

Equality and Human Rights Commission

**Evidence**

# and the Public Sector Equality Duty

A guide for public authorities  
in Scotland

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# 1 | Introduction

## Context for this guide

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This guide is one of a series written by the Equality and Human Rights Commission (the Commission) to explain how public authorities can meet the requirements of the Equality Act 2010 (the Act), which harmonises and replaces previous equalities legislation. The Act includes a public sector equality duty which replaced the separate duties relating to race, disability and gender equality. The public sector equality duty came into force on 5 April 2011.

There are eight guides giving advice on the public sector equality duty in Scotland:

- Essential guide to the public sector equality duty
- Equality outcomes and the public sector equality duty
- Evidence and the public sector equality duty
- Involvement and the public sector equality duty
- Assessing impact and the public sector equality duty
- Mainstreaming the equality duty
- Employee information and the public sector equality duty
- Board diversity and the public sector equality duty

*The essential guide* gives an overview of the requirements of the public sector equality duty.

The other seven documents provide additional practical advice. Further information can be found on the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

If you require this guide in an alternative format and/or language please contact us to discuss your needs. Contact details are available at the end of the publication.

## Legal status of this guide

This guide gives advice on how to meet the public sector equality duty. It will help public authorities to comply with their legal duties under:

- Section 149 of the Equality Act 2010 (the public sector equality duty), and
- The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended.

## Aim of this guide

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This guide aims to help authorities subject to the public sector equality duty to implement the duty as it relates to evidence. The guide provides more detailed advice to supplement the information set out in the Essential Guide to the Public Sector Equality Duty.

## Who this guide is for

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This guidance provides advice to two types of public authority: those that are subject only to the public sector equality duty and those that are also subject to the specific duties under the 2012 regulations mentioned above ('listed authorities'). The different requirements for each type of public authority are set out clearly throughout this guide.

The guide is aimed at those responsible for implementing the public sector equality duty in public authorities in Scotland. It will be of interest to staff right across public authorities, but particularly those involved in gathering and using evidence, and staff in charge of business planning, procurement, analysis, performance management, human resources, grant making, governance and scrutiny.

The guide will also assist those who have an interest in the work of public authorities such as service users, voluntary bodies, unions and equality organisations.

## Content of this guide

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This guide:

- Explains the obligations of listed authorities to gather and consider evidence under The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended (the specific duties)
- Explains the purpose of gathering and considering evidence and how this relates to the other requirements of the public sector equality duty
- Advises on the use of evidence in setting equality outcomes, and other uses of evidence
- Suggests what sorts of information public authorities could gather and consider, including using existing evidence and addressing gaps
- Advises on methods for gathering evidence, and suggests points to think about in considering evidence.

This guidance is for public authorities in Scotland. Separate guidance on the public sector equality duty is available for public authorities in England (and bodies with non-devolved functions in Scotland and Wales) and public authorities in Wales. These reflect the differences in the specific duties for England and Wales.

## 2 | Evidence and the public sector equality duty

The public sector equality duty is here referred to as the ‘general equality duty’ and is set out in the Equality Act. If you are listed in The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended, you are also covered by specific duties, which are designed to help listed authorities meet the general equality duty. Further information on the public sector equality duty can be found in our *Essential guide to the public sector equality duty*.

### The General Equality Duty

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The general equality duty 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 that is prohibited by the Equality Act 2010
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

This guidance refers to these three elements as the three ‘needs’ mentioned in the general equality duty and so when we discuss the general equality duty we mean all three needs.

The public sector equality duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The public sector equality duty also covers marriage and civil partnerships, with regard to eliminating unlawful discrimination in employment.

The ban on age discrimination in services and public functions came into effect on 1 October 2012. As the ban does not extend to people under 18 this limits the scope

of the duty to have due regard to the need to eliminate ‘unlawful discrimination’ under the first need of the duty (although it does not limit the other two needs).

## The Specific Duties

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The purpose of the specific duties in Scotland is to help those authorities listed in the Regulations in their performance of the general equality duty.

For a complete list of listed authorities and their reporting cycles, see our publication “Public Authorities in Scotland – Who is covered by the Specific Duties?” which can be found here. [www.equalityhumanrights.com/en/publication-download/public-authorities-scotland-who-covered-specific-duties](http://www.equalityhumanrights.com/en/publication-download/public-authorities-scotland-who-covered-specific-duties)

## What the Specific Duties require in terms of evidence

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### **Public authorities covered by the Specific Duties**

The specific duties require a listed authority, in preparing and publishing a set of equality outcomes, to consider relevant evidence relating to people who share a relevant protected characteristic and any person who appears to the authority to represent the interests of those people.

