Final Report for the Scottish Government
30 November 2022

Scottish Government
Riaghaltas na h-Alba

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Contents

1   Executive Summary

This Executive Summary provides an overview of the consultation responses received to the Scottish Government Public Sector Equality Duty (PSED) Review[1]. The PSED (Section 149 of the Equality Act 2010[2]) obliges public authorities, and those carrying out public functions, 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 Equality Act 2010.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

While the subject matter of the PSED is largely reserved to the UK Government, Scottish Ministers have used their powers to support compliance with the PSED by placing specific duties on Scottish public authorities. Scottish Ministers used these powers to make The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.

The findings of the consultation will help inform Scottish Ministers regarding any suggested improvements to the SSDs and implementation environment, and the Scottish Government has committed to continued engagement with stakeholders as part of this process.

The consultation ran on the Citizen Space website from 13th December 2021 to 11th April 2022, and 128 validated responses were received. Most responses were from organisations, including listed authorities and equality advocacy groups. A common set of themes emerged from responses to many of the consultation questions. This included:

- A request for further clarification or detail on specific aspects of the Scottish Government proposals.
- A request for clear and comprehensive guidance for listed authorities, including clear definitions and terminology and plain English used throughout.

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[1] The Scottish Government, Review of the operation of the Public Sector Equality Duty in Scotland: Consultation Paper, December 2021.
[2] Section 149 Equality Act 2010

- A call for the Scottish Government to provide financial resources, training, and capacity building support to aid listed authorities implement the proposed changes.
- A request for continued dialogue and collaboration between the Scottish Government and all key stakeholder groups as part of the next step in the process.

For brevity, we have not touched on or repeated these points in the summaries provided below.

Part 1: Proposals to Improve the SSD Regime

Question 1.1 – What are your views on the proposal outlined in the Consultation Paper in relation to the substance of reporting?

Almost all respondents express support in principle for the Scottish Government proposal in relation to the substance of reporting. The main point raised by those respondents in support of the proposal are that: it would lead to a more prescriptive, cohesive, and streamlined approach, and that it would strengthen the contribution of lived experience. Whilst generally supportive of the proposal, several respondents highlighted concerns. The main concerns are that: the four-year reporting cycle is considered too long, with some expressing a preference for the current reporting timetable; there would need to be a cultural shift among listed authorities to embed the PSED regime, and that there may be difficulties implementing the proposals related to lived experience.

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

Respondent views are more mixed on the Scottish Government proposal in relation to the reporting process, however, the majority appear to support the proposal in principle. The points raised by respondents who support the proposal echo those raised to **Question 1.1**. Additional points raised include that: streamlining reporting arrangements is welcomed; the four-year reporting period would allow for longer-term planning; and workloads could be more evenly distributed throughout the year. A considerable minority of respondents raise concerns with the proposal or do not support it. The main feedback from these respondents is that the four-year reporting cycle is considered too long and could lead to a reduction in activity in non-reporting years. Slightly more respondents appear to not support the proposed four-year reporting cycle.

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

Almost all respondents express support for consolidating the previous sets of amending regulations. The main points raised by all respondents in support of the proposal include that it would: improve clarity and cohesiveness of the regime; simplify processes and make regulations

more accessible to all interested parties; and provide an opportunity to highlight the interconnectedness of the SSDs and to recognise the importance of intersectionality.

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?

Most respondents express support in principle for the proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work. These respondents highlight the wide range of benefits that result from inclusive communication. An additional prevalent view among these respondents includes support for a co-production approach in finalising the proposal that involves the Scottish Government, people with lived experience, subject matter experts, and third sector organisations. Among the wider issues or points of concern raised by respondents, this includes the following: there are mixed views on the proposed inclusion of the term 'proportionality' within the Scottish Government proposal; and concerns are raised about the availability and capacity of specialist service providers to support implementation of the proposal. While supportive of improving inclusive communication and the solutions proposed by the Scottish Government a few listed authorities are of the view that increased guidance and access to required resources to implement inclusive communication could be a more effective approach.

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

There is wide support across consultation responses for the proposal to require listed authorities to publish ethnicity and disability pay gap information. These respondents view the proposal as a positive step for advancing disability and race equality. The main points raised by all respondents in support of the proposal include that it would: increase transparency and accountability; and lead to greater standardisation and comparability in reporting. Many respondents highlight issues or concerns they have with the proposal, including data quality. Some equality advocacy groups feel that the focus should be on prioritising measures to tackle under-representation of these groups in the workforce and consider the proposal insufficient to create change for people with these protected characteristics.

Question 3.2 - Should the reporting threshold for ethnicity and disability pay gap reporting be the same as the current reporting threshold for gender pay gap reporting (where a listed authority has at least 20 employees)?

It appears more respondents support the proposal than those who do not. This includes respondents who indicate support for the reporting threshold but who caveat their response in some way. Prevalent views among respondents in support of the proposal include that it would:

help ensure consistency of approach and reporting across listed authorities; improve comparability of reporting; and that a lower threshold could risk identification of individuals.

Concerns raised about the proposal include: data confidentiality and data protection issues; and that a low threshold could make the provision of meaningful, reliable and disaggregated levels of reporting more difficult. Some respondents therefore hold a view that a higher reporting threshold could help overcome these issues. A few respondents (e.g. equality advocacy groups and other organisations) feel that the proposal should either: have a lower reporting threshold than that proposed by the Scottish Government (e.g 10 employees is suggested) or that the proposal should cover all organisations, regardless of the number of employees.

Question 3.3 - What are your views on the respective formulas that should be used to calculate listed authorities' gender, ethnicity and disability pay gaps?

Most respondents to the consultation agree with the Scottish Government proposal to improve standardisation by prescribing the formulas listed authorities should use to calculate each of their pay gaps. The main points raised by all respondents in support of the proposal include that it would support: consistency in reporting; trend analysis; ease of comparability; benchmarking of national performance; the sharing of good practice. A template for reporting is welcomed by these respondents. An additional theme includes support for alignment with recognised good practice/ existing approaches. Many respondents raise similar concerns to those raised at **Question 3.2** (i.e. data issues - disclosure, availability, completeness, etc), and note that careful consideration of the formula used would be essential. Further, some respondents consider it important that the information is used to inform action planning.

Question 4.1 - What are your views on the proposal in relation to regulation 5?

Most respondents agree with the Scottish Government proposal regarding Regulation 5: Duty to assess and review policies and practices. These respondents are in strong agreement that Equality Impact Assessments (EqIA) must be undertaken as early as possible in the policy development or review process. Further, there was equally strong support expressed by these respondents for strengthening the duty by requiring the involvement of people with lived experience, or organisations who represent them, in certain circumstances, and that it would be important for the Scottish Government to lead by example.

Some equalities advocacy groups and others highlight concerns the current approach/system is not working, and that implementation of this duty has been weak to date. These respondents request that the Scottish Government ensures the wording used for this proposal is as strong as possible to avoid it being open to interpretation. Where additional issues are raised by respondents these centre on: the importance of not overburdening people or organisations;

whether there is scope for integrated impact assessments and associated guidance; and some respondents feel that the proposal is not sufficient to drive the desired change.

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?

The main points raised by respondents are a repeat of views raised to **Question 4.1**. Additional themes relate to culture change being an important factor in ensuring greater compliance with reviewing policies and practices, and the need for resources and support to build knowledge and capacity within listed authorities.

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

Respondent feedback is relatively mixed on the current scope of policies that should be assessed and reviewed under regulation 5. On the one hand there is respondent feedback that the current scope is appropriate and reasonable. Others consider it to be too broad or too wide, while some respondents consider there to be a lack of clarity and uncertainty surrounding the current scope. Support, however, is expressed by most respondents for retaining flexible, pragmatic, and proportionate arrangements. Many respondents ask for clear definitions for terms used in the proposal (e.g. 'policy', 'practice', 'relevant and proportionate', 'reasonable adjustment').

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

Respondents are generally supportive of the proposals for the Scottish Government to set national equalities outcomes. These respondents welcome the flexibility provided in the proposals for listed authorities to set their own outcomes (e.g. if they find the nationally set outcomes are not appropriate). Prevalent views among respondents who support the proposal include that it would: provide opportunities for comparing and benchmarking performance; and encourage partnership working between listed authorities.

Some equalities advocacy groups feel that new nationally set outcomes would need to be accompanied by improved monitoring and enforcement mechanisms, whilst some listed authorities note that national outcomes should be SMART to monitor progress and drive improvement.

A small number of larger listed authorities do not support the proposal and would prefer that listed authorities set their own equalities outcomes.

Question 6.1 - What are your views on the Scottish Government's proposal to simplify the regulation 6A process?

Most respondents are broadly supportive of the proposal to simplify the regulation 6A process. The main point raised by all respondents in support of the proposal is that they welcome the Scottish Government taking a greater leadership role in ensuring that greater emphasis is placed by listed authorities on equalities considerations during board recruitment. Support is also expressed by these respondents for data suppression where required. Few respondents do not support the proposal and there are no common themes across these responses.

Question 6.2 - What are your views on the proposal in relation to regulations 11 and 12?

Most respondents are broadly supportive of the proposals with most in agreement that regulations 11 and 12 should be retained and supported. A common theme, mainly from equalities advocacy groups and a small number of listed authorities, is that Scottish Government leadership, and the use of regulations 11 and 12 are necessary to drive improvement in equalities outcomes. A few respondents do not support the proposal and question whether regulations 11 and 12 should be retained. These respondents note in their response that regulation 11 has never been used, and that when regulation 12 has been used there have been delays.

Question 6.3 - In 2019, the First Minister's National Advisory Council on Women and Girls recommended that Scottish Ministers deliver an Annual Statement, followed by a debate, on Gender Policy Coherence to the Scottish Parliament. In our response to this we said we would: "Consider the merits of aligning the delivery of a statement and debate with the existing legal duty on Scottish Ministers to publish a report on progress to better perform the PSED under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012". What are your views on this?

Almost all respondents support the Scottish Government proposal. A prevalent view among these respondents is that the proposal could help to raise awareness of diversity and inclusion related issues. A small number of respondents raise concerns or do not support the proposal. Points raised by these respondents include either support for the proposal to cover all protected characteristics or support for the proposal to only cover gender. Further, some respondents feel that the Scottish Government proposal is vague and do not feel able to provide comment until further detail/clarification is provided.

Question 7.1 - What are your views on our proposal and call for views in relation to procurement?

Respondents to the consultation are generally in favour of the Scottish Government proposal relating to procurement. The main themes from those in support of the proposal include that: procurement is an important lever to influence equality; and these respondents welcome Scottish Government recognition that proportionality is an important consideration with regards to the proposal in relation to procurement. Some respondents identify issues or do not support the proposals. The main feedback from these respondents include that: equality is already embedded within their organisation's procurement procedures; and that additional resources will be required to support implementation.

Part 2: Exploring Other Areas

Question 8.1a - 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". What are your views on this?

Most respondents support this Scottish Government proposal. The main themes to emerge from those respondents who express support for the proposal relate to: the importance of intersectional data in helping to better understand the multi-dimensional issues faced by those with more than one protected characteristic; and a requirement for support from the Scottish Government to support implementation of the proposal.

A significant minority of respondents do not support the proposal or identify issues or concerns. The prevalent views among these respondents related to: data protection issues; other challenges relating to in data collection and reporting; and an increased administrative burden placed on listed authorities.

Question 8.1b - How could listed authorities be supported to meet this requirement?

The two main themes which emerge from respondents on how listed authorities could be supported to gather and use intersectional data are: the provision of clear and comprehensive guidance; and the provision of additional resources and capacity building support, including finance and training.

Question 8.2a - If there was a requirement for your organisation to "gather and use intersectional data, including employment and service-user data, to advance equality between protected groups, including men and women", would you be confident your organisation could comply with it?

Table 1: Confident that organisation could meet the requirement

	Number	Percentage
Yes	16	22.9%
No	54	77.1%

N=70. Excludes blank, not answered responses, and any responses not from a listed authority.

Question 8.2b – If yes, why?

The main reason provided by those listed authorities who report that they are confident their organisation would be able to comply with the proposal is that they already have a system and process in place or that it would be relatively easy to make modifications to it.

Question 8.2c – If no, what would you need to ensure you could comply by 2025?

Listed authorities who report that they are not confident their organisation would be able to comply with the proposal raised similar points to those raised at **Question 8.1b**.

Question 9.1 - The First Minister's National Advisory Council on Women and Girls' called for the Scottish Government to integrate intersectional gender budget analysis into the Scottish Budget process, and to place this on a statutory footing. What are your views on this?

Most respondents agree in principle with an intersectional approach to gender budget analysis. The main themes from those who support the proposal are that the proposal would help advance equality and human rights, and that the Scottish Government would be demonstrating effective leadership in this area. A variety of concerns are raised by respondents around data collection, analysis and reporting, and some hold a view that the proposal may risk creating a hierarchy of protected characteristics.

A few listed authorities are not supportive of the proposal and feel that it is unnecessary to place this additional duty on a statutory footing. These respondents note that information on intersectionality is already captured or could be gathered through existing methods (e.g. EqIA) and that the proposal could increase the administrative burden placed on listed authorities.

Question 9.2a - 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 integrate intersectional gender budget analysis into their budget setting procedures. What are your views on this?

Much of the respondent feedback to **Question 9.2a** echo points raised to **Question 8.1a** and **Question 9.1** and have not been repeated here.

Question 9.2b - How could listed authorities be supported to meet this requirement?

The main points raised by respondents chime with responses to previous questions, namely requests for: improved guidance to be provided by the Scottish Government; financial support; training/ upskilling for staff; and investment for IT equipment/updating processes.

Question 9.3a - If an additional duty was placed on your organisation to integrate intersectional gender budget analysis into its budget setting procedures, would you be confident your organisation could comply with it?

Table 2: Confident that organisation could meet the requirement

	Number	Percentage
Yes	13	20.6%
No	50	79.4%

N=63. Excludes blank, not answered responses, and any responses not from a listed authority.

Question 9.3b – If yes, why?

Listed authority confidence to meet the requirement mainly stems from their organisational ability to amend or modify existing processes and procedures, such as impact assessments. Like other questions there is a request for improved guidance, training, and support. Others suggest that their organisation's ability to meet the requirement may depend on the level of detail required.

Question 9.3c – If not, why

As outlined elsewhere, the main respondent feedback calls for the provision of improved guidance, financial resources, and training to support implementation.

Question 10.1a - In your view, are there any Scottish public authorities who are not subject to the PSED or the SSDs that you think should be?

Table 3: Are there any Scottish public authorities who are not subject to the PSED or the SSDs that you think should be?

Respondents	Yes	No
Individual	33.3%	66.7%
Organisation	29.0%	71.0%
Total	**29.2%**	**70.8%**
Organisation Breakdown		
Listed authority	19.6%	80.4%
Equality advocacy groups	71.4%	28.6%
Other public bodies	25.0%	75.0%
Other organisations	60.0%	40.0%

N=65 (3 individuals and 62 organisations). Excludes blank and not answered responses.

Question 10.1b - If yes, please give detail on which Scottish public authorities you think should be subject to the PSED or SSDs.

The Scottish public authorities most identified by respondents are: Social Services Council (SSSC); The General Teaching Council for Scotland (GTCS); The Scottish Parliament; The Care Inspectorate; HM Inspectorate of Education (HMIE); Registered Social Landlords (RSLs); Education authorities (e.g. Education Scotland); Other regulatory bodies, ombudsmen and inspectorates; and Other health organisations, GPs, dentists, etc.

Question 10.2 - Equality and Human Rights Commission (EHRC) has expressed the view that regulatory bodies, as part of their own compliance with the SSDs, should be encouraged to do more to improve PSED performance within their sector. What are your views on this?

Most respondents are supportive of the view expressed by EHRC. These respondents agree that regulatory bodies are well-placed to improve PSED performance within their sector and that a collaborative approach could help improve the situation.

A few respondents do not support the proposal and feel that significant capacity building support would be required and a concern that the proposal could lead to added bureaucracy and complexity for regulatory bodies.

Question 11.1 - The Scottish Government will consult on the issues in this section further through the mainstreaming strategy (e.g. funding, protected bugeting, training, etc). However, if you think any of these matters could be addressed through the PSED review, please give details here.

Many respondents, in particular listed authorities, agree that it would be more appropriate to consider the issues outlined in the Consultation Paper as part of the consultation process for the mainstreaming strategy. There is wide support across consultation responses with the proposed actions, however, it is recognised that listed authorities would require capacity building support, and additional resources and funding to support effective implementation.

Question 12 - What would you like to see in improved revised guidance for the SSDs?

The respondents to the consultation acknowledge limitations of the current guidance and are supportive of proposals to produce updated and improved guidance and to establish a more cohesive regime. A prevalent view among respondents is that the guidance should be: clear, concise and consolidated; written in plain English; and developed and informed by people with lived experience. Some equality advocacy groups suggest that the guidance should be aligned to the Equality Act 2010.

Question 13 - EHRC has expressed the view that listed authorities should report on how they have used positive action under section 158 of the Equality Act 2010, as part of their reporting obligations. What are your views on this?

Most respondents express support with the EHRC view, with many noting that the proposal is reasonable and sensible. Additional points raised include the need for a clear definition of 'positive action' to be provided as well as updated guidance including good practice and case studies. Some respondents raise concerns relating to the disclosure of data. A handful of respondents (e.g. listed authorities) state that they do not support the proposal. These respondents in the main feel that positive action should not be a reporting obligation and suggest that a more appropriate approach may be through research.

Part 3: Overall Reflections

Question 14.1 - Overall, what are your reflections on the proposals set out by the Scottish Government and the further areas explored?

The majority of responses to this consultation question are broadly supportive of the proposals outlined in the Consultation Document. A prevalent view among these respondents is that the proposals will help to strengthen equality and diversity in Scotland, albeit some note that further detail/clarification may be required on some of the proposals.

A small number of respondents indicate that they do not support the Scottish Government proposals. A few listed authorities feel that the proposals may lead to a disproportionate administrative burden for their organisations, while a few equalities advocacy groups feel that the proposals are not ambitious enough or sufficient to drive change.

Question 14.2 - Please use this box to provide any further information that you think would be useful, which is not already covered in your response.

The points raised by respondents to **Question 14.2** are largely a repeat of the themes outlined earlier in **Question 14.1**.

2 Introduction

2.1 Background

This report presents the independent analysis of consultation responses to the Scottish Government Public Sector Equality Duty (PSED) – Section 149 of the Equality Act 2010) Review[3]. The consultation ran on the Citizen Space website from 13th December 2021 to 11th April 2022.

The PSED is a duty on public bodies, and those carrying out public functions (e.g. local government, NHS, educational bodies). The PSED obliges public authorities, and those carrying out public functions, 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 Equality Act 2010.
- Advance equality of opportunity between people from different groups.
- Foster good relations between people from different groups

Scottish Ministers used their powers in 2012 to support compliance with the PSED by placing specific duties on listed Scottish public authorities i.e. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012). This provides a supporting framework to enable listed public authorities to better perform their PSED and to mainstream equality and good relations in their everyday work, through enhanced data collection and evaluation, and greater transparency and accountability. In doing so this should reduce inequality and lead to better outcomes for all, including those who experience disadvantage (e.g. by designing and delivering services that meet the diverse needs of users).

