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* **Glasgow Centre for Inclusive Living (**[**http://www.gcil.org.uk/**](http://www.gcil.org.uk/)**)**
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* **Positive Action in Housing (**[**http://www.paih.org/**](http://www.paih.org/)**)**
* **TPAS Scotland (**[**https://www.tpasscotland.org.uk/**](https://www.tpasscotland.org.uk/)**)**
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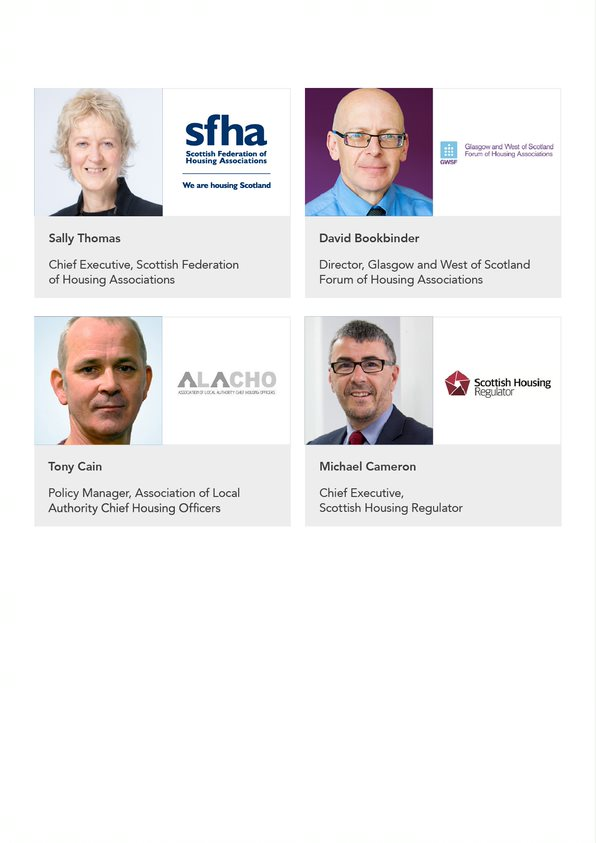
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Foreword

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 how 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
* how data can be collected
* what barriers to data collection exist
* 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 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.
* Collecting data on a completely anonymised basis is a legitimate approach for those organisations who do not wish to link the data collected to the individual. The guide provides potential options regarding methodology without being prescriptive.
* 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 guide is accompanied by two model equality monitoring forms at[**Appendix 1**](#App1)and[**Appendix 2**](#App2)**.**

**Please note:** 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.

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
* 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. SHR’s [regulatory framework](https://www.housingregulator.gov.scot/for-landlords/regulatory-framework#section-1) 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]](#footnote-2) The equality action plan should cover a wide range of activities, including:

* equality data collection
* equality impact assessment of organisational policies and procedures
* 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 linked to an individual 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. As outlined later in the document, if data collected is not linked to an individual in any way, then this is no longer personal data, and such data protection considerations would no longer apply.

1. **The equality strategy and tenant participation strategy**

Social landlords have a [statutory duty](https://www.legislation.gov.uk/asp/2001/10/section/53) 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.

1. **The equality strategy and customer care strategy**

The [Scottish Social Housing Charter](https://www.gov.scot/publications/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 a landlord to ensure those needs can be addressed.

Section 3: Law relating to equality data collection

This section provides a summary of key legal provisions relevant to equality data collection. 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](https://www.legislation.gov.uk/asp/2010/17/contents/enacted) 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]](#footnote-3)

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

The Equality Act 2010  
The [Act](https://www.legislation.gov.uk/ukpga/2010/15/contents) 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
* sexual orientation.

EHRC has confirmed that marriage and civil partnership is only a protected characteristic in terms of employment. This means there is more flexibility for landlords as to whether they choose to collect data on this characteristic for tenants and applicants than with other protected characteristics.

**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](https://www.legislation.gov.uk/ukpga/1998/42/contents), section 150 (5).

Standard 5.3 of the [Regulatory Standards of Governance and Financial Management](https://www.housingregulator.gov.scot/for-landlords/regulatory-framework#section-3) 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]](#footnote-4)

**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 relevant data. 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]](#footnote-5)

EHRC’s overall view is that if a landlord did not collect data across protected characteristics, it is likely that they would be failing to meet the Public Sector Equalities Duty.

**Example**

A social landlord (as employer) can evaluate impairment relateddata 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.

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.”[[5]](#footnote-6)

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]](#footnote-7)*

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](https://www.equalityhumanrights.com/sites/default/files/assessing-impact-public-sectory-equality-duty-scotland.pdf).

**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.

Data protection law

The main law relevant to social landlords is the [UK General Data Protection Regulation](https://uk-gdpr.org/) and the [Data Protection Act 2018](https://www.legislation.gov.uk/ukpga/2018/12/contents).The Information Commissioner’s Office (ICO) provides comprehensive [guidance](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/) on all of the requirements on data protection. It is important to note that data protection legislation only applies to personal data, so this legislation would only be of consideration to landlords if they were choosing to link data collected to individuals. If they were collecting on a purely anonymous basis and the data was in no way linked to the individual, then it is no longer personal data and data protection considerations would no longer apply.

A summary of key issues in relation to processing equality related data (for those who choose to link data to the individual) is provided below; this is not intended as a complete statement of law.

**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 Scottish Housing Regulator’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
* 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 ten relevant exemptions is satisfied. These are set out in the UK GDPR, Article 9.

If a social landlord chooses to link the data collected to individuals, it 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
* processing is necessary for reasons of substantial public interest.

**Using explicit consent**

This section applies where a landlord has:

1. Chosen to link equalities data collected to the individual and
2. Chosen to use explicit consent as the basis for collecting special categories data

The ICO provides detailed guidance on [when it is appropriate to use explicit consent](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/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 any equality monitoring form used, a statement to obtain consent such as the example below.

