



# Engender Response to the Equality, Human Rights and Civil Justice Committee call for evidence on the Public Sector Equality Duty

February 2025

## 1. INTRODUCTION

The PSED is currently not fit for purpose in bringing equality concerns to the heart of public sector work. Nor are public bodies adequately supported to improve outcomes for people with protected characteristics and to fulfil their obligations under the law. Alongside sector colleagues we have advocated for reform for many years. **We are calling on the Scottish Government to revisit proposals on PSED reform, to expand the duties so that outcomes for people with protected characteristics are improved.**

In 2022, we joined with twenty-five other equalities organisations to respond to the Scottish Government consultation.<sup>1</sup> We set out our shared concerns that proposals were not ambitious enough to create badly needed change and called for co-production of the revised duties with equality experts. Engender submitted a detailed response<sup>2</sup> and developed model draft regulations, with Professor Nicole Busby, an expert in equality law.<sup>3</sup> These include an overhaul of equality impact assessment and the mainstreaming duty, and new duties on intersectional data and gender budget analysis.

Since then, Scottish Government's proposals have been scaled back significantly. In parallel, the cost of living crisis, the pandemic and austerity have all impacted deeply on women's inequality. These impacts are particularly acute for women who experience intersecting discrimination, including women of colour and disabled women. Likewise, the rights of

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<sup>1</sup> Engender (2022) Joint response to the Scottish Government consultation on PSED. Available at: [https://www.engender.org.uk/content/publications/1649685255\\_PSED-review-equality-stakeholders-common-concerns-April-2022.pdf](https://www.engender.org.uk/content/publications/1649685255_PSED-review-equality-stakeholders-common-concerns-April-2022.pdf)

<sup>2</sup> Engender (2022) Engender response to the Scottish Government's consultation on the operation of the Public Sector Equality Duty in Scotland. Available at: <https://www.engender.org.uk/content/publications/Engender-response-to-PSED-consultation.pdf>

<sup>3</sup> Engender (2022) Available at: Draft Regulations for the Scottish Specific Duties of the Public Sector Equality Act. Available at: <https://www.engender.org.uk/content/publications/engender-draft-regulations-table-of-changes.pdf>

women, and marginalised women in particular, are at risk from the rise of the far right in Scotland, across the UK and globally. **The need for improved equality mainstreaming is therefore urgent.**

At the same time, the Human Rights Bill proposes a further ‘duty’ regime on public bodies, adding additional complexity into a system that is not working well. This makes the need to revisit the weaknesses within PSED, to learn from them and take corrective action, all the more urgent. This is critical not only for PSED, but for the future implementation and impact of any Human Rights Bill.

## 2. CONSULTATION QUESTIONS

### Question 1

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

There is little evidence to show that public authorities understand the terms and aims of the PSED. Broadly speaking, compliance with the Scottish Specific Duties is poor.<sup>4</sup> This means that understanding of the terms of the PSED is weak, or else that listed authorities do understand their obligations under equalities law but choose not to fulfil them. Indeed, PSED improvement work from Scottish Government must better account for the fact that there are pockets of active resistance to equality mainstreaming throughout the public sector.<sup>5</sup> Without a programme of capacity-building to shift understanding and acceptance of equalities work as central to the functioning of an effective public sector, duties under PSED will always be seen as a bureaucratic, box-ticking exercise by some.

Listed authorities’ responses to Scottish Government consultation on PSED show that many do not understand its aims. There has been a strong emphasis throughout, from both Scottish Government and public bodies, on ‘reducing bureaucracy’ and the need to address concerns that the PSED is too burdensome. This reflects a widespread mindset regarding equality, which runs counter to the aims of PSED, throughout the public sector. This idea that equality is a burdensome additional workstream, rather than a core element of an organisation’s work that merits investment of resources and capacity, is precisely what needs to be addressed if the SSDs are to drive better outcomes for people with protected characteristics in Scotland.

For example, reducing reporting requirements, as initially proposed by Scottish Government and advocated for by many listed authorities, would undermine urgently needed capacity

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<sup>4</sup> Close the Gap (2015) Making progress? An assessment of public sector employer performance of the public sector equality duty. Available at: <https://www.closesthegap.org.uk/content/resources/Making-Progress---An-assessment-of-employers-compliance-with-PSED-November-2015.pdf>

<sup>5</sup> Research at EU level demonstrates resistance to mainstreaming. Cavaghan (2017) Making gender equality happen: Knowledge, change and resistance in EU gender mainstreaming

and competence building on equality. It would intensify the last-minute scramble to produce reports that we already see. Conversely, regular reporting on activity that is sustained and embedded in the day-to-day business of an organisation should not be onerous if the right structures and support are in place.

The aims of the PSED are to bring equality considerations to the heart of public policy and programme design, in order to improve outcomes for people with protected characteristics. Instead of embracing and working towards these outcomes, instead we see listed public authorities routinely working to ensure the bare minimum on equalities.

## Question 2

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

The PSED is categorically failing to deliver on its aims to improve outcomes for people with protected characteristics.

