



**WHAT WORKS FOR WOMEN:
IMPROVING GENDER MAINSTREAMING
IN SCOTLAND**



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1. INTRODUCTION

Gender mainstreaming is a strategic approach to tackling systemic gender inequality. It was the central recommendation within the UN's 'Beijing Declaration and Platform for Action' in 1995,¹ in response to the limitations of policy approaches that are specifically aimed at women. Gender mainstreaming stems from the understanding that gender inequality is socially constructed, and that the sexism inherent to our institutional structures and decision-making must be actively targeted. It aims to ensure that issues around women's equality are incorporated into the design and delivery of all public sector activity, such that consideration of gender is routinely used to shape policy and practice throughout government and public bodies.

In response to the Platform for Action, gender mainstreaming was adopted in some form by over 100 legislatures, sparking optimism amongst feminist activists and advocates about the prospect of real change.² However, over 20 years later, analysis of gender mainstreaming in practice reveals mixed and largely disappointing results.³ These include a startling lack of intersectional models that take account of the discrimination women face as a result of race, disability and other inequalities.

This gloomy outlook is true of gender mainstreaming work in Scotland, and the UK more widely. On paper the Equality Act 2010 provides a legislative and comparatively strong basis for equality mainstreaming, with the public sector equality duty (PSED). However, progress to date has been extremely limited. A focus on critical analysis and developing renewed approaches is now sorely needed.

Scottish Government's escalated ambitions with regard to gender equality over the last five years have begun to bear real fruit in certain gendered policy areas.⁴ Gender equality has also been nominally integrated to varying degrees within high-level strategies, including the Government Economic Strategy, and in budgeting processes. None of these achievements, however, have been driven by Scotland's obligations to mainstream gender under the Equality Act. Now this agenda has reached a critical point, which requires radical and systematic action to address the sexism woven into the fabric of our society. To do so, the ongoing resistance to feminism and to the centring of gender equality that persists across much of the public sector must be tackled, in part by robust and properly resourced mainstreaming strategies. This is both a huge opportunity and a huge challenge for Scotland.

¹ Fourth World Conference on Women (1995) *Beijing Declaration and Platform For Action* United Nations. Available at: <https://www.un.org/womenwatch/daw/beijing/platform/>.

² Rosalind Cavaghan (2017) *Making gender equality happen: Knowledge, change and resistance in EU gender mainstreaming* Routledge.

³ Center for the Implementation of Public Policies for Equity and Growth (2018) *Gender mainstreaming: A strategic approach* CIPPEC. Available at: <https://www.cippec.org/publicacion/gender-mainstreaming-a-strategic-approach/>.

⁴ These include the Domestic Abuse (Scotland) Act 2018, and *A Fairer Scotland for Women: gender pay gap action plan*.

This paper reviews the history of legal mainstreaming duties in Scotland, implementation of its principal mainstreaming policy - the public sector equality duty - and international best practice in gender mainstreaming. It subsequently draws conclusions regarding reform of PSED and recommends new action on mainstreaming by Scottish Government.

Discussion of gender mainstreaming in this paper

Gender mainstreaming is a broad approach that aims to make gender equality a routine objective in policymaking. It brings a gendered perspective inside all activity of the state, including those of executive and public bodies and agencies, in order to drive forward women's rights, and equality between women and men. It incorporates a host of tools, infrastructure, regulations, processes and activities that should work in concert for mainstreaming to be effective.

In Scotland, the public sector equality duty (PSED)⁵ is one such tool that, in its entirety, is intended to drive gender mainstreaming in public policy. Within its provisions, there is also a specific requirement for public bodies 'to report progress on mainstreaming the equality duty'.⁶ This is known as 'the mainstreaming duty'. Discussion in this report focuses on two elements of PSED: the mainstreaming duty and 'the duty to assess and review policies and practices'. In practice, the latter is the requirement for all public bodies in Scotland to undertake equality impact assessments, referred to in this report as 'requirement to undertake EQIA'.

The report explores in detail the structures and activities needed to enable the fulfilment of the mainstreaming requirements mandated by PSED. It does not speak to the other gendered elements of PSED - equality outcomes, gathering employment data, reporting on the gender pay gap, equal pay and occupational segregation.

As Scotland's feminist policy and advocacy organisation, Engender is focused on women's equality and rights. The terminology of Gender Mainstreaming is widely recognised by policy-makers, and is reflected in discussions of 'gender (in)equality', and in the names of governmental departments across Europe. For the avoidance of confusion, this report largely reflects this language. There is a specific discussion of gender-sensitive sex-disaggregated data in chapter three.

⁵ The public sector equality duty was enacted in section 149 of the Equality Act 2010.

⁶ Further duties that apply to Scottish public bodies (known as Scottish-specific regulations) were established in secondary legislation with the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.

2. GENDER MAINSTREAMING IN SCOTLAND

Public sector bodies have a vital role to play in tackling gender inequality as employers, service providers and policymakers. Women are the majority of public sector workers, and gendered inequalities around access to resources, unpaid caring, the labour market, and safety and security mean that women are made more reliant on public services and social security than men. In terms of policymaking, there are widespread misconceptions that policy areas not explicitly associated with gender equality, such as transport, planning, climate change or agriculture, do not have an impact on the lives of women as equality issues. However, the public sphere has been built on the historical exclusion of women, and default perspectives across positions of authority and decision-making remain male. Mainstreaming gender in public sector policy, service delivery and employment is designed to challenge these notions of gender neutrality in the majority of public policy.

2.1 History of equality mainstreaming duties in Scotland

The first mainstreaming duty in Great Britain⁷ was the Race Equality Duty, introduced in 2001, followed by the Disability Equality Duty (2006) and the Gender Equality Duty (2007). Each duty had a distinct set of requirements for public bodies to deliver against in relation to its protected group.⁸

Whilst the introduction of these duties was welcomed by equalities organisations, implementation issues were immediately apparent. The Race Equality Duty was criticised over concerns that the purpose and ambition of mainstreaming was being lost within complex process and output requirements. Consequently, the disability and gender duties were designed to be more outcome-focused. However, even with only three protected characteristics to consider, public bodies immediately attempted to streamline and consolidate their obligations. Scotland's equality regulators expressed concerns, warning public bodies against a generic approach, noting that “differences in the general duties illustrate the differences in the nature of discrimination experienced by the different groups”.⁹

Despite this, the three existing duties were replaced by an integrated public sector equality duty (PSED) in 2011, which in addition stipulates equality requirements on the grounds of age, gender reassignment, marriage and civil partnership, religion or

⁷ Neither the Equality Act 2006 nor the Equality Act 2010 extend to Northern Ireland, which has its own suite of equality laws. Proactive equality duties are set out in Section 75 of the Northern Ireland Act.

⁸ In the case of the Gender Equality Duty, these were to publish employment data, action on reducing their gender pay gap, and equality impact assessments on all significant policies.

⁹ Commission for Racial Equality, Disability Rights Commission, and Equal Opportunities Commission in Scotland (2007) *Bringing Equality to Scotland: The Three Public Sector Duties*.

belief, pregnancy and maternity, and sexual orientation. PSED is formed of three positive equality duties that require public authorities to design policy that reduces discrimination, advances equality, and promotes good relations between different groups across the nine protected characteristics.

Listed Scottish public bodies are also subject to a range of specific requirements regarding mainstreaming, equality outcomes, the use of equality impact assessment (EQIA), and a suite of reporting on gender and employment.¹⁰ Of specific interest to this report, these Scottish regulations include a 'duty to report progress on mainstreaming the equality duty' and a 'duty to assess and review policies and practices'. We refer to these as the mainstreaming duty and the requirement to undertake EQIA.

2.2 The PSED mainstreaming duty to date

Performance of PSED by public bodies, across the protected characteristics, has been assessed as weak by the Equality and Human Rights Commission (the statutory regulator) and by equalities organisations.¹¹ This includes analysis of the mainstreaming duty and of EQIAs. Furthermore, assessment identifies a significant decline in performance of the duty over time, as well as unfavourable comparison with implementation of the Gender Equality Duty.¹² It has become clear that the intention for PSED to minimise process and publication requirements in favour of outcomes has not materialised in practice.

2.2.1 Process

Taking a global view across all protected characteristics, there is very little evidence of mainstreaming being adequately understood or implemented.¹³ This is partly because the purpose and ambition of the duty has been subsumed by a focus on processes. The different elements of the duty (publishing data, outcome-setting, reporting on mainstreaming, and equality impact assessment) are very poorly articulated in relation to one another. They do not create a clear and systemic approach in which data and evidence drives the selection of outcomes, which are then pursued through an appropriate action plan and subsequently reported on within a mainstreaming report. Instead, equality advocates have observed public

¹⁰ These are reporting on the gender pay gap and occupational segregation, and publishing gender-disaggregated employee data.

