

Draft Regulations for the Scottish Specific Duties of the Public Sector Equality Act

In preparing our response to the Scottish Government's consultation on the public sector equality duty in Scotland, Engender worked to develop a set of draft regulations with Nicole Busby, Professor of Human Rights, Equality and Justice at Glasgow University's School of Law, and an expert in equality law. This document compares the original Duty with our proposed recommendations, and sets out some information about why we are proposing this change. The full proposed Draft Regulations are available at the bottom of the document.

Full details can be found in our consultation response, available at:

engender.org.uk/content/publications/Engender-response-to-PSED-consultation.pdf

FOR FURTHER INFORMATION

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ABOUT US

Engender is Scotland's feminist policy and advocacy organisation, 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

Original Duty	Proposed Change (in bold)	Why make this change?
<p>Duty to report progress on mainstreaming the equality duty</p>	<p>Duty to mainstream the equality duty</p>	<p><i>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.</i></p>
<p>3. A listed authority must publish a report on the progress it has made to make the equality duty integral to the exercise of its functions so as to better perform that duty—</p> <p>(a) not later than 30th April 2013; and</p> <p>(b) subsequently, at intervals of not more than 2 years, beginning with the date on which it last published a report under this regulation.</p>	<p>3.(1) A listed authority must make the equality duty integral to the exercise of all of its functions so as to better perform that duty by using data and evidence gathered and collated in the forms specified under regulation 13 for each protected characteristic to set outcomes as required under regulation 4, and preparing a strategic plan setting out how these outcomes and the duties specified under regulations 5-11 will be met.</p> <p>(2) A listed authority must publish a mainstreaming report including the strategic plan required under this regulation and all other information required in regulations 4-11.</p> <p>(a) not later than (one year from the date of these regulations coming into force); and</p> <p>(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a report under this regulation.</p>	<p>3.(1) <i>The mainstreaming duty should require listed authorities (LAs) to embed equality in all of its work, rather than to report on attempts to do so. We are advocating for the mainstreaming duty to support LAs in this, by spelling out prescribed steps needed, including collecting and using data, setting outcomes, and subsequently preparing the new strategic plan proposed by Scottish Government.</i></p> <p>(2) <i>We propose that equality outcomes and the strategic plan are developed every four years, and set out in a mainstreaming report that also meets other information required for that year. We also recommend annual reporting against the strategy under paragraph 6, hence the change to 4 years at (2)(b).</i></p>

	<p>(3) The development of the strategic plan required under this regulation will include a process of consultation with:</p> <p>(a) Experts in the field of equality policy;</p> <p>(b) Listed authorities' equality officers or their designates;</p> <p>(c) Lived experience panels for all protected characteristic groups;</p> <p>(4) The strategic plan required under this regulation will be reviewed and revised as necessary as part of the reporting process at intervals of not more than 2 years, beginning with the date on which the listed authority last reviewed its strategic plan under this regulation.</p> <p>(5) The Scottish Ministers will publish guidance on the production and content of the mainstreaming report and the strategic plan, including a set of indicators and a measurement framework to assess progress against national outcomes under regulation 12.</p> <p>(6) A listed authority must report on the progress it has made in meeting the equality outcomes and other activities specified in its strategic plans — annually starting with the year following publication of the strategic plan</p>	<p><i>(3) We support the proposal to introduce strategic plans if these are understood as action plans that set out how the other duties will be implemented. Decisions around content should therefore not be left to individual listed authorities but mandated in regulation guidance. The prescriptiveness that listed authorities desire and that Scottish Government is proposing to augment will not be effective if inconsistently applied. Consultation with both people with lived experience of all protected characteristics, and with equalities experts is vital.</i></p> <p><i>(4) Equality issues can emerge and evolve dramatically within four years. Review of the strategic plan, with revisions as necessary, should therefore be built into the system. We propose that listed authorities should actively decide whether to make amendments every two years, at the midpoint between strategic plans.</i></p> <p><i>(5) Please see point (3) above. The current lack of monitoring and evaluation of PSED activities is notable and undermines progress for people with protected characteristics. We propose a standardised metric published by Ministers. Alternatively, listed authorities can choose to develop and use their own under regulation 4.</i></p> <p><i>(6) We strongly reject Scottish Government's proposal to reduce reporting on PSED activity to once every four years. This is likely to undermine the purpose of the duties in mainstreaming equality and to exacerbate the</i></p>
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	<p>and not more than 12 months after the date of publication thereof,</p> <p>(7) The progress report required under this regulation should include:</p> <p>(a) Progress against the indicators and measurement framework published by Ministers under regulation 12 or against a listed authority’s own metrics for assessing progress published within its strategic plan as required under regulation 4;</p> <p>(b) Expenditure against each equality outcome or activity during the reporting period, broken down by protected characteristics;</p> <p>(c) A list of equality impact assessments undertaken during the reporting period accompanied by the information required under regulation 5 (7) on data and evidence and an explanation of how the results of each assessment were taken into account in the resulting policy and related decision-making;</p> <p>(d) A list of procurement processes undertaken during the reporting period, accompanied by a procurement equality statement as required under regulation 9;</p>	<p><i>last-minute rush to ‘find things to report on’ that we currently see. If equality is being effectively mainstreamed into the core functions of an organisation, then annual reporting should not be too onerous.</i></p> <p><i>(7) (a) Content of the progress report should be set out in regulation and guidance, to support listed authorities to meet duties 4-16 of the regulations, to improve transparency and accountability, and to mitigate against the poor level of reporting that has been seen to date.</i></p> <p><i>(b) Equality outcomes are often extremely broad and not attached to a resourced programme of work. This undermines the potential for EOs to drive change. We propose that budgets, per protected characteristic, are produced and published.</i></p> <p><i>(c) EQIAs are often of very poor quality or absent, and/or do not inform decision-making. A requirement to publish EQIAs and set out how they were taken into account would help to drive up standards.</i></p> <p><i>(d) Likewise, a requirement to publish details of procurement activity would increase potential for the procurement duty to achieve its purpose, as well as for accountability and scrutiny.</i></p>
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	<p>(e) A statement detailing how people with protected characteristics and experts in equality policy were involved in meeting the duties and specifying the impact(s) of their involvement on that implementation.</p> <p>(f) A statement detailing how the results of gender budget analyses were taken into account in budgetary decision-making.</p>	<p><i>(e) It is vital that Scottish Government’s increased focus on lived experience is not tokenistic. The impact of people’s time and efforts must be made clear in line with best practice participation standards.</i></p> <p><i>(f) As with EQIA, gender budget analysis must be embedded in decision-making, rather than serving as a commentary alongside it, if we are to see better outcomes for women and girls.</i></p>
<p>Duty to publish equality outcomes and report progress</p>	<p>Duty to publish equality outcomes and report progress</p>	
<p>4.--(1) A listed authority must publish a set of equality outcomes which it considers will enable it to better perform the equality duty—</p> <p>(a) not later than 30th April 2013; and</p> <p>(b) subsequently, at intervals of not more than 4 years, beginning with</p>	<p>4.—(1) A listed authority must prepare and publish a set of equality outcomes to be included in the strategic plan required under regulation 3 which it considers will enable it to better perform the equality duty with specific consideration of the national equality outcomes published by the Scottish Ministers in accordance with regulation 12—</p> <p>(a) not later than XXXX--; and</p> <p>(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a strategic plan required under</p>	<p>4.(1) <i>Equality outcomes must be prepared in advance of the strategic planning process. The strategic plan must subsequently articulate how the equality outcomes will be achieved. We propose that listed authorities consider adopting a set of national equality outcomes that have been published by Scottish Ministers (see reg. 12) as the basis for their own. These would be amended to the local/domain specific context accordingly.</i></p>