**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 (If linked to the individual). (see Table 1 below).

Social landlords that choose to link equalities data collected to the individual 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 characteristic** | **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 |

**Other potential data protection issues**

If linking data to the individual, the processing of special categories data is likely to be high risk. In these circumstances, then social landlords should undertake a data protection impact assessment (DPIA). The ICO provides [guidance](https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/data-protection-impact-assessments-dpias-guidance/) on carrying out DPIAs, and provides a [template](https://ico.org.uk/media/2258461/dpia-template-v04-post-comms-review-20180308.pdf) 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](https://icosearch.ico.org.uk/s/redirect?collection=ico-meta&url=https%3A%2F%2Fico.org.uk%2Fmedia%2Ffor-organisations%2Fdocuments%2F2616286%2Fappropriate-policy-document.docx&auth=P%2B8tyGKLiwXZVtgOSWDYrg&profile=_default&rank=1&query=Appropriate+Policy+Document) that data controllers can use if they require to have an Appropriate Policy.

Data security[[7]](#footnote-8)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](https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf) 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](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/encryption/) on encryption.

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 Scottish Housing Regulator (SHR) has published [regulatory requirements](https://www.housingregulator.gov.scot/for-landlords/regulatory-framework#section-3) 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 (if this is how a landlord chooses to collect the data) 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
* 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](https://www.equalityhumanrights.com/en/public-sector-equality-duty-scotland) 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 duty[[8]](#footnote-9)
* 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.

In respect of the SHR data collection requirements, EHRC has confirmed that marriage and civil partnership is only a protected characteristic in respect of employment. This means that landlords have more of an option as to whether they choose to collect information on this characteristic for tenants and applicants than they do for other protected characteristics

**The Information Commissioner’s Office**

For those landlords that choose to link data to the individual, the Information Commissioner’s Office provides a range of [guidance](https://ico.org.uk/for-organisations/guide-to-data-protection/) to help organisations to comply with data protection requirements. This includes 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](https://ico.org.uk/for-organisations/sme-web-hub/checklists/) to assess their compliance with the requirements.

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](https://www.careinspectorate.com/index.php/new-standards-and-inspections) 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](https://www.cih.org/) has produced Practice Briefings that illustrate good practice in housing in respect of equality matters, including equality monitoring.

The [National Housing Federation](https://www.housing.org.uk/our-work/diversity-and-equality/) 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](https://womensaid.scot/wp-content/uploads/2019/08/Domestic-abuse-guidance-for-social-landlords-FINAL.pdf) 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](https://www.scottishtrans.org/wp-content/uploads/2017/06/getting_equalities_monitoring_right.pdf).

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](https://www.spso.org.uk/the-model-complaints-handling-procedures)

Other regulatory bodies such as the Care inspectorate implement regulatory standards that are also relevant to equality data collection, such as under the [Health and Social Care Standards](https://www.gov.scot/publications/health-social-care-standards-support-life/) relating to dignity and respect.

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
* 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
* ensure that equality data is processed in line with data protection law (if linking data collected to the individual).

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]](#footnote-10).

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. This may not be through issuing an equality monitoring questionnaire, as individuals may approach landlords directly to request adjustments to meet their individual needs. If anonymising data collected, it is important to offer individuals opportunities to do so should they so wish.

**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.

Table 2 highlights examples of how equality data on specific protected characteristics, as well as more general awareness of equalities considerations, 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. |
| 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](https://www.gov.scot/publications/guide-successful-tenant-participation/pages/3/) 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
* 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 (applicable to anonymised data as well as that linked to individual)**

**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 (applicable when data linked to individual)**

**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
* 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. Whilst the landlord will still need to issue the relevant letters and notices to comply with the pre action requirements contained in the Housing (Scotland) Act 2010 in cases of rent arrears, it can use this information to ensure that it also 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 (not part of SHR requirement, but part of requirements under equality legislation)**

**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 (applicable when linking data to the individual)**

**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 (applicable if anonymising or linking to individual)**

**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, 2016**[[10]](#footnote-11)

**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)
* 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. These will also vary depending on whether a landlord chooses to anonymise the data or link this to the individual:

* 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](https://www.spso.org.uk/) emphasises the importance of equality data collection to effective complaint systems for social landlords.

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
* 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](https://www.spso.org.uk/the-model-complaints-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]](#footnote-12)

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

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:

* using comprehensive and clear equality monitoring forms, that could help identify different forms and types of discrimination
* specifying clearly why data is being collected and how it is being used
* 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 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
* 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
* 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
* 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
* joining the Disability Confident Scheme.

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

* [Glasgow Centre for Inclusive Living](http://www.gcil.org.uk/) – which has developed a number of initiatives to include disabled people in society. These include its Equality Academy, its Professional Careers programme and its innovative housing support service
* [PATH (Scotland)](https://pathscotland.org.uk/) – which 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. If linking the data to individuals, this will also need to include:

* 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
* 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 (if linking to the individual)
* 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
* reporting to governing body members.

**Section 7: Using a model equality monitoring form and collection methodology**

The guide is accompanied by two model equality monitoring forms at [Appendix 1](#App1) and [Appendix 2](#App2). This section provides guidance on how (and when) to use these model forms, as well as some possible alternative options

The model form at [Appendix 1](#App1) can be used by landlords that wish to collect data on a completely anonymous basis. The model form at [Appendix 2](#App2) can be used by any landlord who wishes to link data collected to individuals and seek explicit consent in order to do so in compliance with data protection legislation.

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 forms are based on legal requirements and good practice and use a standard format that:

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

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

* adding additional questions (although there are further data protection considerations in asking questions that go beyond the SHR requirement if linking data to the individual)
* 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
* Including 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
* having a specific monitoring form to cover each of the categories of person, i.e., housing applicants, tenants, job applicants, employees and committee members
* removing questions where you are already collecting the data elsewhere – e.g., through housing waiting list applications.
* removing the question relating to marriage and civil partnership from the questionnaire when issuing to tenants or applicants – as it is only a protected characteristic in terms of employment.

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 your information collection processes to ensure that they avoid duplication of equality data collection where possible, although this may be more challenging if you choose to anonymise collection. You should review the data you hold at agreed intervals to ensure that it is accurate; this will help you in meeting the current needs of customers, and ensure you are complying with data protection requirements.

[Appendix 3](#App3) provides some objectives to consider when developing an equalities monitoring form.