¹¹ Equality and Human Rights Commission (2017) *Measuring Up? Report 7: Public authorities' performance in meeting the Scottish Specific Equality Duties* EHRC. Available at: https://www.equalityhumanrights.com/sites/default/files/m_u_7_formatted_final.pdf.

¹² Close the Gap (unpublished) Internal PSED assessment 2017 *Close the Gap; Close the Gap (2015) Making Progress? An assessment of public sector employer performance of the public sector equality duty* Close The Gap. Available at: <https://www.closesthegap.org.uk/content/resources/Making-Progress---An-assessment-of-employers-compliance-with-PSED-November-2015.pdf>.

¹³ Equality and Human Rights Commission (2017) *Measuring Up? Report 7: Public authorities' performance in meeting the Scottish Specific Equality Duties, 2017* EHRC. Available at: https://www.equalityhumanrights.com/sites/default/files/m_u_7_formatted_final.pdf.

bodies adopting an approach that is fragmented, incoherent, and overwhelmingly focused on producing lengthy publications, rather than delivering activity that will advance equality for women and other protected groups. With regards to the mainstreaming duty, the substantive task of mainstreaming gender and other equalities has largely been replaced by efforts to produce content for publication.

2.2.2 Homogenisation

This scramble around reporting is partly due to the increased number of strands within the Equality Act, which has been accompanied by a complete lack of adequate concomitant support. A homogenised approach to tackling inequality under PSED has emerged that now requires urgent attention. A coalition of equalities organisations¹⁴ set out related concerns in a joint paper to the Scottish Government:

“The response from public authorities to the public sector equality duty has essentially been to treat protected characteristics in an undifferentiated way, glossing over or ignoring the specific disadvantage and discrimination faced by specific groups of people. Public bodies increasingly attempt to consider multiple characteristics at the same time, and without adequate data or characteristic-specific competence. There has been a trend away from characteristic-specific engagement and (co)production mechanisms such as women’s committees, race equality officers, and disability stakeholder groups. Instead, structures that cover multiple characteristics, such as equality advisory groups and internal ‘equality champions’ have been established.

[...] the publication and process requirements of the public sector equality duty are now almost universally carried out using a highly genericised approach that spans all of the protected characteristics.”¹⁵

This diluted focus on individual, identity-based inequalities under PSED stems from a broad lack of recognition of the causes of inequality amongst practitioners that precludes the identification of effective solutions. Within this, the specific needs of people facing multiple forms of discrimination, such as disabled or Black and minority ethnic women, are crowded out entirely. Marginalised groups experience different forms of inequality that must be specifically addressed through an intersectional lens.

¹⁴ Inclusion Scotland, Engender, Close the Gap, Coalition for Racial Equality and Rights, Equality Network, LGBT Youth Scotland, Scottish Women’s Aid, Scottish Women’s Convention, Stonewall Scotland, and The ALLIANCE.

¹⁵ Equality Sector Response (2017) *The socio-economic duty: A consultation* Inclusion Scotland, Engender, Close the Gap, Coalition for Racial Equality and Rights, Equality Network, LGBT Youth Scotland, Scottish Women’s Aid, Scottish Women’s Convention, Stonewall Scotland, and The ALLIANCE. Available at: <https://www.engender.org.uk/content/publications/Equality-sector-response-to-the-Scottish-Government-consultation-on-Socioeconomic-Duty-September-2017.pdf>.

2.2.3 Gender mainstreaming reports

Focused assessment of gender mainstreaming reveals a no less rosy picture. Close the Gap, Scotland's expert policy advocacy organisation working on women's labour market participation, find significant lack of understanding and practical examples of mainstreaming in action, and a tendency to cite mere compliance with existing law (such as granting parental leave) as evidence of gender mainstreaming. New initiatives are heavily skewed towards the obligations of employees in frontline service provision, and the consideration of equalities issues within service delivery.¹⁶ While this is essential, it must be accompanied by a reflective and strategic focus on gender at all levels of policy, decision-making and operations.

Despite this, many public bodies report that they have successfully mainstreamed gender. Others have simply reproduced near identical content in respective reporting periods.¹⁷ This complacency borders on contempt for PSED in its current form, and indicates fundamental issues regarding understanding of the legislation, and with lack of accountability.

SPOTLIGHT: Transport strategy

When the Gender Equality Duty and PSED were first introduced, it was common for government strategies to merely reference their duty to mainstream, without mentioning women or other protected characteristics again in the text. Although this does persist in some areas, some progress has been made.

For instance, the first National Transport Strategy was a key strategic document for Scottish Government that set direction on transport policy for ten years. It merely states in a sentence under 'partnership working' that

“it is essential that [...] full account has been taken of the six strands of equalities that the Scottish Government is committed to mainstreaming: race, disability, sex/gender, sexual orientation and faith or religious belief.”

Unsurprisingly, one sentence stating the importance of mainstreaming in an 82-page strategy was not sufficient to have an impact on women's experiences of using Scotland's transport systems over the decade that followed.

¹⁶ Close the Gap (2015) *Making Progress? An assessment of public sector employer performance of the public sector equality duty* Close The Gap. Available at: <https://www.closesthegap.org.uk/content/resources/Making-Progress---An-assessment-of-employers-compliance-with-PSED-November-2015.pdf>.

¹⁷ Ibid.

The ambition to address equality issues is clearly much higher up the agenda in the successor strategy, which was published in January 2020. The National Transport Strategy (NTS2) identifies promoting equality as a key priority and recognises gender inequality as a challenge for the transport system in Scotland. However, given the complexity of gender mainstreaming, the current lack of gender competence in Transport Scotland,¹⁸ and the broad lack of successful practice of gender mainstreaming across Scotland's public bodies, the undertaking at hand must be fully understood and addressed, or else this ambition will become an empty commitment.

Equality concerns should therefore not be primarily confined to a statement of intent and dedicated paragraphs about equalities groups, as they are in NTS2. To have an impact in practice, women's equality issues, and those for other protected groups, should be integrated throughout substantive and practical elements of strategy documents.

2.2.4 Equality impact assessment

Equality impact assessment (EQIA) is a key equality mainstreaming methodology. It is the second obligation geared towards mainstreaming mandated within the Scottish specific duties, under the 'duty to assess and review policies and practices'. EQIAs are essential to the effective delivery of PSED, yet women's sector analysis of public body compliance with the duty and of individual EQIAs have revealed the standard to be extremely low.¹⁹

There is ample evidence of EQIAs simply not having been conducted for major policies, and those that have been completed regularly fail to identify the most basic and readily accessible information regarding gender equality and the subject in question. Under the specific duties, EQIA must inform the development of strategy and policy. However, the content of many EQIAs immediately demonstrates that they have been completed post-hoc or in parallel to the policy design. As such, EQIAs are routinely of zero use to policy development and on the whole are failing to serve their intended purpose under PSED.

¹⁸ Gender competence is individual and organisational capacity to apply gender analysis to policy or programme development with the aim of advancing gender equality. It refers to the skills, knowledge and analytical capability to develop statistics, data, policy, or programmes that are well-gendered; that take account of the socially constructed difference between men's and women's lives and experiences.

¹⁹ For instance: Engender (2019) *Engender response to the Scottish Government consultation on Scotland's National Transport Strategy* Engender. Available at: <https://www.engender.org.uk/content/publications/Engender-response-to-the-Scottish-Government-consultation-on-Scotlands-National-Transport-Strategy.pdf>.

SPOTLIGHT: Planning Bill EQIA

The EQIA undertaken for the Planning (Scotland) Bill²⁰ illustrates these criticisms of the approach to equality impact assessment in Scotland. It categorically fails in its duty to critically engage with equality issues, and to ensure that the legislation proactively advances equality and does not discriminate against those with protected characteristics.

In terms of gender it is exceptionally bad, merely stating that “there is limited evidence concerning differing experiences of men and women of the planning system.” This is simply not good enough. The EQIA should set out existing evidence and analysis, which is not difficult to find, and explore explanations for the limited focus on women’s equality in planning to date. It should relate these findings to its own claim that “the Bill provisions will strengthen processes, engagement and participation right across the planning system”. In short, it should proactively seek to promote equality, and should not reinforce the status quo.

The EQIA also states that “the Bill is intended to be of positive benefit to Scotland’s communities, regardless of whether they fall into one or more protected groups”. However, the “intentions” of the Bill are irrelevant if there is not robust analysis that shows how these intentions will be realised. As such, it did not meet minimum standards set out by law and thus could not assist the Committee in adequately considering equality dimensions of the Bill.

Finally, the EQIA was informed by research commissioned by the Scottish Government on Barriers to Engagement in Planning. It is unfortunate that this piece of research does not include gendered analysis or participatory research targeting women and other marginalised groups. Instead it focuses on community empowerment in broad terms, and a majority of participants were men. The terms of reference of such research should ensure that gender equality, as well as other forms of equality, are taken into account.