2.2 A Phased Approach

Scottish Ministers have committed to undertaking a review of the effectiveness of the PSED in Scotland including: the effectiveness of the SSDs, for which Scottish Ministers have legislative competence; and the implementation environment for the PSED in Scotland, recognising that regulations alone do not deliver equality - factors such as leadership and capacity are also critical.

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[3] The Scottish Government, Review of the operation of the Public Sector Equality Duty in Scotland: Consultation Paper, December 2021.

The review does not consider the scope of the general PSED as set out in section 149 of the Act or the role of the EHRC as the enforcement body. These are matters reserved to the UK Parliament.

A staged approach to the PSED Review was undertaken. Stage One involved engagement between Scottish Government and equality stakeholders and listed authorities in 2021 to understand which aspects of the PSED were working well and to identify areas for improvement. The Stage One Report (March 2021)[4] set out the main lessons learned, reflections of equality mainstreaming over the last two years of the coronavirus pandemic (COVID-19) and key improvement proposals. The Stage One Report identified eight cross-cutting themes and other areas where more could be done, **Table 2.1**.

Table 2.1: Stage One Report Findings

Cross-cutting themes	Areas where more could be done
• Making better use of evidence and data.	• Improving the understanding of, and approach to, mainstreaming.
• Strengthening participatory policy making and hearing lived experience.	• New approaches to outcome setting.
• Improving the links between equality and human rights frameworks.	• Strengthening the current approach to assessing policies.
• Strengthening leadership and resourcing.	• Supporting the gathering, use and reporting of a wider range of employee data.
• Reducing bureaucracy.	• More effective leverage of purchasing power in procurement processes.
• Increasing clarity in relation to coverage, proportionality, and process.	• Enhancing the accessibility of PSED related publications and consider the scope of the SSDs to advance progress on inclusive communication more generally.
• Improving support and capacity building.	• Exploring how best to use the duties relating to Scottish Ministers.
• Improving the cohesiveness of the regime.	• Improving the understanding of, and approach to, mainstreaming.

Source: The Scottish Government, Review of the operation of the Public Sector Equality Duty in Scotland: Consultation Paper.

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[4] The Scottish Government, Equality Outcomes and Mainstreaming Report 2021, March 2021.

Stage Two aimed to build on the findings and cross-cutting issues identified in the Stage One Report. The public consultation sought to further explore the key findings and presented proposals both for legislative changes to the SSDs and changes to the wider implementation environment to help improve and strengthen the regime.

A questionnaire was also sent to listed authorities and some equality advocacy groups.

2.3 Public Consultation

The Stage Two public consultation was undertaken to explore issues and themes identified in the Stage One Report, and to further build the evidence base. More specifically, the consultation sought views on specific and detailed proposals to improve the current regime, including:

- Improving the overall cohesiveness and reducing perceived bureaucracy.
- Improving the use of lived experience and participatory policy making.
- Making better use of equality evidence and data.
- Improving leadership, particularly from the Scottish Government.

Due to the technical nature of the SSD regime and the purpose and effect of the regulations, the consultation was mainly targeted to the Scottish public sector and equality advocacy groups. Scottish Ministers also welcomed responses from members of the public and the private sector.

The findings of the consultation will help inform Scottish Ministers regarding any suggested improvements to the SSDs and implementation environment, and the Scottish Government has committed to undertake continued stakeholder engagement as part of this process.

Changes to the SSDs will be legislated for to the extent possible within the powers of Scottish Ministers. Subject to the Parliamentary timetable, regulations will be introduced to the Scottish Parliament which will be subject to the affirmative Scottish Statutory Instrument (SSI) procedure to give effect to any proposals that require regulatory changes. This means that they will be scrutinised by the Equality, Human Rights and Civil Justice Committee and must be approved by a resolution of the Scottish Parliament.

The intention is that any regulatory changes will come into force in 2025. This timescale will facilitate a lead in period to ensure that listed authorities understand what will be required of them under the new regulatory regime and for new guidance to be developed. This timeline also aligns with the reporting cycle for most listed authorities under the current SSDs.

Any regulatory change will need to be accompanied by implementation steps, and the Scottish Government will take forward this work, including through the development of a wider mainstreaming strategy to ensure that new regulations are underpinned by an effective plan for implementation. This will be developed with public bodies and key stakeholders including the EHRC and equality advocacy organisations.

2.4 Report Structure

Alongside a brief section on the consultation methodology, the remainder of the consultation analysis report has been structured in line with the Consultation Paper, **Table 2.2**.

Table 2.2: Consultation Paper and Consultation Analysis Report

Consultation paper		Chapters in report
Part 1: Proposals to Improve the SSD Regime - seeking views on specific and detailed proposals that the Scottish Government thinks will improve the current regime, based on evidence and views from stakeholders.	Proposals 1 to 7 relating to Question 1 to Question 7.	Chapters 4 to 10.
Part 2: Exploring Further Areas - using the opportunity of this consultation to seek further views from stakeholders and build the evidence base on key issues.	Question 8 to Question 13.	Chapters 11 to 16.
Part 3: Overall Reflections - providing an opportunity for further and general reflections from stakeholders on the consultation.	Question 14.	Chapter 17.

Several appendices have also been attached.

3 Consultation Methodology and Analysis

3.1 Introduction

The public consultation on the Public Sector Equality Duty (PSED) Review ran on the Scottish Government Citizen Space website from 13th December 2021 to 11th April 2022.

3.2 Consultation Respondents

A total of 129 responses were received to the consultation and almost all are from organisations. One response was received well beyond the extended deadline for consultation responses (received in July 2022), and this was not included in the analysis. The remainder of this report is based on 128 validated responses, **Table 3.1**.

Table 3.1: Respondents

Type of Respondent	Number	Percentage
Organisations	123	96.1%
Individuals	5	3.9%

N=128.

Organisation respondents can be grouped under the following broad categories, **Table 3.2**. A majority of organisation respondents are listed authorities i.e. the bodies subject to the Scottish Specific Duties (SSDs) identified in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended). Equality advocacy groups make up around one-quarter of organisation respondents.

Table 3.2: Organisation respondents

Type of Organisation Respondent	Number	Percentage
Listed authorities	75	61.0%
Equality advocacy groups	31	25.2%
Other organisations	9	7.3%
Other public bodies	8	6.5%

N=123.
EKOS coded all organisation respondents into one of the afore-mentioned four categories. The categorisation was discussed and agreed with the Scottish Government client team.

Appendix A provides details of how organisation respondents have been categorised.

3.3 Analysis

Three-quarters of consultation responses were submitted through the Citizen Space website, with the remainder submitted to the Scottish Government directly (25.0%). Where this was the case, the Scottish Government added these submissions manually to Citizen Space. All responses were moderated by the Scottish Government, Directorate for Equality, Inclusion and Human Rights, Mainstreaming and Strategy Unit. EKOS exported consultation responses from Citizen Space into Microsoft Excel for data cleaning, review, and analysis.

The analysis seeks to identify the most common themes and issues. It does not report on every single point raised in the consultation responses. Equal weighting has been given to all responses. This includes the spectrum of views, from large organisations with a national or UK remit or membership, to individual's viewpoints. This analysis report quotes and paraphrases some of the comments received. This does not indicate that these comments will be acted upon or given greater weight than others.

Where the respondent has given permission for their submission to be published these will be made available on the Citizen Space website (**Appendix B**).

3.4 Limitations

The following limitations to the public consultation should be noted:

- Respondents to any public consultation or survey are self-selecting, and the responses may not be representative of the population as a whole.
- Some respondents do not answer every question and the detail of responses to consultation questions is also varied. Some, but not all, respondents provide links to published evidence or research in support of points raised.
- Some submissions (e.g. non-Citizen Space responses) provide responses that have not been set out in line with the consultation questions.
- A campaign response was not considered to be a significant issue. It more likely reflects membership bodies (and others) pushing the public consultation out to their members and/or networks. Further, some organisations have worked with others to prepare a joint response in addition to submitting a response from their own organisation.

Part 1: Proposals to Improve the Scottish Specific Duty Regime

4 Proposal 1

Creating a more cohesive regime and reducing perceived bureaucracy

The Scottish Government believes it can improve the cohesiveness of the Scottish Specific Duties (SSDs) and minimise the perceived feeling of bureaucracy, by putting a stronger focus on how each of the duties are implemented to help meet the Public Sector Equality Duty (PSED) and assist listed authorities' efforts to mainstream equality.

4.1 Question 1.1 – Substance of Reporting

In terms of the substance of reporting, the Scottish Government proposes to make the mainstreaming reporting duty more prescriptive, including requiring listed authorities to produce a report every four years. Details of the proposals include:

- Publishing a strategic plan that sets out how the listed authority intends to meet all SSDs.
- Publishing all of the information required by other SSDs.
- Reporting on listed authorities' implementation of the SSDs, over the previous four years.
- Reporting on how listed authorities have used lived experience, or the organisations representing people with lived experience, throughout their implementation of the duties.

The intention would be to assist listed authorities in seeing the SSDs in an interconnected way, and to encourage listed authorities to explore and publish how they have implemented their duties to better meet the needs of the PSED. This would include duties that previously did not have a publication element to them. The revised mainstreaming reporting duty would also cover any new or revised duties introduced as a result of the PSED review.

What are your views on the proposal outlined in the Consultation Paper in relation to the substance of reporting?

A vast majority of respondents provided a response to **Question 1.1** (89%).

4.1.1 Respondents who support the proposal

Almost all respondents (i.e. all groups) support the Scottish Government proposal in relation to the substance of reporting in principle. The main themes to emerge from the consultation responses are outlined below.

Theme 1: A more prescriptive, cohesive, and streamlined approach

There are many comments from respondents that express support for the proposal outlined in the Consultation Paper in relation to the substance of reporting. Common words or phrases used across consultation responses includes "we welcome the proposal", "good idea", "sensible", "seems reasonable", and "happy with the proposals".

These respondents consider the proposal would have several benefits, including that it would:

- Lead to a more cohesive, consolidated, joined-up and/or holistic approach to reporting.
- Assist listed authorities' efforts to more effectively mainstream equality.
- Increase transparency and accountability.
- Reduce bureaucracy.
- Clarify, simplify, and streamline reporting arrangements.
- Make the approach easier to understand for listed authorities and for service users.
- Encourage the sharing of lessons learned and best practice among listed authorities.
- Improve benchmarking across listed authorities.

Theme 2: Strengthening the contribution of lived experience

There are many comments from respondents in relation to the proposal around reporting on how listed authorities have used lived experience, or the organisations representing people with lived experience, throughout their implementation of the duties.

Similarly, these respondents often note in their consultation response that they "welcome" or are "happy" with the proposal. Enhancing and strengthening the contribution of lived experience is viewed by many respondents to the consultation as a positive step. Further, some of these respondents provide examples of how they "already use lived experience as part of their evidence base for equality work" or note that the proposals may "support a change in focus towards more considered activity that will impact positively to increase equality for individuals, groups and communities".

These respondents also consider it "imperative that engagement with those with lived experience is meaningful", and raise several points for the Scottish Government to consider further as it finalises the proposal, including:

- The level of the expectation around how listed authorities will gather and use such information.
- The capacity of different protected characteristic groups to engage in the process.

- The support listed authorities may need to meet this duty effectively, and in a way that does not lead to stakeholder burnout (i.e. people with lived experience themselves, and the organisations that represent them). As well as how implementation may be appropriately resourced appropriately.

Theme 3: Guidance

Many respondents (including listed authorities) call for clear and strong guidance to support implementation of the Scottish Government proposal in relation to the substance of reporting.

4.1.2 Respondents who highlight issues or concerns

While almost all respondents are broadly supportive of the proposal in relation to the substance of reporting, many highlight issues or raise some concerns.

Theme 1: Four-year reporting cycle

Some respondents (e.g. both listed authorities and equality advocacy groups), express concern with the proposed change to submitting a report every four years and advocate for the current reports and reporting timescales to remain in place. A point made by these respondents is that some listed authorities may take little or no action in the first three years and focus activity/work in year four. Others note that reporting timescales "may be too long and create the risk of losing momentum".

Theme 2: A need for a cultural shift

A concern raised (e.g. primarily by equality advocacy groups) is the perceived feeling of bureaucracy in the PSED regime among listed authorities. These respondents note that the current regime is often viewed by listed authorities as an "addition to day-to-day work rather than a core part of performing their roles effectively". Further, these respondents suggest that listed authorities may require additional support to help ensure the cultural shift/change required is achieved, and for equality to be more effectively mainstreamed into the routine operational activities of listed authorities.

Theme 3: Implementation of the lived experience proposal

Some listed authorities and other organisations raise concerns about the practicalities of implementing the proposal relating to lived experience, namely:

- There may be a risk of consultation and engagement fatigue – among those with lived experience and those organisations who represent them.

- There may be specific challenges in implementation for smaller organisations and those based in remote/rural geographies. Both from a capacity perspective and the potential over-reliance on the views/input from a smaller number of people and organisations.

4.1.3 Respondents who do not support the proposal

Few respondents (e.g. a small number of listed authorities and an equalities advocacy group) do not support the proposal at all. These respondents raise similar points to those outlined at **Section 4.1.2**.

4.1.4 Further clarification on the proposal required

Many respondents request further clarity from the Scottish Government on various elements of the proposal outlined in the Consultation Paper in relation to the substance of reporting. This includes:

- Clarification on what is meant by 'strategic plan'.
- More detail on the expected format of the strategic plan and what it may look like in practice.
- Whether the strategic plan negates the current requirement to produce and publish a separate Education Authority Mainstreaming Report.

4.2 Question 1.2 – Reporting Process

In relation to the reporting process, the Scottish Government proposes to: simplify the regime so that there is only one reporting cycle for all of the duties; allow listed authorities to satisfy all of their reporting duties in one report, reinforce the flexibility of reporting requirements and encourage listed authorities to report on their duties as part of their own operational reporting cycles; ensure that reporting deadlines do not align with the end of the financial year; and require reports to be published at a minimum of every four years.

What are your views on the proposal outlined above in relation to the reporting process?

A vast majority of respondents provided a response to **Question 1.2** (88%). The main themes to emerge from the feedback of respondents are summarised below.

Many of the consultation responses to this question are very similar to those provided to **Question 1.1**. We highlight the main points of agreement and difference rather than repeating every theme again here.

4.2.1 Respondents who support the proposal

Most respondents appear to support the Scottish Government proposal (in principle) in relation to the reporting process.

Theme 1: Streamlined approach and improved planning

Those respondents who express support for the proposal welcome the the streamlining of reporting into a single report. Some, but not all of these respondents, feel that the reporting period of every four years could improve focus and allow for longer-term and improved planning. Further, these respondents consider the proposal to ensure that reporting deadlines do not align with the end of the financial year could allow workloads to be more evenly distributed throughout the year.

4.2.2 Respondents who highlight issues or concerns

While there is a broadly similar proportion of respondents who highlight issues or concerns as in **Question 1.1**, many of these respondents' express concerns and less supportive views on the Scottish Government proposal in relation to the reporting process (e.g. in particular equality advocacy groups).

Theme 1: Four-year reporting cycle is considered too long

As noted earlier at **Question 1.1**, concern is again expressed by both equality advocacy groups and some listed authorities that the proposed four-year reporting cycle is too long. For example, some responses describe the proposal as a "terrible mistake", that "equality work would be severely deprioritised", or feel it is "overly long and could limit meaningful action".

From a review of the responses it appears that slightly more respondents do not support the proposed four-year reporting cycle than those who do support it. The main concern expressed by these respondents is that moving to a four-year reporting cycle could lead to a lack of activity throughout the first three years, with activity only taking place in year four. Further, it is suggested that more regular/frequent reporting could bring a greater level of discipline to the process and assist listed authorities' efforts to mainstream equality.

4.2.3 Respondents who do not support the proposal

A considerable minority of respondents (e.g. both listed authorities and equalities advocacy groups) do not support the proposal in relation to the reporting process. The proposed four-year reporting cycle is considered by these respondents to be too long.

4.2.4 Further clarification of the proposal requested

A few respondents request further clarity from the Scottish Government on several aspects of the proposals, including:

- Clarity on the new deadline for reporting.
- Clarity on what information is required for reporting and how it should be presented.

4.3 Question 1.3 – Consolidating Regulations

The Scottish Government proposes to consolidate all previous sets of regulations relating to the SSDs, in one new all-encompassing and clear set of regulations.

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

Around 85% of respondents provide a response to **Question 1.3**.

4.3.1 Respondents who support the proposal

Almost all respondents (i.e. individuals and all organisation sub-groups) express support for consolidating the previous sets of amending regulations. The main themes to emerge from these consultation responses are outlined below.

Theme 1: Improved clarity, cohesiveness and understanding

Common feedback from respondents in support of the proposal to consolidate all previous sets of regulations relating to the SSDs, in one new all-encompassing and clear set of regulations is that this would:

- Improve clarity and cohesiveness of the regime.
- Ensure listed authorities have a shared understanding of what is expected of them.
- Make the regulations easier to navigate and ensure more consistent application.
- Reduce the risk of misunderstanding which can arise from amending regulations, rather than repealing and passing new ones.
- Maximise the effectiveness of the regulations and close any perceived loopholes.

Theme 2: Simplify processes and make regulations more accessible

Another common theme from respondents who are in favour of the proposal is that it would:

- Simplify processes and arrangements, reduce existing levels of bureaucracy and complexity, and streamline expectations on listed authorities.
- Make the regulations more accessible to everyone, including to the wider public.

Theme 3: Interconnectedness and intersectionality

Some respondents note in their response that the proposal offers an opportunity to highlight the interconnectedness of the SSDs as well as to recognise the importance of intersectionality.

Theme 4: Collaboration and continued dialogue

Some respondents ask that the consolidation of regulations should be "widely consulted on" and should evidence how equality is considered within various strategic frameworks and reporting processes. There is also feedback, including from equality advocacy groups, that any amendments to regulations should be undertaken in collaboration with "those who are living under these regulations and are directly affected by them".

Theme 5: Clear guidance

There is a request from respondents for clear supporting guidance, including examples and case studies, to aid implementation of the proposal and ensure consistency of approach/application. Further, a few respondents highlight that there may be a role for the Equality and Human Rights Commission (EHRC) to play in helping to develop and shape the guidance.

"We would support the consolidation of previous sets of amending regulations into a cohesive, overarching set. We would suggest clear guidance is provided to ensure listed authorities are aware of the changes. The EHRC in Scotland should have a clear leadership role here".

<div align="right">sportscotland</div>

4.3.2 Respondents who do not support the proposal

Few respondents indicate that they do not support the Scottish Government proposal.

While one equality advocacy group (CEMVO Scotland) acknowledges the potential benefits of consolidating the regulations they feel that leaving the regulations as they are, would ensure that each regulation receives adequate consideration.

"Due to the continuous neglect faced by ethnic minorities in Scotland due to the lack of accountability, clarity and action taken by public bodies, CEMVO Scotland are in favour of retaining the current system, as having individual regulations allows individual importance to be given to each Duty".

