purpose of conducting impact assessments should be considered given the very many headings under which they are expected to impact assess.

It should be emphasised that the strategy is not introducing mainstreaming. Equality and mainstreaming have been integral to all public sector activities since the introduction of The Equality Act 2010 and the Fairer Scotland Duty (2018). These remain legislative requirements and are embedded across the wider public sector, as well as all areas of Local and National Government.

3 Developing accountability and transparency

Accountability and transparency are critical for ensuring good governance in Government and the wider public sector, with scrutiny being an essential element of this. Those who live in Scotland have the right to relevant information about policies that affect them in a format and structure that suits them. This includes legislative activities, policymaking, legal provisions, policy enforcement and performance, administrative budget and public expenditure. Scottish Government, and the wider public sector, must be accountable to the public, as well as stakeholders, for the way they have carried out their functions. This accountability must encompass scrutiny of performance on realising and protecting equality and human rights.

7. Do you agree accountability and transparency are a key driver for mainstreaming equality and human rights?

- Yes
- No
- Don't know

Please give reasons for your answer or provide further information

Accountability and transparency ensure that organisations and individuals are held responsible for their actions and decisions, which promotes trust and confidence among stakeholders. Transparency allows for open communication and access to information, which is essential for identifying and addressing inequalities and human rights issues. By fostering a culture of accountability and transparency, organisations can create an environment where equality and human rights are prioritised and protected.

8. Have we captured the core elements of accountability and transparency within the context of mainstreaming?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information

The strategy highlights the importance of holding organisations and individuals responsible for their actions and decisions, promoting trust and confidence among stakeholders, and ensuring open communication and access to information. By fostering a culture of accountability and transparency, the strategy demonstrates how these elements are crucial for identifying and addressing inequalities and protecting human rights.

9. What actions would you recommend to ensure greater accountability and transparency contributes to mainstreaming?

We would recommend that consideration is given to include a clear plan of all the legislative activities and policymaking for what the wider public sector is recommended to have in place. This will ensure greater accountability and transparency and would contribute to the delivery of equalities mainstreaming. We recommend including a comprehensive plan detailing all legislative activities and policymaking that the wider public sector should implement. This approach will enhance accountability and transparency, and contribute to the effective delivery of equality mainstreaming.

4 Ensuring effective regulatory and policy environment

The aim of this key driver is to create regulations and policies, and the tools to support policy development and creation, that meet the public sector equality duty and realise fundamental human rights for all the people of Scotland. This includes specific equality and human rights legislation and that other legislation properly takes account of equality/gender requirements. Create a cohesive legislative framework that specifically supports Scotland's ambition to be a global leader in equality and human rights.

10. Do you agree that ensuring an effective regulatory and policy environment is a key driver for mainstreaming equality and human rights?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information

While we agree that having an effective regulatory and policy environment is a driver, we suggest that providing sufficient funding and other resources to tackle the causes and consequences of inequality on the ground is more effective than monitoring the decision making of public authorities who are already dealing with pressurised budgets.

11. Have we captured the core elements of ensuring an effective regulatory and policy environment within the context of mainstreaming?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information

Assisting public authorities to comply with existing legislation should be considered rather than further regulation.

12. What actions would you recommend to ensure that an effective regulatory and policy environment will contribute to the achievement of mainstreaming?

Please give us your views

We consider that introducing improvements to PSED regime to make it less tick box and more meaningful is important. Reference to new training courses, guidance and dedicated team is long overdue given the under capacity in expertise in this area in public authorities, particularly in relation to impact assessment. IT solutions could also be considered as a smart way of developing an integrated impact assessment tool, rather than unwieldy forms which try to list protected characteristics, socioeconomic duty, human rights articles and UNCRC obligations and become meaningless documents as it becomes too difficult to apply them to individual policies or decisions. Too often we have seen screening documents that are used to screen policies out on a regular basis. Given that practically all policies or decisions will impact on people, there will always be some impact that falls within the scope of equality or human rights. Our preferred approach would be that you recommend that all policies and decisions are assessed, and an authority should be obliged to justify why such an assessment is not required. The principle of proportionality should then be applied to decide the level of assessment that is then carried out, but the default position should be that, as far as the PSED is concerned, an assessment to some extent will almost always be required.

