

Collecting equality information: Guidance for Scottish social landlords

Produced by: Scottish Federation of Housing Associations, Glasgow and West of Scotland Forum of Housing Associations, Association of Local Authority Chief Housing Officers and Scottish Housing Regulator

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This is a draft document intended for initial consultation and feedback. Please contact Jeremy Hewer, jhewer@sfha.co.uk, with any comments or ideas you may have which will be considered for the final release.

In the spirit of this guidance, the ambition is to make it fully accessible and available to any reader. To that end we would welcome feedback on accessibility features. This document can be made available in a range of different formats such as in larger print, Braille or audio-format; we can also translate the document into various languages, as appropriate.



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Introduction

Purpose of the guidance

The guidance has been commissioned to provide social landlords with advice regarding equality data collection.¹ It is intended that this guide will aid understanding of how data can be used to develop and improve services, It will also assist effective implementation of the Scottish Housing Regulator's regulatory requirements.²

Although this guide is not prescriptive in nature, it offers social landlords comprehensive practical advice concerning the collection of equality data, namely data concerning the nine protected characteristics groups. The guide focuses on the social rented housing sector using examples based on actual housing practice.

Practical questions that the guidance covers include:

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

Key principles underlining the guidance

- Equality data collection is not a stand-alone activity, but part of an organisation's equality strategy. As such, it is a core element of governance.
- Social landlords need to be aware of the legal framework that regulates the collection of equality data. This involves taking account of both equality and data protection law.
- The guidance 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 term "registered social landlord" is used to denote housing associations and cooperatives, and "social landlord" is used to denote both housing associations and local authorities.

1 The four commissioning bodies were the Scottish Federation of Housing Associations, the Scottish Housing Regulator, the Glasgow and West of Scotland Forum of Housing Associations (GWSF) and Alacho.

2 Scottish Housing Regulator, 2019, Regulation of social housing in Scotland – our framework, Edinburgh: Scottish Government.

Structure of the guidance and how to use it

The guidance is divided into a number of core sections, with more detailed information provided in the form of appendices. A list of references and a glossary are also provided.

This format enables sections to be updated periodically as law and guidance evolve, as well as enabling housing staff to access issues of particular interest.



You can click on headings in the cover page of each section to jump to that topic or jump to a section by clicking on it from the contents page.

Production of the guidance

This document is produced by Scottish Federation of Housing Associations (SFHA), Glasgow and West of Scotland Housing Forum (GWSF), Association of Local Authority Chief Housing Officers (ALACHO) and the Scottish Housing Regulator (SHR).

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Thanks: We would like to thank all those social landlords that participated in the consultation exercise for their important input which informed the development of this guidance.

Core documentation and lawfulness conditions



Section 1 – Template equality monitoring form

This section is a procedural section that provides housing staff with practical advice and documentation that can be used to collect equality data. How data is collected is secondary to how it is then used, and so it is important that this section is read alongside the guidance (in Sections 3 to 8) on how data can best be used to advance equalities objectives.

This procedure covers the following issues, which you can click to skip to:

- ➔ Introduction to developing an equality monitoring form**
- ➔ Equality monitoring form: standard template**
- ➔ Guidance notes for staff on using the form**
- ➔ Objectives considered in drafting the template equality monitoring form**
- ➔ A template guidance note for individuals being asked to complete the form**

Introduction to the template equality monitoring form

Why equalities data is collected

The practical guidance below on the template monitoring form should be considered within the overall context of equalities data being collected for the following reasons:

- meeting the public sector equality duty;
- meeting the specific duties (local authorities only);
- making reasonable adjustments (for disabled people);
- implementing positive action initiatives; and
- using data to improve policies, procedures and services.

Developing and using equality monitoring forms

This section provides a sample template of an equality monitoring form that contains the minimum number of questions that social landlords should ask to meet legal and regulatory requirements. In the Guidance notes for staff on using the form we explain in more detail the objectives we took account of in drafting the template monitoring form.

The term ‘monitoring form’ is in no way intended to suggest that collecting the data is somehow an end in itself. The form is merely the conduit for gathering information which is then used to inform policies and services across the organisation.

The questions used in the form are based on good practice to promote respect for other people in line with (amongst other things) the Scottish Social Housing Charter.

For example, questions that use phrases like “people with a disability” should be avoided to reflect the social model of disability (see [Section 8](#)). Similarly, framing questions around sexual orientation should take account of good practice recommended by organisations such as Stonewall Scotland. If adapting the template form, therefore, social landlords should take such guidance into account.

Social landlords should insert their own equality statement within the form (see below).

Local flexibility in terms of equality monitoring documentation

Social landlords can adapt their own equality monitoring documentation to meet their particular organisational requirements. This might include:

- adding other questions;
- adapting the order of questions to suit organisational preferences;
- adapting the layout to suit their organisational house style;
- shifting the various boxes/sections, for example, putting the “prefer not to say” option to the top of each question; and
- having specific monitoring forms to cover the different categories.

An example of local adaptation of the form is that some landlords might choose to produce a specific equality monitoring form for housing applicants, in order to reduce any duplication with the information collected in the housing application form.

Encouraging individuals to provide data

This guidance emphasises that the collection of equality data is based on a consensual approach (irrespective of legal conditions used to process the data). In order to promote this approach, social landlords should encourage individuals to provide data to help inform the provision of appropriate services. In Section 1d we provide a template information note that explains why questions are being asked.

Our equality monitoring form uses a standard format that involves:

- asking a question about each of the protected characteristics;
- encouraging individuals to complete each question; and
- providing individuals with the option not to answer specific questions.

Collecting and using equality data

The guidance explains that equality data is collected to meet legal provisions and regulatory requirements. It is important to stress, however, that data will be used to:

- protect people from unlawful discrimination;
- address their needs; and
- promote their interests.

Before completing the form

Before completing the form, the legal condition(s) that is/are being used to collect the data should be clearly explained. This can be stated as an introduction on the form so that:

- individuals can read this if they are completing the form electronically by themselves; or
- housing staff can explain this personally to individuals if equality data is being gathered through personal meetings.

The opportunity for individuals to complete equality monitoring forms with housing staff instead of electronically should always be offered.

Individuals should also be offered a copy of the monitoring form in an alternative format, as appropriate. This is important as the standard template may not meet individuals' accessibility requirements.

Equality monitoring form: standard template

This form is available to download in an editable Microsoft Word format by [clicking here](#).

Name of social landlord: [insert name]

Why are we asking for equality information?

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

Why it is important to collect equality information?

It is important that you provide this information so that we can:

- address your individual needs;
- enhance trust with our community; and
- improve our services on an ongoing basis.

Processing your equality information

We process equality information strictly in line with data protection law and the General Data Protection Regulation.

This includes the following actions:

- processing your equality data securely;
- restricting access only to relevant staff members;
- retaining equality information only as long as necessary and in line with time scales set out in our data retention schedule;
- sharing data only as lawfully permitted; and
- destroying data securely.

Groups in respect of which we gather equality information

We gather equality information in respect of:

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

[Add note on other formats]

[Insert your organisational equality statement]

Note to individuals responding

We provide options throughout this form so you can provide only the information you want to give. This can include completing some questions and not others, or even completing only parts of questions.

However, by completing the form as fully as possible, we can then address your needs more effectively, as well as improving our services.

Information to assist you to complete the form

We have an information sheet that gives you examples of why we gather equality information; this is available publicly.

Protected Characteristic: Age

What is your date of birth?
(Please insert the day, month and year: (DD/MM/YYYY))

Protected Characteristic: Belief or religion

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

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

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

Buddhism:

Christianity – Catholic:

Christianity – Protestant:

Christianity – other (please specify):

Hinduism:

Islam:

Judaism:

Sikhism:

Other religion (please specify):

Prefer not to say:

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

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

Protected Characteristic: Disability

Are you a disabled person?	Yes		No	
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If yes, we will contact you to discuss and arrange reasonable adjustments to address your particular requirements.

Please tell us which category you would use from the following list:

Autoimmune: (for example, multiple sclerosis, HIV, Crohn's/ulcerative colitis)	
Learning difficulties: (for example, Down's Syndrome)	
Mental health issues: (for example, depression, bi-polar)	
Neurodivergence conditions: (for example, autistic spectrum, Dyslexia, dyspraxia)	
Physical impairments: (for example, wheelchair-user, cerebral palsy)	
Sensory impairments: (hearing impairment)	
Sensory impairments: (visual impairment)	
Other: If none of the categories above apply to you, please specify the nature of your impairment.	
Communication impairments (for example, speech impairments)	
Prefer not to say:	

Please use this space to advise us if you have any particular requirements relating to a disability:	
Alternatively, please insert an X in this box if you want to discuss this matter in confidence:	

Note: We ask this question so that we can make reasonable adjustments to address your specific needs, as appropriate. Please see Guidance.

Protected Characteristic: Ethnicity

Within the Equality Act 2010, race includes colour, nationality and ethnic origins (ethnicity). In this section, we make use of all three terms in line with the national census.

Please insert an X at 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 Asian			
Bangladeshi, Bangladeshi Scottish or Bangladeshi British:			
Indian, Indian Scottish or Indian British:			
Pakistani, Pakistani Scottish or Pakistani British:			
Chinese, Chinese Scottish or Chinese British:			
Other Asian background (please specify):			
Black or Caribbean			
Caribbean, Caribbean Scottish or Caribbean British			
Black, Black Scottish or Black British			
Other Caribbean or Black background (please specify)			
Mixed groups			
Mixed or multiple ethnic group (please specify)			
White			
Gypsy Traveller			
Irish			
Polish			
Roma			
Scottish			
Other			
Other group (e.g. Canadian, French, Italian etc) (please specify):			
Prefer not to say:			

Please use this box to advise us of any particular services that we can provide to address any ethnicity issues.

What is your main language	English		Other	
If other, please specify (including BSL and TACTILE BSL):				

Protected Characteristic: Marriage and civil partnership

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

Protected Characteristic: 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				

Protected Characteristic: Sex

What is your sex (assigned at birth)	Female		Male	
	Intersex		Prefer not to say	

Protected Characteristic: Gender re-assignment (trans/transgender)

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

Protected Characteristic: Sexual orientation

What is your sexual orientation?

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

General

Please mark this box if there are any issues that you want to discuss with us in confidence in relation to our equality monitoring	
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Explicit consent

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

Signature:	
Date:	

Guidance notes about the equality monitoring form

These notes should help housing staff to understand why equality questions are being asked, thus allowing them to answer questions raised by individuals completing the form.

The term “individual” refers to those groups from whom equality data is collected: housing list applicants; tenants, job applicants; employees; and committee members.

The notes provide useful information about the following issues:

- general notes about each of the protected characteristics;
- why data is being gathered; and
- using or adapting the form locally.

The notes complement the more detailed guidance in [Appendix 2](#) about why equality data is gathered.



The phrase “promoting equality objectives” is intended to include advancing and fostering equality objectives between people with, and also those without, protected characteristics.

Age

General note

Age Scotland has shown through research that age discrimination is relatively common in Scotland. It is, therefore, very important to ensure that housing services can identify and address any form of unlawful and/or unfair discrimination that may occur in relation to age.

Why age data is gathered

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, age data is gathered for other reasons that may vary depending on the category. For example, information about age is needed to determine if a housing applicant is entitled to be registered on the housing list. This is also relevant for tenants for whom age data might be used to inform allocations of sheltered housing or other housing that is designed and/or adapted for people within certain age groups.

Using or adapting the form locally

Social landlords can use this information to create age groups, as appropriate. For example, creating age groups provides useful insight into local demographic trends and patterns that can be used for future planning (new build and other services).

Belief or religion

General note

The questions used in the equality monitoring form cover three separate categories, namely non-belief, belief in non-religious matters (for example, humanism) and religious belief. The central aim of this question is to identify how personal beliefs might impact on service delivery.

Why data about belief or religion is gathered

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, it must be remembered that the collection of such data is not to know about someone's belief or religion. The main purpose is to use this data to take account of religious beliefs in the delivery of services. For instance, taking account of religious holidays is important when arranging interviews for jobs or planning tenant participation events. The guidance covers this issue through a number of practical housing examples.

Using or adapting the form locally

Social landlords may wish to separate religious groups into more specific categories, to reflect local needs or suit organisational preferences. Information about different categories is contained in the census.

Disability

General note

The question used promotes the social model of disability by using appropriate language and avoiding inappropriate phrases such as "someone with a disability." Social landlords should consider the range of training courses referred to in the guidance that promote the effective collection of equality data, including a course on using appropriate language that covers all protected characteristics.

Why data about disability matters is gathered

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, the key reason for gathering such data is to assess if a disabled person has any particular support needs and/or accessibility requirements. This is important as there is a legal duty to make reasonable adjustments, in both employment and service provision.

Using or adapting the form locally

Social landlords should consider how information obtained can inform the development of needs assessments so that appropriate reasonable adjustments are implemented. Such adjustments are required in law.

The equality monitoring form sets out a range of impairment categories and these can be used and/or adapted to reflect local requirements.

Ethnicity

General note

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. Thus, 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).

Why data about ethnicity matters is gathered

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, the data is used to promote race equality and address any form of discrimination, including institutionalised discrimination. It is also used to inform the planning and delivery of services. Such discrimination has traditionally affected people from black, Asian and other minority ethnic groups.

Using or adapting the form locally

Social landlords may wish to separate ethnic groups into more specific categories, to reflect local needs or suit organisational preferences. Information about different categories, for example, is contained in the census.

Gender re-assignment (trans/transgender)

General note

The term 'gender reassignment' is used and defined in law, see for example, the Equality Act 2010.

Why data about gender re-assignment and trans/transgender matters is gathered

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, the data is used to address, with sensitivity, the needs of trans people in service provision.

Using or adapting the form locally

Social landlords may wish to consider the census question if they want to adapt this question further; this is optional. Also, social landlords may be required to adapt this question in the light of future legislation relating to this issue.

Marriage and civil partnership

General note

The Equality Act 2010 is concerned with determining marriage or civil partnership status to ensure that discrimination does not occur in respect of this protected characteristic. The law is not concerned with whether an individual is single, divorced, separated or widowed.

Why data about marriage and civil partnership status is gathered

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, social landlords can use such data to inform planning and service delivery. For example, an employer may want to give advice to staff about their respective rights in terms of employment and equality law. This data can be used to ensure that any benefits that accrue to those who are married are available also to those in civil partnerships. Statutorily, data on marriage and civil partnerships must be collected for employment purposes, but its collection in relation to landlord services is optional.

Using or adapting the form locally

Social landlords may wish to consider the census question if they want to adapt this question further; this is optional. It would also be an option to include questions on whether someone is single, or in a couple, as this provides a fuller picture than covering only those couples who are married or in a civil partnership.

