

Review of the Operation of Public Sector Equality Duty (PSED) in Scotland Consultation Response by South East Scotland Transport Partnership

Introduction:

As you may be aware, as per commitments by Scottish Ministers work has been progressing on the review of the effectiveness of the PSED regime in Scotland. Work to date has included intensive programme of engagement with equality stakeholders and duty bearers to understand which aspects of the PSED were working well, and where improvement was required. Whilst substantive work was reduced in order to respond to the pandemic thinking continued and following a meeting with Ministers the decision was taken to recommence the review via a two-stage process.

A stage one report, setting out the learning from the engagement programme, reflection of equality mainstreaming over COVID-19 pandemic and key improvement proposals was [published on 24 March 2021](#).

Stage two – this stage – will now involve a programme of further engagement and consultation to progress the areas of focus identified in the stage one report. This questionnaire is a key part of this process and will provide an opportunity for you as duty bearers to shape the way ahead. We would therefore invite you to consider the proposals and questions that follow and to provide your answers by Friday 20th August.

Thank you for your support to the review.

IMPROVEMENT PROPOSAL 1	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Making better use of evidence and data	<p>Links across many of the regulations including:</p> <ul style="list-style-type: none"> - Regulation 5 – assessing and reviewing policy and practices; - Regulation 6 – gather and use employee information. <p>Key part of mainstreaming strategy and a Scottish Government equality outcome.</p>	<p>The Scottish Government in conjunction with key stakeholders are 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. This programme will run for the next 18 months, to late 2022. We intend to use the Equality Data Improvement Programme to drive and co-ordinate improvement in this area.</p>

Questions:

- 1.1 In your view, which elements of the proposed programme are most important for driving improvement?
- 1.2 Are you aware of other public sector equality networks that this programme could link with?
- 1.3 Are there any additional actions, outwith the EDIP, that you believe would improve the quality of and use of evidence and data?

Answers:

SEStran has no comment on the specific questions but welcomes the implementation of the EDIP.

IMPROVEMENT PROPOSAL 2	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Strengthening participatory policy making: hearing lived experience	<p>Links across many of the regulations including:</p> <ul style="list-style-type: none"> - Regulation 4 – publish equality outcomes and report progress; - Regulation 5 – assessing and reviewing policy and practices. <p>Key part of mainstreaming strategy and a Scottish Government equality outcome.</p>	<p>Regulation 4 (setting equality outcomes) states that listed bodies “must take reasonable steps to involve persons who share a relevant protected characteristic and any person who appears to the authority to represent the interests of those persons.” Regulation 5 (assessing and reviewing policies and practices) states: “In making the assessment, a listed authority must consider relevant evidence relating to persons who share a relevant protected characteristic (including any received from those persons)”.</p>

Questions:

- 2.1 How can the SSD regime be used to strengthen participatory policy making and ensure lived experience is central within the policy making process?
- 2.2 Are these current requirements are sufficient to ensure evidence of lived experience is taken into account in developing equality outcomes and/or impact assessments?
- 2.3 If not, what additional steps could achieve this intention?

Answers:

The current SSD regime makes it clear the level and type of engagement that is required. Smaller organisation will require more resourcing and support in order to obtain broad enough input into new policies and practices.

IMPROVEMENT PROPOSAL 3	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Improving the links between equality and human rights frameworks	Key aspect of equality and human rights mainstreaming strategy	The Scottish Government recognises the strong links between current equality and human rights frameworks and is committed to building a more integrated approach towards embedding equality and human rights in policy and delivering for the people of Scotland. While this is outwith the scope of the SSD regime, we will be using the equality and human rights mainstreaming strategy to drive improvement in this area.

Questions:

- 3.1** We would welcome your views on how the links between equality and human rights frameworks can be better understood across the public sector in order to support public bodies to better integrate equality and human rights into their business.
- 3.2** We would welcome your view on how the intended new statutory framework for human rights can align with and fully support delivery of the public sector equality duty?

