

Collecting equality information: National guidance for Scottish social landlords

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Foreword

This Guide is intended to support social landlords in Scotland, both local authorities and registered social landlords, to implement legal and regulatory requirements relating to equality data collection. These requirements flow from the Equality Act 2010, the Scottish Government's Scottish Social Housing Charter and the regulatory requirements issued by the Scottish Housing Regulator.

It provides a range of practical advice on collecting equality data and how equality data can be used. The Guide is advisory and social landlords have flexibility regarding how they establish and develop their equality data collection methods to ensure they reflect organisational needs and local context.

The Guide is also intended to support social landlords to use equality data to deliver quality services to tenants and other customers, and to use equality data to promote strategies on customer care, equality, and tenant participation.

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Section 1:

Introduction

This Guide provides social landlords with comprehensive practical advice on equality data collection to support effective implementation of regulatory requirements.

The guide uses examples from housing practice to consider:

- ➔ why data is to be collected;
- ➔ what data is to be collected;
- ➔ what barriers to data collection exist; and
- ➔ how data is to be used.

Key principles underpinning the guide

- Equality data collection is not a standalone activity. It should be part of a social landlord's equality strategy.
- In developing their approach to the collection of equality data, social landlords need to be aware of equality law and data protection law. This Guide provides information about data protection matters as appropriate.
- The Guide is intended to support social landlords to use equality data to deliver quality services to tenants and other customers.
- The best outcomes are likely to be achieved where collection and use of equalities data fits within an existing culture of listening to and working with tenants and other customers to meet their needs as far as possible.
- The Guide complements other guidance that is available on equal opportunities and data collection.



The term “registered social landlord” is used to denote housing associations and co-operatives, and “social landlord” is used to denote both housing associations and co-operatives, and local authorities.



The guide is accompanied by a model equality monitoring form at [Appendix 1](#).

Section 2:

Equality data collection as part of equality strategy

Data collection is integral to a social landlord's equality strategy and its mainstreaming of equality objectives. The key organisational issues social landlords should consider before developing their data collection procedures are:

- ➔ the relationship between governance, equality policy and data collection;
- ➔ factors to consider in developing an effective equality strategy; and
- ➔ links between their equality strategy and other organisational strategies and policies.

The relationship between governance, equality policy and data collection

Good governance underpins the effectiveness of a social landlord's delivery of quality homes and services to tenants and other service users. The Scottish Housing Regulator's (SHR's) [regulatory framework](#) sets out a range of standards on governance and financial management. In practical terms, social landlords will have comprehensive governance policies, and equality issues should be central to all governance policies.

Factors to consider in developing an effective equality strategy

It is important to be aware of a range of other organisational activities that are part of an equality strategy to ensure social landlords adopt a holistic approach to developing equality data collection procedures. Key documents within an equality strategy include the equality policy and action plan, along with procedural documentation such as the organisational equality impact assessment procedure and equality data collection procedure.¹

¹ Other organisational procedures could include harassment procedures that focus on discrimination and harassment due to equality related grounds.

The equality action plan should cover a wide range of activities, including:

- equality data collection;
- equality impact assessment of organisational policies and procedures; and
- training for staff and elected members, committee and/or board members.

Links between equality strategy and other organisational strategies and policies

Similarly, when developing data collection procedures, it is essential to align this activity to other key organisational strategies to ensure a systemic approach to organisational development. Three key strategic policy links are:

1. The equality strategy and data protection strategy

The collection and usage of equality data must comply with the requirements of data protection law (see Section 3), and equality data must be processed in line with data protection legal requirements.

2. The equality strategy and tenant participation strategy

Social landlords have a [statutory duty](#) to develop a tenant participation strategy, and the collection of equality data is critical to the effective implementation of this strategy.

For example, when arranging meetings, equality data gathered in respect of the protected characteristics can be used to address individuals' needs by providing:

- accessible venues for disabled people;
- language interpreters; and
- suitable crèche facilities.

3. The equality strategy and customer care strategy

The [Scottish Social Housing Charter](#), Standard 1 sets out a clear link between customer care and the equality strategy:

"...every tenant and other customer have their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services."

Having good information about individuals' needs, including equality information, is essential to enable social landlords to ensure those needs can be addressed.

Law relating to equality data collection

This section provides a summary of key legal provisions relevant to equality data collection. Social landlords should always seek their own professional advice on complying with legal requirements when determining their approach to collecting equality data.

Housing law does not deal specifically with monitoring of the protected characteristics. However, section 39 of the [Housing \(Scotland\) Act 2010](#) requires social landlords, when performing housing services, to:

“... act in a manner which encourages equal opportunities and in particular the observance of the requirements of the law for the time being relating to equal opportunities.”²

The collection of equality data is important in encouraging equal opportunities.

² [Housing \(Scotland\) Act 2010](#), section 39.

The Equality Act 2010

The [Act](#) aims to harmonise discrimination law and strengthen the law to support progress on equality. It defines protected characteristics and sets duties for specified public bodies.

The **protected characteristics** are those “grounds” on which it is unlawful to discriminate. These are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

Public Sector Equality Duty

The Equality Act 2010 replaced previous duties in respect of race, disability and sex by the duty known as the **Public Sector Equality Duty**. This Duty contains three elements that cover discrimination, harassment, victimisation, and any other form of conduct prohibited under the Act. The second and third elements of the Duty apply to all of the protected characteristics except marriage and civil partnership.

The Duty requires specified public bodies (or those that carry out public functions) to:

- eliminate conduct prohibited in law;
- advance equality of opportunity between people who share a protected characteristic and those who don’t;
- foster good relations between people who share a protected characteristic and those who don’t.

The latter two elements require specified public bodies to take active measures in implementing their equality strategies.

Registered social landlords are not included in the list of designated bodies covered by the Duties, but many of the specific functions that they carry out are likely to be of a public nature, and so the Duty applies to those functions. The question of whether or not a function is of a public nature is complex and takes account of the definition of public function as covered by the [Human Rights Act 1998](#), section 150 (5).

Standard 5.3 of the [Regulatory Standards of Governance and Financial Management](#) reflects the ethos of the statutory duty:

“The RSL pays due regard to the need to eliminate discrimination, advance equality and human rights, and foster good relations across the range of protected characteristics in all areas of its work, including its governance” (page 14).³

Specific Duties

Designated public bodies such as local authorities are also subject to what are known as the Specific Duties. These Duties require prescribed public bodies to monitor and report on a range of equality issues linked to the protected characteristics.

This means that local authority landlords must also produce published information on equality issues, as required. This includes the collection of specific types of equality data as specified in law.

Equality data

It will be difficult to meet the Public Sector Equality Duty without collecting data about the protected characteristics. As the Equality and Human Rights Commission (EHRC) states:

“... (having) adequate and accurate equality evidence, properly understood and analysed, is at the root of effective compliance with the general equality duty. Without it, a body subject to the duty would be unlikely to be able to have due regard to the needs of the duty”.⁴

Example

A social landlord (as employer) can evaluate impairment related data provided by employees to discuss their accessibility requirements. This, in turn, enables the employer to make appropriate reasonable adjustments. This is a clear example of how equality data can be used to promote equality objectives, as well as meeting legal duties to make reasonable adjustments.

