

Scottish Government
Equality and Human Rights Mainstreaming Strategy
5 February 2025

Introduction

1. NASUWT welcomes the opportunity to comment on the Equality and Human Rights Mainstreaming Strategy consultation.
2. NASUWT is the Teachers' Union, representing teachers and school leaders in all sectors of education and across all 32 local authorities in Scotland.

1. Do you agree with the vision?

No

1a. Please explain your answer or provide more information

The Union agrees that the public sector, including the Scottish Government, should embed equality and human rights throughout the work of the public sector and policymaking. There are, though, deep systemic barriers which require to be addressed, including: existing silo working in the public sector; inconsistency of training and approaches across departments; lack of specificity around intersectional and gender-competent budgeting; failures to consistently embed the voices of lived experience; ensuring decision-makers within the public sector and government are representative of the communities they serve; and ensuring systems and processes are established to include impact monitoring, review, analysis and genuine reflection.

NASUWT is concerned that the proposed vision ignores rather than unifies existing legislative duties under the Public Sector Equality Duty and the Equality Act 2010. It is worth noting, though, that while in favour of cohesion, NASUWT does not endorse a homogenised approach which, for example, might potentially undermine the progression of existing equalities work e.g. around anti-racism.

An over-emphasis on a human rights approach has risks whereby we might create a hierarchy of legislative duties, with requests relating to specific individual equality strands potentially being perceived as a sub-set. Equally, the human rights approach previously proposed by government with regard to incorporating international treaties will result in a further tiered system. As was set out in our response to the 'A Human Rights Bill for Scotland: 5 October 2023' consultation:

'NASUWT is particularly concerned with LGBTI rights because, of course, there is no convention or covenant in play that addresses those rights. The Bill runs the risk of relegating these rights relative to those of others covered by the relevant conventions'

There can be no hierarchy of duties.

The law also needs to be accompanied by a reasonable degree of certainty so that everyone has a basic understanding of what is expected of them and can act accordingly: regrettably, the current vision does not meet this test.

2. Do you agree with the objectives?

Don't Know

2a. Please explain your answer or provide more information

The Strategic Objectives do not clearly align with other national commitments and it is not clear in the consultation paper from where these have been

derived. Further, it is unclear how these objectives then track forward to the six key drivers for change. They are also worded quite broadly, and a lack of specificity will hamper both a shared, system-wide understanding as well as successful analytics around future reporting and review.

It would have been preferable for the consultation paper to set out the process undertaken to reach these objectives: including the engagement undertaken across a variety of interested parties, as well as the identification of existing barriers within the system. A practical and pragmatic approach to change is preferred as opposed to an overly abstract theory.

3. Do you agree that strengthening leadership is a key driver for mainstreaming equality and human rights?

Yes

3a. Please explain your answer or provide more information.

Strengthening leadership is welcome but it must mean more than increasing knowledge and advocacy based on improved understanding. Ideally, we need to ensure diversity and representation across our leadership cohort.

Leadership approaches, as well as organisational cultures, are really important and can impact gender, race and disability pay gaps. To move towards greater distributed leadership cultures will require many existing system leaders to relinquish power; this is not addressed in the proposals. If training and advocacy alone were sufficient to embed strategic and systemic change we would not continue to see, for example, a stubborn and persistent gender pay gap 50 years after UK legislation was passed.

4. Do you agree with the focus on different levels of leadership?

Don't know.

4a. Please explain your answer or provide more information.

While, on the face of it, the three levels cited are of critical import, there is a concern that such prescription will become tick box and reductive over time.

Everyone will have a role in organisational culture and leadership in a system which values a distributed leadership approach. How these levels are framed is important as it may entrench existing hierarchies and inequalities.

There is also a lack of specificity around expected activity, there are inconsistencies in language and approach between the three proposed levels of leadership and, further, the approach is not landed within the existing legislative and policy landscape which will likely lead to confusion.

5. Have we captured the core elements of strengthening leadership within the context of mainstreaming?

Don't Know

5a. Please explain your answer or provide more information.

Many of the gaps referenced in earlier questions require to be addressed, including specific reference to diversity of leadership as well as establishing leadership approaches and cultures which support systemic change.

6. What actions would you recommend to ensure strengthening leadership as outlined above will contribute to mainstreaming?

Visibility is incredibly important to systemic change, as is prioritisation. Neither of these points are addressed within the actions.

7. Do you agree accountability and transparency are a key driver for mainstreaming equality and human rights?

Yes

7a. Please explain your answer or provide more information.

NASUWT fully supports the statement that:

'Those who live in Scotland have the right to relevant information about policies that affect them in a format and structure that suits them. This includes legislative activities, policymaking, legal provisions, policy enforcement and performance, administrative budget, and public expenditure.'

