



Scottish Specific Equality Duties: Get Ready for April 2015

A briefing for Scotland's public bodies



The Coalition for Racial Equality and Rights is a Scottish anti-racist organisation which focusses on helping to eliminate racial discrimination and harassment and promote racial justice.

CRER's key mission is to: Protect, enhance and promote the rights of minority ethnic communities across all areas of life in Scotland; and to empower minority ethnic communities to strengthen their social, economic and political capital.

CRER takes a rights based approach, promoting relevant international, regional and national human rights and equality conventions and legislation.

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Scottish Specific Equality Duties: Get Ready for April 2015

Since the introduction of the Scottish Specific Equality Duties in 2012, CRER has undertaken a wide range of activity to support Public Sector organisations in developing their approach to equality. Scotland’s Public Bodies employ over half a million people and provide services used by everyone in Scotland. They have the power to make a real difference to people’s lives by tackling racial and other forms of inequality. Scotland’s Specific Public Sector Equality Duties provide a useful framework to drive that progress.

This briefing is primarily aimed at staff and managers in Scotland’s Public Bodies who already have some experience in implementing the Public Sector Equality Duties. It should be read alongside the Equality and Human Rights Commission’s non-statutory and technical guidance on PSED, which contain essential information on your organisation’s legal responsibilities (see page 11).

This briefing provides a range of good practice tips for meeting the equality duties over the period 2015 to 17. The approach set out here is based on a range of research and guidance on PSED produced by CRER, the EHRC and other bodies; these sources of useful information are listed on page 11.

Publication Dates

Most parts of the Scottish Specific Duties require publications to be produced at specific intervals. Generally, the documents have to be published every two years as shown in the table below. The exception is new equality outcomes and the equal pay statement, which must be published every four years. The information must be published no later than 30th April in the relevant year.

	2015	2017	Ongoing
Mainstreaming report	█	█	
Employee information annual breakdown	█	█	
Equality outcomes progress report	█	█	
New equality outcomes		█	
Gender pay gap*	█	█	
Equal pay statement*		█	
Equality impact assessment			█
Procurement			

*These duties apply only to organisations with 150 or more staff

The duty to assess equality impact requires publication on an ongoing basis, whilst the duty to consider equality in procurement has no publication requirement. These two duties are not covered by this briefing.

Meeting the duties in 2015

Gathering evidence

In a consultation exercise commissioned by the Scottish Government, public bodies said that difficulties in measuring progress were one of the main barriers to implementing PSED.¹ It's arguably impossible to comply with PSED without a strong evidence base. Approaches to meeting the duties must be based on sufficient evidence, and if an organisation lacks that evidence they must take steps to obtain it.²

With the April 2015 deadline fast approaching, most organisations will have considerable work to do in gathering and organising the required evidence.

You may find it useful to develop structured approaches to evidence gathering, for example:

- Setting up an information hub where staff can save any useful information on equality from their own area of work
- Mapping the evidence you already have for each protected characteristic and need of the general duty to see what the gaps are

The evidence you gather should relate to the commitments you've made in your equality outcomes, to allow you to monitor progress. However, it also needs to look at the bigger picture so that you can identify priorities for the future.

The aim is to collect the best possible evidence for each protected characteristic group across the three 'needs' of the general equality duty,³ particularly on how these might be impacted by your organisation's functions. How much evidence you need for each function depends on how relevant the needs of the general duty and protected characteristics are to that function.

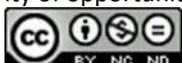
Ideally, the evidence you gather should encompass a range of quantitative and qualitative evidence:

- Internal evidence on the situation within your organisation, including statistics, information from comments and complaints processes, grievances and disciplinaries, and staff or service user consultations
- External evidence from local and national research, equality organisations and statistical sources
- Evidence from involvement activities with people who have protected characteristics and their representatives (for outcome setting, this is a legal requirement which should be carried out when you begin to develop any new set of equality outcomes)

¹ ODS Consulting for the Scottish Government, Implementation of Scottish Specific Duties: Views from public authorities

² EHRC (2014) Technical Guidance on the Public Sector Equality Duty: Scotland

³ See EHRC guidance for more detail on the 'needs' – eliminating discrimination, harassment and victimisation; advancing equality of opportunity and fostering good relations



Employee information

Collecting and using employee information is not only a legal duty, but provides vital evidence to underpin your mainstreaming report and equality outcomes.

