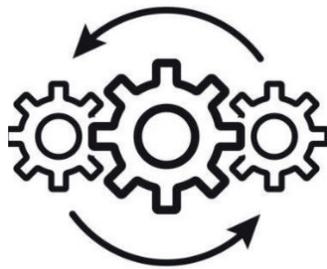


# Review of the Operation of the Public Sector Equality Duty Scotland

April 2022



Consultation Paper Response from the  
Council of Ethnic Minority Voluntary  
Organisations (CEMVO) Scotland.

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## **About CEMVO Scotland**

*CEMVO Scotland is a national intermediary organisation and a long-standing strategic partner to the Scottish Government Equality Unit. Our aim is to build the capacity of the ethnic minority voluntary sector and its communities. We have an established network of ethnic minority (EM), public and third sector organisations throughout Scotland to which we deliver a wide range of capacity building support programmes.*

Our current programmes of work include:

- Providing social enterprise development support to EM groups and social entrepreneurs
- Providing race equality and human rights mainstreaming support to Public, Statutory, Third and environmental Sector organisations
- Increasing EM representation on Public Boards
- Supporting the Scottish Minority Ethnic Women's Network (SMEWN) for peer support and influencing social policy
- Developing and supporting an EM Environmental Network to engage in climate change policy
- Providing employability support to EM young people
- Providing financial capability support to EM communities.

As a national organisation, we continually engage with the EM voluntary sector and its communities, which enable us to gather intelligence about the needs and issues affecting the sector. This helps our organisation to deliver tailored support to the sector, and to work strategically with public, statutory, and government agencies to tackle a range of prevalent issues such as race equality, social inclusion, capacity building and civic participation.

One of our core programmes at CEMVO Scotland is Race for Human Rights. The aim of this programme is to help public service providers increasingly embed race equality and human rights in their strategic planning and day-to-day functions. This will be achieved by adopting an anti-racist and human rights-based approach.

### **This response is on behalf of CEMVO Scotland.**

This letter should be counted as an independent response which sets out our views, irrespective of similar letters received, and further enhances our previous response to this PSED review consultation.

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

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

We have set out below an individualised comment on each proposal to the substance of reporting:

- *Publishing a strategic plan that sets out how the listed authority intends to meet all the SSDs.*

Listed authorities create strategic plans as part of their business planning requirements anyway. To promote and implement learning from mainstreaming strategies, PSED reporting should be included in high level documents such as strategic plans. Strategic plans also outline accountability, monitoring and evaluation processes, therefore incorporating all these into the current strategic business planning of a listed authority would mean reduced production of different reports, with the focus of Equality duties embedded and implemented in conjunction with the authorities' main activities.

- *Publishing all the information required by other SSDs*

Incorporating multiple SSDs into one report would assist in the perception of additional and repetitive workload for employees, which would assist in a shift in attitudes towards PSED reporting away from being an exhaustive task.

- *Reporting on listed authorities' implementation of the SSDs, over the previous 4 years*

Extending to four years would allow for time to collect quality data but could lead to lengthy reports and easily be forgotten/ not prioritised. Thus, we would be in favour of more regular reporting cycles.

- *Reporting on how listed authorities have used lived experience, or the organisations representing people with lived experience, throughout their implementation of the duties*

Recognition on the importance of lived experiences is greatly welcoming. However, we would like to see lived experiences to be used in conjunction with professional expertise, to provide a more in-depth and balanced knowledge base that is less likely to be influenced by a sole negative experience, and more representative of collective base of EM lived experiences, as well as the capacity to provide race equality strategic thinking.

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

We have set out below an individualised comment on each proposal in relation to reporting are:

- *Simplify the regime so that there is only one reporting cycle for all the duties*

the use of ‘regime’ in this document is problematic as it reinforces the image of bureaucratic processes which has already been highlighted as a barrier to PSED effective reporting and implementation. ‘Regime’ is often associated with authoritative operations, which further disengages public authorities in recognising the urgent need of prioritising equalities outcomes for disadvantaged individuals.

