

## **Engender briefing on the public sector equality duty**

June 2024

### **1. CALL TO ACTION**

**We are calling on the Scottish Government to revisit proposals on PSED reform, to expand the duties so that outcomes for people with protected characteristics are improved.**

The public sector equality duty is currently not fit for purpose in bringing equality concerns to the heart of public sector work. Nor are public bodies adequately supported to improve outcomes for people with protected characteristics and to fulfil their obligations under the law. Alongside sector colleagues we have advocated for reform for many years.

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

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

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

**We are therefore calling for the Scottish Government to:**

- **Revisit and expand proposals on PSED reform**
- **Establish the Advisory Group that was previously committed to**
- **Work with equality organisations and people with protected characteristics to co-produce regulations that will improve outcomes.**

## 2. PROPOSALS

### 2.1 Scottish Government proposals

The table below sets out proposals published in the Scottish Government’s 2021 [consultation document](#) and revised proposals issued via letter to stakeholders in 2023. It demonstrates the significant scaling back of Scottish Government’s position, which had already been heavily critiqued by equalities organisations.

Scottish Government proposals 2021	Scottish Government proposals 2023	Engender position
A more prescriptive mainstreaming duty	Not progressed	Supportive but didn’t go far enough
New strategic plan	Not progressed	Broadly supportive
Reduction in reporting to once per four years	May be addressed longer term	Strongly oppose
Streamline reporting requirements	May be addressed longer term	Broadly supportive
New duty on inclusive communications	Commitment to take forward	Support DPOs position that detail is crucial
Disability and ethnicity pay gap reporting	Commitment to take forward	Support CRER and DPOs reservations
Amended duty to assess and review policies (EQIA), inc. lived experience requirement	Not progressed	Supportive but doesn’t go nearly far enough
National equality outcomes	May be addressed longer term	Broadly supportive
Simplify regulation 6A	Will be repealed instead	No position
Publish procurement information	Not progressed	Supportive but doesn’t go far enough
Use of regulation 11 re. data and equality budget analysis	Update in “coming months”	Supportive. Update not yet received.

## 2.2 Summary of Engender proposals

Key elements of our draft regulations are as follows. These were developed with Professor Nicole Busby, an expert in equalities and human rights law at Glasgow University.

- Strengthened mainstreaming duty **to focus on embedding equality** not reporting
- Broadly supportive of Scottish Government's proposed strategic plan, but requirements regarding **process and content must be made clear**
- **Annual reporting** against equality outcomes and other activities to meet the duties in the strategic plan, **strongly oppose** proposal for one report every 4 years
- **Requirement to consult** people with lived experience and equality experts on the development of strategic plan and equality outcome setting
- **Substantial revision of equality impact assessment** (the duty to assess and review policy and practice) in terms of timing, steps taken, data, outcomes and publication
- **National equality outcomes set by Ministers** that must be considered by listed authorities in their individual outcome setting
- Empowerment of Ministers to **direct listed authorities to consider specific issues** where they have failed to meet the duties
- **Strengthened procurement duty** with a set of prescribed steps, an equality statement and publishing requirements
- A new duty on **intersectional, sex-disaggregated and gender-sensitive data**
- A new duty on **intersectional gender budget analysis**
- A new duty on **capacity building resourced by Scottish Ministers**
- A new duty on **prevention of workplace sexual harassment**

**For full details please see:**

[Engender's consultation response on PSED](#)

[Engender's model draft PSED regulations](#)

## 3. BACKGROUND

This timeline indicates the length of the PSED review and the degree of input from equalities stakeholders to date. Very little of this consultation has been incorporated in the current proposals.

**2018:** Scottish Government committed to undertake a review of the Scottish-specific duties. A consultation was initially planned for later that year.

A coalition of equalities stakeholders wrote to the Minister for Equalities, Christina McKelvie MSP, seeking commitment for substantive engagement.

**2019:** Scottish Government reaffirmed its commitment to the review in its [gender pay gap action plan](#), but no further action was taken.

**2020:** The review was paused due to the pandemic.

**2021:** A 'pre-consultation' call for views was issued to stakeholders, closing in August 2021.

**2022:** The [public consultation](#) closed in April. A coalition of 26 equality organisations published a [joint statement](#) highlighting a lack of meaningful engagement, as well as the inadequacy of proposals to address structural inequalities in Scotland.

In June 2022, Engender, Close the Gap and CRER met with the Minister for Equalities and Older People, Christina McKelvie. She committed to set up an advisory group of equalities experts to help shape development of the new duties, however this was not progressed.

In November 2022, the [analysis of consultation responses](#) was published. Equalities organisations expressed concerns that this disproportionately centres the views of public authorities, as the majority of respondents. The need to weight the responses of different stakeholders, in line with the purpose and policy intent of the PSED, was highlighted to Scottish Government prior to this work being commissioned.

**2023:** Progress stalled with the change of Government. In October 2023, eighteen months after the consultation had closed, stakeholders received a letter from Emma Roddick MSP, Minister for Equalities, Migration and Refugees. This detailed the substantially scaled back proposals set out above. The letter indicated that a further update would be issued in the coming months, however this has not been received.

**2024:** Nothing yet from Scottish Government. Equalities organisations are advocating for proposals to be revisited and expanded.

### FOR FURTHER INFORMATION

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### ABOUT US

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