³ Scottish Housing Regulator (2019) [Regulatory Standards of Governance and Financial Management](#), Standard 5.3

⁴ Equality and Human Rights Commission, 2016, Equality Act 2010: [Technical Guidance on the Public Sector Equality Duty](#), page 47

Equality impact assessments

The EHRC requires specific public bodies to carry out equality impact assessments. It notes:

“To the extent necessary to fulfil its general equality duty, a listed authority must assess the impact of applying any proposed new or revised policy or practice against the needs mentioned in the general equality duty” (page 82).⁵

The SHR also promotes equality impact assessments through the regulatory requirement to:

“Have assurance and evidence that (each social landlord) considers equality and human rights issues properly when making all of its decisions, in the design and review of internal and external policies, and in its day-to-day service delivery.”⁶

Each social landlord, therefore, should carry out equality impact assessments of their policies and practices, taking account of locally generated equality data. The EHRC provides [guidance on equality impact assessments](#).

Employment

Social landlords must adhere to their duties, as employers, under the Equality Act 2010. For example, an employer is only required to make reasonable adjustments for disabled job applicants if they know, or could reasonably be expected to know, that an applicant is a disabled person. However, it is good practice to enquire about a disabled person’s accessibility requirements so that any reasonable adjustments can be made.

Social landlords must ensure their recruitment and selection processes are subject to equality impact assessments. Equality data collected about job applicants and employees will be critical in supporting these assessments.

⁵ Equality and Human Rights Commission, 2016, [Equality Act 2010: Technical Guidance on the Public Sector Equality Duty](#), page 82

⁶ Scottish Housing Regulator (2019) [Regulatory Standards of Governance and Financial Management](#)

Data protection law

The main law relevant to social landlords is the [UK General Data Protection Regulation](#) (GDPR) and the [Data Protection Act 2018](#). The Information Commissioner's Office (ICO) provides comprehensive [guidance](#) on all of the requirements on data protection.

Lawfulness conditions

Landlords, as data controllers, must process equality data collection in line with at least one of six data protection principles contained in the UK GDPR, Article 6. One of these lawfulness conditions is when data processing is necessary to comply with any legal obligations to which the data controller is subject.

This condition would include regulatory functions that satisfy specified conditions, namely collecting data on the protected characteristics as covered within the SHR's regulatory framework. So, this lawfulness condition can be used by social landlords to process data relating to the protected characteristics.

Special categories data

The processing of special categories of personal data is given greater protection under data protection law than ordinary personal data.

Special categories data includes data relating to a person's:

- health;
- political opinions;
- racial or ethnic origin;
- religious or philosophical beliefs;
- sex life;
- sexual orientation; or
- trade union membership.

In addition to meeting one of the conditions under Article 6 above, social landlords can only process special categories of personal data if at least one of 10 relevant exemptions is satisfied. These are set out in the UK GDPR, Article 9.

Individual social landlords must determine what exemptions to use taking account of specific advice issued by the Information Commissioner's Office (see below). Examples of such exemptions are:

- receiving explicit consent from the data subject;
- meeting obligations in respect of specific laws such as employment, social security and social protection law;
- protecting the vital interests of the data subject; and
- processing is necessary for reasons of substantial public interest.

Using explicit consent

The [ICO provides detailed guidance](#) on when it is appropriate to use explicit consent.

The ICO advises that, if using explicit consent, then strict criteria must be applied including:

- consent must be freely given;
- it must be easy to withdraw consent;
- detailed records of evidence relating to consent must be kept and updated, as appropriate;
- types of special category being processed must be clearly stated with options to consent separately for different types of data processing;
- consent must be affirmed in a clear statement

A signature box is sufficient to obtain explicit consent as long as an accompanying statement is provided that is sufficiently specific and produced in clear language. If a social landlord uses explicit consent as the basis for collecting special categories data, then it should include, in its equality monitoring form, a statement to obtain consent.

Example statement

"I consent to Anytown Housing collecting and processing the above data to help provide an appropriate service. This service involves using equality data to ensure that services address any form of discrimination, promote equality objectives and address my needs.

Note: If data processing is based on your consent, then you can withdraw consent at any time by telling us."

Examples of how to apply lawfulness conditions when processing special categories data

Example 1: Job applicant

Social landlord X has a duty under the Equality Act 2010 to eliminate unlawful discrimination in respect of job applicants. It is entitled, therefore, to collect equality data/special categories to inform internal evaluations as to whether any unlawful practice has occurred as part of the recruitment process.

Social landlord X can only process this special category data if:

- one of the six relevant lawfulness conditions contained in Article 6 of the UK GDPR exists; and
- one of the specified exemptions set out in Article 9 of the UK GDPR is satisfied.

Of the six lawfulness conditions, Article 6 (1) (c) is most relevant. This is because the processing of the special category data is necessary to comply with a legal obligation, namely the legal duty to eliminate unlawful discrimination.

The specified exemption contained Article 9 (2) (b) entitles social landlord X to process special category data, for example, to meet its obligations under employment law. In this case, that would be satisfied as the purpose of the data processing is to ensure that there is no unlawful discrimination taking place within the recruitment process.

Example 2: Tenant

Social landlord X has a duty under the Equality Act 2010 to make reasonable adjustment, as appropriate, for its tenants. It is entitled, therefore, to collect equality data/special categories in relation to disabled tenants to help it make reasonable adjustments.

In this case, the disabled tenant has a visual impairment and the landlord makes the reasonable adjustment by providing its written documents in large print.

Of the six lawfulness conditions, Article 6 (1) (c) is again the most relevant. This is because the processing of the special category data is necessary to comply with a legal obligation, namely the legal duty to make reasonable adjustments contained in the Equality Act 2010.

The exemption contained in Article 9 (2) (a) entitles social landlord X to process special category data, for example, if the tenant has given their explicit consent to the processing of such data.

The relationship between protected characteristics and special categories of data

Most data that is collected in relation to the protected characteristics is also special category data. (see Table 1 below).

Social landlords must understand what data is covered under special category data processing as such data requires more stringent data processing controls.

Social landlords must also determine which condition (or conditions) they will use for processing special category data.

Table 1: Protected characteristics and special categories of data

Protected characteristics	Special category data
Age	No
Belief or religion	Yes (religious, philosophical and political opinions)
Disability	Yes, if linked to the collection of health data
Ethnicity and race	Yes
Gender re-assignment	No, although gender re-assignment as a medical procedure gives rise to personal data on a person's physical health that would be special categories data.
Pregnancy and maternity	No
Marriage and civil partnership	No
Sex	No, unless the data subject advises that he/she identifies as a member of the opposite sex due to gender re-assignment and/or hormonal therapy
Sexual orientation	Yes

Consensual approach

Irrespective of what lawfulness condition is used, social landlords should base the collection of equality data on "a consensual approach" as people do not have to provide equality data. This applies even if landlords satisfy the above lawfulness conditions.