<div align="right">CEMVO Scotland</div>

4.3.3 Further clarification of the proposal requested

Some respondents request more detail and/or further clarity from the Scottish Government on the proposal to consolidate all previous sets of regulations relating to the SSDs, in one new all-encompassing and clear set of regulations, including:

- Clarification on the proposed timescales for any changes to be made, with some respondents highlighting the importance of sufficient notice and lead-in time.
- Clarification is requested on what any National Outcomes would look like.
- That wider factors may need to be considered by the Scottish Government when consolidating all previous sets of regulations relating to the SSDs, including that listed authorities vary in size, culture, and geographic location.
- Reference is made by an equality advocacy group to the sentence in the Consultation Paper - "It was developed in order to consolidate specific duties in respect of race, gender and disability". A point made by Fair Play for Women is that gender is not a protected characteristic, and that wording in the Consultation Paper conflates gender and sex - this is felt by the organisation to have the potential to undermine the credibility of the PSED Review.

5 Proposal 2

Embedding inclusive communications

5.1 Context

The Scottish Government is of the view that a new duty should be placed on listed authorities that goes beyond publications under the Scottish Specific Duty (SSD) regulations, and that seeks to ensure inclusive communication is embedded proportionately across the work of listed authorities when they are communicating with the public. A clear definition of what communicating in an inclusive way means will be provided, recognising that inclusive communication is about ensuring effective engagement with everyone, including those who understand and express themselves in different ways. Listed authorities would be required to report on how they have met this duty as part of their overarching mainstreaming reporting duty.

To create the conditions for effective implementation of the new duty, the Scottish Government intends to progress work to support this duty through its equality outcome on inclusive communication. This will include 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. Best practice guidance and shared resources for public bodies on inclusive communication will also be prepared.

5.2 Question 2.1 – Inclusive Communication

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

Almost all respondents answered **Question 2.1** (97%).

5.2.1 Respondents who support the proposal

Most respondents express support in principle for the proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work. The main themes to emerge from these consultation responses are outlined below.

Theme 1: Recognition of the importance/value of inclusive communication

Many of the consultation responses in support of the proposal acknowledge that accessible communication is already a legal requirement, and that inclusive communication extends beyond the protected characteristic of disability, which is said to have been the primary focus for listed authorities when they are communicating with the public. Further, many listed authorities note that the proposal complements their existing work in providing inclusive communication.

These respondents also commonly note in their consultation responses:

- The benefits of inclusive communication (e.g. improving accessibility, reducing barriers, increasing participation, promoting inclusion).
- That the proposal could help listed authorities to drive improvements and build on their existing commitment towards more inclusive communication.
- That a set of national standards and parameters would increase accountability, encourage compliance, and improve consistency across listed authorities.
- The proposal could help inclusive communication to be more fully embedded in how listed authorities do business.

Theme 2: Broad support for the proposed solutions

There is clear support expressed within most consultation responses for the proposed solutions specified in the Consultation Paper to ensure inclusive communication is embedded proportionately across the work of listed authorities when they are communicating with the public.

Theme 3: Awareness raising, guidance and training

Many respondents agree that the Scottish Government should provide improved, clear, and user-friendly guidance and supporting documentation at an early stage to listed authorities, including with regards to the requirement to report on how the duty has been met.

Respondents also note the need for effective monitoring procedures to ensure that listed authorities can comply with a new duty on inclusive communication. These respondents welcome the commitment of the Scottish Government to work "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". Additional feedback from respondents highlights flexibility as being important in order "to account for this potential breadth of activities, and the fact that some listed authorities deliver particularly specialist services".

A national approach to capacity building and training would be welcomed by respondents.

"…to be truly inclusive, we must ensure that that staff working for these bodies have the skills and knowledge to communicate inclusively on an individual level whether that is face to face, through written communication, on the phone or via virtual methods".

The Royal College of Speech and Language Therapists

Theme 4: Co-production

Another common theme (e.g. among equality advocacy groups) is the need for continued "two-way dialogue with stakeholders" and that "co-production must be meaningful, embedded from the outset, and extend beyond a tokenistic gesture". These respondents note that further consultation undertaken by the Scottish Government should involve a range of stakeholders, including people with lived experience, subject matter experts, and third sector organisations. It is suggested that such an approach would ensure that the views of everyone, including those who understand and express themselves in different ways, are understood when "common principles" are identified (i.e. there are likely to be a wide range of communication and language needs and preferences). These respondents also note that it would be essential that listed authorities have the "relevant competence and capacity to respond to these needs".

5.2.2 Respondents who highlight issues or concerns

While the Scottish Government proposal on inclusive communication is viewed positively among respondents, most also highlight issues or concerns they have with the proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work. The main themes to emerge from these consultation responses are outlined below.

Theme 1: Additional financial challenge

Many respondents (e.g. listed authorities) consider that the proposal to embed inclusive communication proportionately across their work could be expensive to implement and could present an additional financial challenge to public bodies – "at a time when both staffing and finances are under significant pressure". The dissemination of examples of cost-effective ways to communicate inclusively are considered important by these respondents, as is access to shared resources to reduce potential costs and duplication of effort.

The consensus among these respondents is that:

- Implementation of the proposal could have a significant impact on organisation resources (i.e. costs, capacity, resourcing, training, timing, and practicality).
- Listed authorities would need to be adequately supported/resourced to meet the duty.

"Accessible information and inclusive processes should be prioritised across listed authorities and resourced for accordingly as a core part of budget plans, rather than an 'extra cost' or afterthought".

<div align="right">The Health and Social Care Alliance Scotland (The ALLIANCE)</div>

"The Council agrees in principle but it should be acknowledged and built into any embedding the additional staffing and funding costs which should be met by the Scottish Government fully as part of this work to take account of both the duty to deliver and the duty to report back on that delivery…..It would be desirable if the national group of senior communications managers or heads of communications across the 32 Councils were tasked, supported by COSLA communications, to identify the level of resources and reporting required to support this process and to provide oversight and expert input".

<div align="right">Inverclyde Council</div>

Theme 2: Capacity constraints within listed authorities

Capacity and resourcing are identified by many respondents as barriers that currently exist in relation to embedding the use of inclusive communication, as are the timing and practicality of providing inclusive communications. A related point made by listed authorities is that the Scottish Government would need to allow reasonable time for awareness-raising and skills development before this duty comes into force, and a realistic timeframe to implement any new standards.

Theme 3: Use of the term proportionality with the proposal

Most respondents, including listed authorities, hold the view that any emerging duty should be proportionate and avoid placing an undue burden on listed authorities, especially smaller authorities.

On the other hand, some equality advocacy groups do not agree with the proposed inclusion of the term 'proportionality' within the Scottish Government proposal, as further described below.

Inclusion Scotland provides details of its recent experience of the National Care Service consultation. The equality advocacy group notes in its response that Easy Read versions of the consultation documents were not provided at the start of the consultation period despite the content of the consultation having a clear impact on disabled people, including those who required an Easy Read version. They also point to the example of the Supreme Court findings on the National Disability Strategy consultation (UK Government) case.

"This demonstrates the need for additional PSED regulation. Whilst providing reasonable adjustments is already a duty in the Equality Act, the PSED needs to go further to ensure that individuals are not relying on knowing what to do, who to ask and waiting for a response".

Inclusion Scotland

Others (e.g. Scottish Women's Budget Group) suggest that the term 'proportionately' could be replaced in word and intent with 'proactively'.

Theme 4: Availability and capacity of specialist service providers

Several respondents note that their organisation faces challenges in procuring specialist contractors/suppliers at certain times to help with their inclusive communication activity. Translation and interpretation services are often referred to in the consultation responses. These respondents identify a current shortage of, or a lack of availability of, specialist suppliers across the country and raise a concern that the proposal outlined in the Consultation Paper could result in increased demand for such services. Some also feel that lessons could be learnt from the introduction of the British Sign Language (BSL) Act/ BSL Plans.

There is also recognition across some consultation responses that the duty could result in increased demand on third sector organisations who provide communication support services (e.g. converting information into various accessible formats, such as Braille, BSL, and Easy Read).

Respondents express support for the Scottish Government to explore opportunities for "one central resource, including a shared hub for translation recognising lack of available suppliers".

5.2.3 Respondents who do not support the proposal

There was limited explicit feedback from respondents who indicate that they do not support the proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work. The themes to emerge from these consultation responses are outlined below.

Theme 1: Increased guidance may be more effective

A few respondents (e.g. some listed authorities), while supportive of improving inclusive communication and the solutions proposed by the Scottish Government, note the following points.

"We feel increased guidance and access to required resources to implement inclusive communication would be more effective than a duty at this stage".

South Ayrshire Council

"If a duty is required then it should be in line with other legislative requirements such as the BSL Act 2005 to ensure that there is harmony between legislation and not another layer of bureaucracy".

East Ayrshire Council/East Ayrshire Health and Social Care Partnership

5.2.4 Further clarification of the proposal requested

Most respondents request further clarity on the proposal that seeks to ensure inclusive communication is embedded proportionately across the work of listed authorities when they are communicating with the public. These respondents commonly ask for:

- Further detail on the scope and exact requirements of the proposed regulation and how it would apply in practice - "not all public bodies function in the same way, nor do they necessarily communicate with the same people/community/business demographics and shared resources need to recognise regional and local variations".
- A clear definition of terms used in the proposal, including 'accessible' and 'inclusive' communication, to ensure a common and shared understanding of what these mean in practice. Further, a question raised by some respondents is whether the Scottish Government intends to use the same definition of 'communicating in an inclusive way' within PSED as it does in three other Acts of the Scottish Parliament.
- A definition of what 'proportionate' means in the context of inclusive communication.
- Clarification on how the proposal is different to, or overlaps with, existing duties under the Equality Act 2010 in relation to 'reasonable adjustments'.
- Clarification on how the proposal will relate to/align with/join up with other legislation (e.g. BSL (Scotland) Act 2015, Social Security Act, Public Protection Act).
- Best practice guidance and shared resources on inclusive communication in advance of listed authorities being subject to the duty to minimise cost and duplication of effort, and to help embed a more inclusive approach to communications.
- Lessons learned on inclusive communications during COVID-19 to be shared widely and for lessons to inform the development of guidance and shared resources.
- Clarification on whether the duty is primarily focused on one-way communications (or 'transmission') or if it is broader and covers engagement (e.g. two-way 'conversation' communications).
- That more definitive timeframes for implementation could be specified rather than making sure accessible formats are available "within a reasonable timeframe".
- More information on the proposed 'centralised translation' service.

6   Proposal 3

Extending pay gap reporting to include ethnicity and disability

6.1 Context

The Scottish Government proposes to extend the current duty on gender pay gap reporting to include ethnicity and disability, with an appropriate reporting threshold to ensure that individuals cannot be identified based on their protected characteristics. This would require listed authorities to publish information on their pay gap between disabled people and non-disabled people, and people who fall into a minority racial group and people who do not.

The Scottish Government will also encourage listed authorities to publish disaggregated pay gap information where possible. It is also proposed to improve standardisation by prescribing the formulas listed authorities should use to calculate each of their pay gaps. Listed authorities would also be required to report on how they have met and implemented this duty as part of their overarching mainstreaming reporting duty. Another key driver will be the development of the ethnicity pay gap strategy, which was committed to in the Programme for Government 2021/22[5] and which will begin to be implemented by the end of 2024.

6.2 Question 3.1 – Ethnicity and Disability Pay Gap

What are your views on our proposal to require listed authorities to publish ethnicity and disability pay gap information?

Almost all respondents answered **Question 3.1** (93%). There are mixed views among respondents, although more appear to support the proposal in principle.

6.2.1 Respondents who support the proposal

The themes to emerge from the consultation responses that express support for the proposal to require listed authorities to publish ethnicity and disability pay gap information are outlined below.

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[5] The Scottish Government, A Fairer, Greener Scotland: Programme for Government 2021-22, September 2021.

Theme 1: A positive step for advancing disability and race equality

There are many comments from respondents (e.g. both listed authorities and equality advocacy groups) that note that: they "agree" with the proposal to require listed authorities to publish ethnicity and disability pay gap information; it is "common-sense"; it is "over-due"; it is "critical" to gather and publish this data; such information is a "useful tool to detect bias and discrimination"; or the proposal is viewed as "a positive step" for advancing disability and race equality.

Theme 2: Greater standardisation and comparability in reporting

A commonly held view among respondents in support of the proposal, is that it would "create greater transparency and hold public bodies accountable" for narrowing the pay gaps that exist in their organisations. Several respondents express support for greater standardisation in relation to reporting methods and suggest this would lead to improved consistency, comparability, and appropriate benchmarking of ethnicity and disability pay gaps reporting across the public sector.

"It is understood that discussions have started across Local Authorities in Scotland, led by The Society for Personnel and Development Scotland (SPDS) to progress this further and build consistency in what is reported. We would ask the Scottish Government to keep abreast with developments taken forward by this group".

Midlothian Council

Theme 3: Clear guidance and supporting documentation

Respondents request clear and detailed guidance and supporting documentation from the Scottish Government on the proposal: to support consistency of approach; to ensure robust and useful data is collected; and to provide clear explanation and understanding of the information to be presented and reported on. The following points are frequently referenced in the consultation responses: the provision of clear and consistent definitions and categories; thresholds for ethnicity and disability pay gap reporting; prescribed formulas listed authorities should use to calculate and report this data; updated data gathering questions and options; and a template for presenting and reporting this information.

Theme 4: Potential to roll the proposal out further

Some support was expressed by respondents (e.g. by equality advocacy groups, other organisations) for the Scottish Government's proposal to be rolled out to other protected characteristics in the future – "Holding the same standards across all protected characteristics in an equitable fashion is important for openness and transparency".

6.2.2 Respondents who raise issues or concerns

While the proposal is viewed positively among most respondents, many highlight issues or concerns they have with the proposal to require listed authorities to publish ethnicity and disability pay gap information. The themes to emerge are summarised below.

Theme 1: Data quality

Many respondents highlight complexities and practical difficulties in implementing the proposal and concerns regarding data quality (e.g. inconsistencies and gaps in data collected on ethnicity and disability when compared to gender). These respondents feel that these issues may affect how complete, meaningful, and robust ethnicity and disability pay gap information would be. They emphasise that listed authorities would need to have a strong awareness and understanding of the General Data Protection Regulation (GDPR) and that data quality issues may have implications for disclosure rates, the publishing and accuracy of data, and for the development and implementation of actions to address disparities in the workplace.

"There needs to be a balance between the difficulties in publishing pay gaps where numbers of representation are low and publishing data where broader categories can be used".

Orkney Islands Council

Theme 2: Prioritising measures to tackle under-representation

Some equality advocacy groups note the proposals do not "mitigate our concerns" and believe that tackling under-representation of disabled people and people who fall into a minority racial group within the workforce, including at senior levels, "should be the primary focus of any legislative amendments intended to address ethnicity and employment/income issues".

"We recommend prioritising measures to tackle under-representation…an explicit requirement to set equality outcomes on inequalities demonstrated by employee information data with associated targets and actions, over the proposed introduction of pay gap reporting on ethnicity".

The Coalition for Racial Equality and Rights (CRER)

"A more overarching issue and priority would be to address racism that EM (ethnic minority) communities face within the labour market, resulting in higher rates of poverty and unemployment. Thus, it is more important to address institutional barriers within employment for EM people and to get them into decent paid jobs.…it is more important to address institutional barriers within employment for ethnic minority people and to get them into decent paid jobs". CEMVO Scotland

6.2.3 Respondents who do not support the proposal

Some respondents (e.g. equality advocacy groups) consider the proposal to extend pay gap reporting to ethnicity and disability may be "insufficient to create change for people with these protected characteristics and are likely to replicate existing problems with the current duty on gender pay gap reporting". The same respondents note that:

- Lessons could be learned from the issues with the gender pay gap.
- Careful disaggregation of data would ensure that it is both meaningful and useful.
- Listed authorities could be required to set out what action they will take to reduce any gaps identified by the data otherwise no meaningful change will be realised. Some equality advocacy groups suggest that more needs to be done to progress under-representation of these groups in the workforce.
- The Scottish Government could consider how the proposal would be enforced and whether sanctions may be required should a listed authority fail to collect data or act on this data.

6.2.4 Further clarification on the proposal requested

Some respondents request further clarity on the proposal or pose questions to the Scottish Government, including for example:

- How intersectionality would be accounted for.
- What happens with this information – how would it be used.
- That action plans could further strengthen the Scottish Government proposal.
- Clarification is requested on the rationale for why pay gap reporting for all protected characteristics has not been proposed.
- That the proposal would need to be considered alongside engagement on proposed Local Government Benchmarking Framework (LGBF) indicators.
- A question raised is whether the Scottish Government would provide best practice, shared resources and training to listed authorities' employees.
- What support, if any, would be provided to help listed authorities improve the quality of employee data they hold on ethnicity and disability. Good quality data gathering is considered essential to inform policy and decision making.

6.3 Question 3.2 – Reporting Threshold

Should the reporting threshold for ethnicity and disability pay gap reporting be the same as the current reporting threshold for gender pay gap reporting (where a listed authority has at least 20 employees)?

A vast majority of respondents answered **Question 3.2** (86%). There are mixed views among respondents, although more appear to support the proposal in principle.

6.3.1 Respondents who support the proposal

We have reviewed the consultation responses to identify those respondents who explicitly support the proposal that the reporting threshold for ethnicity and disability pay gap reporting be the same as the current reporting threshold for gender pay gap reporting. This is based on, for example, respondents who use the terms "Yes", "Agree", or "This would be appropriate" in their response.

Based on this approach, it appears that more respondents support the proposal in principle than those who do not. This includes respondents who indicate support for the reporting threshold but who caveat their response in some way.

The main themes to emerge in support of the proposal are outlined below.

Theme 1: Comparability and consistency

The main reason reported by respondents in support of the proposal is for the purposes of comparability and consistency of approach and reporting across listed authorities. Related points include that standardisation would increase openness and transparency across listed authorities, and that it would ensure parity within protected groups.

Theme 2: A lower threshold could risk identification of individuals

Another common theme among respondents in support of the proposal is that a lower reporting threshold (i.e. less than 20 employees) may risk the identification of individuals.

Theme 3: Guidance

Respondents note that the Scottish Government would need to provide comprehensive guidance to listed authorities relating to data protection, data handling, and effective reporting.

6.3.2 Respondents who identify issues or concerns

Many respondents, including but not limited to those who support the proposal, caveat their response or raise concerns about the proposed reporting threshold (i.e. where a listed authority has at least 20 employees). The main themes to emerge from these consultation responses are outlined below.

Theme 1: Data protection

The main concern raised by these respondents relates to data confidentiality and data protection. These respondents suggest that appropriate safeguards would need to be put in place to prevent disclosure and to avoid the identification of individuals (e.g. where staff numbers in categories are low).

Theme 2: Limited value or no information to report

Some respondents note that the value of information obtained from data groups as small as 20 may be limited and/or that some organisations may have no information to report. These respondents suggest that this may present difficulties in providing meaningful and detailed levels of ethnicity and disability pay gap reporting. Other points raised by these respondents include the potential for unreliable and volatile datasets and therefore skewed results.