**Methodology when anonymising data**

[Appendix 1](#App1) provides a model form that can be used to collect the data on a completely anonymous basis by those landlords who chose to do so. This approach removes complex data protection considerations as data collected will not be linked to any individual and therefore not personal data. Individuals may be more willing to answer questions on an anonymous basis

In order to ensure that data collected is completely anonymous, the method by which the questionnaire is issued is important. Issuing by post is recommended to ensure it can be returned anonymously and not linked back to the individual. For instance, asking individuals the questions contained in the form over the phone or in person would not be possible without rendering the data collected personal data and no longer anonymous.

It will not be possible to know who you have collected data from already, so a regular exercise of refreshing any data collected on an anonymous basis is recommended, e.g., after a set number of years.

**Methodology when linking data to individuals**

[Appendix 2](#App2) provides a model form that can be used to collect data when a landlord wishes to

* Link the data collected to the individual providing it and
* Seek explicit consent from that individual for doing so

There are many data protection considerations in collecting the data in this way - and these must be carefully considered by any landlord who chooses to do so (as discussed earlier in this guide).

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
* 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 one of the model forms**

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. Each 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 it is seeking, which could include (depending on if collecting anonymously or linking to the individual):

* providing a paper form, rather than digitally or electronically (recommended when collecting anonymously)
* with the support of a staff member, or another person (when linking to the individual)
* providing the form in alternative formats to meet any particular needs an individual may have.

When linking to the individual, 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 that will not be anonymised 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 4](#App4) 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.

**Alternative approaches**

It is important to note that the SHR requirement is to collect data for nine protected characteristics for the five groups specified – not to issue an equality monitoring form to each. This is only one method of collecting the data, and landlords may decide that alternative approaches might be more suitable for certain aspects of the data. Some landlords are considering issuing the questions used in the census form to each of the five groups rather than those detailed in the template questionnaire – and this would be a perfectly valid approach to collect the data.

Landlords have more of an option around marriage and civil partnership than other protected characteristics. EHRC has clarified that marriage and civil partnership is only a protected characteristic in relation to employment. This means that landlords may decide not to collect information in this regard for tenants and applicants if they did not feel this would provide them with useful data. Of course, landlords could still collect this information for all groups if they decided to.

However – with that exception - EHRC’s overall view is that if a landlord did not collect data across the other 8 protected characteristics, it is likely that they would be failing to meet their duties under equalities legislation and in particular the Public Sector Equalities Duty. This may make it difficult to defend a claim of discrimination and having an explicit policy of not collecting data would likely make any such claims even more difficult to defend.

If a landlord were to decide not to collect data on any protected characteristic for any of the five groups using the questionnaire, the landlord would need to be assured that:

* It remains able to meet all statutory and regulatory requirements
* The rationale for this decision is set out clearly in its policy documents
* It is adequately equipped to prevent discrimination or demonstrate that no discrimination has occurred
* It can contribute information to help identify any priority areas where action needs to be taken to improve the lives of protected groups
* It has adequate information to respond to individual needs for reasonable adjustment (it is recognised that equalities monitoring forms may not be the primary source for certain information)

As highlighted earlier, there is no requirement to undertake a further exercise to collect data that is already being collected by a landlord elsewhere, e.g. through housing application forms. Landlords should review the data already collected before issuing any questionnaire to any group.

EHRC recommend that landlords do not use census data as an alternative to collecting data directly. This is because it can never be completely specific to a landlord’s tenants, applicants etc. That said, census data will become particularly relevant once the results of the 2022 census become available, as it will then be up to date. If appropriate data is available for a landlord’s community/geography, then this data could be particularly helpful. For instance:

* it could be used as a comparison tool, cross checking the census data in the landlords’ area with that which the landlord has collected. This would allow the landlord to check for any possible disparities which might need exploring
* where a landlord had received a low response rate for any particular characteristic or group, it could use census data to obtain a more meaningful sample, albeit census data would not be specifically from its own tenants, applicants etc.

**Using the data collected**

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 your activities, policies and practices in promoting equality objectives, including through equality impact assessments (EHRC provides [guidance on equality impact assessments](https://www.equalityhumanrights.com/sites/default/files/assessing-impact-public-sectory-equality-duty-scotland.pdf))
* better understand the profiles of a social landlords’ committees and boards, staff, tenants, and customers
* to identify patterns that may indicate potential discrimination resulting from your policies or process to enable you to take action to address these
* assess the need for positive action programmes
* report to your committee or board on each of the above
* 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
* 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.

**Frequently Asked Questions**

Registered social landlords raised a number of queries about this guidance which are collected together at [Appendix 5](#App5) in order to provide further clarity on a number of points. These FAQs will be added to as necessary when further queries are raised regarding the requirement.

****

**Equality monitoring form**

|  |  |
| --- | --- |
| **Name of social landlord:** | **[insert name]** |

**Information for those completing the form**

**Why we are asking for equality information?**

We collect equality information to help us to plan and deliver effective services and to meet our legal and regulatory obligations.

**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
* 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.

**Are the answers I provide anonymous?**  
  
Yes – the answers you provide are completely anonymous and will not be linked back to you in any way.

**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
* 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].**

**Age**

|  |  |
| --- | --- |
| **What is your age?** |  |
| Prefer not to say |  |

***Alternative format:***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Please tick the band for your age:** | 16–24 |  | 25–34 |  |
| 35–44 |  | 45–54 |  |
| 55–65 |  | 65+ |  |
| Prefer not to say |  | | | |

Belief or religion

Please tick the box which best describes your belief or religion from the list below?

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Buddhism: | | | | |  |
| Christianity | | | | |  |
| Catholic: |  | Protestant: |  | Other: |  |
| 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): | | | | |  |
| Prefer not to say | | | | |  |

Disability

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Are you a disabled person? | Yes |  | No |  |

If yes, please tick the box 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 issue: (for example, depression, bi-polar) | |  |
| Neuro-divergent condition: (for example, autistic spectrum, Dyslexia, dyspraxia) | |  |
| Physical impairment: (for example, wheelchair-user, cerebral palsy) | |  |
| Sensory impairment: (hearing impairment) | |  |
| Sensory impairment: (visual impairment) | |  |
| Other: If none of the categories above apply to you, please specify the nature of your impairment. | |  |
| Prefer not to say |  | |

Ethnicity

Please tick the box that best describes your particular group.