5 Utilising evidence and experience

The aim of this key driver is to use robust evidence and experience to improve policy development. This will support innovation and adaptation, based on evidence, data and context at individual, organisational and service levels. It also means actively and meaningfully involving those directly impacted in the design and implementation of policy. This means effective engagement with marginalised communities.

13. Do you agree that using evidence and experience is a key driver for mainstreaming equality and human rights?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information

This supports the broad themes in 'Understanding equality data collection in the Scottish public sector' report on what works best as a starting point for enabling better use of evidence and data. The report's recognition of the importance of mainstreaming equality and its suggestion of a "go-to" place for organisations with less specific equality data collection expertise" are particularly important in relation to this proposed Strategy.

14. Have we captured the core elements of utilising evidence and experience within the context of mainstreaming?

- Yes
- **No**
- Don't know

Please give reasons for your answer or provide further information

The Equalities & Human Rights Mainstreaming Strategy consultation lacks detail to clarify what should be captured and definition of good practice, when utilising evidence and experience. The strategy and framework need to provide clear information and direction on required evidence and experience.

15. What actions would you recommend to ensure that utilising evidence and experience as outlined above will contribute to the achievement of mainstreaming?

We consider it essential that public authorities have guidance as to when and how to gather and engage with communities. Guidance would be welcome as to when to engage with communities and to what level and when full blown consultation is required. As mentioned in Q14, clear information and direction on what evidence and experience is required to achieve consistency in mainstreaming of activities is very much needed. This will provide a 'once for Scotland' directive/approach for the wider public sector to develop robust equality policies based on recognised evidence and lived experience.

Enhancing capability and culture

The aim of this key driver is to influence the culture of the Scottish Government and other public bodies to make consideration of equality and human rights part of standard thinking and behaviour i.e. not requiring direct input from equality / human-rights specific staff. This includes ensuring all staff have the required level of knowledge and skills and that there are highly competent specialist staff as required. Simultaneously developing understanding amongst rights holders – particularly those whose rights are most at risk.

16. Do you agree that enhancing capability and culture is a key driver for mainstreaming equality and human rights?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information

We consider that enhancing capability and capacity are probably the most important part of mainstreaming equality and human rights. We have observed a lack of a basic understanding of the meaning of these concepts at all levels in public authorities. It is important to acknowledge that this approach aligns with the efforts the public sector has been striving to implement and deliver since the introduction of the Equality Act in 2010.

17. Have we captured the core elements of enhancing capability and culture within the context of mainstreaming?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information

This ongoing process should include clear guidance and involve subject matter experts to establish an equality culture. The goal is to standardise and integrate this into business-as-usual (BAU).

18. What actions would you recommend to ensure that enhancing capability and culture as outlined above will contribute to the achievement of mainstreaming?

As suggested above we suggest that provide training on the meaning of discrimination should be part of improving capability. This should include practical examples and how that should be captured in an Equality Impact Assessment (“EQIA”).

19. Do you agree that this Strategy will provide a foundation to influence a culture of mainstreaming equality and human rights within Scottish Government and the wider public sector?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information

Its success will depend significantly on the commitment to continual engagement, feedback, and iterative improvement processes. Integrating equality and human rights into all aspects of decision-making, policy formation, and resource allocation is crucial. This requires not only initial training and guidance but also sustained efforts to embed these principles into the organisational fabric.

Recognition should be given to both existing and new policies, and utilise subject matter experts (where feasible) to lead the implementation of an Equality culture, ensuring it is thoroughly integrated throughout the organisation.

7 Improving capacity

The aim of this key driver is to support the Scottish Government and wider public sector to allocate the resources and budget to fully integrate equality and human rights into everything they do. Fundamental to this is ensuring equality and human rights is built into resource allocation and budgeting decisions as a critical factor in decision making. This includes funding for third-sector organisations to create external capacity.

20. Do you agree that improving capacity is a key driver for mainstreaming equality and human rights?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information.

Allocating resources and budgets specifically for integrating equality and human rights ensures these principles are regarded as critical factors in decision-making processes. This also includes funding third-sector organisations to enhance external capacity, which is essential for a comprehensive approach. By embedding equality and human rights into resource allocation and budgeting decisions, the Scottish Government and

wider public sector can ensure these principles are not only a priority but are effectively implemented throughout their operations.

