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Dear Convener,

Thank you for your interest to date on the review of the effectiveness of the Public Sector Equality Duty (PSED) in Scotland.

Following the update sought during the debate on Wednesday 6 September 2023 on Equality within the 2023-24 Programme for Government, I am pleased to now be writing to update you on the next stages of the review. However this work does not sit in isolation. I have therefore included some further information on how this relates to wider activity, including the development of the forthcoming Mainstreaming Strategy and the Human Rights Bill.

As you will be aware, in our [public consultation](#) (published December 2021 and open until April 2022), we consulted on a series of proposals, both for legislative changes and changes to the wider implementation environment in relation to the Scottish Specific Duties. [Consultation responses](#) have since been published alongside [independent analysis](#) of these responses.

As we move forward with the review, we will be taking a phased approach to improving the PSED regime.

New or revised Regulations

Initially this will include delivering on two key prioritised regulatory changes, which I believe will be highly impactful in terms of advancing equality in Scotland for some of the most disadvantaged groups, with the aim of implementing these changes by the end of April 2025. These are: **revising the current pay gap reporting duty** to include reporting on ethnicity and disability pay gaps; and introducing a new duty on listed public bodies in relation to their use of **inclusive communication**.

Revising pay gap reporting

Pay gap reporting is an important means of driving action to spotlight and reduce the pay inequalities affecting certain disadvantaged groups in our society. Pay gaps represent

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different groups' divergent experiences of not only the workplace, but also education, skills acquisition, care and other domestic labour, and wider societal conventions.

The proposal to extend the existing duty to publish gender pay gap information (regulation 7 of the Scottish Specific Duties) to include ethnicity and disability first appeared in the [2021 SNP manifesto](#); and a commitment to consult on these proposals was subsequently contained in the [2021 Programme for Government](#).

Following consultation, we found stakeholders are largely in agreement (93%) that listed authorities should publish ethnicity and disability pay gap information. It was also evident that several listed authorities already voluntarily publish this information.

While pay gap reporting is vital, stakeholders have suggested that it does have some limitations. Reporting statistics alone can be of limited value without contextualising data, as it shows only part of the story. Therefore, we are considering feedback regarding the need for wider reform of pay gap reporting duties, to achieve meaningful change. It is also our priority that individuals cannot be identifiable under any new reporting duties, and my officials are considering how reporting useful data on an aggregated and disaggregated basis might best be achieved.

In the consultation, one stakeholder commented *“this proposal will help increase transparency and accountability and may lead to better employment outcomes for people with disabilities and those of ethnic minority origin. Using the pay gap information and an action plan will provide an opportunity to identifying [sic] actions required to address disadvantage or different needs connected to disability, sex or race.”* I agree with stakeholders that any new duties must be focused on meaningful action and that *“it will also be important to use this data to help understand and progress measures to address the under-representation of people with disabilities and those who belong to minority ethnic groups in the workforce.”*

By extending the current requirement to report on pay gaps between men and women to include reporting on pay gaps related to disability and ethnicity, we can encourage public bodies to take more effective action on equality issues affecting their disabled and ethnic minority staff.

Introducing a new duty on inclusive communication

A commitment to improving inclusive communications also first appeared in the [2021 SNP manifesto](#); and a commitment to consult on this proposal was subsequently contained in the [2021 Programme for Government](#).

As part of our public consultation, we proposed to create a new Scottish Specific Duty that seeks to ensure inclusive communication is embedded proportionately across the work of listed authorities. Stakeholder feedback on that proposal was overwhelmingly positive, both from equality advocacy groups and listed authorities. Most respondents expressed support in principle for the proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work.

Introducing a new duty in this area should be beneficial for everyone in Scotland. We believe this is an important step towards a larger cultural change around the way we communicate and will make a real difference to the lives of the people of Scotland. Many consultation

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respondents highlighted the benefits of inclusive communication (e.g. improving accessibility, reducing barriers, increasing participation, promoting inclusion).

The new duty will sit alongside the Scottish Government's other work to embed inclusive communication across the public sector, such as developing national standards, best practice, and monitoring systems.

For both of the above proposals we are in the process of developing our final policy based on your consultation responses, and on extensive stakeholder engagement.

Guidance

An appropriate lead-in period will be provided to ensure that listed authorities understand and can prepare for what will be required of them under new or revised Regulations. We will work with the Equality and Human Rights Commission, who produce technical guidance on all aspects of the PSED regime under section 13 of the Equality Act 2006, to ensure that listed authorities are fully prepared for any new duties.

It is our belief that these proposals would represent realistic incremental change, while also having a significant impact on the advancement of equality.

Repeal of regulation 6A

Following careful consideration of all elements of the regime, including aspects which are not working well, I have decided to take steps to repeal regulation 6A of the Scottish Specific Duties. I have asked my officials to continue to consider what other means could deliver the policy outcomes intended when that regulation was created, as part of the ongoing programme of PSED improvement activity.

