

TAYSIDE AND CENTRAL SCOTLAND TRANSPORT PARTNERSHIP**EXECUTIVE COMMITTEE****29 MARCH 2022****PUBLIC SECTOR EQUALITIES DUTY IN SCOTLAND CONSULTATION:
TACTRAN RESPONSE****REPORT BY STRATEGY OFFICER (STRATEGIC CONNECTIVITY)**

This report seeks approval of a proposed response to the Scottish Government's consultation on 'Review of the operation of the Public Sector Equality Duty in Scotland'

1 RECOMMENDATIONS

- 1.1 That the Executive Committee considers and approves the proposed consultation response to the 'Review of the operation of the Public Sector Equality Duty in Scotland' as detailed in Appendix A.

2 BACKGROUND

- 2.1 The Scottish Government published consultation on [Public Sector Equality Duty in Scotland](#) on 13 December 2021, with responses to be submitted by 11 April 2022
- 2.2 At its meeting of 15 March 2021, the Partnership delegated authority to the Executive Committee to consider and approve a response to Scottish Government's consultation on Public Sector Equality Duty in Scotland. (Report RTP/22/10 refers).

3 DISCUSSIONContext

- 3.1 The Public Sector Equality Duty (PSED) in Scotland is a duty on public bodies, and those carrying out public functions, which was created by section 149 of the Equality Act 2010 (the Act) and came into force in April 2011. It was developed in order to consolidate specific duties in respect of race, gender and disability that were all previously contained in separate Acts and extended it to other relevant protected characteristics. The PSED obliges public authorities, and those carrying out certain 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 Act;

- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

3.2 Although the subject matter of the Act is largely reserved to the UK Parliament, Scottish Ministers have the power (under section 153 of the Act) to supplement the PSED by placing specific duties on certain Scottish public authorities. Scottish Ministers used these powers to make the Scottish Specific Duties in 2012.

3.3 The SSDs are intended to provide a supporting framework to enable certain public authorities to better perform their PSED, through enhanced data collection and evaluation, and greater transparency and accountability. In this way, the specific duties help authorities to better perform their duty to have 'due regard' to the 3 needs of the PSED, and to mainstream equality in their everyday work.

3.4 Tactran's most recent Mainstreaming the Equality Duty Report and Employee Information and Equality Outcomes Report were approved by the Executive Committee in April 2021 (report RTP/21/10 refers)

Scope of the Review of the Operation of the PSED

3.5 Scottish Ministers have committed to reviewing the operation of the PSED in Scotland, which in effect means reviewing:

- The effectiveness of the SSDs, for which Scottish Ministers have legislative competence; and
- The implementation environment for the PSED in Scotland, in recognition of the fact that regulations alone do not deliver equality, but that factors such as leadership and capacity are critical.

Purpose of this consultation

3.6 Scottish Ministers are committed to reviewing the effectiveness of the Public Sector Equality Duty (PSED) in Scotland. After months of research and engagement to identify issues within the Scottish Specific Duties (SSDs), it has become clear that more could be done to improve the regime.

3.7 Drawing on research so far, this consultation now sets out a series of detailed proposals both for legislative changes to the SSDs and changes to the wider implementation environment. Due to the technical nature of the SSD regime and the purpose and effect of the regulations, this consultation is mainly targeted to the Scottish public sector and equality advocacy groups.

3.8 The Executive Committee is asked to consider and approve the proposed Tactran response, as detailed in Appendix A to allow submission by the deadline of 11 April 2022.

4 CONSULTATIONS

4.1 Relevant Tactran officers contributed to the response to the consultation.

5 RESOURCE IMPLICATIONS

5.1 There are no resource implications arising directly from this report.

6 EQUALITIES IMPLICATIONS

6.1 This report has been screened for any policy implications in respect of Equality Impact Assessment and no major issues have been identified.

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NOTE

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above Report.

Review of the operation of the Public Sector Equality Duty in Scotland: Consultation paper, The Scottish Government, December 2021

Report RTP/22/10, Consultations, 15 March 2022

Report RTP/21/10, Public Sector Equality Duty Reporting 2021, 14 April 2021

Public Sector Equality Duty (PSED) in Scotland: Consultation Response on Stage 2 of the Review

Creating a More Cohesive Regime and Reducing Perceived Bureaucracy

Q1.1 What are your views on the proposal outlined above in relation to the substance of reporting?

Tactran already regularly reports on how the Partnership meets the Scottish Specific Duties (SSDs).