Each listed authority must consider relevant evidence relating to people who share a relevant protected characteristic (including any evidence received from those people) when assessing the impact of applying a proposed new or revised policy or practice against the needs of the general equality duty.

### **Public authorities covered only by the General Equality Duty**

Although there is no specific requirement under the general equality duty to consider relevant evidence and involve service users or employees, considering relevant evidence will help you meet the requirement to have due regard to the needs of the general equality duty.

## A note on terminology

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This guidance uses the term ‘policy’ as shorthand for any activity of your organisation. Therefore ‘policy’ should be understood broadly to embrace the full range of your policies, provisions, criteria, functions, practices and activities including the delivery of services – essentially everything you do.

This guidance uses the term ‘equality groups’ to mean ‘persons who share a relevant protected characteristic’, and where reference is made to ‘equality groups and communities’ this includes ‘any person who appears to the authority to represent the interests of those persons’.

## 3 | ‘Considering relevant evidence’ and ‘involvement’

‘Considering relevant evidence’ and ‘involvement’ are closely related activities which inform the decisions of listed authorities in preparing and publishing a set of equality outcomes.

Considering relevant evidence, including any such evidence received from equality groups, informs the assessment of impact of proposed new or revised policies.

This guide addresses evidence. In practice, however, the two will often overlap, as some ways of involving people also serve as forms of evidence gathering, as in a focus group for example.

For further information, please see our guide *Involvement and the Public Sector Equality Duty*.

Listed authorities must use evidence and involvement to prepare equality outcomes. This will help them focus their efforts and use their resources most effectively. This is of particular importance in a period of constrained public spending.

## 4 | Why consider evidence on equality?

The purpose of considering relevant evidence in the specific duties is to use such evidence to help set equality outcomes which are likely to make the biggest difference in tackling inequality within your organisation's sphere of influence, and to ensure that your assessments of the impact of proposed new or revised policies and practices are well informed.

Considering relevant evidence will help you to:

### 1. Identify key issues

- Understand service users' needs, and their diversity in experiences and life chances, to help inform policy development, service planning and delivery
- Understand the effect of your proposed policies, practices and decisions on different groups so you can plan them more effectively
- Review the effect of your existing policies and practices
- Identify what the key equality issues in employment are for your organisation and assess the effectiveness of any action that you have taken to address these.

### 2. Take action

- Develop a set of equality outcomes to meet the specific duties (for public authorities that are covered by them)
- Make informed, evidenced-based assessments about the impact of your policies and practices on equality
- Direct resources more effectively
- Consider taking steps to meet the needs of staff and service users who share relevant protected characteristics
- Consider positive action measures to improve equality for people who share a particular characteristic
- Highlight the relevance of the general equality duty to an organisation's functions, which may not previously have been clear
- Have 'due regard' to the needs of the general equality duty by ensuring that staff have appropriate information for decision-making.

### **3. Assess performance**

- Measure your performance towards your outcomes
- Benchmark your performance and processes against those of similar organisations, nationally or locally.

Considering relevant evidence on equality will be critical to demonstrate you have met the specific equality duties. A listed authority should aim to have the best evidence possible to enable it to set meaningful equality outcomes, measure progress towards those outcomes, and accurately assess impact.

Authorities subject to the general equality duty will need to consider relevant evidence in order to have 'due regard' to the need to eliminate discrimination and harassment, advance equality of opportunity and foster good relations.

Active consideration of equality through evidence and involvement can help improve the quality of services, criteria and practices, make them more responsive to the needs of those affected, and lead to better outcomes.

## 5 | What is evidence?

Evidence, in this context, is information about an issue or area that you are trying to understand. Equality evidence refers to information about the needs and experiences of equality groups and communities; it may include information about your functions including employment, services, and regulatory functions.

Evidence can come from a range of sources, for example:

- Internal sources such as service monitoring information, employment monitoring information, administrative data, commissioned research, staff groups or complaints
- External sources such as statistics, surveys, research or evaluations from government departments, partner organisations, voluntary sector organisations, equality groups and networks, and academic and professional institutions.