EHRC analysis of the Scottish Specific Duties shows that:

“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”.<sup>6</sup>

This poor performance of the PSED rests heavily on public bodies’ focus on producing reports at the expense of undertaking substantive mainstreaming work on which to report. The ‘mainstreaming duty’ itself (regulation 3) is ‘to **report progress** on mainstreaming the equality duty’. Engender advocates for this regulation to be amended so that the duty is ‘to **mainstream** the equality duty’ instead.<sup>7</sup>

Given the poor performance of PSED within a statutory framework, it is extremely optimistic to hope that non-regulatory changes and softer accompanying measures to create an enabling environment will result in significant improvements for disadvantaged people in Scotland’s communities.

In 2022, we published our own draft regulations, developed with Professor Nicole Busby, an expert in equalities and human rights law at Glasgow University. These seek to optimise the regulations to see improvements for women and others with protected characteristics. Key elements include:

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<sup>6</sup> EHRC (2018) Effectiveness of the PSED specific duties in Scotland. Available at: <https://www.equalityhumanrights.com/sites/default/files/2022/our-work-effectiveness-of-psed-specific-duties-scotland-2018.pdf>

<sup>7</sup> Engender (2022) Engender response to the Scottish Government’s consultation on the operation of the Public Sector Equality Duty in Scotland. Available at: <https://www.engender.org.uk/content/publications/Engender-response-to-PSED-consultation.pdf>

- A strengthened mainstreaming duty to focus on embedding equality instead of reporting
- Broad support for Scottish Government's (previously) proposed strategic plan, but requirements regarding process and content to be made clear
- Annual reporting against equality outcomes and other activities to meet the duties in the strategic plan, strong opposition to the (previous) proposal for one report every four years
- Requirement to consult people with lived experience and equality experts on the development of equality outcome setting (and any strategic plan)
- Substantial revision of equality impact assessment (the duty to assess and review policy and practice) in terms of timing, steps taken, data, outcomes and publication
- National equality outcomes set by Ministers that must be considered by listed authorities in their individual outcome setting
- Empowerment of Ministers to direct listed authorities to consider specific issues where they have failed to meet the duties
- A strengthened procurement duty with a set of prescribed steps, an equality statement and publishing requirements
- A new duty on intersectional, sex-disaggregated and gender-sensitive data, as recommended by the National Advisory Council on Women and Girls
- A new duty on intersectional gender budget analysis, as recommended by the National Advisory Council on Women and Girls
- A new duty on capacity building resourced by Scottish Ministers
- A new duty on prevention of workplace sexual harassment

For full details please see:

Engender's consultation response on PSED

<https://www.engender.org.uk/content/publications/Engender-response-to-PSED-consultation.pdf>

Engender's model draft PSED regulations

<https://www.engender.org.uk/content/publications/engender-draft-regulations-table-of-changes.pdf>

### Question 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?**

Current proposals can only have very limited impact on embedding equalities and improving outcomes for people with protected characteristics.

In 2022, twenty-six equalities organisations made a joint submission to the Scottish Government's consultation.<sup>8</sup> We heavily critiqued Scottish Government's proposals for their lack of ambition and called for a revised set of duties to be co-produced with equalities experts, to strengthen proposals with a focus on outcomes for people with protected characteristics.

The submission states that:

“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 [...] The duties currently in place have not resulted in notable progress for people with protected characteristics and therefore require fundamental revision.”

The Scottish Government has since **scaled back significantly** on its initial proposals. The reason given for this is lack of capacity. This is unacceptable. People with protected characteristics are in even greater need of prioritisation and support than when the review began. The cost of living crisis, threats to human rights from populism and the far right, ongoing impacts of the pandemic for marginalised groups and on services, failures of the new UK Government to rectify egregious austerity measures, fiscal crisis across the Scottish Government – all of these crises are further marginalising, impoverishing and endangering women and others with protected characteristics, particularly those who experience intersecting forms of marginalisation. These include disabled women, BME women (including migrant women) and trans women.

The PSED is Scotland's key mechanism for mainstreaming equality and for leveraging better outcomes for many of the most marginalised groups in Scotland. There is huge potential for reform that would better achieve its aims, however strategic leadership is sorely lacking and current proposals consequently fall far short. The promised next phase of work must recognise and act on this potential for real change, and deliver substantial revisions to the system.