Answers:

The new statutory framework for human rights should be implemented in such a way as to make it closely aligned with the equality duty such that organisations of whatever size can meaningfully engage with it.

IMPROVEMENT PROPOSAL 4	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Strengthening leadership and resourcing	Key aspect of equality and human rights mainstreaming strategy	The Scottish Government recognises the importance to strengthen leadership and adequate resourcing on equality across the public sector. While no regulatory changes are envisaged for this improvement proposal, we would welcome views on how this could be better achieved.

Questions:

4.1 Do you agree with the position that this is best achieved through routes other than regulatory change?

4.2 If so, then what do you feel is needed?

Answers:

Leadership needs to come from the Scottish Government and resources should be targeted at strengthening this aspect and supporting organisations to deliver the national priorities.

IMPROVEMENT PROPOSAL 5	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Reducing bureaucracy	Links across many of the regulations, but mainly relevant including: <ul style="list-style-type: none"> - Regulation 3 - report progress on mainstreaming the equality duty; - Regulation 4 - publish equality outcomes and report progress. 	The Scottish Government is keen to consider ways in which to enhance the regime in ways that lessen burden, and support public authorities to get the best possible value out of their engagement with the regime in a way that prioritises delivering meaningful outcomes and impacts rather than processes.
<p>Questions:</p> <p>5.1 What do you feel drives the feeling of the bureaucracy of the SSD regime?</p> <p>5.2 What would be the best method of reducing the bureaucracy of the regime while ensuring the regime still prioritises meaningful outcomes and impacts?</p>		
<p>Answers:</p> <p>Putting in place resource to allow straight forward but meaningful data collection without the need for cumbersome reporting mechanisms that do not fit easily with established governance cycles.</p>		

IMPROVEMENT PROPOSAL 6	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Increasing clarity re: coverage, proportionality, and process	Relevant across most regulations.	One of the aims of the Scottish Government's review of the operation of the PSED is to increase the clarity of the SSD regime, particularly around coverage, proportionality and process.
<p>Questions:</p> <p>6.1 How could the clarity of the regime be improved?</p> <p>6.2 How could the proportionality of the regime be regime be improved?</p>		
<p>Answers:</p> <ul style="list-style-type: none"> • The use plain english in documents • Provide reporting templates • Provide relevant case studies covering all sizes of organisations <p>Less onerous reporting for small organisations using sampling rather than regular reporting. (This exercise itself, is onerous for our organisation as it requires bringing together a variety of staff from different functions. 4 out of our 10 staff have been required to complete and fully consider the responses.)</p>		
<p>Questions:</p> <p>6.3 How can smaller listed authorities be supported to meet the duties under the SSDs?</p> <p>6.4 How could the process for adding new bodies to the Regulations be improved?</p> <p>6.5 Would consolidating all previous sets of regulations into one new set improve the clarity of the regime?</p>		
<p>Answers:</p> <p>See above in relation to proportionality.</p>		

IMPROVEMENT PROPOSAL 7	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Improving support and capacity building & improving the understanding of and approach to mainstreaming	Relevant across most regulations	The Scottish Government is keen to work with stakeholders improve support and capacity building under the PSED regime, including improving the understanding of and approach to mainstreaming.

Questions:

- 7.1 How could the guidance (and access to guidance) on SSD compliance be improved? What would you like to see in any new or revised guidance?
- 7.2 In addition to written guidance what approaches would you consider effective to develop the skills, knowledge and practice of duty bearers?
- 7.3 How can revised guidance be best developed to ensure that it fully meets the needs of all parties?

Answers:

Any development in new guidance needs to set out how it applies to different sizes of organisations and include best practice examples.