- *Allow listed authorities to satisfy all 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*

The feedback from listed authorities has highlighted that this would reduce pressure in reporting which should be noted. However, the issue is not about reporting cycles or formats, but more about the lack of reporting on successful outcomes by listed authorities and therefore there must be great care to ensure that this is not an excuse for a mask for “bureaucracy” over lack of equalities progress by listed authorities.

- *Ensure that reporting deadlines do not align with the end of the financial year*
- *Require reports to be published at a minimum of every 4 years.*

By increasing the time period between reporting, it also reduced the accountability to comply with strategic aims within a set period. It may result in Equality duties being less prioritised because it is not an imminent requirement within the daily activities of a listed authority. We would argue to have the reporting cycle maintained at two years and strengthen the accountability process.

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

We have found that the many regulations are difficult to remember and come across as a monotonous checklist, therefore by consolidating the previous regulations would allow for all requirements to be stipulated and referred to in a simplistic manner. However, by leaving the regulations as they are, this ensures that each regulation is received adequate consideration in that field. 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.

## **Proposal 2: Embedding Inclusive Communications**

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

There are limited provisions for embedding inclusive communication is within the current scope of regulation 10, where “SSD reporting obligations in a manner that makes the information accessible to the public”. As noted, there are other provisions in specific legislations (pg. 18) which stipulates inclusive communication. Having a specific duty on inclusive communication will broaden the scope to incorporate all aspects of public life, as well as highlighting its necessity and value to the human right to participate in society.

If this matter does not become a specific new duty, CEMVO Scotland would strongly support a toolkit on what is inclusive communication that will be developed with stakeholders and lived experience groups

We are aware that many public bodies already have a centralised translation/interpreting contractor which offer value for money and could contribute to lower standards. Therefore, we welcome the introduction of a centralised translation service, which would be more accessible and a cost-effective resource for all listed authorities. Through our consultancy and training services, clients have mentioned that lack of resources often attribute to the capacity of the authority to provide accessible and inclusive communication.

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

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

This proposal appears to remedy the decade of ethnicity and disability obligations. By prioritising one protected characteristic over another, the Governments have created a situation where gender has superseded in all equalities legislations and policies. This has created an environment of distrust, reinforcing the status quo of institutionalised racism and ableism. An acknowledgment of this situation would be welcome, and this proposal would reinforce commitment from the Government to prioritise the rights of fair pay for ethnic and disabled individuals. Holding the same standards across all protected characteristics in an equitable fashion is important for openness and transparency. In addition to the proposal, CEMVO Scotland advocates for disaggregated data on visible and non-visible ethnic minority employees and would welcome this to be incorporated into the pay gap information.

We welcome the comment of some listed authorities who publish ethnicity pay gaps as a result of their obligatory reporting on equal pay statements.

A more overarching issue and priority would be to address racism that EM 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

**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)?**

CEMVO Scotland has been a strategic partner of the Scottish Government in assisting with race employment issues. To provide consistency in this approach, we support comparable reporting thresholds, as this will be seen as less invasive and a burden to employees who responsibility it is to carry out this function in the organisation.

We would highly recommend that there should be some prescriptive action and/or guidance on the collection of such ethnicity data, including pay gaps as Public Bodies already struggle collecting ethnic minority workforce data. Would there be scope for example for a “mandatory” / “legal requirement” for public body employees to provide this information along with ethnicity and other protected characteristics for listed authorities to fulfil their obligations?

As noted, we would echo concerns in publishing information through which an individual is recognisable because of their protected characteristic.

**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?**

According to the information provided in this consultation document, using good examples of the model used through the Equality Act 2010 (specific Duties and Public Authorities) regulations 2017 that apply in the UK would show a workable and practical formulas that has proven to provide consistent and quality data.

As a tried and tested approach, we would welcome a pilot of this to be carried out in Scotland to determine if similar outcomes are reached.