Theme 3: Further engagement with stakeholders

Some equality advocacy groups suggest that further engagement and consultation between the Scottish Government and experts on the employment inequalities faced by people who share these protected characteristics may be required to help finalise the approach to ethnicity and disability pay gap reporting. A further suggestion is for the Scottish Government to undertake continued engagement with smaller listed authorities to "ensure any new requirements are proportionate and achievable".

Theme 4: A more proportionate approach

A few respondents suggest that a more proportionate approach to reporting may be beneficial – "using a tiered process according to institutional employee populations".

6.3.3 Respondents who do not support the proposal

While all consultation respondents are supportive in principle of ethnicity and disability pay gap reporting, some do not support the reporting threshold proposed by the Scottish Government. The main themes to emerge from those who respond in this way are summarised below.

Theme 1: Reporting threshold could be higher

Some respondents (e.g. some listed authorities and other public bodies) are typically in favour of a higher reporting threshold. Feedback from these respondents varies, with suggestions that the reporting threshold could be increased to those listed authorities that have 50 employees, 100 employees, or 250 employees. Much of the feedback from these respondents relates to: the importance of understanding the local context; data sensitivity issues; challenges in disaggregating data; making sure that the data reported is robust and meaningful; and/or mitigating GDPR concerns.

Theme 2: The threshold could be lower or cover all organisations

A few respondents (e.g. equality advocacy groups and other organisations) feel that the proposal should either:

- Have a lower reporting threshold than that proposed by the Scottish Government. Listed authorities with 10 employees is suggested.
- Cover all organisations, regardless of the number of employees.

"…to allow better transparency and to identify any structural issues with pay gap across the sector. This will help avoid letting smaller recurrent pockets of potential discrimination go unreported".

Central Scotland Regional Equality Council (CSREC)

Theme 3: Pay gap reporting duty needs to be reformed separately

Some equality advocacy groups call for the pay gap reporting duty to be reformed separately, and make a similar comment, as follows:

"Disaggregating data for these protected groups is not as straightforward as disaggregating data based on gender and it is unclear if undertaking this would result in meaningful data being produced….we believe that the pay gap reporting duty needs to be reformed separately in order to require public bodies to use their gender pay gap, occupational segregation and employee data to develop an action plan to close their pay gaps, and to require public bodies to report progress on this action plan".

Scottish Women's Budget Group

6.3.4 Wider points raised

Additional points raised by respondents, but not to any great extent, include the following:

- It would be important that the data gathered is "actually used and seen to be used". The point made by these respondents is that gathering data serves no purpose if it does not then inform actions to mitigate negative effects that have been identified by the data. Some go further and suggest that the pay gap reporting duty may need reformed to require public bodies to use their gender pay gap, occupational segregation and employee data to develop an action plan to close their pay gaps, and to require public bodies to report progress on this action plan.

- As well as having a threshold for an overall workforce, there may need to be consideration and a potential threshold in relation to, for example, the number of minority ethnic colleagues in the organisation, regardless of organisational size (e.g. an organisation with 1,600 employees but only 30 who fall into a minority racial group).

- Some respondents advocate for a relevant threshold for disaggregated data.

- Another comment made is that the Scottish Government could consider the benefit of data to demonstrate the pay gap (if any) for individuals who hold intersecting protected characteristics beyond sex and gender.

- The gender pay gap data started with reporting by larger organisations and then moved to smaller organisations once the principle of reporting and best practice had been established. A suggestion made is that a similar approach could be adopted here.

6.4 Question 3.3 - Formulas

What are your views on the respective formulas that should be used to calculate listed authorities' gender, ethnicity and disability pay gaps?

Around 80% of respondents answered **Question 3.3**.

6.4.1 Respondents who support the proposal

Most respondents agree with the Scottish Government proposal to improve standardisation by prescribing the formulas listed authorities should use to calculate each of their pay gaps. The main themes to emerge in support of the proposal are outlined below.

Theme 1: Comparability and consistency

These respondents note in their response that improved standardisation by prescribing the formulas listed authorities should use would enable: consistency in reporting; trend analysis; ease of comparability; benchmarking of national performance; and listed authorities to learn from one another and share good practice. A template for reporting is therefore welcomed by these respondents. It is reported that a template would: ensure consistency of presentation and comparability of data; improve progress monitoring; reduce bureaucracy; and encourage cross sector learning/practices.

Some listed authorities point to a Equality and Human Rights Commission (EHRC) report[6]. These respondents suggest the EHRC report's good practice examples and findings could be used by the Scottish Government to help inform the approach undertaken in Scotland.

Theme 2: Alignment with recognised good practice/existing approaches

Some listed authorities note that the Scottish Government could consider adopting the approach that is used across the rest of the UK (i.e. model derived from the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017). It is suggested that this would allow public bodies to benchmark their progress against other public bodies in Scotland and their counterparts in the rest of the UK.

Other suggestions from these respondents includes the following:

- Close the Gap has produced guidance for gender pay gap reporting, including standardised formulas – it is suggested that this could be replicated for disability and ethnicity.
- That the LGBF approach could be replicated in terms of formulae being clearly laid down with meta data.

These respondents express support for a standardised approach in Scotland to "align with recognised good practice and/or those used elsewhere".

Theme 3: Ensuring anonymity in reporting

Another common theme among respondents is that it would be important that formulae permit for variations where necessary to ensure anonymity in reporting is maintained.

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[6] EHRC, research report 117, Measuring and reporting on disability and ethnicity pay gaps, August 2018.

Theme 4: Technical guidance

Similar to responses to other consultation questions, many respondents consider it important that clear and consistent technical guidance is provided by the Scottish Government relating to this proposal. Comments include a request for the guidance to include: clear and consistent formulae; definitions of 'ethnicity' and 'disability' (e.g. clear set of identified groupings and characteristics); best practice examples and approaches; consideration of the impact of using mean or median on the risk of disclosure versus utility and comparability of pay gap statistics; and how listed authorities report intersectionality.

6.4.2 Respondents who identify issues or concerns

Many respondents, including but not limited to those who support the proposal, caveat their response or raise concerns about the proposal. The main theme to emerge from these consultation responses is summarised below.

Theme 1: Similar points to those raised to previous questions

Some respondents restate similar points to those raised earlier. Namely data issues and concerns (e.g. disclosure, availability, completeness, etc). There are said to be differences when looking at gender pay gap calculation and ethnicity and disability pay gap calculations, and that this may result in a lack of accurate and meaningful data and skewed results. Careful consideration of the formula used is felt to be essential by many respondents. Further, respondents consider it important that the information should be used to inform action planning.

Further, some respondents (e.g. some equality advocacy groups) note that the "relatively greater complexity" involved in robustly calculating an ethnicity pay gap may result in more non-compliance. For example, these respondents refer to research undertaken for the EHRC that found that the calculation provided in the regulations for gender pay gap reporting was often not being used, despite being very clear and well promoted.

Additional feedback (e.g. from some listed authorities) is that the "standard formula used in calculations is not prescriptive enough and lacks uniformity" – a respondent adds that "This sometimes ends up with skewed results across listed authorities and makes comparing and bench marking difficult".

It is further suggested that "respective formulas for calculating each protected characteristic pay gap needs to be very specific and the data gathering questions and answers should be fit for purpose and agreed by all listed authorities".

6.4.3 Respondents who do not support the proposal

While some respondents (e.g. some listed authorities) recognise the afore-mentioned benefits in terms of comparability and consistency of approach from the use of standardised formulae, they raise concerns about the implications of the proposal on tried and tested formulae and templates.

"…careful consideration must be given to the potential impact on equality progress by adding additional bureaucracy, costs and potential incomparability of longitudinal data gathered over many years in organisations that are further ahead in this work. Any approach must allow flexibility and recognise the uniqueness of individual institutions".

Scottish Equality Forum for Colleges and Universities (SEFCU)

6.4.4 Further clarification on the proposal requested

Some respondents request further clarity from the Scottish Government on the proposal, including for example:

- More specific details are requested on the prescribed formula and calculations alluded to in the Consultation Paper, including clarity on how the formula is constructed.
- Some respondents call for additional stakeholder consultation on the proposed formulas prior to any changes of legislation.
- Clarification on whether non-compliance with the proposal by listed authorities would result in enforcement action.

7 Proposal 4

Assessing and reviewing policies and practice

7.1 Context

Regulation 5: 'Duty to assess and review policies and practices' requires listed authorities, where and to the extent necessary to fulfil the Public Sector Equality Duty (PSED), to assess the impact of applying a proposed new or revised policy or practice against the needs mentioned in that duty, i.e. the need to advance equality of opportunity, eliminate discrimination and foster good relations.

The Scottish Government proposes to adjust the duty to assess and review policies and practices 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 to ultimately make better policy for people.

The Scottish Government also proposes to strengthen the duty to assess and review policies and practices to require the involvement of people with lived experience, or organisations who represent them, in certain circumstances, like where the policy being assessed is a strategic level decision (of the type that engage the socio-economic duty in part 1 of the Equality Act 2010). This is also explored in Proposal 7.

As set out in Proposal 1, the Scottish Government proposes to require listed authorities to report on how they have implemented all of their Scottish Specific Duties (SSDs) as part of their overarching mainstreaming reporting duty. This will include assessing and reviewing policies and practices. This could be illustrated through case studies and examples.

7.2 Question 4.1 – General Views

What are your views on the proposal outlined above?

A vast majority of respondents provided a response to **Question 4.1** (91%).

7.2.1 Respondents who support the proposal

Most respondents agree with the Scottish Government proposal outlined above regarding Regulation 5: 'Duty to assess and review policies and practices'. The main themes to emerge in support of the proposal are outlined below.

Theme 1: Support for assessments to be undertaken early

Most of the respondents who express support note agreement with the proposal to adjust the duty to assess and review policies and practices to emphasise that Equality Impact Assessments (EqIAs) must be undertaken as early as possible in the policy development or review process – "at a formative stage of policy development", "from the inception of a policy development process" and "before strategies and policies reach version final and before any project is designed".

These respondents feel that the proposal could:

- Help to make impact assessment an integral part of policy development processes (e.g. not formulaic nor tokenistic, increase transparency, accountability, and public reporting).
- Encourage a proactive and forward-looking approach to EqIA among listed authorities.
- Improve the way equalities is considered in policy making.
- Create better policy for people with protected characteristics.
- Ultimately help to develop more inclusive policies, practices, and strategies.
- Be an effective tool to assist listed authorities develop policies which result in real improvements in the lives of those with protected characteristics (i.e. improve policy effectiveness).

"This means the assessment process must happen before a policy is decided. The assessment cannot be retrospective, or undertaken near the end of the process, but should instead be integral to the earliest stages of the development of proposed polices or practices, and in the revision of existing policies or practices". However, this does not happen consistently or effectively".

Scottish Women's Aid

A couple of listed authorities – while supportive of the Scottish Government proposal in principle – note that "assessment cannot always be carried out as early as would be desirable", or that "…it is not always appropriate to carry out an assessment as 'early as possible'; with a risk that you are just assessing the principle of a policy rather than the impact of a detailed formulated policy".

Theme 2: Support for strengthening the duty and improving the regime

Respondents (i.e. all groups) note that the proposal to strengthen the duty to assess and review policies and practices to require the involvement of people with lived experience, or organisations who represent them, in certain circumstances, is a "welcomed step". These respondents view such a requirement as key and "should be prioritised and mainstreamed into the decision making of public bodies".

Further, many respondents agree that it is "important for decision makers to be informed by the lived experience of those affected by policies/practices", that it is important to listen to the "real life challenges" of people who share protected characteristics, and that engagement must be "carefully planned", "timely", "genuine", "meaningful", and be "transparent".

These respondents emphasise that such an approach would:

- Ensure that EqIAs become less process driven.
- Encourage listed authorities to involve equality stakeholders at an early stage.
- Be used more to inform the development of policy or practice or to advance equality of opportunity and foster good relations. For example, some respondents feel that it is often used in a limited way to determine unlawful discrimination.
- Ensure that equality considerations are more likely to form part of the decision-making process.
- Encourage involvement of people with lived experience, or organisations who represent them, to be mainstreamed rather than viewed as ah-hoc or a one-off exercise.
- Encourage the use of robust qualitative data alongside quantitative data, or where no quantitative data is available.

"There is a clear distinction between organisations that directly represent people and organisations that undertake structural analyses of equality issues. Our draft regulations make suggested amendments to the 'duty to involve' accordingly".

Engender

"Access to data is essential if good EqIAs are to be carried out".

Scottish Women's Budget Group

Theme 3: Clearer and stronger wording

Further, some equalities advocacy groups and others highlight concerns the current approach/system is not working, and that implementation of this duty has been weak.

"The duty to assess and review policies is currently seen as a duty of filling out a form rather than its original purpose of creating meaningful change. The SFC therefore welcomes the intention to improve this process, as well as the way equality is considered in policy making".

Scottish Funding Council

"The increased focus on the EqIA process needs to be more robust in the elements around advancing equality of opportunity as the current focus is skewed towards identifying and eliminating discrimination. This focus doesn't necessarily reduce the inequality gap".

<div align="right">Mobility and Access Committee for Scotland (MACS)</div>

"Engender proposes that listed authorities are required to follow a prescribed set of criteria that must be met in undertaking an EqIA. As the consultation document describes, many listed authorities have indicated that such an approach would be welcome. We have developed the set of steps below following years of being approached for views on or support with developing EqIAs, as well as regular analysis of those relating to key policy areas for women's equality:

- "Relevant qualitative and quantitative evidence relating to women (and all other protected characteristics) is described.
- Gaps in evidence are identified and needed additional research is outlined.
- Existing evidence is analysed from a gender equality perspective (and from the perspective of all other protected characteristics).
- This analysis is applied to identify where gender inequality and discrimination against women can be reduced and where women's equality can be advanced.
- Policy is developed or adapted to address the inequalities and opportunities to advance equality that have been identified, including steps to fill gaps in the evidence base".

<div align="right">Engender</div>

Close the Gap notes that there is a "need for a cultural shift to ensure equality impact assessments are prioritised and embedded across Government and the public sector, however, we are not persuaded that this can be achieved without regulatory change". They also recommend that the wording of regulation five is strengthened to provide clarity on the purpose and process of equality impact assessments, and to enable greater accountability and enforcement – "A new regulation should set out minimum standards that public bodies must comply with in how they use equality impact assessment".

There is some respondent feedback that terms used in the Scottish Government proposal may be open to interpretation (e.g. 'aim' to test ideas, 'as early as possible'). These respondents suggest there may be benefit in the drafting of legislation to have clear definitions/be carefully worded in order to convey and mandate their intent and to maximise effectiveness and impact – "We urge Scottish Government to ensure that wording around this is as strong as possible".

Theme 4: Scottish Government to lead by example

A point raised by some respondents (e.g. equality advocacy groups) is that it would be important for the Scottish Government to lead by example in this regard, ensuring that government completes timely, substantive EqIAs when new strategies and policies are being considered. This relates to a previous point raised on the perception that EqIAs are currently "used inconsistently or carried out retrospectively, or sometimes not carried out at all".

"It would be beneficial if the Scottish Government led on strategic impact assessments for public sector wide initiatives to level up and when introducing or changing provisions such as parental leave. The public sector should be consistent and funded to set the example for industry".

Scottish Police Authority/Police Scotland

Theme 5: Robust guidance

Some respondents (e.g. equality advocacy groups, listed authorities) call for the Scottish Government to provide robust guidance to "support listed authorities when making decisions about what to assess".

"Agree that there needs to be guidance and sharing of best practice that moves away from a process driven approach to a value added evidence based decision making model. The current process can often become overcomplicated and lose sight of the intention of the duty".

Scottish Police Authority/Police Scotland

7.2.2 Respondents who raise issues or concerns

Many respondents, including those who support the proposal, caveat their response or raise concerns. The main themes to emerge from these consultation responses are summarised below.

Theme 1: Important to not to over burden people or organisations

While respondents (all groups) acknowledge that EqIA processes need to be made more accessible for people with lived experience to engage with the process meaningfully, concerns are raised about the practicalities of implementing the proposal.

Related points made by these respondents include that:

- It would be important to ensure that people with lived experience (in general as well as smaller protected characteristic groups) or the organisations who represent them are not over-burdened by the requirement for involvement.

- "Consultation fatigue" must be avoided.
- The requirement should be proportionate and necessary to the programme being assessed.
- Consideration could be given to exemptions or thresholds to ensure that engagement is meaningful.
- A commitment could be made by the Scottish Government to provide resources and assistance to enable and support people not only to share but to cope with any issues that sharing entails for them (e.g. sometimes this may involve asking an individual to relive deep trauma).

Some of these respondents point to existing toolkits that could be looked at to inform the PSED Review. For example, the Scottish Commission for People with Learning Disabilities' (SCLD) toolkit for including people with learning disabilities in the EqIA process is mentioned.

A suggestion (e.g from a few listed authorities) is that "Where possible existing data and evidence should be utilised to reduce burden on representative organisations and individuals, or on building that evidence base for use across the public sector where it does not already exist. And that the enhancement of the Scottish Government evidence finder may support this approach.

These respondents also suggest that the Scottish Government could continue to engage with relevant stakeholders and learn lessons from others when finalising the proposal.

Theme 2: Resources and support to build knowledge and capacity

There is recognition across the consultation responses that there needs to be consideration across national and local government of the realistic level of resource commitment required to adequately fulfil this duty.

"Requests for our input do not take account of the expense, time and energy required for us to contribute and support participation by our members. This should be addressed".

Inclusion Scotland

"Setting a standard is one thing, having the capability and capacity to fulfil it is quite another".

Equate Scotland

There is also reference made across consultation responses (e.g. by some equality advocacy groups) that the proposals would require a cultural shift in terms of how EqIA are viewed across government and public sector – "They are seen as a means to an end, rather than as a step to developing action to overcome identified issues". As such, the provision of "meaningful training to managers" is considered essential to improve levels of knowledge and understanding, and for staff within listed authorities to be equipped and have the necessary awareness, understanding and skills to complete meaningful EqIAs, including at board and senior executive level, and to develop further action from them.

A related point (e.g. equality advocacy groups, listed authorities, other public bodies) is that 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, then it would be important to "build institutional knowledge and capacity on equalities and human rights within listed authorities". These respondents note that this would require "adequate and sustained resources" to achieve.

Awareness raising of EqIA as well as the provision of technical guidance, systematic training, workshops, toolkits, EqIA template, mandatory minimum considerations, general support, and opportunities to share issues/experiences, are all referenced in the consultation responses as potentially helpful ways to support listed authorities to implement the new duties. Ongoing capacity and capability development is viewed by respondents as critically important.

"We would like to emphasise the need for resources which focus on the 'how' rather than just the 'why'. It was raised by many councils that a central resource to provide awareness raising, training and general support for councils would be invaluable. The 'Fairer Scotland' support post based in the Improvement Service was given as an example that has worked well for councils".

COSLA

Theme 3: Integrated impact assessments

A few listed authorities report that there is an existing requirement to undertake various impact assessments (e.g. Fairer Scotland Duty Impact Assessments, Islands Communities Impact Assessments, and Equality Impact Assessments, and some services complete Health Inequalities Impact Assessments).

In this regard, these respondents feel that the "assessment landscape is going to become more complicated with introduction of Children's Rights and Wellbeing Impact Assessments and mooted Human Rights Impact Assessments".