**African**

|  |  |  |
| --- | --- | --- |
| African, African Scottish or African British: | |  |
| Other African background (please specify): |  | |

**Asian, Scottish Asian or British**

|  |  |  |
| --- | --- | --- |
| 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 group: | Yes |  | No |  |
| Please specify your ethnic group |  | | | |

|  |  |
| --- | --- |
| Prefer not to say: |  |

Marriage and civil partnership

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

**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 | | | |  |

Sex

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

Gender re-assignment (trans/transgender)

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

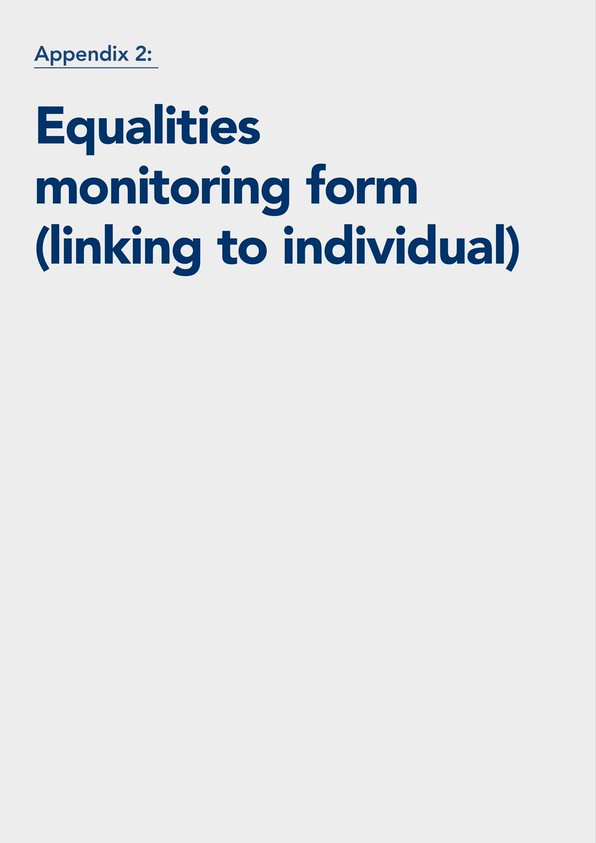
Sexual orientation

**What is your sexual orientation?**

|  |  |
| --- | --- |
| Bisexual |  |
| Gay man |  |
| Heterosexual/straight |  |
| Lesbian/gay woman |  |
| Other |  |
| Prefer not to say |  |

Particular Requirements

If you have any particular requirements relating to any of the questions you have answered, and would like to discuss further in confidence, please contact **[INSERT CONTACT DETAILS]**

****

**Equality monitoring form**

|  |  |
| --- | --- |
| **Name of social landlord:** | **[insert name]** |

**Information for those completing the form**

**Why we are asking for equality information?**

We collect equality information to help us to plan and deliver effective services and to meet our legal and regulatory obligations.

**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
* 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
* 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
* 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**

|  |
| --- |
|  |

**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 sixteen.**

|  |  |  |
| --- | --- | --- |
| **What is your date of birth?** (DD/MM/YYYY) |  | |
| Prefer not to say | |  |

***Alternative format:***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Please tick the band for your age:** | 16–24 |  | 25–34 |  |
| 35–44 |  | 45–54 |  |
| 55–65 |  | 65+ |  |
| Prefer not to say |  | | | |

Belief or religion

Please tick the box which best describes your belief or religion from the list below?

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Buddhism: | | | | |  |
| Christianity | | | | |  |
| Catholic: |  | Protestant: |  | Other: |  |
| 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): | | | | |  |
| Prefer not to say | | | | |  |

Please use the space below to tell us about any particular requirements relating to your beliefs or religion.

|  |
| --- |
|  |

|  |  |
| --- | --- |
| Please tick here if you want to discuss this matter in confidence: |  |

Disability

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Are you a disabled person? | Yes |  | No |  |

If yes, please tick the box 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 issue: (for example, depression, bi-polar) | |  |
| Neuro-divergent condition: (for example, autistic spectrum, Dyslexia, dyspraxia) | |  |
| Physical impairment: (for example, wheelchair-user, cerebral palsy) | |  |
| Sensory impairment: (hearing impairment) | |  |
| Sensory impairment: (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 the space below to advise us if you have any particular requirements.

|  |
| --- |
|  |

|  |  |
| --- | --- |
| Please tick here if you want to discuss this matter in confidence: |  |

Ethnicity

Please tick the box that best describes your particular group.

**African**

|  |  |  |
| --- | --- | --- |
| African, African Scottish or African British: | |  |
| Other African background (please specify): |  | |

**Asian, Scottish Asian or British**

|  |  |  |
| --- | --- | --- |
| 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 group: | Yes |  | No |  |
| Please specify your ethnic group |  | | | |

|  |  |
| --- | --- |
| Prefer not to say: |  |

Please use the space below to advise us if you have any particular requirements.

|  |
| --- |
|  |

|  |  |
| --- | --- |
| Please tick here 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 the space below to advise us if you have any particular requirements.

|  |
| --- |
|  |

|  |  |
| --- | --- |
| Please tick here 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 the space below to advise us if you have any particular requirements.

|  |
| --- |
|  |

|  |  |
| --- | --- |
| Please tick here if you want to discuss this matter in confidence: |  |

Sex

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

Please use the space below to advise us if you have any particular requirements.

|  |
| --- |
|  |

|  |  |
| --- | --- |
| Please tick here 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 the space below to advise us if you have any particular requirements.

|  |
| --- |
|  |

|  |  |
| --- | --- |
| Please tick here if you want to discuss this matter in confidence: |  |

Sexual orientation

**What is your sexual orientation?**

|  |  |  |
| --- | --- | --- |
| Bisexual | |  |
| Gay man | |  |
| Heterosexual/straight | |  |
| Lesbian/gay woman | |  |
| Other | |  |
| Prefer not to say |  | |

Please use the space below to advise us if you have any particular requirements.

|  |
| --- |
|  |

|  |  |
| --- | --- |
| Please tick here 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 |  |

Consent

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

|  |  |
| --- | --- |
| **Signature:** |  |
| **Date:** |  |



Appendix 3: 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 Equalities Monitoring forms at [Appendix 1](#App1) and [Appendix 2](#App2). 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
* monitoring and addressing unlawful forms of discrimination.