<p>the date on which it last published a set of equality outcomes under this paragraph.</p> <p>(2) In preparing a set of equality outcomes under paragraph (1), a listed authority must—</p> <p>(a) take reasonable steps to involve persons who share a relevant protected characteristic and any person who appears to the authority to represent the interests of those persons; and</p> <p>(b) consider relevant evidence relating to persons who share a relevant protected characteristic.</p>	<p>regulation 3.</p> <p>(2) In preparing a set of equality outcomes under paragraph (1), a listed authority must—</p> <p>(a) ensure that equality outcomes express a desired change for people with specific protected characteristics;</p> <p>(b) ensure that equality outcomes do not replicate existing legal duties;</p> <p>(c) consult with persons from all protected characteristic groups and experts in equality policy and publish details of how the consultation was conducted, specifying the outcomes of the consultation and how they were taken into account in preparing the equality outcomes;</p> <p>(d) take account of relevant existing evidence relating to persons who share a relevant protected characteristic in preparing the equality outcome</p> <p>(e) specify the percentage of the authority’s budget that has been allocated to achieve the specified equality outcome, with the breakdown of how much was allocated to each protected characteristic group in respect of overarching or generic outcomes.</p>	<p><i>(2)(a) Equality outcomes to date have often been generic, unfocussed and not linked to clear change for people experiencing inequality. We support the Coalition for Racial Equality and Rights’ proposal that outcomes clearly articulate a specific change in the lives of marginalised people.</i></p> <p><i>(b) Similarly, some listed authorities have restated existing legal obligations in creating EOs.</i></p> <p><i>(c) The setting of equality outcomes must be in line with an established standard of co-production that involves equalities experts as well as people with lived experience of inequality across the protected characteristics. This should entail the publishing of details in the strategic plan, including how input was taken into account in decision-making;</i></p> <p><i>(d) All existing evidence must be taken into account when developing equality outcomes</i></p> <p><i>(e) Equality outcomes that are linked to stated change for people with protected characteristics will not be achieved unless actions are costed and resourced.</i></p>
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<p>(3) If a set of equality outcomes published by a listed authority does not seek to further the needs mentioned in section 149(1) of the Act in relation to every relevant protected characteristic, the authority must publish its reasons for proceeding in this way.</p> <p>(4) A listed authority must publish a report on the progress made to achieve the equality outcomes published by it under paragraph (1)—</p> <p>(a) not later than 30th April 2015; and</p> <p>(b) subsequently, at intervals of not more than 2 years, beginning with the date on which it last published a report under this paragraph.</p> <p>(5) No change</p>	<p>(3) If a set of equality outcomes published by a listed authority does not seek to further the needs mentioned in section 149(1) of the Act and does not seek to contribute to the national outcomes relevant to the reporting period provided under regulation 12 in relation to every relevant protected characteristic, the authority must publish its reasons for proceeding in this way and outline what steps it is taking to address specified inequalities identified within its own local area or context.</p> <p>(4) A listed authority must publish progress made to achieve the equality outcomes published by it under paragraph (1) within the annual progress report required under regulation 3 against the indicators and measurement framework set by Ministers in relation to the national outcomes for the reporting period in the form specified under regulation 12 or against a listed authority’s own metrics for assessing progress published within its strategic plan as required under regulation 3.</p> <p>(5) No change</p>	<p><i>(3) National outcomes will not cover the most pressing inequalities in all local areas or domain-focussed bodies. Listed authorities should have the option to create tailored equality outcomes, rather than amending and adopting national outcomes. They should publish rationale for this.</i></p> <p><i>(4) Annual reporting against the strategic plan would include updates on activity to achieve equality outcomes, replacing the need for separate reports every two years. This annual reporting would be in line with a measurement framework published alongside the equality outcomes in the strategic plan.</i></p>
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Duty to assess and review policies and practices	Duty to assess and review policies and practices	<i>In practice this is known as Equality Impact Assessment (EQIA)</i>
<p>5.--(1) A listed authority must, where and to the extent necessary to fulfil the equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs mentioned in section 149(1) of the Act.</p> <p>(2) In making the assessment, a listed authority must consider relevant evidence relating to persons who share a relevant protected characteristic (including any received from those persons).</p>	<p>5.--(1) A listed authority must, where and to the extent necessary to fulfil the equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs mentioned in section 149(1) of the Act.</p> <p>(2) In making the assessment, a listed authority must consider and record relevant evidence relating to persons who share a relevant protected characteristic (including any received from those persons) in the form specified under regulation 12 –</p> <p>(a) by gathering, recording and using disaggregated qualitative and quantitative data relating to all protected characteristic groups in the form specified under regulation 12;</p> <p>(b) by gathering, recording and using intersectional qualitative and quantitative data relating to the members of two or more</p>	<p>5. <i>EQIAs are not working as intended. Our proposed amendments seek to reflect the core purpose of the duty to bring equality to the heart of decision-making.</i></p> <p><i>(2) Records are essential to enable scrutiny, accountability and improvement. To address current inconsistency and low standards, we propose that listed authorities follow prescribed steps when completing an EQIA. Details are set out under reg. 12.</i></p> <p><i>(a) The lack of collection and use of gendered data fundamentally undermines the scope of EQIA to promote change.</i></p> <p><i>(b) Intersectional data analysis and use is even more rare.</i></p>

	<p>protected characteristic groups in the form specified under regulation 12;</p> <p>(c) by identifying gaps in the available data and specifying the steps necessary to acquire the missing data;</p> <p>(d) by analysing all available data using a framework which takes account of the specific inequalities relevant to each protected characteristic group as well as the inequalities relevant to the members of two or more protected characteristic groups which arise as a result of intersectionality and their underlying causes to identify any potential discriminatory impacts of the proposed new or revised policy or practice on each of the protected characteristic groups as well as on the members of two or more protected characteristic groups;</p> <p>(3) A listed authority must, in developing a policy or practice and at the earliest possible point in the process, take account of, including through the use of worked examples, the results of any assessment made by it under paragraphs (1 and 2) in respect of that policy or practice with the specific aims of identifying –</p> <p>(a) where discrimination against each protected characteristic group can be reduced,</p>	<p><i>(c) EQIAs are not routinely used to identify and address data gaps.</i></p> <p><i>(d) An intersectional analysis framework is needed to drive improvements and move EQIA closer to achieving positive change for oppressed and marginalised groups. Further commentary on our proposals can be found in our consultation response.</i></p> <p><i>(3) EQIAs are usually undertaken as an adjunct to policy or programme development and rarely from the outset of the work as needed.</i></p> <p><i>(a)(b) EQIAs must identify not only potential discrimination but also opportunities to advance</i></p>
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<p>(3) A listed authority must, in developing a policy or practice, take account of the results of any assessment made by it under paragraph (1) in respect of that policy or practice.</p> <p>(4) A listed authority must publish, within a reasonable period, the results of any assessment made by it under paragraph (1) in respect of a policy or practice that it decides to apply.</p>	<p>and;</p> <p>(b) where equality for each protected characteristic group can be advanced.</p> <p>(3A) A listed authority must, following the assessment made by it under paragraphs (1, 2 and 3) adapt the proposed new or revised policy or practice to address the inequalities identified and to take any action necessary to advance equality, including any action necessary to fill gaps in the relevant data specified in paragraph 2(c)</p> <p>(4) A listed authority must publish, alongside the policy or practice being assessed and in the form specified under regulation 12, any assessment made by it under paragraph (1) in respect of a policy or practice that it decides to apply and whether the policy or practice being assessed will –</p> <p>(a) be continued without amendment as no equality impact was identified;</p> <p>(b) continue with amendment to address the inequality(ies) identified;</p> <p>(c) be withdrawn temporarily in order to identify and make any amendments necessary to address the inequality(ies) identified, or;</p> <p>(d) withdrawn completely as no amendments</p>	<p><i>equality for every group.</i></p> <p><i>(3A) It is crucial that listed authorities act on the findings of EQIAs, rather than producing a commentary that ultimately has no bearing on the policy or programme.</i></p> <p><i>(4) The clause to publish EQIAs as it stands is not effective. We propose replacing ‘within a reasonable period’ with an obligation to publish the EQIA alongside the policy/practice, and to set out what the outcome of the EQIA has been. The options we suggest have been drawn up and proposed by the Coalition for Racial Equality and Rights.</i></p>
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<p>(5) A listed authority must make such arrangements as it considers appropriate to review and, where necessary, revise any policy or practice that it applies in the exercise of its functions to ensure that, in exercising those functions, it complies with the equality duty.</p> <p>(6) No change</p>	<p>which would address the inequality(ies) identified are possible.</p> <p>(5) A listed authority must review and, where necessary, revise any policy or practice that it applies in the exercise of its functions to ensure that, in exercising those functions, it complies with the equality duty, in accordance with regulation 12A(5).</p> <p>(6) No change</p> <p>(7) A listed authority must publish all relevant data collected and analysed under paragraphs 1 and 2 in respect of any policy or practice, and the categorisation identified under paragraph 4 along with any specific actions taken to address inequalities or potential inequalities identified by such data as part of its annual report.</p>	<p><i>(5) The scope of impact assessments has been undermined by discretion for listed authorities to make “arrangements as it considers appropriate” with regard to review and revision of policy and practice. We propose that Scottish Ministers are required to publish a schedule of review relating to existing policies under regulation 12A.</i></p> <p><i>(7) Use of data in completing EQIAs is currently extremely limited, as is evidence that findings from EQIAs influence policy and programmes. We propose full details are published in the annual report against the strategic plan to enable greater understanding of the barriers to better performance of EQIA and to increase accountability.</i></p>
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<p>Duty to gather and use employee information</p>	<p>Duty to gather and use employee information</p>	<p><i>Our proposed amendments on regulation 6 are based on proposals from Close the Gap.</i></p>
<p>6.--(1) A listed authority must take steps to gather information on—</p> <p>(a) the composition of the authority’s employees (if any); and</p> <p>(b) the recruitment development and retention of persons as employees of the authority, with respect to, in each year, the number and relevant protected characteristics of such persons.</p>	<p>6.--(1) A listed authority must take steps to gather information on—</p> <p>(a) the composition of the authority’s employees (if any) which should be broken down to show the number and relevant protected characteristics of persons in each of the following categories:</p> <p>(i) The occupations of all posts;</p> <p>(ii) The occupations of all full-time posts;</p> <p>(iii) The occupations of all part-time posts;</p> <p>(iv) The occupations of all fixed-term and/or temporary posts;</p> <p>(v) The number of flexible working applications requested during the reporting period and the proportion of successful applications as a percentage of total applications during the same period;</p> <p>and</p> <p>(b) the recruitment of persons as employees of the authority, with respect to, in each year, the number and relevant protected characteristics of such persons in each of the following</p>	<p>6.(1)(a) <i>Data on the shape of employment for people with protected characteristics is vital to reduce labour market inequalities. This includes information on part-time, temporary, and flexible work.</i></p> <p><i>(b) Further details regarding recruitment, development and retention of employees are needed to understand where systemic inequalities are acting as barriers to</i></p>

