



Equality and
Human Rights
Commission

Scotland

Consultation Response ###

Scotland's Fourth National Planning Framework – Call for Ideas

April 2020

Laura Pasternak

Contents

| | |
|---|-----------|
| About the Equality and Human Rights Commission | 2 |
| Who we are..... | 2 |
| How we have approached this consultation | 2 |
| Summary | 3 |
| Our Response | 4 |
| ‘Improving equality and eliminating discrimination’ | 4 |
| 1. What development will we need to address climate change? | 9 |
| 2. How can planning best support our quality of life, health and wellbeing in the future? | 10 |
| 3. What does planning need to do to enable development and investment in our economy to benefit everyone? | 12 |
| 4. What infrastructure do we need to plan and build to realise our long term aspirations?..... | 13 |
| Contacts | 15 |
| EASS | 15 |

About the Equality and Human Rights Commission

Who we are

The Equality and Human Rights Commission (“the Commission”) is the National Equality Body (NEB) for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We are an “A Status” National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

How we have approached this consultation

The Equality and Human Rights Commission in Scotland welcomes the opportunity to respond to the Fourth National Planning Framework (NPF4) Call for Ideas. As the national equality body for Scotland, England and Wales, we are keen to help shape the vision for Scotland in 2050.

We are submitting a short submission at this stage highlighting priority interests and issues in relation to the high-level outcome of ‘improving equality and eliminating discrimination’ and responses to the questions where we can add value in the Call for Ideas. We intend to engage more with this process at the later consultation stage this year.

Summary

- While we welcome that 'improving equality and eliminating discrimination' is a stand-alone outcome to NPF4, we also wish to highlight the need at this early stage to apply an equality lens/priority to each of the other outcomes.
- In order to plan fairly for everyone in Scotland, the Scottish Government must pay due regard to the PSED including specific duties, and the 'Fairer Scotland' socio-economic duty. In order to comply, these duties must be embedded in national planning from the outset.
- A full equality impact assessment must be carried out and published in a way which is accessible prior to or when the draft NPF4 is due to be laid in the Scottish Parliament in September 2020.
- The Scottish Government and planning authorities should employ evidence-based equality impact assessments and the Fairer Scotland duty to aid their strategic thinking, outcome and priority-setting, and action planning.
- Specific, evidence-based equality outcomes which address different protected characteristic groups in relation to planning should be developed by planning authorities.
- Cross-cutting themes of age, disability, race, religion or belief, sex, sexual orientation, gender reassignment and socio-economic disadvantage should be considered and links should be made to equality and poverty-related policies nationally, regionally and locally.
- Monitoring, evaluation and compliance activities should ensure that clear equalities standards are upheld and that desired equalities outcomes are central to this process.

Our Response

'Improving equality and eliminating discrimination'

We particularly welcome that NPF4 is intended to address the following high-level outcomes:

- 'Meeting the housing needs of people living in Scotland including, in particular, the housing needs for older people and disabled people'
- 'Improving the health and well-being of people living in Scotland'
- 'Improving equality and eliminating discrimination'
- 'Meeting any targets relating to the reduction of emissions of greenhouse gases'

When revising the National Planning Framework, focus on tackling inequality and supporting marginalised people should be a primary consideration. If not considered from the outset, during the participation and engagement stage, there is a high risk that inequalities and non-discrimination will be overlooked, reinforced, perpetuated or exacerbated.¹

This could involve analysing the responses to the call for views, in order to check if there are any people who share protected characteristics whose views may not be represented, but for whom NPF4 will nevertheless have implications. Furthermore, consultation processes should be fully accessible to ensure that people who share protected characteristics can meaningfully engage. Disabled people should be fully involved in the consultation process, including by providing easy-read documents and BSL translations where necessary, in consultation with disabled persons' organisations and in line with the Public Sector Equality Duty (PSED).

While we welcome that 'improving equality and eliminating discrimination' is a stand-alone outcome to NPF4, we also wish to highlight the need at this early stage to apply an equality lens/priority to each of the other outcomes.