To maximise the effectiveness of your employee information:

- Check that the categories your monitoring system uses for each protected characteristic match up with external data sources you can use to benchmark progress (e.g. Scottish Census 2011)
- Be clear about what data on ethnicity means
 - Categories such as 'white' vs 'non-white' are often used when reporting ethnicity data; if you wish to combine ethnicity categories, explain clearly which specific categories have been combined and in what way
 - Make sure that combining data doesn't disguise inequalities between specific ethnicity categories
- Ensure that your equality monitoring system covers the whole range of data required by the employee information duty
 - Composition – information on current employees
 - Recruitment – e.g. applicants, candidates shortlisted for interview and appointees
 - Development – e.g. promotions, training, performance reviews, take up of employee benefits, grievances, disciplinaries
 - Retention – e.g. dismissals, redundancies, end of fixed term contracts, resignations; return rates of staff on maternity or long-term sick leave
- Rather than just publishing tables, describe what the employee information means for your organisation within the mainstreaming report
- Report numbers as well as percentages for better transparency and analysis
- Avoid suppressing data for data protection reasons unless you have strong evidence of a disclosive risk
- If it becomes necessary to suppress data, explain clearly how this has been done and why; methods of data suppression often lead to misrepresentation or misunderstanding
 - If using an asterisk or other symbol to represent low numbers (for example numbers under five), do not use this to represent zero
 - Only round figures up or down where necessary and proportionate, and explain how this has been done (for example avoid rounding all numbers under five up to five)

As well as publishing data, the public sector equality duties require you to detail progress in gathering and using information. This is your opportunity to report the issues you have identified and how they're being tackled, for example:

- Set out plans for improving data collection and filling gaps in your evidence base
- Explain how your employee monitoring results have informed outcome setting
- Detail any positive action measures or other steps you are taking to address inequalities



Reporting progress on mainstreaming the equality duty

Our research into PSED performance in Glasgow in 2013 found that the type and amount of information published in mainstreaming reports at the last publication date in 2013 varied enormously.¹

To make sure your report is both compliant and coherent, it's important to publish enough information to meet the duties without including too much detail on processes which don't relate to equality. The concept of mainstreaming means different things to different people, but in this case, the focus must be on how your organisation embeds each of the needs of the general duty for each protected characteristic throughout all of its work.

Suggestions which could help to focus mainstreaming reports effectively include:

- Including information for each of your organisation's functions, covering the work of staff at all levels and considering all of the needs and protected characteristics of the equality duties
- Concentrating on ongoing activities, policies, processes, strategic work and organisational ethos
- Using a combination of narrative and statistics to explore mainstreaming in your organisation
- Including case studies which show good practice
- Making sure that all of the content relates to equality
 - Remember that quality and equality are not the same thing
 - If what you're describing doesn't address a disadvantage or close a gap for one or more protected characteristic groups, it's not relevant

Equality outcomes

Organisations are not obliged to set new equality outcomes until 2017, however they may choose to do so earlier if they wish. In the meantime, a progress report must be published in 2015 detailing performance in meeting the outcomes published in 2013.

The evidence gathering tips given at page 5 should help in establishing progress. However, organisations which set outcomes which were not tightly defined or appropriately targeted may find it difficult to show the type of progress which complies with the duties.

If some outcomes prove challenging to evaluate, consider:

- Concentrating on the type of indicators which show the difference your actions have made to people's lives and experiences, rather than simply confirming that a process or output has been accomplished
- Reframing your outcomes to focus more clearly on the changes you want to achieve for people with protected characteristics (organisations are permitted to alter their equality outcomes before 2017 if desired)
- Explaining the challenges you face in measuring progress on particular outcomes, and how you intend to mitigate them (as well as enhancing your current progress report, considering this will help you to develop more measurable outcomes in future)

¹ CRER (2013), Equality in Glasgow: Glasgow's Public Sector Bodies and the Public Sector Equality Duty.



Some organisations may choose to change or update the outcomes set in 2013 in advance of the 2017 renewal date. In these cases, progress still needs to be reported on the original outcomes. It's also important to remember the requirement to involve people with protected characteristics in developing new outcomes, regardless of when this takes place.

Gender pay gap

The EHRC's Measuring Up? research showed that 95% of relevant authorities had published gender pay gap information.¹ Many of these organisations, however, may not have been fully compliant. It's not enough to just publish something; the content of the publication has to match up to the legal requirements.

For 2015, the gender pay gap is the focus of publication activities (the equal pay statement should be renewed in 2017). Some organisations previously failed to include senior management pay in the gender pay gap figure, which breaches the duty.

Some key points to consider in meeting the gender pay gap duty include:

- Ensure that you publish a single gender pay gap figure encompassing staff at all levels, giving the percentage difference between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime)
- Be aware that male over-representation in senior grades is an integral part of the gender pay gap and should not be treated as a skewing factor
- You can also choose to provide breakdowns of the gender pay gap for different grades, departments or occupational groups

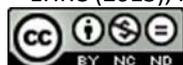
Suggestions for 2016

The time between publication dates provides a good opportunity to concentrate on taking practical action to meet the duties. It's important to keep up the momentum during this time, to ensure that equality remains high on your organisation's agenda.

