

## INTRODUCTION

Please use this document to submit your response to the Scottish Government.

This document brings together all of the questions proposed in the 'Fairer Scotland Duty: Paper for Stakeholders' into one document. Each header represents a section in the stakeholder paper related to a proposed change or addition to the guidance.

As per the covering email, this document should be returned by Friday 7 May 2021.

**Please send your replies to:** [sjsu@gov.scot](mailto:sjsu@gov.scot)

## QUESTIONS

### 1. Two new public bodies added to the list of bodies covered by the Duty: Scottish National Investment Bank and South of Scotland Enterprise

- Are there any other new public bodies that you think should be covered by the Duty?

Yes

- If you answered yes to the question above, please name them and outline why you think they should be covered by the Duty.

Scotland's two National Park authorities:

- Loch Lomond and the Trossachs National Park
- Cairngorms National Park

While these authorities are not "new", having been established in 2002 and 2003 respectively, the Commission believes that the nature of their functions and the scale of impact they have merits them being covered by the Duty.

These authorities have a substantial impact in both their local/surrounding communities and at a regional and national level, as they contribute significantly to rural communities and social and economic development. They have a large impact on rural economies and are already required to prepare plans at a strategic level that, were they to be prepared by another similar body already covered by the Duty (for example Forestry and Land Scotland) would likely fall into the scope of actions subject to the Duty. As a consequence, strategic decisions they take can have a significant impact on socio-economic disadvantage and hence the Commission believes that these authorities should be covered by the Duty.

## 2. Further examples of what constitutes a 'strategic' decision

- Could the definition of a 'strategic decision' be clearer?

Yes

- If you answered yes to the question above, please tell us why and how you think it could be improved?

Broadly the definition in the revised guidance is reasonable and the Commission recognises the challenges that limit prescribing an exact list of *all* strategic decisions, as there is necessarily judgement involved in what constitutes a strategic decision from case-to-case.

However from the experiences of the Commission, it believes that the guidance around this could be further strengthened by being more explicit that it is good practice that FSD assessments *should be seen at Board level* in order to be subject to scrutiny at the right level and to constructively challenge decisions if necessary. It is apparent from the Commission's experience that this does not always happen in practice and it would be helpful for the guidance to underline the importance of this.

- Do you consider all the types of decisions listed to be strategic in nature?

Yes

- If you answered no to the question above, please tell us which one(s) you think are NOT strategic and why?

n/a

- Are there other types of decision that you think should be included here?

No, aside from the comment in relation to good practice above.

- If you answered yes to the question above, please tell us what they are and why you think they should be included?

n/a

### 3. New section: ‘organisational readiness’

- Do you think that the new section on organisational readiness is useful?

Yes, this section is broadly useful though quite general in nature.

- If you answered no to the question above, please tell us why, and how it might be improved?

n/a – Though see below for some additions.

- Are there any other components that you think should be included in this section?

Yes

- If you answered yes to the question above, please tell us what they are and why you think they are critical to successful delivery of the Duty?

The points in this section are useful broad points for public bodies to consider but would benefit from being strengthened around the points below:

- **Leadership:** The Commission’s view is that leadership buy-in, ownership and championing is central if the FSD is to be effective. Currently the guidance is quite general in this regard: to strengthen this the guidance should recommend that public bodies nominate a senior officer (e.g. at Chair or Chief Executive level) to take responsibility for the effective operation of the FSD in their organisation.
- **Organisational culture:** Related to the point above, the change we are all seeking around FSD – where it is truly embedded in the business of public bodies – will require changes in the culture of organisations subject to the Duty. This needs to include greater openness to enable effective FSD scrutiny, more engagement with relevant communities, and less opaque organisational “marking own homework” when it comes to whether assessments are required and the outcomes of assessments. Organisational leaders have a strong role to play in championing culture change, but it also needs to be supported by process and operational changes, some of the Commission’s suggests for which are included in other parts of this response.

- Are there any components that you think should be removed from this section?

No

- If you answered yes to the question above, please tell us what they are and why you think they should be removed?

n/a

#### 4. Demonstrating ‘due regard’

- Do you think that the six questions listed above are helpful when considering ‘due regard’?

Yes

- If you answered no to the question above, please tell us why and how they might be made more helpful?

n/a

- Are there any other questions that you think it would be helpful to include here?

Yes

- If you answered yes to the question above, please tell us what they are and why you think they should be included?