¹ EHRC, [Technical Guidance on the PSED: Scotland, 2016](#) [accessed 18/3/20], pp. 85-86. [Backbier.M et al., A Children's Rights Approach, 2019](#) [accessed 18/3/20] pp. 9-13.

For example, the principal policy on sustainability and, where relevant, individual subject policies, aimed at addressing the high-level outcome of 'meeting any targets relating to the reduction of emissions of greenhouse gases', should include 'improving equality and eliminating discrimination' as a guiding principle in addition to supporting climate change mitigation and adaptation.

This will help to address the negative impacts of climate change which disproportionately affect people in vulnerable situations, including women, children, older people, ethnic minorities, disabled people and those from disadvantaged backgrounds.²

Taking such an approach should meaningfully integrate equality into national climate action policies, helping ensure they are adequate and non-discriminatory. As a result, diverse views will be included in finding effective and inclusive solutions that mitigate unintended consequences planning may have on protected characteristic groups.

This will also help Local Authorities meet their obligations under the PSED, as an example of mainstreaming the equality duty.³

In order to plan fairly for everyone in Scotland, the Scottish Government must pay due regard to the PSED including meeting specific duties, and the 'Fairer Scotland' socio-economic duty. In order to comply, these duties must be embedded in national planning from the outset.

Equality Act 2010 - Public Sector Equality Duty and the Fairer Scotland Duty

The Public Sector Equality Duty (PSED), which is found in section 149 of the Equality Act 2010, requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.

² OHCHR, 'The rights of persons, groups and peoples disproportionately impacted by climate change' (30th September 2016), [last accessed 2/4/20], p. 1; and IPCC, AR5 (2015), [last accessed 2/4/20], p. 54; OHCHR, 'The impacts of climate change on the rights of the child' [last accessed 22 April 2020].

³ The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, Reg. 3. See also EHRC, Mainstreaming the PSED: a guide for public authorities in Scotland, 2016 [last accessed 18/3/20] pp. 10-11.

- Foster good relations between people who share a protected characteristic and those who do not.

The broad purpose of the PSED is to integrate consideration of equality and good relations into the day-to-day business of public authorities. In Scotland, there are specific duties to support implementation of the PSED and which apply to specific listed authorities. The Scottish Government have announced that they intend to review the specific duties, and we will be working with them to ensure that they are made as effective as possible.

In April 2018, the Fairer Scotland Duty came into force (the socio-economic duty), which requires certain public authorities to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions. The interim guidance is scheduled to be reviewed by the Scottish Government. NPF4 should be used as an opportunity to improve performance in reducing socio-economic inequality.

Equality Mainstreaming and Outcome Setting

As a general response to the questions asked in the NPF4 call for ideas, **cross-cutting themes of age, disability, race, religion or belief, sex, sexual orientation, gender reassignment and socio-economic disadvantage should be considered and links should be made to equality and poverty-related policies nationally, regionally and locally.**

This includes the Scottish Government 'Race Equality Action Plan', 'Improving the lives of Gypsy/Travellers: 2019-2021', 'Fair Work Action Plan', 'Equally Safe Delivery Plan', 'Fairer Scotland for Disabled People Delivery Plan' and 'Scotland's Wellbeing: National Outcomes for Disabled People'.

Regional spatial strategies should link into other equality-related policy initiatives such as: City and Regional Growth Deals,⁴ the Strategic Transport Projects Review, the Infrastructure Investment Plan, the Land Use Strategy, etc.

We also encourage the Scottish Government and local authorities to plan with an increased and tailored focus on tackling inequality and supporting marginalised people in a more localised context, tapping into any local equality-related policy and community engagement initiatives.

⁴ For example, see previous EHRC work on City Deals to support Regional Partners to incorporate equality considerations into their strategies: Oswald, C, 'Equality and investment in city region and growth deals' (2019) [last accessed 30/4/20].

For example, the research on the adoption of Scottish Planning Policy in Local Development Plans did not cover equality beyond a reference to linking to the equality agenda under the sustainable development topics.⁵

Specific, measurable and evidence-based equality outcomes which address the needs of different protected characteristic groups in relation to planning should be developed by planning authorities through meaningful participation with groups of people with lived experience, and informed by research such as the EHRC's three-yearly *Is Scotland Fairer?* reports. The next report is due in 2021.