In particular, you might want to use this time to:

- Address gaps in employee monitoring information and other evidence you need to gather
- Conduct an interim evaluation to make sure that your organisation is up to speed with the actions and outputs needed to meet its equality duties
- Build relationships with individuals and organisations who could assist you by getting involved in the 2017 outcome setting process
- Meet with managers and other stakeholders within your organisation to discuss mainstreaming progress and plans for the future
- Consider how to prepare for the inclusion of race and disability in your equal pay policy and occupational segregation information from 2017 onwards

¹ EHRC (2013), Measuring Up? Monitoring Public Authorities performance against the Scottish Specific Equality Duties



- Evaluate and improve your approach to the duties on Equality Impact Assessment and Procurement

Get ready for 2017

In the run up to April 2017, you can use what you've learned from the 2015 reporting cycle to identify what worked well and what could be done differently this time.

Mainstreaming report

In addition to the suggestions provided at page 5, consider how you can ensure easy access to the information needed to update your mainstreaming report in 2017 and subsequent years.

Once you have established the best structure and range of information for your organisation's mainstreaming report, the main challenge is ensuring that the information published is accurate each time. This can be difficult in large organisations where changes in staffing and shifting work priorities are common.

You may wish to think about:

- Ensuring that each organisational function has a reporting progress through which you can collate information on mainstreaming; for example by building a section on mainstreaming into each area or department's standard annual report
- Checking carefully that all information copied from previous mainstreaming reports remains accurate
- Providing support and information to any new or reassigned / promoted members of staff who will be required to report on mainstreaming activities in their area or department at an early stage

Equality Outcomes

The EHRC rated 29% of public bodies as 'poor' in terms of the quality of the outcomes set in the first publication round, so many will want to make substantial improvements in 2017.¹ Ensuring that your new set of equality outcomes are well framed and tightly focussed will help to make compliance easier over the next four years.

When planning any new outcomes, involving people with protected characteristics and their representatives from an early stage is essential:

- Make sure that the people you involve are empowered and have capacity to be involved
 - Consider using the Scottish National Standards for Community Engagement and/or co-production methods
- Consulting on fully formed draft outcomes is not enough to meet the duties

Once you have the evidence you need to set outcomes, consider ways to structure them effectively. Our research into public sector equality duty performance found that in 2013, many organisations adopted a blanket approach - trying to cover as many equality issues and protected characteristics as possible within a single outcome. This led to a lack of clarity about whether the outcome could be achieved and measured.

¹ EHRC (2013), Measuring Up? Report 3



Outcomes designed to improve things ‘for everyone’ often risked non-compliance as there was no link to equality.

These common difficulties can be avoided through effective structuring and wording:

- Focus on the main inequalities, gaps or issues you’ve identified through evidence gathering
- Be honest and transparent about what you need to achieve
- Word your outcomes to describe the change you want to see in people’s lives and experiences
 - Check that your outcomes are not technically actions or outputs
- If you don’t set an outcome for each protected characteristic relating to each of the three needs of the general duty, provide evidence to justify this
- Ensure that each outcome relates clearly to specific protected characteristics and specific needs of the general equality duty
- The number of protected characteristics and needs which each outcome aims to address should be realistic and evidence based

Equal pay statement and gender pay gap

The EHRC’s Measuring Up? research found that 96% of relevant public authorities had published an equal pay statement setting out their policy on equal pay. However, only 74% had published the required occupational segregation information.¹

In addition to the suggestions provided at page 8 on the gender pay gap, you may want to consider:

- Demonstrating that evidence on the causes of any pay gap have been considered when developing the equal pay policy
- Using job evaluation and equal pay audit to analyse gender pay issues
- Including information on both horizontal and vertical occupational segregation, as required by the duty – the concentration of women and men in particular grades and particular occupations

The 2017 equal pay statement and occupational segregation publication requirements cover more protected characteristics. Organisations will be required to include race and disability in addition to Gender.

To prepare for this, consider:

- How your current monitoring arrangements fit in with the new requirements
- Available evidence on equal pay and occupational segregation in terms of race and disability
- Potential ways to tackle inequality in pay and occupational segregation for these groups

¹ EHRC (2013), Measuring Up? Report 1



Useful information

The key sources used in developing this briefing are:

CRER (2013), Equality in Glasgow: Glasgow's Public Sector Bodies and the Public Sector Equality Duty. Available from: <http://www.crer.org.uk/publications>

CRER Public Sector Equality Duty Portal: <http://www.crer.org.uk/public-sector-equality-duty>

EHRC (2014), Technical Guidance on the Public Sector Equality Duty: Scotland. Available from: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Technical%20Guidance%20on%20the%20PSED%20Scotland.pdf

EHRC Scotland non-statutory guidance on the Public Sector Equality Duties: <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland/non-statutory-guidance-scottish-public-authorities>

EHRC Scotland monitoring and enforcement publications, including the Measuring Up? research series: <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland/monitoring-and-enforcement>

ODS Consulting for the Scottish Government (2013), Implementation of Scottish Specific Duties: Views from public authorities. Available from: <http://www.scotland.gov.uk/Resource/0043/00439844.pdf>

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