	<p>categories:</p> <ul style="list-style-type: none">(i) Applications received for each vacancy;(ii) Shortlisted candidates for each vacancy;(iii) Appointments made; <p>and</p> <p>(c) the development of persons as employees of the authority, with respect to, in each year, the number and relevant protected characteristics and working patterns of such persons in relation to:</p> <ul style="list-style-type: none">(i) Those who access training;(ii) Those who request training and are denied;(iii) Those who receive coaching or mentoring;(iv) Those who are selected for internal development programmes;(v) Those who are promoted; <p>and</p> <p>(d) the retention of persons as employees of the authority, with respect to, in each year, the number and relevant protected characteristics and working patterns of such persons in relation to:</p> <ul style="list-style-type: none">(i) Those who participate in shared parental	<p><i>progress.</i></p>
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	<p>leave;</p> <p>(ii) Those who are granted voluntary severance;</p> <p>(iii) Those whose posts are made compulsorily redundant;</p> <p>(iv) Those who are dismissed for a reason other than redundancy;</p> <p>(v) Those who retire;</p> <p>and</p> <p>(e) the proportion, as a percentage of the total workforce, of women returning to work following a period of maternity leave and data regarding any contractual changes following such return.</p>	
(2) No change	(2) No change	
(3) No change	(3) No change	
(a) No change	(a) No change	
(b) No change	(b) No change	
6A No change	6A No change	
Duty to publish gender pay gap information	Duty to publish gender pay gap information	<i>Our proposed amendments on regulation 7 are based on proposals from Close the Gap.</i>
7.--(1) A listed authority	7.--(1) A listed authority must in accordance	7 (1). Inconsistency in reporting the gender pay gap

<p>must in accordance with regulation 8A publish information on the percentage difference among its employees between men’s average hourly pay (excluding overtime) and women’s average hourly pay (excluding overtime).</p> <p><i>[para 2 omitted by The Equality Act 2010 (Specific Duties)(Scotland) Amendment Regulations 2016]</i></p>	<p>with regulation 8A publish information on the percentage difference among its employees between men’s average hourly pay (excluding overtime) and women’s average hourly pay (excluding overtime), known as the “mean gender pay gap”, in respect of the following:</p> <p>(a) The entire workforce;</p> <p>(b) All those employed on a full-time basis;</p> <p>(c) All those employed on a part-time basis compared with all those employed on a full-time basis.</p> <p>(d) The difference between the mean hourly rate of pay of male (entire workforce/full-time employees/part-time employees) and that of female (entire workforce/full-time employees/part-time employees) must be expressed as a percentage of the mean hourly rate of pay of male (entire workforce/full-time employees/part-time employees) and is to be determined as follows—</p> $\frac{(A - B)}{A} \times 100$ <p>where—</p> <p>A is the mean hourly rate of pay of all male (entire workforce/full-time employees/part-time employees); and</p>	<p><i>across listed authorities means that it is difficult to chart progress and undertake comparative analysis. More detailed and standardised information from listed authorities will enable analysis that allows for greater scrutiny and accountability of action towards closing gender pay gaps.</i></p> <p><i>The requirement to publish whole organisation, full- and part-time pay gaps will enable listed authorities to undertake meaningful analysis of their gender pay gap and its causes, which can drive more targeted action to close their pay gaps.</i></p> <p><i>Many listed authorities still fail to publish the required gender pay gap information. The provision of a standardised formula will help ensure consistency and accuracy in calculation and make clear exactly what information authorities are obliged to publish.</i></p>
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	<p>B is the mean hourly rate of pay of all female (entire workforce/full-time employees/part-time employees).</p> <p>(2) A listed authority must in accordance with regulation 8A publish information on the difference between the midpoints in the ranges of men’s average hourly pay (excluding overtime) and women’s average hourly pay (excluding overtime), known as the “median gender pay gap”, in respect of the following:</p> <p>(a) The entire workforce;</p> <p>(b) All those employed on a full-time basis;</p> <p>(c) All those employed on a part-time basis compared with all those employed on a full-time basis.</p> <p>(d) The difference between the median hourly rate of pay of male (entire workforce/full-time employees/part-time employees) and that of female (entire workforce/full-time employees/part-time employees) must be expressed as a percentage of the median hourly rate of pay of male (entire workforce/full-time employees/part-time employees) and is to be determined as follows—</p>	
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<p>(3) The information published must be based on the most recent data available for a date when the authority had at least 20 employees.</p> <p><i>[paras 4 and 5 omitted by The Equality Act 2010 (Specific Duties)(Scotland) Amendment Regulations 2016]</i></p>	$\frac{(A - B)}{A} \times 100$ <p>where—</p> <p>A is the median hourly rate of pay of all male (entire workforce/full-time employees/part-time employees); and</p> <p>B is the median hourly rate of pay of all female (entire workforce/full-time employees/part-time employees).</p> <p><i>[original para 2 omitted by The Equality Act 2010 (Specific Duties)(Scotland) Amendment Regulations 2016]</i></p> <p>(3) The information published must be based on the most recent data available for a date when the authority had at least 20 employees.</p> <p><i>[paras 4 and 5 omitted by The Equality Act 2010 (Specific Duties)(Scotland) Amendment Regulations 2016]</i></p> <p>7A Duty to publish information relevant to gender pay gaps</p> <p>A listed authority must in accordance with regulation 8A publish information on:</p> <p>a) The proportion, as a percentage of the total number, of women and men employed at each grade and</p>	<p>7A. <i>Repeated assessments of performance of this duty have identified that the vast majority of listed authorities still fail to publish the required occupational segregation information. Listed authorities rarely publish information on both types of occupational segregation – vertical (by grade) and horizontal (by job type or cluster) – as required, with the majority of those who do publish only providing data on vertical</i></p>
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	<p>in each job type or cluster;</p> <p>b) The distribution of male and of female employees by grade and by job type or cluster across the workforce as whole.</p>	<p><i>segregation. This inhibits meaningful analysis and targeted action to tackle their gender pay gaps, and means the majority of public bodies are failing to comply with this duty. The specification of each type of information required, with the addition of information on the proportion of women and men in each grade and job type or cluster will clarify what public bodies are obliged to publish, and enable more meaningful and detailed analysis of occupational segregation within a listed authority, facilitating better designed action to address issues identified.</i></p>
<p>Duty to publish statements on equal pay, etc.</p>	<p>Duty to publish statements on equal pay, etc.</p>	<p><i>Our proposed amendments on regulation 8 are based on proposals from Close the Gap.</i></p>
<p>8.--(1) A listed authority must in accordance with regulation 8A publish a statement containing the information specified in paragraph (2) —</p> <p>(a) 2013; and</p> <p>(b) each fourth year after that.</p> <p>(2) The statement must specify—</p> <p>(a) the authority’s policy</p>	<p>8.--(1) A listed authority must in accordance with regulation 8A publish a statement containing the information specified in paragraph (2) —</p> <p>(a) 2013; and</p> <p>(b) each fourth year after that.</p> <p>(2) The statement must specify—</p> <p>(a) the authority’s policy on equal pay among its employees between—</p> <p>(i) men and women;</p> <p>(ii) persons who are disabled and persons who</p>	

<p>on equal pay among its employees between—</p> <p>(i) men and women;</p> <p>(ii) persons who are disabled and persons who are not; and</p> <p>(iii) persons who fall into a minority racial group and persons who do not; and</p> <p>(b) occupational segregation among its employees, being the concentration of—</p> <p>(i) men and women;</p> <p>(ii) persons who are disabled and persons who are not; and</p> <p>(iii) persons who fall into a minority racial group and persons who do not, in particular grades and in particular occupations.(3)</p> <p>The information published must be based on the most recent data available for a date when</p>	<p>are not; and</p> <p>(iii) persons who fall into a minority racial group and persons who do not; and</p> <p>(b) occupational segregation among its employees, being the concentration of—</p> <p>(i) men and women as identified in compliance with regulation 7A;</p> <p>(ii) persons who are disabled and persons who are not; and</p> <p>(iii) persons who fall into a minority racial group and persons who do not, in particular grades and in particular occupations.</p> <p>(3) The information published must be based on the most recent data available for a date when the authority had at least 20 employees.</p> <p>(4) The information published must be used by the listed authority to formulate an action plan, as part of the statement on equal pay, to be used:</p> <p>(a) As the basis for an equal pay review of the entire workforce;</p> <p>(b) To monitor pay rates across the entire workforce;</p> <p>(c) The action plan should be drawn up in partnership with recognised trade union(s) or</p>	<p><i>(8)(4) At present listed authorities are not specifically required to do anything with the information gathered and published, and a majority have not set out plans to do so. An action plan within the statement on equal pay, including a set of prescribed information, would drive forward listed authorities' work in this area and enable more effective compliance monitoring and enforcement.</i></p>
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<p>the authority had at least 20 employees.</p> <p><i>[para 4 omitted by The Equality Act 2010 (Specific Duties)(Scotland) Amendment Regulations 2016</i></p> <p>(5) No change</p>	<p>employee representatives with the following aims:</p> <p>(i) To set objectives intended to eliminate the gender pay gaps;</p> <p>(ii) To identify specified actions, with appropriate targets and timelines, intended to eliminate the gender pay gaps;</p> <p>(iii) To specify the plan for implementation of the actions specified at (ii) in partnership with the workforce;</p> <p>(iv) To assign responsibility and accountability for the policy to a named individual drawn from the senior management team;</p> <p>(v) To identify and commit the necessary resources required to achieve equal pay.</p> <p><i>[Previous para 4 omitted by The Equality Act 2010 (Specific Duties)(Scotland) Amendment Regulations 2016</i></p> <p>(5) No change</p>	
<p>Duty to consider award criteria and conditions in relation to public procurement</p>	<p>Duty to consider award criteria and conditions in relation to public procurement</p>	
<p>9.--(1) No change</p>	<p>9.—(1) No change</p>	