Monitoring, evaluation and compliance activities should ensure that clear equalities standards are upheld and that desired equalities outcomes are central to this process.

Evidence-based equality impact assessments and the Fairer Scotland duty

The Scottish Government and planning authorities should employ evidence-based equality impact assessments and the Fairer Scotland duty to aid their strategic thinking, outcome and priority-setting, and action planning.

We note the publication of the 'Integrated Impact Assessment (IIA): Screening / Scoping Report', as well as the plans for engagement events and research to plug equality evidence gaps, and to publish an equality impact assessment.

Our *Is Scotland Fairer 2018* report and *Housing and disabled people: Scotland's hidden crisis 2018* report should be analysed to supplement this evidence base to help give proper consideration to the potential impact on people with protected characteristics.

The Scottish Government should collect further qualitative data on wider accessibility issues beyond housing for disabled people and the accommodation needs of Scottish Gypsy Travellers. Data should also be collected more strategically, to allow for a break down by race or disability, rather than being published as 'white/non-white' or 'disabled/not

⁵ Research Project: Adoption of Scottish Planning Policy in Local Development Plans (2019), p.51.

disabled'.⁶ Notwithstanding, the screening exercise is not to be treated as an assessment of impact itself.⁷

Therefore, **a full equality impact assessment must be carried out and published in a way which is accessible prior to or when the draft NPF4 is due to be laid in the Scottish Parliament in September 2020.**

We recognise that this should be a living document, especially given the long-term nature of NPF4, as its impact on equalities will evolve over time. Therefore, the equality considerations should be subject to regular review.

If evidence-based impact assessments relating to the protected characteristics are not carried out at this early stage, the Scottish Government risk designing parts of the population 'out' from the beginning.

A proper assessment of the impact on equality, including with a particular focus on socio-economic disadvantage, at this development stage will inform and/or modify NPF4.⁸ This should include linkages with the aforementioned equality-related national policies, as well as poverty-related policies. It should result in proposals which mitigate any potential negative impacts for protected characteristic groups, or people with lived experience of poverty.

Such proposals should be informed by the lived experience of these groups including old and young people, children, disabled people, women, minority ethnic groups, religious groups and people with experience of living in poverty.

The research, engagement and impact assessment should be intersectional, taking into account the interconnected nature of the protected characteristics, socio-economic disadvantage, and the unique form of multiple or overlapping discrimination or disadvantage some people experience in the planning system.

Procurement and Regulators

The Scottish Government and listed public authorities must pay due regard to the PSED in relation to award criteria and conditions in relation to public

⁶ EHRC, '[Is Scotland Fairer?](#)' (2018) p. 116 [last accessed 30/4/20]. We are also working closely with the Scottish Government on various projects to improve the collection of protected characteristic data.

⁷ EHRC, '[Technical Guidance on the PSED: Scotland, 2016](#)' [accessed 18/3/20], p. 84.

⁸ Scottish Government, '[The Fairer Scotland Duty \(Interim Guidance for Public Bodies\)](#)' (March 2018) p. 22.

procurement around planning. This means that public authorities must be able to demonstrate that they have consciously considered the need to eliminate discrimination, advance equality of opportunity and foster good relations when using their purchasing power.⁹

Bodies with responsibility for regulating, inspecting, or auditing public authorities within a particular sector could also play a role in relation to equality outcomes and priorities.

1. What development will we need to address climate change?

As previously stated, complying with the PSED, specific duties and 'Fairer Scotland' duty should embed equality into national climate action policies, helping ensure they are adequate and non-discriminatory.

For example, when limiting access to or increasing the cost of some fossil-fuel based services such as transport, protected characteristic groups should be consulted to shape solutions which do not disproportionately impact groups that depend on these.

