

SCRA Consultation Response FULL VERSION 2021

PUBLIC SECTOR EQUALITY DUTY REVIEW CONSULTATION



The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to respond to this consultation.

The Children's Hearing is Scotland's distinct statutory approach, in which concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child) are considered by Children's Reporters and then by panel members in a Children's Hearing, who make a decision about whether there needs to be compulsory professional involvement with the child and family.

In the Children's Hearings System:

- the needs of children or young people are addressed through one holistic and integrated approach which considers all the circumstances of the child and the child's welfare
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making
- the rights of children and families are respected

The role and purpose of SCRA is:

1. Receiving referrals for children/young people who may be at risk.
2. Ensuring that other public agencies carry out enquiries and assessments into children/ young people's circumstances so we can make informed decisions about children/young people referred to us.
3. Making decisions on whether to refer a child/young person to a Children's Hearing if they need compulsory measures of supervision.
4. Drafting the grounds for the Hearing.
5. Arranging for Children's Hearings to take place when we decide that compulsory measures of supervision are warranted and where there is sufficient evidence to prove the grounds.
6. Ensuring fair process takes place within the Hearing, including the rights of those in attendance being met.
7. Having a key role in establishing grounds of referral in court, where these are contested, and in defending decisions of Children's Hearings which are subject to appeal.

Our Vision: Children and young people will be listened to, protected and supported to realise a positive future where they are safe, valued and respected.

Our Mission: We protect and support Scotland's children and young people, by making high quality decisions, upholding their rights and working collaboratively as compassionate, inclusive corporate parents to enable the most positive and personalised experience of the Children's Hearing.

Our Values: Our values are the shared motivations, beliefs and behaviours that underpin all that we do.

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Supportive	We work with kindness to support children, young people and families, our Partners and each other.
Child Centred	Children and young people are at the heart of everything we do.
Respectful	Everyone is respected and treated fairly, inclusively and lawfully.
Accountable	We are responsible for our decisions, our ethics and our learning.

Question 1.1:

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

We support the move to a strategic approach and think that a four year cycle will reduce bureaucracy. We agree that the proposed focus for reporting is clearer and will encourage mainstreaming of equalities through a firmer understanding of how the separate Scottish Specific Duties are connected and interdependent. We also think this approach will allow other pressing areas of public policy reformation – particularly in relation to children’s and wider human rights – to be more widely understood and applied.

Question 1.2:

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

We are not yet sure how we fulfil this reporting duty, but we see nothing that causes us undue alarm or evident difficulty. The proposed reporting duty seems clear, focused and designed to encourage systemic change.

Question 1.3:

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

It makes total sense to pull everything that is relevant into one. If that wasn’t being suggested then we think we may have asked for it to be considered.

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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?

Absolutely. In order to deliver inclusive service listed authorities need to have an eye to appropriate communications at all times and need to be able to make decisions about how and when this should occur. Authorities also need to be open to conversations about these decisions and be able to change an approach if required. We particularly like the concept of a centralised translations function – but would stress that some public authority functions are time critical and there would need to be a commitment to meet this need. There are likely to be additional costs for listed authorities associated with this work and we would ask that this be scoped in full prior to any required change. We are excited to see the best practice guidance and shared resources and would be pleased to be involved in the development of these if that is helpful.

Question 3.1:

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

We agree with these proposals and are pleased that a prescribed formula to calculate the pay gaps will be provided. We agree with the proposed approach to disaggregated pay gap information and with the approach for this information to be published in a single place to increase accessibility. SCRA already includes ethnicity and disability pay gap information in our gender pay gap reporting.

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)?

Yes.

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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?

Group 1 – per individual & role (as you could have two); hours worked * hourly rate / hours worked = average pay p/h

Group 2 – per individual & role (as you could have two); hours worked * hourly rate / hours worked = average pay p/h

Then a normal % calculation dividing by group 1 or 2 depending on which has the largest average pay.

Equally median pay could be reported; and it might be an idea to chart the % of staff group at each grade in an organisation as that gives the figures (however you generate them) clear context in terms of whether it is purely a pay issue or whether there are additional complexities, like people not getting / being in promoted posts.

Question 4.1:

What are your views on the proposal outlined above?

SCRA supports the change in approach to promote the completion of impact assessment at ideas stage – before a change has already impacted people. Whilst this approach can slow down development it will ensure that development is always the best it can be within the given constraints and we think that our own experience during Covid19 supports this. We also accept that on occasion unplanned change can be required – but we think that a flexible and innovative approach to impact assessment can allow for a rapid initial assessment which can then be followed up with a more rigorous approach as soon as is practicable. We also agree in principle with the development of involving people with lived experience or organisations that represent them in an impact assessment approach. We have some reservations about the practicalities of this approach and a concern that certain groups of people will be inundated with requests for involvement. We need to focus more widely on enhancing the choir of voices of lived experience, particularly in certain sectors, and on supporting public services to engage with these choirs effectively and consistently prior to any change in the requirements – or this won't work. We agree that listed authorities should report on impact assessment in the ways outlined.