It is for each social landlord to encourage individuals to provide data willingly; and a willing individual is more likely to provide comprehensive information.

Other data protection issues

Where processing data is likely to be high-risk, such as the processing of special categories data, then social landlords should undertake a data protection impact assessment (DPIA). The ICO provides [guidance](#) on carrying out DPIAs, and provides a [template](#) for conducting an assessment.

The Data Protection Act 2018 outlines when an Appropriate Policy Document is required if processing special categories data. The Appropriate Policy Document complements the general records of processing that data controllers must maintain. The ICO provides a [model template](#) that data controllers can use if they require to have an Appropriate Policy.

Data security⁷ is at the heart of data protection law and is vital when processing special category data, including data relating to the protected characteristics. Therefore, social landlords must integrate data security into their data protection strategies.

The ICO [code of practice](#) on anonymisation provides useful information on how to anonymise personal data. This is also relevant to the processing of equality related data as this will often require to be anonymised when presenting information about equality issues to members. Anonymising data is also important when compiling organisational reports or carrying out research involving protected characteristics.

Social landlords will often use cloud computing and may encrypt personal data. Encryption is an important method of enhancing data security when processing data relating to protected characteristics. The ICO provides detailed [guidance](#) on encryption.

7 Information Commissioner's Office (2020) [Guide to GDPR – Security](#)

Section 4:

Regulatory standards and guidance

This section examines regulatory standards and guidance issued by regulatory bodies relevant to equality data collection.

The Scottish Housing Regulator

The SHR has published [regulatory requirements](#) that every social landlord must:

“Have assurance and evidence that it is meeting all of its legal obligations associated with housing and homelessness services, equality and human rights...”

The regulatory framework specifies that this requires social landlords to collect equality information in respect of the protected characteristics. Each social landlord must:

“Have assurance and evidence that it considers equality and human rights issues properly when making all of its decisions, in the design and review of internal and external policies, and in its day-to-day service delivery.”

and

“... collect data relating to each of the protected characteristics for their existing tenants, new tenants, people on waiting lists, governing body members and staff. Local authorities must also collect data on protected characteristics for people who apply to them as homeless. Landlords who provide Gypsy/Traveller sites must collect data on protected characteristics for these customers”

The SHR also makes clear that:

“Landlords should adhere to our statutory guidance. In certain cases, where exceptional circumstances exist, it may be appropriate for a landlord to depart from our statutory guidance. Where a landlord is considering departing from statutory guidance, it should discuss with us why a departure from the guidance is necessary before acting. The landlord should keep a record of the reasons for the departure.”

The implications of these requirements for social landlords are that:

- the collection of data is a specific requirement, applying to all protected characteristics;
- social landlords' equality data collection forms must cover all the protected characteristics for the groups specified by the SHR;
- this requirement does not refer to job applicants, however social landlords must also gather personal data about job applicants, including data about an applicant's protected characteristics, and must process this in line with data protection law; and
- social landlords must adhere to the statutory guidance unless exceptional circumstances exist.

The Equality and Human Rights Commission

The Equality and Human Rights Commission produces a diverse range of [guidance](#) in the form of statutory and non-statutory codes, general guidance and research publications. Two key documents that social landlords should be aware of include:

- the EHRC technical guidance on implementing the public sector equality duty⁸; and
- separate statutory codes on employment and services.

These documents contain detailed information about equality law and good practice. There is also information about collecting data in respect of the protected characteristics, which is relevant to social landlords in relation to both employment and housing services.

The Information Commissioner's Office

The Information Commissioner's Office provides a range of guidance to help organisations to comply with data protection requirements, including statutory codes that provide detailed guidance on issues relevant to equality data collection and about special category data and how such data should be processed including how to determine what lawfulness conditions to use when processing special category data. It also provides a range of [checklists](#) to assess their compliance with the requirements.

8 Equality and Human Rights Commission (2016) [Technical guidance on the Public Sector Equality Duty: Scotland](#)

Other regulatory guidance

Other regulatory bodies such as the Care Inspectorate implement regulatory standards that are also relevant to equality data collection. The [national health and social care standards](#) specify, under the heading 'dignity and respect', the following requirements:

"I am accepted and valued whatever my needs, ability, gender, age, faith, mental health status, race, background or sexual orientation;

and

"My human rights are protected and promoted, and I experience no discrimination"

In order to meet these requirements, social landlords that provide relevant support services will require to gather appropriate equality data.

Other useful guidance

The [Chartered Institute of Housing](#) has produced Practice Briefings that illustrate good practice in housing in respect of equality matters, including equality monitoring.

The [National Housing Federation](#) provides practical examples in a range of housing services, including the relevance of equality data collection to these services.

ALACHO, CIH, SFHA, Shelter (Scotland) and Scottish Women's Aid jointly produced a [good practice](#) guide for social landlords on domestic abuse. This guide highlights the need for information sharing and confidentiality protocols.

Stonewall Scotland and Scottish Trans produced guidance on [Getting Equalities Monitoring Right](#).

The Scottish Public Services Ombudsman (SPSO) view equality data collection as being highly pertinent to effective complaint systems for social landlords within its [model complaint handling procedures](#).

Section 5:

Benefits of equality data collection

This section explains the benefits of equality data collection to social landlords. It shows how equality data collection lies at the heart of quality services. The benefits are summarised in three themes:

- ➔ promoting positive customer care strategies;
- ➔ enhancing tenant participation opportunities; and
- ➔ meeting specific business objectives.

Promoting positive customer care strategies

Social landlords develop quality services in line with their customer care strategy. This strategy should take into account the regulatory requirement to tailor services to individuals' needs and treat them with respect.

Firstly, trust is at the heart of quality customer care and is promoted if social landlords:

- understand the needs of individual customers (including equality data) and use that data to provide appropriate services;
- treat individuals with respect; and
- ensure that equality data is processed in line with data protection law.

Secondly, by gathering useful equality data, the organisation can focus on what individuals actually need, as opposed to how the organisation may perceive their needs. As CIH points out, this is a different focus from traditional customer satisfaction surveys that

"...can only inform what customers think of the current services rather than the services that they may want the organisation to provide".⁹

Finally, by understanding the needs of individual people, an organisation can communicate more effectively with them. This will be reinforced when people experience their social landlord acting on information that they have provided.

⁹ CIH, 2008, Good Practice Briefing Number 32 – Customer Insight: Knowing Your Customers, Coventry: CIH

Example

By knowing the particular needs of disabled tenants with visual impairments and/or blind people, a landlord can provide information in formats to meet their needs. For instance, written information could be provided in an appropriate font and type size, or in another format such as audio-format and/or Braille. This is also important as it means that social landlords are carrying out their statutory duty in relation to making reasonable adjustments.

