



Scottish Specific Equality Duties: 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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Scottish Specific Equality Duties: 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 implement their Public Sector Equality Duties.

It provides information about the new requirements impacting public sector organisations in 2017, and also updates guidance previously provided in the CRER publication ‘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 (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 p.16).

This briefing provides a range of good practice tips for meeting the requirements of the equality duties in the run up to the April 2017 publication round. 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 p.16.

Organisations may also find it useful to refer to the Scottish Government’s Race Equality Framework 2016-2030.¹ A number of the goals and actions within the Framework relate to better performance of the Public Sector Equality Duties.

¹ Available from: <http://www.gov.scot/Publications/2016/03/4084>

Publication Dates

Most parts of the Scottish Specific Duties require certain publications to be produced at specific intervals. Generally, the documents have to be published every two years from 2013 onwards. The main exceptions to this rule are revised sets of 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.

This timetable for publication applies to all listed public bodies except some new or merged institutions which have been added to the list after its original approval.² This includes Health and Social Care Integrated Joint Boards (IJBs),³ whose publication duties began in April 2016. Public bodies are permitted to publish earlier than the statutory publication dates, so it is possible for public bodies to align with the standard timetable if desired. For example, IJBs may find it beneficial to align with their partner organisations (Local Authorities and NHS Health Boards) in future through early publication.

For organisations following the standard publication cycle beginning in 2013, the requirements for 2017 are shown below.

	2017	Ongoing
Mainstreaming report		
Employee information annual breakdown (including collecting / using information)		
Membership / Board of Management information breakdown*		
Equality outcomes progress report		
Set of equality outcomes		
Gender pay gap**		
Equal pay statement**		
Equality impact assessment		
Procurement		

*New requirement for selected public bodies only

**As of 2016, these duties which formerly applied only to listed organisations with 150 or more staff now apply to all listed organisations with 20 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.

² More information is available from the Equality and Human Rights Commission (EHRC) website: [Listed Public Bodies](#)

³ For more information on how the duties apply to IJBs, see the EHRC's [FAQ page for IJBs](#)

Meeting the duties in 2017

The 2017 PSED publication round combines a range of existing obligations with some new or amended requirements.

Some particular areas to be aware of include:

- Inclusion of race and disability within the equal pay statement
- Revision of the threshold for gender pay gap and equal pay statement reporting moves from 150 employees to 20 employees
- New requirements for public bodies which have appointed members or boards of management to publish information on their gender balance (this does not apply to councils, joint boards, licensing boards, education authorities or individual public office holders)
- Publication of a new set of equality outcomes
- Reporting on progress towards achieving equality outcomes

The following sections set out practical information and recommendations on preparing for the 2017 publication round across a range of areas of work, beginning with evidence gathering processes.

Gathering evidence

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.⁴

The Scottish Specific Duties require listed public bodies to consider relevant evidence relating to people who share a relevant protected characteristic (and any person who appears to the authority to represent the interests of those people) when preparing and publishing equality outcomes.⁵ In practice, evidence is also needed to report progress on outcomes set previously; 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.

Although the mainstreaming reporting duty does not specify how evidence should be gathered, without it, compiling an adequate mainstreaming report would be very difficult.

With the April 2017 deadline fast approaching, most organisations will have considerable work to do in gathering and analysing the required evidence.

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

⁴ EHRC (updated 2016) Technical Guidance on the Public Sector Equality Duty: Scotland

⁵ EHRC (updated 2016) Evidence and the Public Sector Equality Duty: A Guide for Public Authorities

- 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 each of the ‘needs’⁶ of the general duty to see what the gaps are

In terms of reporting on mainstreaming, the aim should be to collect the best possible evidence for each protected characteristic group across the three ‘needs’ of the general equality duty, 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.

In terms of outcome setting, the evidence you gather around protected characteristics and the ‘needs’ of the general equality duty should relate not just to the situation within your own organisation, but to equality issues more broadly. Identifying the range of inequalities which affect particular groups is vital to inform your organisation’s thinking about how it can eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations.