Often equality evidence is incomplete, contradictory or unavailable. Other sources of information may need to be used to supplement or complement such evidence or, if necessary, fill any gaps. There may be a lack of evidence about the needs and experiences of people from some equality groups, for example concerning religion and belief, sexual orientation or transgender. Seeking the views of experts, equality groups and communities through involvement will often help to provide further evidence.

## 6 | What is relevant evidence?

Relevant evidence is internal and external information relating to equality groups and communities which provides insight into the area or issue under consideration.

Remember that equality groups and communities include all the protected groups covered by the equality duty: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Relevant evidence is also internal and external information which may relate to your functions including services, policy development, employment and procurement.

The relevant evidence that authorities will need to consider to inform their decisions under the equality duty will vary widely between different sectors and organisations. While the regulations provide a general indication of the evidence you should consider, it is within your discretion to decide exactly what evidence will help you meet the equality duty. In many instances, this will depend on the nature of your services and should be proportionate to the size of your organisation.

The following broad suggestions may be of some assistance:

A key activity will be to consider relevant employee information. The specific duties require public authorities to take steps to gather and use certain employee information, as well as to publish specific information (see our guide *Employee Information and the Public Sector Equality Duty*).

Public authorities will also be interested in considering evidence on their performance, service provision (including contracted-out services), the effect of decisions made, and the populations that they serve. This includes information about who is or isn't using your services, how satisfied they are with them, and what outcomes are being achieved. For example, education bodies will know how well different ethnic groups do at different levels; health boards will know about the cancer survival rates for different age groups; and police forces will know how many women and girls have been accused or been victims of different offences.

It is likely that a public authority will already possess, or have access to, existing internal and external sources of evidence. As a starting point, you should focus on

making best use of existing evidence and consider what more you need to know to gain a full picture before collecting any new information.

Collecting evidence on all protected groups is not yet commonplace. Some authorities have experience of collecting evidence for most protected groups, but many organisations will not. It is important that you develop your own practice appropriately.

We recommend that you build on your experience of using equality evidence for the race, disability and gender duties and where there are insufficient data for particular characteristics or particular functions, take steps to develop relevant evidence. Please see a suggested approach to identify and fill evidence gaps in section 7 of this guide.

When gathering information on people's protected characteristics, we recommend you use questions which are based on the Scottish Census 2011, or are part of the core questions included in all Scottish Government surveys. This will help support greater consistency and comparability. Please see Appendix 1 for further information and advice on gathering equality information.

Remember that you are considering relevant evidence on key equality issues to help you prepare a set of equality outcomes, measure progress towards these outcomes, and assess the impact of your policies and practices. It is important to have a clear idea of how you intend to use any evidence you collect.

## 7 | Planning to develop evidence

### Existing evidence

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Authorities will already have access to existing internal and external sources of evidence (see below). Before collecting new information, we recommend that you identify and review the existing evidence base across all your functions, including any functions that are contracted out.

This could include evidence from previous assessments of impact on equality, from involvement activity with staff and service users, and from equality monitoring. You can then establish what format the information is in, how accurate it is, to what extent it is broken down by each protected characteristic, and how relevant it is to the needs of the general equality duty.

Some larger organisations devote significant resource and budget to developing and maintaining their internal evidence base, and gathering, analysing and interpreting external sources of evidence. Regardless of the size of your authority, you could consider taking a strategic and coordinated approach to **gathering** evidence and **carrying out** involvement **activities**. Collaborating with similar organisations, organisations in your sector, or other bodies working in the same geographical area (for example, Community Planning Partners) may help you overcome any capacity issues you may face in implementing the public sector equality duty.

### Building on existing experience

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Many organisations will already have experience in developing and using equality evidence for the race, disability and gender duties. You will have a range of systems, mechanisms and training in place to gather and use valid, reliable and relevant evidence. This experience will help you plan, develop and adapt this work so you can effectively gather, analyse and interpret relevant evidence for all protected groups.

## What form should the evidence be in?

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A distinction is usually drawn between two different approaches to data collection: quantitative and qualitative.

Quantitative approaches generate numerical data, and can involve counting and measurement of people, behaviours, conditions or events. Equality monitoring, for example, can provide a good source of quantitative data to establish the profile of people affected by what you do.

Statistical analysis / techniques help us make sense of and summarise quantitative data. Some examples include:

- Percentage of people reporting they were a victim of hate crime because of their perceived sexual orientation (from Scottish Crime and Justice Survey)
- Percentage of disabled people who are in work (from the Labour Force Survey)
- Number of racist incidents recorded by the police
- Proportion of males attaining 5 or more standard grades at general level or above compared to females (from SQA Examination Results).