## Proposal 4: Assessing and reviewing policies and practices

### ***Our proposal***

*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 their 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.*

### **Question 4.1: What are your views on the proposal outlined above?**

The proposal fails to acknowledge the accountability of listed authorities. EQIA's have become a 'tick-box' exercise where there is little difference made. We feel that the Government should take responsibility, alongside the EHRC, for not undertaking its obligations seriously towards assessing and reviewing policies and practices that affect disadvantaged groups.

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. As a stakeholder in this group, 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 SSDs in one mainstreaming report as this avoids repetition of work and consolidates evaluations within one document. However, as already highlighted, the primary focus should be on the reporting of positive equalities outcomes.

### **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?**

Replacing the term 'regime' to something less dominating and rigid would assist in the changing of attitudes towards this practice.

EHRC has provided many guidance documents for listed authorities to assist in their methodologies, and these should be further utilised to assist the responsible civil servants in upholding the SSD requirements.

Leading by example is also necessary to shift attitudes towards the 'add-on' requirements, for example the Scottish Government should implement these measures more robustly within its own structures and public bodies.

Continuous learning and development for Senior Leaders is necessary to educate them on the purposes of assessing and reviewing policies and practices through a social justice lens, where problems are presented alongside organic and tangible solutions.

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.

Creating awareness to the social injustices faced by those with protected characteristics would assert the 'human' element and address the desensitisation of many civil servants and leaders who perceive these activities to be unnecessary or unimportant, and redirect resources to other competing priorities.

**Question 4.2: What are your views on the current scope of policies that should be assessed and reviewed under regulation 5?**

Regulation 5 stipulates the requirement of a listed authorities to assess and review policies and practices that affect a protected characteristic within the remit of those policies and practices. For example, an assessment on free school meals provision would require an impact assessment for those who fall within the categories of ethnicity and disability due to the accessibility of culturally appropriate and dietary requirements of these specific characteristics. This regulation is clear in that the nine protected characteristics must be reviewed, and it should be ascertained as to which characteristic requires further impact analysis.

The absence of reinforcing and implementing these requirements with no consequence has led to a biased attitude, where having a protected characteristic is perceived to be an additional burden on an already stretched society.

If stronger messaging and accountability were to be enforced through the Scottish Government, there would be shift in attitudes towards protected characteristics, and specifically, institutional racism. It has taken 10 years for the Scottish Government to acknowledge institutional racism within Scotland – now that this has been established, the more the Government talks about this issue at every level and every policy area, the more likely listed authorities will follow the direction of national leaders.

## Proposal 5: A new equality outcome setting process

### **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?**

We would concur with the background and considerations brought through this proposal.

Equality organisations have the knowledge and expertise to support listed authorities in strategic and high-level planning and implementation. We have found through our experiences that senior leaders from listed authorities need to fully appreciate the purpose of fulfilling their duties and recognise that they are drivers of change.

We agree for the Scottish Government to lead by example and for national equality outcomes to be set, as this provides a collective focus in line with national priorities and complement the existing National Improvement Framework. We would like to see the Scottish Government take a stronger stance by linking these outcomes within funding arrangements with listed bodies. For example, have percentage targets for race and other protected characteristic outcomes linked to levels of funding, and have future funding levels dependent on achieving equality targets/outcomes rather than mere aspirational equalities rhetoric.

The terminology could be strengthened by used human rights-based approach, in line with the incorporation of human rights within Scottish legislation. As expressed earlier (with the use of the term 'regime') terminology influences attitudes and shapes societal thinking. Therefore, by using specific terms that will provide a cohesion with other policy changes will be more effective and concise.

The complacency in the lack of accountability placed on listed authorities is perceived by the acceptance of justifications from responsible bodies. Therefore, in addition to these proposals, we would highly recommend evaluation and monitoring prescriptions to be included. This will provide clarity on accountability and reporting of how equality outcomes have been achieved as well as complement strategic planning.