As you may know, regulation 6A relates to the collection of data on listed authorities' members' characteristics. Officials have taken steps over many years to seek to set up a workable process to comply with this regulation, however it has not yet been achieved due to barriers and challenges around how the data collection requirement of the regulation is framed.

Since this regulation was introduced, the landscape relating to board diversity has changed considerably. Much has been done to diversify boards. There have been specific schemes targeted at under-represented groups, including work with a Disabled People's Organisation and workshops with minority ethnic communities on board applications.

Another important development since regulation 6A was enacted is the passing of the Gender Representation on Public Boards (Scotland) Act 2018. This Act makes provision about gender representation on boards of Scottish public authorities. The intention of the Act is to help address the historic and persistent under-representation of women in public life. The Act has been subject to legal challenges relating to the definition of 'woman' but nonetheless it has led to important debate about board diversity. As of the end of 2022, 51% of regulated board members are women.

Taking all of the above into account, my decision is to repeal the current regulation 6A, and to ask my officials to continue to explore possible future means of achieving the intended policy outcomes, including through dialogue with the Public Appointments Team.

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Making use of regulation 11 powers to highlight key emerging issues

Regulation 11 of the Scottish Specific Duties says that “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.”

I have asked my officials to explore how I might use this power in the coming months to highlight issues which I consider would have an immediate impact on public bodies’ progress in equality mainstreaming, such as making more effective use of intersectional equality data in policy making and increasing consideration of equality in budget process. I will issue a further update on this in the coming months.

Longer-term changes

Reporting

Further legislative changes will be considered over the longer-term; this includes how we create a more cohesive regime. This phased approach enables us to very deliberately work towards increasing alignment with other changes which are currently proposed regarding the mainstreaming of equality and human rights – such as the introduction of the Human Rights Bill which is currently out for consultation. We recognise that reducing the perceived reporting burden was a key concern in many consultation responses, and are keen to make that a reality.

Outcome setting

Many consultation responses supported the Scottish Government taking on more of a leadership role in setting national equality outcomes, which would inform the outcomes of listed authorities. I have asked my officials to further explore the appetite for this, using a non-regulatory route to improve the current equality outcome-setting process, subject to resource and capacity, and dialogue with relevant policy teams and stakeholders about their expectations in regard to future outcome-setting work. The new National Performance Framework, which is currently under development, will be a key element in our thinking.

Learning from International Best Practice

You may be aware that in April 2023, my officials commissioned research on international best practice in relation to equality duties to help inform policy development.

That research is now nearing completion, and my officials are considering the findings. This will inform our thinking about further changes to the PSED regime in Scotland over the longer-term. The research will be published on the Scottish Government website shortly.

Regulations which remain unchanged

At this point in time, I am not proposing any change to the procurement duty (regulation 9), or to the duty to assess and review policies and practices (regulation 5).

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My intention, like that of my predecessor Ms McKelvie, who steered the review in its early stages, is to deliver a balance of continuity and change. This is in recognition of the extensive work already underway in listed authorities, who work with this regime day in and day out. It also recognises the desire for faster progress on mainstreaming equality that was articulated in consultation responses and in my officials' engagement with interested parties.

I would emphasise that I have decided on a phased approach to improving this regime, and that my officials will continue to engage with interested parties as they consider what more could be done over the medium and longer term.

Legislative competence

The changes I am proposing to particular elements of the current suite of Scottish Specific Duties will necessarily require to fall within the limits of devolved competence.

Wider mainstreaming activity: forthcoming strategy

We also intend by the end of this year to consult on a Mainstreaming Strategy, as part of our commitment to embed equality and human rights throughout government and the public sector. This provides a parallel route to progress other, non-legislative, improvements to equality and human rights mainstreaming across the public sector, with the aim of improving the lives of the most disadvantaged people in Scotland.

After earlier engagement with internal and external stakeholders, the main themes of the Strategy which we will formally consult on, will be:

- Strengthening Leadership;
- Accountability and Transparency;
- Regulatory and Policy Environment;
- Evidence and Experience;
- Enhancing Capability and Culture; and
- Ensuring Capacity.

We are also using the information provided through the PSED review consultation to inform this work and look forward to hearing your views as part of this.

In conclusion

I would like to thank you for your input and patience to date. I appreciate that this review has been underway for some time, and has been affected by pauses, while officials were redeployed to work on emergent crises. I want to reassure you that I am committed to implementing changes that will improve the PSED regime, and to keeping our valued stakeholders updated and involved throughout the process. The ongoing review aims to strengthen the approach to advancing equality in Scotland, which I would intend to have the effect of ensuring that equality is built into future crisis management processes.

I believe that this phased approach to improving the effectiveness of PSED in Scotland will enable us to collectively make progress; while still considering what more could be done, and how.

If you have any questions about anything above, please get in touch.

Yours sincerely

EMMA RODDICK