Enhancing tenant participation

Collecting equality data is central to the development of effective tenant participation strategies, as highlighted by both the Tenant Participation Advisory Service (TPAS) and the Tenant Information Service (TIS) below.

“Knowing tenants’ needs is vital in tenant participation. Providing quality information, seeking feedback and responding to aspirations are dependent on knowing the people in the communities we serve. Equality data collection is “bread and butter” to effective, efficient and economic tenant participation (and services generally). It breaks down barriers to engaging and delivers real opportunities to influence what is important to the individual at the right time and in the right way to achieve value for money and tenant satisfaction.”
—TPAS Scotland, April 2020

“It is fundamental that we know who our communities are. Equality data collection enables the social rented sector to better understand the aspirations of tenants, residents, and service users in order to deliver services that meet the needs of our diverse and ever-changing communities. The process provides a framework to expand participation opportunities; identify gaps in performance; seek new approaches for improvement; promote equality and human rights; and adopt new practices.”
—Tenant Information Service, May 2020

The effectiveness of a social landlord’s tenant participation strategy depends on the collection and usage of equality data. Tenant participation strategies comprise many inter-dependent activities, including methods of consultation to be used as part of this process. Implementing these activities effectively is dependent on having equality data.

The table below highlights examples of how equality data on specific protected characteristics could assist in planning a consultation event. In practice, social landlords should develop accessibility checklists to use when carrying out impact assessments of venues for events.

Table 2: Equality data to consider when arranging a consultation event

Protected characteristic	Issue(s) and relevant equality data
Age	Ensure that information used during a presentation is accessible/relatable to people of different age groups (older and younger people alike).
Belief or religion	Consider if the scheduled meeting date might clash with religious holidays of relevant faith groups.
Disability	Check to ascertain if a proposed venue is accessible and, if not, consider what reasonable adjustments might be appropriate.
Ethnicity and race	Assess if an interpreter is required in advance of the event to enable this service to be booked.
Sex	Assessment of the data by reference to sex (and related household data) may require specific actions. For example, single parents – mostly women – might need crèche facilities.
Sexual orientation	Ensure that language use and imagery used in presentations promotes a positive view of LGBT+ groups.

The Scottish Government's [Guide to Successful Tenant Participation](#) provides useful information on how to encourage involvement from tenants with different protected characteristics. It is important to consider the needs of individuals, who may have several protected characteristics, rather than focusing on the separate protected characteristics.

Meeting specific business objectives

Comprehensive equality data collection systems are a key aspect of business and financial governance. This section describes how comprehensive equality data collection can be used to enhance business objectives, with examples of different protected characteristic data on:

- housing applicants;
- tenants;
- job applicants;
- employees; and
- committee/elected members.

Enhancing business efficiency and effectiveness includes delivering appropriate services, prioritising services, and resource planning, all of which can lead to cost savings and are integral to prudent financial management and public accountability.

Example 1

Category of data subject: Housing applicant

Protected characteristic and related issues: Age and family composition

Understanding both the age and family composition profiles of housing applicants can help inform social landlords' development programmes. For instance, age data can be used to inform particular development requirements such as identifying appropriate support services that can vary for people of different age groups.

Key business guidance point: Linking the planning and implementation of capital programmes to actual housing needs (and preferences) of applicants helps reduce potential risks by focusing on issues that should contribute to future sustainable tenancies.

Example 2

Category of data subject: Tenant

Protected characteristic and related issues: Disability and accessibility requirements

Understanding the needs of disabled people with literacy issues helps social landlords deliver appropriate services to those tenants. For example, a social landlord that knows the percentage of tenants with literacy issues can implement a range of actions such as:

- determining staff have access to this information and agreeing who should contact individuals concerned to discuss their specific requirements;
- working with each disabled person and their support worker, if appropriate, to consider what reasonable adjustments might be required; and
- implementing adjustments, such as producing documents in a relevant format including in plain language, easy to read formats or in audio format.

A social landlord will contact a tenant, normally in writing, if they are in rent arrears. They will then often follow this up with a home visit. In this example, at such a visit a disabled tenant explains they cannot read and so the letter is not appropriate to their needs and asks the landlord to notify them of rent arrears by telephone or through personal visits. The landlord uses this information to ensure that it visits this tenant in future to discuss rent arrears issues - personal visits are likely to constitute a reasonable adjustment.

Key business guidance point: The main aim of collecting information about impairments or conditions is to enable social landlords to make reasonable adjustments to better serve their customers. This also minimises the risk of failing to comply with law. This type of information also enables landlords to better assess and plan resource requirements.

Example 3

Category of data subject: Job applicant

Protected characteristic and related issues: Belief or religion

Understanding a person's belief or religion can be used to inform the recruitment and selection process and promote equality objectives. For example, information about belief and religion can be used to arrange job interviews to avoid religious holidays or prayer time commitments.

Key business guidance point: The aim of collecting data about belief and/or religion is to gather information about the person's needs and/or requirements in relation to their belief or religion. This is done to provide an appropriate service, as well as to avoid actions that could be discriminatory in law.

Example 4

Category of data subject: Employee

Protected characteristic and related issues: Race and ethnicity

Information about race and ethnicity can be used to monitor for any form of unlawful discrimination. Such data is also collected to inform future strategic planning initiatives including positive action programmes.

Key business guidance point: Data collection is used to promote strategic planning in respect of positive action. Such action, from a business perspective, is likely to have consequential benefits as positive action promotes the interests of disadvantaged groups. Benefits from the perspective of the employer include enhanced prospects of attracting and retaining staff.

Example 5

Category of data subject: Committee/board member/Elected Members.

Protected characteristic and related issues: All protected characteristics – equality data is required to promote diversity of committee and/or board membership.

“Research suggests that more diverse boards are associated with improved financial performance, enable good corporate governance and facilitate better decision-making decision by bringing different perspectives to support constructive and challenging dialogue” EHRC, 2016¹⁰

Key business guidance point: Social landlords should use equality data to identify noticeable gaps between demographic data and existing committee/board membership. For example, data might reveal that few younger people are committee or board members despite local demographic data indicating that younger people comprise a sizeable number of tenants. Landlords should take active steps to identify what barriers may prevent people with protected characteristics becoming involved on the committee/board. Such barriers can include:

- inaccessible meeting spaces (affecting some disabled people); and
- inappropriate meeting schedules that are not in line with family commitments, for example, women (or men) with childcare requirements and/or caring responsibilities.

Other business benefits of gathering equality data

Other business benefits related to equality data are varied and include issues that affect efficiency and effectiveness of services:

- by understanding the equality profiles of tenant households, landlords can tailor surveys to their needs thus focussing on relevant issues;
- by delivering services to address individuals' needs, including those needs identified by equality data, landlords can enhance the quality of those services. By doing this, it is likely that landlords will also see reduced numbers of justified complaints.
- landlords can use complaints as a source of information to help them improve their services.

The [Scottish Public Services Ombudsman](#) emphasises the importance of equality data collection to effective complaint systems for social landlords.

