



Consultation Response

Public Sector Equality Duty in Scotland: Consultation

The Scottish Commission for
People with Learning Disabilities
April 2022



Introduction

The Scottish Commission for People with Learning Disabilities (SCLD) is an independent charitable organisation and partner to the Scottish Government in the delivery of Scotland's learning disability strategy, *The keys to life* (2013)¹ and *The keys to life* Implementation Framework (2019-2021)².

SCLD is committed to creating an environment in Scotland in which systems and culture are changed to ensure people with learning disabilities have opportunities and are empowered to live the life they want in line with existing human rights conventions. SCLD believes that the discrimination and barriers faced by people with learning disabilities and other disabled people are not inevitable. These barriers stop people with learning disabilities and other disabled people being included in society and participating on an equal basis.

SCLD is focused on sharing innovation and good practice so that those providing services and interventions can learn from each other. SCLD is a knowledge hub - building an evidence base, sharing how policy is being implemented and developing a shared understanding of what really works.

SCLD welcomes the opportunity to respond to the Scottish Government consultation on the Public Sector Equality Duty (PSED) in Scotland. In the following, SCLD provides specific comment on the proposals from the PSED review that relate most closely to our work.

SCLD is supportive of the proposals in review, and the rationale given for why such proposals are necessary. It is clear that the Scottish Government will need to provide significant resource if it is to achieve what it sets out to do in its proposals. This is highlighted throughout our response.

SCLD believes that intersectional and disaggregated data is at the heart of achieving equality through robust monitoring of equalities outcomes. Regulations alone cannot and will not

achieve this. Such changes must be driven by significant investment in mechanisms such as the Equalities Data Improvement Programme.¹

¹ [Statistics An Introduction to the Equality Data Improvement Programme - Statistics \(blogs.gov.scot\)](https://blogs.gov.scot)

Proposal 1: Creating a more cohesive regime and reducing perceived bureaucracy

Question 1.1: What are your views on the proposal outlined about in relation to the substance of reporting?

Question 1.2: What are your views on the proposal outlined about in relation to the reporting process?

Question 1.3: What are your views on consolidating the previous sets of amending regulations?

SCLD is very supportive of the general principle that the regime should be more cohesive and less bureaucratic. SCLD is also supportive of the plan to consolidate previous sets of amending regulations into one new set. In relation to the specific proposals to make the mainstreaming reporting duty more prescriptive and require listed authorities to produce a report every 4 years, SCLD believes that this will help to create cohesiveness. SCLD would encourage the Scottish Government to consider the views of listed authorities submitting responses to the consultation to ensure their buy in, and encourage more meaningful engagement with the PSED going forward.

SCLD would urge clarification on whether the publication of a strategic plan that sets out how the listed authority will meet all the Scottish Specific Duties would be expected to take the form of a standalone equality plan, or whether this could be included in a business or strategic plan? While a standalone plan could be useful to raise the profile of equalities issues, the inclusion of equalities outcomes within an overall plan could serve to better embed equalities across the work of listed authorities. It is imperative that moving to a 4-year reporting cycle does not risk loss of momentum on equalities duties, in particular employment reporting, so the 4-yearly report cannot be the only equalities reporting mechanism.

SCLD would be welcome the format for reporting including space to share what barriers were faced in trying to meet duties, in particular, where they have not been met.

Additionally, SCLD would welcome detail on how listed authorities will be held accountable for lack of reporting. Presently, there is a lack of accountability in the process, with no repercussions when listed authorities fail to meet their duties. Accountability is a key human rights principle and should underpin the PSED.

SCLD welcomes the requirement for listed authorities to outline how they have listened to people with lived experience, or the organisations representing people with lived experience throughout the implementation of their duties. SCLD ascribes to the belief that 'nothing about us without us' is the foundation of good policy and lasting change. However, it is imperative that engagement with those with lived experience is meaningful.

SCLD is often asked to help facilitate the engagement of people with learning disabilities in relation to consultations. This requires significant time and resource to recruit and support people to understand the tenet of consultations, as well as creating inclusive materials to aid people's participation. Rarely, if ever, are those with lived experience compensated for the time and effort spent contributing their views and experience.