Pregnancy and maternity

General note

The Equality Act 2010 introduced these as protected characteristics. Maternity is the period after the birth. In a work context, it is linked to maternity leave. Outside of a work context, the law provides protection against maternity discrimination for 26 weeks after giving birth. It provides protection in situations where a woman is treated unfavourably because she is breastfeeding.

Why data about pregnancy and maternity is gathered

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, this data is used in the planning and delivery of services.

Using or adapting the form locally

Social landlords may wish to consider the census question if they want to adapt this question further; this is optional. Also, in respect of employment issues, human resource staff may wish to ask questions about maternity and/or paternity leave.

Sex

General note

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.

Why data about sex is gathered

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, data on sex is gathered, for example, to inform planning and delivery of services to inform employment strategies. Such data can also be used to promote positive action initiatives that address the under-representation of women historically in certain fields such as the building sector.

Using or adapting the form locally

Social landlords may wish to consider the census question if they want to adapt this question further; this is optional.

Sexual orientation

General note

Sexual orientation refers to someone'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.

Why data about sexual orientation is gathered

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, this data is used when reviewing planning and in the delivery of services.

Using or adapting the form locally

Social landlords may wish to consider the census question if they want to adapt this question further; this is optional.

Objectives considered in drafting the template equality monitoring form

This section provides a checklist of key objectives that we have considered in developing the template equality form. They reflect recommended good practice from organisations that support social justice objectives.

Social landlords should consider these objectives, too, when developing and/or refining their organisational equality monitoring form(s).

Checklist of objectives

Objective 1: Adhering to guidance

Housing staff should refer to both this guidance and other source materials explained in the guidance to access examples of good practice in drafting equality monitoring forms. Also, equality monitoring forms should take account of context and local issues.

Objective 2: Consulting with data subjects

Social landlords should advise individuals about their equality data collection forms and consult with them through their tenant participation activities, as appropriate.

Objective 3: Aligning questions to the purposes of data processing

Social landlords can use the standard equality monitoring form above, or adapt it to their own organisational needs, bearing in mind the fact that each question should be aligned to clear and defined purposes.

For instance, asking a housing applicant about their age is used to ascertain if they qualify to be registered on a housing list. This would not, though, be appropriate for tenants. In the case of tenants, age questions might be linked to identifying tenants who want to transfer to housing where age is a relevant criterion to access housing.³

Social landlords may choose to develop more than one monitoring form to reflect the different categories, namely housing applicants, tenants, job applicants, employees and committee members.

Alternatively, they can use one form and provide guidance to individuals as to why information is being gathered in respect of these groups.

³ The Housing (Scotland) Act 1987, section 20 (2B) (a).

Objective 4: Using appropriate and clear language

Social landlords should use appropriate language in their equality monitoring forms, as highlighted in this guidance. For example, it is important to use language that conveys positive values and respect for other people, such as promoting the social model of disability. Again, plain language should be used, with any technical terms explained clearly.

Social landlords should review from time to time the terminology used which can change and to ensure the most appropriate terms are deployed. Having ongoing contact with groups/organisations representing those with protected characteristics will assist social landlords in keeping up to date with developments

Objective 5: Encouraging responses

Irrespective of what legal condition(s) is/are used to collect data, actual response rates depend on individuals agreeing to complete the form. Each equality question must, therefore, contain 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

Social landlords, as data controllers, must determine what lawfulness conditions are appropriate. They must determine what lawfulness conditions are appropriate. [Section 2](#) and [Appendix 3](#) provide further information about this matter.

Objective 7: Rights of data subjects

Individuals have various rights that exist to protect their interests when personal data is processed. Social landlords should ensure that data is processed with these rights in mind. For example, individuals have a right to have inaccurate data rectified (GDPR, Article 16). This is linked to the legal principle that applies to data controllers to take all reasonable steps to ensure that personal data is accurate. Again, this requires clear and comprehensive questions being asked on equality monitoring forms.

Objective 8: Understanding why equality data is being collected

Social landlords must bear in mind the purposes of data collection when determining what conditions to use in processing special categories data, namely:

- complying with regulatory standards, in particular equality data collection standards issued by the Scottish Housing Regulator as contained within the Regulatory Framework;
- complying with law in relation to the Public Sector Equality Duty and the Specific Duties, as appropriate; and
- monitoring and addressing unlawful forms of discrimination.

Objective 9: Using explicit consent

If explicit consent is used as condition (under Article 9) for collecting data, then this is subject to strict conditions as explained in [Section 2](#). For example, social landlords must provide sufficient information, as well as use an appropriate method such as a signed statement and/or unselected box. People must also be advised of their entitlement to withdraw consent at any time. Indeed, the GDPR provides that consent should not be regarded as freely given if the data subject has no choice or is unable to refuse or withdraw consent without penalty (GDPR 2016, Recital 42).

Objective 10: Accessing equality data

Access to equality information must be controlled strictly by each social landlord and be part of data processing procedures. Information to individuals should refer explicitly to the fact that equality data is processed in line with data protection law that regulates data usage, including sharing and data retention.

Objective 11: Providing training

Social landlords should provide staff training on their equality monitoring, including using standard forms so that staff understand why equality data is being gathered and can answer queries from individual people. This should include highlighting the fact that people have the right to say “no” to providing equality information at any time. The various types of equality monitoring training are explained in [Appendix 7](#).

A template guidance note for individuals being asked to complete the form

Why we are asking you for equality information

Although we collect equality information to monitor and address if unlawful discrimination is taking place, we also use it to promote equality objectives.

In particular, we collect equality data to protect and promote the rights and interests of individual people.

Monitoring is, therefore, central to service delivery and the provision of quality services

We process all personal data strictly in line with data protection law and the General Data Protection Regulation.

This leaflet explains why we ask each question and provides examples of how we use equality data.

Generally, we use data for all the categories below to monitor if unlawful discrimination is taking place and to promote equality objectives.

Age: Why age data is gathered

Information about age is needed, for example, to determine if a housing applicant is entitled to be registered on the housing list, or where certain properties are let only to those in a specific age group.

Belief or religion: Why data about belief or religion is gathered

We collect information about individuals' beliefs and religion to inform the delivery of services. For instance, we want to make sure that we hold meetings with tenants at times that do not conflict with religious holidays.

Disability matters: Why data about disability matters is gathered

We gather data from disabled people so that we can liaise with them and make reasonable adjustments to service delivery. For example, by knowing the access requirements of people with visual impairments, we can provide information in larger print or audio-format. We also use this data in the planning and delivery of our services.

Ethnicity: Why data about ethnicity matters is gathered

The 2010 Equality Act's definition of race includes colour, nationality and ethnic or national origins. A racial group is one where people share any one of these characteristics. And, 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).

This data is used to promote race equality and address any form of discrimination, including institutional discrimination. We also use this data to inform the planning and delivery of services.

Gender re-assignment (trans/transgender): Why data about gender re-assignment and trans/transgender matters is gathered

This is when a person's gender identity is different from the sex assigned to them at birth – it is not their sexual orientation.

This data is used to ensure services address the needs of trans people and to deliver them with sensitivity.

Marriage and civil partnership: Why data about marriage and civil partnership status is gathered

The law covers those who are married or in a civil partnership but does not cover if someone is single, divorced, separated or widowed.

We use this data mainly in our role as an employer. We can use it, for example, to ensure that any benefits which staff who are married have are equally available to staff who are in civil partnerships.

Pregnancy and maternity: Why data about pregnancy and maternity is gathered

Maternity is the period after the birth. In a work context it is linked to maternity leave. For those not in work it means there is protection against maternity discrimination for 26 weeks after giving birth. It includes where a woman is treated unfavourably because she is breastfeeding.

We use this data mainly in our role as an employer.

Sex: Why data about sex is gathered

Sex is different from gender in that sex is biologically defined whereas gender is socially constructed.

As well as using data to monitor if unlawful discrimination is taking place and promoting equality objectives, data on sex is gathered, for example, to inform our [planning] and delivery of services. For service issues, monitoring this data is used for different purposes such as to avoid unlawful discrimination and to promote equality opportunities for women. For instance, using data to inform strategies around childcare facilities at meetings, women attending meetings etc. This data would be cross-referenced to other data to ascertain possible issues for assessment.

Sexual orientation: Why data about sexual orientation is gathered

Sexual orientation is someone's sexual attraction that can be towards their own sex, the opposite sex or to both sexes. Discrimination could take place in both employment and housing services. For example, if a housing officer were to allocate lesser quality housing to someone because the applicant is – or is perceived to be – gay.

Section 2: Lawfulness conditions for processing equality data

This section provides information on:

- ➔ Key data protection principles enshrined in law
- ➔ Data protection principles
- ➔ The six lawfulness conditions for processing data
- ➔ Processing special categories of personal data
- ➔ Data security



Key data protection principles enshrined in law

The main data protection law that will be referred to in this guidance are the General Data Protection Regulation (GDPR) 2016, and the Data Protection Act 2018.⁴ The Data Protection Act 2018 runs alongside the GDPR and supplements it in areas where the UK has competency to do so, applies a modified GDPR regime to areas that fall outside the scope of the GDPR.

It also creates exemptions from provisions within the GDPR, including rights.

Data protection law is very important in respect of equality data collection as such data must be processed in line with relevant principles, which are summarised below by reference to GDPR provisions.

Data protection principles⁵

There are six core principles that are fundamental to processing of equality data. Data must be:

- processed lawfully, fairly and transparently;
- collected only for specific, explicit and legitimate purposes;
- limited to what is necessary, including avoiding data duplication and processing irrelevant data;
- accurate and kept up-to-date;
- retained only as long as necessary;
- processed securely using appropriate technical and organisational measures.

⁴ The Data Protection Act 2018 repeals most of the Data Protection Act 1998 except in areas where it made amendments to other legislation (DPA 2018, Schedule 19, Part 1, Para 44).

⁵ GDPR, 2016, Article 5, 1 (a) to (f); and the Data Protection Act 2018, Schedules 1 and 2.

The six lawfulness conditions for processing data

In order to process personal data, social landlords must meet at least one of six lawfulness conditions (GDPR 2016, Article 6 (1)). These conditions are as follows:

- Data processing is necessary to comply with legal obligations (including regulatory functions that satisfy specified conditions).
- Data processing is necessary for the performance of a task carried out in the public interest.
- Data subject has given their consent.
- Data processing is necessary to enter into or comply with a contract;
- Data processing is necessary to protect someone's vital interests.
- Data processing is necessary to meet the data controller's legitimate interests (this does not apply to processing carried out by public authorities in performing their tasks).

In terms of processing equality data, it is a requirement of the Scottish Housing Regulator that social landlords collect equality data for specified groups. Hence the main lawfulness condition relevant to social landlords is the condition that specifies:

"processing is necessary for compliance with a legal obligation to which the controller is subject" (the social landlord) GDPR, 2016, Article 6 (c)).

Processing special categories of personal data⁶

Special categories data includes personal data relating to someone's:

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

Processing of "special category" personal data is only permitted if at least one of ten relevant conditions is satisfied.⁷ Examples of such conditions include:

- explicit consent given by the data subject, that is, the natural person whom the data is about;
- 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.

Social landlords must understand what data is covered under special category data processing as such data requires more stringent data processing controls. And they must determine which condition (or conditions) they will use for processing special category data. Social landlords must also consider both the GDPR and relevant conditions contained in the Data Protection Act 2018, Schedule 1.

If explicit consent is used as the main lawfulness condition, then a range of criteria must be met, for example:

- 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 (oral or written); and
- a signature box is sufficient as long as an accompanying statement is provided that is sufficiently specific and produced in clear language.

⁶ GDPR, 2016, Article 9, 1. Article 9 refers to special categories of data which are generally referred to simply as special category data from this point.

⁷ GDPR, 2016, Article 9, paragraph 2 (a) to (j).

ICO guidance that states that explicit consent (as explained below) is considered appropriate if organisations “... can offer people real choice and control over how you use their data, and want to build their trust and engagement.”

Given that the provision of equality data by individual people is, in any event, based on a consensual approach, using explicit consent as a lawfulness condition could be appropriate if this meets the criteria outlined above.

Example

Although each social landlord must consider what statement it wants to use, one example would be:

“I consent to x housing association 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 can be withdrawn at any time by telling us.”

More detailed guidance on lawfulness conditions and data protection issues is provided in [Appendix 3](#), but the summary guidance above should suffice where organisations choose to use explicit consent as the main lawfulness condition for collecting and processing equalities data.

Data security⁸

Data security is at the heart of data protection law and is vital when processing special category data, including data relating to the protected characteristics. Data security measures must, therefore, be integrated into social landlords’ data protection strategies. Methods of enhancing data security are explained in [Appendix 3](#), which describes specific techniques in relation to anonymisation and pseudonymisation.

⁸ GDPR, 2016, Article 5 (1) (f) and Article 32.

Guidance for senior staff



Section 3: Equality data collection as part of organisational equality strategy

This section provides information as to how equality data collection is not to be viewed as a stand-alone activity but is part of organisational equality strategy. It describes key organisational issues that each social landlord should consider before developing their data collection procedures. These issues are:

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



The relationship between organisational governance, equality policy and data collection

Organisational governance is central to the Scottish Housing Regulator's regulatory framework; social landlords must satisfy a diverse range of standards.

Standard 1 states, for example, that:

"The governing body leads and directs the RSL to achieve good outcomes for its tenants and other customers" (SHR, 2019, page 10).

In practical terms, social landlords must develop comprehensive governance policies and equality is central to all governance policies.

Standard 4 requires each social landlord's governing body to base:

"...its decisions on good quality information and advice and identifies and mitigates risk to the organisation's purpose" (SHR, 2019, page 13).

Implicit in this Standard is the requirement for social landlords to develop robust equality data collection procedures so that governing bodies are provided with quality information.

Factors to consider in developing an effective equality strategy

It has been stressed that equality data collection is integral to an organisational equality strategy. It is important to be aware of a range of other organisational activities that are part of an equality strategy, to ensure that social landlords adopt a holistic approach when developing equality data collection procedures.

Key documents within an equality strategy include the equality policy and related action plan.⁹ As well as these key activities, a comprehensive equality strategy is likely to include other equality procedural documentation such as the organisational equality impact assessment procedure and equality data collection procedure.¹⁰ The latter may operate as part of data protection procedures but remains central to equality strategic planning.

The equality action plan should cover a wide range of activities, as it is through this that social landlords mainstream equality objectives.

Examples of activities that a comprehensive equality action plan covers are:

- equality data collection,
- equality impact assessment of organisational policies and procedures,
- training for staff and elected members, committee and/or board members.¹¹

It is stressed that social landlords have discretion regarding the particular activities to include within equality action plans, which should be tailored to the specific needs of each social landlord.