**Objective 9: Using explicit consent**

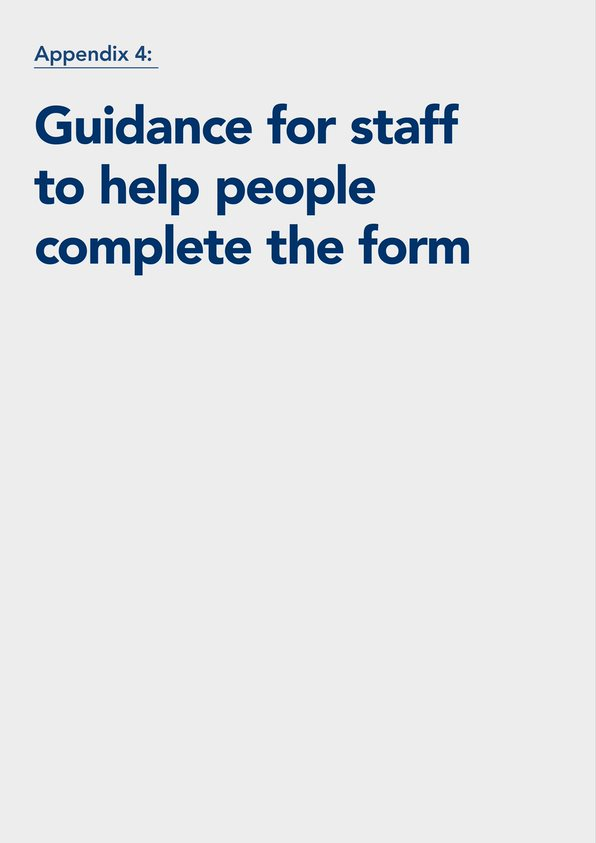
Apply the conditions for using explicit consent for collecting data.

**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.



Appendix 4: 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](https://www.ageuk.org.uk/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 that 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?

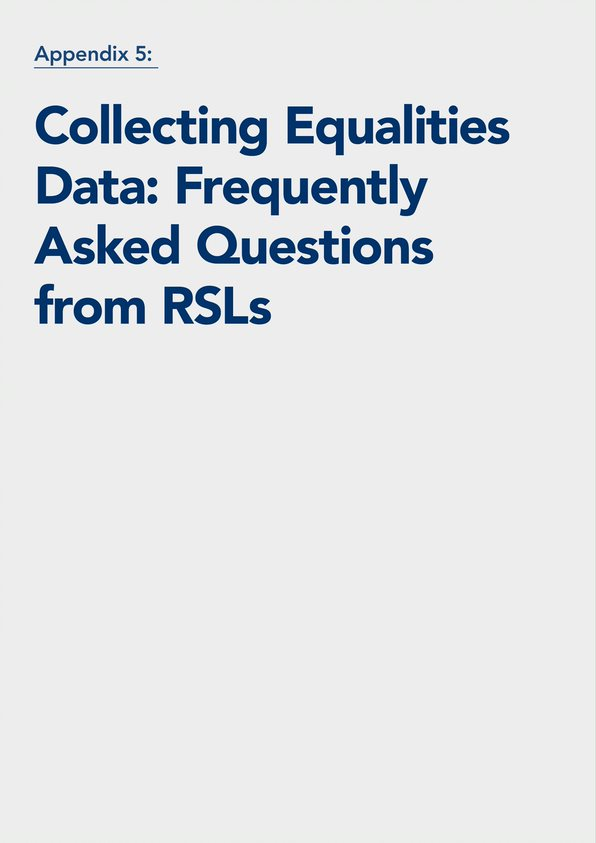
A: We gather this information to help us promote our equality objectives, to inform planning and delivery of services, and to monitor and address any form of discrimination, including in recruitment and employment. We can also use this data to promote positive action initiatives that address the under-representation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



**Background**

Since the National Guidance on Equalities Data Monitoring was first made available to all landlords in Scotland in August 2021, SFHA, GWSF and the SHR have received a number of queries from RSLs relating to the document and the requirement in general. This Appendix provides a summary of the most frequently asked questions and seeks to provide further guidance on these points. Questions are divided into two main categories:

* Clarifying the data collection requirement
* Flexibility on what data is collected

The Equality and Human Rights Commission (EHRC) and Information Commissioner’s Office (ICO) provided further guidance and advice during the production of the FAQs, placing greater emphasis on the need for each landlord to decide whether it wishes to link the data collected to the individual or collect on a completely anonymous basis. This is also now reflected in the National Guidance.

We will update this FAQ document as necessary as further questions and points are raised. If you have any further queries that you would like to see covered in the document, please contact [enquiries@sfha.co.uk](mailto:enquiries@sfha.co.uk)

**Clarifying the data collection requirement**

***Question 1* - *Should we be linking data to individuals or ensuring it is anonymous?***

**Answer:** It is up to each landlord to decide whether it wishes to collect the data on a purely anonymous basis, or if it wishes to link it to the individual. An RSL may decide on a different approach for different groups (staff, tenants etc.).

There are pros and cons with either approach, although it is clear that linking the data to the individual would be more complex to implement and require more robust mechanisms in place to ensure compliance with data protection legislation. As a general point of principle, both the Equalities and Human Rights Commission (EHRC) and the Information Commissioner’s Office (ICO) advise that linking data to individuals can risk equalities information being used to discriminate. Landlords will need to put in place a range of important legal protections if linking is to be undertaken safely and correctly.

The ICO advises that linking data to individuals means keeping data as identifiable information, and that in doing so landlords must ensure this is both necessary and proportionate. The ICO has also advised that if a landlord plans to link data to individuals for a number of different uses, it would need to ensure that a privacy notice satisfactorily covered all these potential purposes.