<p>(2) No change</p> <p>(3) Nothing in this regulation imposes any requirement on a listed authority where in all the circumstances such a requirement would not be related to and proportionate to the subject matter of the proposed agreement.</p>	<p>(2) No change</p> <p>(3) To discharge its duties to have due regard for better performance of the equality duty specified in paragraphs 1 and 2, where a listed authority is a contracting authority it must –</p> <p>(a) produce an equality statement within its annual report specifying how it has gathered relevant data including through consultation with the users of the goods and/or services it provides to identify potential impacts on the members of each protected characteristic group and to advance equality for each protected characteristic group;</p> <p>(b) Incorporate equality as a specified objective of each relevant agreement and require evidence of the equality competence on the part of any potential contractors;</p> <p>(c) Ensure equality within the workforce relating to any relevant agreement, including through the setting of targets for the employment of members of each protected characteristic group;</p> <p>(d) Include weighted equality criteria related to composition of the workforce, and product and service design in the tender evaluation process so that final decisions regarding the awarding of contracts take account of the equality</p>	<p><i>(9)(3) Gender mainstreaming has never been systematically applied to procurement processes in Scotland. We recommend that listed authorities are required to follow a set of steps (described at 3b-3e) and to produce an annual statement that is published within the strategic plan progress report. This statement should set out how impacts of procurement activities on equality have been identified, both negatively and positively, as well as an overview of steps 3b – 3e for each procurement process undertaken.</i></p>
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<p>(3) No change</p>	<p>competence of contractors;</p> <p>(e) Incorporate equality clauses into the conditions of each relevant agreement including the process by which specified equality indicators will be measured and monitored by the contracting parties throughout the duration of the contract;(f) Publish the arrangements for and outcomes of any assessment made in respect of this duty.</p> <p>(3) No change</p>	
<p>Duty to publish in a manner that is accessible, etc.</p>	<p>Duty to publish in a manner that is accessible, etc.</p>	
<p>10.--(1) A listed authority must comply with its duty to publish under regulations 3, 4, 7 and 8 in a manner that makes the information published accessible to the public.</p> <p>(2) A listed authority must, so far as practicable, comply with its duty to publish under regulations 3, 4, 7 and 8</p>	<p>10.—(1) A listed authority must comply with its duty to publish under these regulations in a manner that makes the information published accessible to the public.</p> <p>(2) A listed authority must, so far as practicable, comply with its duty to publish under these regulations by employing an existing means of public performance reporting.</p>	<p>10. <i>Our draft regulations include enhanced publishing requirements throughout.</i></p>

<p>by employing an existing means of public performance reporting.</p>		
<p>Duty to consider other matters</p>	<p>Duty to consider other matters</p>	
<p>11. In carrying out its duties under these Regulations, a listed authority may be required to consider such matters as may be specified from time to time by the Scottish Ministers.</p>	<p>11. In carrying out its duties under these Regulations, a listed authority may be required to consider such matters as may be specified from time to time by the Scottish Ministers, including where a failure to meet the requirements of these regulations in full or in part is identified.</p>	<p>11. <i>Analysis of PSED and the SSDs often points to lack of leadership as a factor that undermines the intent and implementation of the duties. Scrutiny and enforcement of the SSDs is also very poor. There is clear potential for regulations 11 and 12 to be better utilised by Ministers to drive improved delivery of PSED. Regulations should specify that Ministers may require action from listed authorities where they fail to meet their duties.</i></p>
<p>Duty of the Scottish Ministers to publish proposals to enable better performance</p>	<p>Duty of the Scottish Ministers to publish proposals to enable better performance</p>	
<p>12.--(1) The Scottish Ministers must publish proposals for activity to enable a listed authority to better perform the equality duty— (a) not later than 31st</p>	<p>12.—(1) The Scottish Ministers must publish proposals for activity to enable a listed authority to better perform the equality duty— (a) not later than XXXX</p>	

<p>December 2013; and</p> <p>(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published proposals under this paragraph.</p> <p>(2) The Scottish Ministers must publish a report on progress in relation to the activity—</p> <p>(a) not later than 31st December 2015; and</p> <p>(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a report under this paragraph.</p>	<p>(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published proposals under this paragraph.</p> <p>(2) The proposals will be developed following a process of consultation with:</p> <p>(a) Experts in the field of equality law and policy;</p> <p>(b) Listed authorities' equality officers or their designates;</p> <p>(c) Lived experience panels for all protected characteristic groups.</p> <p>(3) The proposals required under this regulation will be reviewed and revised as necessary at intervals of not more than 2 years, beginning with the date on which proposals were last reviewed under this regulation.</p> <p>(4) The Scottish Ministers must publish progress made in relation to the activity within the annual progress report required under regulation 3.</p>	<p><i>12.(2) To date, Scottish Ministers have not fulfilled their duties in publishing proposals under regulation 12. We recommend that this process is strengthened through consultation with lived experience panels for all groups, experts in equality law and policy and public sector equality officers.</i></p> <p><i>(3) Flexibility to amend the proposals should be built in, with the option to revise after review at the two-year mark.</i></p> <p><i>(4) Regular reporting would help to secure equality mainstreaming activity as a core part of government business and to drive up standards.</i></p>
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<p>Duty of Scottish Ministers to publish national equality outcomes to enable better performance</p>	<p><i>This is a new regulation – there was no previous duty on national equality outcomes</i></p>
<p>12A.—(1) The Scottish Ministers must publish national equality outcomes, including a set of indicators and a measurement framework, and related guidance on specific activity to enable a listed authority to better perform the equality duty—</p> <p>(a) not later than 31st December 202--; and</p> <p>(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published proposals under this paragraph.</p> <p>(2) The national equality outcomes must be broken down in respect of</p> <p>(a) Scottish Ministerial portfolios at Cabinet Secretary level at the time of publication; and</p> <p>(b) Each protected characteristic group</p>	<p><i>12A. (1) Equality outcomes are often very broad in scope and have not delivered progressive change for people with protected characteristics. Overarching outcomes that are adapted to local/domain contexts could focus equalities work at a strategic level, as well as in response to the landscape at a given time. Such a process could also help to create leadership and profile for outcomes setting. A measurement framework and set of indicators would be essential in supporting listed authorities to chart progress and engage with the process.</i></p> <p><i>2(a) A mandated sectoral focus for the national outcomes, with the option for listed authorities to adapt these to meet local need, would help move away from meaningless equality outcomes (e.g. “there is a culture in which women’s lives, opportunities and confidence are improved”) that are not focussed at a specific inequality and cannot be measured.</i></p> <p><i>(b) A one size fits all approach would be inadequate to capture the locally-specific needs of respective protected characteristic groups. We therefore advocate for Ministerial sector-specific national outcomes to be developed for each protected characteristic. There is a manifest need for equality outcomes to be geared towards positive change for oppressed groups in Scotland.</i></p>

(3) Each national equality outcome will be developed following a process of consultation with:

(a) Experts in the field of equality policy;

(b) Listed authorities' equality officers or their designates;

(c) Lived experience panels for all protected characteristic groups.

(4) The national equality outcomes must include:

(a) The identification of specified key inequalities, with targets for improvement as appropriate, for listed authorities to consider in preparing their equality outcomes under regulation 4, and subsequently identifying actions to achieve these outcomes in the form of a strategic plan as required under regulation 3;

(b) Relevant information at the national level including disaggregated data for each protected characteristic group relating to the specified functions of listed authorities to be used and referred to by listed authorities in preparing equality outcomes and related indicators and measurement frameworks under regulation 4.

(3) Outcomes should be targeted at key inequalities for each group, identified through a process of consultation, with directions in regulation for public bodies to select and tailor these accordingly. In turn, this would be undertaken in local-level or domain-specific consultation with relevant groups. In adapting a national level outcome to the local/domain context, authorities would aim to contribute to reducing the overarching stated inequality. Alternatively, listed authorities would be able to create separate outcomes, and set out the rationale for doing so. Listed authorities should set at least one outcome for each protected characteristic.

(4)(a) Equality outcomes are often vague and disconnected from specific inequalities or action to achieve change. The national outcomes setting process should include a set of specified inequalities and targets for improvement where appropriate. As above, listed authorities would be required to consider these in setting their own outcomes and subsequent action plans, but are not bound to them.

(b) Lack of data disaggregated by protected characteristic groups undermines the ability of listed authorities to set adequate outcomes and to measure progress. Robust attempts to measure progress against equality outcomes have been virtually non-existent. Ministers should set out indicators and a measurement framework, with the alternative for listed authorities to establish their own metrics. This would also strengthen accountability.

(5) Alongside the national equality outcomes Scottish Ministers must publish a standard template to be used by listed authorities in fulfilling their duty to assess and review policies and practices under regulation 5 which should be accompanied by a schedule of review relating to existing policies and which, in relation to any proposed new or revised policy or practice, should specify:

- (a) the required evidence relating to persons who share a relevant protected characteristic (including any received from those persons);**
- (b) the methods of data analysis to be used in determining the impact of the proposed new or revised policy or practice on each protected characteristic group.**

(6) The Scottish Ministers must report on progress in relation to the national equality outcomes —

- (a) not later than XXXX; and**
- (b) subsequently, at intervals of not more than 1 years, beginning with the date on which it last published a report under this paragraph.**

(7) The national outcomes required under this regulation will be reviewed and revised as necessary at intervals of not more than 2 years, beginning with the date on which national outcomes were last reviewed under this regulation.

(5) The general standard of EQIA is extremely low and does not deliver the policy intent behind regulation 4 of the SSDs. A prescriptive model support listed authorities that lack capacity and experience to understand and deliver what is required. Our recommended template is attached at the annex to this document and published in our response to the Scottish Government's consultation on PSED.

*Regulation 4 is a duty to assess and **review** policy, however in practice EQIA is applied to new policy and programme development only. We have supported calls from the Coalition for Racial Equality and Rights (CRER) to introduce a schedule of review for existing policies and include this as an obligation on Ministers under regulation 12.*

(6) The national equality outcomes would need to be developed and published on a schedule that allowed listed authorities to consult on and develop their own equality outcomes, ahead of development of the strategic plan which would enact them. In line with our broader proposals for equality outcomes, reporting on national outcomes against the prescribed measurement framework should be undertaken annually.