The partnership supports the consolidation of the reporting cycle. However, rather than reporting every four years, consideration should be given to align the reporting cycle with the five years' election cycle and the respective government term of the Scottish Government. This would also assist RTPs to align PSED reporting with review and renewal of their Regional Transport Strategies.

With regards to the proposal that listed authorities are required to publish a strategic plan that sets out how the listed authority intends to meet all of the SSDs, Tactran would welcome further clarification on what the Scottish Government means by strategic plan. While we appreciate that a separate strategic plan on equalities may be helpful in further raising the profile of equalities and the respective duties, Tactran is of the opinion that the respective duties should be embedded in other strategies and policies to implement meaningful change for the people.

Q1.2 What are your views on the proposal outlined above in relation to the reporting process?

Tactran agrees in principle with the proposal to simplify the reporting regime. Also see above under Q1.1.

Q1.3 What are your views on consolidating the previous sets of amended regulations?

Tactran agrees with the proposal to consolidate previous sets of regulations relating to the SSDs.

Embedding Inclusive Communications

Q2.1 What are your views on our proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work?

Tactran welcomes the proposal to place a duty on listed authorities to embed inclusive communications proportionately when in communication with the public. Receiving communication and information in a format that matches the respective requirements is key in relation to minimise some of the challenges of people with disability.

However, Tactran would welcome further clarification on what the Scottish Government considers to be proportionate in this context. It will be key that the listed authorities are fully aware of the nature of disabilities and the impacts of disabilities on people. Subsequently,

awareness raising, and training will be needed throughout public sector authorities. The proposal is, therefore, likely to require an additional funding commitment to listed authorities to implement the duty. It should be noted that generic accessibility standards do not always best meet the needs of specific groups.

Extending the pay gap reporting to include ethnicity and disability

Q3.1 What are your views on our proposal to require listed authorities to publish ethnicity and disability pay gap information?

Tactran agrees in principle with the proposal to require listed authorities to publish this information. Data on intersecting protected characteristics will be key to ensure the needs of marginalised population segments are adequately identified and considered within Public Services.

Q3.2 Should the reporting threshold for ethnicity and disability pay gap reporting be the same as the current reporting threshold for gender pay reporting (where a listed authority has at least 20 employees)?

Tactran agrees with the proposal to apply the same reporting threshold for ethnicity and disability pay gap reporting as for gender pay reporting.

Q3.3 What are your views on the respective formulas that should be used to calculate listed authorities' gender, ethnicity and disability pay gaps?

Tactran agrees that standardised formulas will support the monitoring of progress to minimise pay gaps.

Assessing and reviewing policies and practices

Q4.1 What are your views on the proposal outlined above?

Tactran welcomes the proposal 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”. The partnership is already implementing this with assessments being carried out at the earliest opportunity to inform the development of Tactran’s strategies and policies. This includes comprehensive option appraisal against set objectives.

Tactran agrees with the importance of involving people with lived experience, or the organisations who represent them. Substantive qualitative evidence is important.

Q4.2 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?

Tactran agrees that there is a need to shift the emphasis from the focus on process to highlight the importance of Equality Impact Assessments as a useful, practical tool which helps authorities to create fairer, better, and more inclusive policies and practice.

There is a subsequent need to build institutional knowledge, competence, and capacity on equality considerations across protected characteristics and equalities within the public sector organisations. Training and guidance should be provided.

A standardised template, complemented with comprehensive guidance, would be helpful to support listed authorities to meet their obligations to assess impact effectively and meaningfully. This would be helpful, both in instances of responsive policy and strategic decision making, to ensure consistency in the quality of Equality Impact Assessments across public authorities.

Q4.3 What are your views on the current scope of policies that should be assessed and reviewed under Regulation 5.

The current scope covers all policies and practices. The extent to which policies should be subject to assessment will depend on questions of relevance and proportionality. Tactran agrees that all policies and practices should be assessed. However, we would welcome further guidance on determining the scope of the assessment based on relevance and proportionality. What is expected here?

A new equality outcome setting process

Q5.1 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 outcomes.

Tactran welcomes the proposal for the Scottish Government to take on more of a leadership role in setting national equality outcomes. Equality outcomes should be based on evidence relating to equality groups and communities and should respond to specific issues identified in a particular sector. Subsequently, due consideration needs to be given to specific equalities outcomes at local and regional level.

Tactran supports an approach that is tailored and specific to advance equality of specific equality groups and communities within a listed authority. Rather than remaining too broad and unspecific. The partnership would, therefore, welcome support for listed authorities to implement national equality outcomes in a way that is tailored and targeted to specific needs of local people who access the respective services.