Scottish Government, and the wider public sector, must be accountable to the public, as well as stakeholders, for the way they have carried out their functions. This accountability must encompass scrutiny of performance on realising and protecting equality and human rights'

8. Have we captured the core elements of accountability and transparency within the context of mainstreaming?

No

8a. Please explain your answer or provide more information.

The paper reads as though the system is currently operating optimally in terms of accountability and transparency. NASUWT would have welcomed a more honest reflection on the barriers which exist in the system in order to inform and improve these mechanisms moving forward.

There are different levels of accountability possible when comparing scrutiny bodies, paper-based reviews or impact assessments and 'key stakeholder groups'. It would have made sense to tease out the variance in approach and efficacy of each model, including that of the general public. This work requires to be done first, to enable the responder to identify what is missing. Even where coverage on paper exists, funding and capacity require to be considered.

9. What actions would you recommend to ensure greater accountability and transparency contributes to mainstreaming?

An evidence-based approach to examining existing practice is a critical first step. There are already systemic gaps in accountability between national organisations around responsibility for equality scrutiny, including both data collection as well as audit functions.

It is also important that human rights are not conflated with equalities, they cannot be used interchangeably. Coherence and clarity around audit structures, and their intersecting roles in human rights and equalities scrutiny, will be critical.

The Union would also like to see specific mention of intersectional data approaches, which would also improve transparency and accountability.

In terms of engaging a wider audience in the consultative process, it would have been better to use examples in the consultation document and be clearer around proposals and impact. The means and manner through which we communicate will directly impact the response garnered: could the general public understand the questions being asking in this consultation paper, feel empowered to engage in the discussion and be able to relate the policy proposals to their own life experiences?

10. Do you agree that ensuring an effective regulatory and policy environment is a key driver of mainstreaming equality and human rights?

Yes

10a. Please explain your answer or provide more information.

While regulation and the policy environment are not the only drivers to achieve systemic change, they are nevertheless important and necessary. Equalities, human rights and mainstreaming are not always viewed positively by all sections of the press or, indeed, online on social media: clear frameworks for action provide external legitimacy and the internal comfort necessary to secure change as well as evidencing the prioritisation of a mainstreaming approach from government.

11. Have we captured the core elements of ensuring an effective regulatory and policy environment within the context of mainstreaming?

No

11a. Please explain your answer or provide more information.

Clarity relating to the interactions between Westminster and the Scottish Parliament is needed but not referenced. We have repeatedly seen

legislative competence raised in the last decade as a barrier, with the UNCRC being but one example.

Equally, concerns about a cluttered and incoherent policy landscape are not addressed. A very surface-level summary is given within the consultation document which does not consider the impact to date of existing regulatory functions. It is concerning that we have not seen any substantial changes following the PSED consultation in 2022, which does not then foster faith and confidence that the Scottish Government is poised to undertake anything more than surface-level change. It is worth revisiting the Union's comments from the '*Public Sector Equality Duty in Scotland: 11 April 2022*' consultation that:

'In a busy policy landscape, it would be useful to have these proposals more clearly framed with other work being undertaken nationally; for example, in relation to human rights and fair work. The risk in not doing so is that changes are rushed through without first establishing policy coherence.'

Furthermore, an honest appraisal of the reasons the PSED has failed to make meaningful progress in the field of equalities should have been undertaken and mapped across to agreed changes which would facilitate structural change. It is critical that the Scottish Government does more than just espouse equality and that it actively seeks to address the societal inequalities, discrimination and prejudice, by building a future founded upon the trade union principles of equality and fairness, by seeking out the voices of those with protected characteristics as a priority and by ensuring a change management process exists which is both strategic and explicit in its aims and outcomes.'

Finally, Scottish Ministers need to lead on the implementation of the PSED in Scotland. The narrative of delivering excellence and equity in education has been pervasive and this oft-repeated national priority has undoubtedly impacted on local authority and school planning and processes. The same import and political priority requires to be given to equality and the PSED in order to build political capital and influence key leaders within listed authorities'.

It is not clear that any cognisance has been taken of the concerns raised 3 years ago in that consultation process.

12. What actions would you recommend to ensure that an effective regulatory and policy environment will contribute to the achievement of mainstreaming?

NASUWT would be against any additional burdens which were bureaucracy-heavy and action-light. It would be preferable to ensure existing processes were improved, for example in relation to Equality Impact Assessments.

On a very basic level, we need to ensure communication of outcomes and any consequent changes post-process are shared more effectively. Improvements in community cohesion, trust in government and processes as well as benefits to core business should be front and centre. It should be clear how both people and processes are impacted. Also, without diversity in the workforce of those who are undertaking the reviews and completing the paper processes, how can we truly embed the voice of lived experience? Greater evaluation of the correlation between diversity in the workforce and the effectiveness of policy drivers and reviews is required.