These issues with process, homogenisation and quality assurance demonstrate a pressing need to revisit the content of the Scotland-specific duties, and the support structures that are meant to enable them. The Public Sector Equality Duty has a vital role to play in bringing equality to the centre of public bodies’ decision-making, but it is currently not fit for purpose.

²⁰ The original EQIA is no longer available online. The post-stage 2 EQIA merely states “there is limited evidence concerning differing experiences of men and women of the planning system”. Available at: <https://www.gov.scot/publications/planning-bill---post-stage-2-equality-impact-assessment/>.

3. GENDER MAINSTREAMING IN GLOBAL PERSPECTIVE

Scotland is not alone in facing these challenges. Entrenched inequality is intrinsically difficult to overcome at every level. Sexism is inherent to structures, systems and policies within institutions, and, consciously or unconsciously, to the attitudes and assumptions of individuals charged with implementing change. A number of shared and divergent experiences from countries across the world as they have grappled with these issues are applicable to analysis of PSED and gender mainstreaming more broadly in Scotland.

3.1 Successful approaches

The following approaches are common to legislatures where there has been a degree of success with regards to gender mainstreaming. Scotland, and the UK more widely, cannot yet be included within this bracket.

3.1.1 High-status gender equality body

A body or governmental department that is dedicated to gender equality is the lynchpin of numerous national approaches to mainstream gender. To be effective, such departments must be afforded the status of other major portfolios, or strategically located within structures already at the heart of government. They must also have a clearly defined mandate.²¹ As such, they are well-placed to lead on mainstreaming efforts in their respective jurisdictions.

SPOTLIGHT: High-status department

Gender mainstreaming has been elevated in the policy hierarchy of respective governments with the following measures:

- Australia: The Office for Women is located within the Department of the Prime Minister and Cabinet, with the explicit remit of working across government.
- Austria: The Department for Women and Equality sits within the Federal Chancellery. It is responsible for management of the Inter-Ministerial Working Group on Gender Mainstreaming/Budgeting.
- Belgium: The Belgian Federal Institute for the Equality of Women and Men is a semi-independent body. It is under ministerial control

²¹ European Institute for Gender Equality (2016) *Institutional transformation: Gender mainstreaming toolkit* EIGE. Available at: <https://eige.europa.eu/publications/institutional-transformation-gender-mainstreaming-toolkit>.

administratively but has full autonomy regarding its advice function and any need for legal action. It contains a specific gender mainstreaming unit. Responsibility for gender equality sits with the Minister of Employment, Economy and Consumers.

- Canada: Women and Gender Equality Canada (WAGE) is a federal department in the Canadian government. It plays a leadership role in government-wide implementation of its intersectional gender mainstreaming programme, 'Gender-based Analysis Plus'.
- Denmark: The Department and Minister of Gender Equality have a particular focus on gender discrimination amongst ethnic minorities and LGBTQI+ rights.
- France: The French Secretary of State for Equality between Women and Men is attached to the Prime Minister's Office.
- Iceland: The Prime Minister's Office oversees Equality, alongside Legislative Affairs, Policy Co-ordination, Administration (including Cabinet Affairs) and Finance and Operations.
- Sweden: The Swedish Gender Equality Agency sits within the Ministry of Employment. Its remit is focused on long-term goals and the co-ordination of gender equality policy across government.

The need for such a body at the highest level of government chimes with Scotland's experience. The Equality Unit, which sits within the Equality, Human Rights and Third Sector division of the Local Government and Communities Directorate, is tasked with a huge amount of work. Its remit covers gender, race, disabled people, LGBTI people, faith and belief, Gypsy/Travellers, aspects of work on refugee and asylum seekers, and the enormous range of weighty policy issues that sit within these forms of inequality.

Violence against women and girls, for example, is an extraordinarily complex policy area, which demands extensive cross-departmental working, and in which staff in the Equality Unit have been empowered to make significant and commendable progress. It is unrealistic, however, to expect this under-resourced and relatively junior team of around ten staff members to adequately address all of the pressing policy issues covered by its brief, never mind to also effectively lead on the mainstreaming of all equality issues across the whole of government.²² The scale of the task at hand, and the resources and status afforded to it are simply not in balance.

²² "Specialised support for mainstreaming is provided by the Equality Unit, which works across the Scottish Government to embed equality in all policy areas" in: Scottish Government (2019) *Equality Outcomes and Mainstreaming report 2019* Scottish Government. Available at: <https://www.gov.scot/publications/equality-outcomes-mainstreaming-report-2019/>.

3.1.2 Comprehensive toolkit and methodology

A comprehensive framework of tools, methodologies and guidance is crucial to the successful practice of mainstreaming. Indeed, lack of clarity over how to implement PSED is seen by both critics and public bodies themselves as a key stumbling block.

SPOTLIGHT: The European Institute for Gender Equality

The European Institute for Gender Equality (EIGE) is an autonomous body of the EU responsible for gender mainstreaming. Its model includes key 'tools',²³ within which a series of methods must be employed to effect change. The methodology emphasises that these tools cannot work effectively in isolation, but rather as part of a wider framework.

Methods to be employed across the framework include:

- Gender analysis
- Gender audit
- Gender awareness-raising
- Gender budgeting
- Gender equality training
- Gender evaluation
- Gender impact assessment
- Gender planning
- Gender procurement
- Gender statistics
- Gender-sensitive stakeholder consultation
- Institutional transformation
- Sex-disaggregated data

These are supported by clear working definitions and guidance. For instance, the guide to effective training sets out 12 clear steps across preparation, implementation, and evaluation and follow-up,²⁴ which can be adjusted according to context. It also covers how to address institutional and individual resistance to gender mainstreaming, which researchers identify as a primary barrier to its implementation.

²³ Gender equality training, gender impact assessment, institutional transformation, gender equality in academia and research, and gender-sensitive parliaments.

²⁴ European Institute for Gender Equality (2016) *Gender Equality Training: Gender Mainstreaming Toolkit* EIGE. Available at: <https://eige.europa.eu/gender-mainstreaming/toolkits/gender-equality-training>.

SPOTLIGHT: Gender-based Analysis Plus

The Canadian government's methodology for gender mainstreaming is known as Gender-based Analysis Plus (GBA+) and is expressly intersectional.²⁵ It supports federal public servants to systematically apply gender analysis with a framework comprised of six key elements:

- A responsibility centre, to oversee implementation of GBA+ and provide internal advice;
- An organisational needs-assessment, to determine what capacity and resources already exist, and to inform the creation of a work plan;
- A policy statement, or statement of intent, to articulate commitment to GBA+ and provide a mandate for implementation;
- GBA+ training and tools, to facilitate buy-in, build capacity and raise awareness of GBA+;
- A GBA+ "pilot" initiative, to provide a concrete example of GBA+ in practice;
- Ongoing monitoring of progress, to highlight successes, best practice, and to identify gaps and new priorities.

As with the approach set out by EIGE, all of these components must work in concert and with a robust accountability structure to achieve maximum impact.

The information set out here provides only a snapshot of the EIGE and Canadian models. It does, nonetheless, demonstrate the breadth of commitment and action necessary to achieve a baseline for effective gender mainstreaming. Currently, civil servants in Scotland do not have access to a framework with anywhere near the tools or the support required to fulfil their legal obligation to mainstream equalities under PSED. The range of methods employed worldwide could be analysed and adapted within development of a Scottish intersectional gender mainstreaming strategy.

3.1.3 Gender competence

Gender competence is the cornerstone of mainstreaming in practice. It encompasses the knowledge and analytical skills needed to develop policy that takes account of the socially constructed differences between women's and men's lives. The need for

²⁵ "The 'plus' in GBA+ acknowledges that GBA goes beyond biological (sex) and socio-cultural (gender) differences. [...] GBA+ also considers many other identity factors, like race, ethnicity, religion, age, and mental or physical disability," in Standing Committee on the Status of Women Canada (2018) 'Gender-based Analysis Plus (GBA+)' Government of Canada. Available at: <https://cfc-swc.gc.ca/gba-acsc/index-en.html?wbdisable=true>.

gender competence is cross-cutting, both departmentally and individually: there must be understanding of the relevance and importance of equalities analysis across all aspects of government - from defence to fisheries - and individuals must be able to execute that analysis and make effective use of available tools and methods.

Intersectional gender competence recognises that women have multiple identities, and that the experiences of disabled, BME, LGBT, older and younger women, women of different faiths, unpaid carers, women with insecure immigration status, and women in rural areas differ vastly. This perspective is then applied throughout analytical stages of policy development and used to form layered policy interventions.

Common approaches to building gender competence include centres of expertise, ideally managed from within a powerful department for gender equality, and the integration of 'gender focal point networks' across all public authorities. This enables training strategies and materials to be developed centrally and rolled out by staff with a specialism in both gender and the particular context in which they work. In addition to delivery of training, these experts embedded throughout organisational structures are well placed to support the implementation of gender mainstreaming initiatives more broadly.

