Increasing the Employment of Disabled People in the Public Sector: a consultation

Scottish Government
Riaghaltas na h-Alba
gov.scot

Increasing the Employment of Disabled People in the Public Sector: a consultation

Ministerial Foreword

A Fairer Scotland for Disabled People[1], published by the Scottish Government in December 2016 seeks to drive transformational change to improve the lives of disabled people in Scotland. It recognises the challenges and barriers disabled people face in the labour market and sets out a range of commitments to support our ambition to reduce by at least half the disability employment gap.[2]

In recent months, the Scottish Government has engaged with disabled people, their representative bodies and other stakeholders both inside and outwith government to consider how this very ambitious target can be achieved.

I have joined a number of events and while there is some good work happening, the clear conclusion I have reached is that an all Scotland approach will be required to see the much needed change in culture, systems and practice to support many thousands more disabled people into work each year, and to help them stay and progress in work.

This is a significant challenge. It lies at the heart of our inclusive growth ambitions. It requires a change of culture and practice across every sector of the economy. The

---

[1] http://www.gov.scot/Resource/0051/00510948.pdf
[2] This is the gap in employment rates between those with and those without disabilities or long term health issues. Based upon 2016 Annual Population Survey data, this is around 37 percentage points (42.8% - 80.2%).

status quo – where so many disabled people in Scotland do not have the opportunity to work and fulfil their potential – simply cannot continue.

The public sector clearly has a key role to play in achieving our ambition and its institutions should set the standard for Scotland. Scotland's public sector employs around a fifth[3] of the total workforce in Scotland. According to survey data[4], only around one in nine public sector employees are disabled, despite disabled people making up almost one fifth of the working age population in Scotland. It's clear we need to take action to help more disabled people into work in the public sector and crucially, to help them sustain their employment, including if they become disabled, or a pre-existing condition worsens whilst in work.

Setting targets for public bodies is one option we are considering to help achieve this goal. In *A Fairer Scotland for Disabled People*, we committed to undertake a consultation with public bodies and disabled people's organisations on this matter. This consultation fulfils this commitment but also supports our key aim of further understanding the views of a wide range of disabled people.

I am clear that whether or not targets are set, much more needs to be done now. In the coming months, we will work with all of Scotland's public bodies to consider what more we can all do in this respect.

Some examples of emerging good practice in the Scottish Government and NHS Scotland are set out in the document. I know there will be many other examples and we need to build on that to ensure that the public sector workforce better reflects the population it serves. The Scottish Government will develop a recruitment and retention plan to set out its actions. We will also use existing networks to share good practice across the public sector to support more disabled people into sustainable work.

---

[3] Source: Scottish Government Public Sector Employment in Scotland
http://www.gov.scot/Publications/2018/03/5266/0
[4] Annual Population Survey Jan-Dec 2016

It is our intention to publish a cross-Government Disability Employment Action Plan in the Autumn of this year setting out the actions we will take to help us achieve our long term ambition to reduce the disability employment gap by at least half. The analysis and outcomes from this consultation will feed into that plan.

In undertaking a formal consultation, we want to reach the widest possible audience of interested parties, and I hope all of Scotland's many and varied public bodies will engage. The views of disabled people are very important to us and we will work with disabled people's organisations across Scotland to gather their views.

Tackling inequality and supporting inclusive growth are key priorities in Scotland's Economic Strategy. Unless we take action now to address the inequality disabled people face in the labour market in Scotland today, we cannot meet our ambitions for a Fairer Scotland.

Jamie Hepburn, MSP, Minister for Employability and Training

Definitions

For the purposes of this consultation, as in other policy and practice, the Scottish Government has applied the definition of disability as it is set out in the Equality Act 2010. That is:-

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities. [5]

It is also important to be clear that the Scottish Government's approach to policy for disabled people is based unequivocally on the social model of disability which emphasises society's inability to provide for disabled peoples' needs, rights, and aspirations, rather than the medical model which places emphasis on the impairment.

---

[5] Section 6 of the Equality Act 2010.

Introduction

The Scottish Government wants to reduce the disability employment gap by at least half and has recognised that to achieve this the public sector needs to increase the number and proportion of disabled people it employs.