(7) Review and optional revision should be built into the system, to afford flexibility in the face of evolving circumstances (e.g. austerity, Covid or the cost of living crisis).

<p>Duty to gather, collate and use intersectional equality data</p>	<p><i>This is a new regulation – there was no previous standalone duty on data</i></p>
<p>13.—(1) In fulfilling its duties under these regulations, a listed authority must use and publish evidence and data related to persons who share protected characteristics –</p> <p>(a) by gathering, recording and using disaggregated qualitative and quantitative data relating to all protected characteristic groups;</p> <p>(b) by gathering, recording and using intersectional qualitative and quantitative data relating to the members of two or more protected characteristic groups;</p> <p>(c) by gathering, recording and using gender-sensitive qualitative and quantitative data that meet established international standards as provided for in guidance, and equivalent for other protected characteristics as provided for in guidance;</p> <p>(d) by collecting data that enables intersectional analysis by ensuring that the data relating to each protected characteristic group can be</p>	<p><i>13.(1) Fulfilment of the SSDs is categorically undermined by a lack of data. Where data is gathered it is not systematically used to meet requirements under the regulations. Across all policy areas a lack of gender-sensitive sex-disaggregated data undermines potential for legislation and policy to improve women’s equality and to meet women’s needs.</i></p> <p><i>Improved gathering and use of intersectional equality data throughout the SSD obligations must be driven at a systemic level and enable intersectional gender analysis. As such, we recommend duties for public bodies to gather, record, use and publish data that is:</i></p> <p><i>(a) disaggregated by all protected characteristic groups</i></p> <p><i>(b) disaggregated intersectionally by two or more protected characteristics</i></p> <p><i>(c) gender sensitive, in line with international standards that are set out in guidance</i></p> <p><i>(d) Availability of intersectional data is extremely limited. Improvement is urgently needed to enable programming and policy that targets better outcomes for multiply marginalised</i></p>

<p>sub-divided with reference to other protected characteristic groups to identify the combined effects of membership of two or more groups;</p> <p>(e) by collecting data that is directly related to the performance indicators for specific bodies or specified policies in accordance with regulations 3 and 4;</p> <p>(f) by using the evidence collected in the processes of monitoring and impact assessing duties set out in these regulations to fulfil its obligations to mainstream equality throughout its functions in accordance with regulation 3.</p> <p>(2) A listed authority must publish intersectional qualitative and quantitative data relating to all activities undertaken in fulfilment of paragraph (1).</p>	<p><i>women and other groups. Data must be collected and recorded such that it enables intersectional analysis where possible.</i></p> <p><i>(e) Public bodies do not view equality as core to their daily operations. Data should be collected in relation to listed authorities' core functions, and action assessed under the measurement framework and indicators as referenced in regulations 3 and 4.</i></p> <p><i>(f) Data should not only be collected but utilised by listed authorities in creating equality outcomes and a strategic plan aimed at reducing inequality for protected characteristic groups, and mainstreaming equality throughout their organisations.</i></p> <p><i>(2) Publishing of data is vital to improve accountability and scrutiny regarding these requirements, and to allow for external analysis of the data.</i></p> <p><i>Detailed ministerial guidance would be needed to support listed authorities in meeting these duties.</i></p> <p><i>* We recognise concerns around listed authorities' capacity to meet current duties on data. We recommend that Scottish Government commits to introducing a duty on intersectional data and enacts this after a period of development work. *</i></p>
<p>Duty to integrate intersectional gender budget analysis into budget setting and revenue raising processes</p>	<p><i>This is a new regulation – there was no previous duty on gender budget analysis</i></p>
<p>14.—(1) The Scottish Ministers must make provision for</p>	<p>14. (1) Current gender budgeting processes do not result in</p>

intersectional gender budget analyses in:

- (a) All central budget-setting processes relating to the Scottish budget;**
 - (b) All devolved budget-setting processes relating to the Block Grant and related budgetary matters including arrangements made under the Internal Market Act 2020;**
 - (c) All budgetary arrangements between Scottish Government and public bodies funded through the Scottish Budget;**
 - (d) All revenue raising processes;**
- (2) Reporting requirements detailing the impact of the gender budget analyses required under (1) on the decision-making relevant to the setting of budgets and revenue-raising plans must be published by spending portfolio as part of the budget reporting process.**
- (3) The data relating to the intersectional gender analyses of all policies and programmes funded on behalf of listed authorities by Scottish Government under paragraphs (1) a-d and reported under regulation 4 must be collated by the Scottish Ministers and published alongside a report detailing any action taken in relation to future budget allocation.**
- (4) The Scottish Ministers will produce guidance on intersectional gender budget analysis**

integrated GBA of spending decisions and revenue raising in Scotland. Engender supports the recommendation from the First Minister's National Advisory Council on Women and Girls (NACWG) to mandate the use of intersectional GBA through the SSDs. In line with thinking from Scottish Women's Budget Group, we have listed budgeting processes that should be specified if intersectional GBA is introduced. It is vital that GBA is systematically applied to all budget-setting and revenue raising processes.

(2) Gender budget analysis is a form of equality impact assessment and, as with EQIA, the impact of GBA on the decision made must be published to improve scrutiny, drive better use of the methodology, and ultimately enable better outcomes for women and other groups.

(3) Existing data is often not published. Requirements to publish data are integrated throughout our recommended regulations as this will improve accountability and scrutiny, and to enable further analysis and identification of data gaps by stakeholders. Ongoing analysis and improvement will be needed to embed application of GBA across government, and Ministers should be responsible for this.

(4) Detailed statutory guidance would be necessary, particularly in light of concerns around capacity gaps.

<p>(5) A listed authority must make provision for intersectional gender budget analyses in all budget-setting processes using the data required under regulation 5(2).</p> <p>(6) A listed authority must report on how the results of gender budget analyses were taken into account in budgetary decision-making through its annual reporting against its strategic plan as required under regulation 3.</p>	<p><i>(5) Listed authorities must also embed gender budget analysis, ensuring the impact of budget decisions on marginalised groups of women is included in the analysis wherever possible.</i></p> <p><i>(6) Requirements to undertake impacts assessments, including GBA, rarely have an impact on the decision being made. We propose a requirement to set out how findings have influenced the resource allocation, including where evidence of inequality was not taken into account.</i></p> <p><i>* We recognise concerns around listed authorities' capacity to undertake gender budget analysis. We recommend that Scottish Government commits to introducing a duty on GBA and enacts this after a period of development work. *</i></p>
<p>Duty of Scottish Ministers to make provision for equality competence building</p>	<p><i>This is a new regulation – there was no previous duty on competence building</i></p>
<p>15.—(1) Mechanisms for measuring progress on equality outcomes will be expressly included in the annual performance objectives relating to Scottish Government Directors and the Chief Executives of each listed authority;</p> <p>(2) The Scottish Ministers will make adequate budgetary provision to develop and implement an improvement programme to support the fulfilment of the duty to assess and review policies and practices under regulation 5, and for listed authorities to recruit and train a PSED officer or number of PSED officers, proportionally in line with guidance, to develop and deliver an organisational intersectional equality training strategy.</p>	<p><i>15.(1) Globally, limited successes of gender mainstreaming have largely hinged on lack of leadership and poor gender competence. Equality imperatives must be built into the core work of senior management.</i></p> <p><i>(2) The need for capacity building with regards to the 'bread and butter' work of equality impact assessment is recognised across the board. Central investment for an improvement programme and a network of PSED officers to support fulfilment of the SSDs would provide a critical boost to capacity and signal leadership. Resourcing would include development and delivery of a training strategy on intersectional equality.</i></p>

(3) When recruiting or appointing a PSED officer, the authority must have regard to the professional qualities of the proposed officer, in particular—

(a) the proposed officer’s expert knowledge of equality law, policy and practice including intersectionality, and

(b) the ability of the proposed officer to support staff to perform the tasks required to meet the authority’s obligations under the public sector equality duty including compliance with these regulations, and to support with equality competence building within the listed authority.

(4) The authority must ensure that the PSED officer is involved, properly and in a timely manner, in all issues which relate to the fulfilment of the equality duty.

(5) the authority must provide the PSED officer with the necessary resources and access to personal data and processing operations to enable the equality officer to—

(a) perform all relevant tasks, and

(b) maintain expert knowledge of equality law and practice.

(6) the PSED officer will oversee the provision of the intersectional equality training on a rolling basis for all those within the

(3) PSED officers should have expertise in structural inequality and intersectionality to ensure they are able to support capacity building across the organisation.

(4) The PSED officer should not be responsible for undertaking activities required under the SSDs, but should be involved in an advisory capacity from the outset of processes across the duties. A proportional number of PSED officers should be funded and recruited in each listed authority to ensure that these posts are not overburdened. This should be set out in guidance following a period of consultation and development work.

(5) Additional resources must be made available as needed to enable PSED officers to provide quality support, manage the training strategy and receive ongoing professional development. Access to data is vital.