A key strength of this approach is the numerical form of the data, in that it can be relatively straightforward to present concise findings about the incidence or prevalence of people's experience. It can also identify key numerical differences between groups and monitor change over time. However, this may not always be possible. Some equality groups have relatively small numbers of people, and this can mean that quantitative data for some groups cannot be analysed separately due to statistical unreliability or concerns about confidentiality.

By contrast, qualitative approaches generate any type of data that is non-numerical – for example, written documents, data recorded from interviews/focus groups or evidence from direct observation. The strength of this approach is that it generates rich and detailed data, providing insight into people's experiences and behaviour, and exploring complex issues to enhance understanding of critical subjects.

In practice, it is important to focus on how quantitative and qualitative approaches can be integrated in a way that draws on the strengths of each approach. This will mean using a mixture of these approaches to generate a better understanding of equality issues and potential solutions to problems.

Often quantitative approaches will tell you 'what' and 'how many' and qualitative approaches will give you an insight into 'why'. So, for example, a customer satisfaction survey can tell you the number of disabled people who are dissatisfied

with your service but only qualitative approaches such as focus groups/interviews can give you an insight into why they are dissatisfied and what action you could take to address this.

## Internal sources of evidence

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Your organisation may already gather, store and analyse a range of quantitative and qualitative information, for example:

- Service monitoring information
- Corporate performance management data
- Complaint records
- In-house or commissioned research
- Service user or resident surveys, citizen panels, staff surveys
- Employee information
- Community engagement and involvement activity.

Internal information will be extremely valuable and useful in helping you to identify equality issues across all of your work and plan action accordingly. The challenge will be considering relevant evidence across all relevant protected groups: age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

## External sources of evidence

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External sources of evidence can include information gathered for other purposes, and provide a large and varied range of material. These sources include statistics, administrative data, surveys, research, evaluation, and input from equality groups and communities.

Your organisation will be able to access a wide range of external evidence and literature from a number of local, national or international organisations, including:

- government departments
- statistics bodies
- academic and research institutions
- regulatory bodies
- local authorities

- equality organisations – e.g. the Runnymede Trust, Stonewall Scotland, the Fawcett Society, Age Scotland and Capability Scotland.

There are many advantages to using these sources of evidence. The breadth of some national evidence means that you can get a great deal more evidence than you would if you carried out the work yourself. Also, where a government or research institute has carried out a large-scale survey, this is likely to yield far more accurate results than surveys based on relatively small sample sizes.

It is also less expensive because the evidence already exists. In a climate where public authorities are facing extremely difficult economic challenges, external sources of evidence will be invaluable, and authorities should make best use of this evidence before gathering new data.

It is not possible to provide a comprehensive list of external sources of evidence that may be of use to better understand equality issues. However, the links and publications in Appendix 2: 'Selected sources of evidence' may provide a useful starting point.

## Addressing evidence gaps

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After reviewing the existing evidence base, you are likely to identify things that you do, or protected groups that access your services, for which you do not have equality evidence. This could be because you have good information but it is not disaggregated for all protected characteristics, or because you do not routinely collect information in relation to particular functions.

Think about whether you have enough evidence, and the right type of evidence, to enable you to give rigorous consideration to the needs of the general equality duty across all your functions.

You will not be able to do everything at once, and it may take some time to develop relevant evidence across all of your functions. But a lack of evidence is not a valid excuse for inaction on the duty. It is important that you start to take action based on the evidence you have, while also taking steps to develop evidence in other areas.

Deciding which gaps to prioritise will be challenging. You may receive conflicting views from representatives across and within the protected characteristics, and it is important that you balance these views and consider them alongside other relevant criteria.

As a starting point, you should prioritise those gaps which are most relevant to your performance of the general equality duty.

We recommend that you identify your evidence gaps and needs and develop a plan to fill them. A suggested step-by-step approach on how to do this is set out below.

**Step 1:** Divide the functions of the organisation into categories. For example, for a council these might include Human Resources, Housing, Education, Planning, Leisure and Environment.

**Step 2:** Map out the relevant evidence (internal and external) that you hold or have access to, across these functions. This includes functions that are contracted out. Find out to what extent the evidence is, or can be, broken down (i.e. disaggregated) by different protected groups. You may find that you already have a good level of disaggregation for some protected groups but not for others. Likewise, you may find that you already collect a lot of information on some functions but little or none on others.

