

# Equalities, Human Rights and Civil Justice Committee

8th Meeting, 2021 (Session 6), Tuesday, 16 November 2021

## Subordinate legislation

### Note by the clerk

#### Purpose of the paper

1. This paper invites the Committee to consider the following draft affirmative instruments:

- [The Equality Act 2010 \(Specific Duties\) \(Scotland\) Amendment Regulations 2021 \[draft\] \(Annexe A\)](#)

and

- [The Equality Act 2010 \(Specification of Public Authorities\) \(Scotland\) Order 2021 \[draft\] \(Annexe B\)](#)

## Delegated Powers and Law Reform Committee Consideration

2. The Delegated Powers and Law Reform Committee (DPLR) considered the instruments at its meeting on [26 October 2021](#). The DPLR Committee agreed that it did not need to draw the Parliament's attention to either of the instruments on any grounds within its remit.

## Equalities, Human Rights and Civil Justice Committee Consideration

### Procedure for Affirmative instruments

3. The draft instruments were laid on 30 September 2021 and referred to the Equalities, Human Rights and Civil Justice Committee. The instruments are subject to affirmative procedure (Rule 10.6). It is for the Equalities, Human Rights and Civil Justice Committee to recommend to the Parliament whether the instruments should be approved.

4. The Minister for Business, Trade, Tourism and Enterprise has, by motions [S6M-01530](#) and [S6M-01531](#) respectively, proposed that the Committee recommends the approval of the instruments. **The Committee is therefore required to report to the Parliament by 24 November 2021.**
5. The Minister for Business, Trade, Tourism and Enterprise is due to attend the meeting on 16 November to answer any questions on the instruments and to move the respective motions for approval.

## Recommendations

6. **It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instruments.**
7. **The Committee is asked to delegate to the Convener authority to approve a short, factual report on both the instruments for publication.**

Clerks to the Committee  
11 November 2021

## Annexe A

### The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2021 [draft]

8. The draft SSI is being laid before the Scottish Parliament under section 210(2) and (6) of the Equality Act 2010. The affirmative instrument is subject to approval by resolution and due to come into force on 23 December 2021.
9. The purpose of the instrument is to apply the Scottish specific equalities duties, as set out in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 ("the 2012 Regulations"), to South of Scotland Enterprise ("SOSE").
10. Regulation 2 adds South of Scotland Enterprise to the list of public authorities in the 2012 Regulations. Regulation 2 also modifies the 2012 Regulations in their application to South of Scotland Enterprise so as to provide different dates by which certain duties have to be complied with, and amends regulation 8A of the 2012 Regulations to provide different dates by which publication of gender pay gap information and statements on equal pay is to take place by South of Scotland Enterprise under regulations 7(1) and 8(1) of the 2012 Regulations.
11. Regulation 2 also adds a further category of "relevant period" for the purposes of regulation 8A(3) of the 2012 Regulations.

## Scottish Government Policy Note

### The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2021 [draft]

The above instrument is proposed to be made in exercise of the powers conferred by sections 153(3) and 207(4) of the Equality Act 2010 (“the 2010 Act”). The instrument is subject to affirmative procedure.

#### Purpose of the instrument

The purpose of the instrument is to apply the Scottish specific equalities duties, as set out in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, to South of Scotland Enterprise (“SOSE”).

#### Policy objectives

The South of Scotland Enterprise Act 2019 (“the 2019 Act”) established SOSE and sets out its strategic aims – namely, to further the economic and social development, and improve the amenity and environment, of the south of Scotland.

The purpose of this instrument is to list SOSE in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (“the 2012 Regulations”), making SOSE subject to the equalities duties in the 2012 Regulations. These duties include: assessing the impact of new or revised policies or practices on the needs set out in the public sector equality duty; publishing equality outcomes and reporting on progress on meeting those outcomes; reporting on mainstreaming equality; publishing information on the gender pay gap and equal pay; gathering employee information in relation to protected characteristics and using this information to better perform the public sector equality duty; and taking account of the public sector equality duty in the context of procurement.

This instrument also makes provision for the time periods within which certain duties must be complied with.

#### Consultation

In accordance with the requirement under section 153(4) of the 2010 Act, the Commission for Equality and Human Rights was consulted and is content with the proposal to list SOSE in the 2012 Regulations.

Stakeholders are also aware of the proposed listing and are supportive.