They note that resources are constrained, and that the requirement to "increase levels of engagement make the need for a joined-up approach more important".

A point made by these respondents is that they would like to see all impact assessments required by Scottish Government to be "integrated, with consistent guidance provided as to when and how these are required" or a "more coherent framework". They add that the advantages of an integrated or coherent framework for impact assessments include that integration would: enable a better strategic overview to be undertaken within organisations; result in less contradiction/ differences between different assessments about what needs to be done; and enable more efficient use of resources with regards to engagement with service users.

Theme 4: Proposals may not be sufficient to drive the desired change

A few respondents (e.g. listed authorities, equality advocacy groups, other organisation) feel that "the proposals outlined above go some way to strengthening existing requirements but may not be sufficient to drive the desired change". Some but not all respondents expand on this point further.

For example, The Coalition for Racial Equality and Rights (CRER) note that the proposals are "too weak to lead to meaningful change" and recommend the following amendments to the SSD in relation to EqIA:

- "Require involvement of service users with protected characteristics and those who represent their interests (where relevant) in equality impact assessments.
- Consider creating a pro-active right to request involvement in EqIA processes, with rationales for the decision to be published.
- Consider creating a pro-active right to request that an EqIA be carried out on a specific policy or service, with rationales for the decision to be published."

CRER also identifies some additional considerations, including:

- "A summary of EqIA activity should be set out within the single report, but would suggest that inclusion of a full list of EqIAs carried out should be required in addition to this overview.
- This could usefully include a requirement to set out whether the policy/service being assessed will be continued without mitigation (where no impact identified), continued with mitigations, halted to identify mitigations, or halted entirely as no mitigations are possible. This four-option consideration is paraphrased from previous Equality and Human Rights Commission guidance, prior to their adoption of a non-prescriptive stance.

In our view, an approach such as this could substantially reduce the tendency for EqIAs to have no impact on decision making.

- We would also support mandating publication of a summary of the evidence used in assessing equality impacts, alongside data gaps limiting the available evidence".

A related point made by the Women's Support Project is that "It is essential that lived experience and data are intrinsic in the policy development process at operational level as well as at a strategic level". Further, NASUWT query why the views of people with lived experience would only be required in certain circumstances.

7.2.3 Respondents who do not support the proposal

There is limited feedback from respondents that notes they do not support the proposal regarding Regulation 5: 'Duty to assess and review policies and practices'. Rather, as noted above, many respondents caveat their support by raising points for the Scottish Government to consider or request further clarification on the proposal.

A point raised by an equality advocacy group relates to the reporting on EqIAs and notes their opposition to the proposed system of a single report every four years, and other feedback relates to the issue of accountability.

"We do not see how this could be an effective lever to address the significant and deeply-rooted issues with the quality of EqIAs. We are recommending annual reporting against the strategic plan that would include a list of each EqIA undertaken during the reporting period, accompanied by a summary of what impact the process of gathering and analysis of evidence had on decision-making. The substance of progress reporting must be clearly delineated in guidance; we reject the notion that reporting on implementation of EqIAs "could be illustrated by case studies and examples".

Engender

"The proposal fails to acknowledge the accountability of listed authorities. EqIA's have become a 'tick-box' exercise where there is little difference made….Although the current proposal has its practical values, there is no mention of accountability and consequences of this exercise is not fulfilled properly. For example, the current Co-Design service within the Scottish Government does not include a published equality impact assessment as such and does not implement a human rights-based approach….we have concerns about the reluctance of civil servants in embedding these assessments from the beginning of a policy development process and reviews.

The involvement of those with lived experiences should provide a greater insight with alternative solutions to overcome barriers. We empathise with the inclusion of all SSD's in one mainstreaming report as this avoids repetition of work and consolidates evaluations within one document. However, as already highlighted, the focus should be on the reporting of positive equalities outcomes".

Council of Ethnic Minority Voluntary Organisations (CEMVO) Scotland

7.2.4 Further clarification on the proposal requested

Some respondents request further clarity from the Scottish Government on the proposal, including, for example:

- The term used in the proposal 'should aim to test ideas' should be clearly defined.
- The term 'lived experience' should be clearly defined.
- When the term 'strategic level decision' used in the proposal would apply.
- Clarification on how prescriptive the proposed changes would be.
- Whether there would be the flexibility for a proportionate approach.
- How compliance with the duty would be monitored and enforced.
- That inequality goes beyond the nine protected characteristics in the Equality Act 2010, and that EqIAs could be strengthened if they included human rights and socio-economic circumstance.

7.3 Question 4.2 – Other Improvements

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?

A vast majority of respondents answered **Question 4.2** (89%).

Many respondents raise similar points to those outlined at **Question 4.1**, for example:

- Support is expressed for assessments to be undertaken early.
- Support is also expressed for strengthening the duty and improving the regime in terms of ensuring an active role for people with lived experience.
- The Scottish Government leading by example is emphasised as important.
- There is a request for the provision of robust guidance.

- It is considered important not to over burden people with lived experience or organisations that represent them.
- It is proposed that resources and support are needed to build knowledge and capacity in listed authorities.
- Support is expressed for integrated impact assessments.

Additional improvements identified by respondents have been summarised below.

Theme 1: Culture change is required to improve the regime

Many respondents, particularly equality advocacy groups, feel that a culture change is required to improve the regime around assessing and reviewing policies and practices. They note that the current regime, including EqIA, is too often seen as an "add-on" and bureaucratic, which leads to a "poor" level of compliance. These equalities advocacy groups suggest that facilitating culture change across listed authorities would be an important factor in ensuring greater compliance.

Many listed authorities and equality advocacy groups state that efforts to mainstream equality will be vital to improving the regime in this regard. For example, a few respondents suggest there is an opportunity for a group of senior leaders across listed authorities to share knowledge and expertise to drive culture change across public bodies to improve the regime.

Another view held by some equality advocacy groups is that there is already a range of available guidance, and that the main issue that needs addressed is compliance by listed authorities. These respondents feel that a culture change from senior leadership, which is adequately and continuously resourced, is required to improve the regime around assessing and reviewing policies and practices.

"Equate Scotland considers that a complete culture change is necessary to improve the regime around assessing and reviewing policies and practices. We would say there have been plenty of opportunities for meaningful change to be enacted, and outcomes have fallen short. Tangible effort and outcomes are required to make substantial progress."

Equate Scotland

Theme 2: Resources and support to build knowledge and capacity

In order to improve the regime and facilitate cultural change, most respondents, particularly listed authorities, report a need for resources and support to build knowledge and capacity within their own and other organisations.

In addition to the feedback described at **Question 4.1**, other suggested improvements include that the sharing of best practice, case studies and templates would be valuable. It was reported that this would help to clarify expectations, ensure consistency of approach across different organisations:

- "Training that everyone can access, for example, good quality e-learning or a training video for the types of 'policies' that all organisations have and should be doing assessments for.
- Overarching guidance, a standard equality impact assessment template that we could download and resources (such as examples of which external organisations to involve in an assessment, where to find quantitative data, data gathering template, action plan template, etc).
- Sharing good practice case studies (difference a good assessment has made, or how others have embedded it into their organisations).
- Tools to share so that professionals can share it within their organisations to help embed it, so it becomes 'the way things are done around here."

Care Inspectorate

A further point raised by listed authorities is that it would be beneficial if there is a "national-led" and "unified" approach to training which is easy to understand and implement.

Many respondents identify that practical training, particularly targeted at senior and middle management level, may help to facilitate cultural change within organisations, improve the quality of EqIA and equality data which is gathered, and mainstream equality considerations.

Many listed authorities express strong support for a dedicated equality and human rights officer to help progress work in this area. It is suggested that their role could be to "provide internal advice, guidance and competence building" and monitor "the use of equality impact assessments within the organisation, ensuring they adhered to the standards set out in the duties and guidance."

For some respondents, having an officer with clearly defined roles and responsibilities could help to improve levels of compliance. Some respondents point to previous examples such as the value of a dedicated officer and programme manager for the Fairer Scotland Duty and would welcome a similar resource aligned to the Scottish Government proposal. These respondents also note that this would require adequate and continuous funding and resource.

"A dedicated equality and human rights resource at a senior officer level is required to embed into performance and quality improvement structures. There have been examples of where this has worked previously when resources were made available to quality check impact assessments being undertaken as a way of identifying any corrective actions required to deliver a robust impact assessment which involved those with the relevant protected characteristics/lived experiences or those experiencing inequality. Such a resource will also deliver a direct link to Risk Registers as well as monitoring and reporting on progress being made against the recommendations which come out of the impact assessment."

Aberdeen City HSCP

Theme 3: Robust guidance

In addition to the points raised regarding robust guidance at **Question 4.1**, additional feedback is provided by respondents on specific guidance relating to EqIA and involving people with lived experience or organisations who represent them.

Some listed authorities state that it would be useful to have clear and standardised definitions to aid the understanding of EqIA and relevant data. A wider view expressed is that better defined expectations of what is required would result in EqIA being more outcome-focussed to ensure impact and promote their use as a "practical tool" rather than being viewed as a process. Several respondents note their positive experience of, and the helpful guidance provided, as part of the Fairer Scotland Duty and would welcome a similar approach here.

In terms of involving people with lived experience, some listed authorities ask for further guidance and clarity from the Scottish Government on what this means in practice, and what is expected.

Equality advocacy groups and some listed authorities feel that people with lived experience should be actively involved in shaping policies and practices rather than only being asked to provide feedback on policies and practices.

"The regulatory body is already in place to ensure that these standards are being upheld, however their effectiveness is questionable as many listed authorities do not fulfil their statutory obligations. Therefore, providing resources to aid existing organisations/departments who have the expertise and legality to enforce, train and support listed authorities to develop effective assessments would be helpful. These resources could be in the form of people with lived and professional experiences."

Council of Ethnic Minority Voluntary Organisations (CEMVO) Scotland

Theme 4: Greater enforcement to improve compliance

A few equality advocacy groups and other bodies call for greater enforcement of Regulation 5: 'Duty to assess and review policies and practices' or a stronger approach to improve compliance among listed authorities. Some respondents suggest a dedicated officer (as described above) could help support this to happen.

"The quality of EqIA should be incorporated in performance management frameworks. Engender also advocates for creation of a Scottish Government EqIA review panel, with the authority to compel EqIA to be revisited within the policymaking process. This would allow wider expertise to be brought to bear more effectively within the process and allow concerns to be identified and resolved within a timescale that is compatible with policymaking. Once established, coverage for listed authorities could be explored."

Engender

7.4 Question 4.3 – Current Scope of Policies

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

Circa 85% of respondents answered **Question 4.3**. The main themes across consultation responses are outlined below.

Theme 1: Mixed views on current scope

Responses to the consultation are relatively mixed on the current scope of policies that should be assessed and reviewed under regulation 5.

On the one hand there is feedback from some respondents that the current scope is "too broad" or "very wide" (e.g. "covers all policies and practices", "often interpreted as everything we do", "has resulted in considerable variation on the ground"). Some go onto suggest that the scope could be narrowed.

"The revised Fairer Scotland Duty guidance provides a comprehensive definition of where the duty applies. We would ask that Scottish Government provide a similarly comprehensive definition for the PSED and that this aligns where possible to allow for integrated impact assessments".

East Renfrewshire Council

Some respondents consider there to be a lack of clarity and uncertainty surrounding the current scope regarding which policies should be assessed and reviewed under regulation 5. These respondents request further clarification to be provided by the Scottish Government as to what level an EqIA might be required at.

On the other hand, there is feedback from respondents who are "supportive" of the current scope of policies that should be assessed and reviewed under regulation 5. These respondents typically note that the current scope is "appropriate", "reasonable", or "sufficient". This is, however, often followed by comments that express support for a "proportionate approach" and for EqIA to become "an integral part of policy development or renewal…to encourage the mindset of equalities and embed it more in everything that we do".

"The inclusion of strategies as well as new or revised policies and practices seems a sensible approach. Any policies/practices developed at speed should have a requirement to bring forward the review period as quickly as possible to ensure people from a protected group are not being disproportionately affected by the policy or to seek suggestions where improvements could be made".

<div align="right">Tayside NHS Board</div>

"We believe that this should be applied as widely as possible against a broad range of areas. It needs to cover operations as you can have the best strategic policy/intentions but how things are implemented on the ground can negatively impact on individuals".

<div align="right">Women's Support Group</div>

Theme 2: A relevant and proportionate approach

Support is expressed by most respondents for retaining flexible, pragmatic, and proportionate arrangements – "this is vital to ensuring meaningful and effective assessment is undertaken which adds value and focuses resources and engagement on the right priorities".

"We feel that the policies to be assessed should be at the discretion of the organisation, as they are best place to decide which are likely to impact (negatively or positively) on PSED".

<div align="right">Highlands and Islands Enterprise</div>

There is wide reference across consultation responses to the following wording in the proposal - "The extent to which policies should be subject to assessment will depend on questions of relevance and proportionality".

Many respondents feel there requires to be further clarification and guidance provided by the Scottish Government regarding the definition of "relevance and proportionality" in this context. It is reported that this would help ensure a clear and shared understanding among listed authorities on what is expected.

Theme 3: Clearer definitions and language

There are many comments from respondents that asked for clear definitions of terms used in the Scottish Government proposal relating to the current scope of policies that should be assessed and reviewed under regulation 5. For example:

- Clear definitions of what 'policy' and 'practice' means in the context of the legislation, as this is viewed as a "catch all term" from many areas across organisations. "Language is sometimes used loosely, and some terms are used interchangeably"
- Examples and further clarity on the terms 'relevant and proportionate' – some respondents feel this is "open to considerable interpretation".
- The 'concept of reasonable adjustment' would also need to be established.
- The requirement to assess existing policies as well as new or revised policies could be clearer. For example, The Coalition for Racial Equality and Rights (CRER) suggest that compliance could potentially be strengthened by amending the SSD to "require publication of a schedule of equality impact assessments to be completed over each cycle, as required under the previous Race Equality Duty".

It is suggested that clearer definitions and improved guidance (alongside examples of best practice and case studies) would help ensure that decisions on whether or not to assess/review policies is less subjective and would encourage a "consistent quality standard" for EqIA.

Theme 4: Improved guidance and additional support

A common theme to emerge from the consultation responses is a request for clear, detailed, robust, and practical guidance to be provided by the Scottish Government to create a framework for applying EqIA in a meaningful and impactful way, and to help determine what to assess and the scope of the assessment.

"There should be a clearer indication of the expected scope within any guidance – this is an aspect where a more prescriptive approach might be helpful. To an extend the approach in the Fairer Scotland guidance may be helpful, but with additional detail".

Highland Council

"The guidance needs to be clearer and more practical in providing some criteria or examples of what may or may not need a detailed assessment. Without this, either everything will be assessed but in a light touch way or things will be missed".

<div align="right">Scottish Environmental Protection Agency</div>

"Funded training or access to support would assist organisations with limited resources".

<div align="right">Glasgow Kelvin College</div>

"The Scottish Human Rights Commission and the Equality and Human Rights Commission have provided useful guidance on developing a screening process which ensures decisions on whether to undertake an impact assessment are "rational and informed by appropriate evidence".

<div align="right">The Health and Social Care Alliance Scotland (the ALLIANCE)</div>

Theme 5: Accountability

Where mentioned by respondents, support is expressed that EqIA publication and accountability should be retained and monitored.

"If stronger messaging and accountability were to be enforced through the Scottish Government, there would be shift in attitudes towards protected characteristics.

<div align="right">Council of Ethnic Minority Voluntary Organisations (CEMVO) Scotland</div>

"Clear cycle for completion / publication and reporting back to Government".

<div align="right">The Scottish Children's Reporter Administration</div>

8 Proposal 5

A new equality outcome setting process

8.1 Context

The Scottish Government propose to take on board the suggestions for the Scottish Government to take on more of a leadership role in setting national equality outcomes, which listed authorities could then adopt to meet their own equality outcome setting duty. If a listed authority chose not to adopt the national equality outcomes, they would still be required to set their own equality outcomes. This would require the Scottish Government to:

- Set national equality outcomes, taking a collaborative approach to ensure that outcomes are pertinent to the ambitions of relevant listed authorities.
- Ensure the national equality outcomes are measurable and link to the National Performance Framework (NPF).
- Involve people with lived experience, and work with the organisations who represent them, when developing national equality outcomes, providing information on how they have taken account of that involvement in their development.

Listed authorities would retain scope to set their own equality outcomes, and in this event, they too would be obliged to involve people with lived experience, or the organisations who represent them, when developing their equality outcomes, and to provide information on how they have taken account of that involvement in their development. Listed authorities would also be required to ensure their outcomes link to the NPF. Whether listed authorities decide to use national equality outcomes, or set their own, as per the first proposal set out in the Consultation Paper, they would be required to set out how they plan to meet the equality outcomes, then to subsequently report on how they have progressed towards achieving them.

8.2 Question 5.1 – National Equality Outcomes

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

Almost all respondents answered **Question 5.1** (93%). While some respondents did express reservation about the proposal, they are generally supportive of the proposal in principle.

8.2.1 Respondents who support the proposal

The main themes to emerge in support of the proposal for the Scottish Government to set national equality outcomes, which listed authorities could adopt to meet their own equality outcome setting duty, are outlined below.

Theme 1: Flexibility is important

Many respondents (e.g. listed authorities, some equality advocacy groups) welcome the proposal that listed authorities are free to choose whether they adopt national equality outcomes or can set their own. These respondents note that a one-size-fits all approach would not be appropriate, given the diversity of listed authorities. These respondents highlight three broad concerns with a one-size-fits all approach:

- The public sector in Scotland has a wide array of functions and relevant equality outcomes for health organisations may differ drastically from, for example, transport organisations.
- Listed authorities differ greatly in size, and the proposal would need to be proportionate.
- Listed authorities may be better placed to set their own equality outcomes (e.g. knowledge and expertise in this area, strong understanding of the local context).

Theme 2: Comparability and benchmarking

A common theme to emerge from the consultation responses is that the setting of national equality outcomes for listed authorities could ensure a more consistent and aligned approach, as well as provide an opportunity to compare and benchmark data, including trend analysis.

Wider feedback from respondents is that the provision of an equality outcome framework would provide listed authorities with specific examples of equality outcomes – and that this may be particularly helpful and beneficial for smaller listed authorities that may lack the necessary expertise and/or resource to set their own equality outcomes.

Theme 3: Opportunity for partnership working

A few listed authorities and an equality advocacy group note that the development of national equality outcomes could provide opportunities for additional partnership working.

For example, they suggest that the process may encourage listed authorities who operate in similar geographies and/or who engage with similar client groups to undertake further collaboration and partnership working with others in the setting of equality outcomes.

8.2.2 Respondents who raise issues or concerns

Some respondents, generally those who support the proposal, caveat their response or raise some concerns. The main themes to emerge from these consultation responses are summarised below.

Theme 1: Monitoring and enforcement

The first concern, almost exclusively raised by a small number of equality advocacy groups, is that the setting of national equality outcomes would need to be accompanied by improved monitoring arrangements. Further, a question raised by these respondents relates to how compliance with the proposal would be enforced.