**Step 3:** Work out where the gaps in information are by looking at what evidence you need, and prioritise the gaps most relevant to your performance of the general equality duty. This will depend on the sort of functions you carry out. Your employment of staff will be highly relevant to the needs of the general equality duty because of the diversity of your workforce. The provision of services to members of the public will also be highly relevant, whether you are supplying these services directly or whether they have been contracted out.

**Step 4:** Consider involving equality groups and communities to help prioritise the gaps to be filled, and how best to do this.<sup>1</sup>

**Step 5:** Review the relevant evidence you have – where are the problems? Where is the situation unclear?

**Step 6:** Where problems exist, or the situation is unclear, do more detailed follow-up work – focus groups, independent research, etc.

**Step 7:** Report the evidence you have gathered.

**Step 8:** Consider involving equality groups and communities to inform your decision about the way forward<sup>1</sup>, and

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<sup>1</sup> Please remember you are required to take reasonable steps to involve equality groups and communities in the process of setting your equality outcomes

**Step 9:** Identify the best approach to implement the next steps. For example, you may want to incorporate the agreed next steps into the relevant improvement plans across your organisation.

This will be a challenging and complex exercise given the range of evidence you may need for all protected characteristics, and in particular the significant gaps that exist for certain groups such as gay, lesbian or transgender people. Remember that what you do will depend on the nature of your services, and should be proportionate to the size and significance of your evidence gaps and to the size of your organisation.

## 8 | How can evidence be gathered?

Where a need for new evidence has been identified and prioritised, there are a wide range of methods available to organisations to gather evidence, and each has its own strengths and weaknesses.

Please note this guide does not provide detailed information on each method. We recommend you look at one of the many textbooks on the subject or search the internet for more detailed technical advice and guidance.

### Methods of gathering evidence

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The following are some common methods which you could consider to gather evidence:

- **Surveys** (structured interviewing or self-completion questionnaires) – useful if you want to examine the nature, size, frequency and distribution of an issue or topic and make inferences about an entire population
- **Service monitoring** – extremely useful for many purposes, including identifying who is using services and highlighting potential inequality of access to services
- **Employment monitoring** – essential to understanding how representative your workforce is of the general population; also enables you to analyse how your practices and procedures affect different equality groups
- **Interviewing in qualitative research** – can be used for collecting data on individuals' personal histories, perspectives and experiences, particularly when sensitive topics are being explored
- **Focus groups** – effective if you are interested in the broad views and experiences of people on a particular topic
- **Secondary analysis of external data** – a useful and commonly used evidence-gathering method which allows you to carry out further analysis of an existing dataset to generate a more detailed understanding of a particular topic or area
- **Literature review/search** – a very inexpensive method of gathering existing internal and external evidence from a wide range of sources to provide a baseline

understanding of what is known on a particular topic or area, or identifying good practice for particular interventions. This is often done on the basis that further work may need to be carried out, such as future research

- **Systematic Review Evidence** – examines a collection of high quality studies, providing syntheses of what the evidence tells us about a topic or policy area.

You will have to determine what kind of information you require, who needs to supply the information, and under what circumstances, in order to select the appropriate method or methods to be used. It will also be important to check that those responsible for gathering the evidence have the appropriate level of specialist skills and training.

## 9 | Building trust and confidence

Gathering evidence will usually involve a number of people, from those supplying the information to those responsible for gathering, storing, analysing, interpreting or using the evidence.

Some information will be of a personal and sensitive nature, such as data about transsexual people or about grievances or harassment. Information about chronic illness or disability, and a person's ethnic origin or sexual orientation is also classed by the Data Protection Act as 'sensitive personal data'. To build trust and confidence, you will need to ensure that everyone asked to supply information understands why you are collecting this information, how it will be used, and what you will do to protect confidentiality. You should ensure that all personal and sensitive information is processed in accordance with the Data Protection Act, which would also include reporting it in anonymised form and storing it securely.

Please see Appendix 1 for further information on the Data Protection Act, and advice on monitoring and sensitive information.

Building trust and confidence will be critical to success, and you may be able to use examples of how you have already used relevant evidence to improve the way you work. If the process is perceived as bureaucratic by participants, there is a risk that the information you gather will not be of sufficient quality to inform decision-making.

You should ensure that those responsible for gathering information are fully trained to explain or clarify any queries about questions, are aware of issues of accessibility and are sensitive to issues of confidentiality and disclosure.