- **Active consideration:** Related to the points made under “organisational readiness”, the degree to which the Duty is “actively considered” is a key process that will determine whether the FSD results in material changes to socio-economic outcomes. It would help if the wording around active consideration, and how this is demonstrated, be further strengthened and clarified (potentially with reference to the case studies) to give the Scottish Government’s view as to what good looks like when it comes to active consideration. This could also include a question to prompt a senior leader with responsibility for the FSD in an organisation (see response to previous question) to make a judgement on whether the issue has been appropriately “actively considered” in relation to the Duty, either here or at another appropriate place in the guidance.
- **Presumption in favour of engagement rather than against it:** The Commission is concerned that, in some instances, decisions are made within public bodies that FSD assessments are not required, *prior* to engagement with those who may be affected. This is concerning as the body may not “know they don’t know” in terms of actions that have consequence for socio-economic disadvantage, prior to consultation with people who will be affected. To help reduce the risk of this, the Commission thinks that the guidance should be stronger in recommending public bodies presume in favour of engagement, rather than a default of officials making the decision that an FSD assessment is not required, without engagement. To support this a question asking senior leaders to consider and actively evidence why they believe engagement is not required before deciding not to conduct an assessment would be useful here (or at another appropriate place in the guidance).

- Do you think any of the six questions should be removed from this section?

No

- If you answered yes to the question above, please tell us what question(s) and why you think it should be removed?

n/a

## **5. Two new templates: Evaluation tool to help bodies demonstrate they have met the Duty and Assessment Not Required Declaration Template**

### **Evaluation Tool**

- Do you think that the Evaluation Tool is useful?

Yes

- If you answered no to the question above, please tell us why?

n/a

- Are there any other questions or text that it would be helpful to include here?

Yes

- If you answered yes, please tell us what the questions and/or text are and why you think they should be included?

- **Highlight and cross-reference its existence elsewhere in the document:** The evaluation tool appears to be useful, however its existence does not seem to be referred to elsewhere in the guidance text so it may be easily missed.
- **Openness around evaluation to aid scrutiny:** As discussed in the final question in this response paper, one of the most important means by which improvements in practice around the FSD will be realised is scrutiny, both internal and through interest from stakeholder organisations, the public and, in particular, communities and people who experience socio-economic disadvantage and who have a very real stake in the decisions made by public bodies. The guidance should suggest that, as good practice and to drive up performance, good practice for public bodies is to publish (in whole or summaries) of their use of the self-evaluation tool, in parallel to the expectation that bodies publish their FSD assessments/declarations of assessments not required.

- Is there anything that you think should be removed from the Evaluation Tool?

No

- If you answered yes to the question above, please tell us what that is and why it should be removed?

n/a

### Assessment Not Required Declaration Template

- Do you think that the Assessment Not Required Declaration Template would be useful?

Yes

- If you answered no to the question above, please tell us why?

n/a

- Is there any other information that is would be helpful to include or ask for here?

Yes

- If you answered yes to the question above, please tell us what that information is and why you think it should be included?

To reflect suggestions under sections 3 and 4, the Commission’s view is that the sample assessment not required declaration should also reflect the following:

- **The responsible officer for taking the decision should be at a senior level within the organisation** and have clear designated role in relation to ensuring the public body effectively meets its obligations under the FSD. This will help raise the profile of FSD-related decisions within the organisation which, as they are by nature of strategic importance, should have visibility and responsibility at the most senior levels of the public body.
- **There should be an explicit section of the template for officials to detail the extent of engagement with affected individuals and communities in arriving at the decision not to assess** (in line with the presumption in favour of engagement discussed in question 4) and, where no engagement was conducted, an explanation as to why. This will underline and evidence the importance of engagement to avoid erroneous decisions being made that FSD assessments are not required due to the issue of officials working for public bodies having an imperfect understanding of how their strategic policy decisions may or may not impact on people experiencing socio-economic disadvantage.

- Is there anything that you think should be removed from the Template?

No

- If you answered yes to the question above, please tell us what that is and why it should be removed?

n/a

## 6. Data sources section updated

- Are the groupings and evidence identified helpful?

Yes

- If you answered no to the question above, please tell us why?

n/a

- Are you aware of any other data sources that should be included?

Yes

- If you answered yes to the question above, please tell us what that data source is and why you think it should be included.

To note that some of the data sources listed in the draft shared require updating before publication (e.g. to reflect the March 2021 publication of the Scottish Government poverty and inequality statistical releases).

In addition the first link (What Works Scotland) under section 3 is to all WWS publications and seems too general to be helpful. It should link to the most relevant publications that address the issue of what is effective in targeting poverty and inequality (for example <http://whatworkscotland.ac.uk/publications/tackling-child-poverty-actions-to-prevent-and-mitigate-child-poverty-at-the-local-level/> from earlier in the document.)