13. Do you agree that utilising evidence and experience is a key driver for mainstreaming equality and human rights?

Yes

13a. Please explain your answer or provide more information.

As well as being a key driver, it can also be a barrier. Scottish Government needs to be alive to the challenges of inaction where data gaps exist: this was explored in more detail in the Union's response to the PSED consultation in 2022:

'...there has been a failure to link data gathering and equality outcomes. This disconnect is in some part attributable to variations in the availability of data and an unwillingness to see the narrative of lived experience as of equivalent

import when viewed alongside a numbers-based dataset. Given many people do not wish to disclose their protected characteristics, many public bodies view incomplete or limited data as an insurmountable barrier to effective strategic planning and reporting.

The NASUWT is therefore strongly in favour of any proposal which mandates listed authorities to report on how they have used lived experiences, or the organisations representing people with lived experiences, throughout their implementation of the duties'

14. Have we captured the core elements of utilising evidence and experience within the context of mainstreaming?

Don't know.

14a. Please explain your answer or provide more information.

NASUWT is strongly supportive of the need to gather and use intersectional data. Indeed, the Union has been consistently arguing for data gathering to adopt an intersectional lens for some time: this approach is already utilised in the NASUWT's own annual Big Question survey. While recognising data needs to be intersectional, insufficient detail is contained within the consultation document to be able to confirm whether this will be able to be successfully achieved.

The politicisation of some data is not referenced within the consultation paper and yet this often impacts not only the collection but, thereafter, the disclosure of data. For example, in 2024 NASUWT submitted the following motion to STUC LGBT+ Conference, which passed:

Vexatious FOI Requests (2024)

Conference notes that there are both individuals and groups online who oppose work to support LGBTI people. Conference acknowledges that schools, and other public bodies, are facing increased requests by such groups for information relating to engagement with charities and third sector organisations supporting and advocating for LGBT Inclusive Education.

Conference notes that vexatious uses of FOI legislation to target schools and individual teachers can have a deleterious impact on those teachers and headteachers, oftentimes being exposed to vitriol online and in the press as a result, as well as negatively impacting LGBTI children and young people in the school and community who are witnessing this discourse.

Conference notes that a Bill to reform Freedom of Information legislation in Scotland is currently being considered in the Scottish Parliament and calls on the STUC to advocate for:

- (i) increased accountability for, and protection against, vexatious FOI complaints;*
- (ii) governmental awareness, and acknowledgement, of the impact of such vexatious complaints on teachers and other public sector workers, many of whom have felt publicly outed and their privacy breached.*

15. What actions would you recommend to ensure that utilising evidence and experience as outlined above will contribute to the achievement of mainstreaming?

Clearer and improved approaches to lived experience and engagement are essential. Significantly more time and effort needs to be given to exemplifying good practice in this area. The risks of alienation and relational damage are very real: it is essential that, where information is being gathered by individual policy makers, they have sufficient knowledge and understanding to create a safe space. Support and interventions to reach the voices of those who are not usually heard is also important: this will take time and investment. Finally, the role of lived experience should not be limited to the repeated exemplification of data. Internal barriers to inclusion in the workforce must simultaneously be addressed, while the onus to find a solution should not be placed at the door of those with lived experience; it is equally true that many feel excluded from participation in the policy creation sphere beyond the retelling of their experience.

16. Do you agree that enhancing capability and culture is a key driver for mainstreaming equality and human rights?

Yes

16a. Please explain your answer or provide more information.

NASUWT fully agrees that enhancing capability and culture are key drivers for mainstreaming equality and human rights. As one example, through the work of the Anti-Racism in Education Programme (AREP), the skill and knowledge of Scottish Government staff involved has been both visible and appreciated. Their ongoing and sustained involvement in anti-racism work, however, has had limited bleed across other Government departments. A passive approach to upskilling staff, either simply by proximity or information-sharing or even by attending a one-off training event, will not have the impact or reach which shared ownership of a project and ongoing engagement with third sector and the voices of lived experience will foster.

17. Have we captured the core elements of enhancing capability and culture within the context of mainstreaming?

Don't know

17a. Please explain your answer or provide more information.

Prioritisation and investment in the development of staff will require not just a budget, but also a model for delivering sustainable learning and development. Who would deliver the learning and how this would be quality assured are critical to ensure it is not just a tick-box online learning module.

Equally, sufficient support mechanisms need to be in place for those within the Government workforce with an experience of disadvantage and discrimination. Tackling systemic disadvantage internally must go hand-in-hand with upskilling the workforce: this means addressing diversity within staffing, ensuring issues of bullying and harassment are dealt with appropriately including appropriate reporting and monitoring mechanisms being in place. It is also clear that those with lived experience are often overburdened with the labour to address those challenges in their workplace,

often with little recognition or reward. In short, institutional discrimination must be addressed in tandem with upskilling staff.