Theme 2: SMART outcomes

A few respondents, mainly listed authorities, express support for any national equality outcomes to be SMART (i.e. Specific, Measurable, Achievable, Realistic, and Timely). They note that this would help to monitor progress and drive change/improvement.

8.2.3 Respondents who do not support the proposal

A small number of larger listed authorities do not support the proposal, albeit they would welcome relevant guidance and good practice examples from the Scottish Government. These listed authorities express strong support for listed authorities to be able to set their own equality outcomes, rather than a top-down or centralised approach.

Other concerns noted by individual respondents include:

- Listed organisations should not be able to opt out of using national equality outcomes.
- The proposal may lead to increased bureaucracy.

9 Proposal 6

Improving duties relating to Scottish Ministers

9.1 Context

The Scottish Government proposes to simplify the regulation 6A process to require listed authorities to gather information on the relevant protected characteristics of members of a listed authority, as part of their own duties on data collection. Listed authorities would then be required to set out how they plan to use the information they have required as part of their overarching mainstreaming reporting obligation (see Proposal 1). Listed authorities would not be required to set out the breakdown of the board by protected characteristic, unless they could do this without individuals being identified based on their protected characteristics.

The Scottish Government intends to take more of a leadership role in relation to the equality outcome setting process. This would create a mechanism where the Scottish Government could direct listed authorities to consider what we see as significant inequalities. However, through this system, the Scottish Government proposes to retain key elements of the current regulations 11 and 12 to ensure we have scope to direct listed authorities to consider other matters, or to propose activity to enable better performance, so that we and listed authorities can respond to any arising issues that may not have been foreseen when, for example, setting national equality outcomes.

9.2 Question 6.1 – Simplify Regulation 6A Process

What are your views on the Scottish Government's proposal to simplify the regulation 6A process?

A majority of respondents answered **Question 6.1** (77%).

9.2.1 Respondents who support the proposal

The main themes to emerge from respondents who express support the proposal to simplify the regulation 6A process are summarised below.

Theme 1: Support for Government to have a greater leadership role

Most of the comments provided by respondents are broadly supportive of the proposal and welcome the Scottish Government taking a greater leadership role in ensuring that greater emphasis is placed by listed authorities on equalities considerations during board recruitment.

Theme 2: Data suppression

The only other theme which attracted a significant number of comments (e.g. mainly listed authorities) is that these respondents agree with the proposal to suppress data so that individuals cannot be identified based on their protected characteristics. Due to the small number of members usually on boards, these respondents agree that some form of data suppression would be necessary.

9.2.2 Respondents who do not support the proposal

Few respondents do not support the proposal to simplify the regulation 6A process, and no common themes are identified across these responses. The individual points noted include:

- There may be limited use in gathering such data if it cannot be published due to data protection issues.
- It may prevent a national overview of board membership if reporting is subsumed within the reporting of individual listed authorities.
- If leadership rests with the Scottish Government, this may not accurately reflect the local picture/context.

9.2.3 Further clarification on the proposal requested

There are a few requests from respondents for greater clarity from the Scottish Government on the proposal to simplify the regulation 6A process, including:

- Further clarification on what constitutes good or poor performance in terms of board membership.
- That clear guidance should be provided on how data should be gathered and on data protection requirements.

9.3 Question 6.2 – Regulations 11 and 12

What are your views on the proposal in relation to regulations 11 and 12?

A majority of respondents answered **Question 6.2** (72%).

9.3.1 Respondents who support the proposal

The main themes to emerge from respondents who support the proposal in relation to regulations 11 and 12 are summarised below.

Theme 1: Broad support with the proposal

Most respondents are broadly supportive of the proposal without providing any further detail or explanation. For example, common words or phrases used in consultation responses include: "we agree these should be retained", "we support the current regulations" or "correct for Scottish Government to have a leadership role".

Theme 2: Scottish Government leadership is necessary to drive improvement

A common theme, mainly from equality advocacy groups, but also from a small number of listed authorities, is that Scottish Government leadership, and the use of regulations 11 and 12 are necessary to drive improvement in equalities outcomes.

Some of these respondents' express concern that regulations 11 and 12 have been underused to date, and that the Scottish Government could be more robust in future by using these regulations to drive improvement among listed authorities.

"Close the Gap notes that regulations 11 and 12 have not been used to their fullest extent to date. These regulations have significant potential to address many of the problems identified with public bodies' performance of the duties. We support the retention of these duties for this purpose."

Close the Gap

9.3.2 Respondents who identify issues or concerns

Some respondents (mainly listed authorities and two equality advocacy groups) feel that the Scottish Government proposal relating to regulations 11 and 12 outlined in the Consultation Paper is "vague", and that more detail and clarification from the Scottish Government may be required before an informed view on the proposal can be provided.

9.3.3 Respondents who do not support the proposal

A few respondents call into question whether regulations 11 and 12 should be retained. These respondents note in their response that regulation 11 has never been used, and that when regulation 12 has been used there have been delays.

9.3.4 Further clarification on the proposal requested

Where further clarification is requested by respondents, this includes, for example:

- What constitutes 'other matters' in the context of regulation 11.
- In what circumstances would the Scottish Government use regulations 11 and 12.

9.4 Question 6.3 – Gender Policy Coherence

In 2019, the First Minister's National Advisory Council on Women and Girls recommended that Scottish Ministers deliver an Annual Statement, followed by a debate, on Gender Policy Coherence to the Scottish Parliament. In our response to this we said we would: "Consider the merits of aligning the delivery of a statement and debate with the existing legal duty on Scottish Ministers to publish a report on progress to better perform the PSED under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012". What are your views on this?

Almost three-quarters of respondents answered **Question 6.2** (73%).

9.4.1 Respondents who support the proposal

The main themes to emerge from respondents who support the proposal to align the delivery of an annual statement Gender Policy Coherence with the existing duty to publish a report of progress of the Public Sector Equality Duty (PSED) are considered below.

Theme 1: Broad support with the proposal

Most respondents express support for the proposal without necessarily providing further detail or explanation. Examples of responses include "we are very supportive", "agree they should be aligned" or "welcome this suggestion".

Theme 2: Awareness raising

A common theme among listed authorities and equality advocacy groups, is that the proposal could help raise awareness about diversity and inclusion issues, as well as demonstrate the progress that listed authorities are making through the PSED.

9.4.2 Respondents who identify issues or concerns

A small number of respondents, whilst not necessarily disagreeing with the proposal, identify some issues or points for further consideration.

Theme 1: The proposal should cover all protected characteristics

Some listed authorities feel that the annual statement should cover all protected characteristics rather than a sole focus on gender. A concern raised by these respondents is that a statement that solely focusses on one protected characteristic could create a "hierarchy". Support is expressed by these respondents for all protected characteristics to be treated equally.

Some respondents also note that a sole focus on gender fails to take an "intersectional mindset" – the point made is that individual protected characteristics cannot be considered in isolation when individuals can belong to several marginalised groups.

9.4.3 Respondents who do not support the proposal

Few respondents do not support the proposal, with the main theme outlined below.

Theme 1: The proposal should only cover gender

A few respondents, including some listed authorities and equality advocacy groups, feel that there is a risk that the inclusion of a statement on the PSED in the annual statement on gender could dilute the focus of the statement and debate away from gender. Some suggest that a better approach could be to facilitate separate debates for each equality group.

9.4.4 Further clarification on the proposal requested

Some respondents (mainly listed authorities) feel that the proposal outlined in the Consultation Paper is "vague", and that they would find it difficult to provide an informed view until further detail and clarification is provided by the Scottish Government.

10 Proposal 7

Procurement

10.1 Context

As per Proposal 1, the Scottish Government proposes to require listed authorities to set out how they plan to meet all of their duties, and then subsequently to report on how they have met and used all of their duties, as part of their overarching mainstreaming reporting obligation. This would include the duty on procurement, and therefore satisfy the suggestions put forward by stakeholders to strengthen the procurement duty by implementing a publication aspect.

The Scottish Government would welcome views on the call from stakeholders to require that award and tender specifications should stipulate that all outputs of any work must meet the requirements of the Public Sector Equality Duty (PSED) and specify examples.

10.2 Question 7.1 - Procurement

What are your views on our proposal and call for views in relation to procurement?

Most respondents answered **Question 7.1** (85%).

10.2.1 Respondents who support the proposal

Respondents are generally in favour of the Scottish Government proposal relating to procurement, and the main themes to emerge from respondents who respond in this way are outlined below.

Theme 1: Procurement is an important lever to influence equality

Many respondents note that procurement is an important lever to influence equality in the private sector, and that steps to further embed equality into procurement processes are considered sensible and appropriate.

Theme 2: Proportionality is welcomed

A common theme among listed authorities (and other organisations) is that they welcome the Scottish Government's recognition of the importance of proportionality with regards to increased procurement requirements.

These respondents feel that overly prescriptive procurement requirements could deter some service providers who lack the expertise to comply with any new requirements from submitting tenders. Many respondents refer to Small and Medium Enterprises (SMEs), including the third sector, and highlight concerns relating to the potential for the proposal to place an increased administrative burden on smaller businesses and organisations.

10.2.2 Respondents who identify issues or concerns

In the main listed authorities raise some issues or concerns regarding the Scottish Government proposal relating to procurement.

Theme 1: Equality is already embedded into procurement

Some listed authorities note in their consultation response that they are already required to give due regard to the PSED in their procurement duties, and that the proposal could result in duplication of effort.

Theme 2: Additional resources to support implementation

Some respondents, mainly listed authorities but also one equality advocacy group, note that additional resources may be required to help listed authorities and businesses comply with any new requirements. Suggestions included:

- Guidance and best practice examples.
- Training and financial resources for listed authorities.
- Training for SMEs.

10.2.3 Respondents who do not support the proposal

Few respondents do not support the Scottish Government proposal relating to procurement. The reasons provided by these respondents echo the themes described in **Section 10.2.2**.

Part 2: Exploring Further Areas

11 Intersectional and Disaggregated Data Analysis

11.1 Context

There are several actions within the first phase of the Equality Data Improvement Programme that aim to improve the collection, analysis and use of intersectional equality data, including:

- Producing a report to build knowledge of intersectionality among public sector analysts, covering what is meant by 'intersectionality', examples of how the concept of intersectionality has been used to identify and understand structural inequality, and statistical approaches to carrying out intersectional data analysis.
- Systematically examining key population survey and administrative datasets to identify where intersectional data breakdowns are already published and where intersectional breakdowns could be provided, noting the protected characteristic variables collected and available sample size.
- Producing a new equality dataset through the secure linkage of existing administrative and Census data, to support robust intersectional outcomes-based equality data analysis.
- Commissioning independent research with people with lived experience of different and intersecting protected characteristics to explore response issues, to investigate data fears and to understand what positive messaging would help to reduce fears and encourage participation in surveys. The research findings will be used to develop guidance for public sector data collectors.

The Scottish Government believes that the Equality Data Improvement Programme can be a key driver in improving the collection and use of intersectional and disaggregated equality data across the public sector in Scotland.

11.2 Question 8.1a – Intersectional Data

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". What are your views on this?

Most respondents answered **Question 8.1a** (90%).

11.2.1 Respondents who support the proposal

Most respondents support the proposal, however, there is significant minority who do not. The main themes to emerge from those who express support for the proposal relating to intersectional data is outlined below

Theme 1: Necessity of intersectional data

Equality advocacy groups consider the proposal important to help develop a better understanding of the multi-dimensional issues faced by individuals with more than one protected characteristic. There is, however, recognition among these respondents that there may be some resistance among listed authorities to this proposal due to the potential increased administrative burden.

Theme 2: Supporting implementation

Equality advocacy groups also consider it important that steps are taken by the Scottish Government to ensure listed authorities can comply with this proposal. Suggestions include:

- Promotion of the benefits and value of gathering this data to listed authorities.
- Encouraging staff and service users to disclose personal information.
- Providing increased resources to listed authorities to support implementation.
- Providing updated and improved guidance and support to listed authorities.

11.2.2 Respondents who identify issues or concerns

Whilst most respondents are supportive of the proposal, some do raise concerns with regards to its implementation.

Theme 1: Data protection issues

Some listed authorities and other organisations are concerned that the gathering of intersectional data may be challenging due to data protection issues. These respondents feel that the absolute numbers may be small and that there may be a risk of identifying individuals. This is a particular concern among smaller listed authorities.

Theme 2: Wider challenges in data gathering and reporting

A small number of respondents identify specific challenges in data gathering that may make presenting intersectional data difficult, including:

- Some listed organisations are concerned that staff and service users may not feel comfortable sharing information relating to protected characteristics, and the implications this then has for service improvement.
- Wider challenges raised include that information on services users in some cases is captured in a more narrative/qualitative format, that information is captured from various agencies in a non-standardised format, or challenges in gathering data from service users more generally.

11.2.3 Respondents who do not support the proposal

As noted above, a significant minority of respondents do not support the Scottish Government proposal relating to intersectional data.

Theme 1: Disproportionate administrative burden

A common response, primarily among listed authorities, but also among other organisations, is that the proposal could cause a disproportionate administrative burden on listed authorities. There is concern (mostly among listed authorities) that their organisation lacks the necessary capacity and resource to meet this requirement, and to gather, analyse and use intersectional data in any meaningful way.

Similarly, a few listed authorities feel that the proposal may also have a negative impact on third sector organisations who deliver services on their behalf. For example, smaller third sector organisations may also face resource and capacity constraints. It is suggested that these organisations may be disproportionally affected by the proposal, and that it could act as a barrier for them in tendering for the delivery of listed authority services.

11.3 Question 8.1b – Support Requirements

How could listed authorities be supported to meet this requirement?

Over three-quarters of respondents answered this question (79%), and two themes emerged regarding how listed authorities could be supported to gather and use intersectional data, and meet this requirement.

Theme 1: Guidance

A prevalent view among all respondents is that there needs to be clear and comprehensive guidance provided by the Scottish Government for listed authorities on how intersectional data should be collected, analysed, and used. This could help ensure a consistent approach to meeting the requirement. It is suggested that guidance documents would also need to cover issues including data protection and GDPR legislation.

Theme 2: Additional resource and support

Many respondents suggest that additional resources may be required to enable listed authorities to meet this new requirement. Financial resources, training/upskilling staff, and upgrading of IT equipment and processes are commonly mentioned in the consultation responses.

11.4 Question 8.2a – Confidence

If there was a requirement for your organisation to "gather and use intersectional data, including employment and service-user data, to advance equality between protected groups, including men and women", would you be confident your organisation could comply with it?

Question 8.2a was directed specifically to listed authorities. Over three-quarters of listed authorities reported that they are not confident that their organisation would be able to comply with the proposal relating to intersectional data.

Table 11.1: Confident that organisation could meet the requirement

	Number	Percentage
Yes	16	22.9%
No	54	77.1%

N=70. Excludes blank, not answered responses, and any responses not from a listed authority.

11.5 Question 8.2b – Yes, confident

The main reason provided by those listed authorities who report that they are confident their organisation would be able to comply with the proposal relating to intersectional data is that they already have a system and process in place or that it would be relatively easy to make modifications to it.

11.6 Question 8.2c – No, not confident

Listed authorities who report that they are not confident their organisation would be able to comply with the proposal relating to intersectional data, were asked what support they would need to ensure they could comply by 2025.

Theme 1: Similar response to Question 8.1b

The feedback from these listed authorities echoes points raised at **Question 8.1b** namely:

- Financial support.
- Training/upskilling staff.
- Investment for IT equipment/updating processes.
- Updated and improved guidance from the Scottish Government.

12 Intersectional Gender Budget Analysis

12.1 Context

The Consultation Paper notes that the Scottish Government has committed to take steps to further embed equality and human rights in all stages of the Budget process in the Scottish Government's Programme for Government 2021/22, and in the Scottish Government and Scottish Green Party Shared Policy Programme. Interest in understanding budgets from various perspectives has grown in recent years, and a number of recommendations and proposals relating to budget analysis have been made to the Scottish Government, covering interests from equality, to human rights and children's rights.

Amongst these proposals, the First Minister's National Advisory Council on Women and Girls has recommended that the Scottish Government "integrate intersectional Gender Budget Analysis into the Scottish Budget process, and to give this a statutory footing". An intersectional gender budgeting approach would involve analysing budgets by more than one category, for example, examining not only how a spending proposal might impact women and girls compared to men and boys, but additionally, how that proposal might impact disabled women compared to non-disabled women. The relevant intersectional breakdowns of groups would depend on the budget decision under consideration. Also, for the purposes of the Scottish Specific Duties (SSDs) any reference to the intersectional disaggregation of data would only be on the basis of the relevant protected characteristics, and would not likely be able to encompass other factors such as socio-economic disadvantage, which is addressed through the Fairer Scotland Duty.

12.2 Question 9.1 – Intersectional Gender Budget

The First Minister's National Advisory Council on Women and Girls' called for the Scottish Government to integrate intersectional gender budget analysis into the Scottish Budget process, and to place this on a statutory footing. What are your views on this?

Most respondents answered **Question 9.1** (80%).

Note: there may have been some potential misunderstanding of the question among respondents. Some respondents refer to the capacity of listed authorities and/or their own organisation to integrate intersectional gender budget analysis into budget setting procedures rather than the Scottish Budget process.

12.2.1 Respondents who support the proposal

Most respondents agree in principle with an intersectional approach to gender budget analysis. The main themes to emerge from respondents who express support for the proposal to integrate intersectional gender budget analysis into the Scottish Budget process are summarised below.

Theme 1: Advance equality and human rights

A key theme from the consultation responses, particularly among equality advocacy groups, is that gender budget analysis has helped advance equality and increase understanding of the potential impact of spending proposals/budgets on women and girls. Integrating other protected characteristics into an intersectional approach is viewed by these respondents as a 'logical' extension to current duties and could help advance equality and human rights. There is reference across consultation responses to the protected characteristic of disability and the potential of the proposal to aid an increased understanding of the impact of spending proposals/budgets on people with multiple protected characteristics.

Some equality advocacy groups, such as Close the Gap, identify international examples of successful intersectional gender budget analysis and highlight the potential for Scotland to build on approaches happening elsewhere.

Theme 2: Strengthening leadership role

Some listed authorities note in their submissions that the proposal to integrate intersectional gender budget analysis into the Scottish Budget process would allow the Scottish Government to show effective leadership in advancing equalities.

The same respondents further note that stronger leadership would be welcomed in "modelling good practice and demonstrating the practical value of methods including intersectional gender budget analysis", particularly if an additional duty is placed on listed authorities to integrate intersectional gender budget analysis into their budget setting procedures.

12.2.2 Respondents who raise issues or concerns

Many respondents, including but not limited to those who support the proposal, caveat their response or raise points of concerns regarding the proposal. The points raised are similar to the response to **Section 11** (**Question 8**):

- A common concern (mostly among listed authorities) is that the Scottish Government and their own organisations may lack the necessary capacity and resource to gather, analyse and use intersectional data in a meaningful way. Allied to this, a couple of respondents note that the "cost [of the Scottish Budget process] would increase" if integrating intersectional gender budget analysis into the process.

- Respondents consider that there are likely to be challenges in data gathering and reporting as "intersectional analysis may not lead to statistically relevant data".

- Respondents call for further information and guidance on what this proposal means in practice and implications for Scottish Government and listed authorities. A couple of respondents feel that there is a "lack of a strong evidence base for this proposal."