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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?

Altering the duties will alter the priority that organisations give to this work. It can be very difficult to embed an approach when there is no real impetus for people to prioritise work or when work is seen as a non-essential 'add-on' from executive management down. Establishing a support network specifically in relation to impact assessment might be helpful and clear guidance in how to determine what does / does not need impact assessed would also be beneficial.

Question 4.2:

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

We think the scope of what should be subject to impact assessment should be wide. We wonder whether an agreed position could / should be developed between a public authority and Scottish Government with a clear cycle for completion / publication and reporting back to Government?

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 think this approach is helpful and could drive consistent national improvement in a very positive way.

Question 6.1:

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

We continue to believe that increased diversity of in public sector recruitment is essential for Scotland's public services to offer truly inclusive and supportive 'services' to the general public. We support the

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Scottish Government taking a leadership role in this and agree that a way forward would be for listed authorities to report using their equalities mainstreaming report as outlined.

Question 6.2:

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

We are interested to see more detail on the specific proposals in relation to regulations 11 & 12 – we understand the proposals offer greater flexibility to focus quickly on arising equalities issues and we applaud this but we can't quite see how this will be done, particularly if there is a shift to a four year reporting cycle for Equalities Mainstreaming.

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?

We are not convinced that such alignment would meet the intentions of the recommendation from the First Minister's National Advisory Council, particularly if the reporting period extends to a four year cycle. We also have some concern that the specific issues in relation to gender policy and coherence may be lost if the focus was on the much wider reformed approach to the PSED. We wonder if an annual approach to the issue being considered in Holyrood may be a way forward, perhaps using International Women's Day as a focus for both demonstrating change and debating next steps.

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Question 7.1:

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

Procurement approaches vary according to works, goods, services and according to the amount of money to be spent in the procurement exercise. All of this would need to be considered / factored into the proposals. Regardless of this we think the current context of public procurement work is already well structured and quite clear when we are following the Public Contracts Scotland regulations where a contact award notice is published through the Public Contracts Scotland online portal and the Contracts Register for goods / services contracts more than £50000. There is a clear regulated procurement process and a single procurement document template and in our procurement we often use an existing procurement framework (and all the impact assessment decisions taken when developing that framework) set up by Scottish Government or another public body. We therefore think that perhaps more consideration could be given to the current procurement context or landscape in the consultation – for example, could changes be made to the Public Contracts Scotland online portal which could then result in the kind of publication envisaged by the proposal. We currently publish an Annual Procurement Report, as required by regulation.

Notwithstanding the comments about the current approaches above, in SCRA our Procurement strategy is very clear; SCRA's Board has oversight of procurement; the Principal Reporter has responsibility to ensure that activity is carried out in accordance the Scottish Public Finance Manual and fully complies with Public Sector regulations. The strategy ensures that all who are involved in procurement in SCRA have access to the specialist support and advice they need, now and in the future, to make wise, best value decisions about goods and services, to benefit from the scale of national contracts and to vision future ways of making things ever more efficient, responsive and adaptable to our changing needs. The impact of procurement decision making features strongly and sustainability and promoting inclusivity is also really central to the approach we take. We aim for our inclusive procurement approach to increase supplier diversity by:

- Eliminating unnecessary barriers to the procurement process to give SMEs, minority-owned businesses, third sector, social enterprises and other different organisations fair and equal access to opportunities.
- Working proactively to encourage these organisations to participate in the procurement process.
- Seeking feedback on the procurement process to ensure the process is as accessible as possible to as many as possible.

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A new publication duty in relation to procurement would need to be very clear, relevant and proportionate or it might have a negative impact for us in relation to staffing and capacity to complete the duty satisfactorily.

We are however clear that procurement is already one way for us to have a wider positive impact on inequalities and we are keen to see how we can work with this proposal as it is developed.

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?

We are looking forward to the 2022 publication of the revised equality evidence strategy. We agree that the focus initially has to be building knowledge and skill amongst Policy makers and enhancing the datasets, so that intersectional data analysis and the benefits of disaggregated data are more widely understood and are integrated into approaches.

The nature of the data that SCRA holds in relation to children known to the Hearings System is a potential barrier to currently undertaking intersectional analyses. This is because the data that we hold is largely in narrative form (i.e. it comes from referrals and reports submitted by other statutory agencies) and, although containing professionally evidenced opinions about the needs of children, does not offer standardised reporting for all children. In order to be able to explore in depth the multiplicative and interactive ways in which protected characteristics and social inequality impact upon the lives of the children, and families, who use our services there would need to be a substantive move towards standardised reporting by local authorities and other external agencies who supply information to the Children's Hearings System. For instance, a current research project being undertaken by SCRA to explore the lived experiences of children under the age of 12 in residential care, while being able to characterise the range of social inequities that

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the children experience, including the types of complex trauma that the children have experienced, is unable to explore how these factors interact and intersect with each other as the extraction of the data required for this data is so labour intensive that there are insufficient sample sizes to undertake these more refined analyses. This situation could be partly resolved through standardised reporting of agreed protective characteristics and social determinants to SCRA by partner organisations.