It is important to note that if data collected is not linked in any way to an individual – i.e., if no name and signature are sought and the data is not linked to other identifying information (for example a housing application form) – it is not personal data and the data protection requirements relating to personal data would not apply. (See ICO guidance here: [ICO identifying personal data guidance](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/)). Many landlords may choose this approach for these reasons.

If a landlord decides to link data to individuals, it is crucial that they take appropriate legal advice to ensure that they are doing so correctly. While this may be a more complex approach to implement, some landlords may still decide to do so due to the benefits of such an approach - most notably cutting down on duplication of data collection from individuals.

For instance, EHRC has recognised that there are scenarios where linking the data to individuals could make monitoring outcomes easier and avoid having to seek data from the same person for a second time at a later date. Taking housing list applicants as an example, linking the data to individuals enables a landlord to compare the characteristics of applicants with those of people who are actually rehoused. With no such linking of the data, people who are rehoused would need to be asked to complete a further monitoring form at the point of rehousing.

The question of whether equalities data is linked to individuals is quite separate from the issue of acting on an individual’s request to make appropriate adjustments in relation to a particular need. For example, a tenant may advise that they are hard of hearing so that this can be noted and taken into account in any communications with them.

The ICO [code of practice](https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf) on anonymisation provides useful information on how to anonymise personal data.

***Question 2 -*** *Why does the template form at* [*Appendix 2*](#App2) *ask for a person’s signature?*

**Answer:** The National Guidance has been revised to emphasise that the person’s signature should not be asked for if a landlord is collecting data on an anonymous basis.

A signature on the form should only be requested if:

1. The landlord wishes to link the data to the individual and
2. The landlord wishes to use explicit consent as the condition for gathering special category data under the UK GDPR (under these circumstances the landlord’s statement on explicit consent would also be inserted)

Any landlord that decides to take this approach should take appropriate legal advice to ensure compliance with data protection legislation.

***Question 3*** *-* *If we do not link data to an individual, how can we use this to improve services?*

**Answer:** Aggregated data from responses that cannot be linked to individuals can be used to enhance services. For example: an understanding of both the age and family composition profiles of housing applicants can help inform social landlords’ development programmes.

The SHR has acknowledged that, while many landlords will already be collecting much, or at least some, of the data through existing arrangements, it will take time to gather a meaningful data set that can be used to demonstrably influence service delivery.

***Question 4*** *–* *Do we have to issue a questionnaire to all of our existing tenants?*

**Answer*:*** Whilst there is no requirement to issue the questionnaire to all existing tenants, this may be the most practical option depending on the approach the RSL decides to take on linking the data to the individual.

If an RSL chooses not to link the data to the individual (i.e., the data collected is completely anonymous and therefore not personal information), then issuing the questionnaire to all existing tenants may be the only practical method of ensuring every tenant has been approached to provide the information – as there will be no means of tracking who has (and has not) responded. It is recognised that such an exercise would provide a ‘snapshot in time’ picture which would then gradually become out of date as a result of tenancy turnover.

If an RSL chooses to link data collected to individuals, then it may not need to undertake a specific exercise to gather the necessary information from all existing tenants, (although they can of course still choose to do so if they think that puts them in the best position to understand the needs of their tenants). Under these circumstances, RSLs could use other engagements with tenants to gather the information, with possible examples including the tenant satisfaction survey; when a tenant applies for a transfer; or when a tenant seeks assistance in maximising their income.

It is, of course, likely that many landlords will already hold much of the required information about many of the groups of people covered by this requirement. Landlords may need to bring this information together, refresh it and consider how to keep it up to date.

It is important to note that EHRC has clarified that marriage and civil partnership is only a protected characteristic in respect of employment. This means that there is more flexibility as to whether a landlord wishes to seek data on this characteristic in respect of tenants.

*Question 5 - Can we ask the questions in the questionnaire over the phone or in person?*

**Answer:** This would be dependent on whether you chose to collect the data anonymously or link it to the individual.

The methodology in issuing the questionnaire at [Appendix 2](#App2) would be crucial if you are seeking to ensure responses are anonymous. For instance, issuing by post would ensure that the individual could return the form without any link to the individual, but phoning individuals or asking them the questions in person when they were in the office would remove this anonymity and mean that the data collected was personal data.

If you are linking to the individual, you might be in a position to ask the questions in the model form at [Appendix 1](#App1) over the phone or in person. However, this would be dependent on whether you were seeking to codify the responses or limit the number of staff who have access to the responses.

***Question 6*** *–* *By what date are we required by the SHR to begin collecting the data?*

**Answer:**  The Regulator wrote to landlords in June 2021 to ask landlords to provide it with assurance in their Annual Assurance Statement (due by the end of October 2021) that they had appropriate plans to implement an effective approach to the collection of equality information. The SHR will take a similar approach in 2022 and ask landlords to confirm that they are taking steps towards compliance with this requirement as part of their Annual Assurance Statement submission (due by end of October 2022).

***Question 7 –****How frequently do we have to collect data, i.e., do we have to reissue the questionnaire after a set number of years?*

**Answer:** Whilst there is no requirement to reissue the questionnaire after a set number of years, landlords may wish to do so depending on their approach to linking the data collected to the individual.

If the data is not being linked to an individual in any way (i.e., it is completely anonymous and not personal data) then there is no way of knowing who has filled out the questionnaire or checking if the data provided by respondents is up to date. This means there is no method of refreshing the data without reissuing the questionnaire after a set number of years.

Where an RSL chooses to link the data to the individual, other methods will be available to the landlord to keep the information held up to date. As this would then be personal data, such landlords should be mindful of the [‘Accuracy’ principle under UK GDPR Article 5](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/accuracy/). It states that personal data should be: *“accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (‘accuracy’).”*

*Question 8 -* *Are we expected to collect equalities information for those in a household as well as the tenant/applicant?*

Answer: The SHR requirement is to collect equality data only for the named tenant/applicant and does not extend to households.

Landlords may already collect some other data about households via other methods – e.g., housing applications – but this does not form part of the SHR requirement to collect equality data.