## Proposal 6: Improving duties relating to Scottish Ministers

### **Question 6.1: What are your views on the Scottish Government’s proposal to simplify the regulation 6A process?**

By shifting the responsibility from Scottish Ministers to listed authorities to gather the required information on the relevant protected characteristics of their members would assist in reducing bureaucracy, as listed authorities need to collect data anyway. However, by removing the duty from Scottish Ministers would relieve them of their public obligations in leading on equality matters. Thus, responsibilities / duties must be shared, with Scottish Ministers still having accountability measures to ensure collection of equalities data by listed authorities.

However, the proposal outlined appears to simplify the process, therefore there should be improved compliance with this regulation, resulting in better quality of data.

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

This proposal seeks to remove the “power to require a listed authority to consider specific matters” and “publish proposals for activity to enable a listed authority to better perform the equality duty” from Scottish Ministers. This would be replaced by directing “listed authorities to consider ... significant inequalities”. This undemanding approach would assist in reducing perceived bureaucracy, however, this also reduces the obligations from Scottish Ministers in using their powers to enforce policy direction, such as the need to include intersectionality within policies.

**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?**

The purpose of this proposal set out by the NACWG is to provide a platform to hold the First and Scottish Ministers to account on their commitments and progress to effectively carrying out their PSED and SSD’s. We would argue that having a sole focus on gender does not go far enough, and there should be a statement with an intersectionality lens, as Ministers are obligated towards all protected characteristics; age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sexual orientation, each of which women interconnect. This would reinforce the work of Phase 2 of the NACWG and address calls for intersectionality data collection and analysis.

## Proposal 7: Procurement

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

Regulation 9 stipulates for listed authorities to consider award criteria and conditions in relation to public procurement. CEMVO Scotland welcomes the recognition that this regulation can be used to influence change and implement PSED. It has been disappointing that the provisions currently in place have not been utilised to their full capacity. Therefore, we welcome the proposal to require award and tender specifications should stipulate that all outputs of any work must meet the requirements of the PSED and specify examples.

The procurement sector is vast and has a variety of avenues through with goods, services and work is contracted out to public, private and third sector organisations. These contracts still have a value for money-based approach in terms of “lowest price” which often supersedes PSED with race / equalities having low consideration and priority within such contract awarding processes. Through our own experiences, CEMVO Scotland has worked with Scottish Government departments to facilitate an increase of ethnic minority contributions to service delivery within tender processes, such as with Climate Challenge Funding and the Just Enterprise Contracts where a % target of EM clients / applications set within the tender contract stimulated delivery partnership relationships being developed between Keep Scotland Beautiful, Community Enterprise in Scotland and CEMVO Scotland. Thus, having due regard to the PSED such as setting % equalities targets within procurement processes can stimulate change within sectors through mainstream white organisations partnering with EM organisations to help deliver race/equality targets within tenders, leading to addressing racial inequalities through sharing of financial resources between partners.

Embedding an accountability process would allow for consistent monitoring and feedback for the Scottish Government to improve their own practices and obligations towards PSED. Not only would this provide leadership to implement progressive change, but it will also allow for practical and sharing of good examples which would assist in addressing systemic and institutional racism and ableism.

## 8. Intersectional and disaggregated data analysis

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

**(a) What are your views on this?**

CEMVO Scotland have found, through our services and research, that a key element in improving diverse representation is having the ability to view disaggregated intersectional data, to capture quality evidence to shape policy and services. The information provided within this section coincides with the work we carry out through our projects. The scope of this proposal could be viable through regulations 11 and 12 to better implement the equality duties placed on listed authorities.

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

Initially, those responsible within listed authorities must understand why this information is important and be empowered to make decisions that will influence positive change. As well as providing a centralised data recording system, listed authorities could be provided with specialised/dedicated support to implement these. This suggestion stems from feedback about the lack of clarity around implementing PSED, perceived bureaucracy and incoherent. Scottish Government could look to international human rights law for guidance on how to disaggregate data appropriately e.g., General Recommendation 32 states that 'statistics should be disaggregated by race, colour, descent and ethnic or national origin and sex. It should measure the socio-economic and cultural status of various groups and their participation in political and economic development of the country'. By utilising human rights law as a guiding tool, Scottish Government will ensure that the review/amendments of PSED's will align with human rights legislation changes scheduled for the next couple of years.