9 Some landlords may choose to use different names such as equality and diversity policy, equality and human rights policy and so on. The key point is that, no matter the name chosen, the strategy should include relevant documentation.

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

11 Failure to include relevant equality activities within equality policies is often referred to by the technical term “structured omission.” This is not necessarily a conscious process but refers to how omission of key issues leads to their non-implementation in practice. Studies about relevant factors to consider in developing comprehensive action plans in relation to social housing are sparse. See the Reference List for further information. For studies that focus on this topic in relation to social rented housing in Scotland, see Montgomery, 2011 and 2001.

Links between equality strategy and other organisational strategies and policies

Equality data collection is a core element within an organisational equality strategy. When developing data collection procedures, it is essential to align this activity to other key organisational strategies. This shows the importance of adopting a systemic approach to organisational development. Three key strategic policy links are highlighted below.

The equality strategy and data protection strategy¹²

The collection and usage of equality data must comply with the requirements of data protection law. A summary of specific data protection law relevant to equality data collection is given in [Section 4](#).

Whilst in practice equality data is collected in line with equality strategic objectives, data must be processed in line with data protection legal requirements.

The equality strategy and tenant participation strategy

Social landlords have a statutory duty to develop a tenant participation strategy;¹³ and the collection of equality data is critical to the effective implementation of this strategy. This is covered further in [Section 7](#).

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.

The equality strategy and customer care strategy

The customer care strategy is a key governance strategy and its application is very much governed by the Scottish Social Housing Charter, 2017, Standard 1, page 6.

In line with this standard, all aspects of housing services (including customer services) must be performed so that:

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

A clear link between customer care and equality strategy is thus implicit in Standard 1. Without having information about individuals' needs, it is difficult to envisage how these can be addressed. It is through the organisational equality data collection procedure that such information is gathered.

¹² Social landlords may use different expressions to refer to their data protection strategy such as information management strategy.

¹³ The Housing (Scotland) Act 2001, section 53 (1).

Example: Using allocation equality data to address individual needs

The Scottish Government guidance on allocations was issued in 2019 to ensure that social landlords comply with current legislation in allocations¹⁴. It refers specifically to the importance of monitoring, in particular that “the use of equality data is also essential” (page 30).

Example: Information on disabilities

By knowing the needs of disabled wheelchair users, this information can be used to inform:

- the allocation of accessible housing to disabled applicants;
- the provision of accessible housing in future development programmes.

In such cases it is vital to adopt a systemic approach as knowing applicants’ needs is insufficient to meet the policy objective of establishing sustainable tenancies. To achieve this goal, social landlords must take account of the full range of applicants’ stated preferences, including preferred locations.

¹⁴ See Robertson, L, et al, 2019, Social Housing Allocation in Scotland: A Practice Guide, Edinburgh: The Scottish Government.

Section 4: The law relating to equality data collection

This section provides an overview of the legal framework in relation to equality data collection. This is of particular relevance to policy makers involved in organisational development in respect of equality and data protection strategies.

This section is not intended as a precise statement of law, but as a summary of key legal provisions relevant to equality data collection. It covers law relating to equality, data protection and housing.

- ➔ The Equality Act 2010
- ➔ The Public Sector Equality Duty and equality data
- ➔ Equality impact assessments



The Equality Act 2010

This Act has two key purposes, to:

- harmonise discrimination law;
- strengthen the law to support progress on equality¹⁵.

Two key issues of relevance to this guide are the protected characteristics and duties imposed on specified public bodies.

The protected characteristics

The protected characteristics are those “grounds” on which it is unlawful to discriminate.¹⁶ These are, in alphabetical order:

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

The regulatory framework requires social landlords to gather information in respect of all protected characteristics. This is separate from any statutory duties that may apply.

Duties imposed on public bodies

The Equality Act 2010 replaced previous specific duties in respect of race, disability and sex by the duty known as the Public Sector Equality Duty.

The Public Sector Equality Duty contains three elements that cover addressing discrimination, promoting and fostering equality of opportunity. The Duty applies to 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.

¹⁵ See TSO, 2010, paragraph 10.

¹⁶ The Equality Act 2010, sections 4 to 12.

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 do not;
- foster good relations between people who share a protected characteristic and those who do not.



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

At the date of publication of this guide, housing associations are not included in the list of designated bodies covered by the Duty, although specific functions that they carry out could well be deemed to be of a public nature. If this were the case, then the Public Sector Equality Duty would apply to those functions. Whether a function is of a public nature is complex and takes account of the definition of public function as covered by the Human Rights Act 1998, section 150 (5).

In legal terms this question has not been tested, and this guidance on equalities data collection does not aim to provide definitive advice on the wider legal obligations of housing associations. It is suggested, however, that in practice, a proportionate approach to wider equalities obligations needs to be applied, not least as associations vary significantly in size.

Designated public bodies are also subject to what are known as the Specific Duties. These duties require them to monitor and report on a range of equality issues linked to the protected characteristics (see Reference List).

Both duties apply to local authorities that provide and manage social housing.

Local authority landlords must also produce published information on equality issues, as required. This includes the collection of specific types of equality data as set out in law.

The Public Sector Equality Duty and equality data

Without collecting data about the protected characteristics, it would not be possible to meet the Public Sector Equality Duty. To cite the Equality and Human Rights Commission, it is emphasised that:

“... (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”

Equality impact assessments

The legal framework requires specific public bodies to carry out equality impact assessments. As the EHRC, 2016 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”.

In terms of the regulatory framework, and separately from the statutory framework, the Scottish Housing Regulator also promotes equality impact assessments. Each social landlord is, therefore, required to carry out equality impact assessments of their policies and practices.

For example, the Scottish Housing Regulator specifies that equality impact assessments are essential activities as reflected in the requirement (already cited above) 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.”

All social landlords must carry out equality impact assessments that take account of locally generated equality data. This provision is covered either in law and/or in regulatory requirements.



Data protection law relating to equalities data collection is covered in [Section 2](#).

Section 5: Regulatory standards and guidance

This section explains the Scottish Housing Regulatory framework in relation to equality data collection, as well as signposting social landlords to other guidance.

Section 5 examines regulatory standards and other guidance that has been issued by three regulatory bodies relevant to equality data collection.¹⁷ This guidance is produced to assist organisations to implement the law effectively.

The three bodies are:

- ➔ **The Scottish Housing Regulator**
- ➔ **The Equality and Human Rights Commission**
- ➔ **The Information Commissioner**



¹⁷ There are other regulatory bodies whose standards impose requirements on social landlords, but the bodies selected are those central to the key theme of this guide, that is, equality data collection. As the Scottish Housing Regulator notes: “Landlords also have requirements placed on them by other regulatory bodies, including the Office of the Scottish Charities Regulator, the Equality and Human Rights Commission, the Care Inspectorate, Audit Scotland and the Scottish Public Services Ombudsman” (SHR, 2019, par 3.4. page 5).

The Scottish Housing Regulator

The Scottish Housing Regulator, 2019, has published statutory requirements to the effect 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...” (page 5).

The SHR 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.”

This is followed by the requirement relating to equality data collection to the effect that each social landlord must:

“... 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” (page 8).

This requirement does not include job applicants. It is important to note that social landlords will, of necessity, gather personal data about job applicants, including data about an applicant’s protected characteristics. Such data must be processed in line with data protection law.

Governance and financial management regulatory standards

The Scottish Housing Regulator has issued a code of conduct that sets out Standards of Governance and Financial Management for registered social landlords.¹⁸

Standard 2.4. is extremely important as this specifies the requirement for social landlords to:

“...seek out the needs, priorities, views and aspirations of tenants, customers and stakeholders. The governing body takes account of this information in its strategies, plans and decisions” (page 11).

Seeking out the needs of these groups is likely to include equality data, the collection of which is viewed as an activity central to organisational and financial governance.

¹⁸ This is done to comply with the Housing (Scotland) Act, section 36. These standards are set out in SHR, 2019.

Employment implications of the regulatory requirements for social landlords

Job applicants: Although social landlords are not required to gather equality data in respect of job applicants in relation to the regulatory standard, in practice they will need to do so. For example, personal data will be gathered as part of their employment and recruitment processes. This involves processing data in compliance with the Equality Act 2010 and data protection law.

Recruitment and selection policies and procedures: Social landlords must ensure that 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.

The Scottish Social Housing Charter

The Charter standard reference to treating people with respect introduces another facet that is critical to equality data collection. Data collection should not focus solely on the collection of that data. What is important is how equality data is to be used to meet individuals' needs and promote respect.

The Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) produces a diverse range of guidance in the form of statutory and non-statutory codes, general guidance and research publications.

This is a summary of key guidance issued by EHRC that is particularly relevant to equality data collection. This guidance – and other specialist EHRC guidance – will also be referred to in later sections of this Guide.

Two key documents that social landlords should be aware of include:

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

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

Guidance from the UK Information Commissioner's Office

This is covered in [Appendix 3](#).

Other regulatory guidance

Other regulatory bodies such as the Care Inspectorate implement regulatory standards that are also relevant to equality data collection. The National Health and Social Care Standards specify, under the heading dignity and respect, the following requirements.¹⁹

"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".

To meet these requirements social landlords that provide relevant support services will need to gather appropriate equality data.

¹⁹ See the Scottish Government, 2017, Health and Social Care Standards, 2017. Care Inspectorate Scotland is responsible for monitoring effective implementation of these standards by relevant providers, including social landlords which provide housing support services.

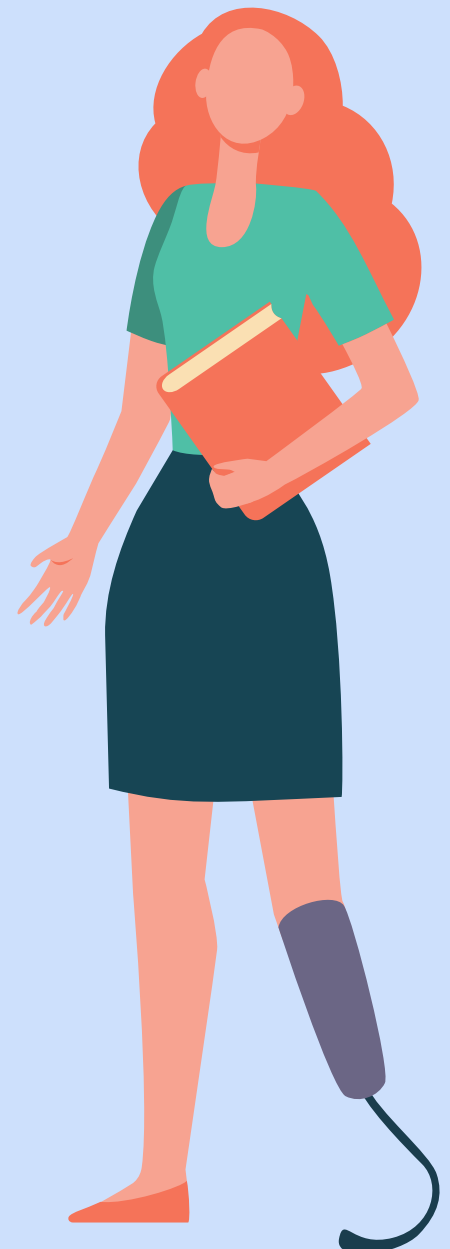
Section 6: Addressing barriers to data collection

Social landlords may experience a range of barriers when collecting equality data. To support social landlords collect equality data effectively and efficiently, it is important to understand factors that might inhibit the equality data collection process. [Section 6](#) describes a range of possible barriers to equality data collection in relation to the relevant groups²⁰, with advice on how such barriers can be addressed.

This is not intended as a definitive list of all possible barriers, as these can vary from area to area. Social landlords will have to identify specific barriers at local level and implement appropriate actions. This should be done as part of their individual equality action plan activities.

In considering possible barriers to equality data collection, four key issues are covered:

- ➔ **structural and societal factors**
- ➔ **organisational factors**
- ➔ **personal factors**
- ➔ **national factors**



²⁰ The phrase “the relevant groups” is used to denote the categories for whom social landlords are collecting equality data. Although the examples used below refer to staff, tenants and other customers, the points apply also to job applicants, elected members, board and/or committee members. The legal term “data subject” is used more frequently in this section when discussions relate to equality data monitoring forms. This term refers to any individual whose special category data is being processed by social landlords.

Structural and societal factors

In contemporary society with its focus on social media, there has been substantial coverage of data protection breaches. It is important to note that social landlords have been involved in data breaches too with such breaches apparently increasing.²¹

Coverage of GDPR and data protection law throughout the social media has, arguably, generated more detailed understanding of individual rights. This includes awareness of rights about data processing and puts the onus upon social landlords to justify and explain clearly why equality data is being collected.

Coverage of data breaches in the media may also impact on individuals' willingness to provide equality data as they become aware of issues associated with such breaches.

Obtaining individuals' agreement is important if social landlords want to collect equality data; this issue is dealt with in detail below. This does not entail that explicit consent is the lawfulness basis that should be used for collecting equality data. No matter the lawfulness condition that is used, data can only be collected if people agree to provide personal data willingly. To promote this, social landlords must provide more information about why equality data is being gathered and how it is being used. This links to the key principles of fairness and transparency.

Given that individuals are likely to have genuine reservations about providing data, social landlords should consider the following questions:

- are service users aware of organisational values and/or regulatory reasons that underpin equality data collection?
- why should organisations be trusted with processing equality data given historical patterns that show information has often been used to discriminate against individual people? (see note)
- why should individual people complete equality monitoring forms if such forms do not comply with good practice? (see below).



Opposition to equality monitoring is noted as early as 1985, for instance, when the National Federation of Housing Associations, 1985, states that: "...Much of the opposition to the keeping of ethnic records is due to unease about the confidentiality of this information and the possible uses to which it may be put" (page 8).

²¹ See Wilmore, J, Inside Housing 15.11.19, which noted that there was a fifteen per cent increase in data breaches involving housing associations in the period assessed. See ICO, 2014 for information about a survey carried out by ICO in respect of a limited number of social landlords to consider the effectiveness of existing data protection practices. This study related to social landlords in England.

Organisational factors

This describes the wide range of organisational factors that might inhibit the collection of equality data collection. This includes guidance on identified barriers. More detailed guidance on the collection and use of equality data is the focus of [Appendix 1](#).

The organisational factors covered here are:

- accessibility;
- information about equality data collection;
- equality data collection forms; and
- staff training.

Accessibility

Social landlords, through their equality impact assessment process, should identify if their policies and procedures are accessible to staff, tenants and other customers.