## 10 | Considering the evidence

Listed authorities are required to consider relevant evidence when preparing a set of equality outcomes and when assessing the impact of their activities.

Considering relevant evidence involves the analysis and interpretation of, ideally, multiple forms of relevant evidence, from internal and/or external sources. The aim is to use this evidence to make better, more informed decisions, and take proportionate action where required.

There are many ways to analyse data. The method of data analysis will be determined by the type of data, quantitative or qualitative, and the method or methods you have chosen to collect the data. This guide does not provide detailed information on how to carry out analysis. We recommend you seek expert advice and guidance from a research or analytical colleague if available, or a specialist researcher if not.

A large part of your analysis will involve identifying differences between groups in relation to their needs and experience, and the barriers they face. You will also need to analyse evidence to identify potential multiple disadvantages. For example, an Asian woman could have difficulties accessing health services because of factors related to her sex, her age and her race.

You may also want to compare your performance with other similar organisations, national sources of evidence, evidence from within your sector, or your own organisation over time. You could:

- Compare current performance indicators with earlier performance indicators to assess progress over time, for example to find out whether a greater or smaller proportion of disabled service users are expressing satisfaction with a service over time.
- Compare evidence from your organisation with that of other employers or relevant populations of potential service users. For example, you might like to find out the percentage of ethnic minority people from your area using your sports and leisure services, or the number of women accessing employment advice services compared to the number of economically active women in the area.

- Compare performance indicators for your organisation with other organisations in the same sector – for example, customer satisfaction levels for different equality groups.

Once you have analysed the trends in your information, the next step is to work out why these patterns might exist. Bringing all your relevant evidence together – quantitative and qualitative – and interpreting what this evidence means may help you form an opinion about whether or why there is inequality, and what you can do to improve the situation.

Involving people from protected groups may also give you an idea of how accurate your interpretation is. It will help you to establish whether there are any differences between how you think you are performing and the experience of protected groups. See our guide *Involvement and the Public Sector Equality Duty* for more information on this.

Your interpretation should also include an assessment of your decision-making processes. For example, if you have looked at your procedures and cannot find any external reason for the inequalities identified, you should consider whether people in your authority are making decisions in such a way that people from certain equality groups are treated less favourably.

# Appendix 1 |

## Questions to use and factors to consider when gathering equality information on protected characteristics

### Recommended questions

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Organisations are likely to use a variety of methods to gather relevant evidence. Sometimes this will be a specific equality monitoring form and on other occasions protected characteristic questions will be included in other evidence-gathering mechanisms.

Any questions which are going to be used to measure and record people's protected characteristics need to be comparable and appropriate. The Census provides the most comprehensive and reliable data about the population. National surveys, such as the Scottish Household Survey, will also use categories comparable with those used in the Census.

For most of the protected characteristics you can use either 2011 Census questions or the Scottish Government core questions, which are the same in many cases. Using these questions will help facilitate comparisons between your performance and other similar organisations. These questions may differ from what you have used in the past, and if this is the case then you should plan to update and, if appropriate, extend the data in your records.

Please see the Scottish Government's website for further information and to access the final core and harmonised questions:

[www.scotland.gov.uk/Topics/Statistics/About/SurveyHarm](http://www.scotland.gov.uk/Topics/Statistics/About/SurveyHarm)

The Scottish Government has also produced a suite of guidance notes to help public authorities when collecting, analysing and disseminating equality information:

[www.scotland.gov.uk/Topics/Statistics/Browse/Social-Welfare/equalitiesclassifications](http://www.scotland.gov.uk/Topics/Statistics/Browse/Social-Welfare/equalitiesclassifications)

## Disaggregating information

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The extent to which you disaggregate information will depend on the relevance of the issue to equality and good relations, and ultimately the size of your sample. You need to bear in mind that disaggregating information in very high-level terms is not likely to give you a very complete picture of potential equality issues, and may also mask inequalities faced by particular groups. For example, if an education authority only disaggregated attainment information in relation to whether young people are white or non-white, it would not highlight the differences in attainment within ethnic minority groups – such as 52 per cent of Chinese pupils attaining 5 standard grades at credit level, compared to 28 per cent of Black African pupils.

It is important that you present the information in as much detail as possible, while ensuring the information does not identify a particular individual. Where there are small numbers being analysed, which are further disaggregated into small groups of each protected characteristic, you should also bear in mind that some statistical differences will be too small to be statistically significant.