**Question 8.2: [Question directed specifically to listed authorities]**

**(a) 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?**

YES/NO

Routing depending on answer to part (a).

**(b) If yes, why?**

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

This section is not applicable to CEMVO Scotland.

## 9. Intersectional gender budget analysis

**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?**

Throughout this proposal document, it has been highlighted that leadership from the Scottish Government is required to make real progressive change, and to assist in shifting the attitudes towards equalities within policy implementation. By integrating an intersectionality gender budget analysis, this will allow for further examination on how public money is being spent to support those who are most marginalised and vulnerable, that also fall within multiple protected characteristics. For example, a disabled, ethnic minority woman would face additional barriers than a disabled woman, therefore, to ensure that both have the required financial support and resources needs to be recognised and adjusted for.

The NACWG's call for a statutory requirement would reinforce the commitment of the Scottish Government towards intersectionality and provide legal accountability for listed authorities to comply. Without an accountability mechanism embedded, there is no guarantee that responsible authorities would take this matter seriously enough to make practical implementations.

**Question 9.2: 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.**

**(a) What are your views on this?**

An intersectional approach to budgeting would ensure that public money is being spent on those who have the most disadvantage. We agree that the evidence needs to be robust to be able to make solid justifications and support evidence from lived experiences to satisfy stakeholders. However, as part of the pandemic recovery, we are aware that the most disadvantages group has been ethnic minorities with the highest death rate in Scotland, which is why an Expert Reference Group on COVID-19 and Ethnicity was established. Perhaps it should be an intersectional approach with ethnicity underpinning intersectionality as opposed to "intersectional gender" thus we should perhaps propose an "intersectional ethnicity" budget instead to address gaps caused by centuries of racial disparities.

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

Learning and development opportunities would be beneficial to help understand and gain knowledge around the social inequities around intersectionality. Education is necessary to overcome barriers to participation. Training, dedicated support and specific guidance on how to report on intersectional gender budget analysis would alleviate confusion and allow for a

comprehensive approach, with the aim of encouraging and assisting listed authorities in being compliant.

In terms of race equality, leaders within listed authorities should increase their level of understanding and approach to institutional / structural racism and white privilege through education / training so that they can be better informed to address these issues within their respective organisations.

Monitoring listed authorities would need to be embedded within the supportive structures to provide continuous feedback to improve systems and services (feedback loop as a human rights-based approach).

**Question 9.3: [Question directed to listed authorities]**

**(a) 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?**

**YES/NO**

**Routing depending on answer to part (a).**

**(b) If yes, why?**

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

This section is not applicable to CEMVO Scotland.

## 10. Coverage

### **Question 10.1:**

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

No

**(b) If YES, please give detail on which Scottish public authorities you think should be subject to the PSED or SSDs.**

**Question 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?**

Regulatory bodies, to enforce and monitor practices, should also be subjected to the PSED and SSD, such as EHRC. This is to provide an equal standard amongst all organisations that relate to public services and are funded by Governments. Such obligations need to be more prescriptive than "encourage" to improve PSED performance; CEMVO Scotland advocates for additional responsibility to be placed on regulatory bodies than complying with PSED internally as an organisation. This is because such bodies have huge enforcement / regulatory powers to help improve equalities performance within their respective sectors. These additional regulations would ensure equalities performance is comprehensively audited within their processes, where serious consequences would be implemented by the regulator on organisation who are found to be performing poorly on race and equalities. For example, these consequences could be linked to lower levels of future funding (if their equalities performance does not improve) both for the regulator and the regulated. A positive action measure to support under-performing authorities could be for regulators to support/signpost them to a recommended organisations to help improve their equalities performance.