SPOTLIGHT: Gender competence

There is no blueprint for improving equalities expertise, but notable features of international gender competence building include the following:

- Bulgaria: The Bulgarian Gender Equality Act (2016) legislates for the position of Gender Equality Co-ordinators to be embedded within national and all regional governments.
- Canada: The gender network is divided into three clusters (Security and Defence, Science, Economics and Research, and Social Health and Justice) that meet regularly to share learning.
- Denmark: The Danish 'interdepartmental network to improve gender mainstreaming at ministerial level' is mandated in the national Strategy for Gender Mainstreaming.
- Spain: Spain's National Institute of Public Administration (civil service training school) embeds gender mainstreaming throughout courses not specifically focused on gender equality.
- Sweden: Each Ministry has a given number of Gender Equality Co-ordinators, who sit on an inter-ministerial group on gender mainstreaming. The group meets quarterly with support from the Gender Equality Agency.

In Scotland the widespread failure to develop functional EQIAs, as well as the broader lack of effective mainstreaming, rests heavily on a dearth of gender competence across the public sector. A cursory glance at the majority of Scottish Government EQIAs demonstrates the lack of capacity on gender outwith the Equality Unit, even where attempts have been made in good faith. This lack of a gender architecture to embed expertise throughout public authorities is a significant barrier that has been repeatedly raised by women's organisations. Unless there are dedicated leads for gender or equalities, this work is generally not built into capacity planning, and the mandated focus on gender and other protected characteristics is lost. The importance of gender expertise and its relevance to all sectors of public life must therefore be addressed within a comprehensive training programme on structural gender inequality.

3.1.4 Data collection and use

Sex-disaggregated data, for use in analysis and policymaking, is an essential foundation for equality mainstreaming. Without a baseline of intersectional data, policy development with equality at its core, and monitoring and evaluation of outcomes for diverse groups of women and girls are not possible.

Gendered data gaps emerge both when the sex of individuals is not collected within an established dataset, and in the lack of gender competence in the design of data collection in the first place. With regard to the former, for instance, much of the data on income inequality in Scotland and the UK is masked by household level statistics that ignore the characteristics of individuals within those homes. Thus, the gendered, racialised and intersectional nature of poverty is largely misunderstood by policymakers and the wider policy community.

In terms of what the data can tell us, a lack of gender analysis or a default male perspective on a given issue regularly excludes women from the outset, even when sex-disaggregated data is collected. For instance, within discourse and policy around homelessness, the male experience of 'rough sleeping' has come to be equated with the mainstream understanding of homelessness. This is both driven and exacerbated by data collection that focuses on this form of homelessness as the norm. However, women's homelessness, which often takes the form of unstable and harmful temporary accommodation or rough sleeping in ways not captured by housing services, is rendered invisible as a result.²⁶

²⁶ Engender (2020) *A Woman's Place: Gender, housing and homelessness in Scotland* Engender. Available at: <https://www.engender.org.uk/content/publications/A-WOMANS-PLACE---GENDER-HOUSING-AND-HOMELESSNESS-IN-SCOTLAND.pdf>.

Sex and gender in data

In academic literature and policymaking circles, the terms sex and gender have largely been used interchangeably in the context of data disaggregation. This has recently been highlighted within wider discussions on the intersections between gender identity and women's equality in discourse and practice. A working group on sex and gender in data, convened by the Scottish Government's Chief Statistician, is currently exploring these issues in the context of the Scottish policy landscape. Throughout this paper we use the term 'sex-disaggregated' data to refer to information that records individuals as female or male. Engender refers to 'gender-disaggregated data' as a shorthand for gender-sensitive sex-disaggregated data which refers to data that is gathered in a way that pays attention to gendered stereotypes, norms and roles, and the impact this has on women's lives.

SPOTLIGHT: Sex-disaggregated data

Examples of impactful and evidenced use of sex-disaggregated data are thin on the ground. The OECD reports that, amongst its members, only Norway and Sweden have "routinely available gender-disaggregated data in the required depth across key areas of public service".²⁷ However, progress regarding data collection has been made in several EU member states:²⁸

- Bulgaria: There is a "national legal obligation to disseminate statistics disaggregated by sex". National ministries work in collaboration with the National Statistical Institute to generate sectoral data.
- Portugal: Statistics Portugal co-ordinates and promotes the development of gender-disaggregated statistics. Data is also collected by the National High Council for Statistics working group on social inequalities indicators.
- Spain: The National Statistical Institute and other relevant public administrations are legally obliged to collect data disaggregated by gender under the Equality Law. In practice, this has proved to be effective in up to 75% of cases, though certain sectors (e.g. trade, environment, finance) still lag behind.

²⁷ Ronnie Downes, Lisa Von Trapp and Scherie Nicol (2017) *Gender budgeting in OECD countries* OECD Journal on Budgeting. Available at: <http://www.oecd.org/gender/Gender-Budgeting-in-OECD-countries.pdf>.

²⁸ European Institute for Gender Equality (2018-2019) 'Review of Institutional Mechanisms for Gender Equality and Gender Mainstreaming Country Specific Information' EIGE. Available at: <https://eige.europa.eu/gender-mainstreaming/countries>.

- Sweden: Official statistics related to individuals must be disaggregated by sex unless there are valid exemptions, under the Official Statistics Ordinance (2001). Statistics Sweden has a legally nominated unit responsible for the production of sex-disaggregated data. Its 172 gender equality tables are updated twice a year. A gender equality publication is produced biennially.

Under PSED, public authorities in Scotland are required to “consider relevant evidence” when setting and reporting on equality outcomes and undertaking EQIAs. However, there is little evidence of agencies collecting and utilising data regarding sex or other protected characteristics in order to meet the Scotland-specific duties. EQIAs and PSED reporting reveal data sets with significant gaps, as well as a lack of initiatives to improve data gathering processes. In practice, data is rarely integrated throughout the EQIA process in a meaningful way.

Collection and use of intersectional data, vital in policy development to target inequalities for disabled, BME, LGBT, older and younger women, women from minority faith backgrounds, and women with insecure immigration status, is virtually non-existent in Scotland.

3.1.5 Gender budgeting

Finally, gender budget analysis (GBA) is a methodology that mainstreams gender equality as a decision-making factor in budgeting processes. It weighs up the impact of spending decisions on women and girls, men and boys, and the inequalities between them. GBA should act as a guide against unequal investment in terms of gender. Ultimately, gender equality will not be achieved without significant financial commitment, and alignment between policymaking and resource allocation is vital.

SPOTLIGHT: Gender budget analysis (GBA)

International best practice regarding gender budgeting processes include the following:

- Austria, Iceland, Mexico, Netherlands, South Korea and Spain have provisions specifically related to gender budgeting within ‘Organic Budget Law’.²⁹

²⁹ Ronnie Downes, Lisa Von Trapp and Scherie Nicol (2017) *Gender budgeting in OECD countries* OECD Journal on Budgeting. Available at: <http://www.oecd.org/gender/Gender-Budgeting-in-OECD-countries.pdf>.

- Austria: Gender budgeting is enshrined in the Austrian constitution. Legal provisions stipulate that each chapter of the Annual Budget Statement includes at least one outcome objective on gender equality. The Austrian government was commended by the United Nations CEDAW³⁰ committee for its use of GBA.
- Canada: Gender budget analysis is a key feature of the GBA+ model. Approval of department budgets is contingent on completed GBA+ analysis.
- Iceland: Icelandic law requires all ministries to undertake gender analysis of budget proposals. The Budget Bill must also outline the impact of changes in revenue policies on gender equality targets.
- South Korea: The Ministry of Strategy and Finance is mainly responsible for implementing gender budgeting. GBA is mandated by the National Finance Law.
- Sweden: Each proposal in the Budget Act is accompanied by a gender impact assessment. Data on gender equality budgetary allocations is published.
- 13 OECD countries have formally introduced gender budgeting. The UK does not number amongst them.³¹

Gender budgeting has gained some ground in Scotland in recent years, with the Scottish Women’s Budget Group playing a key role in advocating for a gendered approach to the budget process. Since 2009, the Scottish Government’s equality budget statement, now the Equality and Fairer Scotland Budget Statement (EFSBS) has been published alongside the annual budget. The EFSBS attempts to identify the equality impact of government spend and highlights funding directed towards equalities work. The Scottish Government also convenes the Equality Budget Advisory Group (EBAG), a non-statutory advisory group that helps to shape an equality and human rights approach to the budget. However, these initiatives have not resulted in a notable shift in government spending priorities, and gender budgeting is not yet proactively used in major policy or infrastructure development.