¹⁰ Equality and Human Rights Commission, 2016, How to Improve board diversity: a six-step guide to good practice, London: EHRC.

Section 6:

Promoting equality objectives in practice

This section explores ways social landlords can use equality data to promote equality objectives in housing services, including implementing positive action initiatives.

The following areas illustrate practical ways in which social landlords can use equality data to advance equality objectives:

- ➔ complaint systems;
- ➔ tackling institutionalised discrimination;
- ➔ positive action; and
- ➔ staff development and training.

Complaint systems

The Scottish Public Services Ombudsman (SPSO) is responsible for developing and monitoring the implementation of [model complaint handling procedures](#) for various sectors, including the 2020 model complaints handling procedure for social landlords.

In order to implement complaint systems effectively, social landlords need to gather equality data to address the needs of people with protected characteristics. In its 2020 guidance, the SPSO emphasises that for publication and accessibility social landlords:

“... should take into account individual requirements, for example disabled people, people with learning difficulties, people who are deaf or hard of hearing (including British Sign Language users), people with a visual impairment and people whose first language is not English. Where appropriate, suitable arrangements should be made for the specific needs of those who wish to complain, including provision of interpreting services, access to support or advocacy, and information in a variety of formats and languages, at suitable venues, and at suitable times”¹¹

Equality data collection is not simply ancillary to the complaint handling process; it is integral to effective implementation of that process.

¹¹ Scottish Public Services Ombudsman (2020) [The Model Complaints Handling Procedures](#)

Tackling institutionalised discrimination

Equality data collection is vital in enabling social landlords to detect and address practices that could be discriminatory. As well as unlawful forms of discrimination, organisational practices may also disadvantage certain groups unless social landlords are aware of the risk of institutionalised discrimination.

The Equality Act 2010 defines a range of different forms of unlawful discrimination, including direct and indirect discrimination. However, discrimination can be understood in other ways, including institutional discrimination which may occur if organisational policies, rules, and procedures do not identify relevant issues clearly or if equality data forms follow a simple “select box procedure” without explaining why data is being gathered. Failing to identify relevant issues, often through a lack of awareness, can mean that those issues are not dealt with in practice.

Social landlords can use equality data collection to challenge institutional discrimination and promote equality objectives by:

- ensuring that equality data collection include data about all protected characteristics;
- using comprehensive and clear equality monitoring forms that inform governance, as well as identifying different forms and types of discrimination;
- specifying clearly why data is being collected and how it is being used; and
- using appropriate language in equality monitoring forms to promote respect for other people and establish trust and thereby elicit more comprehensive responses.

The social model of disability promotes the rights and interests of disabled people, focusing on how people are disabled by society rather than by their impairment. Disabled people can be excluded by economic and societal factors, including through use of inappropriate language. Many disabled people experience two significant structural disadvantages through living in inaccessible accommodation and having fewer employment opportunities than non-disabled people.

Using positive and appropriate language in equality monitoring forms will help social landlords to elicit meaningful equality data from disabled people. For example, the question “*Are you a disabled person?*” should be used rather than “*Do you have a disability?*”. Social landlords should also be clear why they are asking for the information about impairments: to help them make reasonable adjustments to address someone’s needs, and to ensure that there is no discrimination. This is relevant to all protected characteristics.

Positive action

Positive action addresses historic patterns of discrimination that are often institutionalised in society. The EHRC highlights that people who share a protected characteristic can often experience institutional and/or systemic discrimination that results in high levels of poverty and social exclusion, including in housing.

Positive action initiatives must be implemented in compliance with equality law. Social landlords can implement positive action if they have reasonable grounds for believing that the following conditions apply to people who share a protected characteristic:

- where they experience disadvantage due to their protected characteristic, for example, due to being part of a particular racial group;
- where their needs differ from those of people without the protected characteristic; or
- who have disproportionately low participation in the social landlord's activity compared to people without the protected characteristic.

Where these conditions apply, social landlords may take steps to:

- remove or minimise the specified disadvantage experienced by the particular group;
- implement actions to meet the need identified; or
- encourage persons from the specified group to participate in relevant activities.

Before deciding to proceed with a positive action initiative, social landlords should compare their equality data with national data sources, such as the census, and seek advice from the EHRC to ensure they satisfy the conditions above.

Example: positive action in recruitment

A social landlord identifies from its equality data that few disabled people are applying to it for employment. It then considers this against the three conditions explained above to justify if it should take positive action. The conditions appear to be met because:

- national research and statistical information demonstrate that many disabled people experience barriers to securing employment;
- disabled people have different accessibility needs from non-disabled people; and
- having compared its employment data against national, it concludes that it has disproportionately few disabled employees.

The social landlord then implements a positive action initiative to address under-representation of disabled people in employment by:

- reviewing its job adverts to ensure they do not inhibit disabled people from applying;
- undertaking an equality impact assessment of its recruitment and selection processes in collaboration with disabled people and disability rights groups;
- amending the documentation to ensure that job advertisements promote equality objectives, including using appropriate language;
- training its staff on how to write accessible and inclusive job adverts;
- publicising widely information about their positive action initiative; and
- joining the Disability Confident Scheme.

Major positive action programmes in social housing include those delivered by:

- [Glasgow Centre for Inclusive Living](#) – which has developed a number of initiatives to include disabled people in society. These include its Equality Academy, Professional Careers programme and innovative housing support service.
- [PATH \(Scotland\)](#) – was established in 1998 to address the absence of Black and Minority Ethnic (BME) communities in housing and related sectors. PATH (Scotland) runs employability, mentoring, coaching and leadership programmes across all sectors.

Staff development and training

Staff development and training should be an important element of a landlord's equality action plan to help drive effective implementation of good practice, including on equality data collection. The absence of appropriate training for staff involved in collecting equality data can be a significant barrier to its effectiveness.

Landlords need to equip staff with the knowledge to be able to provide people completing equality monitoring forms with information about:

- why equality data is being collected and how it will be used;
- the person's rights about data processing;
- who has access to equality data and with whom the data might be shared;
- how long equality data will be retained; and
- the security measures that are in place.

Landlords should plan their training programme based on an assessment of training needs of staff, recognising that each staff member may require different types of training. Relevant training will include:

- law and regulatory framework relating to equality and data protection;
- equality data collection procedures, particularly on the use of equality monitoring forms;
- the landlord's equality policy, action plan and use of equality impact assessments;
- other specialist training, including appropriate language and dealing with challenging situations that may arise in collecting equality data;
- effective use of equality data in supporting the landlord's development of policy and practice across the full range of its activities, positive action initiatives, and research projects ; and
- reporting to committee and board members.

Using the model equality monitoring form

The guide is accompanied by a model equality monitoring form at [Appendix 1](#). This section provides guidance on how to use the model form.

The law does not specify the types of questions that social landlords should use to collect equality data, although there is a range of guidance on how questions should be asked. The model form is based on legal requirements and good practice and uses a standard format that:

- asks a question about each of the protected characteristics;
- provides the option not to answer specific questions; and
- provides the option to ask to discuss confidentially any issues raised by completing the form.