- Some respondents note that the proposal risks creating a hierarchy of protected characteristics. The point made is that legislating for one or some specific characteristics over others "may promote the impression that one type of equality is more important than another". Dumfries and Galloway College state that "not all issues relate directly to gender, so even badging this as intersectional under a gender umbrella is inappropriate".

12.2.3 Respondents who do not support the proposal

A few respondents (e.g. listed authorities) do not support the proposal. Their view is that it may be unnecessary to place this additional duty on a statutory footing. These respondents note that information on intersectionality is already captured or could be gathered through existing methods, such as Equality Impact Assessments (EqIA). For these respondents, the additional statutory duty in addition to these existing methods may increase the administrative burden by "[complicating] financial reporting and monitoring."

12.3 Question 9.2a – Integrating Intersectional Budget Analysis

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 integrate intersectional gender budget analysis into their budget setting procedures. What are your views on this?

Most respondents answered this question (80%) with feedback similar to responses described at **Section 11 (Question 8)** and **Section 12.2 (Question 9.1)**.

12.3.1 Respondents who support the proposal

Most respondents agree in principle with the proposal to place an additional duty on listed authorities to integrate intersectional gender budget analysis into their budget setting procedures. This is reflected in feedback that highlights the importance and value of intersectional data in helping to understand issues faced by individuals with more than one protected characteristic. These respondents note that the proposal is "reasonable", "welcomed", and reflective of "the fact that we do not have one protected characteristic but many".

Theme 1: Potential benefits of the proposal

In addition to the points raised in **Section 11 (Question 8)**, the potential benefits of the proposal are highlighted, mostly by equality advocacy groups. These are commonly framed as follows:

- The proposal would help to understand issues faced by individuals with more than one protected characteristic.
- The proposal would provide meaningful data for listed authorities and help them to target their resources more effectively.
- It would lead to greater accountability of budget setting processes within listed authorities.

"[The proposal] has the potential to create economic transformation, could help to mitigate many of the ongoing recruitment and retention issues that are present in the social care sector, and would strengthen accountability."

The Health and Social Care Alliance Scotland (The ALLIANCE)

"[Intersectional gender budgeting] will help to examine how a budget proposal may affect men differently than women and result in a restructure of revenue and spending decisions in other to promote equal outcomes. For example, how a budget proposal might affect women and girls as compared to men and boys and additionally compare the impacts on disabled women as compared to non-disabled women. This will enable listed authorities identify and target their resources to where they are needed the most and maximise efficiency."

Registers of Scotland

12.3.2 Respondents who raise issues or concerns

Around half of respondents (e.g. mainly listed authorities) who are supportive of the proposal caveat their response in some way and raise concerns about their organisation's ability to meet the requirement. The main points raised by these respondents centre on:

- A need for additional support from the Scottish Government to help listed authorities meet the requirement (e.g. guidance, financial resources, etc).
- A call for a proportionate approach to implementation of the proposal.

12.3.3 Respondents who do not support the proposal

Around one-quarter of respondents, mostly listed authorities, explicitly state that they do not support the proposal to place an additional duty on listed authorities to integrate intersectional gender budget analysis into their budget setting procedures. Similar points are made to those described in **Section 11 (Question 8)** and **Section 12.2 (Question 9.1)**.

Some of these respondents describe the proposal as "unrealistic" or "unachievable". Much of the feedback reiterates difficulties in data collection, increased administrative burden, and the significant level of support that would be required to help listed authorities meet the requirement.

Another view held by a couple of listed authorities is that they agree in principle with the proposal and think it is a "positive step" but feel placing it on a statutory footing is not the best approach. The point made by these respondents is that existing budget analysis undertaken by their organisations from an equalities perspective is considered extensive.

12.4 Question 9.2b – Support Requirements

How could listed authorities be supported to meet this requirement?

Over two-thirds of respondents answered this question (69%), and the main points chime with responses to previous questions, namely:

- Updated and improved guidance from the Scottish Government.
- Financial support.
- Training/upskilling staff.
- Investment for IT equipment/updating processes.

12.5 Question 9.3a - Confidence

If an additional duty was placed on your organisation to integrate intersectional gender budget analysis into its budget setting procedures, would you be confident your organisation could comply with it?

This question was directed to listed authorities. More than three-quarters of listed authorities report that they are not confident that their organisation could comply with an additional duty to integrate intersectional gender budget analysis into its budget setting procedures (79.4%), **Table 12.1**.

Table 12.1: Confident that organisation could meet the requirement

	Number	Percentage
Yes	13	20.6%
No	50	79.4%

N=63. Excludes blank, not answered responses, and any responses not from a listed authority.

12.6 Question 9.3b – If Yes, Why

All listed authorities who are confident that their organisation could comply with the proposed additional duty provided a response.

Theme 1: Existing procedures can be easily amended

Listed authority confidence to meet the requirement mainly stems from their organisational ability to amend or modify existing processes and procedures, such as impact assessments.

For example, there is reference in consultation responses to "sophisticated" and well-established procedures relating to equality impact, "staff dedicated to equality, diversity and inclusion…as well as access to a range of protected characteristic data". These listed authorities feel that they would be well-placed to comply with the proposed additional duty.

Theme 2: Positive response is caveated in some way

Around half of listed authorities who have confidence in the ability of their organisation to comply with the requirement caveat their response or have some concerns in implementing the proposal:

- There is a request for clear guidance, training, and support.
- The ability of their organisation to meet the requirement may depend on the required level of detail.

12.7 Question 9.3c – If No, Support Needed

If no, what would you need to ensure you could comply by 2025?

As outlined above, most listed authorities are not confident in their organisation's ability to meet this requirement. As outlined elsewhere, the main feedback points to the need for comprehensive guidance, financial resources, and training for listed authorities.

"Not at this stage. To be able to comply by 2025, we would need to ensure the quality of training and human rights and equality analysis, as well as further changes to analytical tools in the budget process in order to fully realise the budget as a key mechanism for advancing equality and securing human rights. These improvements to process and capacity would be critical to ensure that gender budgeting approaches are well integrated."

West Lothian Council

13 Coverage

13.1 Context

This section relates to which public bodies are covered by the Public Sector Equality Duty (PSED) and the Scottish Specific Duties (SSDs). Scottish Ministers have competence to add relevant Scottish public authorities to the SSDs who are already subject to the PSED. Further, Scottish Ministers could also add relevant Scottish public authorities to Part 3 of schedule 19 of the 2010 Act (so that they become subject to the general PSED) and could consequently make them subject to the SSDs.

Equality and Human Rights Commission (EHRC) has also expressed the view that regulatory bodies, as part of their own compliance with the SSDs, should be encouraged to do more to improve PSED performance in their sector. However, this would not mean conferring any of EHRC's enforcement powers on these bodies.

Following calls from the First Minister's National Advisory Council on Women and Girls and EHRC to mandate all Scottish regulators, ombudspersons and oversight bodies to advance equality and rights, the Scottish Government is seeking further views on which bodies should be covered by the PSED and SSDs and on the issues raised by the National Advisory Council on Women and Girls and the EHRC.

13.2 Question 10.1a – Which Bodies should be covered by the PSED and SSDs

In your view, are there any Scottish public authorities who are not subject to the PSED or the SSDs that you think should be?

Around half of respondents answered this question.

Almost-one third of these respondents consider that there are Scottish public authorities who are not subject to the PSED or the SSDs that should be, **Table 13.1**. Equality advocacy groups are more likely to report that there are some other Scottish public authorities who should be subject to the PSED or the SSDs.

Table 13.1: Are there any Scottish public authorities who are not subject to the PSED or the SSDs that you think should be?

Respondents	Yes	No
Individual	33.3%	66.7%
Organisation	29.0%	71.0%
Total	**29.2%**	**70.8%**
Organisation Breakdown		
Listed Authority	19.6%	80.4%
Equalities Advocacy Groups	71.4%	28.6%
Other Public Bodies	25.0%	75.0%
Other	60.0%	40.0%

N=65 (3 individuals and 62 organisations). Excludes blank and not answered responses.

13.3 Question 10.1b – If Yes, Provide Details

If yes, please give detail on which Scottish public authorities you think should be subject to the PSED or SSDs.

The Scottish public authorities most commonly identified by these respondents are listed below:

- Scottish Social Services Council (SSSC).
- The General Teaching Council for Scotland (GTCS).
- The Scottish Parliament.
- The Care Inspectorate.
- HM Inspectorate of Education (HMIE).
- Registered Social Landlords (RSLs).
- Education authorities (e.g. Education Scotland).
- Other regulatory bodies, ombudsmen, and inspectorates.
- Other health organisations, GPs, dentists, etc.

The following public authorities are specified by a single respondent in each case (i.e. absolute numbers are small):

- Association of Directors of Education in Scotland (ADES).
- Caledonian MacBrayne (CalMac).
- Convention of Scottish Local Authorities (COSLA).
- NHS Education for Scotland (NES).
- ScotRail.
- Scottish Canals.

- Scottish Housing Regulator.

- Scottish Human Rights Commission.

- Scottish Water.

- Scottish Environment Protection Agency (SEPA).

- Scottish Qualifications Authority (SQA).

- The Commission for Ethical Standards in Public Life in Scotland (CESPLS).

13.4 Question 10.2 – Improving PSED Performance

EHRC has expressed the view that regulatory bodies, as part of their own compliance with the SSDs, should be encouraged to do more to improve PSED performance within their sector. What are your views on this?

Around three-quarters of respondents provided a response to **Question 10.2** (74%).

13.4.1 Respondents who support the proposal

Most respondents support the view expressed by EHRC that regulatory bodies, as part of their own compliance with the SSDs, should be encouraged to do more to improve PSED performance within their sector. Respondent feedback can be grouped into the following themes.

Some respondents simply express support for the proposal. Common words or phrases used in consultation responses include: "we agree that regulatory bodies should be doing more", "we are supportive of this approach", or "we would welcome regulatory bodies in advancing equality and rights."

Theme 1: Regulatory bodies are well-placed to improve PSED performance within their sector

Some respondents (e.g. all organisation sub-categories) support the EHRC view as they consider regulatory bodies to be well-placed to help improve PSED performance within their sector. Regulatory bodies are said to have the necessary knowledge and expertise of PSED compliance within their sector and could play a stronger leadership role to encourage improved PSED performance within their sector (i.e. given their influence and reach). Further, these respondents suggest that regulatory bodies could do more in terms of sharing best practice, signposting, training, and providing guidance.

"This would be a valuable step, with regulatory bodies well placed to act as a key contact point, and share sector-specific information and best practice that will be of relevance to listed authorities."

<div align="right">Age Scotland</div>

Theme 2: Collaborative approach

A prevalent view among listed authorities is that any proposal to encourage a joint or collaborative approach to help improve PSED performance within different sectors are to be welcomed. These respondents feel that regulatory bodies can play an important role in encouraging this to happen within their sector.

13.4.2 Respondents who have issues or concerns

Theme 1: Capacity building and guidance

Some listed authorities, while generally supportive of the proposal, do raise issues or concerns:

- The proposal places an additional expectation on regulatory bodies to encourage improved PSED performance within their sector, and this would require additional resources/support for effective implementation (e.g. capacity building, guidance, and additional resources).
- As EHRC has an existing regulatory system in place, these respondents consider it important that the Scottish Government clearly defines and communicates the roles and responsibilities of EHRC and regulatory bodies in relation to this proposal to avoid any duplication of effort or confusion.

"If regulatory bodies adopted a supportive approach to help guide and assist authorities to understand and meet the duties where relevant to their own area of regulation this would be welcomed. It is good that Audit Scotland include best value audits on how well local authorities perform in equality and rights. However, the EHRC is the regulatory body for the PSED and the Scottish Government is the regulatory body for the SSDs and these two organisations should remain the regulatory bodies. There is a danger of conflicting understanding or instruction from different agencies. There is also a danger that the EHRC loses its credibility as the regulatory body. If regulatory bodies, as part of their own compliance with the SSDs do more to improve PSED performance within their sector, this should be in strong collaboration with the EHRC and Scottish Government and resource may need to be considered in order to do this well."

<div align="right">City of Edinburgh Council</div>

Theme 2: Terminology used

There are mixed views among respondents on the use of the word 'encouraged' in the proposal specified at **Question 10.2**. On the one hand, a few respondents note in their submission that the proposal could be framed as "advice" to regulatory bodies. On the other hand, a minority view is that "encouraged" is too weak and may result in some regulatory bodies not taking action to encourage the sector to improve PSED performance. A related point is a request from respondents for further guidance, advice, and information from the Scottish Government/EHRC to understand what 'encouraged' means in the context of the proposal.

13.4.3 Respondents who do not support the proposal

A few respondents (e.g. some listed authority and equality advocacy groups) state that they disagree with the proposal that regulatory bodies, as part of their own compliance with the SSDs, should be encouraged to do more to improve PSED performance within their sector. The points raised by respondents who hold this view include:

- Significant capacity building support would be required within regulatory bodies given constrained public sector finance and resources.
- The proposal may lead to added bureaucracy and complexity for regulatory bodies, and a sense that it may risk confusion (i.e. with the existing EHRC regulatory system).

"Whilst we think there should perhaps be a greater emphasis on assessing / evaluating outcome in relations to PSED performance we are not clear that this approach is the one we should take. There is a clear regulatory system in relation to PSED and we have some concern that this would be diluted if regulatory bodies also took on some enhancement / enforcement responsibility. In addition, the public sector is regulated in different ways – and the impact of a different approaches through the regulatory bodies could be felt in different ways in different sectors and we think this could be contrary to the intention of the proposal."

The Scottish Children's Reporter Administration

13.4.4 Further clarification on the proposal requested

As noted above, there is a request from some respondents for further detail on this proposal. This includes those who suggest that further information/detail would be necessary for their organisation to provide an informed view on the proposal.

14 Strengthening Leadership and Accountability and Enhancing Capability, Capacity and Culture

14.1 Context

The Scottish Government views the Public Sector Equality Duty (PSED) regime as an important lever to drive change and sits as part of our wider agenda to mainstream equality and human rights. Strengthening leadership and accountability, and enhancing capability, capacity and culture will form part of the equality and human rights mainstreaming strategy currently being developed. Throughout the proposals in this Consultation Paper, we believe we have put forward proposals to ensure the Scottish Government and Scottish Ministers are playing an effective leadership role.

Throughout our engagement to date, stakeholders have put forward the following suggestions which are relevant to this area:

- **Funding**: Ensuring there is long-term and protected funding for the public and third sectors for equality and human rights.
- **Protected budgeting**: Requiring the public sector to spend a certain percentage of its budget to advance equality and human rights.
- **Training**: Ensuring that there is effective and mandatory equality training, particularly for senior leaders and public appointments.
- **Equality accountable officers**: Requiring public bodies to appoint an accountable officer, who would provide internal advice, guidance, and competence building.
- **Improved forums or portals to share best practice**: Improving existing forums to share best practice across the public sector or establishing a new online portal to share consolidated guidance, best practice and publications.

The Scottish Government believes that these issues and suggestions need to be explored further, and do not think a statutory footing is the best approach at this stage or whether the Scottish Specific Duties (SSDs) would be the appropriate vehicle to take them forward. These matters will be subject to further consultation as part of the mainstreaming strategy consultation.

14.2 Question 11.1 – Mainstreaming Strategy

The Scottish Government will consult on the issues in this section further through the mainstreaming strategy. However, if you think any of these matters could be addressed through the PSED review, please give details here.

Almost two-thirds of respondents provided a response **Question 11.1** (64%).

Theme 1: More appropriate to consult through the mainstreaming strategy

Many respondents, particularly listed authorities, agree with the Scottish Government proposal that it would be more appropriate to consider the issues outlined above and outlined in the Consultation Paper as part of the consultation process for the mainstreaming strategy.

Some respondents agree with the Scottish Government's view that the proposed actions to strengthen leadership and accountability and enhance capability, capacity and culture should not be considered as part of the PSED review and do not require a statutory footing. Although it should be noted that a few respondents explicitly state that certain issues, mainly training and improved forums, could be addressed through the PSED review.

Theme 2: Broad agreement with proposed actions

Most respondents agree with the proposed actions and mechanisms outlined in the Consultation Paper around funding, protected budgeting, training, equality accountable officers, and improved forums or portals to share best practice. Further, these respondents recognise that listed authorities would require capacity building support, and additional resources, staffing and funding for effective implementation. These respondents consider each element "critical if the ambitions of the PSED are to be met", and to some listed authority respondents are "long overdue."

Further, Equality and Human Rights Commission (EHRC) welcome the "recognition that regulatory change is one part of a wider cultural shift which includes strengthening leadership and accountability and enhancing capability and capacity."

Theme 3: Additional funding

Many listed authority and equality advocacy group respondents consider that long-term funding would be essential to help improve leadership and accountability and enhance capability, capacity and culture, and to drive change.

"There needs to be a sustainable funding commitment to support this work at local level, accompanied by standard training and development made mandatory within listed public bodies to secure improved practice and achieve improved outcomes for individuals and communities."

Stirling Council

Theme 4: Protected budgeting

There are mixed views among respondents regarding the proposal on protected budgeting.

Most respondents support the proposal and consider that the proposed requirement of the public sector to spend a certain percentage of its budget to advance equality and human rights is a positive step, and an important lever to drive change.

Whilst supportive in principle, some listed authority respondents highlight constrained public sector finances and reduced public sector budgets as an issue. For example, it is noted that a reduction in the overall budget to the public sector would reduce the ring-fenced allocation and may limit impact/change.

Raised to a lesser extent, some listed authorities feel that further consultation and discussion may be required about projected budgeting, with some holding the view that the Scottish Government could have greater trust in listed authorities to set their own budgets to advance equality and human rights and express a preference for greater autonomy in this area.

"If the assumption is that this will come from existing, stretched budgets, this is likely to dilute the equality impacts due to lack of funding and as such resources to dedicate to this key area of work."

Mobility and Access Committee for Scotland (MACS)

Theme 5: Training

Many respondents, especially listed authorities, agree that there is a need for effective and mandatory equality training, particularly for senior leaders and public appointments. The focus on leadership training is therefore welcomed as a catalyst to effect change. Some equality advocacy group respondents note that the Scottish Government has an important leadership role to play in this regard.

Support with training and for equality accountable officers are viewed by these respondents as a good opportunity to involve people with lived experience in the process (e.g. to shape decision-making, to share knowledge and expertise).

A few respondents note that training could be considered as part of PSED review.

"Whilst training and awareness raising are already part of some but not all listed authorities activities, it has to be the right training. This should mean involving those with lived experience and their own organisations, not those run by people who do not share that protected characteristic. There is potentially a leadership role for Scottish Government to play here in promoting this and providing for the necessary regulation of quality standards and professionalisation for training."

Inclusion Scotland

Theme 6: Equality accountable officers

There is consensus among respondents to the consultation that dedicated equality accountable officers would be critical in helping the public sector to advance equality and human rights. Some respondents further note in their response that the public sector has used dedicated staff resources in other cross-cutting areas to good effect (e.g. legal compliance officers are mentioned).

