

POLICY NOTE

THE EQUALITY ACT 2010 (SPECIFICATION OF PUBLIC AUTHORITIES) (SCOTLAND) ORDER 2024

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by Section 151(3) of the Equality Act 2010 (“the 2010 Act”). The instrument is subject to affirmative procedure.

Summary Box

The purpose of the instrument is to add the Patient Safety Commissioner for Scotland (“PSCS”) and Community Justice Scotland (“CJS”) to the list of public authorities in Part 3 of schedule 19 of the 2010 Act. Listed public authorities are required to comply with the public sector equality duty.

Policy Objectives

The public sector equality duty in section 149(1) of the 2010 Act requires public authorities 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 2010 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.

Those bodies and office holders subject to the public sector equality duty are listed in Part 3 of schedule 19 of the 2010 Act.

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.

This draft Order proposes to add the PSCS and CJS to Part 3 of schedule 19 of the 2010 Act so as to require them to comply with the general public sector equality duty. It 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