Action 29 of *A Fairer Scotland for Disabled People* notes:-

"Disabled people make up 20% of the population but only 11% of the private sector workforce and 11.7% of the public sector workforce. ***We will consult with disabled people's organisations (DPOs) and public sector bodies around setting targets to redress this imbalance.****"*

This consultation aims to identify the best way to achieve our ambition of increasing the number of disabled people employed in the public sector. It seeks views on the best way to effect change and how we can know that this change is making a difference to the lives of disabled people in Scotland.

In doing so, it will set out suggestions for change which include potential options for different types of targets. Other proposals are of course, welcomed.

The consultation highlights the fact that a lack of robust data on disability employment levels in individual public bodies creates a challenge for the setting and monitoring of targets, and again we welcome respondents' views on how this could be addressed.

It further seeks views on actions other than targets that public bodies can take to increase the number and proportion of disabled people in their workforces.

In summary, this consultation will focus on:-
- What the Scottish public sector landscape looks like, the information we have about disability employment in the public sector, and the powers the Scottish Government has to set targets if required (Chapter 1);

- Options for different types of targets that could be set (Chapter 2);
- Other measures that could be used to increase the employment of disabled people in the public sector (Chapter 3);
- Monitoring and reporting (Chapter 4);
- How you can engage with us on the questions and issues set out in this consultation, including information about events we will hold; events you/your organisation can hold; and how to respond to the consultation (Chapter 5 and 6).

Chapter 1 – Public Sector Bodies in Scotland and data

The public sector in Scotland employs around 600,000 people[6]. This includes local authorities, the further education sector, devolved civil service and the reserved public sector (such as HMRC and DWP), and together they employ the majority of people working in the public sector in Scotland. Other bodies include Executive Agencies, Non Ministerial Departments, Health Bodies, Public Corporations – which are accountable to Scottish Ministers – and Parliamentary Commissions and Ombudsmen – which are accountable to the Scottish Parliament Corporate Body.

Public sector bodies vary considerably in size and function. Some employ around 20 people, while others employ thousands of staff. Some are very specialist (such as the Police, and Fire and Rescue Services) and some deliver a wider range of services (such as local authorities). Roughly 10% of the public sector is reserved, being either part of, or accountable to, the UK Government.

Around 77,000 disabled people were employed in the Scottish public sector in 2016 (aged 16-64). This is 11.7% of the total public sector workforce (Annual Population Survey (APS) data, Jan-Dec 2016). In comparison, in the private sector in Scotland, 11.2% of the total workforce are disabled.

Public Sector Equality Duty (PSED) and published data

All public sector bodies listed in Schedule 19 of the Equality Act 2010 (the 2010 Act) are subject to the Public Sector Equality Duty (PSED), which is set out in section 149 of that Act.

The 2010 Act places a general duty on public authorities to have due regard to the need to: eliminate discrimination, harassment and victimisation prohibited by the Act; advance equality of opportunity; and foster good relations between persons who share a protected characteristic and those who do not. Although taking action on equal opportunities is largely reserved to the UK Government, Scottish Ministers can

---

[6] Source: Annual Population Survey (2016), ONS.

take certain steps, such as supplementing the general duty by placing specific duties on Scottish public authorities[7] and have done so under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (the 2012 Regulations).

The specific duties require authorities to undertake a number of actions, including, for example, to: produce reports showing how equalities are being mainstreamed within the organisation; gather and use information about the recruitment, development and retention of employees with protected characteristics; and publish equal pay statement covering, amongst other matters, employees with a disability. A report on the Scottish Government's delivery of the specific duties was published in 2017. It covers mainstreaming, the setting of outcomes and employee information, and can be found at: http://www.gov.scot/Publications/2017/04/4384/0

Enforcement of the 2012 Regulations is carried out by the Equality and Human Rights Commission (EHRC). [8] The EHRC regulates the PSED in Scotland and is a reserved body.

Under the PSED, public sector bodies are required to collect data annually and to report every 2 years on how many disabled people they employ. Guidance for public sector bodies is available on the EHRC website.[9] The EHRC published a summary of the most recent published information late last year in their Measuring Up 7 report.[10]

While APS figures (ONS, the Office of National Statistics) report a figure of 11.7% in 2016 for disabled employees in the public sector, many public bodies themselves report much lower figures. Scottish Government analysis of data published by a representative sample of public sector bodies showed that on average, less than 5%

---

[7] EHRC Advice and Guidance: Public Authorities in Scotland - Who is covered by the Specific Duties? https://www.equalityhumanrights.com/en/publication-download/public-authorities-scotland-who-covered-specific-duties

[8] Any escalation in relation to non-compliance is a matter for the Equality and Human Rights Commission. The process is set out in sections 31 and 32 of the Equality Act 2006. Broadly, the Commission can issue a compliance notice, and can subsequently seek enforcement through the courts if necessary.