Although this applies to people with all protected characteristics, this point is arguably most relevant to disabled people. This applies as social landlords have statutory duties to make appropriate reasonable adjustments to disabled people. This would include making reasonable adjustments to equality data collection forms.

This specific barrier is particularly noteworthy following the findings of one EHRC study.²² Although not specifically directed at equality data collection, the implications are self-evident.

“Disabled people, and in particular people with learning disabilities or mental health conditions, report that they have difficulty getting adequate support from housing providers. This ranges from providers’ reluctance to provide information in accessible formats, such as ‘easy read’, to a lack of specificity in advertisements for accessible properties and a lack of assistance with applications. This includes tenancy agreements and correspondence from the landlord, which typically contains language that is legalistic and can be inaccessible to many people.”

The quotation above also illustrates the symbiotic relationship between equality data collection and actual housing services. Without knowing the actual accessibility needs of individual staff, tenants and customers, reasonable adjustments cannot be implemented comprehensively.²³

²² See EHRC, 2018, page 26.

²³ The duty to make reasonable adjustments “operates differently depending on the context in which it arises,” for example, housing services or work (see Beale, in Wadham et al, 2016, page 44).

Information about equality data collection

To promote equality data collection, social landlords should consider two issues.

They should assess the quality of present methods they use to communicate their equality data collection commitments to tenants and other customers. Examples of such documentation include (in alphabetical order):

- application form for housing;
- application form for employment;
- newsletters (or leaflets);
- privacy notices;
- publication scheme, including the social landlord's data retention schedule;
- survey forms, for instance, satisfaction surveys;
- tenants' handbook; and
- tenancy sign up (forms and information).

Following this assessment, social landlords should determine what improvements are required, if any. This is an issue that social landlords could consult with tenants and other customers about, for instance, through their tenant participation strategy.

Social landlords should consider drafting staff procedural guidance covering the reasons for equality data collection, as well as how data is used. This is important as housing staff will be required to advise individual people about these matters to obtain their support in completing equality data forms.

Equality data collection forms

Equality data collection procedures should be based clearly on data protection law and its relevant principles as summarised in [Section 3](#).

A possible barrier to the collection of equality data can arise, though, if questions do not enable social landlords to elicit the data required. Detailed guidance on forms, along with the template form, are provided in [Section 1](#).

Staff training

Staff training is a major organisational driver in the equality data collection process. Failing to provide training to staff involved in equality data collection may prove to be a significant barrier.

Key training points that housing staff involved in equality data collection should be aware of include being able to explain clearly to people:

- individuals' rights about data processing;
- why equality data is being collected;
- the legal basis for processing equality data (see note);
- who has access to equality data;
- what is being done with equality data;
- with whom equality data might be shared;
- how long equality data will be retained;
- the data security measures that are in place; and
- any other questions that people (as data subjects) might pose, including dealing with what is often referred to as "challenging behaviour."

Personal factors

Equality data collection is a personal activity that, from the perspective of individual people, involves questions that focus on sensitive matters. Such questions may appear intrusive, if little or no information is provided to clarify why data is being gathered.

Completion of equality data forms is a question of personal choice. Individual data subjects may choose to complete some questions but not others. Although this might appear to be a disadvantage, insofar as less equality data would be collected, this offers social landlords the opportunity to focus efforts and resources in promoting understanding among people that equality data is being collected in their interests. This could encourage them to provide fuller responses when equality data is reviewed.

Attitudes – among staff as well as tenants and other customers – play a part. Attitudes will vary and will have been shaped by an individuals' present and/or previous experience. People with previous unsatisfactory experience, whether in housing or elsewhere, may have less positive attitudes towards equality data collection. It is unsurprising, then, that some individual people are reluctant to complete equality data monitoring forms.

The fourth point concerns trust, and where there is a culture of promoting trust and respect between social landlords and tenants, which is reflected in how equalities data is gathered, the outcome is likely to be better.

National factors

Social landlords may also need to consider equality data at national level to inform local strategies. This is important, for instance, when social landlords are considering if a positive action programme should be developed. It is important that social landlords use other data sources. For example, local authorities collect and use equality data within strategic planning and their reports relating to the equality statutory duties.

Social landlords can also use specific national database sources to ascertain information about particular equality groups, including questions to ask. For example, the EHRC provides a list of selected sources of national equality data. These include sources on the EHRC website as well Scottish Government website sources, including the Scottish Census.

Section 7: Benefits of equality data collection to social landlords

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 and should not be regarded as simply an exercise in monitoring.

Previous sections have summarised law, regulatory standards and guidance that regulate, to a large extent, why equality data is to be collected by social landlords. Section 7 explains in what ways – as well as meeting legal and regulatory requirements – equality data collection is beneficial to social landlords.

This focuses on benefits from an organisational perspective which are summarised by reference to three themes:

- ➔ **promoting positive customer care strategies**
- ➔ **enhancing tenant participation opportunities**
- ➔ **meeting specific business objectives***

*(all three themes promote business objectives, but this last section considers efficiency matters specifically).



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. This subsection explains how equality data collection contributes to this process.

Trust lies at the heart of quality customer care and is promoted if a social landlord:

- understands the needs of individual customers (including equality data) and uses that data to provide appropriate services;
- treats individuals with respect;
- ensures that equality data is processed in line with data protection law as implemented through its organisational data protection strategy.

By gathering useful equality data, this allows an organisation to focus on what individuals actually need, as opposed to perceived needs. This is a different focus from traditional customer satisfaction surveys that, it has been suggested:²⁴

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

Through understanding the needs of individual people communications are likely to be more effective. This will be reinforced when people experience their social landlord acting on information that they have provided.

Example

By knowing the particular needs of disabled tenants with visual impairments and/or blind people, then information can be provided in formats to address and/or 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 important as it means that social landlords are carrying out their statutory duty in relation to making reasonable adjustments.

²⁴ See the CIH, 2008.

Enhancing tenant participation

Tenant participation is a major strategic policy area within the Scottish social housing sector. The effectiveness of tenant participation strategies depends on the collection and usage of equality data.

“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”

(Source: TPAS Scotland, April 2020).

“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”

(Source: Tenant Information Service, May 2020).

Tenant participation strategies comprise many inter-dependent activities, including methods of consultation to be used as part of this process. And implementing these activities effectively – as stressed in the quotation above – is dependent on having equality data.

This is illustrated by the example in Table 1 below by reference to specific protected characteristics (not exhaustive) and equality data that could inform the planning of a policy consultation event.²⁵



The Scottish Government’s guide to successful tenant participation²⁶ provides useful information on how to encourage involvement from tenants with different protected characteristics.

²⁵ In practice, social landlords should develop accessibility checklists that they use when carrying out impact assessments of places used for events and meetings. See, for example, (EHRC, 2018(A)) that provides detailed guidance about accessibility issues to take into account as part of event planning.

²⁶ Scottish Government, 2019. Guide to Successful Tenant Participation, Edinburgh: The Scottish Government. <https://www.gov.scot/publications/guide-successful-tenant-participation/pages/3/>

Table 1: Equality data to consider when arranging a policy consultation event

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



Individual people are likely to have a range of needs and so it is important to consider persons as individuals rather than focussing on the separate protected characteristics. In Table 1, for instance, any one individual is likely to have several protected characteristics.

Meeting specific business objectives

Developing comprehensive equality data collection systems is a key aspect of business and financial governance. This subsection describes how comprehensive equality data collection can be used to enhance business objectives. This is done through using examples of different protected characteristic data in respect of the following categories:

- housing applicant;
- tenant;
- job applicant;
- employee; and
- committee/elected member.

Enhancing business efficiency and effectiveness includes diverse governance issues such as delivering appropriate services, prioritising services and resource planning. All three factors have cost implications and are, therefore, integral to prudent financial management and public accountability.

The five examples below demonstrate this point through reference to actual housing practices.



It is emphasised that access to equality data in the examples below must be processed in line with relevant equality and data protection law and guidance. So, in the employment related examples below, interviewing panels would not receive equality data, but data might be used to provide appropriate services: for example, data about an applicant's impairments would be used to make reasonable adjustments so that the applicant is not disadvantaged at interview stage.

Example 1

Housing applicant

Protected characteristic and related issues: age and family composition

By understanding both the age and family composition profiles of housing applicants, then this can be used to inform social landlords' development programmes where they have one.

For instance, age data can be used to inform particular requirements such as (in conjunction with local statutory services) identifying appropriate support services.

Key business guidance point

By linking the planning and implementation of capital programmes to actual housing needs (and preferences) of applicants, then this reduces potential risks associated with sustaining tenancies.

Example 2

Tenant

Protected characteristic and related issues: disability and accessibility requirements

By understanding the needs of disabled people with literacy issues social landlords can deliver services to those tenants, as appropriate.

If a social landlord knows that some tenants have a learning disability, then the social landlord can implement a range of actions such as:

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

A social landlord will normally remind tenants (in writing) if they are in rent arrears and then follow this up with a home visit. At this visit, the disabled tenant explains that the letter in standard English is not appropriate to their needs (the tenant cannot read it). The person asks for the social landlord to notify rent arrears either by telephone calls or through personal visits.

The social landlord then ensures that staff visit this tenant in future, to discuss rent arrears issues. Personal visits are likely to constitute a reasonable adjustment. Another adjustment could be providing rent arrears information in easy to read format if this is suitable to the tenant concerned.

In this example is not information about “disability” that is being collected, but additional information relating to the needs of disabled people. This is the data that will be used to inform what services are to be provided.

Key business guidance point

The main aim of collecting information about impairments or conditions is to enable social landlords to make reasonable adjustments in compliance with law. This approach minimises risk associated with failure to comply with law and related financial implications of such failure. And, from a business perspective, this enables resource requirements to be assessed and planned within organisational budgets.

Example 3

Job applicant

Protected characteristic and related issues: belief or religion

Data collected about belief or religion can be used to inform the recruitment and selection process and promote equality objectives. For example, in the case of job applicants, information about belief and religion can be used when arranging job interviews so that times arranged do not conflict with religious holidays or prayer time commitments.

Key business guidance point

Collecting data about belief and/or religion is not simply to know what someone's belief or religion is, but to understand 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

Employee

Protected characteristic and related issues: race and ethnicity

Collecting information about race and ethnicity is used for various business reasons. For example – as with other protected characteristic data – it is used to monitor if any form of unlawful discrimination is taking place. But such data is also collected to inform future strategic planning initiatives including positive action programmes.²⁷

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.

²⁷ Positive action is explained in Section 7.

Example 5

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 too. As the (EHRC, 2016) states:²⁸

“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”.

Key business guidance points:

- There is no requirement for social landlords to set rigid targets for committee/board membership, for instance, to have “x number” of people with “such and such” protected characteristics
- Social landlords should use equality data gathered to identify if there are noticeable gaps between demographic data and existing committee/board membership. For example, data will help confirm that few younger people are committee or board members despite local demographic data indicating that younger people comprise a sizeable number of tenants.
- Social landlords should take active steps to identify if people might want to join committees/boards, and identify what barriers may exist that are preventing active involvement.

Other business benefits of gathering equality data

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

- By understanding the equality profiles of tenant households, this means that surveys can be tailored to their needs thus focussing on relevant issues.
- If services are delivered to address individuals’ needs, including needs related to equality data, the quality of services should be enhanced. A by-product of this could be a reduced number of justified complaints.²⁹

²⁸ Equality and Human Rights Commission, 2016 B, How to Improve board diversity: a six-step guide to good practice, London: EHRC.

²⁹ This is not to belie the importance of complaints as a source of information that social landlords can use to improve their services. It is emphasised that the Scottish Public Services Ombudsman (SPSO), too, views equality data collection as being highly pertinent to effective complaint systems for social landlords (see SPSO, 2020).

Section 8: Promoting equality objectives in practice

Advancing equality objectives is central to equality law and the regulatory framework. This section explores ways social landlords can use equality data to promote equality objectives in housing services, including through positive action.

The examples below are not intended to cover all possible ways in which equality data can be used by social landlords to promote equality objectives: social landlords should develop innovative ways to collect and use equality data to address locally identified issues. Whilst equality profiles of local people may comprise the same range of protected characteristics, actual equality issues can vary considerably from area to area.

For instance, older people living in flats without lifts might have different needs from older people living in houses with gardens. Equality strategies should take account of actual context when equality data collection procedures are implemented.³⁰

Five areas are selected to illustrate practical ways in which equality data can be used to advance social landlords' equality objectives. The key areas are:

- ➔ **complaint systems**
- ➔ **institutionalised discrimination**
- ➔ **the social model of disability**
- ➔ **positive action**
- ➔ **staff development and training**



³⁰ This point will be examined in detail in Appendices 1 and 2 when the issue of equality data collection “in context” is explained.

Complaint systems

The Scottish Public Services Ombudsman is responsible for developing and monitoring the implementation of model complaint handling procedures for various sectors. This includes monitoring complaints against social landlords, and a revised model complaints handling procedure was produced in 2020.³¹

In order to implement complaint systems effectively, social landlords need to gather equality data so that they can address and/or meet the needs of people with protected characteristics. In the SPSO guidance, 2020, for example, it is emphasised (in the section relating to publication and accessibility) that RSLs and public authorities:

“... 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”.

As this extract demonstrates, equality data collection is not simply ancillary to the complaint handling process; it is integral to effective implementation of that process.

Institutionalised discrimination

As well as unlawful forms of discrimination, organisational practices may also disadvantage certain groups unless social landlords are aware of important concepts, including institutionalised discrimination.

The Equality Act 2010 defines a range of different forms of unlawful discrimination, for example, direct and indirect discrimination.³² However, discrimination can be understood in other ways. In social policy, for instance, a concept that is commonly used is that of institutional discrimination.³³

Institutional discrimination may occur, for example, if organisational policies, including rules and procedures, do not identify relevant issues clearly. This omission may occur, too, in the case of equality data monitoring if equality monitoring forms follow a simple “select box procedure” without explanation as to why data is being gathered. And, very importantly, failing to identify relevant issues through equality monitoring forms can result in those issues not being dealt with in practice. This omission is mainly due to lack of awareness, not intentionality.

31 This will be introduced from April 2021. See <https://www.spsos.org.uk/the-model-complaints-handling-procedures> [SPSO, 2020, A].

32 See the Equality Act 2010, sections 13 to 27.

33 See, for example, the University of Strathclyde, 2004; other information is provided in the Reference List. See Montgomery, 2011, for an overview of different forms of discrimination from the perspective of social policy.

Ways in which equality data collection can be developed to challenge institutional discrimination and promote equality objectives include:

- ensuring that equality data collection methods include data about all protected characteristics;³⁴
- using comprehensive and clearly drafted equality monitoring forms that inform organisational governance, as well as identifying possible forms of discrimination;
- specifying clearly why data is being collected and how it is being used; and
- using appropriate language within equality monitoring forms, not only to promote respect for other people, but to establish trust and thereby elicit more comprehensive responses.