## Data Protection Act

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When processing and publishing equality information, you must consider the privacy and compliance implications of the Data Protection Act 1998.

Under the Data Protection Act information about people's protected characteristics would constitute 'sensitive personal information' for the purposes of the legislation and must be processed as such. You should not report or publish information in any way that makes it possible for an individual to be identified. You need to ensure that the information you publish meets the requirements of the Data Protection Act 1998.

Sometimes, it may be possible to identify individuals from your analysis. Even if it is not possible to identify an individual with certainty from the data, if the information points to only a small group of people, this might also affect their rights under the Data Protection Act and you will need to consider anonymising the data.

Anonymisation is the process of converting data into a form where identification of individuals is unlikely to take place. For example, if the number you are reporting on is less than 10, and the information is 'sensitive personal information' that might lead to individuals being identified, you could replace the number with an asterisk. Where you do this, also check that it is not possible to work out this missing data from the other information that you publish. Other ways to prevent individuals from being

identified include, for example, using ranges or bands, or by disaggregating your published information to a lesser extent.

Further information on the Data Protection Act is available on the Information Commissioner's website: [www.ico.org.uk](http://www.ico.org.uk). The Information Commissioner's Office has published a code of practice on the anonymisation of personal data and the disclosure of data once it has been anonymised.<sup>2</sup>

## Monitoring and sensitive information

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Collecting information in relation to some protected characteristics such as sexual orientation can be sensitive. Before deciding whether to gather relevant evidence through equality monitoring, consider:

- Why you want the information. Only collect information that is relevant and that will actually be used.
- Whether the information you need is already available from other sources. Are there national data you could use, or are there other measures that you could use instead?
- How easy or difficult it will be to get complete information.
- How the potential accuracy and completeness of the information will affect its usefulness.
- The process you might use to gather information and how you will ensure the data remain confidential and anonymous.

Where response rates to questionnaires (or surveys for staff or service users) are routinely low, being clearer about why you are collecting the information, how you intend to use it, and how it is helping improve your performance may improve return rates. It is also important that you do not say, or imply, that answering monitoring questions is compulsory.

## Disability

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Disaggregating information simply in terms of whether people are disabled or not is unlikely to give a very complete picture of the disabled people within your workforce, on your board, or among your service users. It may be more useful to gather

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<sup>2</sup> See [http://ico.org.uk/for\\_organisations/data\\_protection/topic\\_guides/anonymisation](http://ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation)

information about different impairment types. It is usually unlawful to ask any job applicant about their disability or health until after they have been offered a job. However, for the purposes of equality monitoring, you can still ask questions about disability and health, the answers to which are stored in an anonymous way which is not linked to the application form. Remember that it is important to explain clearly how this information will be processed, as disclosing certain impairments (such as mental health conditions) can be difficult for many people. Further information about the definition of disability can be found in Appendix 1 of the Equality Act 2010 services and employment Codes of Practice.

## Religion or belief

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Monitoring religion or belief can be a sensitive issue. Varying levels of commitment to particular religions or beliefs can also make it difficult to interpret any information gathered. For example, there may be significant differences between someone who loosely identifies themselves as a Christian but who does not practise the religion, and a person for whom Christianity influences most or all aspects of their lives. Remember also that the Equality Act 2010 applies equally to people with no religious belief, or atheists, and people with non-religious philosophical beliefs, such as humanists.

Further information on this is available in our Employment Code of Practice on the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Further information about religion and belief monitoring is available in the Office for National Statistics information and advice section on measuring equality: <http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/ethnic-national-identity-religion/religion/index.html>

## Sexual orientation

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Some people may feel uncomfortable disclosing their sexual orientation, which may mean that relatively high proportions of people will not answer the question initially. Evidence shows that disclosure of sexual orientation increases over time, as organisations improve their systems and create a culture of trust. Further information about sexual orientation monitoring is available in the Scottish Government guidance: [www.scotland.gov.uk/Publications/2011/06/20105614/1](http://www.scotland.gov.uk/Publications/2011/06/20105614/1)

However, some organisations consider that the approach set out here can lead to under-reporting, particularly among older people. A report titled 'Improving sexual orientation monitoring', published by the Commission, explores the case for asking people about sexual orientation, the issues it raises, how questions might be framed more effectively, and the importance of anonymity and confidentiality. It suggests appropriate questions to ask and how the information you collect can be used. Please see our website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## Gender reassignment

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Gender reassignment is a process of transitioning from one gender to another, and it is a protected characteristic in the Equality Act 2010. The Act refers to someone who intends to undergo, is undergoing or has undergone gender reassignment. A person is not required to undergo medical treatment in order to be protected by the Act.