(6) PSED officers would not necessarily be responsible for delivering training but would oversee implementation of the

<p>organisation.</p>	<p><i>training strategy. The workload of these posts would need to be carefully managed with an emphasis on building organisational capacity.</i></p>
<p>A duty to prevent sexual harassment</p>	<p><i>This is a new regulation – there was no previous duty on sexual harassment</i></p>
<p>16.—(1) A listed authority must take all reasonable steps to prevent sexual harassment in the workplace, including:</p> <p>(a) Formulation of a standalone workplace sexual harassment policy to be developed in consultation with trade unions and/or employee representatives</p> <p>(b) Annual monitoring and review of the sexual harassment policy formulated under (1) with a view to ensuring its continuing effectiveness</p> <p>(c) Preparation of a separate sexual harassment prevention strategy to accompany the sexual harassment policy under (1) setting out specific measures required to tackle the structural inequalities related to protected characteristics that contribute to sexual harassment.</p>	<p><i>16.(1) Sexual harassment in Scotland’s workplaces is endemic and preventative action from employers is urgently needed.</i></p> <p><i>(a) A standalone sexual harassment policy would play a key part in primary prevention and increase the extent to which sexual harassment is reported. This must be distinct from anti-harassment and bullying policies that cover other forms of discrimination under the Equality Act. The policy should be developed or adapted from a best practice model in consultation with recognised trade unions and worker representatives that are expert in the given professional field.</i></p> <p><i>(b) Monitoring and evaluation of anti-harassment policies is vital, both in terms of effective implementation and more broadly, in order to help plug significant knowledge gaps around what works in this area.</i></p> <p><i>(c) The sexual harassment policy should form part of an intersectional organisational sexual harassment prevention or anti-sexism strategy, aimed at addressing structural gender inequalities and institutional sexism within the workplace.</i></p>

Draft Regulations for the Scottish Specific Duties of the Public Sector Equality Act

2022 No.

EQUALITY

The Equality Act 2010 (Specific Duties) (Scotland)

Regulations 2022

Made - - - - 2022

Coming into force - -

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 153(3), 155(1)(c) and (2), and 207(4) of the Equality Act 2010 and all other powers enabling them to do so.

In accordance with section 153(4) of that Act, they have consulted the Commission for Equality and Human Rights.

In accordance with section 210 of that Act^a, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2022 and come into force on

Interpretation

2. In these Regulations—

“the Act” means the Equality Act 2010;

^a Section 210 was modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

“employee” is to be construed in accordance with section 83 of the Act except that it is also to include a constable (including a chief constable) and a police cadet of a police force maintained under section 1 of the Police (Scotland) Act 1967^a;

“listed authority” means a public authority listed in regulation 2A(1) of or the Schedule to these Regulations^b;

“relevant protected characteristic” is to be construed in accordance with section 149(7) of the Act; and

“the equality duty” means the duty of the listed authority to have, in the exercise of its functions, due regard to the needs mentioned in section 149(1) of the Act.

Further listed authorities

2A.--(1) The following public authorities are, in addition to those listed in the Schedule, listed authorities—

Children’s Hearings Scotland;

Food Standards Scotland;

Historic Environment Scotland;

an integration joint board established by order under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014⁽³⁾;

a regional board (within the meaning of section 35(1) of the Further and Higher Education (Scotland) Act 2005⁽⁴⁾);

Revenue Scotland.

(2) These Regulations apply to the authorities listed in sub-paragraphs (a), (b) and (d) to (f) of paragraph (1) subject to the modifications set out in paragraphs (3) and (4).

(3) In regulation 3(a), for “2013” substitute “2016”.

(4) In regulation 4—

^a 1967 c.77; section 1 was amended by the Local Government (Scotland) Act 1973 (c.65), section 146(2) and the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 71(2).

^b The Schedule lists those public authorities specified in Part 3 of Schedule 19 to the Equality Act 2010 which are made subject to the specific duties in these Regulations. Part 3 of that Schedule was amended by S.S.I. 2011/233 and 2012/55.

in paragraph (1)(a), for “2013” substitute “2016”; and

in paragraph (4)(a), for “2015” substitute “2018”.

[paras 5 and 6 omitted by The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016]

(7) These Regulations apply to Historic Environment Scotland subject to—

the modifications set out in paragraphs (5)(b) and (6)(b) above; and the modifications that— in each of regulations 3(a), 4(1)(a), 7(2)(a) and 8(1)(a), “2017” is to be substituted for “2013”; and in regulation 4(4)(a), “2019” is to be substituted for “2015”.

Duty to mainstream the equality duty

3.--(1) A listed authority must make the equality duty integral to the exercise of all of its functions so as to better perform that duty by using data and evidence gathered and collated in the forms specified under regulation 13 for each protected characteristic to set outcomes as required under regulation 4, and preparing a strategic plan setting out how these outcomes and the duties specified under regulations 5-11 will be met.

(2) A listed authority must publish a mainstreaming report including the strategic plan required under this regulation and all other information required in regulations 4-11.

(a) not later than (one year from the date of these regulations coming into force); and

(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a report under this regulation.

(3) The development of the strategic plan required under this regulation will include a process of consultation with:

(a) Experts in the field of equality policy;

(b) Listed authorities’ equality officers or their designates;

(c) Lived experience panels for all protected characteristic groups;

(4) The strategic plan required under this regulation will be reviewed and revised as necessary as part of the reporting process at intervals of not more than 2 years, beginning with the date on which the listed authority last reviewed its strategic plan under this regulation.

(5) The Scottish Ministers will publish guidance on the production and content of the mainstreaming report and the strategic plan, including a set of indicators and a measurement framework to assess progress against national outcomes under regulation 12.

(6) A listed authority must report on the progress it has made in meeting the equality outcomes and other activities specified in its strategic plans —

annually starting with the year following publication of the strategic plan and not more than 12 months after the date of publication thereof,

(7) The progress report required under this regulation should include:

(a) Progress against the indicators and measurement framework published by Ministers under regulation 12 or against a listed authority's own metrics for assessing progress published within its strategic plan as required under regulation 4;

(b) Expenditure against each equality outcome or activity during the reporting period, broken down by protected characteristics;

(c) A list of equality impact assessments undertaken during the reporting period accompanied by the information required under regulation 5 (7) on data and evidence and an explanation of how the results of each assessment were taken into account in the resulting policy and related decision-making;

(d) A list of procurement processes undertaken during the reporting period, accompanied by a procurement equality statement as required under regulation 9;

(e) A statement detailing how people with protected characteristics and experts in equality policy were involved in meeting the duties and specifying the impact(s) of their involvement on that implementation.

(f) A statement detailing how the results of gender budget analyses were taken into account in budgetary decision-making.

Duty to publish equality outcomes and report progress

4.--(1) A listed authority must prepare and publish a set of equality outcomes to be included in the strategic plan required under regulation 3 which it considers will enable it to better perform the equality duty with specific consideration of the national equality outcomes published by the Scottish Ministers in accordance with regulation 12—

(a) not later than XXXX--; and

(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published a strategic plan required under regulation 3.

(2) In preparing a set of equality outcomes under paragraph (1), a listed authority must—

(a) ensure that equality outcomes express a desired change for people with specific protected characteristics;

(b) ensure that equality outcomes do not replicate existing legal duties;

(c) consult with persons from all protected characteristic groups and experts in equality policy and publish details of how the consultation was conducted, specifying the outcomes of the consultation and how they were taken into account in preparing the equality outcomes;

(d) take account of relevant existing evidence relating to persons who share a relevant protected characteristic in preparing the equality outcomes.

(e) specify the percentage of the authority's budget that has been allocated to achieve the specified equality outcome, with the breakdown of how much was allocated to each protected characteristic group in respect of overarching or generic outcomes.

(3) If a set of equality outcomes published by a listed authority does not seek to further the needs mentioned in section 149(1) of the Act and does not seek to contribute to the national outcomes relevant to the reporting period provided under regulation 12 in relation to every relevant protected characteristic, the authority must publish its reasons for proceeding in this way and outline what steps it is taking to address specified inequalities identified within its own local area or context.

(4) A listed authority must publish progress made to achieve the equality outcomes published by it under paragraph (1) within the annual progress report required under regulation 3 against the indicators and measurement framework set by Ministers in relation to the national outcomes for the reporting period in the form specified under regulation 12 or against a listed authority's own metrics for assessing progress published within its strategic plan as required under regulation 3.

(5) In this regulation, "equality outcome" means a result that the listed authority aims to achieve in order to further one or more of the needs mentioned in section 149(1) of the Act.

Duty to assess and review policies and practices

5.--(1) A listed authority must, where and to the extent necessary to fulfil the equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs mentioned in section 149(1) of the Act.

(2) In making the assessment, a listed authority must consider and record relevant evidence relating to persons who share a relevant protected characteristic (including any received from those persons) in the form specified under regulation 12 –

(a) by gathering, recording and using disaggregated qualitative and quantitative data relating to all protected characteristic groups in the form specified under regulation 12;

(b) by gathering, recording and using intersectional qualitative and quantitative data relating to the members of two or more protected characteristic groups in the form specified under regulation 12;

(c) by identifying gaps in the available data and specifying the steps necessary to acquire the missing data;

(d) by analysing all available data using a framework which takes account of the specific inequalities relevant to each protected characteristic group as well as the inequalities relevant to the members of two or more protected characteristic groups which arise as a result of intersectionality and their underlying causes to identify any potential discriminatory impacts of the proposed new or revised policy or practice on each of the protected characteristic groups as well as on the members of two or more protected characteristic groups;

(3) A listed authority must, in developing a policy or practice and at the earliest possible point in the process, take account of, including through the use of worked examples, the results of any assessment made by it under paragraphs (1 and 2) in respect of that policy or practice with the specific aims of identifying –

(a) where discrimination against each protected characteristic group can be reduced, and;

(b) where equality for each protected characteristic group can be advanced.

(3A) A listed authority must, following the assessment made by it under paragraphs (1, 2 and 3) adapt the proposed new or revised policy or practice to address the inequalities identified and to take any action necessary to advance equality, including any action necessary to fill gaps in the relevant data specified in paragraph 2(c)

(4) A listed authority must publish, alongside the policy or practice being assessed and in the form specified under regulation 12, any assessment made by it under paragraph (1) in respect of a policy or practice that it decides to apply and whether the policy or practice being assessed will –

(a) be continued without amendment as no equality impact was identified;

(b) continue with amendment to address the inequality(ies) identified;

(c) be withdrawn temporarily in order to identify and make any amendments necessary to address the inequality(ies) identified, or;

(d) withdrawn completely as no amendments which would address the inequality(ies) identified are possible.