21. Have we captured the core elements of improving capacity within the context of mainstreaming?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information.

By emphasising the importance of allocating resources and budgets specifically for integrating equality and human rights, you ensure that these principles are regarded as critical factors in decision-making processes. This approach includes funding third-sector organisations to enhance external capacity, which is essential for a comprehensive strategy.

Moreover, embedding equality and human rights into resource allocation and budgeting decisions allows the Scottish Government and the wider public sector to not only prioritise these principles but also implement them effectively throughout their operations. The acknowledgment of core elements such as training, practical guidance for impact assessment, and the need for resources within public authorities highlights a commitment to mainstreaming equality and human rights comprehensively.

22. What actions would you recommend to ensure that improving capacity will contribute to the achievement of mainstreaming?

As above, there is a significant lack of understanding of the basic concepts of discrimination under the Equality Act and this translates into an inability to properly impact assess. More training is needed in this area. We refer to our comments regarding improvement to EQIA templates and practice. There is a distinct lack of resources within public authorities in order to put effective EQIA into action.

To ensure that improving capacity will meaningfully contribute to the achievement of mainstreaming equality and human rights, several targeted actions are necessary. Firstly, comprehensive and specialised training programs should be developed and implemented for staff across all public authorities. This training should focus on deepening the understanding of the Equality Act, discrimination concepts, and the practical application of Equality and Human Rights Impact Assessments (EQIAs).

Secondly, enhancing and standardising EQIA templates and practices across public bodies is crucial. There should also be practical guidance for public authorities as to how to apply a thorough and proportionate approach to impact assessment and how to manage assessing for an extremely wide range of

factors i.e. all of the protected characteristics and the 3 heads of the PSED, the FSD, the UNCRC and a general human rights assessment involving the articles of the European Convention on Human Rights.

In addition, the allocation of dedicated resources to support these initiatives is essential. This includes not only financial investments but also the provision of expert support and practical tools to help public authorities effectively integrate and apply equality and human rights considerations in their decision-making processes.

Lastly, fostering a culture of accountability and continuous improvement is vital. Regular reviews, audits, and updates to the EQIA processes, alongside active engagement with third-sector organisations and stakeholders, will ensure that the public sector remains responsive to evolving needs and maintains high standards of equality and human rights practices.

8 How will the strategy support real change?

We recognise that although a strategy provides direction it does not achieve change on its own. Therefore, alongside the strategy we propose publishing two key supporting resources to drive change:

- **an action plan** - This will articulate actions Scottish Government are taking to mainstream equality and human rights. This will include:
 - collating the wide range of cross-cutting mainstreaming actions that have already been committed to elsewhere such as in responses to the recommendations of the or [Scottish Government's Mainstreaming Report published in April 2023](#). We recognise that current commitments towards equality and human rights mainstreaming are not available in a single place and feedback from stakeholders to date highlighted these as include general statements rather than specific time bound actions
 - we believe collating and grouping these wide-ranging actions in a single place will increase transparency. For example, commitments to developing competence have been made in response to [recommendations from the NACWG](#), [response to recommendations from the Equality and Human Rights Budget Advisory group](#) and in [Mainstreaming Report 2023](#)
 - additional actions will subsequently be identified as result of this consultation and associated engagement
 - it will focus on cross-cutting actions against the key themes
 - this action plan would be updated annually to add further actions and provide statements of progress

- these statements of progress will directly link to and form part of required statutory reporting
- **a toolkit** to support the public sector, including Scottish Government, to deliver mainstreaming in practice. The toolkit will provide examples of the steps and provide practical tools that an organisation can take to mainstream equality and human rights. It will provide self-diagnostic tools, guidance, best practice examples and training materials. This will supplement the technical guidance for specific legislation. We envision the toolkit will:
 - be web-based and accessible to all providing practical and pragmatic support
 - be regularly maintained and updated
 - as well as hosting specific tools, it will provide a single portal to signpost to other resources: such as characteristic specific toolkits and technical guidance.

This will provide:

- Self-diagnostic tools
- Guidance and best practice examples
- Training materials aimed at both specialists and wider staff
- A single portal to signpost to other resources, such as technical guidance and characteristic specific development materials.

23. Do you think the proposed approach to a collated Action Plan will drive change?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information.