[9] https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty

[10] https://www.equalityhumanrights.com/en/publication-download/public-authorities%E2%80%99-performance-meeting-scottish-specific-equality-duties-2017

of staff were reported as disabled. However, the figures for individual bodies vary significantly, with some showing a disabled workforce of as low as 0.1%, and in others higher than 11%. EHRC suggested in its report that the apparently low reporting rate in relation to the PSED may be due to factors such as a lack of resources.

The low numbers reported may also be due to public bodies collating their information through staff surveys and recruitment processes, where staff are asked to self-declare any disability.

The overall response rates and sample sizes of staff surveys can also be much lower than that of official national statistics, such as the APS, and therefore less robust. Some public bodies' published PSED data reported very high rates of non-response to disability questions with one organisation reporting 70% of the workforce declining to respond. Reasons for not declaring a disability may include worries about negative reactions and misunderstandings in the workplace, as well as worries that it may impact on their career progression. Many people in employment - who would satisfy the definition of disabled as set out in the 2010 Act - also don't actually perceive themselves as disabled.

Improving self-declaration rates is a crucial first step to better understanding the challenge and what we should be doing to increase disabled employment in the public sector. A positive example of this is NHS Scotland. NHS Scotland recognises that existing published equalities data about their workforce significantly underestimates the proportion of the workforce living with a disability. Work is underway in NHS Scotland to tackle some of the underlying cultural issues that have prevented staff from voluntarily disclosing their disability status. NHS Board Equality and Diversity Leads, the Royal Colleges and the Business Disability Forum are working to support continuous improvement in staff experience.

Steps we could take might include asking all or some public sector bodies to implement measures which could improve the quality of their own staff disability data/ information, including measures to improve or increase:

- response rates (where applicable);
- methods (making sure people can provide answers in confidence);
- scope (that is, collect more information, such as the nature of disability/impairment/long term health conditions);
- increasing awareness among staff of why improved data is important;
- learning from other public sector bodies and sharing good practice; and
- delivering actions by a set date, for **example** in line with biennial PSED reporting.

Question 1 - 3:

1. In your view, or the view of your organisation, how could public sector bodies better support self-reporting (self-declaration) of disabilities for members of their workforce, to improve response rates and the quality of data collected?

2. What should be the time scale for implementing these measures?

3. What support, if any, and from where, would public sector bodies need to implement measures, such as improving data collection?

For all Questions please use additional space or paper if required.

Chapter 2 – Target Options

This chapter considers some of the types of targets that could be set and seeks views on which might be considered suitable. We know that the setting of targets can have unintended consequences and these must be considered carefully.

The general use of targets/key performance indicators

Performance indicators, objectives and targets are widely used to measure how individuals or organisations are doing in meeting key areas of performance. Most public bodies have measures on which they report.

Targets or key indicators aim to offer a transparent way of demonstrating performance. In setting them, we have to consider what we know about that performance now, and what performance we believe would represent a significant positive change.

It is also important to have a clear starting point from which to measure, with clear and consistent mechanisms in place to accurately monitor progress.

Challenges to public sector targets

As noted in Chapter 1, the PSED data held and published by individual public bodies on their workforce in relation to disability varies considerably, and is likely in some cases to be the subject of significant under-reporting. Improving the quality of the data gathered will be key and must be considered carefully in developing any targets which may be appropriate.

In addition, in considering targets, it is important to consider the varying size, scope and functions of Scotland's public bodies.

Target options

Given our overarching ambition to drive a cultural change across Scotland which results in much higher disability employment rates, there is an agreed need to consult more widely than on target setting alone. We are therefore consulting on various options which could drive continuous improvement in the employment of disabled people in a way which recognises the distinct issues facing different bodies.

In the remainder of this chapter we have set out a number of potential options for setting targets and are seeking your views on those options. Chapter 3 will go on to consider other options for increasing the disability employment rates in the public sector.

Potential Target Options :

A. The Scottish Government to set one national public sector target (in a similar way to the setting of the overall ambition to more than halve the disability employment gap), with a timescale to meet this.

