



Equal Pay Duties - Race and Disability

PSED: Get Ready for April 2017

Coalition for Racial Equality and Rights, 2016



The Coalition for Racial Equality and Rights works to eliminate racial discrimination and promote racial justice across Scotland. Through capacity building, research and campaigning activities which respond to the needs of communities, our work takes a strategic approach to tackling deep rooted issues of racial inequality.

CRER has experience of anti-racist work covering areas such as community engagement and empowerment, research and resource development, practical training and equality mainstreaming support for Public and Voluntary Sector organisations.

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

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Equal Pay Duties - Race and Disability

PSED: Get Ready for April 2017

This briefing is part of a series of publications from CRER designed to help public sector organisations in Scotland to better implement their Public Sector Equality Duties.

It provides information about the new requirement to include race and disability in equal pay statements and occupational segregation data from April 2017.

The 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 (PSED). 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 10).

More CRER guidance on PSED responsibilities for 2017, including on publishing a revised set of equality outcomes, is available in our publication [Scottish Specific Equality Duties: Get Ready for April 2017](#).

The approach set out here is based on a range of research and guidance on PSED produced by CRER and the EHRC; these sources of useful information are listed on page 10.

New Duties on Race and Disability in Equal Pay

Two elements of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (the Scottish Specific Public Sector Equality Duties, or PSED) come into force for the first time in 2017. The new duties mean that listed public bodies will have to include race and disability considerations alongside gender in their equal pay statement and occupational segregation information.

Under these new duties, each listed public body with 20 or more staff¹ must publish:

- A statement on equal pay, which must specify its policy on equal pay as regards:
 - Women and men
 - People who are disabled and those who are not
 - People who fall into a minority racial group and those who do not

- Information on occupational segregation, which is the concentration in particular grades and in particular occupations of:
 - Women and men
 - People who are disabled and those who are not
 - People who fall into a minority racial group and those who do not

For most public bodies, the publication deadline for the new duties will be 30th April 2017. For those who were listed later than 2013, the publication deadline will be no later than 30th April in the fourth year after its first publication round.

There is no specific legal requirement to publish pay gap information on race and disability at this time, although Scottish Government may opt to introduce this in future. We would suggest that organisations will find it difficult to determine a policy on equal pay without first analysing the relevant pay gaps. For best practice, we would recommend that all organisations publish this information.

Although only gender, race and disability are included within these duties, the EHRC recommends that organisations consider the position of staff with other protected characteristics in order to effectively meet the general equality duty.²

¹ Prior to the commencement of the The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016, the threshold was 150 staff.

² EHRC (2016) [Employee Information and the Public Sector Equality Duty](#).

Equal Pay Statement

Public bodies will already be familiar with the existing equal pay statement duty on gender, where a listed body has to specify its policy on equal pay between women and men. The new duties require that race and disability now be included in the equal pay statement in a similar manner.

However, simply adding a mention of the two extra protected characteristics will not be enough to constitute a 'policy'. Organisations will need to remember that the causes of unequal pay on the grounds of race or disability differ from the causes of gender pay inequality.

Historical and current discrimination are at the heart of all three forms of unequal pay. However, the context and the factors underlying pay inequality differ slightly in each case.

Examples of factors you may already be considering where **women** experience pay inequality include:

- Lack of flexible working options (especially in better paid posts)
- Expectations that staff in better paid posts will work long or unpredictable hours
- The language used to describe senior or better paid posts, including in recruitment, having a 'masculine' focus
- Organisational cultures which prioritise 'masculine' or 'laddish' attitudes and behaviours
- Pay and grading structures which reflect the historic undervaluing of jobs dominated by women

Examples of factors to consider where **minority ethnic people** experience pay inequality include:

- Organisational cultures which treat majority ethnic people as 'the norm', so that those who don't fit in to that stereotype lose out on recruitment and promotion (issues around colour based racism and the normalisation of whiteness will mean that this especially affects non-white minority ethnic people)
- Promotion structures which favour those with length of service rather than being merit based
- Succession planning which is not sufficiently merit based or fails to identify minority ethnic staff who could work towards senior positions
- Failure to properly assess the merit of candidates for recruitment or promotion, meaning that minority ethnic candidates are consistently undervalued due to assumptions based on stereotypes (this can impact all minority ethnic people but for migrants, assumptions around overseas qualifications and language skills can be a particular concern)

Examples of factors to consider where **disabled people** experience pay inequality include:

- Lack of flexible working options (especially in better paid posts)
- Expectations that staff in better paid posts will work long or unpredictable hours
- Unfair assumptions about disability related absence affecting recruitment, promotion or succession planning decisions
- Failure to make reasonable adjustments that may be needed for people to undertake jobs at higher grades

It's important to remember that staff at risk of unequal pay can be impacted by the factors relating to gender, race and/or disability in different combinations. So, for example, if a large majority of an organisation's minority ethnic staff are women, the factors underlying the gender pay gap will be relevant to the pay gap for minority ethnic staff and vice versa. The combination of more than one protected characteristic is often termed intersectionality. Intersectional analysis can be of benefit across the Public Sector Equality Duties, especially in terms of avoiding or tackling multiple discrimination.

Currently available systems for analysing gender pay issues such as job evaluation and equal pay audits are not generally set up to enable consideration of race or disability. Organisations involved in using or designing these may wish to consider what developments might enable application of these to race and disability in future.

You may also wish to consider the role of recruitment processes in supporting equal pay improvements, most specifically for minority ethnic people. As the proportion of minority ethnic staff in public bodies is usually too low, measurably improving equal pay or occupational segregation for minority ethnic people will be difficult without a more representative workforce.

Occupational segregation

The duty on occupational segregation requires organisations to examine two different types of occupational segregation for gender, race and disability:

- Horizontal occupational segregation
 - Where women, minority ethnic people or disabled people are concentrated in particular types of job / work areas within the organisation
- Vertical occupational segregation
 - Where women, minority ethnic people or disabled people are concentrated at particular grades / levels of seniority

Analysing these two types of occupational segregation can help to demonstrate the occupational factors underlying pay inequality; if people are concentrated in lower paid work areas or in lower grades across different work areas, this will impact the pay gap.

Evidence from the analysis of occupational segregation should be used to inform the equal pay statement. Organisations should consider what could be done to ensure its workforce is representative across work areas and pay grades.

This might involve, for instance, taking positive action to ensure minority ethnic staff are better included in succession planning activities to ensure they have an equal chance at gaining promotion in the future.

Looking at occupational segregation should also be useful for other elements of your equality duties, for example in setting equality outcomes. Occupational segregation is not just about pay differentials, but includes wider equality issues around the limitations imposed on people by notions around 'traditional' jobs, and barriers to 'non-traditional' jobs.

Ethnicity categorisation

The duties on equal pay and occupational segregation require comparison between “people who fall into a minority racial group and those who do not.” Our previous research has demonstrated that ethnicity categorisations used by public sector bodies are often inconsistent, requiring a better understanding of what constitutes ‘a minority racial group’ and what the implications of different categorisations are.

The purpose of categorising ethnicity is not to label people, but to help identify trends in inequality affecting people who experience forms of racism and xenophobia. This can’t be done without adequate methods of categorisation.

We always recommend that organisations use Scottish Census ethnicity categories for equality monitoring. There is no perfect way to categorise ethnicity, as self-identification of ethnicity is complex and no single system would suit everyone. However, the current Census categories (Scottish Census 2011) are the most effective approach to use, as they allow for consistency and benchmarking.

Analysing ethnicity data for occupational segregation and pay variance

It is important to ensure that your analysis reflects the issues you intend to examine. The factors underlying pay inequality and occupational segregation for minority ethnic people often affect different ethnic groups in different ways. For example, the impacts of the racism experienced by people of colour or those who self-identify as Black will differ from the impact of xenophobia (e.g. discrimination against white minority ethnic communities).