This could include the need to capture and fully consider the views of disabled people regarding any climate action to ensure that they are not excluded by moves towards car-free days, cycling, and other solutions.¹⁰

The United Nations' Committee on the Elimination of Discrimination Against Women's concluding observations to the UK in 2019, paragraph 54, states that "Government should take action to ensure the equal participation of women and girls in rural areas in the development of policies on environmental disasters and climate change".

Large employers have significant carbon footprints, beyond fossil fuel companies themselves. There is scope within the Scottish Government and listed public

⁹ [The Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012, Reg. 9. EHRC, 'Procurement guidance for Scottish public authorities' \[last accessed 30/4/20\].](#)

¹⁰ See UN Committee of the Rights of Persons with Disabilities concluding observation to the UK in response to Q2 below.

authorities' aforementioned purchasing power to uphold equality and non-discrimination in the context of climate change.

2. How can planning best support our quality of life, health and wellbeing in the future?

We welcome the high-level outcome 'Meeting the housing needs of people living in Scotland including, in particular, the housing needs for older people and disabled people' of NPF4.¹¹

We refer to the recommendations in our response to the [Scottish Government's *Housing to 2040* consultation in February 2020](#), which was largely based on our [***Housing and disabled people: Scotland's hidden crisis 2018 report***](#).

We believe that NPF4, combined with other policies and strategies, could address our previous recommendations, including:

- The Scottish Government should highlight the PSED (and the specific duties) and the Fairer Scotland Duty in order to help relevant public authorities consider how best to address inequalities when making decisions in relation to housing provision.
- The Scottish Government should require all local authorities to ensure that a minimum of 10 per cent of new-build homes across all tenure types are built to a wheelchair-accessible standard. This should be monitored and reviewed throughout NPF4, Planning Policy or through changes to Building Standards.¹²
- Local authorities should meet their duty to publish their Equality Impact Assessments alongside their Strategic Housing Strategies and Strategic Housing Investment Plans.

¹¹ See previous EHRC calls to UK Government on this: [EHRC, UK Response to the Consultation on the National Planning Policy Framework, 2018](#) [last accessed 19/3/20].

¹² Carson. G, ['Building a More Accessible World for us All'](#) [last accessed 19/3/20]; Fitton. S, ['Places for Disabled People'](#) [last accessed 19/3/20].

The disproportionate impact of fuel poverty on protected characteristic groups should be a further consideration in planning related to housing as part of the 'Fairer Scotland' duty.¹³

Furthermore, an inclusive, participative and empowering policy approach will best ensure that planning policies contribute to the outcomes of improving the health and wellbeing of people living in Scotland and improving equality and eliminating discrimination.¹⁴

For example, the principle of participation should be applied as per:

- The United Nations' Committee on the Rights of Persons with Disabilities' concluding observations to the UK in 2017, paragraph 11 – disabled people should be involved in intersectional participation in policy design to make their rights a reality.
- The United Nations' Committee on the Elimination of Discrimination Against Women's concluding observations to the UK in 2019, paragraph 54 – the UK Government should take action to improve women's access to, and ability to influence decisions concerning, education, employment, healthcare and other support services in rural areas, including by ensuring access to transportation and the internet.
- The United Nations Committee on the Rights of the Child's concluding observations to the UK in 2016, paragraph 75 –
 - (a) In line with UN advice on children's right to rest, leisure, play and cultural life, ensure all children have access to safe play and leisure activities.
 - (b) Provide children, especially those from disadvantaged backgrounds and disabled children, with safe play spaces, and ensure they are accessible by public transport.
 - (c) Involve children in creating and monitoring policies and activities on play and leisure locally and nationally.

¹³ [Energy Action Scotland, Fuel Poverty Overview](#) [accessed 19/3/20].

¹⁴ [Equality & Human Rights Impact Assessment](#) [accessed 19/3/20].

3. What does planning need to do to enable development and investment in our economy to benefit everyone?

To improve on NPF3 and the Scottish Planning Policy, especially in the context of responding to the economic challenges of Brexit, it is important to make clear that addressing inequality should be related to protected characteristics and socio-economic status rather than simply regional or geographic inequality.¹⁵ ¹⁶ An over-reliance on the Scottish Index of Multiple Deprivation or work based on deprivation in terms of area which does not take account of deprivation arising from other characteristics is likely to exclude many of Scotland's most disadvantaged people.