For example, this could be that disabled people make up a certain percentage of staff across all public sector bodies (based on the Annual Population survey figure of 11.7%) within a certain set time frame.

B. Similar to Option A, the Scottish Government to set one overall incremental public sector employment target that would be reviewed and revised in fixed stages.

For example, setting an overall target of a certain percentage point increase in the number of disabled people employed in the public sector, but with staged increases of *for example* 1 percentage point set over fixed periods. Progress

would be reviewed after an agreed period of time, and new targets would be set based on past performance.

C. To require Scottish public sector bodies to set targets for their organisation taking into account their starting point in terms of the level of disabled people in their workforce, their size and differing core functions.

This would likely need to be based on agreed criteria (to ensure consistency of approach) and robust PSED measures to be in place and used for the starting measure.

D. For the Scottish Government to set a target for its own core Civil Service workforce, while working with other public bodies to encourage them to set their own voluntary targets.

Questions 4 – 7:

4. In your view, or the view of your organisation, would setting targets improve the disability employment rate in the public sector? (If yes, please go to Question 5 below).

> **If you or your organisation <u>do not</u> think setting targets would help to improve the disability employment rate in the public sector, <u>please go to Question 7</u> below.**

5. If you said <u>yes to Question 4, please rank the following options in order of preference</u>, where 1 is your least preferred option, and 4 is your most preferred option, and use the space provided to <u>explain your rationale</u>. Please only rank options you believe are viable:

Option A above

1) Setting one national public sector target, with a time scale to meet this.

2) If you support this option, do you, or your organisation, have a view on what the target should be?

Option B above

1) Setting one overall incremental public sector employment target that would be reviewed and revised in fixed stages.

2) If you support this option, do you, or your organisation, have a view on what the target should be?

Option C above

1) To require Scottish public sector bodies to set targets for their organisation taking into account their starting point in terms of the level of disabled people in their workforce, their size and differing core functions.

Option D above

1) The Scottish Government to set a target for its own core Civil Service workforce, while working with other public bodies to encourage them to set their own voluntary targets.

6. Please also tell us:

Where appropriate, what is your view, or the view of your organisation, on how long it would take to achieve the target set out from your preferred option above?

7. If you or your organisation <u>do not</u> think setting targets would bring about a significant change to the disability employment rate in the public sector, please tell us why.

Additional comments:-

Please tell us anything else about these options, or setting targets, that you haven't covered already, including any alternatives.

Chapter 3 – Other measures and steps that could be taken to increase disability employment rates in the public sector

In addition to considering whether setting targets is the most appropriate approach, there will be other actions and suggestions which could deliver on the ambition to increase the number of disabled people working in public bodies in Scotland.

An Example - Recruitment

The Scottish Government has achieved Disability Confident level three (Disability Confident Leader) in the UK-wide Disability Confident Scheme. Job applications are welcomed from all suitably-qualified people, in particular those that are currently under-represented in the organisation, including disabled applicants. The Scottish Government operates the Guaranteed Interview Scheme. Details of this are included within all vacancies advertised internally and externally.
The Scottish Government is also working closely with the UK Government in setting stretching targets for recruitment of disabled candidates to the Senior Civil Service in the Scottish Government.

As noted, work is underway in the Scottish Government to consider actions which will make a difference. But we would welcome your ideas. These could include action in areas such as:

- addressing the causes of low levels of staff identifying as disabled in some public bodies;
- improving approaches to advertising, promotion and recruitment;
- developing business cases for recruiting disabled people;
- increasing awareness and dispelling myths and fears about employing disabled people;
- considering the support public sector employers need to employ and retain disabled people;
- greater use of paid work experience/internships; and
- sharing learning from other public sector bodies.

Question 8:

As already noted, action is already underway in the Scottish Government and across the wider public sector to improve disability employment rates. However, we would like to find out what else – if anything – you think your organisation/the public sector could do to employ more disabled people, and to support them to stay in work.

8. What other measures or options do you, or your organisation, think could be put in place to:

a) employ more disabled people in the public sector; and,
b) support disabled people to remain in employment in the public sector?

Chapter 4 – Monitoring and Reporting

To make a real difference to the disability employment rate in Scotland's public sector, any of the options set out in Chapter 2 - or alternatives - would likely require systems to be put in place to monitor and regularly report on outcomes.