In addition the following could be included to add to the references there:

- **Low income:** JRF links are perhaps better to go to the reports and data pages <https://www.jrf.org.uk/reports> & <https://www.jrf.org.uk/data>
- **Low wealth:** <https://www.resolutionfoundation.org/publications/taking-stock/>
- **Socio-economic background:** Not clear why the social metrics commission link is here, perhaps it is better in low income?
- **Evidence for what is effective:** This section feels like it should be strengthened in comparison to others, particularly given how important it is. The JRF links may also fit here, plus also linking to specific What Works Centres outside of Scotland on an individual basis? (E.g. Educational endowment foundation, early intervention, what works local growth etc.) Links are at [What Works Network - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## 7. New case studies

- Are the new case studies useful?

Yes

- Please tell us why you think this?

The Commission thinks the case studies are a useful inclusion. To build on the strength of these, consideration could be given to the measures that SG can take to gather and promote other case studies as the FSD enters its next phase. Openness and transparency around publishing assessments, as stressed elsewhere in this response, will support the sharing of such good practice and help improve overall performance.

- Do you have a case study that could be included in the guidance?

We suggest that you contact colleagues at Transport Scotland ([heather.cowan@transport.gov.scot](mailto:heather.cowan@transport.gov.scot) and/or [Bethany.Sharp@transport.gov.scot](mailto:Bethany.Sharp@transport.gov.scot)) to see if a case study can be shared as the integrated assessment approach that Transport Scotland took during the production of the Transport Transition plan (to support the route map out of lockdown) is a potential example for inclusion.

- If you answered yes to the question above, please send us a brief overview of the case study.

See above

## Any other comments?

- How do you think the revisions to the Guidance will influence assessments produced under the Fairer Scotland Duty?

Subject to the comments above, the Commission considers the revisions to the guidance to be generally useful updates that improve the quality of the guidance. The focus on participation from people with lived experience of poverty is particularly welcome.

Compared to the previous guidance, and given that the authorities have a requirement under the Equality Act 2010 to “take into account any guidance issued” by Scottish Ministers, the revisions to the guidance have the potential to positively influence practice and the quality of FSD assessments.

However, the revised guidance itself, while necessary, is not sufficient to take drive up the quality of practice around the Duty and ultimately, to improve outcomes in relation to socio-economic disadvantage. The Commission agrees with the March 2021 EHRC assessment of further steps needed to ensure future success of the duty: success criteria and measures for the duty itself; guidance and support from governments; accountability mechanisms; collective responsibility for the duty across public bodies; and a focus on outcomes not just processes.

The guidance, while important, is just a part of one aspect of these EHRC recommendations and alone, without other support actions, its impact is likely to be limited.

- Do you have any other general views or comments on the revised guidance?

In the context of the comments in response to the question immediately above, the Commission considers the following to be useful points and questions in terms of maximising the potential value of the guidance, alongside other supporting actions in relation to the FSD.

- **Accessibility of the guidance and communications:** While the guidance is necessarily detailed, the Commission considers that it, in terms of building awareness of the FSD among people and communities who will be affected by and interested in decisions made under it, a more accessible and easily communicated summary of some of the main points should be made for a general audience. A greater public awareness of the guidance will help people and organisations know what public bodies *should* be doing and assist in accountability when they fall short. Hence SG should be considering communications around the guidance, particularly in accessible forms (short videos, social media content etc.) to engage a wider audience.
- **Challenge/accountability function:** Aside from the actions in the point above in terms of public interest in the FSD driving public bodies to better practice, it would be beneficial to better understand what formal challenge functions are there to hold public bodies to account in relation to their obligations under the Duty. The EHRC have provided a recommendation on mechanisms to hold public bodies to account, so progress in this area is an important next step for embedding the Duty.
- **Openness of assessments/declarations:** To aid scrutiny and to drive up quality of FSD activity, can the advice and expectation to publish FSD assessments and declarations be strengthened further so they become the norm? The Commission believes that that this expectation should be framed in the strongest possible terms it can be under the current statutory arrangements.
- **A requirement to go back to people public bodies engage with:** the Commission is aware that, on some occasions, public bodies engage with those who have lived experience to consult with on a policy or proposal but then never return to these communities to “close the loop” and set out the outcome of the decision to let these groups know how their contributions were weighed into the final decision (regardless of outcome). The importance of closing this loop could be emphasised at several points throughout the guidance.
- **How will we know if the guidance and the changes to it are effective?:** What work is planned or underway to determine how the guidance has changed practice? If this is not set out in the guidance itself, it is important to clarify elsewhere.