It is important to recognise that various other mainstreaming approaches are being pursued in parallel by the Scottish Government. PSED reform is all the more urgent given Scottish

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<sup>8</sup> Engender (2022) Joint response to the Scottish Government consultation on PSED. Available at: [https://www.engender.org.uk/content/publications/1649685255\\_PSED-review-equality-stakeholders-common-concerns-April-2022.pdf](https://www.engender.org.uk/content/publications/1649685255_PSED-review-equality-stakeholders-common-concerns-April-2022.pdf)

Government proposals for a new set of duties within the Human Rights Bill. We are concerned that in the absence of any meaningful reflection exercise or corrective action on the effective implementation of PSED, the Human Rights Bill is likely set to replicate the same weaknesses.<sup>9</sup>

**Without action on PSED, there is a real risk that the Human Rights Bill will simply add greater complexity to a system of duties that is already failing to deliver on its aims.**

Policy coherence is also vital across related Scottish Government frameworks, under review or development, including the National Performance Framework and the mainstreaming strategy. In our response to the recent consultation on an Equality and Human Rights Mainstreaming Strategy, we set out concerns regarding a lack of integration across parallel systems that do not speak to each other and have failed to inform one another.<sup>10</sup>

#### Question 4

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

We do not have expertise in inclusive communication and urge the Committee to seek views from disabled people's organisations (DPOs). Many DPOs are currently 'fire-fighting' due to funding and capacity pressures, as the realities of the pandemic, cost of living crisis and ongoing austerity continue to have devastating impacts on their communities. We therefore urge Committee to reach out to gather information from DPOs and disabled people in ways that may work for them if needed.

It is also vital that any new approach to embedding inclusive information is adequately strong in terms of intersectionality. Disabled women and other multiply-marginalised groups of disabled people will have specific communication needs, and information and capacity building on this should be built into the system.

#### Question 5

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

We are extremely concerned that the PSED is underregulated in Scotland and that compliance with PSED goes unenforced. We urge the Scottish Government to be creative in exploring how this can be addressed.

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<sup>9</sup> Engender (2023) Response to the Scottish Government's consultation on A Human Rights Bill for Scotland. Available at: <https://www.engender.org.uk/resources/Engender-response-to-the-SG-consultation-on-A-Human-Rights-Bill-for-Scotland.pdf>

<sup>10</sup> Engender (2025) Engender response to the Scottish Government consultation on the equality and human rights mainstreaming strategy.

Accountability mechanisms are crucial to effective gender mainstreaming. However, significant challenges regarding scrutiny, compliance and accountability are widespread. Academic literature on gender mainstreaming indicates that ‘soft accountability’ measures, including the lack of penalties, have played a significant role in the limited impact of mainstreaming policies to date.<sup>11</sup>

In the case of PSED, it appears that even legal requirements are insufficient to drive action where there are no significant consequences for non-compliance. Despite successive assessments of PSED that highlight poor standards, public bodies are not held accountable. This has contributed to complacency and the steady deterioration of quality in PSED reporting, with an increasing number of public bodies simply failing to produce mainstreaming reports, never mind demonstrating actionable progress.<sup>12</sup>

In theory, Scotland’s existing equalities legislation creates a landscape in which accountability for PSED is relatively unambiguous and compliance action is possible. However, the situation has been compounded by an underfunded regulator, the Equality and Human Rights Commission (EHRC). The EHRC budget for 2023 -2024 was £17.9m,<sup>13</sup> representing an 85% cut in funding since the organisation was established in 2007 with an annual budget of £70m.<sup>14</sup>

This lack of funding has prevented the EHRC from undertaking sustained compliance proceedings and from delivering the level of resource-intensive work that is necessary to support public bodies in their obligations. The scope for enforcement action is consequently far too narrow, and as such the main avenue for challenge has instead become judicial review instigated by individuals.<sup>15</sup> The Commission is not accountable to the Scottish Parliament or the Scottish Government, but to UK Government and the Westminster Parliament. It is at Westminster and Whitehall that the EHRC’s budget, strategy and work plan are agreed.

Finally, reform of the duties should lead to a set of requirements that are both more effective and more enforceable than the current regulations. For instance, a more standardised approach to reporting, which is supported by clear statutory guidance, would facilitate scrutiny and accountability.

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<sup>11</sup> Sophie Jacquot (2010) ‘The paradox of gender mainstreaming: unexpected effects of new modes of governance in the gender equality domain’ West European Politics Volume 33 Issue 1. Available at: <https://doi.org/10.1080/01402380903354163>.

<sup>12</sup> Close the Gap (unpublished) Internal PSED assessment 2017

<sup>13</sup> EHRC (2024) EHRC annual report and accounts 2023 to 2024. Available at: <https://www.gov.uk/government/publications/equality-and-human-rights-commission-annual-report-and-accounts-2023-to-2024/ehrc-annual-report-and-accounts-2023-to-2024-html>

<sup>14</sup> Adjusting for inflation, £70m in 2007 is equivalent to £115.9m in 2025

<sup>15</sup> Equality and Human Rights Commission (2018) Reviewing the aims and effectiveness of the public sector equality duty in Great Britain EHRC. Available at: <https://www.equalityhumanrights.com/sites/default/files/review-of-public-sector-equality-duty-psedeffectiveness.pdf>

## **FOR FURTHER INFORMATION**

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## **ABOUT US**

Engender is a leading feminist policy and advocacy organisation in Scotland, working to increase women's social, political and economic equality, enable women's rights, and make visible the impact of sexism on women and wider society. We work at Scottish, UK and international level to produce research, analysis, and recommendations for intersectional feminist legislation and programmes.