3.2 Challenges

Despite these initiatives around the world, the widespread introduction of gender mainstreaming has not delivered a shift in equality for women and girls. In 2019, a review by the European Institute of Gender Equality found that gender equality and

³⁰ United Nations Committee on the Elimination of Discrimination Against Women.

³¹ Austria, Belgium, Finland, Iceland, Israel, Italy, Japan, Mexico, Netherlands, Norway, South Korea, Spain, and Sweden.

gender mainstreaming across the EU are less well institutionalised than six years ago.³² This reflects a broader picture of disappointing results internationally, as a result of “strategies and tools [that] have been technically flawed, poorly framed, lacked specific and measurable goals and subject to considerable political and institutional resistance.”³³ However, analysis does not reveal fundamental issues with the central concepts or approaches in use. Rather, a number of common themes regarding practical application emerge in the critical evaluation of global gender mainstreaming practices. These are highly relevant to the discussion of next steps for PSED in Scotland.

3.2.1 Sustainability

Interventions on gender equality, and equality more broadly, are vulnerable to political and economic circumstances. A change of government can result in sweeping changes across the policy landscape, and equality remains widely seen as a dispensable ‘added bonus’ that does not belong within the ‘real’ business of government. This is precisely why mainstreaming is needed.

The current situation in Australia serves as a warning in this respect. There is little to no action on gender mainstreaming within the present Australian administration. However, a long history of advocacy on women’s rights in Australia had previously led to practice on gender mainstreaming and budgeting that was ground-breaking at the time. This highlights the need to strategically target areas of institutional and individual resistance to the centring of gender equality. If there had been a real shift in understanding and acceptance of these approaches, progress may have become sufficiently embedded in the institutional culture to outlast changing of the political guard.

To drive sustainable change, gender mainstreaming must be sufficiently resourced, fully embedded as a standard in regulation and in policy development across government, and supported by an overarching mainstreaming strategy that tackles institutional sexism and hostility to change.

In Scotland, the legal obligation to mainstream gender has not yet led to the development of these prerequisites for systemic change. There is no real architecture, strategy or resource to embed equalities across the public sector in the present, never mind to ensure sustainability in a future political context where ambitions for gender equality may be lower down the agenda.

³² European Institute for Gender Equality (2018-2019) ‘Review of Institutional Mechanisms for Gender Equality and Gender Mainstreaming Country Specific Information’ EIGE. Available at: <https://eige.europa.eu/gender-mainstreaming/countries>.

³³ Gülay Caglar (2013) ‘Gender Mainstreaming’ Politics and Gender Volume 9 Issue 3. Available at: <https://doi.org/10.1017/S1743923X13000214>.

3.2.2 Leadership

Gender mainstreaming activities are undermined by lack of leadership across public bodies and government departments. It stands to reason that high-level commitment to gender equality, and policies on paper in pursuit of that goal, must be accompanied by willingness and a degree of personal belief in the issue by those in senior positions.

This is highlighted by empirical research into gender mainstreaming within the European Commission's Directorate-General on Research and Innovation (DG Research). The DG is responsible for EU policy on science and technological development, fields that are renowned for the underrepresentation of women and for perpetuating gender inequalities through unconscious bias. Interviews with staff from a number of DG Research's operational Directorates revealed the impact of different approaches in leadership.

In 'Directorate H':

"Management's positive embrace of the gender mainstreaming agenda facilitated learning and the development of new practices among Scientific Project Officers (SPOs), research teams and evaluators. In this way the process of gender mainstreaming proceeded as the feminists designing the policy might have hoped."

Conversely, in 'Directorate N':

"Managerial staff... indicated that they did not recognise themselves or their Unit exercising any oversight or leadership in gender mainstreaming implementation.

[...]

"Management decisions [such as delegating a temporary communications worker to represent the Directorate at the gender network] have bounded gender mainstreaming out the directorate's actual work [...] several intersecting processes encourage staff in Directorate N to assume that gender is irrelevant to *their* work."³⁴

Clearly, senior decision-makers can effectively block the implementation of mainstreaming policies, either consciously or subconsciously. The Canadian model seeks to address this by cultivating senior buy-in as part of its mainstreaming strategy, and the GBA+ programme has seen the most success where this has been

³⁴ Rosalind Cavaghan (2017) *Making gender equality happen: Knowledge, change and resistance in EU gender mainstreaming* Routledge.

achieved.³⁵ For instance, the Chief of Defence Staff of the Canadian Armed Forces (CAF) has mandated that GBA+ be a part of all planning and operations. CAF now has a unit dedicated to gender equality and gender-based analysis, and states that it is a world leader on gender equality, with ambitious goals to increase women's representation across all trades and ranks.³⁶

Leadership on PSED, including mainstreaming and equality impact assessment, has been minimal across government and other public authorities in Scotland. Also absent from the approach is recognition of the resistance to action on gender equality, including at management level, and steps to incorporate this reality into mainstreaming efforts. This has contributed to process-driven reporting taking priority over action and outcomes, and ultimately to PSED being unfit for purpose in its current form.

3.2.3 Accountability

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.³⁷

SPOTLIGHT: Accountability for gender mainstreaming

In Canada, responsibility for monitoring and assessing implementation of the GBA+ Action Plan lies with central agencies, the Privy Council Office and Treasury Board of Canada Secretariat, as well as the federal department on gender equality. These agencies also exercise a 'challenge function', along with the Department of Finance. Compared with the infrastructure in place in Scotland, these arrangements are advanced. However, a Canadian parliamentary inquiry found that, in practice, issues with accountability have impeded the programme's potential.³⁸ The Auditor General of Canada's most

³⁵ Standing Committee on the Status of Women (2016) *Implementing gender-based analysis plus in the government of Canada* House of Commons Canada. Available at: <https://www.ourcommons.ca/Content/Committee/421/FEWO/Reports/RP8355396/feworp04/feworp04-e.pdf>.

³⁶ Government of Canada (2019) 'Women in the Canadian Armed Forces' Government of Canada. Available at: <https://www.canada.ca/en/department-national-defence/services/women-in-the-forces.html>.

³⁷ 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>.

³⁸ Standing Committee on the Status of Women (2016) *Implementing gender-based analysis plus in the government of Canada* House of Commons Canada. Available at: <https://www.ourcommons.ca/Content/Committee/421/FEWO/Reports/RP8355396/feworp04/feworp04-e.pdf>.

recent report on GBA+ includes recommendations to increase the accountability of senior management across departments,³⁹ which have since been incorporated into the Action Plan on Gender-Based Analysis (2016-2020).

Other elements of international accountability mechanisms include the following:

- Austria: The 'high-level Inter-ministerial Working Group on Gender Mainstreaming' was mandated by the Council of Ministries to increase accountability at executive level.
- Finland: The National Anti-Discrimination and Equality Tribunal is empowered to impose financial sanctions for non-compliance with the Act on Equality Between Women and Men.
- France: The High Gender Equality Council, an advisory body embedded in law in 2017, has an acclaimed evaluation role, and both challenges and supports the government in its implementation of gender mainstreaming.
- Netherlands: A 'system-responsibility' approach to gender mainstreaming entails 'co-operation agreements' between the lead Ministry of Education, Culture and Science and other government ministries. All of these ministries are subsequently held accountable by parliament for the implementation of gender equality policy.

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.⁴⁰

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 2019-20 is

³⁹ Office of the Auditor General of Canada (2015) *Implementing Gender-Based Analysis Reports of the Auditor General of Canada*. Available at:

https://www.oag-bvg.gc.ca/internet/English/parl_oag_201602_01_e_41058.html.

⁴⁰ Close the Gap (unpublished) *Internal PSED assessment 2017 Close The Gap*.

£17.4m,⁴¹ representing a 75% cut in funding since the organisation was established in 2007 with an annual budget of £70m.⁴² This relative 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.⁴³ 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.

3.2.4 Capacity

The limited successes of gender mainstreaming largely hinge on poor gender competence. In practice, the bulk of mainstreaming work often falls to under-resourced staff with a gender equality brief, rather than being undertaken by colleagues with their support and guidance. This situation is underpinned by a widespread culture of resistance to the policy - ranging from unconscious bias to overt hostility - which training and capacity building must aim to address. These efforts should be guided by a training strategy, developed by gender competent practitioners, that goes well beyond articulating a set of standards. Such a strategy should identify gaps in gender competence, set out where best to make meaningful interventions, and analyse delivery of training itself to diagnose sites and the nature of resistance.

The training itself must be developed as a multi-level package that includes a primer on which to build further knowledge, detailed training for key government and public body staff working on equality, and the use of well-trained and resourced gender networks to spread tailored knowledge throughout departments. All levels of the package must include elements on the socially constructed nature of gender roles, with particular regard to political institutions and the policy field in question, and on the social and economic values of gender equality.