Ideally, when analysing the experiences of different ethnic groups, it’s best to use a range of methods including analysis by individual ethnic group, by overarching category and by categories that allow analysis reflecting the impacts of colour based racism. Where possible, you should report numbers as well as percentages for better transparency and analysis.

We recommend that organisations consider the following ways of aggregating ethnicity data, to cover a number of different analyses. Each of these should ideally reflect Census categories, for benchmarking and analysis purposes:

- Individual ethnic group
 - Looking at each group stated on the equality monitoring form
- Overarching ethnicity categories
 - Combining individual groups into a series of headline categories
- Categorisations to consider the impact of skin colour based racism and xenophobia
 - Using three high level categories: White Scottish, British or Irish; white minority ethnic and non-white minority ethnic

Data protection is naturally a consideration when publishing data on people with protected characteristics, and it may especially be important in relation to the new duties. Disaggregating information on horizontal and vertical occupational segregation by race and disability may result in

data which relates to low numbers of staff. The information published is anonymous, but data protection still needs to be considered. However, to ensure a balance with compliance with the equality duties, it's important to avoid suppressing data for data protection reasons unless you have genuine evidence of a disclosive risk.

More information on categorising ethnicity (including our rationale for the three suggested ways of aggregating ethnicity data provided above), data protection and how to deal with risks to privacy will be covered in our forthcoming briefing on Ethnicity Monitoring and Data Protection.

Pay gap calculations

Organisations will already be familiar with the gender pay gap requirements. This involves calculating 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).

If you wish to calculate pay gap figures for race and disability, it's advisable to use the same approach. Reflecting the language used in the duties on the equal pay statement and occupational segregation information, this would involve comparing:

- People who fall into a minority racial group and those who do not
- People who are disabled and those who are not

However, to ensure the potential different impacts on white minority ethnic and non-white minority ethnic staff can be considered, you may wish to try calculating pay gaps in three ways:

- Overall race pay gap
 - Using the average hourly pay excluding overtime of all white staff compared to all non-white staff
 - This calculation will demonstrate any inequality for non-white minority ethnic staff, but will disguise any inequality for white minority ethnic staff.
- White minority ethnic pay gap
 - Using the average hourly pay excluding overtime of white Scottish and other British staff compared to white minority ethnic staff
 - This calculation will demonstrate any inequality for white minority ethnic staff
- Non-white minority ethnic pay gap
 - Using the average hourly pay excluding overtime of white Scottish and other British staff compared to non-white minority ethnic staff
 - This calculation will demonstrate any inequality for non-white minority ethnic staff to the highest level of detail, because any potential skewing downwards of pay in the 'white' group by white minority ethnic pay inequalities will be removed.

Be aware that over-representation of white staff or non-disabled staff in senior grades is an integral part of the pay gap, and should not be treated as a skewing factor.

Next Steps

CRER plans to undertake further work on PSED following the 2017 publication round. This will include looking at approaches to meeting the new duties on equal pay and occupational segregation for race and disability. We would be interested to hear examples of innovative practice and effective work; please get in touch and let us know how your practice is developing.

To discuss how your organisation can best use this policy briefing, please contact:

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Useful information

EHRC (updated 2016). Technical Guidance on the Public Sector Equality Duty: Scotland. Available from: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-scotland>

EHRC (updated 2016). Essential Guide to the Public Sector Equality Duty: A Guide for Public Authorities (Scotland): <https://www.equalityhumanrights.com/en/publication-download/essential-guide-public-sector-equality-duty-guide-public-authorities-scotland>

EHRC (updated 2016). Employee Information and the Public Sector Equality Duty: A Guide for Public Authorities, Scotland:
https://www.equalityhumanrights.com/sites/default/files/7_employee_information_-_formatted_0.pdf

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

CRER (2016). Equality in Glasgow: Glasgow's Public Bodies' Progress on Meeting the Public Sector Equality Duty: Forthcoming from <http://www.crer.org.uk/>

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

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