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

- 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 share a protected characteristic 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; see p.10 for more information)

⁶ See EHRC guidance for more detail on the three ‘needs’ of the general duty – eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations

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 during the first publication round varied enormously.⁷

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. Specifically, the duty requires organisations to 'report on the progress it has made to make the equality duty integral to the exercise of its functions so as to better perform that duty.'

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 needs and protected characteristics covered by 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

April 2017 marks the third round of mainstreaming reporting for most organisations. By this time, you should have a good idea of the strengths and weaknesses of your previous approaches, making it easier to set out mainstreaming reports in an accessible and coherent way.

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. It's also good to have continuity in the data and narrative reported over the years, building on previous work to demonstrate how the approach is developing and improving. This can be challenging in large organisations where changes in staffing and shifting work priorities are common, but can make a big impact on the effectiveness and sustainability of efforts to make the equality duty integral to the exercise of your functions.

You may wish to think about:

- Ensuring that each organisational function has a reporting process 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
- If copying information from a previous mainstreaming report, checking carefully that all information remains accurate and providing narrative explanations of changes over time

⁷ CRER (2013), Equality in Glasgow: Glasgow's Public Sector Bodies and the Public Sector Equality Duty.

- 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

Employee information

Employee information should be published as part of your mainstreaming report. Gathering and using employee information is not only a legal duty, but provides vital evidence to underpin mainstreaming reporting and equality outcomes.

For some public bodies, ensuring the right systems were in place to collect employee information was initially challenging. By this time, these difficulties should have been overcome.

In our work with public bodies however, low rates of response to equality monitoring surveys have often been a problem. This may be an ongoing concern for some. The duties require organisations to tackle this pro-actively, publishing details of the progress that the authority has made in gathering employee information to enable it to better perform the equality duty within their mainstreaming reports (see p.7). Low response rates can often be easily addressed by communicating the reason for monitoring clearly and consistently to staff and job applicants.

Recent EHRC research into performance of the duties in 2015 showed that whilst all listed public bodies had published some information on workforce composition, this often failed to cover all of the relevant protected characteristics. The other types of employee information which should be gathered were less widely adhered to, with only 69% publishing any breakdown of recruitment statistics, 55% publishing any data on staff retention and just 48% publishing any staff development data.⁸

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 (and ensure the most detailed data is still made available for internal use in tackling inequalities)
 - 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

⁸ EHRC (2015) Measuring Up? Report 4: Performance.

- Development – e.g. promotions, training, performance reviews, take up of employee benefits, grievances, disciplinarys
- Retention – e.g. dismissals, redundancies, end of fixed term contracts, resignations; return rates of staff on maternity or long-term sick leave
- 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)

Progress in gathering and using employee information

As mentioned previously, the public sector equality duties require you to detail progress in gathering employee information. It also requires you to detail progress on using that information. This means that as well as publishing tables showing employee data within your mainstreaming report, you should describe how your organisation is gathering and using that information to enable it to better perform the equality duty.

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 the inequalities identified through employee information

Information on membership of public authorities and Boards of Management

New regulations introduced in 2016 require public bodies which have appointed members or boards of management to publish information on their gender balance within their mainstreaming report. This does not apply to councils, joint boards, licensing boards, education authorities or individual public office holders. The requirement to publish data only relates to gender, however the regulations also state that Scottish Ministers will, from time to time, gather and provide information to public bodies on the protected characteristics of their membership or boards of management. Where this information has been received by a public body, they must use it to better perform the general equality duty. They must also publish information on how the information has been used and/or is intended to be used to take steps towards diversity.

Equality outcomes

Following on from the first round of equality outcome setting in 2013, organisations are legally obliged to publish another set of equality outcomes by the end of April 2017. In 2013, the EHRC rated 29% of public bodies as 'poor' in terms of the quality of the outcomes, so many will want to make substantial improvements in 2017.⁹ 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 equality outcomes, involving people with protected characteristics and their representatives from an early stage is a legal obligation. It's important to properly understand what involvement means in the context of setting equality outcomes.