The social model of disability

The social model of disability is a framework of principles that promote the rights and interests of disabled people. This model recognises that individual disabled people are “disabled” and disadvantaged by a wide range of factors resulting in their social exclusion.

For example, the (EHRC, 2015) has reported that lack of suitable and accessible accommodation for disabled people remains a major issue In Scotland:

“(there are) a number of concerns including the lack of one-bedroom accommodation available in the social rented sector, the ability of households to meet arrears in their rents and possible increases in arrears”.

This statement is of particular importance as it highlights that being a disabled person should not be perceived in terms of individual impairment issues, and that disability is a term that should be used to refer to social disadvantage, including social exclusion economically.

Further, the statement can be clearly understood by recognising two structural disadvantages experienced by disabled people. Firstly, a sizeable number of disabled people live in inaccessible accommodation. Secondly, disabled people have fewer employment opportunities compared to non-disabled people, as the same EHRC report points out:

“Whereas the gap in employment rates has stayed relatively constant in recent times, the gap in unemployment rates between disabled and non-disabled people has recently increased”.

Positive action

Positive action is used to address historic patterns of discrimination that are often institutionalised in society. It is defined by the EHRC³⁵ as people sharing a protected characteristic who:

“...may be socially or economically disadvantaged by the consequences of the past or present discrimination or disadvantage.”

This is often seen in people from these groups experiencing institutional and/or systemic discrimination that results in (again, from the same source):

“...high levels of poverty and social exclusion, including high levels of poverty and/or segregation in housing, education or social welfare”.

Positive action initiatives must be implemented in compliance with equality law. This guidance does not seek to explain in detail the legal provisions that underpin positive action, but some key legal provisions are summarised below.

Social landlords can implement positive action if they have reasonable grounds for believing that certain specified conditions apply to people who share a protected characteristic.³⁶ These conditions are as follows:

- people sharing a protected characteristic experience disadvantage due to that characteristic, for example, due to being part of a particular racial group;
- these people have needs that differ from people without the protected characteristic; or
- have disproportionately low participation in the social landlord’s activity compared to people without the protected characteristic.

If these conditions apply, then social landlords may take steps to meet “the stated aims,” namely to:

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

Before determining to proceed with any positive action initiative programme, social landlords should compare equality data that they collect with other data sources. This would generally include consideration of national data sources such as the census, as well as local data. Social landlords should also contact the EHRC if general and/or specific advice is required. This is important to satisfy the conditions above.

Detailed information about positive action and steps to be followed is contained in the statutory codes produced by EHRC.

Example: positive action in the social rented housing sector in respect of recruitment and selection

In assessing its workforce by reference to equality data relating to people with impairments, say, a social landlord ascertains that few disabled people are applying for employment.

At this stage, social landlords should consider this situation against the three conditions explained

above to justify if positive action should be taken. The conditions appear to be met, for the following reasons.

National research and statistical information demonstrate that many disabled people experience barriers to securing employment that are often disability-related.

Disabled people have different accessibility needs from non-disabled people, a fact reflected in law by the statutory duty for employers to make reasonable adjustments.³⁷

In this example, there are few disabled employees, an issue that can be checked by social landlords through comparing their employment data against national data statistics. This can include assessment of sectoral data base sources, if possible.

The social landlord may then implement a positive action initiative to address under-representation of disabled people in employment. Examples of relevant actions could include:

- evaluating existing practices such as job advertisements to assess if their job content might inhibit disabled applicants from applying;
- using the internal equality impact assessment procedure to audit recruitment and selection documentation;
- carrying out this assessment in liaison with disabled people, including liaison with disability rights groups, if appropriate;
- amending the documentation to ensure that job advertisements promote equality objectives, including using appropriate language;
- staff training on how to develop accessible and inclusive job advertisements;
- publicising information about their positive action initiative widely, for example, through social landlords' Publication Schemes; and
- considering joining the Disability Confident Scheme, if appropriate.

[Appendix 5](#) includes details of two major positive action programmes relating to the social rented housing sector which have been established in Scotland:

- Glasgow Centre for Inclusive Living
- PATH Scotland.

³⁷ The Equality Act 2010 allows employers to treat disabled people more favourably than non-disabled people as this may be required to ensure equal access to services. This is separate from positive action. See Wadham et al, 2016, page 36.

Staff development and training

Staff development and training should be a key activity within a comprehensive organisational equality action plan. This is vital as it is a fundamental driver in effective rights implementation. This training should incorporate training on equality data collection issues.

[Appendix 6](#) provides detailed guidance on potential areas of staff training on equalities.

Supplementary Advice and Guidance



Appendix 1: Effective monitoring in the social rented housing sector

This appendix examines the effective monitoring methods that social landlords can consider when developing their internal monitoring systems. This is of interest to policy officers and staff involved in information technology system development.

“While some progress has been made in this area, even where data is available, it is not being routinely used. Public bodies should ensure that they have, and routinely use, evidence to assess the impact of any legislation, policies or interventions across protected characteristics and human rights.”

(Source: Equality and Human Rights Commission, 2016 G, Is Scotland Fairer?)

“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”

(Source: A quote from the Chartered Institute of Housing (Scotland), 28 April 2020).

The following addresses a range of practical issues pertinent to monitoring of equality data and the role of research in assisting this process. This uses a systemic approach to organisational development, thus drawing on issues explained in [Section 3](#). The issues dealt with in this section are as follows:

- ➔ **issues to be monitored by social landlords**
- ➔ **addressing gaps in evidence**
- ➔ **the role of operational data in monitoring**
- ➔ **organisational resources and monitoring**
- ➔ **involving people in data collection**
- ➔ **applying equality monitoring to practice**
- ➔ **the role of information technology**



Monitoring and equality data collection

This is a framework of relevant monitoring issues that social landlords can refer to when developing their internal monitoring strategy, to clarify the range of issues that are likely to be reported to committee/board members. Monitoring is a term that covers a range of activities. Five specific examples are provided in this section, all of which are relevant to social landlords.

Example 1: Compliance with law and regulatory standards

Assessing recruitment and selection decisions to determine if any form of unlawful discrimination is taking place. This is one of the main reasons why the equality monitoring form is used.

Example 2: Impact assessments

Assessing the impact of organisational policies and practices in promoting equality objectives. This type of monitoring can also vary depending on the documentation under assessment.

Example 3: Positive action programmes

Assessing housing list data to evaluate if groups with particular protected characteristics are under-represented so that positive action programmes might be used to address this.

Example 4: Organisational research

Assessing allocation trends to find out why people from certain black and minority ethnic groups are not applying for particular streets and/or locations.

Example 5: Monitoring through other organisational activities.³⁸

This shows how equality data can be monitored through other housing services. Race equality is used for this, although the point applies to all protected characteristics.

- abandonments and possible reasons, for example, racism;
- numbers of incidents of racial harassment and outcomes;
- frequency and types of staff training concerning race equality;
- transfer requests by people from black and minority ethnic applicants to ascertain reasons for such requests, for instance, due to children being racially abused on the way to school;
- progress of existing partnership arrangements, including any local Multi-Agency Racist Incidents Monitoring Groups; and
- using equality data about black and minority groups to develop positive action programmes, for example, participation in the Path (Scotland) programme.

All five activities are likely to involve quantitative and qualitative data. The human role in assessment is, thus, critical as it is not simply a question of providing computer generated reports.

Issues to be monitored by social landlords

Social landlords report to committee/board at regular intervals progress of their equality action plans. Issues to be reported include statutory and regulatory data, as well as wider information collected. These issues are explained individually below.

Statutory reporting

Local authority landlords, who are covered by the Specific Duties, are required to produce formal reports, as appropriate.³⁹ The information is specified in Scottish secondary legislation.⁴⁰ and covers report 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;
- use and publication of Elected Members’ data;
- any gender pay gap;
- an equal pay statement; and
- award criteria and contract conditions in relation to public procurement.

This guidance does not cover the issue regarding failure to comply, but detailed guidance is available in the technical guidance (EHRC, 2016).

Regulatory requirements

This guidance has explained (in [Section 5](#)) the Scottish Housing Regulator’s requirements that social landlords must collect equality data in respect of all protected characteristics and for each of the specified groups.

They are also encouraged to collect and use other data that is relevant to promoting equality policy objectives.

Contextual issues

Context is important to equality monitoring, as equality matters can vary from area to area. In practice, this means that social landlords’ equality action plans must take cognisance of this and adapt strategies to locally identified need, the same way as estate action plans can be devised to address different issues within specific housing areas.

39 For a public body that might be subject to the Public Sector Equality Duty, but not the specific duties, it will “still need to ensure that they gather and use enough information on their employees to effectively meet the general equality duty” (EHRC, 2016(D), page 10).

40 SSI No. 162 The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended by SSI No. 254 and SSI No.159 (see Reference List). See EHRC, 2016, for detailed information.

Addressing gaps in evidence

It was noted by the (EHRC, 2016(C)) that equality evidence is often incomplete:

“Collecting evidence on all protected groups is not yet commonplace. Some authorities have experience of collecting evidence for most protected groups, but many organisations will not. It is important that you develop your own practice appropriately”.

If there is lack of evidence, then social landlords can implement a range of actions to address this:

- A comprehensive assessment of existing equality data held by social landlords should be carried out.
- Social landlords should seek to collect data (from both internal and external sources) to address any gaps in data that have been identified in the needs assessment. The focus should be on quality of information rather than quantity of data.

Data should be reviewed at agreed intervals to ensure that it is accurate. This is important, not just to meet data protection law, but to meet the needs of individual people.

Internal sources of information

Internal sources that can provide data to support monitoring include:

- actions raised in relation to discrimination and/or harassment;
- data within equality monitoring forms (as used for the various categories within the regulatory framework);
- functional data across all services (see below);
- information about equality related complaints;
- in-house surveys or commissioned research; and
- satisfaction surveys.

External sources of information

External sources that can provide data for monitoring include:

- Equality and Human Rights Commission;
- equality organisations;
- local authorities;
- other housing associations;
- regulatory bodies, for example, reports on their websites;
- research published by academic and other organisations, for example, the Chartered Institute of Housing;
- Scottish Government.

It is important to link the equality needs assessment described above to options offered through external sources. For instance, if social landlords receive any complaints about staff attitudes towards gay people, then appropriate actions might include liaising with specialist organisations such as Stonewall Scotland to review policies and procedures on sexual orientation; and providing staff training.



The reference list ([Appendix 8](#)) contains website references for social landlords to access, as appropriate.

The role of operational data in monitoring

Equality data collection and monitoring should encompass data used in operational functions. Two examples are provided here.

Example: Staff development reviews (linked to employment data)

The (EHRC, 2016(D)), page 16 provides an example of how assessing operational data can highlight possible issues for review:

“If a statistical trend emerges in your employee information (for instance, a disproportionate trend towards poorer appraisals for disabled employees) you will need to investigate the reason for this. It may be, for example, that this trend reflects a failure by the authority to ensure that the reasonable adjustments required by disabled staff to do their job are always in place. Identifying the cause will allow you to take appropriate action to address it.”

Example: Procurement function

EHRC guidance suggests that once an organisation has identified the needs for its procurement activity and established a business case, it will have determined where equality is a requirement, and can then use the specification to set out explicitly what it requires the contractor to do/.

Procurement example 1: Allocation policy

A procurement condition might include the requirement to for the consultant appointed to liaise with specific equality groups so that the policy satisfies organisational equality impact assessment standards.

This approach would also promote guidance issued by the (EHRC, 2016 (E)), page 12:

“A policy or practice which proactively considers equality, particularly through the use of evidence, is likely to be a better quality policy or practice, in the sense that it is more responsive to the needs of all those affected.”

Procurement example 2: Information technology

A procurement condition should include IT design systems taking account of accessibility technical criteria in respect of disabled people. But social landlords can also specify that design criteria cover specific issues such as layout of accessibility features. For example, this could include locating the “accessibility page” on the initial screen thus allowing individuals to change features more easily.

Organisational resources and monitoring

Social landlords vary considerably in terms of both scale and type, as do the resources available to individual landlords in developing equality action plans and related monitoring systems. Monitoring must, therefore, be proportionate. (EHRC, 2016(C)) notes:

“You will not be able to do everything at once and it may take some time to develop relevant evidence across all of your functions. But a lack of evidence is not a valid excuse for inaction on the duty. It is important that you start to take action based on the evidence that you have, while also taking steps to develop evidence in other areas.”

Although this refers to the Public Sector Equality Duty, the principles that underpin this statement apply to all social landlords.

This guidance suggests that social landlords should adopt a functional approach when assessing gaps in data. For example, the equality data collection section of the equality action plan can be divided into main organisational functions such as employment, housing management etc. This will enable landlords to apply an incremental approach to the implementation of their equality objectives that is appropriate to organisational scale and resources.

The implication of this approach is that social landlords may have different timescales in place for meeting their locally identified objectives.

Involving people in equality data monitoring

If the equality data collection strategy is to be sensitive to peoples' needs, it is important to involve local people in the development of the equality monitoring framework.

As the (EHRC, 2016(F)) states, in its guidance on equality outcomes and the Public Sector Equality Duty:

“By involving staff groups, individuals, equality groups and communities you will help give a voice to those who are affected by your decisions and ways of working, and to improve decision-making. These people and groups can tell you where you are successful in advancing equality and where action is most needed.”

In terms of practical guidance, then, social landlords should implement two key actions.

1. Social landlords should assess what performance indicators are relevant to each service, to produce a portfolio of relevant indicators for all relevant services.
2. Social landlords can use their tenant participation strategies to consult with tenants and other customers about the types of monitoring that they propose to use. This can include discussions about quantitative equality monitoring (performance indicators), as well as qualitative measures such as surveys.

Applying equality monitoring to practice

This subsection provides two examples of how equality data monitoring, by adopting a systemic perspective, serves to promote equality mainstreaming. This is also important so that social landlords do not focus on monitoring of protected characteristics in isolation from specific organisational practices (or vice versa).

Example: Abandonment performance indicator

The abandonment figure in the ARC is a quantitative indicator. But beneath it various issues could be probed which are pertinent to equalities factors.

For instance, analysis might show that households abandoning their homes are more likely to be people from black and minority ethnic groups, disabled people, single parents, people housed out of homelessness, or some combination of these, in which case landlords can try to identify why abandonments took place, through more detailed exploration of households abandoning their homes:

- did the original let take account of the individual's known needs?
- was harassment of households a driver that led tenants to abandon their homes?
- was harassment linked to any particular protected characteristic (disability; race or sexual orientation and so on)?
- was there an issue with (lack of) appropriate housing support in place?