A point raised by a couple of respondents is that there would need to be sufficient resource which is proportionate to the size and scale of the organisation. For example, these respondents feel that this would help to avoid the case where a sole individual within a large organisation is given full responsibility for equality accountability – it is noted that this may be unmanageable and limit the impact of the proposal.

Theme 7: Improved forums or portals to share best practice

Respondent feedback is much more limited on the Scottish Government proposal relating to improved forums or portals to share best practice.

For example, some listed authority respondents simply state their agreement that this is an area which requires greater focus or that the proposal is viewed positively.

Additional points raised by respondents on improved forums or portals to share best practice are that this would require to be adequately resourced to achieve maximum impact, and that any portals would need to be easy to use/navigate, accessible, and routinely updated. A few respondents point to hubs such as the Improvement Service and Fairer Scotland Duty's Knowledge Hub as examples that the Scottish Government could learn lessons from.

"Improved forums and portals to share best practice and guidance would be welcome but would rely on appropriate resource to ensure they were effective, up-to-date and promote cross sector partnership working opportunities. Often organisations are busy and resources are low so any wider forums require to add value with minimal abstraction."

<div align="right">Scottish Police Authority/Police Scotland</div>

14.2.1 Further clarification on the proposal requested

Some respondents (e.g. some listed authorities and equality advocacy groups) call for further detail and clarity from the Scottish Government on the proposals to strengthen leadership and accountability and enhancing capability, capacity, and culture, including:

- How the proposals would be resourced.
- Whether a proportionate approach would be adopted by the Scottish Government to reflect the differences between organisations (i.e. size, scope, nature of activity).

"Experience to date suggests that without strong legislation, accountability and enforcement, many bodies will not effectively meet their legal obligations. The critical issues of adequate resourcing of equalities work and improved organisational / staff capacity to implement this also tie into leadership and accountability."

<div align="right">Joint Submission from Equality Stakeholders</div>

15 Guidance

15.1 Context

As the relevant enforcement body, Equality and Human Rights Commission (EHRC) provides guidance to assist listed authorities in complying with the Scottish Specific Duties (SSDs). With revised duties, there will be a requirement for refreshed guidance which EHRC will produce. Through engagement to date, there have been calls for updated and improved guidance. These calls included:

- More prescriptive step-by-step technical guidance.
- Consolidating guidance and increased use of clearer language throughout all supporting documents.
- Strategic guidance which reaffirms how compliance with the duties relates to the general PSED.

Throughout the Consultation Paper, the Scottish Government consider that they have put forward proposals for more prescriptive regulations and a more cohesive regime; they hope that this, in turn, will make it easier for improved guidance to be created.

Furthermore, some listed authorities have also highlighted that they would find it useful to receive feedback on the mainstreaming reports and equality outcomes that listed authorities produce to strengthen their understanding.

However, the Scottish Government are aware that more than revised guidance will be required to enable an improved PSED regime, and therefore the coverage section should be read along with the strengthening leadership and accountability, and enhancing capability, capacity, and culture section above. The Scottish Government are also considering how toolkits, case-studies and other resources can be developed and used alongside the formal guidance produced by the EHRC.

15.2 Question 12 – Improved Guidance

What would you like to see in improved revised guidance for the SSDs?

Four in five respondents provided a response to **Question 12** (80%).

15.2.1 Respondents who support the proposal

A vast majority of respondents support the Scottish Government proposal for improved revised guidance for the SSDs.

Theme 1: Limitations of current guidance

Many respondents acknowledge the limitations of current guidance and support proposals to produce updated and improved guidance, and to establish a more cohesive regime.

Some of these respondents go on to highlight the potential benefits associated with updated and improved revised guidance for the SSDs. These are commonly framed as: strengthening leadership, accountability, and transparency; increasing confidence to be able to comply with requirements; and greater consistency in reporting across listed authorities.

Theme 2: Guidance

Some respondents provide comment on the proposals or provide additional suggestions that the Scottish Government could consider to ensure revised/updated guidance is helpful and east to understand.

The points raised by these respondents have been summarised below:

- Clear, concise, consolidated, and consistent guidance which uses accessible and plain English language is considered essential.
- That guidance is informed and shaped by people with lived experience through a collaborative approach - more guidance may also be required on how to include people with lived experience in decision-making processes.
- Some listed authorities ask whether they could be involved in the development process for the guidance (e.g. through a working group or by providing feedback).
- Some equality advocacy groups, such as Fair Play for Women, suggest that the guidance should be aligned to the Equality Act 2010 (e.g. Fair Play for Women suggest aligning to definition of sex as in the Equality Act 2010).

"Incorporating a feedback mechanism would also be vital for authorities to feel valued and part of the guidance process. This would allow for shared experiences, empowerment and a sense of contribution that will encourage authorities to engage with PSED activities through a holistic approach."

Council of Ethnic Minority Voluntary Organisations (CEMVO) Scotland

A few respondents identify specific aspects which they feel could be considered by the Scottish Government as the updated guidance is designed:

- Equality advocacy groups would welcome improved guidance on embedding inclusive communication.
- Listed authorities call for improved guidance across all of the protected characteristics so that their organisations can meet and report on their duties more effectively.
- Listed authorities call for improved guidance on mainstreaming equality, diversity, and inclusion into organisations.

Theme 3: Resources and support

Many respondents, particularly listed authorities, note the need for resources and support in order to help their organisations meet the proposed requirements:

- Access to and sharing of case studies, toolkits, and best practice (e.g. scoring matrix) would be valuable to listed authorities – it is suggested that this could be made available through a central resource hub.
- Many listed authorities suggest that step-by-step technical guidance could be supported through the delivery of workshops and training and/or through a lead contact to ensure that guidance is fully understood. A lead contact is considered valuable by these respondents as a mechanism to help mainstream equality, diversity, and inclusion throughout their organisations.

"Specifically, we would welcome the EHRC taking on greater leadership to help unearth and understand the issues, challenges and barriers which prevent public bodies from exercising their duties effectively and the subsequent development of EHRC led strategies, resources, and tools to alleviate these such as training, facilitated events, networking opportunities, improved guidance etc. This could include influencing and upskilling public authority leaders at Board, executive and senior management level, reviewing the benefits of having accountable equality officers and promoting a move to co-production/co-design approaches which would provide people with lived experience real opportunities to inform decision making."

Sportscotland

15.2.2 Respondents who do not support the proposal

A handful of respondents, mostly equality advocacy groups, do not support the Scottish Government's proposed approach to improve revised guidance for the SSDs.

These respondents feel that there is currently a lack of compliance among listed authorities with the existing guidance, and therefore question whether the solution rests with improved guidance. Current guidance is considered sufficient, and these respondents suggest that a better approach may be for the Scottish Government to place greater focus and effort on increasing compliance by listed authorities.

The EHRC also note in their response that "guidance which involves toolkits and templates should be avoided, as this may make the duties even more process driven than at present."

16 Positive Action

16.1 Context

Section 158 of the Equality Act 2010 provides general provisions on positive action. This section applies "if a person reasonably thinks that:

- Persons who share a protected characteristic suffer a disadvantage connected to the characteristic.
- Persons who share a protected characteristic have needs that are different from the needs of persons who do not share it.
- Participation in an activity by persons who share a protected characteristic is disproportionately low."

Section 158 goes on to state that the Equality Act 2010 does not prohibit that person "from taking any action which is a proportionate means of achieving the aim of:

- Enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage.
- Meeting those needs.
- Enabling or encouraging persons who share the protected characteristic to participate in that activity."

This section applies to all fields within the Act, including education, the provision of services, and some aspects of employment. However, it does not apply where section 104 (selection of political candidates) or section 159 (positive action: recruitment and promotion) apply.

The Equality and Human Rights Commission (EHRC) has said that it is not clear the extent to which listed authorities use the positive action provisions in the Equality Act 2010. They advise that they would expect to see this in existing mainstreaming reports or progress reports on outcomes (with the exception of the tie-break provision under section 159, which may risk identification of relevant people) but this is rarely the case. They believe there is a need both to encourage better use of positive action by listed authorities and subsequent reporting.

16.2 Question 13 - Reporting on Positive Action

EHRC has expressed the view that listed authorities should report on how they have used positive action under section 158 of the Equality Act 2010, as part of their reporting obligations. What are your views on this?

Around 85% of respondents answered **Question 13**.

16.2.1 Respondents who support the proposal

Most respondents express support with the EHRC view that listed authorities should report on how they have used positive action under section 158 of the Equality Act 2010, as part of their reporting obligations.

Common feedback from these respondents is that:

- The proposal is considered "reasonable" or "sensible".
- Positive action is considered "an important tool to reach persons with protected characteristics and improve outcomes".
- Many listed authorities already report on positive action within existing mainstreaming reports or progress reports on outcomes "but may not label it as such".

Some respondents including Close the Gap, an equality advocacy group, cite research[7] which suggests that positive action is "significantly underused". Other respondents consider there to be a lack of empirical data to evidence the use of positive action. These respondents feel that the proposal could increase the use of positive action and lead to improved availability of information and data on its use/impact.

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[7] Close the Gap (unpublished) Internal PSED assessment (2017); Close the Gap (November 2015) Making Progress? An assessment of public sector employer performance of the public sector equality duty; and Close the Gap (March 2014) Monitoring Scottish public bodies' compliance with the public sector equality duty.

Theme 1: Positive action reporting within mainstream reporting rather than as an additional burden

Most respondents consider it reasonable and sensible that positive action reporting should be included within existing mainstreaming reporting rather than as an additional reporting burden. It is suggested that setting out a clear definition of 'positive action' would help to raise awareness of, and encourage greater use of, positive action among listed authorities.

Theme 2: Actions to support reporting of positive action

Many respondents (e.g. all organisation sub-categories), suggest actions which could support listed authorities to report on their use of positive action, including:

- A clear definition of positive action could avoid any confusion with positive discrimination.
- The provision of updated and improved guidance, including good practice examples/case studies, could be shared among listed authorities to encourage knowledge exchange.
- Positive action reporting could include details of the impact of positive action undertaken (i.e. reporting could go beyond information on the nature of the positive action undertaken).

16.2.2 Respondents who have issues or concerns

A few respondents raise issues or concerns with the proposal, including:

- A few listed authorities call for greater clarity from the Scottish Government regarding whether they would face punitive action if they are not able to comply with the requirement. These respondents feel that a better approach may be for positive action reporting to be "encouraged" rather than mandatory reporting.
- A couple of listed authorities note the difference in the wording of the proposal compared to the Equality Act 2010 which 'permits' positive action but does not 'require' it. These respondents ask the Scottish Government to consider whether mandating positive action reporting could be perceived to mandate the taking of positive action, and the extent of its powers in this regard.
- A few respondents' express concerns around data disclosure and data sensitivity.

16.2.3 Respondents who do not support the proposal

A handful of respondents (e.g. listed authorities) state that they do not support the proposal. These respondents feel that positive action should not be a reporting obligation, and suggest a more appropriate approach may be through research.

"Such information gathering ideally ought to be gathered through a research exercise rather than through an Equality Mainstreaming reporting method. The reason for doing so is due to the lack of case-by-case support provided by the EHRC or Scottish Government on implementing positive action initiatives, which by their nature, are individualistic – beyond the current minimal and static published guidance."

Scottish Equality Forum for Colleges and Universities

Part 3: Overall Reflections

17 Overall Reflections

17.1 Context

This section of the Consultation Paper provided an opportunity for respondents to provide further and general reflections on the proposals outlined by the Scottish Government.

17.2 Question 14.1 - Reflections

Overall, what are your reflections on the proposals set out by the Scottish Government and the further areas explored?

Over two-thirds of respondents provided a response to **Question 14.1** (69%).

17.2.1 Respondents who support the proposals

A majority of the responses provided by listed authorities and equality advocacy groups are supportive of the Scottish Government proposals.

Theme 1: Proposals will strengthen equality and diversity in Scotland

A prevalent view among listed authorities is a belief that the proposals set out by the Scottish Government would help to strengthen equality and diversity in Scotland and help listed authorities to undertake the duties required of them by the Public Sector Equality Duty (PSED).

Common words or phrases used across consultation responses includes "I agree with the document", "proposals seek to strengthen equality and diversity", "agree with the majority of the proposals", "broadly supportive", or "welcome the review".

17.2.2 Respondents who identify issues or concerns

Theme 1: Improved guidance and resources required

Some respondents (e.g. including listed authorities), while positive about the proposals note that there would require to be sufficient lead in time for any changes to be implemented, and the provision of comprehensive guidance, training, and resources to support listed authorities with implementation and compliance.

Theme 2: Additional detail on the proposals may be required

Some respondents (e.g. including listed authorities) feel that additional information and detail on the proposals set out by the Scottish Government would be welcome/required. Some feel that many of the proposals are "vague" and could "benefit from greater clarity". The consultation submissions note that this issue has made assessing the impact of the proposals on their own organisations more difficult.

17.2.3 Respondents who do not support the proposals

A very small number of respondents are critical of the proposals and note that they do support the detail of the proposals set out by the Scottish Government.

Theme 1: Disproportionate administrative burden

A small number of listed authorities and other public bodies believe that the proposals set out by the Scottish Government may not achieve its ambition to reduce bureaucracy associated with the PSED. Rather, these respondents feel that the proposals may increase bureaucracy and increase the administrative burden placed on listed authorities.

Theme 2: Scottish Government proposals are perceived to lack ambition

A small number of equality advocacy groups believe that the proposals set out by the Scottish Government are not ambitious enough to create positive change for people with protected characteristics, and that a focus on reducing bureaucracy could undermine the extent to which PSED is embedded within listed authorities.

17.3 Question 14.2 – Further Information

Please use this box to provide any further information that you think would be useful, which is not already covered in your response.

One-third of respondents provided a response to **Question 14.2** (36%).

Theme 1: Repetition of comments in previous question

Responses largely echo the comments received to **Question 14.1**, namely there is a need for updated and improved guidance, and many comments which express support or welcome the proposals set out by the Scottish Government.

Theme 2: Removing licensing bodies as listed authorities

A small number of listed authorities raise a concern that licensing bodies are treated as separate listed authorities. This is due to licensing bodies generally having a very small number of employees and all staff are employed by the local authority. These respondents feel that licensing bodies should not be treated as separate listed authorities and should be subsumed under their respective local authorities in order to reduce bureaucracy and duplication of effort.

Appendix A: Organisation Respondent Groupings

Table A.1: Organisation Groupings

Sub-Group	Organisation Name
Listed Authority	- Aberdeen City Council - Aberdeen City HSCP - Aberdeenshire Council - Aberdeenshire Integrated Joint Board / Health & Social Care Partnership - Argyll and Bute Council - Audit Scotland - Care Inspectorate - Children's Hearings Scotland - City of Glasgow College - Clackmannanshire and Stirling Health and Social Care Partnership - Creative Scotland - Dumfries and Galloway College - Dundee City Council - East Ayrshire Council/East Ayrshire Health and Social Care Partnership - East Dunbartonshire Council - East Renfrewshire Council - Edinburgh College - Fife Council - Glasgow City Council - Glasgow Kelvin College - Healthcare Improvement Scotland - Highland Council - Highlands & Islands Enterprise - Historic Environment Scotland - Independent Living Fund Scotland - Inverclyde Council - Mental Welfare Commission for Scotland - Midlothian Council - Nestrans - NHS 24 - NHS Ayrshire and Arran - NHS Dumfries and Galloway - NHS Education for Scotland (NES) - NHS Fife

Sub-Group	Organisation Name
	• NHS Grampian
	• NHS Greater Glasgow & Clyde
	• NHS Highland
	• NHS National Services Scotland
	• North Ayrshire Council
	• North Ayrshire Health and Social Care Partnership
	• North Lanarkshire Council
	• Orkney Islands Council
	• Public Health Scotland
	• Registers of Scotland
	• Renfrewshire Health and Social Care Partnership
	• Revenue Scotland
	• Scottish Enterprise
	• Scottish Environment Protection Agency
	• Scottish Fire and Rescue Service
	• Scottish Funding Council
	• Scottish Legal Aid Board
	• Scottish Police Authority/Police Scotland
	• Scottish Water
	• Skills Development Scotland
	• SOUTH AYRSHIRE COUNCIL
	• South East Scotland Transport Partnership (SEStran)
	• South Lanarkshire Council
	• South of Scotland Enterprise
	• sportscotland
	• Stirling Council
	• Strathclyde Partnership for Transport
	• Tayside and Central Regional Transport Partnership (Tactran)
	• Tayside NHS Board
	• The City of Edinburgh Council
	• The Scottish Children's Reporter Administration
	• The Scottish Social Services Council
	• The University of Aberdeen
	• The University of Edinburgh
	• University of Dundee
	• University of Glasgow
	• University of St Andrews
	• University of Strathclyde
	• VisitScotland
	• West Dunbartonshire Council
	• West Lothian Council

Sub-Group	Organisation Name
Equalities Advocacy Groups	• Age Scotland • Amina Muslim Women's Resource Centre (MWRC) • British Deaf Association (BDA) Scotland • Camphill Scotland • Central Scotland Regional Equality Council (CSREC) • Close the Gap • Communication Inclusion People Community Interest Company • Council of Ethnic Minority Voluntary Organisations (CEMVO) Scotland • Deafblind Scotland • Disability Equality Scotland • Engender • Equality and Human Rights Commission (EHRC) • Equality Here, Now • Equality Network and Scottish Trans Alliance • Equate Scotland • Fair Play For Women • For Women Scotland • Grampian Regional Equality Council (GREC) • Inclusion Scotland • Joint Submission from Equality Stakeholders • Living Streets Scotland • Mobility and Access Committee for Scotland (MACS) • National Autistic Society Scotland • Scottish Commission for People with Learning Disabilities • Scottish LGBTI Police Association • Scottish Women's Aid • Scottish Women's Budget Group • Sense Scotland • The Coalition for Racial Equality and Rights (CRER) • Voluntary Health Scotland • Women's Support Project
Other Public Bodies	• Argyll & Bute Integration Joint Board • COSLA • National Records of Scotland • NatureScot • NHS Golden Jubilee • Scottish Police Federation • Scottish Public Services Ombudsman • The Open University in Scotland

Sub-Group	Organisation Name
Other Organisations	- General Medical Council Scotland - Law Society of Scotland - NASUWT - Outside the Box - Royal College of Speech and Language Therapists - Scottish Equality Forum for Colleges & Universities - Scottish Forces Breakfast Club - The Health and Social Care Alliance Scotland (the ALLIANCE) - The Scottish Assessors Association

Appendix B: Publication of Responses

Of the 128 responses:

- 67 selected "publish response (with name)", all organisation respondents.
- 49 selected "publish response only (without name)", including 44 organisation respondents and five individuals**.**
- 12 selected "do not publish", all organisations. This includes one organisation who did not provide a Respondent Information Form.

Appendix C: Satisfaction with this Consultation

Table C1: How satisfied were you with this consultation?

	Percentage
Very satisfied	32.9%
Slightly satisfied	25.3%
Neither/nor	30.4%
Slightly dissatisfied	10.1%
Very dissatisfied	1.3%

N=79. Excludes blank responses.

Table C2: How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

	Percentage
Very satisfied	44.4%
Satisfied	24.7%
Neither/nor	24.7%
Dissatisfied	0.0%
Very dissatisfied	6.2%

N=81 (Excludes blank responses.