In particular, you may wish to bear in mind:

- Creating an involvement plan which sets out how you will involve stakeholders and make sure their input forms the basis for equality outcome setting
- Involving people before the drafting process gets underway - consulting on fully formed draft outcomes is not enough to meet the duties
- Ensuring that the people you involve have the support, information and capacity they need to be involved
 - Consider using the Scottish National Standards for Community Engagement and/or co-production methods
 - Think about the information people might find useful in order to contribute – do they understand what your organisation does; do they need to know about your previous outcomes and any outstanding equality issues you're aware of?

Further information on involvement is available in the EHRC publication 'Involvement and the Public Sector Equality Duty: A guide for Public Authorities, Scotland', which has been newly revised for 2016.¹⁰

It's important to compare and contrast the evidence gathered through involvement with other types of evidence (see p.6 for details of legal obligations on evidence). Combining these two types of information will give a more rounded picture and help you to effectively prioritise the issues.

Once you have the evidence you need to set outcomes, consider ways to structure them effectively. In particular, it's important to avoid using outputs (things your organisation will produce) or actions (things your organisation will do) in place of outcomes. The focus of each outcome needs to be on the change you want to see in the lives and experiences of people with protected characteristics. Some organisations have previously set 'outcomes' which are more process focussed, but perhaps have supporting information or 'sub-outcomes' which set out more detail on outcomes for people. This is not an advisable approach, as the outcome itself must be legally compliant and will be the focus of progress measurement in the future.

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

⁹ EHRC (2013), Measuring Up? Report 3

¹⁰ EHRC (2016), Involvement and the Public Sector Equality Duty: A guide for Public Authorities, Scotland

as possible within a single outcome. This led to a lack of clarity about whether the outcome could be achieved and measured. Outcomes designed to improve things ‘for everyone’ often risked non-compliance as there was no link to inequality.

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 the lives and experiences of people with protected characteristics
 - Check that your outcomes are not technically actions or outputs
- 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
- If you don’t set an outcome that seeks to further the ‘needs’ of the general duty for one or more of the protected characteristics, you must provide evidence to justify this

As previously mentioned, after the 2013 outcome setting process, many organisations found that their published outcomes were not tightly defined or appropriately targeted enough to comply with the duties. Some of these organisations chose to revise their outcomes, whilst others didn’t.

This means that in 2017, organisations may have:

- Maintained the same outcomes since 2013
- Entirely changed their outcomes, meaning these haven’t been in place for the full four years, or
- Have a mixture of outcomes which have been in place for various lengths of time; these could be seen as different ‘sets’ of outcomes, with different progress monitoring schedules

Revising equality outcomes early is permissible, but creates a degree of complexity for organisations. The requirement to report on progress every two years and revise outcomes every four years is most easily met by having consistent publication dates across all of the outcomes.

To avoid varying requirements for reporting progress, it is recommended that organisations try to align their outcomes as much as possible in 2017. For example, this could mean retaining any outcomes which were changed or added after 2013 and publishing these alongside new ones to meet the requirement to publish a set of outcomes. Taking this approach will enable organisations to consistently measure progress on the same set of outcomes over the four years to 2021. If new outcomes need to be added in response to specific inequalities in the intervening time, these can again be carried forward into the 2021-2025 cycle. This ensures that all outcomes have a minimum of four years in which to be progressed. Any less than this goes against the spirit of the law, and creates a piecemeal approach which is unlikely to create sustainable progress.

The evidence gathering tips given at p.5-6 should help in establishing some key areas to consider in setting outcomes. This includes ensuring that the outcomes you set are linked to evidence sources which can be used as indicators for monitoring and evaluation, in line with the biennial duty to report progress towards achieving equality outcomes. However, it’s important to focus on the

inequalities which need to be addressed, even where the available measurements may be less tangible. Where quantitative evidence is lacking, qualitative evidence can often be used to demonstrate progress while approaches to gather quantitative information are being developed.

To ensure that your new outcomes can be monitored and reported on in future, 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
- Planning ahead by mapping existing indicators (e.g. sources of data or annual surveys) and when information on these becomes available, and aiming to fill any gaps through new ways of measuring progress
- Explaining any challenges you might face in measuring progress on particular outcomes, and how you intend to mitigate them

As the 2017 publication date marks the end of the first complete equality outcomes cycle, organisations will be publishing both a new set of outcomes and information on the progress they have made towards the previous set. It's important to consider how you can ensure progress is sustained on the outcomes set in 2013 which are not being carried forward into the new cycle. In some cases, it will be possible to detail work around these outcomes in future mainstreaming reporting. For clarity, however, it is recommended that organisations include a section in their 2017 outcomes report explaining the future position of each of the previous outcomes; whether they have been embedded into mainstreaming work, carried forward into the new set of outcomes, completed or dropped (and if so, why).