We have not previously reported data using an intersectional approach. We have some concern that as an organisation we have neither the statistical knowledge or capacity to undertake these analyses, and as such would require additional supports in order to fully explore the complex interplay of protected characteristics and social inequity. Thus, at present there is a danger that we may be moving into practical and policy level applications of an approach before we can really understand the capacity that we have to undertake the approach in practice.

We agree “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.” However, we have concerns about the risk of disaggregating data to a level where privacy becomes compromised. This is a risk that is already live in our work and we frequently have to exclude numbers <5 when reporting data. So while we see the benefit of collecting and reporting on the interactive effect of protected characteristics and social inequity for employment data, there is a real risk that we not be able to do this in a way that afford privacy to our staff members. An example of this could be in terms of assessing the intersection of gender and disability on the salaries of SCRA staff as once you move into management grades the likelihood is that we would be able to present aggregated data without affecting the privacy of staff members but we would not be able to report disaggregated descriptive data due to the relatively small size of the organisation and the small number of individuals who would fall into categories that may be more disadvantaged. It is also likely that any statistical reporting would be biased due to small sample sizes. However, was the data that was collated to be supplied as part of a wider national statistical review exploring the intersectionality of

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gender and disability on public sector pay, and not disaggregated by organisation, we would see real benefits of this for informing policy.

As an organisation, we would also need to invest in work to determine how we were going to use any new information that came from using an intersectional approach to data analysis at a system, policy and an individual level across our work – with our staff and with partners and the children and families who are involved with us.

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

This is difficult to answer. Listed authorities will be resourced differently and will have different uses for disaggregated data. They may also have different pre-conceived ideas about intersectionality and the benefits of understanding data in this way. Listed authorities may need extensive practical and financial support in order to develop their data collection / retention / analysis to meet any meaningful new intersectional duty and may also need extensive practical and financial support in order to embed the new data analysis within their system level / policy level and individual level decision making. As an organisation who receives and collates significant levels of information about children and their families we would want to see a standardised approach to the collection of variables that were considered to be important to understand the intersectional effects of protected characteristics and social inequity upon child welfare, children's health and decision making by statutory bodies. This would require investment to ensure that both the systems existed to ensure that routine reporting was possible, but also that staff were adequately trained in the importance of routinely recording this information. As an organisation we would also need investment to develop the skills of existing research and data management staff to undertake intersectional analyses, or to employ additional staff who already hold these skills. Alternatively, we would need to work with colleagues within the Scottish Government to identify how data we hold can be made more accessible for data analysis as the current narrative format of much of our data means that matching it with existing administrative datasets is extremely labour intensive.

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It might be that artificial intelligence approaches may provide a way forward. AI could be developed to fully capture the variables that are considered important for understanding the complexities of the interplay between protected characteristics and social inequity for the data that we already hold on children. However, in the longer term, investing in an agreed minimal level of routinely collected and shared information for children and families known to social services, the police and the Children's Hearings System would be the more ideal solution to provide a consistent and evidenced based picture of how multiple forms of disadvantage affect the lives of our service users.

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?

NO

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

- 1) a clear framework for data collection
- 2) a definite framework for intersectional data analysis
- 3) guidance on using and reporting intersectional data, including some worked examples of ways to use the data to advance equality and to reduce inequality.

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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?

We are excited to see the outputs from the Scottish Women's Budget Group. We think that considering budget approaches from the top down in this way will progress equalities for the relevant protected characteristics more quickly. We are very interested to see that the approach of the Budget Group is to focus on effective impact assessment and we wondered if materials in relation to this could be made available in advance of the Group completing their work (2024).

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?

We agree with this but would ask for support in order to develop an effective methodology and to ensure that the methodology we used was what was intended and was consistent with other public bodies. Our wider staff group has historically been subject to gender imbalance and gender budgeting could be a very useful tool post-pandemic to really focus us as employers on the ways to effectively support staff who have been impacted as a result of the pandemic in many different ways.

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

- 1) a clear methodology for intersectional gender budget analysis.
- 2) clear guidance on using gender budget analysis in budget setting and other work in relation to our employees.

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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?



NO

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

Please see above. We think there is some work to be done for this to be a reality in our budget processes – we do, however, think that this could be achievable if the supports outlined above were accessible.

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

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?

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.

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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.

No answer given.

Question 12:

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

No answer given.

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?

We think that this could be very helpful.

Question 14.1:

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

No answer given.

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.

No answer given.

SCRA Research, Procurement, Data, Inclusion & Diversity and Policy, 2021