If implemented as part of the PSED regime, the EHRC (a body reserved to the UK Government) would enforce the targets and report on progress as part of the current PSED reporting requirements.

Other approaches would require consideration of how we monitor and report progress towards achieving our goals.

Overall monitoring and reporting for the Disability Employment Action Plan will be developed, and we anticipate that any action to improve data quality and levels of disability employment in the public sector workforce will be part of that.

Question 9:

It is the Scottish Government's intention to report regularly on its work to increase disability employment rates. Whether or not targets are set, monitoring of progress towards the ambition to increase disability employment rates in the public sector will be important. Your views on how this can be done are welcomed.

9. Do you, or your organisation, have any views on monitoring and reporting on the actions needed to increase disability employment rates in the public sector?

Chapter 5 - Engagement events – and events you can arrange

We intend to hold a number of consultation events to engage with partners across Scotland. Anyone interested in attending one of the events should contact: ConsultationDisabilityEmployment@gov.scot

We also recognise that disabled people's organisations and other third sector groups may wish to hold their own consultation events to gather the views of people they support or represent, which Employability officials will attend wherever possible.

Chapter 6 - Practical issues – How to respond

We are inviting responses to this consultation by 15 August 2018.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at https://consult.gov.scot/fair-work-employability-and-skills/disability-employment You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 15 August 2018.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:
Employability Policy Unit
Employability Division
Fair Work, Employability and Skills
6th Floor Atlantic Quay,
Glasgow G2 8LU

Handling your response

If you respond using Citizen Space (http://consult.scotland.gov.uk/), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at http://consult.scotland.gov.uk. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to: ConsultationDisabilityEmployment@gov.scot

Or write to us at:

Employability Policy Unit

Employability Division

Fair Work, Employability and Skills

6th Floor Atlantic Quay,

Glasgow G2 8LU

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: http://consult.scotland.gov.uk. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (https://www.ideas.gov.scot)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot

address individual concerns and comments, which should be directed to the relevant public body.

<u>List of Annexes</u>

1.	Respondent Information Form
2.	Summary of Questions

ANNEX 1

Increasing the Employment of Disabled People

in the Public Sector: a consultation

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

☐ Individual

☐ Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

☐ Publish response with name

☐ Publish response only (without name)

☐ Do not publish response

> **Information for organisations:**
>
> The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.
>
> If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

☐ Yes   ☐ No

ANNEX 2

SUMMARY OF QUESTIONS

1.   In your view, or the view of your organisation, how could public sector bodies better support self-reporting (self-declaration) of disabilities for members of their workforce, to improve response rates and the quality of data collected?

2.   What should be the time scale for implementing these measures?

3.   What support, if any, and from where, would public sector bodies need to implement measures, such as improving data collection?

4.   In your view, or the view of your organisation, would setting targets improve the disability employment rate in the public sector? (If yes, please go to Question 5 below). If no, please go to Question 7 below.

5.   If you said <u>yes to Question 4, please rank the target options in order of preference</u>, where 1 is your least preferred option, and 4 is your most preferred option, and use the space provided to <u>explain your rationale</u>. Please only rank any options you believe are viable.

Option A above
1) Setting one national public sector target, with a time scale to meet this?
2) If you support this option, do you or your organisation, have a view on what the target should be?

Option B above
1) Setting one overall incremental public sector employment target that would be reviewed and revised in fixed stages.
2) If you support this option, do you or your organisation have a view on what the target should be?

Option C above

1) To require Scottish public sector bodies to set targets for their organisation taking into account their starting point in terms of the level of disabled people in their workforce, their size and differing core functions.

Option D above

1) The Scottish Government to set a target for its own core Civil Service workforce, while working with other public bodies to encourage them to set their own voluntary targets.

6. Please also tell us:

Where appropriate, what is your view, or the view of your organisation, on how long it would take to achieve the target set out from your preferred option above?

7. If you or your organisation <u>do not</u> think setting targets would bring about a significant change to the disability employment rate in the public sector, please tell us why.

Additional comments: Please to tell us anything else about these options, or setting targets, that you haven't covered already, including alternatives.

8. What other measures or options do you, or your organisation, think could be put in place to:

a) employ more disabled people in the public sector; and,

b) support disabled people to remain in employment in the public sector?

9. Do you, or your organisation, have any views on monitoring and reporting of the actions needed to increase disability employment rates in the public sector?