The development of a collated action plan should not be limited to the Scottish Government; rather, it should encompass considerations and implementations for the entire public sector. A co-design approach should be taken to improve user experience and sustainability, and we suggest that stakeholder readiness be tested before reaching this point. Any collated action plan should include existing policies and legislation that are currently in place within the public sector. We recommend that the action plan should incorporate a timeline or plan on a page with key milestones outlining future considerations and actions.

24. Do you think there is a need for a cross public sector toolkit to support mainstreaming of Equality and Human Rights?

- **Yes**
- No
- Don't know

Please give reasons for your answer or provide further information.

A cross sector toolkit would support a consistent approach and promote best practices. It will also assist with capacity and resource management, providing a central point for information, tools, and documents. It would maximise value and impact through stronger governance and collaboration with wider partners/stakeholders in the public sector.

25. What practical steps would you include to make the toolkit an effective resource?

Please give us your views

As suggested above, any toolkit should include guidance and templates regarding integrated impact assessment in order to assist authorities to assess against a multitude of factors. It should include comprehensive guidance and user-friendly templates for conducting integrated impact assessments. This will help authorities consider multiple factors in their evaluations. The toolkit could support a database for equality data, building on the initial 2023-25 Equality Evidence strategy.

The toolkit could also feature case studies and best practice examples to illustrate successful implementation of equality and human rights principles. Additionally, it should offer training modules and workshops to build capacity and understanding among public sector employees.

9 Reporting

There is extensive existing and proposed statutory reporting. So we do not propose that the Strategy will have separate stand-alone reporting requirements beyond the action plan updates.

26. What are your views on additional reporting requirements?

- **Additional stand-alone reporting requirements should not be created**
- Additional stand-alone reporting requirements should be created
- Don't know

Please give reasons for your answer or provide more information.

We do not believe this can improve mainstreaming in reality. Completing stand-alone reporting may become an end in itself and does not lead to meaningful change for the target groups. This would also add to the regulatory burden where there are already too few resources. We consider that resources are better spent on directly assisting the disadvantaged groups the strategy seeks to help.

While we would not support the creation of additional stand-alone reporting requirements, reflecting existing reporting requirements and developing a schedule of reporting could be included in the strategy, extending beyond Scottish Government reports. This could cover existing legislative needs for the wider public sector, aligned with existing policies. Including a timeline or plan would aid in structuring and planning reports, as well as identifying capacity and resources when needed.

10 Overall Reflections

In summary,

We need to be able to demonstrate that we have turned our equality and human rights ambitions into reality.

The Scottish Government acknowledges this need and we know that truly embedding equality and human rights into the work of the Scottish Government and wider public sector is the only way to address persistent and systemic inequality.

We are therefore developing:

- a mainstreaming Strategy to lay out our vision and create a clear framework to structure activity
- a mainstreaming toolkit to provide practical support and guidance
- a publicly shared and rolling action plan to improve transparency and accountability

It is the detail of these mechanisms that we describe in this consultation and seek your views on.

27. [To what extent do the drivers capture the full range of activity required to mainstream equality and human rights?](#)

- Captures the full range
- **Captures most of the range**
- Captures some of the range
- Does not capture any of the range

Please give reasons for your answer or provide more information.

While the proposed key drivers appear robust and suitable for developing the Strategy and Framework, it is important to consider other necessary key drivers, such as Governance of Policies and Legislation. This would ensure that appropriate policies and legislation are implemented across both the Scottish Government and the Wider Public Sector, aligning with other drivers like Accountability, Capacity, Capability, and Transparency.

28. Please provide any further information that you think would be useful, which is not already covered in your previous responses.

In addition to the key drivers mentioned, it is critical to address the intersectionality of equality and human rights issues. This approach ensures that the unique challenges faced by diverse groups are adequately considered and addressed. Furthermore, continuous monitoring and evaluation mechanisms should be established to assess the effectiveness of the implemented strategies and policies. Engaging with stakeholders, including marginalized communities, on an ongoing basis will provide valuable insights and foster a more inclusive and responsive framework.

Finally, investing in education and awareness programs will enhance understanding and commitment to equality and human rights at all levels of society. This holistic approach will not only support the integration of these principles into everyday practices but also drive sustainable progress towards a more equitable and just society.

For further information, please contact:

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