Equality and Human Rights Commission Consultation Response to Scotland’s National Transport Strategy 2

Creating a fairer Britain



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# Introduction

The Equality and Human Rights 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).

In this response, we are only answering the questions that we consider are relevant and appropriate to our remit.

# Section A: The Vision and Outcomes Framework

The Commission’s three-year strategic plan commits us to working towards achieving our aim that public transport supports the economic and social inclusion of disabled people and older people. Using public transport means you can take part in all aspects of life, from going to work, to school, the hospital or visiting family or friends. We know that disabled people and older people face barriers when trying to use public transport, which means they cannot participate in all these aspects of life, and that efforts to improve public transport for disabled and older people are inconsistent.

Access to the physical environment and transport for disabled people is also understood and reiterated in the UN Convention on the Rights of Persons with Disabilities (UNCRPD) as being a vital precondition to allow disabled people to participate fully and equally in society and enjoy all their human rights and fundamental freedoms.

We welcome the ambition of the Scottish Government, as set out in the draft Strategy, and we are optimistic this vision can be delivered.

# Equality outcomes

The Commission is pleased the draft Strategy includes ‘Promoting Equality’ as one of its four priorities and that the Scottish Government has taken the positive step of attempting to identify equality outcomes that the National Transport Strategy will achieve.

While we appreciate and support this approach, to ensure best practice performance of the Public Sector Equality Duty (PSED) we recommend the Scottish Government reconsider the draft equality outcomes and in doing so takes into account the Commission’s guidance on setting equality outcomes.[[1]](#footnote-1) In particular, we recommend setting final equality outcomes that:

1. Focus on the biggest problems/ areas of inequality facing people who share particular protected characteristics when they are trying to use transport, which the Scottish Government can change through the National Transport Strategy
2. Will achieve practical improvements for people who experience discrimination, lack of choices and barriers to participation that are linked to a protected characteristic.
3. Will further the needs of the PSED[[2]](#footnote-2) to eliminate discrimination, advance equality of opportunity and foster good relations.
4. Recognise that people who share a particular protected characteristic have been, and continue to be, excluded from using transport and this affects their participation in other areas of life, putting them at a particular disadvantage. This means that advancing equality may be more relevant and pressing to some groups of people than to others.
5. Are specific and measurable, and are underpinned by an action / delivery plan that sets out the measures that will be taken and their expected impact.

The Commission has also published a self-assessment tool[[3]](#footnote-3) to help public authorities set robust equality outcomes that are clear and measurable. This tool will help the Government to evaluate the methods used for setting the equality outcomes it wants the Strategy to achieve, and the quality of the outcomes themselves.

# Challenges for transport

We agree that Scotland’s transport system continues to face a number of challenges, including that many people encounter problems when trying to access the services they need.

The first challenge the draft Strategy describes is poverty and child poverty. However, the draft strategy does not recognise that poverty affects some groups of people more, or differently, than other groups.

The Scottish Government Equality Evidence Finder provides data on poverty rates for people who share particular protected characteristics.[[4]](#footnote-4) It tells us that disabled people, people from minority ethnic (non-white) groups and Muslims are more likely to live in poverty than non-disabled, White-British people and other religious groups respectively. The poverty rate is also higher for lone mothers than for other single working-age adults.

People who share particular protected characteristics may be, through historic disadvantage or a failure to recognise and address their different needs, disproportionately experiencing poverty, poor health, inadequate housing, vulnerability to crime or poor educational outcomes (this list is not exhaustive) and be under-represented in terms of using transport services.

As part of preparing the draft Strategy, we are pleased the Scottish Government has identified there are challenges that need to be tackled, and in particular that these include the disadvantage experienced by people sharing particular protected characteristics and the barriers preventing them from using the transport system.

The next vital step the Scottish Government must take now is to consider how the Strategy, and the policies that will deliver it, can meet the needs of people who share particular protected characteristics, address their exclusion, lack of choice and/or opportunity and the barriers they experience when trying to use public transport. In doing this, we strongly encourage the Scottish Government to consider and take action to alleviate the disadvantage experienced by people who share a protected characteristic, reduce their under-representation and meet their needs.

This approach will enable the Scottish Government to comply with the PSED and realise the vision for Scotland and its transport system.