You can adapt the model form to meet your organisation's own requirements and document style. This could include:

- adding additional questions;
- changing the order of the questions;
- adapting the layout and format to suit your organisation's house style for documents;
- adding additional options under the questions provided
- providing a code for internal use that could be used to anonymise names
 - i.e. only certain staff would have access to the full information
- putting the "prefer not to say" option to the top of each question; and
- having a specific monitoring form to cover each of the categories of person, i.e. housing applicants, tenants, job applicants, employees and committee members.

It is important to stress that social landlords should collect only data that they need, and they should ensure that they are not gathering the same equality data through different organisational functions or at different stages in a process. Social landlords may wish to review the full range of information collection processes to ensure they avoid duplication of equality data collection. Social landlords should review the data they hold at agreed intervals to ensure it is accurate; this will help in meeting the current needs of customers, and ensure they are complying with data protection requirements.

[Appendix 2](#) provides some objectives to consider when developing an equality monitoring form.

Addressing barriers to data collection

Social landlords may experience a range of barriers when collecting equality data, which can vary from landlord to landlord and area to area. Social landlords will, therefore, have to identify the barriers at their local level and take appropriate actions to overcome these.

The increasingly important role of social media and information technology in social landlords' operations brings with it risks around data security and cyber security. People are, arguably, becoming more aware of their rights around their personal data, putting considerable onus upon social landlords to justify and explain clearly why equality data is being collected. Media coverage of high-profile data breaches can also impact on individuals' willingness to provide equality data.

Equality data collection involves asking people questions on sensitive matters, and can appear intrusive, in particular if little or no information is provided on why data is being gathered.

People may have genuine reservations about providing equality data – or at least certain data – given their own experiences or from hearing about how some organisations have used such information historically to discriminate against individuals or groups of people.

These factors highlight further the importance for social landlords to promote trust and respect between social landlords and customers. This will be helped by the social landlord providing clear and accessible information about:

- why it is gathering equality data and how it will use the data;
- how it will safeguard the data, and
- how it will obtain a person's agreement to collect and use equality data, regardless of the lawfulness basis used for collecting equality data.

Collecting data using the form

It is important to explain as clearly as possible to the person the social landlord is asking to complete the form why it is collecting equality data from them, and how the organisation will use it. Social landlords should encourage the person to provide as much of the information as possible, while being clear that they can choose not to provide some or any of the information. The model form includes an introductory page that sets out relevant information for people completing the form.

Social landlords should provide people they are asking to complete the form with alternative ways to provide the information they are seeking, including:

- on a paper form, rather than digitally or electronically;
- with the support of a staff member, or another person; and
- in alternative formats to meet any particular needs they may have.

Social landlords should also obtain the person's agreement to provide the information and for it to be used by the organisation. The collection of equality data should be based on a consensual approach, regardless of whether the social landlord is using explicit consent as the lawfulness basis for collecting the data. It is important to remember that people do not have to provide equality data and it is for social landlords to encourage them to provide data willingly, and a willing provider is more likely to provide comprehensive information.



[Appendix 3](#) provides advice on why the questions on each of the protected characteristics are being asked to support housing staff when they are helping people – principally housing list applicants and tenants – to complete the equality monitoring form.

Using the data from the form

The Chartered Institute of Housing provided the following comment regarding the collection of equalities data:

“If housing and homelessness policy and interventions are to be effective, they need to be informed by the realities of people’s lives and the ways in which society and its institutions work. Social, economic and political structures affect people differently and social landlords need to reflect these differences when developing their policies and procedures. Collecting and using the equalities data could be transformational to improving the lives of tenants and customers”

—Chartered Institute of Housing (Scotland), April 2020

Social landlords should collect equality data to use it, and not simply to meet statutory duties and regulatory requirements. Equality data can be used to:

- assess the impact of activities, policies and practices in promoting equality objectives, including through equality impact assessments (EHRC provides [guidance on equality impact assessments](#));
- better understand the profiles of a social landlord's committees and boards, staff, tenants, and customers;
- identify patterns that may indicate potential discrimination resulting from policies or process to enable action to be taken to address these;
- assess the need for positive action programmes;
- report to a committee or board on each of the above; and
- inform research projects and programmes.

Social landlords who are covered by the Specific Duties will need to use equality data to help them meet the requirements to produce formal reports covering information about:

- equality mainstreaming;
- equality outcomes, including progress through time;
- assessment of new or revised policies and practice (equality impact assessment);
- gathering, usage and publication of employee information;
- usage and publication of Elected Members’ data;
- any gender pay gap;
- an equal pay statement; and
- award criteria and contract conditions in relation to public procurement.

Social landlords should restrict access to equality data to only those who need to use the information for the purposes for which it was collected. For example, in recruitment interviews, panel members should not have access to equality data, but the officer appointed to monitor equality within recruitment in the organisation will require access to such data to identify and address any potential or actual form of unlawful discrimination.

Appendices

Appendix 1: **Model equality monitoring form**

Appendix 2: **Objectives for drafting equality monitoring forms**

Appendix 3: **Guidance for staff to help people complete the form**

Appendix 1:

Model equality monitoring form



You can access an editable, Microsoft Word, version of this form by [clicking here](#).

Name of social landlord:

[insert name]

Information for those completing the form

Why are we asking for equality information?

We collect equality information to meet our obligations in respect of law and regulatory requirements.

What do we do with equality information?

We use equality information for a range of purposes, including to help us to:

- protect and promote your rights and interests;
- promote equality objectives across our services;
- identify and address our customers' needs, and improve our services; and
- identify and eliminate any form of discrimination.

Do you need to answer every question?

By answering as many questions as possible you will help us meet your needs better, but we provide options throughout this form to allow you to provide only the information you want to give us. You can complete some questions and not others or you can complete parts of questions. The form has space for you to tell us more about your needs, if you want.

We may ask for some information in other forms where this is required by law. For example, where we need to know your age if you are applying for a home as only those over 16 years old can be registered on our housing list.

How do we process your equality information?

We process equality information strictly in line with data protection law, including by:

- processing your equality data confidentially;
- restricting access only to relevant staff members;
- retaining equality information only as long as necessary;
- sharing data only as lawfully permitted; and
- destroying data securely.

Who do we gather equality information about?

We gather equality information from:

- people who apply for a home;
- tenants;
- people who apply for a job with us;
- our employees;
- board and committee members; and
- elected members (in case of local authorities)

Other formats

We can provide this document in *[insert the relevant alternative format you can provide]*, and more information to help you to complete the form is available *[insert where this is available]*.

Name

Name:

Age

Note: We may request a specific date of birth in certain forms when this is required in law. For example, we need to know the age of housing applicants as a person can only be registered on our housing list/register if the person is 16 years of age.

What is your date of birth? (DD/MM/YYYY)

Prefer not to say

Alternative format:

Please tick the band for your age:

16 – 24

35 – 44

55 – 64

Prefer not to say

16 – 24

45 – 54

65+

Belief or religion

Please tell us what best describes your belief or religion from the list below?