It is therefore essential to ensure that a place-based deprivation approach¹⁷ doesn't create greater disadvantage for people who share certain protected characteristics, and the public sector equality duty and 'Fairer Scotland' duty provides a structure to support planning, inquiry, assessment and monitoring to ensure that spatial policies to address inequality can be successful.

In order for economic growth to be more inclusive, civil society, particularly people with, or who share protected characteristics and their representative groups, should play a role in the planning and budgetary process through meaningful participation.

The Commission recommends that equalities data should always be sought on the protected characteristics of project beneficiaries. Better use should be made of this data to measure impact, which complements the Scottish Government's inclusive growth focus. This would mean that effective monitoring and evaluation can be carried out on the impact of projects on people who share protected characteristics. Equality Impact Assessments will also be required as part of this process.

¹⁵ [Scottish Planning Policy, 2014](#) [accessed 3/3/2020] pp. 6 and 12.

¹⁶ [Scottish Planning Policy, 2014](#) [accessed 3/3/2020] pp. 6 and 12.

¹⁷ [EHRC, 'In equality?' \(2015\)](#) [accessed 3/3/2020].

Planners should also develop their equality competence. For example, the skills, knowledge, and analytical capacity to think about equality and planning in compliance with the equality mainstreaming duty.¹⁸ Furthermore, NPF4 is an opportunity to bring policy sectors together to work on achieving equality, including socio-economic equality, and therefore planners should be encouraged to avoid operating in silos.¹⁹

4. What infrastructure do we need to plan and build to realise our long term aspirations?

The aforementioned PSED, specific duties, 'Fairer Scotland' duty and participative approach should inform consideration of Scottish Gypsy Traveller sites in local development plans.

In relation to transport connections, women, people from ethnic minority groups and disabled people's participation in the Transport Citizen Panels could be an opportunity to inform the development of infrastructure in NPF4.²⁰ The mobility needs of disabled people should be integral to any planning design.²¹

We welcomed the revised equality outcomes in the National Transport Strategy 2 which took into account the Commission's guidance on setting equality outcomes, and see planning as a means to achieving these.²²

Lastly, in relation to sustainability, NPF4 could be more clearly aligned to the United Nation's Sustainable Development Goals. The following goals, from our perspective, could be given particular attention within the inclusive growth agenda:

[GOAL 1: No Poverty](#)

[GOAL 2: Zero Hunger](#)

¹⁸ Ritch.E, [Creating Public Spaces for Women and Men](#) [accessed 19/3/20].

¹⁹ Goodstadt. V, [Scotland 2050: Lessons from Our Spatial Planning Heritage](#) [accessed 19/3/20]. Findley. G, ['Places for Older People'](#) [accessed 19/3/20].

²⁰ EHRC Scotland, [Response to Scotland's National Transport Strategy 2 \(October 2019\)](#) [last accessed 19/3/20].

²¹ Ibid., pp. 5-6 and EHRC, [UK Response to the Consultation on the National Planning Policy Framework, 2018](#) [last accessed 19/3/20].

²² EHRC Scotland [Guidance for Scottish Public Authorities](#) [accessed 19/3/20]; Transport Scotland, ['National Transport Strategy 2'](#) (February 2020), [last accessed 2/4/20], p. 45.

[GOAL 5: Gender Equality](#)

[GOAL 10: Reduced Inequality](#)

Contacts

This response and related equality and human rights resources are available from [our website](#).

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. We welcome your feedback.

For information on accessing one of our publications in an alternative format, please contact: correspondence@equalityhumanrights.com.

Keep up to date with our latest news, events and publications by [signing up to our e-newsletter](#).

EASS

For advice, information or guidance on equality, discrimination or human rights issues, please contact the [Equality Advisory and Support Service](#), a free and independent service.

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 19:00 (Monday to Friday)

10:00 to 14:00 (Saturday)

Post FREEPOST EASS HELPLINE FPN6521

© 2020 Equality and Human Rights Commission

Published April 2020