# Section C: Transport governance – democracy, decision-making and delivery

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# Decision-making

We know the decisions made about transport in Scotland have not had a significant impact on tackling the most significant inequalities faced by people sharing protected characteristics, e.g. disabled people, women, older and younger people and people from ethnic minority groups. In particular, in 2017 the United Nations Committee on the Rights of Persons with Disabilities expressed its concerns about the insufficient scope, content and number of obligatory and implemented accessible standards relating to, among other things, the physical environment, transport and information in urban and rural areas. It went on to recommend that the governments of the UK, in close collaboration with disabled people’s organisations:

1. Identify gaps in terms of obligatory accessibility standards and ensure standards are met
2. Pay attention to the links between Article 9 UNCRPD and the Committee’s General Comment on Accessibility and targets 9, 11.2 (by 2030 to provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of women, children, disabled people and older people) and 11.7 of the Sustainable Development Goals
3. Monitor progress towards the full inclusion of disabled people through improved accessibility and take action against violations of accessibility regulations. [[5]](#footnote-5)

We also know from their ‘PSED Mainstreaming Reports’ that regional and local transport authorities do not have a consistent or collaborative approach to setting and delivering equality outcomes that address the main inequalities facing people trying to use transport services.

We are concerned that compliance with the PSED is seen as an exercise in completing processes (e.g. publishing reports) rather than on achieving better outcomes for people with protected characteristics.

Improved performance of the PSED will allow the Scottish Government, Transport Scotland, Regional Transport Partnerships (RTPs) and local authorities with an opportunity to achieve better informed decision making and policy development. Importantly, best practice compliance with the PSED will result in a clearer understanding of the needs of transport service users, resulting in better quality transport services which meet varied needs and allow for more effective targeting of policy and resources.

The Commission is aware that under the Transport (Scotland) Act 2005, RTPs must have a regional transport strategy that shows how transport will encourage equal opportunities and, in particular, observes equal opportunities requirements. They must also have regard to any guidance given by Scottish Ministers and to any current national transport strategy.

The Scottish Government Accessible Transport Framework[[6]](#footnote-6) sets four outcomes for accessible travel that everyone involved in transport should be aiming to help achieve.

The Report of Scottish Government/ Regional Transport Partnerships/ COSLA Working Group recommended “RTPs to play a key role in helping to make door to door journeys for older and disabled people more accessible, considering travel information, access to modes of transport and bus stops, stations, etc. and assistance.” [[7]](#footnote-7)

The Scottish specific public sector equality duties[[8]](#footnote-8) require listed authorities, including RTPs and local authorities, to publish a set of equality outcomes at intervals of not more than four years, which will allow them to better perform the PSED. This means that RTPs and local authorities must publish another set of equality outcomes before April 2021.

It is our view that the Strategy provides an important opportunity to improve performance of the PSED and accelerate progress towards equality. As part of the Strategy (and any related policies and guidance) Scottish Ministers should encourage RTPs and local transport authorities to adopt a mainstreamed and collaborative approach to setting and delivering equality outcomes. This would mean asking regional and local transport agencies to tackle the most significant inequalities relevant to transport as part of delivering their regional and local transport plans. The result would be that RTPs and local authorities set and deliver equality outcomes that contribute to the achievement of the equality outcomes in the National Transport Strategy and the Accessible Transport Framework.

Scottish Ministers should also make it clear that in deciding what action to take to achieve equality outcomes, regional and local transport authorities must take into account the specific needs of people with different protected characteristics and the steps they can take to make sure transport services meet these needs.

**Involvement of local communities in making decisions about transport**

The Commission’s report on the state of equality and human rights in Scotland, Is Scotland Fairer (ISF), identifies that only 23% of people agreed that they were able to influence decisions in their local area and 34% reported they would like greater involvement.[[9]](#footnote-9)

Public authorities are required to have regard to the needs set out in the PSED when carrying out their public functions. This means that when they are making decisions about transport, public authorities (and bodies carrying out public functions) must consciously consider the need to eliminate discrimination, advance equality of opportunity and foster good relations. Compliance with PSED in relation to a decision requires the ultimate decision maker to:

* Understand their obligations under PSED
* Have sufficient information, and
* Demonstrably take this information fully into account throughout the decision-making process.

The courts have made clear that organisations subject to the PSED will need to be able to show they had adequate evidence to enable them to have due regard.[[10]](#footnote-10) Adequate and accurate equality evidence, properly understood and analysed, is at the root of effective compliance with the PSED.

When decisions are being made about transport, there should be an assessment of whether there is sufficient understanding of disadvantage, different needs and/ or disproportionately low participation by particular groups who are affected by the decision.