Buddhism:

Christianity – Catholic:

Christianity – Protestant:

Christianity – other (please specify):

Hinduism:

Islam:

Judaism:

Sikhism:

Other religion (please state what this is):

No specific belief in religion (for example, atheism or agnosticism):

Other belief (for example, humanism) (please specify):

Prefer not to say:

Please use this space to advise us if you have any particular requirements relating to your beliefs or religion:

Alternatively, please insert an X in this box if you want to discuss this matter in confidence:

Disability

Are you a disabled person?

Yes

No

If yes, please tell us which category you would use from the following list:

Autoimmune: (for example, multiple sclerosis, HIV, Crohn's/ulcerative colitis)

Learning difficulties: (for example, Down's Syndrome)

Mental health issues: (for example, depression, bi-polar)

Neuro-divergent condition: (for example, autistic spectrum, Dyslexia, dyspraxia)

Physical impairments: (for example, wheelchair-user, cerebral palsy)

Sensory impairment – hearing impairment

Sensory impairments – visual impairment

Other: If none of the categories above apply to you, please specify the nature of your impairment.

Prefer not to say:

Please use this space to advise us if you have any particular requirements:

Please insert an X in this box if you want to discuss this matter in confidence:

Ethnicity

Please insert an X at the box that best describes your particular ethnic group:

African	
African, African Scottish or African British:	
Other African background (please specify):	
Asian, Scottish Asian or British Asian	
Bangladeshi, Bangladeshi Scottish or Bangladeshi British:	
Indian, Indian Scottish or Indian British:	
Pakistani, Pakistani Scottish or Pakistani British:	
Chinese, Chinese Scottish or Chinese British:	
Other Asian background (please specify):	
Black or Caribbean	
Caribbean, Caribbean Scottish or Caribbean British	
Black, Black Scottish or Black British	
Other Caribbean or Black background (please specify)	
Mixed groups	
Mixed or multiple ethnic group (please specify)	
White	
English	
Gypsy Traveller	
Irish	
Polish	
Roma	
Scottish	
Welsh	
Other British	
Other	
Other group (please specify):	
Prefer not to say:	
Please use this space to advise us if you have any particular requirements:	
Please insert an X in this box if you want to discuss this matter in confidence:	

Marriage and civil partnership

Are you presently in a civil partnership?	Yes		No	
Are you presently married?	Yes		No	
Prefer not to say				

Please use this space to advise us if you have any particular requirements:

Please insert an X in this box if you want to discuss this matter in confidence:

Pregnancy and maternity

Are you pregnant?	Yes		No	
Have you taken maternity or paternity leave in the past year?	Yes		No	
Prefer not to say				

Please use this space to advise us if you have any particular requirements:

Please insert an X in this box if you want to discuss this matter in confidence:

Sex

What is your sex?	Female		Male	
	Intersex		Prefer not to say	

Please use this space to advise us if you have any particular requirements:

Please insert an X in this box if you want to discuss this matter in confidence:

Gender re-assignment (trans/transgender)

Do you consider yourself to be a trans person?	Yes		No	
Prefer not to say				

Please use this space to advise us if you have any particular requirements:	
Please insert an X in this box if you want to discuss this matter in confidence:	

Sexual orientation

What is your sexual orientation?

Bi/bisexual	
Gay man	
Heterosexual/straight	
Lesbian	
Other	
Prefer not to say	

Please use this space to advise us if you have any particular requirements:	
Please insert an X in this box if you want to discuss this matter in confidence:	

General

Please mark this box if there are any issues that you want to discuss with us in confidence:

Explicit consent

[If explicit consent is used as the basis for processing special category data, then each social landlord should insert their own explicit consent statement at this point.]

Signature:

Date:

Objectives for drafting equality monitoring forms

This appendix provides a checklist of key objectives to consider in developing an equality monitoring form and can be used in conjunction with the Template Equality Monitoring form at Appendix 1. They reflect recommended good practice.

Objective 1: Adhering to guidance

Refer to both this guidance and other relevant source materials explained in the guidance to access examples of good practice in drafting equality monitoring forms, while taking account of your context and local issues.

Objective 2: Consulting with data subjects

Consult with those who are your data subjects, including your tenants and people applying to you for a home, about your equality monitoring forms.

Objective 3: Aligning questions to the purposes of data processing

Align each question to the purpose for the data you are collecting.

Objective 4: Using appropriate and clear language

Use appropriate language in your equality monitoring forms to convey positive values and respect for other people. Use plain language where possible and explain any technical terms clearly.

Objective 5: Encouraging responses

In each question, provide an option for people not to provide the data if they prefer not to. It is good practice to have a general statement to this effect at the beginning of the form.

Objective 6: Determining lawfulness conditions

Determine what lawfulness conditions are appropriate for the information you are collecting.

Objective 7: Rights of data subjects

Ensure that you process data with the rights of data subjects in mind – such as their right to have inaccurate data rectified. You must take all reasonable steps to ensure that personal data is accurate. This requires clear and comprehensive questions being asked on equality monitoring forms.

Objective 8: Understanding why equality data is being collected

Bear in mind the purposes of data collection when determining what conditions to use in processing special categories data, principally:

- complying with regulatory standards;
- complying with law, including the Public Sector Equality Duty and the Specific Duties; and
- monitoring and addressing unlawful forms of discrimination.

Objective 9: Using explicit consent

Apply the conditions for using explicit consent for collecting data.

Objective 10: Accessing equality data

Ensure that access to equality data and information is appropriately controlled and is part of your data processing procedures. Inform those you are collecting information from that their data will be processed in line with data protection law that regulates data usage, including sharing and data retention.

Objective 11: Providing training

Provide staff with training on equality monitoring, including how to use monitoring forms, so they understand why equality data is being gathered and can answer queries from those providing the data. Highlight that people have the right to say “no” to providing equality information at any time.

Guidance for staff to help people complete the form

This appendix is intended to support housing staff when they are helping people – principally housing list applicants and tenants – to complete the equality monitoring form, and in particular to explain why the questions on each of the protected characteristics are being asked.

At the outset it is important to make the person completing the form aware that they do not have to answer any of the questions in the form. It is also important to stress the benefits in providing the information to encourage them to provide as much as they are comfortable to give.

Age

[Age Scotland](#) research shows that age discrimination is relatively common in Scotland, and so it is important to ensure that landlords can identify and address any form of unlawful and/or unfair discrimination that may occur in relation to age.

Q: Why do you need to know my age?

A: We gather age data to help us promote our equality objectives, to understand who is applying for homes, to help plan for the future and to provide the right services, to help us make appropriate allocation of homes – such as sheltered homes – and to make sure that there is no unlawful discrimination taking place.

Belief or religion

The aim of questions on belief and religion in the equality monitoring form is to identify how personal beliefs might impact on service delivery.

Q: Why do you need to know my belief or religion?