Gender pay gap

Two of the Scottish Specific Equality Duties relate specifically to pay inequality; the duty to publish gender pay gap information and the duty to publish an equal pay statement (including occupational segregation information).

In 2015, the EHRC's Measuring Up? research showed that 95% of relevant authorities had published gender pay gap information.¹¹ This was unchanged from the proportion reporting on the gender pay gap in 2013.¹²

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. In particular, it should be noted that some organisations previously failed to include senior management pay in the gender pay gap figure, which breaches the duty. This was reflected in the findings of EHRC research into the quality of gender pay gap information published in 2015, which found that organisations often published incomplete data which failed to assess the pay gaps for all staff. The report also raised concerns about publication of disaggregated data with no overall gender pay gap figure, and figures presented without any accompanying contextual narrative.¹³

Some key points to consider in meeting the 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 over-representation of men in senior grades is an integral part of the pay gap and should not be treated as a skewing factor
- For good practice, provide breakdowns of pay gaps for different grades, departments or occupational groups in addition to the overall figure
- Although organisations are not required to report specific pay gap figures for race and disability, doing so would make development of the equal pay statement content much easier and also improve transparency

Equal pay statement and occupational segregation information

The 2017 reporting cycle will be the second time the equal pay statement and occupational segregation information has been required, however this time organisations will be required to include race and disability in addition to gender.

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 in the first round of reporting in 2013. However, only 74% had published the required occupational segregation information.¹⁴

¹¹ EHRC (2015) Measuring Up? Report 4: Performance.

¹² EHRC (2013), Measuring Up? Monitoring Public Authorities performance against the Scottish Specific Equality Duties

¹³ EHRC (2015) Measuring Up? Report 4: Practice.

¹⁴ EHRC (2013) Measuring Up? Report 1: Performance.

In relation to this element of the duties, 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 pay equality issues
- Including information on both horizontal and vertical occupational segregation, as required by the duty – the concentration of women and men, persons who are disabled and persons who are not, and persons who fall into a ‘minority racial group’ and persons who do not, in particular grades and in particular occupations

Organisations should be familiar with the requirements around gender in regard to the equal pay statement and occupational segregation information. However, in order to prepare for the addition of race and disability, you may wish to 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

In identifying which ethnicity categories would constitute a ‘minority racial group’, the legislation itself explains the nature of a racial group but not how to identify which groups fall into the ‘minority’ category. As the requirement is to contrast majority and minority groups, CRER would recommend categorising these using white and non-white groups as a minimum. If organisations wish to explore the situation for white minority ethnic groups, this should be done additionally as a third category rather than placing these alongside non-white minority ethnic groups in a single ‘minority ethnic’ category. Doing so risks disguising the true extent of inequalities and fails to take into account the additional barriers faced by those at risk of colour based prejudice.

Conclusion

The 2017 PSED publication round provides a great opportunity for organisations to consolidate their learning since 2013 and ensure that equality work meets the very best standards. In particular, you may wish to aim towards releasing publications which are:

- Based on strong evidence, including evidence from effective involvement
- Addressing issues of inequality and discrimination for protected characteristic groups confidently and clearly
- Presented in a format that is user friendly, concise, comprehensive and transparent
- Detailing ambitious, targeted, practical and achievable outcomes for 2017-2021
- Reporting concrete progress on the previous / existing set of outcomes
- Demonstrating the change equality work makes in the lives of people with protected characteristics, including staff and service users

CRER plans to undertake further work on PSED following the 2017 publication round. 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.

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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: <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>

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>

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EHRC Scotland monitoring and enforcement publications, including the Measuring Up? research series: <https://www.equalityhumanrights.com/en/public-sector-equality-duty-scotland/scotland-public-sector-equality-duty-projects/measuring>

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

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