IMPROVEMENT PROPOSAL 8	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Improving the cohesiveness of the regime	Relevant across most regulations	The SSD regime should be seen as a suite of interconnected duties which collectively help public authorities to better perform the PSED.
<p>Question:</p> <p>8.1 Can this be improved through mechanisms such as guidance or other means, or do the regulations need strengthened in this respect?</p>		
<p>Answer:</p> <p>Strengthening regulations will put an even greater burden on smaller organisations.</p> <p>The role of the Scottish Government in providing advice and support as well as collecting monitoring data on behalf of small organisations, needs to be resourced and fulfilled.</p>		

IMPROVEMENT PROPOSAL 9	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Consider new approaches to outcome setting, including the setting of shared outcomes	Regulation 4 - publish equality outcomes and report progress.	n/a
<p>Question:</p> <p>9.1 Do you support the principle of shared outcomes? In your view, how they would be set and implemented; and how could an improved regulatory regime support this?</p>		
<p>Answer:</p> <p>The extent of shared outcomes and the level at which they're shared could have a disproportionate effect on small organisations.</p>		

IMPROVEMENT PROPOSAL 10	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Support the gathering, use and reporting of a wider range of employee data	<p>Regulation 6 – Duty to gather and use employee information</p> <p>Regulation 7 – Duty to publish gender pay gap information</p> <p>Regulation 8 – Duty to publish statements on equal pay etc.</p> <p>New regulations also required.</p>	In their manifesto, the SNP committed to expanding “the specific duties that require a listed public authority to publish gender pay gap information to disability and ethnicity reporting and ensure these are included within equal pay statements.
<p>Questions:</p> <p>10.1 Could the regulation on “gathering and using” employee information be strengthened?</p> <p>10.2 Is there anything we have learned from practice and compliance with the existing regulation on gender pay gap reporting that we can apply to proposed new duties on ethnicity and disability pay gap reporting?</p> <p>10.3 How can we ensure that pay gap reporting is carried out in a consistent way across the public sector, so that different methods are not used and reports are easier to compare?</p>		
<p>Answers:</p> <p>As a small organisation, we don’t currently have a duty to report and to change the regulations would place a disproportionate burden on us.</p>		

IMPROVEMENT PROPOSAL 11	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
More effectively leverage purchasing power in procurement processes	Regulation 9 - Duty to consider award criteria and conditions in relation to public procurement	n/a
<p>Question:</p> <p>11.1 How could Regulation 9 be better aligned with the procurement process to advance equality at every stage of the procurement process, including the use of award criteria and tender specifications, to encourage employers to focus on increasing opportunities for people with one or more of the protected characteristics?</p>		
<p>Answer:</p> <p>We currently procure through Public Contracts Scotland which requires all consultancies on its framework to comply with PCS regulations and guidelines.</p>		

IMPROVEMENT PROPOSAL 12	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Enhance the accessibility of PSED related publications, and consider the scope of the SSDs to advance progress on inclusive communication more generally	New regulation required and also relevant to Regulation 10 - Duty to publish in a manner that is accessible, etc.	In their manifesto, the SNP committed to using the SSD regime to “place a duty on those public bodies that communicate with the public to ensure they have accessible, inclusive communications” and developing “national guidance for public bodies on inclusive communication”.
<p>Questions:</p> <p>12.1 What would you like to see this duty achieve?</p> <p>12.2 What support is required for public bodies to improve practice on inclusive communication</p> <p>12.3 What are the barriers to improving inclusive communication within the public sector?</p>		
<p>Answers:</p> <p>There should be a consultation on the national guidance to ensure there is consistency of approach at all levels whilst remaining proportionate, especially in the case of smaller organisations as for these organisations it could prove to be a barrier.</p>		

IMPROVEMENT PROPOSAL 13	RELEVANT TO WHICH REGULATION(S) AND/OR WORK STRAND	INFORMATION
Explore how best to use the duties relating to Scottish Ministers	<p>Regulation 6A - Use of member information</p> <p>Regulation 11 - Duty to consider other matters</p> <p>Regulation 12 - Duty of the Scottish Ministers to publish proposals to enable better performance</p>	n/a
<p>Question:</p> <p>13.1 How could the duties under regulations 6A, 11 and 12 be strengthened and/or improved?</p>		
<p>Answer:</p> <p>See previous comments.</p>		

END OF QUESTIONS