Consideration must be given as to the best way to support listed authorities to undertake such a duty meaningfully, in a way that does not lead to stakeholder burnout - both in terms of people with lived experience themselves, and the organisations that represent them.

The Scottish Government must pay particular regard to how this duty can be resourced appropriately.

Proposal 2: Embedding Inclusive Communications

Question 2.1: What are your views on our proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work?

SCLD is very supportive of the proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work when they are communicating with the public.

Though the need for inclusive communications long pre-dated Covid-19, as with many things, the pandemic brought the issue into sharp focus. In a survey undertaken in April 2020, people with learning disabilities told SCLD that having information provided in accessible formats such as easy read and easy English would help to aid understanding of public health messaging.² It is important to recognise that it is not only the information itself that must be accessible, but the places where it is stored. Digital exclusion means that web resources are not appropriate for everyone. During the pandemic, SCLD helped distribute 12,555 paper copies of guided self-help booklets to people and organisations across Scotland, demonstrating the demand for hard copy information. Furthermore, local authority websites; where many who are not digitally excluded would visit to find out about services available to them; are rarely accessible, often difficult to navigate and at times contain out of date information.

SCLD believes that a move toward inclusive communication as standard is long overdue. Failure to provide information in formats people can access has long left many unable to participate in society on an equal basis with others. If the duty for listed authorities to embed inclusive communication across their work is implemented effectively then this would be a welcome step in the right direction.

² SCLD (2020) [The impact of Coronavirus on People with Learning Disabilities and their Parents, Carers and Supporters](#)

SCLD is concerned that listed authorities have already spoken of their worries in relation to resources, lack of understanding of different communication needs and lack of capacity and training. Therefore, it is imperative that this duty is adequately resourced.

SCLD is also often asked to translate Scottish Government and other public sector documents into easy read format. Requests have increased exponentially over the course of the pandemic, and SCLD endeavours to meet these requests to the best of its ability within its resources. Whilst this is of course a good thing insofar as it reflects an increasing awareness of the need for documents to be translated into easy read, it is not sustainable for listed authorities to rely on third sector organisations to produce high quality, accessible information on their behalf. Rather than continue with the current overreliance on the scant resources of civil society, it would be beneficial to build resource and capacity within listed authorities to meet their own accessible communication requirements. As previously highlighted, this will require significant, sustained, resource.

SCLD welcomes the commitment to “working in partnership with other public bodies, stakeholders and people with lived experience, to co-produce a set of national standards and a robust monitoring system.”³ SCLD would urge the Scottish Government to undertake such engagement in a meaningful way with a wide range of people from different audiences, including organisations that provide tailored information to different groups. SCLD would also encourage the Scottish Government to learn lessons from the Covid-19 pandemic, and continue to invest in and develop Scotland’s Inclusive Communication Hub.⁴

³ Scottish Government (2021) Public Sector Equality Duty in Scotland - consultation, p18

⁴ [Welcome to the Inclusive Communication Hub | Inspiring Inclusive Information in Scotland](#)

Proposal 3: Extending pay gap reporting to include ethnicity and disability

Question 3.1: What are your views on our proposals to require listed authorities to publish ethnicity and disability pay gap information?

SCLD supports in principle the proposal to require listed authorities to publish ethnicity and disability pay gap information, as it believes that effective implementation would fulfil core human rights principles of transparency and accountability. SCLD agrees that the Scottish Government should create a template for reporting to improve consistency and comparability of reporting.

However, as highlighted by Close the Gap⁵, it is clear that gender pay gap reporting has done little to address pay disparities between men and women on the ground. It is imperative that the Scottish Government learn lessons from gender pay gap reporting, to understand the reasons that reporting has not led to significant change.

While SCLD is supportive in principal, concerns remain about the ability of listed authorities to report this data meaningfully. For example, small numbers of staff from different groups who share protected characteristics could lead to disclosive information being published, or misrepresentation of pay disparities.