The EHRC Scotland, as a monitoring body, claims to be under-resourced to monitor and enforce compliance and have taken more of a "guidance" / "support" approach rather than a "stick" approach which has led to minimal implementation of PSED within listed authorities. It could be argued and perceived that due to this the lack of accountability and enforcement actions by EHRC that listed authorities have not progressed in advancing PSED. This would also assist in many controversial issues, such as the approach to the Gender Reform Act, where 'sex' is a protected characteristic, not 'gender'.

## 11. Strengthening leadership and accountability and enhancing capability, capacity and culture

**Question 11.1: 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.**

Training should be re-introduced through an educational lens. Knowledge, understanding and practically implementing equality policies is an ongoing process, where foundations of learning is required. Training implies short-term/one off events, where little progressive learning takes place. To change attitudes and culture, there needs to be sustainable elements of continuous learning and development.

A stronger stance on workforce diversity is needed to ensure that there is representation of protected characteristics within our public services. This would not only benefit societal change, but also encourage improved employment practices, and obligations employers have towards their staff.

Having a protected characteristic can impact individuals to varying degrees, therefore it is often avoided as a complex situation to address as there is no 'one-size fits all' approach. The need to move away from standard/rigid practices to allow for flexibility is not only beneficial to the Scottish economy, but also health, education and global prosperity.

## 12. Guidance

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

Guidance produced by EHRC do provide a degree of clarification on majority of matters, by use of case studies and further explanation of the legislation. However, it does not alleviate or reduce nervousness around legality of actions or activities listed authorities could perform.

Improved communication is key to overcome challenges for the use of these guidance documents. Inclusive communication would be welcome in the practical implementation of PSED guidance, which supports the view of clearer language.

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.

The guidance should also be clear on accountability of PSED.

### 13. Positive action

**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?**

One of CEMVO Scotland's main areas of work has been delivering race equality mainstreaming services to public and third sector organisations for nearly two decades. Since the Equality Act 2010 has been in force, there has been an emerging theme, and a specific strand of work, around positive action, due to these organisations lack of understanding of positive action and confusion with positive discrimination. From our experiences in providing support to public bodies, we often receive feedback that this is why organisations have avoided the use of positive action measures. This would also attribute to the wording of positive action and legal positive action, which can become confusing and increases the avoidance of using such actions. We agree with this view, as positive action is a good way to address discriminatory barriers and processes and should be used and reported upon more often so that good examples can be shared.

There is potential for focus work around positive action, and what it means in real terms. Scottish Government has the capacity and resources to implement positive action measures within their own directorates, such as improving diversity of staff and creating flexible working opportunities.

We would advocate that education is key to overcoming the systemic barriers that surface when discussing positive action measures. These would include perceptions of tokenism, favouritism, prioritising equality groups, unwillingness to incorporate change, denial of systemic and institutionalised issues.

## 14. Overall reflections

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

As an intermediary organisation, CEMVO Scotland welcome the proposals and the extensive consultancy work undertaken by the Scottish Government. Many of the proposal brought forward are consistent with our past research and views of the organisations we represent.

We have reiterated throughout this process of having a robust accountability mechanism ts show commitment to progressive change. We are disappointed that there has been no mention of tackling institutionalised racism or hate crime within this document, despite numerous statistics and reports evidencing that this is a prevalent issue within Scottish society.

The Scottish Government has the powers and duties to enforce and lead on data collection on protected characteristics. The lack of statistical information and discrepancies have been highlighted through this pandemic, and this should be acknowledged as a failing of Scottish Ministers to not take their duties seriously. Recent conferences, such as the Fair Work summit, has shown that senior leaders are still hesitant to make progress on race equality, and with increasing budget cuts to public authorities, the obligations towards those with protected characteristics are increasingly diminished. This is a breach of human rights. Moving forward, PSED and SSD should incorporate elements of human rights as stated in the Convention of the Elimination of Racial Discrimination (CERD) to better empower and equip leaders to fulfil their duties and create a fairer society.

### **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.**

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