The information provided on the Scottish Government Equality Evidence Finder is easy to access and can be used to inform national, regional and local decisions about transport services. However, there are notable gaps in the evidence about transport and travel for all protected characteristics.

We recommend the Scottish Government establish the equality evidence base that regional and local transport authorities require to be able to identify equality priorities (including developing equality outcomes) and to understand the effect of their decisions on people with particular protected characteristics. This information should then be collected, published on the Equality Evidence Finder and its availability promoted to transport authorities.

The Commission appreciates that it is not always necessary, or possible, to have sophisticated equality evidence before making a decision. Also, the available evidence may not help to understand the effect of a transport decision on particular local groups, and so alternative sources of information should be used. One such source is to gather information through the involvement of local equality groups and communities in the decision making process.

Involving people who are likely to be affected by transport decisions (for example service users and employees) can greatly assist transport bodies comply with the PSED when they are carrying out public functions. The importance of involvement has been highlighted by case law, where the court, in finding a breach of PSED observed that, ‘…if only the Secretary of State had consulted with them (the claimants) they would have been able (if they wished) to highlight the special equality considerations to him.[[11]](#footnote-11)’

It is important to acknowledge that not everyone can be involved in every transport decision, all of the time. Methods and degree of involvement should be proportionate to the decision being made.

The Scottish specific equality duties require listed authorities (including Scottish Ministers, RTPs and local authorities), when they are preparing a set of equality outcomes, to consider relevant evidence relating to people who share a relevant protected characteristic and take reasonable steps to involve equality groups and communities. The efforts put in to involving equality groups and communities should be in proportion to both the resources of the organisation and the impact of the decision on people’s lives. That said, the involvement of local equality groups and communities will support transport authorities to develop active engagement on an ongoing basis, allowing the identification of key issues and an exchange of views that will help set the most relevant equality outcomes and help with transport decision making.

# Section E: Looking Ahead

# What doesn’t work well at the moment and how could the Strategy improve things

The Commission has recently launched its legal support for transport project that will provide legal assistance and funding for disabled people and older people who have been discriminated against when using, or trying to use public transport. We hope to resolve issues without the need for litigation, but we will support legal action where this is not possible. We will also follow-up with transport providers to encourage them to change their practices and provide information and guidance to prevent them from repeating discriminatory acts.

Therefore, we are speaking to advisors, representative groups and individuals and are starting to build up a picture of the persistent barriers facing disabled and older people when they are trying to use transport. We are also starting to speak to transport providers to understand some of the difficulties they face and to identify ways to help them improve their compliance with equality law.

We have included below some of our initial observations from this work.

There have been welcome improvements in the provision of passenger assistance for disabled people to use train services. However, there is limited passenger assistance available in other, or between different, modes of transport, in particular bus and taxi services.

We have been told repeatedly that disabled people, and families with disabled children, cannot use toilets on trains, buses and coaches or in train or bus stations. For more information we would refer to the work of ‘A Public Inconvenience,’ a project looking into the needs of disabled people finding and using toilets on journeys[[12]](#footnote-12) and the Changing Places campaign.[[13]](#footnote-13)

The Transport Bill has passed through the Scottish Parliament, and the Commission is pleased that this includes measures to improve bus services through bus service improvement partnerships, franchising and a power to enable local transport authorities to operate their own public passenger transport services. The implementation of these new measures provide an important opportunity to deliver the Scottish Government’s vision. In particular, we encourage the Scottish Government and local authorities to use their procurement systems to achieve their equality outcomes by, for example, including requirements that the people working to deliver transport services undergo disability awareness training and to provide effective passenger assistance schemes for disabled people. It is also important that mechanisms are set up to monitor and review performance against meeting any such requirements.

The provisions in the Bill should also mean there will be improved information available to help plan journeys and accelerate the implementation of smart ticketing across Scotland. Again, this provides an opportunity to mainstream equality, and include actions to make sure that information about transport services is available in accessible formats. Bottom of Form

# The immediate actions to increase accountability, strengthen evidence and in delivery

The Commission agrees with the proposal to increase accountability and strengthen evidence, including the creation of Transport Citizen Panels to understand better the lived experiences of people across Scotland.

The Equality Act 2010[[14]](#footnote-14) explains that having due regard to the need to advance equality of opportunity includes having due regard to the need to encourage people who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such people is disproportionately low. We know that women, people from ethnic minority groups and disabled people continue to be under-represented in all areas of public life.[[15]](#footnote-15) The PSED requires the Scottish Government to have due regard to the need to encourage their participation in the Transport Citizen Panels.