Some form of training on gender equality is universally undertaken amongst countries that have signed up to gender mainstreaming. However, extremely basic issues with this training are commonplace in EU member states. Often 'training' is

⁴¹ Equality and Human Rights Commission (2019) Business Plan: 2019/20 EHRC. Available at: <https://www.equalityhumanrights.com/sites/default/files/business-plan-2019-2020.pdf>.

⁴² Government Equalities Office (2013) *Comprehensive budget review of the Equality and Human Rights Commission* UK Government Department for Culture Media and Sport. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/86430/Comprehensive_Budget_Review_of_the_EHRC_.pdf.

⁴³ 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-psed-effectiveness.pdf>.

only a couple of hours long, is rolled out on a voluntary basis, and fails to reach the practitioners who most need it to deliver gender mainstreaming. It is clear, however, that voluntary approaches do not suffice in a context where significant overt and ingrained mistrust of gender equality initiatives persists.

In Belgium, for instance, a proposal for all public sector staff to receive training in issues like unconscious bias and gender impact analysis, has seen under a third of employees taking part.⁴⁴ In terms of good practice, training packages in Estonia and Sweden have been held up as examples that are more comprehensive than elsewhere in Europe.⁴⁵

Currently, gender equality training in Scotland is very limited. Most government and public body staff working on gender and equality issues are expected to develop broad competence 'on the job', and training that is delivered is often not mandatory. Across the public sector there has been a significant reduction in training budgets, with much training now being delivered through online resources that staff members are responsible for completing in their own time. The training programmes that Engender has observed across a range of public bodies are simplistic, often factually inaccurate, and could not equip policy staff to carry out gendered analysis as part of policy development. This prevents effective implementation of the mainstreaming duty and perpetuates poor analysis.

3.2.5 Resources

Critiques of gender mainstreaming routinely point to under-resourcing as a key impediment to better outcomes. Strategy, policy and even mainstreaming architecture can be exemplary, but without funding to implement change, progress will be limited. This is a particularly pressing concern in times of government spending cuts. The UN CEDAW committee has highlighted this in its examination of various countries' compliance with international law on women's human rights. For instance, in 2014, Finland was warned about "budgetary and human resource constraints that hinder measures and policies for the advancement of women and effective use of gender mainstreaming".⁴⁶ This is in a country that, unlike the UK, the European Institute for Gender Equality (EIGE) rates as high-achieving in terms

⁴⁴ European Institute for Gender Equality (2018-2019) 'Review of Institutional Mechanisms for Gender Equality and Gender Mainstreaming Country Specific Information' EIGE. Available at: <https://eige.europa.eu/gender-mainstreaming/countries>.

⁴⁵ Gunilla Sterner and Helene Biller (2007) *Gender mainstreaming in the EU member states: progress, obstacles and experiences at the governmental level* Ministry of Integration and Gender Equality Sweden. Available at: <https://www.government.se/contentassets/d6c802029f75401993da6607cb79ef0d/gender-mainstreaming-in-the-eu-member-states-del-1-av-3>.

⁴⁶ Office of the United Nations High Commissioner for Human Rights (2014) *Concluding observations on the seventh periodic report of Finland*. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsjuNjw8cUF3pRrdCdanf79mQ2z2sYWEiVo8S2udvvsFdFCHrnR4LlcwBpE0k4iEdrrc67Jgyq8ghAWyxbIV3bQh0Pdr9SnxGhIvBV%2B7wEU9m>.

of gender mainstreaming. The EIGE's 2018-19 review of mainstreaming highlights resource cuts as a cause for regression across a number of indicators in several EU member states.

Implementation of mainstreaming in Scotland has been categorically under-resourced. Public authorities have not been allocated a bare minimum of financial support that would enable them to meet the requirements of PSED. Significant investment will be needed to achieve a sustainable programme of change that is ably led across all government departments and public bodies, implemented by well-trained staff, and scrutinised by robust monitoring and accountability mechanisms.

In a public sector landscape characterised by increasingly constrained budgets, it is vital that work on gender and other equalities is no longer seen as expendable, and that public bodies are supported to recognise that investment in gender mainstreaming ultimately means more resource-effective policy for all.

3.2.6 Systemic change

The need for gender mainstreaming persists because sexism and inequality are bedrocks of our society that pervade every aspect of women and men's lives. Policymakers have spent decades attempting to chip away at this with interventions targeted at specific elements of inequality and discrimination, but change is exceptionally slow.

Mainstreaming is therefore envisaged as a systemic model to achieve systemic change. However, two broad approaches, described as integrationist or agenda-setting, have developed since it was adopted at the UN in 1995.⁴⁷ The integrationist approach is process-focused, bureaucratic and attempts to fit gendered policy into existing policy structures and processes. The agenda-setting approach is focused on high-level institutional change and aims to reshape ways in which the system itself perpetuates gender inequality.

Sweden's approach to gender mainstreaming and gender equality more broadly can be categorised as agenda-setting, as it emerged from and is embedded in "a philosophy about gender inequality as a cultural phenomenon".⁴⁸ Since 2014, Sweden has described itself as the world's first feminist government and it ranks as an international leader in European and global gender equality indices.⁴⁹ The

⁴⁷ Sylvia Walby (2005) 'Gender mainstreaming: productive tensions in theory and practice' *Social Politics: International Studies in Gender, State & Society* Volume 12 Issue 3. Available at: <https://doi.org/10.1093/sp/jxi018>.

⁴⁸ Mary Daly (2005) 'Gender mainstreaming in theory and practice' *Social Politics: International Studies in Gender, State & Society* Volume 12 Issue 3. Available at: <https://doi.org/10.1093/sp/jxi023>.

⁴⁹ Sweden has topped every iteration of the EU gender equality index by some margin (available at: <https://eige.europa.eu/gender-equality-index/2019/compare-countries>), and is one of a handful of countries consistently amongst the leading five in the World Economic Forum's global equivalent (available at: <https://www.weforum.org/reports/the-global-gender-gap-report-2018>).

Swedish government believes that the country's long history of innovation and positive outcomes for women's equality means that mainstreaming is truly embedded throughout the public sector and, effectively, that resistance has been overcome. This is highlighted by the unusual lack of legal underpinning to Sweden's gender architecture,⁵⁰ which instead operates via a 'de facto binding' system. In line with this, the literature finds that "norm-building" in Sweden led to a "tipping point" in acceptance,⁵¹ such that "gender mainstreaming, understood as an approach to address structural inequalities, is deeply embedded and widely dispersed as a practice".⁵²

This question of political, institutional and individual acceptance is at the heart of whether systemic change is possible. In many cases, limitations of gender mainstreaming have been heavily shaped by the 'political weakness' of the institutions and policy actors tasked with implementation.⁵³ By contrast, aspects of the Swedish approach exemplify the frame of high-level change that helped to make gender mainstreaming the norm. These have included:

- Annual reports to parliament on gender mainstreaming;
- Long-term, annual and ministry-specific action plans on gender mainstreaming;
- Gender analysis included in the terms of reference for government appointed 'commissions of inquiry' that examine all proposed legislation;
- Between one and four Gender Equality Co-ordinators in each ministry, who sit on an inter-ministerial group on gender mainstreaming;
- Specified contact persons for each ministry in the Gender Equality Division;
- 'State Secretary meetings' on gender mainstreaming, between the secretary for gender equality and the heads of other ministries;
- Ministerial responsibility for gender equality across respective portfolios;
- Annual reports by the Gender Equality Agency on all government agencies' gender mainstreaming activities.⁵⁴

⁵⁰ 17 EU member states are required to undertake gender mainstreaming by law, see: European Institute for Gender Equality (2018-2019) 'Review of Institutional Mechanisms for Gender Equality and Gender Mainstreaming Country Specific Information' EIGE. Available at: <https://eige.europa.eu/gender-mainstreaming/countries>.

⁵¹ Mareike Neumann (2009) 'Gender mainstreaming: Just an empty slogan? On the norm diffusion of the gender equality concept from the EU to a local level' Lund University Library. Available at: <http://lup.lub.lu.se/student-papers/record/1458858>.

⁵² Mary Daly (2005) 'Gender mainstreaming in theory and practice' Social Politics: International Studies in Gender, State & Society Volume 12 Issue 3. Available at: <https://doi.org/10.1093/sp/jxi023>.

⁵³ Center for the Implementation of Public Policies for Equity and Growth (2018) *Gender mainstreaming: A strategic approach* CIPPEC. Available at: <https://www.cippec.org/publicacion/gender-mainstreaming-a-strategic-approach/>.

⁵⁴ Gunilla Sterner and Helene Biller (2007) *Gender mainstreaming in the EU member states: progress, obstacles and experiences at the governmental level* Ministry of Integration and Gender Equality Sweden. Available at: <https://www.government.se/contentassets/d6c802029f75401993da6607cb79ef0d/gender-mainstreaming-in-the-eu-member-states-del-1-av-3>; European Institute for Gender Equality (2018-2019) 'Review of Institutional Mechanisms for Gender Equality and Gender Mainstreaming Country Specific Information' EIGE. Available at: <https://eige.europa.eu/gender-mainstreaming/countries>.