This approach also serves to promote equality values by countering the more traditional estate management approach of regarding abandonment solely as a breach of tenancy.

The final example examines abandonments in more detail by reference to an actual scenario from the local authority housing sector. This is then followed by actions a social landlord can then take to address the issues identified.

The role of information technology

Equality data is gathered through two main methods, namely through paper-based documentation and electronic formats. And the use of information technology (IT) is clearly relevant in relation to the monitoring of such data. Here we offer guidance in relation to IT systems that social landlords might consider as part of their data protection strategies⁴¹.

- Some people may want to complete forms manually and do this in conjunction with staff whom they trust. Thus, collection of equality data should not be regarded simply as an automated process. This has resource implications, of course, and social landlords need to plan this within their timescales for equality data collection.
- IT systems should not drive the equality data collection process. Reports to committee/board should not be governed by existing software packages, for example, if these do not reflect organisational requirements.
- The scope of IT systems should be recognised. They can provide general information in relation to data analysis, for example, the identification of correlative trends.⁴² But analysis of data must be carried out by appropriate staff interpreting and evaluating the statistical equality data that is gathered.⁴³

Appendix 2: Further practical guidance on collecting and using equality data

For those interested in considering equality data collection issues in greater detail, this appendix provides more guidance on a range of issues:

- ➔ applying good practice guidance
- ➔ layered approach to equality data collection
- ➔ other data and using this to promote equality objectives
- ➔ avoiding duplication of equality data collection



Applying good practice guidance

The law does not specify the types of questions that social landlords should use to collect equality data, but how questions are to be asked is contained in different guidance.

For example, the EHRC (2016 C), advises:

“When gathering information on people’s protected characteristics, we recommend you use questions based on the Scottish Census 2011 or are part of the core questions included in all Scottish Government surveys”.

If the census questions are used to collect equality data, then these questions have been revised for the 2021 census.

The Scottish Government survey questions can be accessed through the link provided in the Reference List.

Social landlords should note that use of questions might vary depending on the categories in respect of which data is being collected; standard equality monitoring forms need to be amended to types of data being sought. There is no one equality monitoring form that covers all circumstances.

Other guidance should be considered as well as the above so that appropriate questions are asked about specific matters in relation to (in particular) disability, sexual orientation and trans issues. Advice about this is provided below.

The census and Scottish Government equality questions are restricted to equality data questions asked for surveys. It is good practice to consider the following criteria when drafting equality questions:

- linking questions to the category of data subject
- linking questions to the specific reasons why data is being collected;
- ensuring that questions use appropriate language.

These points are now explained by reference to five examples, the first two of which are taken from the Scottish equality survey forms covering age and religion and belief. The third and fourth examples deal with sensitive questions relating to the separate issues of sexual orientation and transgender. The fifth example relates to disability.

Age

The Scottish Government Guidance Note, 2012,⁴⁴ provides insight into types of questions to be asked during surveys. For example, it provides two types of questions as follows:

- what was your age last birthday? and/or
- what is your date of birth? (the wording that is recommended if more detail is required).

Criterion 1: Linking questions to the category of person (data subject) and the specific reasons why data is being collected.

Questions about age can vary in purpose depending on the category to relating to the data subject. For instance, the question might be used with a housing applicant to determine if that person is eligible to be registered on the housing list.

But a different reason could apply, though, if asking questions about age in relation to tenants. For example, social landlords can use age data to consult tenants about adaptations that might be required to make homes more accessible.

Age specific questions or age bands⁴⁵

Social landlords can use either age specific questions or age bands depending on what the information is needed for. For example, a specific age question is needed to identify if a housing applicant can be accepted onto the housing list.

But social landlords might want to ask questions about age bands to identify people who might be entitled to different benefits. Such information can, in turn, be used as part of social landlords' financial inclusion strategies in addressing social exclusion by virtue of low income.

Criterion 2: Ensuring that questions use appropriate language

The second criterion to consider when setting equality data questions is that of appropriate language use that includes avoiding questions that could contain what is termed "unconscious bias."

For instance, an age-related question may also be linked to questions about impairment and/or health and expressions such as "housebound" may be used. Such language tends to promote negative connotations as well as being inaccurate.

Religion or belief

The Scottish Government Guidance Note, 2012,⁴⁶ provides a useful template of what questions can be asked about religion/belief. This covers survey questions only and is not intended to cover data collection related to service provision.

Again, drawing on the criteria above, there are two points to note when drafting questions about religion and belief.

It is important to consult legal and good practice guidance sources when drafting questions about religion and/or belief. This provides more understanding of what these terms mean and thus inform what questions to ask and how to frame them.

For example, in law, the term “belief” encapsulates non-religious belief too.⁴⁷ Equality data monitoring forms should cover this point as well as religious belief.

When collecting information about religion and/or belief, social landlords should use appropriate terminology. Language usage within the census is, in general, appropriate, although ‘social model’ language in relation to disability is not included.

Sexual orientation

A similar framework as used above is applied to explain key issues to consider when asking about sexual orientation (and transgender below).

As Stonewall Scotland emphasises (2011):

“Before diversity monitoring is introduced, it is important for an organisation to identify why they want to ask about sexual orientation, what they want to find out, and what they will do with the information”.

Any sexual orientation questions must, in turn, be based on the social landlord’s equality policy and related equality data collection procedures. These are the documentation in which social landlords explain why data is being collected.

Questions about sexual orientation must also be distinguished from questions about sex. This is essential as sex and sexual orientation are distinct categories.

Language used by social landlords when asking questions should refer to suggested good practice (or as covered in their appropriate language guides). Good practice sources are provided in the Reference List.

For example, Stonewall Scotland and Scottish Trans, 2018, distinguish the following headings in relation to the question: “What is your sexual orientation?”: bi/bisexual; gay/lesbian; heterosexual/straight; and prefer not to say.⁴⁸



Note: As with all equality questions – but pertinent to sensitive questions – there must be the option not to respond. This is very important to comply with a consensual based approach.

The question proposed in the 2022 Census⁴⁹ reflects this approach by asking questions as follows:

Which one of the following best describes your sexual orientation?

- *This question is voluntary*
- *Answer only if you are aged 16 or over*
- *Tick one box only*

☐ *Straight/heterosexual*

☐ *Gay or lesbian*

☐ *Bisexual*

☐ *Other sexual orientation, write in: _____*



Note: The question makes clear that answering is voluntary.

Qualitative questions about sexual orientation

Qualitative questions such as “Did our service appear to be discriminatory?” can also be asked to provide insight into organisational practices. This can then be used to inform service development, including to identify possible training issues.

⁴⁹ Scotland’s Census 2022, Equality Impact Assessment Results <https://www.gov.scot/publications/scotlands-census-2021-equality-impact-assessment/pages/3/>

Trans/Transgender (gender reassignment)

When asking questions about transgender, it is important, following the UK Government Equalities Unit, 2015⁵⁰ to:

“... make sure that the question you ask is with other gender questions and not with questions on sexual orientation.”

Social landlords need to be clear why they are asking for information about transgender issues and, again, use appropriate guidance and internal policy and procedural documentation.

The same guidance highlights that it is useful to provide “a supporting explanation” and emphasises that people “may object to equality and diversity questions.” This is extremely pertinent to sensitive trans issues.

The importance of data security was also emphasised in the Stonewall Scotland and Transgender Alliance report (2012) by reference to survey responses. In one case, for example, one employee felt “exposed and vulnerable” after they were “outed” in the workplace as being trans.

In Scotland, specific guidance has been issued by Stonewall Scotland and the Scottish Transgender Alliance.⁵¹ In this guidance, it is recommended that the following questions be used in relation to trans questions.

Do you consider yourself to be a trans person?

☐ Yes

☐ No

☐ Prefer not to say

Disability

In [Section 8](#) the social model was discussed briefly and it was noted that medical model language should be avoided. Thus, in terms of asking disability related questions, landlords should focus on identifying and assessing someone’s needs. The purpose of this is, of course, to ascertain what someone’s access requirements are so that appropriate reasonable adjustments can be made.

For example, the question “Do you have a disability?” should not be used and should be replaced with the more appropriate question:

“Are you a disabled person?”

This question can then be developed to collect information about someone’s accessibility requirements, either within the form itself or in other documentation.

Layered approach to equality data collection

Collecting equality data, as has been demonstrated, is not simply about asking specific questions and then storing data. It is important to note that equality data collection can be done incrementally. Social landlords may, therefore, wish to consider a layered approach to the collection of equality data. Two examples are provided to illustrate this point, one from employment and one from housing management.

The equality monitoring form enables social landlords to collect basic information about individuals' needs. Social landlords are encouraged, however, to develop separate needs' assessments, in liaison with individuals. These assessments can be transferred and built upon as individuals move between categories, for example, from job applicant to employee.

Example 1: Employment

If a disabled person applies for employment, then information about that person's accessibility requirements might be requested at this stage. This is done to enable the employer to make reasonable adjustments so that disabled people are not disadvantaged during the interview process.⁵²

As the EHRC (2011) notes:

"An employer must make reasonable adjustments for disabled applicants during the application process and must provide and accept information in accessible formats, where this would be a reasonable adjustment".

Equality information that is collected at application stage, though, should be distinguished from additional information that might be requested should the applicant be successful. At employment stage, for instance, more detailed questions might be required to evaluate the accessibility requirements of employees in the workplace.

In terms of minimising discrimination and preserving confidentiality, the EHRC (2011) also emphasises that:

"An employer can also reduce the possibility of discrimination by ensuring that the section of the application form requesting personal information is detachable from the rest of the form or requested separately".

This should be done in relation to IT online monitoring, too, and as the EHRC states:

"...employers should find a way to separate the monitoring process from the application process. For example, a monitoring form could be sent out by email on receipt of a completed application form."

Example 2: Housing management

A social landlord might ask a housing applicant about their religion within the equality monitoring form. One purpose for asking this question would be to enable the social landlord to monitor if unlawful discrimination is taking place in respect of this protected characteristic.

If the applicant becomes a tenant, then additional information might be sought. This might occur, for example, if the applicant has not provided information other than selecting a box indicating a specific religion. In such cases, and to promote equality objectives, further information might be needed if a meeting or event is being arranged about prayer time requirements, culinary needs and so on.

To sum up: Equality monitoring must cover all protected characteristics, but equality data can be built up incrementally to reflect the different stages and types of activity. This would also promote two of the core data protection principles, namely data minimisation and restricting data collection for “specified, explicit and legitimate purposes.”

Using other data to promote equality objectives

A wide range of data, as well as equality data, is collected by social landlords across all housing services which can be relevant to equality matters.⁵³ Both the examples of this below are based on actual initiatives by a Glasgow social landlord in the 1980s.

Example 1: Allocation

Statistical data revealed that there was an overwhelming demand by housing applicants for flats with three bedrooms. Indeed, waiting times were estimated at more than one hundred years for this size of property. Even longer time scales were envisaged for particular locations.

A student research placement was then arranged to identify three-bedroom flats presently under-occupied by tenants.

Assessment of the households revealed a sizeable number of older people whose families had moved out. The survey showed, too, that a majority of these households were delighted to consider transfers to smaller accommodation. Such moves were, of course, purely voluntary, and transfers occurred due to the high level of priority afforded to applicants under-occupying their homes.

This example highlights how cross-referencing of data sources enables equality objectives to be promoted that might not be apparent at first sight. This illustrates the importance of social landlords adopting a systemic approach to data collection that covers all housing functions.

Example 2: Estate management and development planning

Following a research survey focussing on local demographic features, it was identified that a sizeable number of households were either over fifty years of age or above. This data was used, in conjunction with data about the housing stock (mainly tenements) to support longer term planning of activities such as:

- making adaptations to housing stock for older people, including feasibility of lift installation;
- installing alarm systems;
- providing housing support services;
- developing barrier-free housing, in particular within new build developments;
- re-assessing staff duties so that a wider range of services could be provided by housing officers (benefit advice; energy efficiency grants and so on); and
- providing training that would cover the wider range of estate management services under consideration.

Avoiding duplication of equality data collection

An approach that includes data collection in layers is more likely to be compatible with data protection law. In particular, social landlords must be careful to collect only data that is required; and ensure that the same equality data is not being gathered through different organisational functions or sources, including repeatedly at different stages.

In practical terms, social landlords should review all present organisational documents to ensure that they avoid duplication of equality data collection. Further, and linked to this issue, social landlords must determine how data collection is to be aligned between data categories.

For example, if equality data is gathered in respect of housing applicants, then what kinds of additional equality data, if any, should be collected if these applicants become tenants?

Again, equality questions could be duplicated due to how documentation is structured. For instance, age and pregnancy information is often part of a social landlord's housing application form. Social landlords then need to align this to the equality monitoring form so that questions about equality data are not simply replicated across both forms. This issue falls back, of course, to the distinction between monitoring to identify unlawful forms of discrimination and gathering data to meet service objectives.

Social landlords should address these questions internally as part of their data protection procedure.

Appendix 3: Supplementary Information about data protection issues

This appendix provides an in-depth assessment of the nature of equality data collection, including detailed advice about why data is gathered and how data should be used. It provides more detailed guidance than the summary position outlined in [Section 2](#) earlier in this document. For some, the guidance at Section 2 may be sufficient.

The guidance is not intended as definitive legal advice, but as specific information that social landlords might consider when processing equality data

Appendix 3 covers two main topics as follows:

- ➔ **Processing equality data: key issues**
- ➔ **Guidance from the Information Commissioner's Office**



Processing equality data: key issues

The Information Commissioner's Office provides specific guidance on this topic. Social landlords should consider this guidance when determining what lawfulness conditions to use when processing special category data.

[Click here to see the ICO guidance.](#)

The Information Commissioner's Office has also produced a useful checklist that organisations can consider when assessing appropriate lawfulness grounds.

[Click here to see the ICO checklist.](#)

Given that the ICO has produced detailed guidance, then this guide does not replicate this guidance. It does, though, provide information about issues that are relevant to the collection of special category data.

This information is intended as a summary of the issues that social landlords should take into account when assessing what data protection issues are relevant when collecting equality data and/or special categories data.

Key legal rules concerning data processing

Each social landlord – as data controller – is responsible for determining what lawfulness conditions to apply, taking account of relevant ICO guidance.

Processing ‘special categories data’ is prohibited unless:

- at least one of the six relevant lawfulness conditions for processing this data exists; and
- one of the specified conditions (exemptions) set out in Article 9 of the GDPR is satisfied.



The term “special categories data” is now referred to simply as “special category data.”

This entails considering the purposes of the data processing and identifying which condition (or conditions) might apply.

Of the ten conditions/exemptions specified in the GDPR, Article 9, five of these conditions require authorisation in UK law, that is, the Data Protection Act 2018 (1.4).