A: We gather this data to help us to help us take account of religious beliefs in the delivery of services, for example, in taking account of religious holidays when arranging interviews for jobs or planning tenant participation events. It also helps us to monitor that there is no unlawful discrimination taking place.

Disability

Q: Why do you need to know if I am a disabled person?

A: We gather this to help us understand if a disabled person has any particular support needs and/or accessibility requirements, so we can meet our duty to make reasonable adjustments in how we deliver services or in how we recruit people. It also helps us to plan for the future and to provide the right services, to make appropriate allocation of homes, and monitor that there is no unlawful discrimination taking place.

Ethnicity

The Equality Act 2010 defines race to include colour, nationality and ethnic or national origins. A racial group is one in which people share any one of these characteristics; so, French people can constitute a racial group by virtue of their shared nationality. A racial group can also include two or more distinct racial groups, for instance, British Asians include people of Asian national origin but who are British citizens (nationality).

Q: Why do you need to know my ethnicity?

A: We gather to help us plan and deliver services that are relevant to the different communities we serve. It also to help us promote our equality objectives, including race equality, and to monitor and address any form of discrimination, including institutionalised discrimination.

Gender re-assignment (trans/transgender)

The term 'gender reassignment' is used within the Equality Act 2010, although you should be aware there is currently an ongoing discussion on identifying a term that covers all gender identities, rather than simply the process of gender change.

Q: Why do you need to know if I have reassigned my gender?

A: We gather this data to help us to address, with sensitivity, the needs of trans people in how we deliver our services. It also helps us promote our equality objectives and to monitor and address any form of discrimination.

Marriage and civil partnership

Q: Why do you need to know about my marriage or civil partnership?

A: We gather this information to help us promote our equality objectives and to monitor and address any form of discrimination.

Pregnancy and maternity

Q: Why do you need to know about my pregnancy or maternity?

A: We gather this information to help us promote our equality objectives and to monitor and address any form of discrimination, including in recruitment and employment.

Sex

Sex is distinguished from gender in that sex is biologically defined whereas gender is socially constructed. The monitoring form question relates to sex (as defined by the Equality Act 2010), that is, female or male.

Q: Why do you need to know my sex?

A: We gather this information to help us promote our equality objectives, to inform planning and delivery of services, and to monitor and address any form of discrimination, including in recruitment and employment. We can also use this data to promote positive action initiatives that address the under-representation of women, including in fields such as the building industry.

Sexual orientation

Sexual orientation refers to a person's sexual attraction. That can be towards their own sex, the opposite sex or to both sexes. It also covers where someone is perceived to have a sexual orientation which is leading to discrimination.

Q: Why do you need to know my sexual orientation?

A: We gather this information to help us promote our equality objectives, to inform planning and delivery of services, and to monitor and address any form of discrimination, including in recruitment and employment.

Glossary

Anonymisation	<p>To convert personal data into anonymised data where the data subject can no longer be identified.</p> <p>Pseudonymisation requires the use of additional information to identify the person concerned. Pseudonymised data remains personal data within data protection law.</p>
Big data	This concept refers to data that is extremely large and is, therefore, difficult to process with traditional data base systems and software.
Consent	Consent of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which she/he – by a statement or by clear affirmative action – signifies agreement to the processing of personal data relating to her/him. See the GDPR, Article 4, (11). This can be contrasted with explicit consent as required for processing of special category data in respect of Article 9 (2) (a).
Data	Data refers to distinct pieces of information or facts that are limited in value until it is processed and analysed to produce meaningful information.
Data controller	A data controller is the legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data. (GDPR, Article 4 (7)).
Data processor	A data processor is “a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller” (GDPR, Article 4 (8)).
Data subject	The data subject is the natural person about whom data is collected. This includes anyone who is either identified or identifiable.
Discrimination	This term must be distinguished from legal forms of unlawful discrimination (see below). The term simply means to distinguish. In reality, though, this term is now used by many people to cover any forms of discrimination, either unlawful or unfair. The law deals with unlawful discrimination, but organisational policies can also address unfair forms of discrimination.
Harassment	This term, similarly to discrimination, is defined in the Equality Act 2010, section 26. Other Acts in Scotland cover other unlawful harassment too. These distinctions are important from a monitoring perspective as, by understanding what different types of harassment are taking place, then appropriate remedies can be considered.

Institutional discrimination	This is not a legal concept but is a term used to refer to internal organisational practices – including policies and practices – that may often discriminate indirectly due to the rigidity of organisational rules and failure (by organisations) to monitor the effects of policies in practice. This includes the important theoretical concept of structured omission, a process whereby failure to examine issues that are relevant to social justice serves to promote ignorance of those issues and consequent non-action to address relevant concerns (see Montgomery, 2011, pages 66-67).
Mainstreaming of equality	<p>In the words of the EHRC, 2016 A, page 9:</p> <p><i>“Mainstreaming equality simply means integrating equality into the day-to-day working of an authority. This means taking equality into account in the way the authority exercises its functions. In other words, equality should be a component of everything an authority does.”</i></p> <p>Mainstreaming the equality duty has a number of benefits including:</p> <ul style="list-style-type: none"> • equality becomes part of the structures, behaviours and culture of an authority; • an authority knows and can demonstrate how, in carrying out its functions, it is promoting equality; and • mainstreaming equality contributes to continuous improvement and better performance.”
Natural person	An identified or identifiable natural person is the data subject. This is someone who can be identified, directly or indirectly, in particular by reference to an identifier such as a name etc (see GDPR, Article 4, for further information).
Personal data	<p>This refers to personal data about data subjects. The term is defined in the GDPR, Article 4 (1):</p> <p><i>“Personal data means any information relating to an identified or identifiable natural person.”</i></p>
Positive action	Positive action is promoted in the Equality Act 2010 and is used to address historic patterns of discrimination experienced by particular groups. This must be distinguished from positive discrimination that is, in general, unlawful.
Protected characteristics	These are the categories on which it is unlawful to discriminate in law.
Social landlord ¹²	<p>The term “social landlord” is defined in law, as follows:</p> <p><i>“Social landlord” means a registered social landlord, local authority landlord or a local authority which provides housing services.”</i></p>

¹² See the [Housing \(Scotland\) Act 2010](#), section 165.

Special categories of data	This is defined by the GDPR, Article 9 (1) and includes the data listed in of the Guide. Sensitive personal data was the term now replaced by the term special categories of data.
Unlawful discrimination	This term refers to the diverse forms of unlawful discrimination that are set out in the Equality Act 2010.
Victimisation ¹³	<p>The ERHC website explains what victimisation is in plain language as follows:</p> <p>“Treating someone badly because they have done a ‘protected act’ (or because you believe that a person has done or is going to do a protected act). A ‘protected act’ is:</p> <ul style="list-style-type: none"> • making a claim or complaint of discrimination (under the Equality Act). • helping someone else to make a claim by giving evidence or information. • making an allegation that you or someone else has breached the Act. • doing anything else in connection with the Act.”

¹³ This term is defined in the Equality Act 2010, section 27.

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