(5) A listed authority must review and, where necessary, revise any policy or practice that it applies in the exercise of its functions to ensure that, in exercising those functions, it complies with the equality duty, in accordance with regulation 12(5).

(6) For the purposes of this regulation, any consideration by a listed authority as to whether or not it is necessary to assess the impact of applying a proposed new or revised policy or practice under paragraph (1) is not to be treated as an assessment of its impact.

(7) A listed authority must publish all relevant data collected and analysed under paragraphs 1 and 2 in respect of any policy or practice, and the categorisation identified under paragraph 4 along with any specific actions taken to address inequalities or potential inequalities identified by such data as part of its annual report.

Duty to gather and use employee information

6.--(1) A listed authority must take steps to gather information on—

(a) the composition of the authority's employees (if any) which should be broken down to show the number and relevant protected characteristics of persons in each of the following categories:

(i) The occupations of all part-time posts;

(ii) The occupations of all fixed-term and/or temporary posts;

(iii) The number of flexible working applications requested during the reporting period and the proportion of successful applications as a percentage of total applications during the same period;

and

(b) the recruitment of persons as employees of the authority, with respect to, in each year, the number and relevant protected characteristics of such persons in each of the following categories:

(i) Applications received for each vacancy;

(ii) Shortlisted candidates for each vacancy;

(iii) Appointments made;

and

(c) the development of persons as employees of the authority, with respect to, in each year, the number and relevant protected characteristics and working patterns of such persons in relation to:

(i) Those who access training;

(ii) Those who request training and are denied;

(iii) Those who receive coaching or mentoring;

(iv) Those who are selected for internal development programmes;

(v) Those who are promoted;

and

(d) the retention of persons as employees of the authority, with respect to, in each year, the number and relevant protected characteristics and working patterns of such persons in relation to:

(i) Those who participate in shared parental leave;

(ii) Those who are granted voluntary severance;

(iii) Those whose posts are made compulsorily redundant;

(iv) Those who are dismissed for a reason other than redundancy;

(v) Those who retire;

and

(e) the proportion, as a percentage of the total workforce, of women returning to work following a period of maternity leave and data regarding any contractual changes following such return.

(2) The authority must use this information to better perform the equality duty.

(3) A report published by the listed authority in accordance with regulation 3 must include—

- (a) an annual breakdown of information gathered by it in accordance with paragraph (1) which has not been published previously in such a report; and
- (b) details of the progress that the authority has made in gathering and using that information to enable it to better perform the equality duty.

Use of member information

6A.--(1) The Scottish Ministers must from time to time take steps to—

- (a) gather information on the relevant protected characteristics of members of a listed authority; and
 - (b) provide information gathered by them to the listed authority in question.
- (2) A listed authority in receipt of information provided to it under paragraph (1) must use the information to better perform the equality duty.
- (3) Each relevant listed authority is to include in any report published by it in accordance with regulation 3 details of—
- (4) the number of men and of women who have been members of the authority during the period covered by the report; and
 - (5) the way in which—
 - (6) the information provided to it under paragraph (1) has been used; and
 - (7) the authority proposes to use the information, in taking steps towards there being diversity amongst the authority's members so far as relevant protected characteristics are concerned.
- (8) Paragraph (3) does not apply in relation to a report published before 1st May 2016 by an authority listed in sub-paragraphs (a), (b) and (d) to (f) of regulation 2A(1).
- (9) In paragraph (3), a “relevant listed authority” means any listed authority the members of which, or the board of management of which, include or includes at least one appointed member, but none of the following is a “relevant listed authority”—
- (a) the Scottish Ministers;
 - (b) a council;
 - (c) a joint board;

- (d) a licensing board;
- (e) an education authority;
- (f) an individual holder of a public office.

(10) Where a listed authority is not made up of members but has a board of management, paragraphs (1)(a) and (3) have effect as if a member of the board of management were a member of the authority.

Duty to publish gender pay gap information

7.--(1) A listed authority must in accordance with regulation 8A publish information on the percentage difference among its employees between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime), known as the "mean gender pay gap", in respect of the following:

- (a) The entire workforce;
- (b) All those employed on a full-time basis;
- (c) All those employed on a part-time basis compared with all those employed on a full-time basis.
- (d) The difference between the mean hourly rate of pay of male (entire workforce/full-time employees/part-time employees) and that of female (entire workforce/full-time employees/part-time employees) must be expressed as a percentage of the mean hourly rate of pay of male (entire workforce/full-time employees/part-time employees) and is to be determined as follows—

$$\frac{(A - B)}{A} \times 100$$

where—

A is the mean hourly rate of pay of all male (entire workforce/full-time employees/part-time employees); and

B is the mean hourly rate of pay of all female (entire workforce/full-time employees/part-time employees).

(2) A listed authority must in accordance with regulation 8A publish information on the difference between the midpoints in the ranges of men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime), known as the "median gender pay gap", in respect of the following:

- (a) The entire workforce;
- (b) All those employed on a full-time basis;
- (c) All those employed on a part-time basis compared with all those employed on a full-time basis.
- (d) The difference between the median hourly rate of pay of male (entire workforce/full-time employees/part-time employees) and that of female (entire workforce/full-time employees/part-time employees) must be expressed as a percentage of the median hourly rate of pay of male (entire workforce/full-time employees/part-time employees) and is to be determined as follows—

$$\frac{(A - B)}{A} \times 100$$

where—

A is the median hourly rate of pay of all male (entire workforce/full-time employees/part-time employees); and

B is the median hourly rate of pay of all female (entire workforce/full-time employees/part-time employees).

[original para 2 omitted by The Equality Act 2010 (Specific Duties)(Scotland) Amendment Regulations 2016]

- (3) The information published must be based on the most recent data available for a date when the authority had at least 20 employees.

[paras 4 and 5 omitted by The Equality Act 2010 (Specific Duties)(Scotland) Amendment Regulations 2016]

Duty to publish information relevant to gender pay gaps

7A.--A listed authority must in accordance with regulation 8A publish information on:

- (a) The proportion, as a percentage of the total number, of women and men employed at each grade and in each job type or cluster;
- (b) The distribution of male and of female employees by grade and by job type or cluster across the workforce as whole.

Duty to publish statements on equal pay, etc.

8.--(1) A listed authority must in accordance with regulation 8A publish a statement containing the information specified in paragraph (2) —

- (a) 2013; and
- (b) each fourth year after that.
- (2) The statement must specify—
 - (a) the authority’s policy on equal pay among its employees between—
 - (i) men and women;
 - (ii) persons who are disabled and persons who are not; and
 - (iii) persons who fall into a minority racial group and persons who do not; and
 - (b) occupational segregation among its employees, being the concentration of—
 - (i) men and women as identified in compliance with regulation 7A;
 - (ii) persons who are disabled and persons who are not; and
 - (iii) persons who fall into a minority racial group and persons who do not, in particular grades and in particular occupations.
- (3) The information published must be based on the most recent data available for a date when the authority had at least 20 employees.
- (4) The information published must be used by the listed authority to formulate an action plan, as part of the statement on equal pay, to be used:
 - (a) As the basis for an equal pay review of the entire workforce;
 - (b) To monitor pay rates across the entire workforce;
 - (c) The action plan should be drawn up in partnership with recognised trade union(s) or employee representatives with the following aims:
 - (i) To set objectives intended to eliminate the gender pay gaps;
 - (ii) To identify specified actions, with appropriate targets and timelines, intended to eliminate the gender pay gaps;
 - (iii) To specify the plan for implementation of the actions specified at (ii) in partnership with the workforce;

- (iv) To assign responsibility and accountability for the policy to a named individual drawn from the senior management team;
- (v) To identify and commit the necessary resources required to achieve equal pay.

[Previous *para 4 omitted by The Equality Act 2010 (Specific Duties)(Scotland) Amendment Regulations 2016*

(5) Paragraphs (2)(a)(ii) and (iii) and (2)(b)(ii) and (iii) apply only in relation to the second and subsequent statements published by a listed authority under this regulation.

(6) In paragraph (2), “racial group” is to be construed in accordance with section 9 of the Act.

(7) The Scottish Ministers must review from time to time whether the matters specified in paragraph (2) should be amended.

Publication under regulations 7 and 8

8A.--(1) Publication under regulations 7(1) and 8(1) is to take place no later than—

- (c) 30th April 2016 in the case of Food Standards Scotland;
- (d) 30th April 2017 in the case of Historic Environment Scotland or an authority listed in the Schedule;
- (e) 30th April 2018 in the case of an authority listed in sub-paragraphs (a) and (d) to (f) of regulation 2A(1).

(2) Publication is also to take place—

- (a) under regulation 7(1), no later than 30th April in each second year after the year specified in paragraph (1) in relation to the authority in question;
- (b) under regulation 8(1), no later than 30th April in each fourth year after the year specified in paragraph (1) in relation to the authority in question.

(3) An authority need not effect publication under regulations 7(1) and 8(1) by the end of a relevant period if, during that period, the authority has at no time had 20 or more employees.

(4) Each of the following is a “relevant period” for the purposes of paragraph (3)—

- (a) in relation to publication under regulation 7(1) by an authority listed in the Schedule, the period from 1st May 2015 to 30th April 2017;

- (b) in relation to publication under regulation 8(1) by an authority listed in the Schedule, the period from 1st May 2013 to 30th April 2017;
- (c) in relation to publication by Food Standards Scotland, the period from 11th June 2015 to 30th April 2016;
- (d) in relation to publication by Historic Environment Scotland, the period from 11th June 2015 to 30th April 2017;
- (e) in relation to publication by an authority listed in sub-paragraphs (a) and (d) to (f) of regulation 2A(1), the period from 11th June 2015 to 30th April 2018;
- (f) in relation to any listed authority, the period from the day after publication by that authority is due under paragraph (1) (ignoring paragraph (3)) to the day by which publication is next due under paragraph (2);

in relation to any listed authority, the period from the day after publication by that authority is due under paragraph (2) (ignoring paragraph (3)) to the day by which publication is next due under that paragraph.”.