If social landlords collect special category data using the conditions under the Data Protection Act 2018, then they must determine if an appropriate policy document is needed (see section (d) below).

If processing data is likely to be a high-risk nature, then a data protection impact assessment is required (DPIA). It is recommended that such an assessment is carried out when processing special category data as this data is inherently high-risk.

See the ICO website and its guidance on carrying out such assessments in: “Guide to the data protection – “What is a DPIA?” The ICO has also produced a code of practice on data protection impact assessments (ICO, 2014).

[Click here to access other guidance contained in the Article 29 WP’s Guidelines on DPIAs.](#)

[Click here to access a sample DPIA template produced by the ICO.](#)



In relation to data protection legal provisions, this document focuses on processing special category data concerning equality monitoring. It does not cover how special category data might be used as part of other social landlord activities. For example, it does not examine how special categories data might be used in civil or criminal court actions raised as a result of conduct that involves discrimination and/or harassment in relation to the protected characteristics. In such cases, an appropriate Article exemption ground such as Article 9 (2) (f) might be used as a basis for processing such data.

An explanation as to why equality data is collected

This guidance has identified five key reasons why equality data are to be collected in respect of the protected characteristics. Equality law thus sets the framework – the rationale – for data collection. As these reasons are covered, either in law or the regulatory framework, then these reasons are important for all social landlords, as summarised in the table below.

Key reasons for monitoring equality data

Reason for monitoring equality data	Housing associations	Local Authorities
Elimination of unlawful discrimination in relation to the protected characteristics	Yes	Yes
Requirement to make reasonable adjustments (disabled people)	Yes	Yes
Meeting the public sector equality duty	Yes (see note)	Yes
Specific duties	No	Yes
Promoting positive action	Yes	Yes



As this guidance takes the view that housing associations carry out some public functions, then the public sector equality duty can be said to apply to these functions.

A summary of lawfulness conditions for processing personal data

In order to process personal data, social landlords must meet at least one of six lawfulness conditions (GDPR 2016, Article 6 (1)).

These conditions are as follows:

- Data processing is necessary to comply with legal obligations (including regulatory functions that satisfy specified conditions).
- Data processing is necessary for the performance of a task carried out in the public interest.
- Data subject has given their consent.
- Data processing is necessary to enter into or comply with a contract;
- Data processing is necessary to protect someone's vital interests.
- Data processing is necessary to meet the data controller's legitimate interests (this does not apply to processing carried out by public authorities in performing their tasks).

Special category data conditions/exemptions and requirements under the Data Protection Act 2018, Schedule 1

The GDPR Article 9 (1) prohibits processing of personal data in relation to special category data unless at least one of the specified conditions applies. These are referred to as conditions/exemptions below for ease of reference.

The Table below illustrates key lawfulness conditions that could be used when processing equality data/special categories data. This is not intended as a definitive guide, but as an example of how the legal process operates

If one of the five exemptions indicated in the table below is used as a basis for processing special categories data, then the social landlord needs to satisfy conditions set out in the Data Protection Act 2018.

Special category conditions/exemptions that require to satisfy conditions in UK law

Conditions/Exemptions specified in Article 9	Authorisation under the Data Protection Act 2018, Schedule 1
Explicit consent (par 9 (2) (a)).	No
Employment, social security and social protection (if authorised by law) (par 9 (2) (b)).	Yes (Schedule 1, Part 1)
Vital interests (par 9 (2)(c)).	No
Not-for-profit bodies (par 9 (2) (d)).	No
Data made public by data subject (par 9 (2)(e)).	No
Legal claims or judicial acts (par 9 (2) (f)).	No
Reasons of substantial public interest (par 9 (2) (g) (with basis in law).	Yes (Schedule 1, Part 2)
Health or social care (par 9(2) (h)) (with a basis in law).	Yes (Schedule 1, Part 1)
Public health (par 9 (2) (i)) (with a basis in law).	Yes (Schedule 1, Part 1)
Archiving, research and statistics (par 9 (2) (j)) (with a basis in law).	Yes (Schedule 1, Part 1)

When an Appropriate Policy Document is required for processing special category personal data under the Data Protection Act 2018

The Data Protection Act 2018 outlines when an Appropriate Policy Document is required when processing special categories data. For example, this requirement applies to most of the public interest conditions, as well as conditions relating to processing employment data.

The Appropriate Policy Document complements the general records of processing that data controllers (in this case social landlords) are required to maintain under the GDPR 2016, Article 30).

The Information Commissioner's Office has developed a model template that data controllers can use if they require to have an appropriate policy.

[Click here to access the ICO template.](#)

Applying legal provisions to social landlords

This section describes how data processing law could be applied into practice in respect of equality monitoring relevant to social landlords.

This is then followed (in section (f)) by specific examples in relation to an employee and a tenant.

The Table below provides an illustrative example of how a social landlord might apply the law when processing special category data.

It is emphasised that this is not a definitive statement of all possible options as social landlords must:

- select their preferred options against relevant statutory duties; and
- seek their own professional advice on what is appropriate for them.



It is emphasised that this illustrative example does not constitute legal advice. The purpose of this approach is to illustrate visually the logical steps that underpin the data processing in relation to equality monitoring.

Processing equality data/special category data in respect of data protection law

Equality monitoring activities	Lawfulness conditions that can be used under Article 6	Article 9 exemptions that could be used	Schedule 1 conditions	Appropriate Policy Document needed?
1. Elimination of unlawful discrimination in relation to the protected characteristics (See Note 1)	Compliance with legal obligations, including regulatory requirements (Note 2)	Par 2 (b). Par 2 (g). Par 2 (a). (see Note 3).	Par 1 (1). Par 8 (1).	Yes
2. Requirement to make reasonable adjustments (disabled people)	As above	Par 2 (b).	Par 1 (1).	Yes
3 Meeting the public sector equality duty (see note 4)	As above	Par 2 (g). Par 2 (b).	Par 8 (1). Par 1 (1).	Yes Yes
4 Specific duties	As above	As 3 above	As 3 above	As 3 above
5 Promoting positive action (see note 5)	As above	As 3 above	As 3 above	As 3 above

Note 1: This covers unlawful discrimination in respect of employees, job applicants, tenants, committee members and other customers/service users.

Note 2: This would include compliance with the Scottish Housing Regulatory framework, including the collection of equality data.

Note 3: Explicit consent could be used by social landlords provided this is based on a quality process as set out in this guidance (see [Section 2](#)).

Note 4: The statutory equality framework extends beyond employment, social security and social protection issues to which Schedule 1 applies. For example, the duty to make reasonable adjustments would apply to housing applicants and/or tenants. This could include actions such as making print size larger; this would appear, arguably, not to be directly relevant to employment, social security or social protection issues.

This type of monitoring focuses on patterns/trends, but actions to eliminate unlawful discrimination would be addressed through specific monitoring in relation to data subjects' protected characteristics.

As this type of monitoring is concerned with general monitoring (patterns/trends and so on) Par 8 (3) does not apply to it. It is also noted that the equality statutory framework extends beyond the special category data set out in Paragraph 8 (2).

Note 5: Positive action involves using equality data to establish initiatives that address under-representation of people with relevant protected characteristics in employment and other services.

Examples of applying the law to particular equality monitoring

In this part, two examples are provided to show how the legal process above might be applied to two categories of data subjects, namely job applicants and tenants.

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 as this is used to inform internal evaluations as to whether any unlawful practice has occurred as part of the recruitment and selection process.

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

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

Of the six lawfulness conditions, the one contained in 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 contained in the Equality Act 2010.

With regard to the exemptions contained in Article 9, the one contained in 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 employment process.

This exemption is one of the five that requires authorisation in UK law before it can be relied upon (see the table in section (e) above). The required authorisation is contained in the Data Protection Act 2018, Schedule 1, Par 1 (1). This provides for authorisation in circumstances where the processing of special category data is necessary for the purposes of complying with employment law.

Note: For any equality data that is not special categories data, then neither Article 9 exemptions – nor Schedule 1 conditions apply – and only lawfulness conditions under Article 6 need to be considered by social landlords. Section (g) below illustrates equality data that is also special category data.

Example 2: Tenant

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

In this case, let us assume that the reasonable adjustment to be made involves the requirement to make adjustments to written documentation as the disabled tenant, in question, has a visual impairment.

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

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

Of the six lawfulness conditions, the one contained in 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 make reasonable adjustments contained in the Equality Act 2010.

With regard to the exemptions contained in Article 9, the one 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. See other notes below about explicit consent.

This exemption is not one of the five that requires authorisation in UK law before it can be relied upon (see the table in section (e) above).

Note 1: Explicit consent

Paragraph 99 of the European Data Protection Board guidelines, May 2020, specifies that:

“Article 9(2) does not recognise “necessary for the performance of a contract” as an exception to the general prohibition to process special categories of data. Therefore, controllers and Member States that deal with this situation should explore the specific exceptions in Article 9(2) subparagraphs (b) to (j). Should none of the exceptions (b) to (j) apply, obtaining explicit consent in accordance with the conditions for valid consent in the GDPR remains the only possible lawful exception to process such data.”

Note 2: Other key points about consent

The GDPR provides that consent is not freely given if there is an imbalance of power between individual people and the data controller. This could be the case where the data controller is a public authority. The GDPR also provides that consent is not presumed to be freely given if it does not allow separate consent to be given to different processing operations (GDPR, 2016, Recital 43).

Explicit consent can be obtained in various ways. The term “explicit” refers to the way consent is expressed by the individual concerned. Data subjects could, for example, complete a statement electronically or through email confirmation. This is explained in detail in the Guide.

For further information, see “Guidelines 05/20 on consent under Regulation 2016/679,” paragraphs 93 and 94. These were adopted by the European Data Protection Board on 4 May 2020.

Comparison of protected characteristics and special categories data

Most protected characteristics, as defined in the Equality Act 2010, are also special categories data as defined in the GDPR 2016.

The relationship between these distinct legal concepts is illustrated in the Table below.

Other special categories data not directly relevant to protected characteristics are biometric data and trade union data.

Comparing protected characteristics

Protected characteristics	Special category data
Age	No
Belief or religion	Yes (religious, philosophical and political opinions)
Disability	Yes (see Note 1)
Ethnicity and race	Yes
Gender re-assignment	Not by itself (see Note 2)
Pregnancy and maternity	No (see Note 3)
Marriage and civil partnership	See Note 4
Sex	See Note 5
Sexual orientation	Yes

Note 1: If this is linked to the collection of health data, that is, anything to do with the person's physical or mental health or condition.

Note 2: Gender re-assignment as a medical procedure gives rise to personal data to do with a person's physical health or condition. However, the fact that a person has undergone gender re-assignment is not in and of itself special category data.

Note 3: Pregnancy and maternity are listed as protected characteristics in the Equality Act 2010, Part 2, Chapter 1, section 4. These terms are not explained in section 4, but the Act provides women from unlawful discrimination due to pregnancy or maternity (Equality Act 2010, Chapter 2, sections 17 and 18).

Note 4: Marriage is not special category data as both opposite and same sex couples can marry in Scotland. Being married does not indicate information about sexual preference. Civil partnerships at present may reveal someone's sexual orientation, although this will change when civil partnerships for opposite sex couples become law.

Note 5: Although providing information about sex in itself does not constitute special category data, this could become such data if a data subject advises that she/he now advises they identify as a member of the opposite sex due to gender re-assignment and/or hormonal therapy. This point is important as it demonstrates, as highlighted in the Guide, the importance of assessing information collected holistically. In the case cited, for instance, information about gender re-assignment might be notified as part of a housing officer interview and this should be linked back to the equality data monitoring system.

Guidance from The Information Commissioner's Office

The UK Information Commissioner's Office (ICO) produces a diverse range of guidance. This takes various forms including statutory codes that provide detailed guidance on issues relevant to equality data collection.

The ICO also provides guidance about special category data and how such data should be processed. This issue is explained later in the guide and [Appendix 4](#), in particular, provides detailed information. The ICO also produces general guidance and information, including training materials.

It is important to note that ICO guidance is not law. Housing associations, as data controllers, would, however, have to provide good reasons why they did not comply with ICO guidance if called to account.

This subsection describes specific issues contained in ICO guidance that is particularly relevant to equality data collection.⁵⁴

Anonymisation⁵⁵

The ICO code of practice provides useful information regarding 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.⁵⁶

This code of practice was issued under the former Data Protection Act 1998 and it has not been updated since. Although much of the content is useful, it contains references to outdated legislation, not the GDPR, and should be read in that light. This comment also applies to guidance on cloud computing below.

Cloud computing⁵⁷

Social landlords will often use cloud computing and may encrypt personal data. This is extremely important in respect of special category personal data that is sensitive in nature.



If such data is transferred to a country outside the European Economic Area, then social landlords must have regard to appropriate legal rules to safeguard data protection.

Encryption⁵⁸

Encryption is a mathematical function that makes use of a secret value referred to as the key; the key enables those users with access to read the information.

As the ICO (2017) notes:

“In many cases encryption can provide an appropriate safeguard against the unauthorised or unlawful processing of personal data, especially in cases where it is not possible to implement alternative measures”.

It is, therefore, self-evident that encryption will be an important method of enhancing data security when processing data relating to protected characteristics.

Guide to the GDPR⁵⁹

This is a general guide that provides information about a variety of data protection issues. This provides useful guidance on the lawfulness grounds that social landlords can use when collecting equality data.

⁵⁷ ICO, 2012 A, Guidance on the use of cloud computing. See GDPR, Articles 44 to 50 for further information about data transfers.

⁵⁸ ICO, 2017, Encryption.

⁵⁹ ICO, Guide to the GDPR, ICO (website version). Within the ICO guidance, there is detailed coverage of the use of consent and explicit consent.

Appendix 4: Further guidance on specific data protection issues

This section explains in more detail specific issues that are important to take into account when collecting equality data:

- ➔ access to equality data
- ➔ collection of data (fairness and transparency)
- ➔ equality data retention
- ➔ sharing data
- ➔ storage and restricted access to enhance data security.



Access to equality data

In relation to job applications, the EHRC, 2011, emphasises that:

“It is good practice for the information to be withheld from the people who are short-listing or interviewing because it could allow them to find out about a person’s protected characteristics (such as age or sex)”.

This statement comes from the statutory employment code of guidance and has several important implications as regards equality data collection.

Access to equality data should be restricted within social landlords as part of the monitoring framework. For example, although interviewing panel members should not have access to equality data, another appointed officer(s) will require access to such data. This data is needed to identify and address any potential or actual form of unlawful discrimination. In the case of disabled applicants, this data is required to implement relevant reasonable adjustments in respect of interview arrangements (see example below).