The Equality Act 2010 also places a duty on those carrying out public functions to make reasonable adjustments for disabled people. This duty is anticipatory and requires the Scottish Government when creating the Transport Citizen Panels to consider, and take action to remove, the barriers that may prevent disabled people from participating in the Panels. Therefore, the Government should not wait until a disabled person wants to participate on the Panels before they consider making reasonable adjustments. They should anticipate the requirements of disabled people and the adjustments that may have to be made.

We understand that Audit Scotland audits the general performance of Transport Scotland, RTPs and local authorities. It may also monitor progress on delivering the National Transport Strategy. Complying with PSED should be an integral part of the audit process by being built into auditing regimes and informing judgements on what constitutes good performance. Therefore, if a scrutiny body, such as Audit Scotland, is going to have oversight of the performance of Transport Scotland, RTPs and local authorities in delivering the Strategy, we strongly recommend this also include consideration of how they are meeting the transport equality outcomes that are set at national, regional and local level.

1. EHRC Scotland Guidance for Scottish Public Authorities available [here](https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-scottish-public-authorities) [accessed 21 October 2019] [↑](#footnote-ref-1)
2. See Equality Act 2010 section 149 available [here](http://www.legislation.gov.uk/ukpga/2010/15/section/149) [accessed 21 October 2019] [↑](#footnote-ref-2)
3. EHRC Scotland (January 2015) Improving Equality Outcomes Project, Assessing Equality Outcomes: A tool for Scottish public authorities available [here](https://www.equalityhumanrights.com/en/publication-download/equality-outcomes-self-assessment-tool-public-authorities-scotland) [accessed 21 October 2019] [↑](#footnote-ref-3)
4. See Scottish Government Equality Evidence Finder available [here](https://scotland.shinyapps.io/sg-equality-evidence-finder/) [accessed 16 October 2019] [↑](#footnote-ref-4)
5. UN Committee on the Rights of Persons with Disabilities (3 October 2017) Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland see para 24 and 25 available [here](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GBR/CO/1&Lang=En) [accessed 21 October 2019] [↑](#footnote-ref-5)
6. Scottish Government (2016) Accessible Transport Framework available [here](https://www.transport.gov.scot/media/20113/j448711.pdf) [accessed 21 October 2019] [↑](#footnote-ref-6)
7. Report of Scottish Government/ RTP/COSLA Working Group (August 2015) Develop to Deliver – Maximising the role of RTPs in furthering improvements to transport in Scotland available [here](https://www.transport.gov.scot/media/10266/sg-rtp-working-group-report-final-august-2015-pdf.pdf) [accessed 21 October 2019] [↑](#footnote-ref-7)
8. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 non-amended version available [here](https://www.legislation.gov.uk/sdsi/2012/9780111016718/contents) [accessed 21 October 2019] [↑](#footnote-ref-8)
9. EHRC Scotland (October 2018) Is Scotland Fairer p98 available [here](https://www.equalityhumanrights.com/en/publication-download/scotland-fairer-2018) [accessed 21 October 2019] [↑](#footnote-ref-9)
10. For example, *Child Poverty Action Group v Secretary of State for Work and Pensions* [2011] EWHC 2616 at para 76 [↑](#footnote-ref-10)
11. *R (on the application of (1) Luton Borough Council and Nottingham City Council (2) Waltham Forest London Borough Council (3) Newham London Borough Council (4) Kent County Council (5) Sandwell Metropolitan Borough Council) v the Secretary of State for Education* [2011] EWHC 217 (Admin) Holman J. at para 114. [↑](#footnote-ref-11)
12. See ‘A Public Inconvenience’ project available [here](https://www.ed.ac.uk/health/research/centres/ecred/a-public-inconvenience) [accessed 17 Oct 2019] [↑](#footnote-ref-12)
13. See Changing Places website available [here](http://www.changing-places.org/) [accessed 17 Oct 2019] [↑](#footnote-ref-13)
14. See Equality Act 2010 section 149(3)(c) available [here](http://www.legislation.gov.uk/ukpga/2010/15/section/149) [accessed 21 October 2019] [↑](#footnote-ref-14)
15. EHRC Scotland (October 2018) Is Scotland Fairer p95 available [here](https://www.equalityhumanrights.com/en/publication-download/scotland-fairer-2018) [accessed 21 October 2019] [↑](#footnote-ref-15)