*Question 9 – In joint tenancies, do we have to collect equalities data from both tenants?*

In joint tenancies, the requirement is for landlords to collect data for both tenants. This is because protected characteristics are related to the individual not to the tenancy.

***Question 10*** *–* *If we choose to link data collected to the individual, what is the legal ground for processing this data under the terms of data protection legislation?*

**Answer:** Landlords, as data controllers, must process equality data collection in line with at least one of six data protection lawful bases 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.

In addition, most equality data collected will fall under one of 7 special categories of personal data, which require at least one of 10 relevant conditions to be satisfied. Explicit consent is one of the conditions that could be potentially used when processing such data, and specific legal gateways are provided for equalities monitoring in the Data Protection Act 2018.

Again, it is important to note that if data collected is not linked in any way to an individual – i.e., if the name and signature in the template form was not completed and the form was not coded to an individual in another way (such as being part of a housing application) – it is not personal data and the above does not apply. The ICO has produced a guide on what is (and is not) personal data available here: [ICO identifying personal data guidance](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/)

***Question 11*** *– Our legal advisers are questioning whether the regulatory requirement (and not a statutory requirement) to collect data is a competent ground on which to base our justification for seeking equalities monitoring data from individuals. Can you provide a clearer explanation of this?*

**Answer:** The [ICO’s online guidance](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legal-obligation/) states:

*“Regulatory requirements also qualify as a legal obligation for these purposes where there is a statutory basis underpinning the regulatory regime and which requires regulated organisations to comply.”*

As the SHR’s regulatory regime is underpinned by the Housing (Scotland) Act 2010, this means the legal obligation ground for processing can be used.

It is important to note that no grounds for processing are necessary if a landlord chooses to not link the data collected to the individual in anyway, as this would no longer be personal data.

**Flexibility on what data is collected**

*Question 12 - Do we have to issue the questionnaire if we already collect the data elsewhere – e.g., through a housing application form?*

**Answer:** The SHR does not require any social landlord to collect data (using a questionnaire or otherwise) where this is already collected elsewhere. A good example would be a housing application, where much of the data may already be collected and anonymously linked to individuals. It is unnecessary to seek this data again as it is already held.

Landlords should conduct an audit of data they already hold before issuing any equality questionnaire/seeking equality data in other ways.

***Question 13*** *– The table below outlines the five overarching groups that come under the SHR requirement to collect equalities data (for RSLs) and the nine protected characteristics on which data must be collected.*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | ***Existing Tenants*** | ***New Tenants*** | ***People on waiting lists*** | ***Governing body members*** | ***Staff*** |
| ***Age*** |  |  |  |  |  |
| ***Disability*** |  |  |  |  |  |
| ***Gender reassignment*** |  |  |  |  |  |
| ***Marriage & civil partnership*** |  |  |  |  |  |
| ***Pregnancy & maternity*** |  |  |  |  |  |
| ***Race*** |  |  |  |  |  |
| ***Religion or belief*** |  |  |  |  |  |
| ***Sex*** |  |  |  |  |  |
| ***Sexual orientation*** |  |  |  |  |  |

*Would it be appropriate if – having considered the above as part of our equalities policy – we decided not to collect data for every aspect outlined? For example, if we determined that there are some protected characteristics for certain groups where using different sources of information would be more appropriate to shape our services in this regard (e.g., census information), or if we determined that asking a certain group directly for certain information would reduce the response rate?*

**Answer:** EHRC recommend that landlords do not use census data as an alternative to collecting data directly. This is because it can never be completely specific to a landlord’s tenants, applicants etc. That said, census data will become particularly relevant once the results of the 2022 census become available, as it will then be up to date. If appropriate data is available for a landlord’s community/geography, then this data could be particularly helpful. For instance:

* it could be used as a comparison tool, cross checking the census data in the landlords’ area with that which the landlord has collected. This would allow the landlord to check for any possible disparities which might need exploring
* where a landlord had received a low response rate for any particular characteristic or group, it could use census data to obtain a more meaningful sample, albeit census data would not be specifically from its own tenants, applicants etc.

Landlords have more flexibility around marriage and civil partnership than other protected characteristics. EHRC has clarified that marriage and civil partnership is only a protected characteristic in relation to employment. This means that landlords may decide not to collect information in this regard for tenants and applicants if they did not feel this would provide them with useful data. Of course, landlords could still collect this information for all groups if they decided to.

However – with that exception - EHRC’s overall view is that if a landlord did not collect data across the other 8 protected characteristics, it is likely that they would be failing to meet their duties under equalities legislation and in particular the Public Sector Equalities Duty. This may make it difficult to defend a claim of discrimination and having an explicit policy of not collecting data would likely make any such claims even more difficult to defend.

If a landlord were to decide not to collect data on any protected characteristic for any of the five groups, the landlord would need to be assured that:

* It remains able to meet all statutory and regulatory requirements
* The rationale for this decision is set out clearly in its policy documents
* It is adequately equipped to prevent discrimination or demonstrate that no discrimination has occurred
* It can contribute information to help identify any priority areas where action needs to be taken to improve the lives of protected groups
* It has adequate information to respond to individual needs for reasonable adjustment (it is recognised that equalities monitoring forms may not be the primary source for certain information).

It is important to try to reassure people about why information is being collected and how it will be used to encourage information being provided – and there is some further information in this regard at [Appendix 4](#App4).

***Question 14 –****Do we have to ask all of the questions in the template questionnaire to every group?  Are there any questions that are compulsory?*

**Answer:** The questionnaire can be adapted to suit your approach to collecting equalities data. Issuing the questionnaire is just one method you can use to collect equalities data, and RSLs may already have existing methods in place. Some landlords are considering issuing the questions used in the census form to each of the five groups rather than those detailed in the template questionnaire – and this would be a perfectly valid approach to collect the data.

Equally, there is no need to adjust the questions in the template questionnaire should the landlord not wish to.

EHRC has confirmed that marriage and civil partnership is only a protected characteristic for employment. This means that landlords have more flexibility as to whether they wish to collect data on this characteristic for tenants and applicants.

As highlighted, the RSLs decision on whether or not it wishes to link the data collected to the individual will have an impact on reliance on the questionnaire as the primary method of collection.

