# POLICY NOTE

# THE EQUALITY ACT 2010 (SPECIFIC DUTIES) (SCOTLAND) AMENDMENT REGULATIONS 2024

## SSI 2024/176

The above instrument was made in exercise of the powers conferred by sections 153(3), 155(1)(c) and (2), and 207(4) of the Equality Act 2010 ("the 2010 Act"). The instrument is subject to affirmative procedure.

## Summary Box

The purpose of the instrument is to make the Patient Safety Commissioner for Scotland ("PSCS") and Community Justice Scotland ("CJS") listed authorities for the purpose of the the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 ("the 2012 Regulations"). Listed authorities have specific duties which enable them to better perform the public sector equality duty (the "equality duty") under section 149 of the Equality Act 2010.

## Policy Objectives

The 2012 Regulations place the following specific duties on listed authorities, to support them to better perform the equality duty set out in the 2010 Act:

- To report progress on integrating the equality duty into the authority's other work
- To publish equality outcomes which the authority has decided to work on in particular and report on progress made to achieve those outcomes
- To assess and review policies and practices against the needs which form the equality duty
- To gather and use employee information
- To publish gender pay gap information, where the authority has more than 20 employees
- To publish statements on equal pay and occupational segregation, where the authority has more than 20 employees
- To consider whether award criteria and conditions in relation to public procurement should include consideration of whether a bid will help the authority better perform the equality duty
- To publish these statements and reports in an accessible manner
- To consider other matters which the Scottish Ministers may further specify.

The Patient Safety Commissioner for Scotland Act 2023 ("the 2023 Act") established the PSCS and sets out their general functions, which are to advocate for systemic improvement in the safety of health care, and to promote the importance of the views and experiences of patients and other members of the public in relation to the safety of health care.

The Community Justice Scotland Act 2016 ("the 2016 Act") established CJS and sets out its main functions, namely to promote the National Strategy for Community Justice; to monitor, promote and support improvement in, and keep the Scottish Ministers informed about, performance in the provision of community justice; to promote and support improvement in the quality and range of provision of community justice and making the best use of the

facilities, people and other resources available to provide community justice; and to promote public awareness of benefits arising from persons who are convicted of offences being sentenced to community disposals rather than imprisonment or detention in penal institutions, and managing and supporting certain persons with a view to them not offending in future or, if that is not realistic, reducing future offending by them. Equality legislation was not updated when the new model of community justice was established under the 2016 Act, and the Equality and Human Rights Commission subsequently recommended that appropriate changes be made to include CJS (though up to this point CJS has considered itself to be under the general Public Sector Equality Duty, within section 149 of the 2010 Act, through the application of section 149(2)). The Scottish Government agrees with that recommendation.

These draft Regulations propose to make the PSCS and CJS listed authorities for the purposes of the 2012 Regulations so as to require them to comply with these specific duties. They will also remove references to Community Justice Authorities and Chief Officers of Community Justice Authorities, which were dissolved by the 2016 Act.

**EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

**Consultation**

In accordance with the requirement under section 152(3) of the 2010 Act, the Commission for Equality and Human Rights was consulted and is content with the proposal to add the PSCS and CJS to Part 3 of schedule 19 of the 2010 Act. Stakeholders who were consulted during development of the 2023 Act, are aware of the intention to add the PSCS to the list of authorities subject to the public sector equality duty and support these proposals. In addition, CJS has been consulted and is content with the proposals.

**Impact Assessments**

A combined Equality, Fairer Scotland and Health Inequalities impact assessment (EFHIA) was undertaken in relation to the Patient Safety Commissioner for Scotland Bill which preceded the 2023 Act. That EFHIA is published at https://www.gov.scot/publications/patient-safety-commissioner-scotland-bill-combined-equality-fairer-scotland-health-inequalities-impact-assessment/. The EFHIA supports the application of equality duties to the PSCS. It was made clear during passage of the Bill that the policy intention was to ensure the PSCS was subject to these duties.

An equality impact assessment (EQIA) was undertaken in relation to the Community Justice Scotland Bill which preceded the 2016 Act. This notes that the new national body (CJS) will generate opportunities to advance equality of opportunity. That EQIA is published at https://webarchive.nrscotland.gov.uk/20200121004254/https:/www2.gov.scot/Publications/2015/05/6773/downloads.

Child Rights and Wellbeing, Island Communities, Data Protection and Strategic Environmental impact assessments were not carried out for this instrument as these assessments were either carried out fully or screened out during preparation for the respective Bills and this instrument is not considered to result in any further impacts.

**Financial Effects**

The Cabinet Secretary for Justice and Home Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government

*April 2024*