18. What actions would you recommend to ensure that enhancing capability and culture as outlined above will contribute to the achievement of mainstreaming?

As set out in question 1, it is important we do not end up with a homogenised approach to mainstreaming, which would undermine existing work undertaken to date.

It is also to be anticipated that the recognised workforce Unions would have a significant role to play in negotiating and agreeing any workplace proposals in relation to training and professional learning.

19. Do you agree that this Strategy will provide a foundation to influence a culture of mainstreaming equality and human rights within Scottish Government and the wider public sector?

Don't know.

19a. Please explain your answer or provide more information.

While the Union does not disagree with any of the intentions set out in this section of the consultation paper, further and better quality information would be required in order to comment in more detail. In particular, specificity around actions for change and guarantees around continuity and rigour would be required.

20. Do you agree that improving capacity is a key driver for mainstreaming equality and human rights?

Yes

20a. Please explain your answer or provide more information.

Allocating resources and budget to fully integrate equality and human rights, as well as building them into resource allocation and budget decisions, are critical. The Union also supports funding for third sector organisations.

21. Have we captured the core elements of improving capacity within the context of mainstreaming?

No

21a. Please explain your answer or provide more information.

There is no reference to consultation around decision-making on budgets. It is often the case that political decisions around funding are made without reference to the relevant workforce or key partners: a recent example within education is the creation of a Centre for Teaching Excellence. With finite budgets, it is increasingly important to ensure the allocation of funding is consulted on and based on the needs of the system, rather than to further short-term political narratives.

22. What actions would you recommend to ensure that improving capacity will contribute to the achievement of mainstreaming?

Seek to avoid duplication across strategies for mainstreaming in equalities and human rights as well as prioritising an action-based, rather than a paper-based approach.

23. Do you think the proposed approach to a collated Action Plan will drive change?

No

23a. Please explain your answer or provide more information.

The system is currently over-burdened and under-funded which is a massive barrier to drive change.

The Union believes defining success should be the first step and ensuring we can do so clearly. In short, how will we know if we are mainstreaming successfully? The final outcomes need to be split into short, medium and long term, alongside a clear and rigorous review mechanism. This work must be undertaken before we complete any action plan.

24. Do you think there is a need for a cross-public sector toolkit to support mainstreaming of Equality and Human Rights?

Don't know

24a. Please explain your answer or provide more information.

There is a risk that a toolkit cross-cutting the public sector will lack specificity and exemplification for individual contexts.

For instance, where guidance is not education-specific, it is often worded in a way which does not land effectively within school settings. Schools themselves then often view such guidance as a local authority responsibility and this is a barrier to embedding actions. Therefore, a cross-public sector toolkit will likely be used at the highest level within organisations and may be a barrier to embedding the desired approach across all levels and settings.

Nevertheless, a high quality toolkit could reduce duplication of effort and help to share learning. Templates, exemplification and specific expectations would be very welcome: it is, however, dependent upon individuals and authorities having the capacity to review the documents.

25. What practical steps would you include to make the toolkit an effective resource?

It will be important to invest money to create and maintain an up-to-date toolkit, as well as invest in staff to ensure they have the time to utilise the resources. The Union would also expect further consultation with key partners in the creation of the resource.

As set out above, it is important we do not end up with a homogenised approach to mainstreaming, which would undermine existing work undertaken to date.

26. What are your views on establishing additional reporting requirements?

Additional stand-alone reporting requirements should not be created.

26a. Please explain your answer or provide more information.

NASUWT is concerned about bureaucracy-heavy approaches which may already be covered by existing reporting mechanisms. The first step should be a full data analysis of reporting duties to identify any gaps, rather than an automatic centralised, additional stand-alone reporting requirement for mainstreaming. It is also important to consider the extent to which such an approach would result in significant change, considering existing evidence regarding PSED reporting for example.

The Union is pleased to note the annual statement on gender policy coherence set out within the consultation paper, as a result of a recommendation from the National Advisory Council on Women and Girls. If successful, a similar approach could be adopted to policy coherence across other protected characteristics.

27. To what extent do the drivers capture the full range of activity required to mainstream equality and human rights?

Captures some of the range.

27a. Please explain your answer or provide more information.

Full details have already been set out earlier in the consultation, including requests for further and better data. The implementation of a theory of change model would be most welcome.

Some drivers for change have been ignored. This may not be because Government is not able or does not wish to legislate around these factors, however, they should nevertheless be acknowledged within the consultation paper e.g. press, social media, international context, political sphere, communications strategies.

28. Please provide any more information that you think would be useful, which is not already covered in your previous responses.

N/A

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NASUWT is happy for this response to be published with our name and to be contacted again by the Scottish Government in relation to this consultation exercise. We confirm that the privacy policy has been read and consent to the data we have provided being used as set out in the policy.