***Question 15 -****Can we issue a different questionnaire to each of the five groups or do we have to ask the same questions of each?*

**Answer:**  Yes – landlords could have a specific monitoring form to cover each of the categories of person, i.e., housing applicants, existing tenants, new tenants, staff and governing body members. Equally, landlords could choose to issue the same form to each of the groups if this was felt to be appropriate.

***Question 16 –*** *Is there any requirement to collect data for the customers of our commercial subsidiaries?*

**Answer:** There is no SHR requirement to collect data for customers of your commercial subsidiaries. The SHR requirement is limited to five groups: tenants, new tenants, people on waiting list for housing, staff and governing body members.

***Question 17 –*** *As part of our flexible approach to information collection, can we add categories where we believe the information will be helpful (for example on factored owners)?*

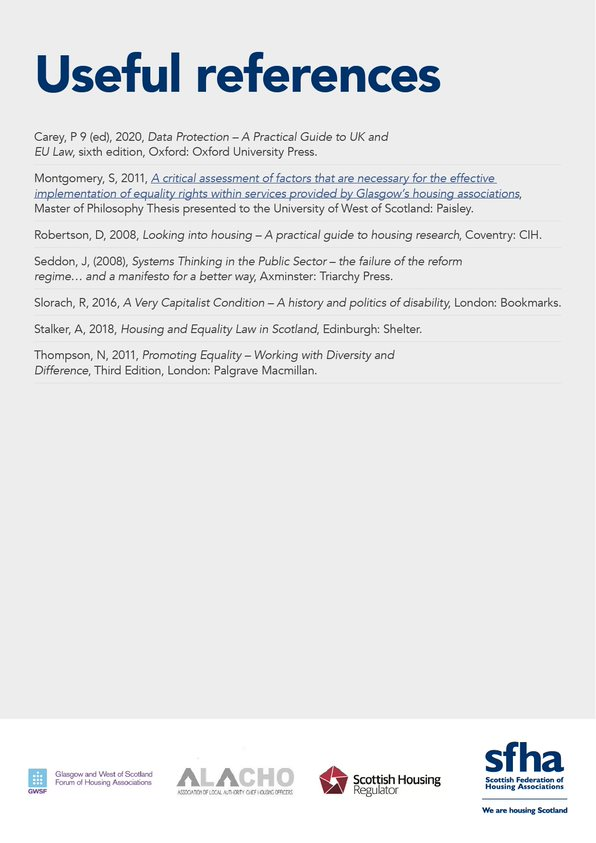
**Answer:** There is no restriction on doing so, but particular care would be needed if equality data was being collected beyond fulfilling the regulatory requirement. This would be especially important if you were linking data to the induvial, as the grounds for seeking the data would be affected, (see questions 7 and 8), requiring the landlord to need to demonstrate an alternative lawful basis for processing the data (Article 4) and also demonstrate an appropriate condition (Article 9).

If you were not linking the data to the individual and collecting on a purely anonymised basis, then data collected would no longer be personal data and the above would not apply. However, consideration would still be needed within the Fair Processing Notice issued to each group to ensure contacting them for this reason would be appropriate.

Appropriate legal advice should be sought by any landlord looking to collect information that goes beyond the requirement.

Glossary

|  |  |
| --- | --- |
| Anonymisation | To convert personal data into anonymised data where the data subject can no longer be identified.  Pseudonymisation requires the use of additional information to identify the person concerned. Pseudonymised data remains personal data within data protection law. |
| 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 UK 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. (UK 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”  (UK 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 torefer tointernal 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 | In the words of the EHRC, 2016 A, page 9:  “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.  “Mainstreaming the equality duty has a number of benefits including:  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 UK GDPR, Article 4, for further information). |
| Personal data | This refers to personal data about data subjects. The term is defined in the UK GDPR, Article 4 (1):  “Personal data means any information relating to an identified or identifiable natural person.” |
| 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]](#footnote-13) | The term “social landlord” is defined in law, as follows:  “Social landlord” means a registered social landlord, local authority landlord or a local authority which provides housing services.” |
| Special categories of data | This is defined by the UK 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]](#footnote-14) | The ERHC website explains what victimisation is in plain language as follows:  “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:  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.” |

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1. Other organisational procedures could include harassment procedures that focus on discrimination and harassment due to equality related grounds. [↑](#footnote-ref-2)
2. Housing (Scotland) Act 2010, section 39. [↑](#footnote-ref-3)
3. Scottish Housing Regulator (2019) [Regulatory Standards of Governance and Financial Management](https://www.housingregulator.gov.scot/for-landlords/regulatory-framework#section-3), Standard 5.3 [↑](#footnote-ref-4)
4. Equality and Human Rights Commission, 2016, Equality Act 2010[: Technical Guidance on the Public Sector Equality Duty](https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-scotland), page 47 [↑](#footnote-ref-5)
5. Equality and Human Rights Commission, 2016, [Equality Act 2010: Technical Guidance on the Public Sector Equality Duty](https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-scotland), page 82 [↑](#footnote-ref-6)
6. Scottish Housing Regulator (2019) [Regulatory Standards of Governance and Financial Management](https://www.housingregulator.gov.scot/for-landlords/regulatory-framework#section-3) [↑](#footnote-ref-7)
7. Information Commissioner’s Office (2020) [Guide to GDPR - Security](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/) [↑](#footnote-ref-8)
8. Equality and Human Rights Commission (2016) [Technical guidance on the Public Sector Equality Duty: Scotland](https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-scotland) [↑](#footnote-ref-9)
9. See the CIH, 2008. [↑](#footnote-ref-10)
10. Equality and Human Rights Commission, 2016 B, How to Improve board diversity: a six-step guide to good practice, London: EHRC. [↑](#footnote-ref-11)
11. Scottish Public Services Ombudsman (2020) [The Model Complaints Handling Procedure](https://www.spso.org.uk/the-model-complaints-handling-procedures)s [↑](#footnote-ref-12)
12. See the Housing (Scotland) act 2010, section 165. [↑](#footnote-ref-13)
13. This term is defined in the Equality Act 2010, section 27. [↑](#footnote-ref-14)