Whilst it may be out with the scope of this consultation, SCLD believes that resource could be better spent prioritising measures that address the underrepresentation of certain groups in the workforce. In Scotland, it is estimated that only 4.1% of people with a learning disability are in paid employment.⁶ This compares to an employment rate of 45.6% of disabled people in Scotland aged 16-64 and 81.1% for non-disabled people.⁷ This is a scandalous figure and is

⁵ Close the Gap (2020) [One year on and little change: An assessment of Scottish employer gender pay gap reporting](#)

⁶ SCLD (2019) [Learning Disability Statistics Scotland](#)

⁷ Scottish Government (2021) [Disabled people in the labour market: 2019](#)

largely hidden due to lack of data disaggregation within routinely collected labour market statistics. Without significant improvements in employment rates, requirements to publish disability pay gap information are in danger of feeling like a tokenistic gesture as opposed to a tool for fundamental change.

Proposal 4: Assessing and reviewing policies and practices

Question 4.1: What are your views on the proposals outlined above?

Question 4.2 The Scottish Government recognises that improving the regime around assessing and reviewing policies and practices will take more than regulatory change. How else could improvements be made?

Question 4.3: What are your views on the current scope of policies that should be assessed and reviewed under regulation 5?

SCLD supports the proposal to “adjust the duty to assess and review policies to emphasise that assessments must be undertaken as early as possible in the policy development process and should aim to test ideas prior to decisions being taken.”⁸ SCLD believes Equality Impact Assessments (EQIA)s must be a parallel process in the development of policy. EQIAs are an important tool to consider the impact of strategies and policies on different groups. However, it is clear that their use is very inconsistent, often carried out retrospectively, and sometimes not carried out at all. SCLD believes that the Scottish Government must lead by example in this regard, ensuring that it completes timely, substantive EQIAs when new strategies and policies are being considered.

As outlined in our response to questions 1.1-1.3 above, SCLD is also supportive of the proposal to require the involvement of people with lived experience, or the organisations who represent them in these processes. However, SCLD is aware of how inaccessible EQIA processes can be for people with lived experience to engage with meaningfully. SCLD has developed a toolkit for including people with learning disabilities in the EQIA process. SCLD would be happy to speak with officials about this, and to share our learning from the development process.

⁸ Scottish Government (2021) Public Sector Equality Duty in Scotland - consultation, p27.

SCLD, along with numerous organisations representing people from different backgrounds, was involved in the EQIA for the Scottish Government's COVID-19 Clinical Guidance and Ethical Advice and Support Framework.⁹ Though imperfect, SCLD feels that overall, the involvement of lived experience in the process was done relatively well, and would encourage learning from this through engagement with those involved.

SCLD believes that in order to engender a culture change whereby EQIAs are seen as a useful tool to ensure policies and practice are more inclusive, affect change and ultimately make for more efficient use of resources in the longer term, then there needs to be a sustained effort to build institutional knowledge and capacity on equalities and human rights within listed authorities. It is impossible to do this without adequate and sustained resources.

In relation to the scope of policies that should be assessed, SCLD is mindful that such decisions would depend on context. However, robust guidance should be provided to support listed authorities when making decisions about what to assess.

⁹ [Scottish Government \(2020\) Equality Impact Assessment \(EQIA\) of the Scottish Government's COVID-19 Clinical Guidance and Ethical Advice and Support Framework](#)

Proposal 5: A new equality outcome setting process

Question 5.1: What are your views on our proposal for the Scottish Government to set out national equality outcomes, which listed authorities could adopt to meet their own equality outcome setting duty?

SCLD welcomes the proposal for the Scottish Government to take more of a leadership role in setting equality outcomes, to ensure they are measurable and linked to the National Performance Framework. Such leadership is important to engender culture change at local level. It is important however to avoid a situation where these outcomes are simply 'lifted' by listed authorities without consideration of what might be more meaningful equality outcomes locally.

SCLD is very supportive of proposals to involve people with lived experience in setting national equalities outcomes. As with our answers to questions 1 and 4 above, it is pivotal that this engagement is done in a meaningful way.