## Impact assessments

An equality impact assessment (EQIA) was undertaken in relation to the South of Scotland Enterprise Bill (“the Bill”) which preceded the 2019 Act. That EQIA was carried out in November 2018 and is published here:

<https://www.gov.scot/publications/south-scotland-enterprise-bill-equality-impact-assessment/>

That EQIA made reference to the intention for SOSE to be made subject to the specific equalities duties in the 2012 Regulations. This instrument therefore seeks to achieve that policy objective. As the proposals in this instrument are primarily consequential in nature to the 2019 Act, it was considered that only a refresher of the previous EQIA was required for this instrument.

A Child Rights and Wellbeing Impact Assessment was not considered required for this instrument however one was carried out in the development of the Bill and is available here:

<https://www.gov.scot/publications/south-scotland-enterprise-bill-child-rights-wellbeing-impact-assessment/>

A Fairer Scotland Duty Assessment was not considered required for this instrument. SOSE was added to the Fairer Scotland Duty by the Scottish National Investment Bank p.l.c. and South of Scotland Enterprise (Miscellaneous Listings) Regulations 2020.

An Island Communities Impact Assessment was not required for this instrument, as the instrument is not considered likely to have an effect on an island community which is significantly different from its effect on other communities.

A Strategic Environmental Assessment was not required for this instrument as the instrument is not considered to have any significant environmental effects.

## Financial effects

The Cabinet Secretary for Finance and Economy confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

## Annexe B

### Scottish Government Policy Note

#### The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2021 [draft]

The above instrument is proposed to be made in exercise of the powers conferred by section 151(3) of the Equality Act 2010 (“the 2010 Act”). The instrument is subject to affirmative procedure.

#### Purpose of the instrument

The purpose of the instrument is to add South of Scotland Enterprise (“SOSE”) to the list of public authorities in Part 3 of schedule 19 of the 2010 Act required to comply with the public sector equality duty.

#### Policy objectives

The public sector equality duty in section 149(1) of the 2010 Act requires public authorities to have due regard, when exercising their functions, to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Those bodies and office holders subject to the public sector equality duty are listed in Part 3 of schedule 19 of the 2010 Act.

The South of Scotland Enterprise Act 2019 (“the 2019 Act”) established SOSE and sets out its strategic aims – namely, to further the economic and social development, and improve the amenity and environment, of the south of Scotland.

This draft Order proposes to add SOSE to Part 3 of schedule 19 of the 2010 Act so as to require SOSE to comply with the public sector equality duty.

## Consultation

In accordance with the requirement under section 152(3) of the 2010 Act, the Commission for Equality and Human Rights was consulted and is content with the proposal to add SOSE to Part 3 of schedule 19 of the 2010 Act.

Stakeholders are aware of the intention to add SOSE to the list of authorities subject to the public sector equality duty and are supportive.

## Impact assessments

An equality impact assessment (EQIA) was undertaken in relation to the South of Scotland Enterprise Bill (“the Bill”) which preceded the 2019 Act. That EQIA was carried out in November 2018 and is published here:

<https://www.gov.scot/publications/south-scotland-enterprise-bill-equality-impact-assessment/>

That EQIA made reference to the intention for SOSE to be made subject to the public sector equality duty. This instrument therefore seeks to achieve that policy objective. As the proposal in this instrument is primarily consequential in nature to the 2019 Act, it was considered that only a refresher of the previous EQIA was required for this instrument.

A Child Rights and Wellbeing Impact Assessment was not considered required for this instrument however one was carried out in the development of the Bill and is available here: <https://www.gov.scot/publications/south-scotland-enterprise-bill-child-rights-wellbeing-impact-assessment/>

A Fairer Scotland Duty Assessment was not considered required for this instrument. SOSE was added to the Fairer Scotland Duty by the Scottish National Investment Bank p.l.c. and South of Scotland Enterprise (Miscellaneous Listings) Regulations 2020.

An Island Communities Impact Assessment was not required for this instrument, as the instrument is not considered likely to have an effect on an island community which is significantly different from its effect on other communities.

A Data Protection Impact Assessment was not required for this instrument as the instrument is not considered to have any impact on the collecting or processing of personal data.

A Strategic Environmental Assessment was not required for this instrument as the instrument is not considered to have any significant environmental effects.

## Financial effects

The Cabinet Secretary for Finance and Economy confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.