Monitoring the numbers of transsexual people is a very sensitive area and opinion is divided on this matter. Many transsexual people have been bullied, harassed and marginalised, and may fear that disclosure of their status could negatively affect them. Using national reports and engaging with equality organisations may be more appropriate than monitoring in some cases. However, public authorities may find it difficult to consider the impact of their policies and practices on transsexual people (e.g. employment patterns in recruitment, training, promotion or leaving rates), without gathering some information.

Further information about monitoring transsexual people and example questions to use when conducting research are available on the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

The Gender Recognition Act 2004 requires that people who hold a gender recognition certificate must be treated according to their acquired gender. It is a criminal offence to disclose their status. A transsexual person may consent to you disclosing the information if they decide it is in their interests to do so, but the consent must be explicit. It must not be assumed. Transsexual staff or service users should not be routinely asked to produce a gender recognition certificate as evidence of their legal gender.

## Children and young people

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It is not always appropriate to monitor certain protected characteristics of young people, for example their sexual orientation or their gender reassignment status. Alternative sources of information such as national statistics, research or engagement, may help you to identify priority equality issues instead. Remember that national trends may be applicable to your circumstances.

Where appropriate, only age, disability, ethnic group and gender should be collected. The responses should be provided by the child/young person themselves, where possible. However, it may be necessary to get a proxy response from a parent or guardian if the child is under 12. The Scottish Government questions for age, disability, ethnic group and gender can be used, with suitable rewording of the question to the third person where data are collected from a parent or guardian.

## Appendix 2 |

# Selected sources of evidence

### Equality and Human Rights Commission:

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- *Is Britain Fairer? The state of equality and human rights 2015*. The Commission's statutory five-yearly report on equality and human rights progress in England, Scotland and Wales. It assesses what progress has been made since the last review in 2010 and brings together evidence from a range of sources including: major surveys and administrative data, reports by inspectorates and regulators, international organisations, parliamentary committees, UK and devolved governments and NGOs. [www.equalityhumanrights.com/en/britain-fairer](http://www.equalityhumanrights.com/en/britain-fairer)
- *Is Scotland Fairer?* is the Scottish standalone supplement to *Is Britain Fairer?* It is based on evidence and analysis produced for *Is Britain Fairer?* which has been supplemented with more recent data from other published analysis, such as the Scottish Census. [www.equalityhumanrights.com/en/scotland-fairer](http://www.equalityhumanrights.com/en/scotland-fairer)
- Equality and Human Rights Commission research publications.

All are available on the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### Other sources of evidence:

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- The Scottish Census: <http://www.scottishcensus.gov.uk>
- Scottish Household Survey: [www.gov.scot/Topics/Statistics/16002](http://www.gov.scot/Topics/Statistics/16002)
- Scottish Crime and Justice Survey: [www.gov.scot/Topics/Statistics/Browse/Crime-Justice/crime-and-justice-survey](http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/crime-and-justice-survey)
- Scottish Health Survey: [www.gov.scot/Topics/Statistics/Browse/Health/scottish-health-survey](http://www.gov.scot/Topics/Statistics/Browse/Health/scottish-health-survey)
- Scottish Government Equality Evidence finder: [www.gov.scot/Topics/People/Equality/Equalities](http://www.gov.scot/Topics/People/Equality/Equalities)

- Other Scottish Government official statistics can be accessed at: [statistics.gov.scot](http://statistics.gov.scot)
- Scottish Social Attitudes Survey: [www.ssa.natcen.ac.uk](http://www.ssa.natcen.ac.uk)

# Contacts

This publication and related equality and human rights resources are available from the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

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.

Website [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)  
10:00 to 14:00 (Saturday)

Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: [scotland@equalityhumanrights.com](mailto:scotland@equalityhumanrights.com). The Commission welcomes your feedback.

## Alternative formats

This guide is available as a PDF file and as a Microsoft Word file from [www.equalityhumanrights.com](http://www.equalityhumanrights.com). For information on accessing a Commission publication in an alternative format, please contact: [scotland@equalityhumanrights.com](mailto:scotland@equalityhumanrights.com)

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