Introduction
The Equality and Human Rights Commission (EHRC) is the National Equality Body (NEB)\(^1\) for Scotland, England and Wales, working across the nine protected grounds set out in the Equality Act 2010: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. We are an “A-status” National Human Rights Institution (NHRI)\(^2\), and share our human rights mandate in Scotland with our colleagues in the Scottish Human Rights Commission (SHRC).

The Commission welcomes the opportunity to comment on the Community Empowerment (Scotland) Bill at Stage 1. We have previously responded to the pre-legislative consultation on the Bill, and have discussed its provisions with ministers and officials. As we have made clear in these discussions, there are a number of areas – such as community planning, setting and meeting outcomes, and community involvement and participation – where the Bill’s proposals resonate with the existing regulatory and policy framework for equalities in Scotland. This response will briefly set out that framework before looking at the Bill’s provisions.

The Public Sector Equality Duty
The general equality duty, as set out the Equality Act 2910, requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

---

1. [www.equineteurope.org/-Equality-bodies-](http://www.equineteurope.org/-Equality-bodies-)
The duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a more equal society through advancing equality and good relations in their day-to-day business, to:

- Take effective action on equality
- Make the right decisions, first time around
- Develop better policies and practices, based on evidence
- Be more transparent, accessible and accountable
- Deliver improved outcomes for all.³

Key public authorities, such as councils, health boards, and Police Scotland, are subject to the specific devolved equality duties which set out the steps they must take to meet the requirements of the general duty⁴, and to publish information on, among other areas, the outcomes set for different equality groups in their geographical or policy area.

Analysis undertaken by The Equality and Human Rights Commission in 2013⁵ suggests that only one in three of the listed public bodies in Scotland have robust – i.e. clear, measurable and evidence-based – equality outcomes in place. Whilst the Commission is taking remedial action to improve the weakest of these sets of outcomes it is discouraging to note that such a high proportion of Scottish PAs were unable to equality outcomes. This suggests that there is still a significant issue of equalities capacity in PA which is preventing effective mainstreaming of equality issues.

We note the reference to the centrality of equality and human rights to the bill’s aims, as set out in the Policy Memorandum (para 6) and look forward to the publication of the Equality Impact Assessment for the Bill. Given the centrality of equality principles, law and policy to the Bill’s proposals, it would have been helpful to have seen the Equality Impact Assessment earlier in Stage 1: at the time of writing (late August) it is still not available.

---

³ Extensive guidance is available at www.equalityhumanrights.com/scotland/public-sector-equality-duty/non-statutory-guidance-for-scottish-publicAuthorities/
⁴ www.scotland.gov.uk/Topics/People/Equality/PublicEqualityDuties
⁵ www.equalityhumanrights.com/uploaded_files/Scotland/PSED_in_Scotland/measuring_up_3_final.pdf
Comments on the Bill

National Outcomes: The EHRC strongly supports the outcomes approach to policy in Scotland. As the policy memorandum accompanying the bill mentions, this approach has been recognised internationally as defining national policy goals and measuring progress. We therefore support the proposal to place National Outcomes on a statutory footing, and well as the requirement to consult on and regularly review these outcomes.

However, as the evidence above suggests, more work is needed to support public authorities to set robust, meaningful outcomes, and to ensure proper alignment with existing requirements such as the Public Sector Equality Duty. We note the work already underway to improve performance under the PSED and would welcome more detail on how ministers intend to assist public bodies and the communities they serve understand better how to set clear and robust outcomes. We would also urge early consideration of how these new statutory outcomes will be aligned with ministers’ and public bodies’ responsibilities under the Public Sector Equality Duties.

It is also important to recognise that, since the launch of the consultation on the draft Bill, Scotland’s first National Action Plan for Human Rights (SNAP) was launched. The plan has empowerment – “increasing people's understanding of human rights and their participation in decisions” – as one of its main priorities, and the highlights Community Planning and the present Bill as key opportunities for doing so. As with the Public Sector Equality Duty, we would expect to see over time the closer alignment of the Scottish Government’s National Performance Framework with SNAP.

Community Planning and Local Outcomes: the policy memorandum cites public service reform and the recommendations of the Christie Commission as principal policy drivers for the Bill. The Commission endorses the approach set out in the Christie recommendations particularly in relation to the mutually-reinforcing nature of equality, participation, prevention and high-quality public services.

---

6 [www.scotland.gov.uk/Publications/2013/12/9408](http://www.scotland.gov.uk/Publications/2013/12/9408)
7 [www.scottishhumanrights.com/actionplan](http://www.scottishhumanrights.com/actionplan)
8 [www.scottishhumanrights.com/actionplan/bcempowerment](http://www.scottishhumanrights.com/actionplan/bcempowerment)
As so much local engagement, prioritisation and outcome-setting is now done through Community Planning Partnerships, the EHRC would support placing CPPs on a statutory footing. We would recommend that:

- Adequate attention is given to effective “read-across” from individual public authorities’ equality outcomes and the outcomes set by statutory CPPs. This will also be important for other multi-agency outcome-setting processes, particularly the new health and social care partnerships.
- CPPs as statutory bodies in their own right should be covered by the General Duty of the PSED. The question of whether they should also be covered by the devolved specific equality duties should be kept under review. For example, should CPPs begin to take on more of a role in procurement, or policy formation this may be an area where it would be useful to have more structured approaches to equality.

Participation Requests: The EHRC’s guidance on involvement and the Public Sector Equality Duty makes clear, active, ongoing, structured and focused involvement helps public bodies better understand the communities they serve, and provides the evidence on which to develop robust and measurable outcomes. We therefore support the proposals to give community participation bodies the right to make a request to participate in an outcome improvement process.

We welcome the policy memorandum’s recognition of stakeholders’ concerns on the importance of ensuring that community bodies are open, inclusive and genuinely representative (paragraph 46). As the EHRC noted in our evidence in the draft Bill, this is particularly important where participation requests relate to sometimes contentious local issues such as, for example, the provision of stopping places and authorised encampments for Gypsies/Travellers.

With this in mind, we would recommend accompanying guidance in this provision makes refers public authorities back to their existing responsibilities.

---

in relation to the elimination of unlawful discrimination, advancement of equality and fostering good relations.

Community Right to Buy: the EHRC supports the policy intention of extending the provisions of the Land Reform (Scotland) Act 2003 so that they apply throughout Scotland, not just rural areas. We would however underline that where an asset passes from a public authority to community ownership, the public authority must have due regard to the need to meet the three requirements of the General Equality Duty in managing that process.

Equality & Human Rights Commission
September 2014

For more information, please contact:
Euan Page, Government Affairs Manager
euan.page@equalityhumanrights.com, 0141 228 5971