Duty to consider award criteria and conditions in relation to public procurement

9.--(1) Where a listed authority is a contracting authority and proposes to enter into a relevant agreement on the basis of an offer which is the most economically advantageous, it must have due regard to whether the award criteria should include considerations to enable it to better perform the equality duty.

(2) Where a listed authority is a contracting authority and proposes to stipulate conditions relating to the performance of a relevant agreement, it must have due regard to whether the conditions should include considerations to enable it to better perform the equality duty.

(3) To discharge its duties to have due regard for better performance of the equality duty specified in paragraphs 1 and 2, where a listed authority is a contracting authority it must –

(a) produce an equality statement within its annual report specifying how it has gathered relevant data including through consultation with the users of the goods and/or services it provides to identify potential impacts on the members of each protected characteristic group and to advance equality for each protected characteristic group;

(b) Incorporate equality as a specified objective of each relevant agreement and require evidence of the equality competence on the part of any potential contractors;

(c) Ensure equality within the workforce relating to any relevant agreement, including through the setting of targets for the employment of members of each protected characteristic group;

(d) Include weighted equality criteria related to composition of the workforce, and product and service design in the tender evaluation process so that final decisions regarding the awarding of contracts take account of the equality competence of contractors;

(e) Incorporate equality clauses into the conditions of each relevant agreement including the process by which specified equality indicators will be measured and monitored by the contracting parties throughout the duration of the contract;(f) Publish the arrangements for and outcomes of any assessment made in respect of this duty.

(3) In this regulation—

“contracting authority”, “framework agreement” and “public contract” have the same meaning as in the Public Contracts (Scotland) Regulations 2012^a; and

“relevant agreement” means a public contract or a framework agreement that is regulated by the Public Contracts (Scotland) Regulations 2012.

Duty to publish in a manner that is accessible, etc.

10.--(1) A listed authority must comply with its duty to publish under these regulations in a manner that makes the information published accessible to the public.

(2) A listed authority must, so far as practicable, comply with its duty to publish under these regulations by employing an existing means of public performance reporting.

Duty to consider other matters

11. In carrying out its duties under these Regulations, a listed authority may be required to consider such matters as may be specified from time to time by the Scottish Ministers, including where a failure to meet the requirements of these regulations in full or in part is identified.

^a S.S.I. 2012/88.

Duty of the Scottish Ministers to publish proposals to better enable performance

12.--(1) The Scottish Ministers must publish proposals for activity to enable a listed authority to better perform the equality duty—

(a) not later than XXXX

(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published proposals under this paragraph.

(2) The proposals will be developed following a process of consultation with:

(a) Experts in the field of equality law and policy;

(b) Listed authorities' equality officers or their designates;

(c) Lived experience panels for all protected characteristic groups.

(3) The proposals required under this regulation will be reviewed and revised as necessary at intervals of not more than 2 years, beginning with the date on which proposals were last reviewed under this regulation.

Duty of Scottish Ministers to publish national equality outcomes to enable better performance

12A.--(1) The Scottish Ministers must publish national equality outcomes, including a set of indicators and a measurement framework, and related guidance on specific activity to enable a listed authority to better perform the equality duty—

(a) not later than 31st December 202--; and

(b) subsequently, at intervals of not more than 4 years, beginning with the date on which it last published proposals under this paragraph.

(2) The national equality outcomes must be broken down in respect of

(a) Scottish Ministerial portfolios at Cabinet Secretary level at the time of publication; and

(b) Each protected characteristic group

(3) Each national equality outcome will be developed following a process of consultation with:

(a) Experts in the field of equality policy;

(b) Listed authorities' equality officers or their designates;

(c) Lived experience panels for all protected characteristic groups.

(4) The national equality outcomes must include:

(a) The identification of specified key inequalities, with targets for improvement as appropriate, for listed authorities to consider in preparing their equality outcomes under regulation 4, and subsequently identifying actions to achieve these outcomes in the form of a strategic plan as required under regulation 3;

(b) Relevant information at the national level including disaggregated data for each protected characteristic group relating to the specified functions of listed authorities to be used and referred to by listed authorities in preparing equality outcomes and related indicators and measurement frameworks under regulation 4.

(5) Alongside the national equality outcomes Scottish Ministers must publish a standard template to be used by listed authorities in fulfilling their duty to assess and review policies and practices under regulation 5 which should be accompanied by a schedule of review relating to existing policies and which, in relation to any proposed new or revised policy or practice, should specify:

(a) the required evidence relating to persons who share a relevant protected characteristic (including any received from those persons);

(b) the methods of data analysis to be used in determining the impact of the proposed new or revised policy or practice on each protected characteristic group.

(6) The Scottish Ministers must report on progress in relation to the national equality outcomes —

(a) not later than XXXX; and

(b) subsequently, at intervals of not more than 1 years, beginning with the date on which it last published a report under this paragraph.

(7) The national outcomes required under this regulation will be reviewed and revised as necessary at intervals of not more than 2 years, beginning with the date on which national outcomes were last reviewed under this regulation.

Duty to gather, collate and use intersectional equality data

13.--(1) In fulfilling its duties under these regulations, a listed authority must use and publish evidence and data related to persons who share protected characteristics –

(a) by gathering, recording and using disaggregated qualitative and quantitative data relating to all protected characteristic groups;

(b) by gathering, recording and using intersectional qualitative and quantitative data relating to the members of two or more protected characteristic groups;

(c) by gathering, recording and using gender-sensitive qualitative and quantitative data that meet established international standards as provided for in guidance, and equivalent for other protected characteristics as provided for in guidance;

(d) by collecting data that enables intersectional analysis by ensuring that the data relating to each protected characteristic group can be sub-divided with reference to other protected characteristic groups to identify the combined effects of membership of two or more groups;

(e) by collecting data that is directly related to the performance indicators for specific bodies or specified policies in accordance with regulations 3 and 4;

(f) by using the evidence collected in the processes of monitoring and impact assessing duties set out in these regulations to fulfil its obligations to mainstream equality throughout its functions in accordance with regulation 3.

(2) A listed authority must publish intersectional qualitative and quantitative data relating to all activities undertaken in fulfilment of paragraph (1).

Duty to integrate intersectional gender budget analysis into budget setting and revenue raising processes

14.—(1) The Scottish Ministers must make provision for intersectional gender budget analyses in:

(a) All central budget-setting processes relating to the Scottish budget;

(b) All devolved budget-setting processes relating to the Block Grant and related budgetary matters including arrangements made under the Internal Market Act 2020;

(c) All budgetary arrangements between Scottish Government and public bodies funded through the Scottish Budget;

(d) All revenue raising processes;

(2) Reporting requirements detailing the impact of the gender budget analyses required under (1) on the decision-making relevant to the setting of budgets and revenue-raising plans must be published by spending portfolio as part of the budget reporting process.

(3) The data relating to the intersectional gender analyses of all policies and programmes funded on behalf of listed authorities by Scottish Government under paragraphs (1) a-d and reported under regulation 4 must be collated by the Scottish Ministers and published alongside a report detailing any action taken in relation to future budget allocation.

(4) The Scottish Ministers will produce guidance on intersectional gender budget analysis

(5) A listed authority must make provision for intersectional gender budget analyses in all budget-setting processes using the data required under regulation 5(2)(a)and(b).

(6) A listed authority must report on how the results of gender budget analyses were taken into account in budgetary decision-making through its annual reporting against its strategic plan as required under regulation 3.

Duty of Scottish Ministers to make provision for equality competence building

15.--(1) Mechanisms for measuring progress on equality outcomes will be expressly included in the annual performance objectives relating to Scottish Government Directors and the Chief Executives of each listed authority;

(2) The Scottish Ministers will make adequate budgetary provision to develop and implement an improvement programme to support the fulfilment of the duty to assess and review policies and practices under regulation 5, and for listed authorities to recruit and train a PSED officer or number of PSED officers, proportionally in line with guidance, to develop and deliver an organisational intersectional equality training strategy.

(3) When recruiting or appointing a PSED officer, the authority must have regard to the professional qualities of the proposed officer, in particular—

(a) the proposed officer's expert knowledge of equality law, policy and practice including intersectionality, and

(b) the ability of the proposed officer to support staff to perform the tasks required to meet the authority's obligations under the public sector equality duty including compliance with these regulations, and to support with equality competence building within the listed authority.

(4) The authority must ensure that the PSED officer is involved, properly and in a timely manner, in all issues which relate to the fulfilment of the equality duty.

(5) the authority must provide the PSED officer with the necessary resources and access to personal data and processing operations to enable the equality officer to—

(a) perform all relevant tasks, and

(b) maintain expert knowledge of equality law and practice.

(6) the PSED officer will oversee the provision of the intersectional equality training on a rolling basis for all those within the organisation.

A duty to prevent sexual harassment

16.—(1) A listed authority must take all reasonable steps to prevent sexual harassment in the workplace, including:

(c) Formulation of a standalone workplace sexual harassment policy to be developed in consultation with trade unions and/or employee representatives

(d) Annual monitoring and review of the sexual harassment policy formulated under (1) with a view to ensuring its continuing effectiveness

(e) Preparation of a separate sexual harassment prevention strategy to accompany the sexual harassment policy under (1) setting out specific measures required to tackle the structural inequalities related to protected characteristics that contribute to sexual harassment.

Name

A member of the Scottish Executive

St Andrew's House,

Edinburgh

Date

SCHEDULE

Regulation 2

List of public authorities