Similarly, Tactran agrees that the proposal also allows for listed authorities to choose not to adopt the national equality outcomes.

Improving duties relating to Scottish Ministers

Q6.1 What are your views on the Scottish Government's proposals to simplify the regulation 6A process?

With Regional Transport Partnerships being effectively public boards, the representation on public boards and ensuring diversity is very important so only changes that will strengthen this should be desired.

The Gender Representation on Public Boards (Scotland) Act 2018 should remain in place.

Regarding Regulation 6A, there is a risk that the protected characteristics of board members could unintentionally be disclosed due to the small numbers of people who sit on such boards.

Q6.2 What are your views on the proposal in relation to regulations 11 and 12.

Tactran has no objections for regulations 11 and 12 to be retained.

Q6.3 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 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?

The delivery of an annual statement, debate, and report on progress would certainly act as an important mechanism and provides an opportunity for parliamentary scrutiny on the progress of the Scottish Government in relation to gender competent policy making. This should consider progress in relation to people who hold intersecting protected characteristics, as well as other marginalised groups.

Procurement

Q7.1 What are your views on our proposal and call for views in relation to procurement?

Tactran has no comment.

Intersectional and disaggregated data analysis

Q8.1 The First Minister's National Advisory Council on Women and Girls called for the Scottish Government to place an additional duty on listed authorities to "gather and use intersectional data, including employment and service-user data, to advance equality between protected groups, including men and women".

(a) What are your views on this?

Tactran supports the proposal to place an additional duty on listed authorities to gather and use intersectional data to advance equality between protected groups. Disaggregated data and intersectional analysis is key in developing policy and practice, and in informing decision making, that actually meets the needs of marginalised groups.

However, we believe that there is a capacity issue and, authorities will need resources, support and time until ready to implement this.

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

Listed authorities could be supported to meet this requirement through training on effective and robust qualitative and quantitative data and evidence collection and data

sharing. The Scottish Government should provide guidance and support to improve processes for collecting data.

Robust data gathering will also require adequate and sustainable resources to support listed authorities to carry out this additional duty.

Q8.2 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?

If yes, why?

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

No. Tactran currently does not have the capacity to carry out this proposal properly at the present time.

The partnership would benefit from further guidance on what listed authorities need to consider, including if low numbers risk identification of individuals because of intersectional data analysis. Respective case studies of public sector organisation already successfully implementing this duty would be welcome in addition to templates and training.

Intersectional gender budget analysis

Q9.1 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?

Q9.2 The First Minister’s 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.

(a) What are your views on this?

Tactran considers that the Equalities Impact Assessment process for strategies and projects adequately caters for intersectional gender provision.

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

Tactran has no comment.

Q9.3 If an additional duty was placed on your organisation to integrate intersectional gender budget analysis into its budget procedures, would you be confident your organisation could comply with it?

(a) If yes, why?

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

Tactran has no comment.

Coverage

Q10.1 In your view, are there any Scottish public authorities who are not subject to the PSED or the SSDs that you think should be?

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

Tactran has no comment.

10.2 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?

Tactran agrees that regulatory bodies, as part of their own compliance with the Scottish Specific Duties, should be encouraged to do more to improve PSED performance within their sector.

Strengthening leadership and accountability and enhancing capability, capacity and culture

Q11.1 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.

Tactran welcomes the proposal that further exploration is given to

- *Funding:
Ensuring there is long-term funding for the public and third sectors for equality.*
- *Training:
Ensuring that there is effective equality training.*
- *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.*

Tactran has no further comments at this stage.

Guidance

Q12.1 What would you like to see in improved revised guidance for the SSDs.

- *Development of best practice guidance and shared resources for listed authorities on inclusive communication.*
- *Comprehensive and detailed guidance to support listed authorities to assess and review policies and practices, including the provision of a standardised template for completing impact assessments.*
- *Guidance to support listed authorities on disaggregated data collection and intersection analysis. This should include qualitative and quantitative data collection*
- *Case studies and further examples of best practice*

- *Dedicated contact at EHRC who listed authorities can approach for any PSED related queries/ support.*

Positive action

Q13.1 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?

Tactran has no comment.

Overall reflections

Q14.1 Overall, what are your reflections on the proposals set out by the Scottish Government and the further areas explored?

Tactran has no comment.

Q14.2 Please use this box to provide any further information that you think would be useful, which is not already covered in your response.

Tactran has no comment.