To date, Scotland's gender mainstreaming has not been driven by a high-level and systemic understanding of gender inequality. Rather it has followed an integrationist model, which "applies the approach in a technocratic way and [is] non-systemic in compass".⁵⁵ With no strategic efforts to address resistance or build support for gender mainstreaming, and no real change required of public bodies - only what has been increasingly perceived as a pesky set of reporting requirements - it is unsurprising that impacts have been extremely limited.

⁵⁵ Mary Daly (2005) 'Gender mainstreaming in theory and practice' *Social Politics: International Studies in Gender, State & Society* Volume 12 Issue 3. Available at: <https://doi.org/10.1093/sp/jxi023>.

4. A SCOTTISH MODEL ON GENDER MAINSTREAMING

It is clear that there is no gold standard of gender mainstreaming that Scotland could attempt to emulate. Indeed, even if the end goal of fully mainstreamed equality throughout the public sector had been achieved elsewhere, it would not be possible to simply replicate this within Scotland's distinct political and cultural circumstances.

However, Scotland has a real opportunity to make policy work for women and lead the way on gender equality, by building on best practice from around the world, and forging a new agenda-setting model on gender mainstreaming.

4.1 Scottish Government ambition on gender equality

In recent years Scotland has seen positive discourse around gender equality translated into significant policy developments. Both the Equally Safe strategy to prevent and eradicate violence against women and girls, and Domestic Abuse (Scotland) Act 2018 are world-leading. This is partly because they take a distinctly gendered approach informed by the expertise of women's organisations. The 'A Fairer Scotland For Women' gender pay gap action plan,⁵⁶ launched in 2019, was also closely developed with gender policy experts. It commits to a broad range of actions on the causes of women's labour market inequality, including review of the Scotland-specific duties under PSED, and a range of related actions on procurement, building gender competence and improving the availability of intersectional gender-disaggregated data.

Meanwhile, the First Minister's National Advisory Council on Women and Girls (NACWG) represents clear ambition to elevate and maintain the current government's focus on policy that addresses gender inequality. This must now enable the development of an improved approach to PSED in Scotland, which builds the ability of public bodies to embed gender mainstreaming in policymaking and drives an attitudinal shift that recognises tackling gender inequality as a core objective of Scotland's public sector.

4.2 Reform of Scotland's gender mainstreaming approach

The Scottish Government's upcoming review of PSED provides a clear opportunity to reflect on the strengths and weaknesses of current mainstreaming practices, both in Scotland and internationally. The approaches discussed in this report reveal similar enabling circumstances for effective gender mainstreaming, and a similar set of challenges to overcome.

⁵⁶ Scottish Government (2019) *A Fairer Scotland for Women: Gender pay gap action plan* Scottish Government. Available at: <https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/>.

It is clear that Scottish Government needs to substantially scale up its work on gender mainstreaming, to enable its effective implementation across Scotland's public sector and to deliver positive outcomes for women and girls. A new framework for action must therefore include a focus on strengthening the mainstreaming regulations within PSED, and a range of wider, innovative actions to enable their fulfilment and tackle intransigent issues.

We recommend that Scotland's new framework for equality mainstreaming includes the following package of reforms.

4.2.1 Public sector equality duty Scotland-specific regulations

1. Two-stage review

Engender proposes a two-stage process to the review of the public sector equality duty Scotland-specific regulations, currently being scoped by Scottish Government. We recommend that this review:

- Seeks evidence at Phase One on the broad context around the duty, including issues with leadership, resourcing, capacity, gender competence, accountability and enforcement;
- Seeks evidence at Phase Two on a recast set of regulations that will be sufficient to drive equality for women and girls in public sector decision-making.

2. Specified process requirement

There is a clear need for a more coherent approach to the duties. We propose that this is addressed with a more clearly specified process requirement for public bodies that would take them through naming the inequality they are aiming to tackle, describing the quantitative and qualitative evidence base for change and action, using that evidence to determine strategic equality outcomes, setting out appropriate actions and indicators for delivery of those outcomes, and measuring and reporting on progress. In contrast to the open publication requirements of the existing duties, this would involve reporting that was comparable between public bodies.

3. Strengthened duties

In addition, we recommend that the review process explores the following changes to the Scotland-specific regulations:

- Mandating an adequate focus on individual protected characteristics by public bodies, including sex, so that critical equality issues for women and girls see action;
- Requiring public bodies, including Scottish Government, to fully integrate gender budget analysis into their budget processes;
- Mandating Ministers to set sector-specific national outcomes for each protected characteristic, including sex, to provide greater clarity and focus about key issues;

- Creating a statutory footing for the gender architecture that enables women's equality and rights (see also section 4.2.2);
- Requiring Scottish Government Directorates and public body departments to make outcome-focused equality policy statements that set a direction of travel on work to realise equality and rights for women and girls;
- Specifying an approval process for equality impact assessments that involves both senior domain-specific decision-makers and internal or external experts.

4. Data

Public bodies in Scotland are not systematically collecting and utilising data regarding sex and other protected characteristics to fulfil their mainstreaming obligations under PSED. This should be addressed within the Scotland-specific regulations, such that bodies are required to:

- Publish data that is gender-sensitive and sex-disaggregated, and directly related to the performance indicators for specific bodies or policies;
- Use this data throughout the fulfilment of public bodies' equalities duties;
- Collect data that enables intersectional analysis, by ensuring it can be sub-divided by other protected characteristics;
- Measure the impact of equalities outcomes and other strategies regarding equality, use this evidence throughout public bodies' work, and publish it in a manner that enables intersectional analysis.

5. Guidance

Current PSED guidance does not adequately support public bodies to fulfil their gender mainstreaming obligations. Improved statutory guidance should include step-by-step instructions on gathering data, identifying issues, creating outcomes, establishing action plans, monitoring progress, and subsequently reporting on activity. It must be accessible and include sufficient analysis to enable public bodies to focus on the specific inequalities associated with each protected characteristic. To do so, relevant equalities organisations should be involved in drafting revised guidance.

4.2.2 Broader mainstreaming activities

6. Cabinet Secretary for Equality

A Scottish Government Cabinet Secretary for Equality would enable the gender mainstreaming agenda to be driven forward in an unparalleled way in Scotland. Elevating and prioritising the status of equalities work within the highest level of government would demonstrate sorely needed leadership and commitment in a

policy area that has flagged for 25 years.⁵⁷ Such a post should emulate the cross-governmental focus on gender within the current brief for the Minister for Older People and Equalities. This ministerial focus on coherent equality policy has proven to be successful, and a great deal more could be achieved with a Cabinet level post.

7. Resourced Equality Directorate

The creation of a new Equality, Human Rights and Inclusion Directorate is welcome. It must now deliver the vast increase to Scottish Government's capacity on gender mainstreaming that is urgently needed, and signal real leadership and intent on gender equality. To this end, the directorate should have distinct and well-resourced departments on gender equality, other identity-based equalities, and intersectional equality mainstreaming. It should have a clear mandate that includes leading on co-ordination of gender mainstreaming across government, though not on its implementation.

Work should be undertaken to establish the scale and resource the new directorate will need to effectively achieve the mainstreaming objectives, infrastructure and activities outlined in this report, in addition to the existing remit of the Equality Unit. In terms of equality, as taken separately from human rights or inclusion, we estimate that this will entail at least a quadrupling of the current budget.

8. Director-General for Equality and Human Rights

To ensure the new directorate has the status and leadership necessary to achieve effective equality mainstreaming and oversee intersectional policy coherence across government, it should be led by a new Director-General for Equality and Human Rights. The creation of such a post is commensurate with the scale and cross-cutting ambition regarding mainstreaming, as established by the National Advisory Council on Women and Girls, and the remit of the National Taskforce for Human Rights Leadership.

9. Gender mainstreaming strategy and change programme

Successful implementation of gender mainstreaming is complex and comprised of a wide range of tools and methodologies. The requirements of PSED dictate current mainstreaming activities in Scotland, but the failures of a homogenised approach point to the need for more targeted action in terms of gender. There is also striking need for supporting infrastructure that will enable these mainstreaming imperatives to be accomplished effectively. We recommend a national strategy on gender mainstreaming is developed, to drive this agenda forward, to build leadership, and to address institutional resistance to policies that centre gender equality.

⁵⁷ UN nation states, including the United Kingdom signed up implementing gender mainstreaming within the UN Beijing Declaration and Platform for Action in 1995.

Such a strategy should incorporate gender competence, equality impact assessment, and monitoring, accountability and compliance mechanisms as set out below. It should also include strands on improved collection and use of intersectional gender-disaggregated data and the development of a comprehensive framework of tools and methodologies.