Intersectional and disaggregated data analysis

Question 8.1 The First Minister’s National Advisory Council on Women and Girls called for the Scottish Government to place an additional duty on listed authorities to “gather and use intersectional data, including employment and service-user data, to advance equality between protected groups, including men and women”?

(a) What are your views on this?

SCLD is supportive of the recommendation from The First Minister’s National Advisory Council on Women and Girls, that the Scottish Government should place an additional duty on listed authorities to “gather and use intersectional data, including employment and service-user data, to advance equality between protected groups.” Indeed, SCLD believes that data disaggregation must go further than protected characteristics if we are to ensure true equality for all groups.

SCLD has long believed that robust data on the experience of people with learning disabilities is fundamental in the promotion of equality and the protection of human rights. Without this data, we are unable to talk authoritatively about the population of people with learning disabilities, or plan and implement services and interventions that improve the lives of people with learning disabilities. Pivotaly, lack of data significantly hampers our ability to measure human rights and equalities impacts across the board.

The need for good quality data in this regard is recognised in a number of policy and legislative provisions, most notably, Article 31 of the United Nations Convention on the Rights of Persons with Disabilities.¹⁰

Despite this, it is clear that significant challenges remain around the collection of robust disaggregated data on people with learning disabilities. The lack of routinely collected data on

¹⁰ [UNCRPD Article 31 – Statistics and Data Collection](#)

people with learning disabilities in Scotland was brought into sharp focus – and into the public consciousness – in 2020, in the huge challenge to report on how many people with learning disabilities had died from Covid-19.¹¹ Lack of available data necessitated a complex linkage of National Records of Scotland (NRS) and NHS controlled datasets, resulting in a significant and unacceptable delay in our understanding of how the crisis was impacting people with learning disabilities. The death rate between January and August 2020 was not published until February 2021, and was based on Census data captured more than 10 years ago.

This lack of data existed in Scotland long before the Covid-19 crisis. Despite the above mentioned legislative and policy provisions, we are still to see disaggregated data produced on the experience of people with learning disabilities in basic health data, as well as across social, economic and political life. In terms of intersectional impacts, the data is even poorer.¹² In a recent report, Fraser of Allander summed up the critical nature of better data:

“Without better data to underpin policy making, Scottish Government ambitions to improve the lives of adults with learning disabilities are unlikely to be realised.”¹³

However, it is clear that Scotland is very far away from being able to achieve this type of data collection.

¹¹ In England, the death rates of people with learning disabilities from Covid-19 were reported from two sources; a targeted piece of work by the Office for National Statistics using information on [care home deaths reported to the Care Quality Commission](#), and a weekly update of [Covid-19 deaths reported to the Learning Disability Mortality Review \(LeDeR\)](#).

¹² Scottish Government (2017) [Scotland's equality evidence strategy 2017-2021](#)

¹³ Fraser of Allander (2021) [Invisible No More: Recommendations to build evidence-based effective action for people with learning disabilities in Scotland](#)

(b) How could listed authorities be supported to meet this requirement?

The Scottish Government must lead this requirement from the front. At the moment, data is often collected on old systems that are unable to link to other systems, and do not have the functionality to collect and store new variables where the data to be collected changes. Robust data gathering will require significant investment in data infrastructure that can collect and link this data. The Scottish Government should consider whether it can advocate for the same system to be used across listed authorities.

While it is pivotal that we put this in place as a matter of urgency, it is equally important that we ensure that the right data is collected in the right way, with human rights and equalities embedded. This will require effective engagement with people who utilise services, including people with learning disabilities. This will require significant investment in the workforce, ensuring the capacity of staff in listed authorities to understand how to collect, analyse and share data in ways that protect people's right to privacy. Particularly for smaller listed authorities, understanding their duties in relation to data sharing/protection will require ongoing support. The Scottish Government should consider whether it is able to provide resource, in terms of good practice guidance, staff or training that would allow listed authorities understand what they would need to consider in this regard, including reporting on low numbers where there is risk of identification.

SCLD thanks the Scottish Government for the opportunity to respond to this consultation.



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