We subsequently recommend that a change programme on gender mainstreaming is led by the newly created Equality, Human Rights and Inclusion Directorate, to take forward this systemic, 'agenda-setting' change. Such a programme should incorporate a pilot exercise within a public body, as well as delivery of the national strategy. It is essential that development of such a programme, and the activities stemming from it, are adequately funded.

10. Gender expertise and competence

Increased gender competence and 'norm building' must be the cornerstone of Scotland's implementation of gender mainstreaming. The mainstreaming strategy and change programme should drive the creation of expertise centres on intersectional gender equality in each Scottish Government directorate, and a wider network of gender experts embedded throughout Scotland's public sector.

These experts would deliver mandatory training to senior and other key personnel in public bodies, in line with a comprehensive training strategy. In addition to articulating a set of standards, such a strategy should identify gaps in gender competence, set out where best to make meaningful interventions, and analyse delivery of training itself to diagnose sites and the nature of any resistance. Over time, this approach would build a cohort of gender-competent practitioners able to cascade learning within their organisations.

11. Equality impact assessment

EQIAs hold the potential to transform policymaking and deliver real change for women and girls in Scotland. At present, however, the system is simply not working. This is not due to issues with the tool itself, or its articulation within the Scottish regulations, but the way it is perceived and used. A renewed and resourced approach to ensure that EQIAs function as intended is vital. This would see EQIA embedded in the policy design process and supported by a comprehensive programme of capacity building on gender equality and the process of gender mainstreaming.

Responsibility for implementing and approving EQIAs must be clearly established. EQIA should be made an 'essential' component of job descriptions for policy analysts, researchers and others routinely conducting this work. In other contexts, where staff undertake EQIAs on an ad-hoc basis, a 'buddy system' of peer support and development is recommended. As an interim measure, a 'double stamp' system of

approval should include sign off by a manager within the team developing the activity and the designated gender equality expert for that team. Over time, as capacity is built, the need for quality assurance by a gender specialist would recede. The quality of EQIAs should also be incorporated in performance management frameworks.

Lastly, we recommend creation of a Scottish Government EQIA review panel, with the authority to compel EQIAs to be revisited within the policymaking process. This would allow wider expertise to be brought to bear more effectively within the process and allow concerns to be identified and resolved within a timescale that is compatible with policymaking.

12. Monitoring and accountability mechanisms

Compliance with the requirements of PSED is low, and public bodies' performance of the mainstreaming duty has declined notably over time. There is clear need for new scrutiny and accountability mechanisms to address this. To this end we propose that Scottish Government establish:

- An annual statement to the Scottish Parliament on intersectional gender policy coherence and gender mainstreaming, delivered by the First Minister;
- Ministerial responsibility in the form of annual progress reports against the gender mainstreaming strategy from respective Scottish Government departments;
- A Directors' Group on intersectional gender mainstreaming and gender equality policy coherence,⁵⁸ to be co-chaired by the Permanent Secretary and Director-General for Equality and Human Rights;
- Mechanisms to deliver quality assurance on public bodies' work on the specific duties, including mainstreaming reports and EQIAs. This work should be adequately resourced and delivered by gender competent personnel.

13. Enforcement

The regulatory role of EHRC Scotland should be reconsidered in relation to PSED. The EHRC's most recent strategy includes the development of its compliance function to ensure that equality law works in practice.⁵⁹ The review of the public sector equality duty must also include a focus on compliance and enforcement, within which EHRC Scotland should be asked:

- To describe how its new compliance work will change outcomes for women and girls;

⁵⁸ Such a group would provide a check against policy development that inadvertently undermines gender equality.

⁵⁹ Equality and Human Rights Commission (2019) Strategic Plan 2019-22 EHRC. Available at: <https://www.equalityhumanrights.com/sites/default/files/strategic-plan-2019-22.pdf>.

- To set out how it will flex its work to support policy divergence in Scotland around the public sector equality duty and women's equality and rights;
- How it will engage with gender experts to improve public bodies' performance of the duty with regard to the protected characteristic of sex.

5. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

Mainstreaming duties require public bodies to embed the proactive advancement of equality and non-discrimination at all levels of policymaking, from the principles set out in any overarching vision, throughout strategy and guidance documents, policy and project development, and service delivery. In the case of women and girls, this means applying intersectional gender analysis to the development or implementation of any given policy or project, in order to identify and mitigate differential impacts, and seek to reduce gender inequality.

Successive assessments of compliance with the public sector equality duty, however, demonstrate public bodies' failure to use gender mainstreaming to examine and shape their practices. Despite the legal status of PSED, public bodies show a concerning degree of complacency regarding non-compliance, and performance against their obligations has regressed over time.

Lack of quality guidance, training and a framework of resources and support has contributed to the increasing homogenisation of equalities work and dilution of focus on gender. This approach to equalities, which seeks to streamline and operate on the smallest resource possible, means that the nine protected characteristics are treated in an undifferentiated way, and as a result none of them are properly considered in the development and delivery of policy. Equalities organisations from across the spectrum state that PSED's intended focus on positive outcomes for marginalised people has been steadily displaced by a focus on process.

This represents a grave missed opportunity to advance gender equality and to improve public service delivery through equality mainstreaming. The upcoming Scottish Government review of PSED must reflect this. While implementation of gender mainstreaming has been mixed in most countries, international best practice reveals a wide range of strategic and technical components that could be adapted within Scotland's context.

A refreshed duty should enable significantly improved gender mainstreaming, have greater specificity with regards to respective equality strands, and take a more directive approach. More broadly, the public sector must be supported to deliver on PSED through a strategy and change programme that tackles resistance to gender mainstreaming, and to develop a framework of practical materials, improved intersectional data-gathering processes, and gender competence building. Clear

leadership, including at management levels throughout the public sector, an embedded gender architecture, sufficient human and financial resources, and functional monitoring, accountability and enforcement mechanisms must also all form part of a new Scottish model.

Within all of this, a predominant challenge to overcome is latent attitudes that view gender as peripheral to the core functions of government, and subtle forms of resistance to the mainstreaming agenda. A shift towards a political and institutional culture that truly grasps the multidimensional imperatives of equality is sorely needed for gender mainstreaming to become business as usual for public bodies.

Engender therefore calls on Scottish Government to:

Scotland-specific regulations of the public sector equality duty

1. Undertake the planned review of PSED in two phases, first seeking evidence on the broad context of the duty and subsequently on the content of regulations.
2. Establish a clearly specified process that enables public bodies to fulfil their legal obligations.
3. Explore strengthening the duties with the following requirements:
 - a. A mandated focus on individual protected characteristics;
 - b. Integrated gender budget analysis in budgeting processes;
 - c. Ministerial sector-specific national outcomes for each protected characteristic;
 - d. Statutory footing for an embedded gender architecture;
 - e. Outcome-focused policy statements from Scottish Government Directorates and public body departments;
 - f. An approval process for equality impact assessments involving senior, domain-specific decision-makers and gender experts.
4. Require public bodies to collect, publish and use data that is gender-sensitive, sex-disaggregated, and enables intersectional analysis, in order to meet their duties.
5. Ensure that statutory guidance includes step-by-step instructions for meeting the duty, is accessible, and sets out issues for each protected characteristic.

Broader mainstreaming activities

6. Introduce a Cabinet Secretary post for Equality to drive intersectional equality mainstreaming and policy coherence across government.
7. Ensure that the new Equality, Human Rights and Inclusion Directorate includes well-resourced departments for gender equality and equality mainstreaming.
8. Create the position of Director-General for Equality and Human Rights to lead the Equality, Human Rights and Inclusion Directorate.
9. Develop a national gender mainstreaming strategy and within this a change programme, that incorporates development of recommendations 10 – 13.
10. Embed intersectional gender competence with expertise centres across Scottish Government, a wider network of gender experts, and a comprehensive training strategy.
11. Transform the use of equality impact assessment with capacity building, clearly established accountability, and a Scottish Government EQIA review panel.
12. Create scrutiny and accountability mechanisms to increase compliance with the public sector equality duty as follows:
 - a. An annual statement to the Scottish Parliament on intersectional gender policy coherence and gender mainstreaming, delivered by the First Minister;
 - b. Ministerial responsibility for gender equality and gender mainstreaming in the form of annual progress reports against the gender mainstreaming strategy from respective Scottish Government departments;
 - c. A Directors' Group on intersectional gender mainstreaming and gender equality policy coherence, co-chaired by the Permanent Secretary and Director-General of the Equality, Human Rights and Inclusion Directorate;
 - d. Mechanisms to deliver quality assurance on public bodies' work on the specific duties, including mainstreaming reports and EQIAs.
13. Reconsider the regulatory role of EHRC Scotland in relation to the public sector equality duty, within the review of PSED.



Engender is Scotland's feminist organisation. We work for women's economic, political, and social equality with men.
Engender is a Scottish charity (SC029053) and a company limited by guarantee (SC 286639).



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