Although information gathered through assessment of the equality data collected should be disseminated to housing staff, this is not the equality data itself.

A housing officer does not, for instance, need to know the nature of a disabled tenant’s impairment: for example, someone with a visual impairment. What the officer needs to know is what this means for service delivery such as providing published information in a specific font and type size. It is this information that the housing officer should be given.

Again, a housing officer does not require to know a tenant’s religious belief. What a housing officer needs to know are the implications of such belief are, if any, housing delivery such as avoiding meetings on specified religious holidays.

Social landlords must clearly separate what is, strictly speaking, monitoring data, from equality data collected to provide appropriate services. For instance, when interviewing a deaf person for a particular post, an interpreter will generally be required. Social landlords should, therefore, develop monitoring systems that allow them to meet these twin objectives.

Applying restricted access to equality data is critical in establishing trust between data subjects and social landlords, an issue that has already been discussed at length.

Most protected characteristics are also special category data under the GDPR. Appropriate procedures must be established, therefore, to ensure comprehensive data security within the social landlord to authorised staff only. Restricting systems-based and physical access by housing staff to this data is, therefore, an important procedural rule and will go some way towards ensuring legal compliance.



If a social landlord processes special category data on a large scale, then a data protection impact assessment is required (GDPR, 2016, Article 35, (3) (b)).

Collection of data (fairness and transparency)

A core data protection principle is to ensure that data is processed lawfully, fairly and transparently.⁶⁰ As regards fairness, for example, this requires social landlords to process data in a manner that is not misleading. And, in relation to transparency, this requires social landlords to ensure that they are clear and open with data subjects about how their data is to be used.

Equality data retention

As part of the GDPR's accountability requirements, social landlords must establish a records management system for data processing activities that they administer (see GDPR, Article 30 (1)). As part of this, social landlords must publish a data retention schedule that provides details of data category types and how long data is retained. This includes equality data.

Sharing equality data

The ICO's statutory code of practice on data sharing (2019) states that:

"When considering sharing data, you must assess your overall compliance with the data protection legislation."

The ICO also recommend that a data protection impact assessment is carried out as part of this requirement.

Examples of key issues in the guidance include:

- ensuring a lawful basis for sharing;
- establishing policies and procedures that allow data subjects to exercise their rights;
- ensuring that sharing data complies with human rights law, for example, Article 8 is especially relevant;
- establishing data sharing agreements with other organisations, as appropriate;
- noting the relevant conditions for processing if you are sharing special category data;
- processing personal data securely with appropriate organisational and technical measures being implemented;
- proceeding with caution if sharing children's personal data,
- sharing data fairly and in a transparent manner;

Social landlords in developing organisational data sharing policies and procedures must, therefore, ensure that these practices incorporate clear rules in relation to equality data.

Storage and restricted access to enhance data security

It is essential that special category data is processed in line with GDPR requirements. Social landlords must adopt “appropriate technical and organisational measures to ensure a level of security appropriate to the risk.”⁶¹ One security measure that can be used to promote legal compliance is by restricting staff access to special category data in line with clear organisational protocols and guidelines.

As Bevitt and Carey, 2018, stress:

“Employees should generally have their access to personal data restricted to that which is necessary for their jobs”.⁶²

Appendix 5: National positive action programmes in the Scottish social housing sector

This appendix includes details of two major positive action programmes relating to the social rented housing sector which have been established in Scotland:

➔ Glasgow Centre for Inclusive Living

➔ PATH Scotland

Both programmes made use of equality data sources in order to develop the specific programmes and focus on specific and relevant activities.



Glasgow Centre for Inclusive Living (GCIL)

GCIL has implemented three main positive action initiatives to include disabled people in society. The first example is GCIL's innovative housing support service that matches disabled people with accessible housing opportunities in both the social housing and public sector. The success of this initiative depends on having clear information about disabled persons' accessibility requirements.

The second example is GCIL's Professional Careers programme that was designed to provide professional employment opportunities for disabled graduates within social housing organisations across Scotland. This was developed to use positive action principles to address the under-representation of disabled people in social housing in Scotland.

The third example is GCIL's Equality Academy that was established in order to advance equality objectives across Scotland and to challenge institutionalised discrimination.^{63,64}

Path Scotland

PATH (Scotland) was established in 1998 to address the absence of Black and Minority Ethnic (BME) communities in housing and related sectors. PATH (Scotland) also runs employability, mentoring, coaching and leadership programmes across all sectors.⁶⁵

The Path Scotland programme is a beacon of good practice and it was highlighted by the CIH – reporting on the experience of BME staff in Housing that the PATH Scheme was:

“The most important route into housing had been by way of a PATH traineeship, demonstrating the continuing importance of the PATH Scotland scheme” (see Sim, D, 2014).

The work of PATH Scotland has also been recognised at national level, too, as an exemplar of good practice in respect of positive action and race equality.⁶⁶

For example, the Parliamentary Equal Opportunities Committee, 2016, has recommended that the Scottish Government works with the EHRC to:

“promote the use of positive action measures such as PATH (Scotland)”.

This Committee also urges the Scottish Government to “work with the public sector to realign their policies and direct their resources at tackling under-representation of ethnic minorities, primarily by developing best practice, including developing projects such as PATH (Scotland)”.

Both programmes have been supported as exemplars of good practice by the organisation Positive Action in Housing:

“Implementing positive action measures in housing is very important in promoting equality objectives throughout the Scottish social housing rented sector. Path Scotland and Glasgow Centre for Inclusive Living implement national positive action programmes that address the interests of people from black and minority ethnic groups and disabled people respectively. These programmes thus serve to promote social justice commitments that are incorporated in Scottish Government policy”

(Source: Positive Action in Housing, 29 April 2020).

Appendix 6: Staff development and training

Staff development and training should be a key activity within a comprehensive organisational equality action plan. This is vital as it is a fundamental driver in effective rights implementation. This training should incorporate training on equality data collection issues.

There are a range of equality data training courses. It is emphasised that organisations should plan training as part of their learning and development strategies ("training strategies"); and align training to staff needs' assessments.⁶⁷ This means that different types of training will be provided to different housing staff, as appropriate.

These training topics are categorised into the following groups, all of which are inter-dependent:

- ➔ law and regulatory framework
- ➔ equality data collection procedure
- ➔ training on appropriate language
- ➔ challenging situations
- ➔ usage of equality data for organisational purposes
- ➔ training for committee and board members



Law and regulatory framework

Training on law and the regulatory framework can itself cover a range of issues such as equality and data protection law and regulatory provisions. Social landlords may wish, therefore, to separate training into appropriate modules and layer training programmes so that knowledge is built up through time.

For example, from the perspective of equality law, equality data training covers important issues such as monitoring relating to:

- implementation of the statutory duties;
- unlawful forms of discrimination; and
- effectiveness of positive action programmes.

Again, from the perspective of data protection law, equality data training covers important matters such as:

- the lawfulness bases for processing protected characteristic data;
- processing equality data in line with data protection law, including related monitoring issues such as retention of such data, sharing of data, security of data processing and so on.

Finally, training activities in relation to the regulatory framework could cover the various regulatory standards as they relate to equality data collection. This approach strengthens, too, staff awareness of the importance of viewing equality data collection as a fundamental requirement among all regulatory bodies.

Equality data collection procedure

It is essential that social landlords provide appropriate training to staff about their internal equality data collection procedures. In particular, such training would cover the development and usage of equality monitoring forms, including:

- links between protected characteristics and special category data;
- why equality questions are being asked;
- what happens to equality information that is gathered through monitoring forms;
- who has access to this data (including any data sharing arrangements);
- how long such data should be retained; and
- information to people about their rights in respect of equality data provided.

Other organisational equality policy, action plan and equality impact assessments

It is critical that staff understand how equality data collection links to other organisational activities. For example, equality data is used to inform equality impact assessments of policies and procedures. And, as has been emphasised above, equality data collection activities are central to the equality action plan.

From a training perspective examples of organisational specific training would include:

- equality policy and equality action plan training; and
- using equality data to inform comprehensive equality impact assessments.

Training on appropriate language

If a social landlord has an appropriate language guide, this can be used to inform the types of questions that social landlords incorporate into their equality monitoring forms. This would include, not only the social model as discussed above, but appropriate language in relation to all protected characteristics.

This type of training is very important for two reasons:

By using positive and appropriate language, this can support the removal of possible barriers to equality data collection.

Enhancing staff awareness of appropriate language has broader application than simply effective completion of equality monitoring forms. For such training not only challenges institutionalised forms of discrimination, it also promotes organisational cultural commitments to fostering good relations between people.

Challenging situations

Given the sensitive nature of equality data, then staff may experience situations when people express a range of emotions when asked for this data. For example, people may be reluctant to provide personal information as such questions might be perceived as being intrusive. This could occur in situations that involve face to face contact (meetings and telephone), or when communicating with people in written formats (emails, letters and/or texts).

It is prudent, therefore, to provide staff training on how to address potential barriers to receiving equality data. This is also central to customer care strategy and social landlords can wish to utilise their own existing training materials, if appropriate.

Use of equality data for organisational purposes

This training activity would focus on exploring how equality data can be used by social landlords, contextually, to:

- support the review and development of key housing policies and practices across all organisational functions;
- develop and implement positive action initiatives; and
- establish local housing research projects.

Training for committee and board members

This type of training would be directed at committee and/or board members to enhance their knowledge of how to:

- assess equality related reports (see note); and
- interpret equality data to promote effective governance, including assessment of equality trends and patterns.

Appendix 7: Guidance from other organisations on equalities

A diverse range of good practice guidance exists in respect of equality data collection and this section describes key guidance.

This appendix describes specific guidance that has been published by non-regulatory bodies. This focuses on guidance concerning equality data collection relevant to Scottish social housing landlords as this is the main theme of this guidance. It is not, however, intended as a list of all relevant guidance as guidance evolves through time.⁶⁸

This appendix covers guidance from:

- ➔ **the Chartered Institute of Housing**
- ➔ **the National Housing Federation**



The Chartered Institute of Housing

The Chartered Institute of Housing has produced a number of good practice Briefing Notes. These illustrate good practice in housing in respect of equality matters, including coverage of equality monitoring.

A CIH document focusing on customer care and linking equality issues to quality customer care⁶⁹ stresses that:

“Housing associations should also have clear equal opportunity objectives in relation to the needs and requirements of current staff. They should seek to ensure that staff are not discriminated against or disadvantaged in relation to employment practices, training and promotion opportunities”.

Again, the necessity of developing comprehensive equality data collection systems regarding protected characteristics becomes apparent. Without such systems, needs of staff cannot be met comprehensively, nor can statutory duties and regulatory requirements be implemented or monitored appropriately.

In 2019 CIH Scotland, ALACHO, SFHA, Shelter Scotland and Scottish Women’s Aid jointly produced a good practice guide in relation to domestic abuse, for social landlords. This guide highlights the need for information sharing and confidentiality protocols.⁷⁰

Two further CIH good practice documents are noted that cover general equality data collection matters and sexual orientation respectively.^{71,72}

This second CIH publication, 2011A, assesses the importance of equality data collection in delivering quality services to lesbian, gay, bisexual and transgender customers (LGBT). Five points recommended as good practice are summarised below. The first point is that social landlords should develop an organisational culture that is positive about LGBT issues, including establishing a welcoming environment. This entails gathering equality data about LGTB matters to inform the development of such a culture, and to identify the needs of LGBT customers.

Key issues to address when asking sensitive questions about sexual orientation include:

- having clear objectives for asking questions about sexual orientation as part of their equality data collection procedure;
- ensuring that customers and staff understand why such data is being collected and, very importantly, what such data is used for;
- asking for information in an appropriate way and manner, for example, using appropriate language and using questions that are sensitive to individuals' needs; and
- using an appropriate exemption for processing such data (special category data) in line with data protection law.

Ensuring confidentiality between LGTB tenants, staff and other customers is significant in establishing trust that is critical in encouraging people to provide equality data.

Social landlords should foster active consultation with LGTB customers, groups or organisations that support the rights and/or interests of LGTB people.

The final point is that equality data on sexual orientation can be used to inform equality impact assessments.⁷³ For instance, if data is known about individuals' sexual orientation, such data can be used to:

- monitor incidents of discrimination and/or harassment on grounds of sexual orientation;
- work with individuals affected by such conduct to agree an appropriate remedy/solution.

The National Housing Federation

The NHF's equality guidance from 2011⁷⁴ provides practical examples of a range of housing services, including the relevance of equality data collection to these services. Three issues from it that are relevant to the Scottish housing context are highlighted below to illustrate application of ideas to different service functions.

Aids and adaptations

The guidance stresses that social landlords should monitor their aids and adaptation services; and that this should involve active consultation with disabled people. Indeed, the guidance stresses that aids and adaptation standards should be drawn up with residents, in particular disabled people or any "disabled tenants' forum.

It is self-evident that this objective can only be met by having clear understanding, not simply about numbers of disabled tenants and/or customers, but about their accessibility requirements. This information is required, of course, to consider and make reasonable adjustments in the case of disabled people.

Anti-social behaviour (ASB)

The guidance provides an extremely useful example of how equality data collection is relevant to managing antisocial behaviour. This is reflected in the question it asks about whether the social landlord breaks down its data on ASB by the protected characteristics in the Equality Act 2010, where possible and where appropriate. This is important as options and remedies considered when

addressing discrimination and/or harassment might vary depending on the type of discrimination and/or harassment.

Rent arrears and financial inclusion

The guidance highlights that social landlords should use their monitoring data to assess impacts on their tenants that result from their arrears policies and practices: this is important as arrears can affect a wide range of people with protected characteristics.

In order to implement this effectively, social landlords require to cross-refer data sets so that appropriate actions can be taken.

For instance, tenants' income data might be gathered primarily to assess benefit entitlements can be aligned to equality data to deliver accessible and quality services.

With regard to rent arrears, these could be tailored to the needs of individuals by:

- using language in arrears' documentation that is appropriate to the needs of individuals, for example, taking account of issues relating to age, literacy and so on;
- making reasonable adjustments in the case of disabled tenants when providing advice and information about benefits to disabled tenants; and
- using income data to promote development programmes that focus on sustainability themes such as producing fuel efficient buildings with lower heating costs.

Other guidance

There is a diverse range of other guidance on equality data collection that is produced by individual organisations, as well as research published in the academic field (see the reference list in [Appendix 8](#) for specific examples). Some of this guidance will be referred to in the sections below. It is important that such guidance is used by social landlords as this enhances a critical approach in developing quality equality strategies in general and equality data collection procedures in particular.

Appendix 8: Reference list

This appendix provides a diverse range of references that policy officers and housing staff can access for more detailed information on particular topics.

The reference list contains the documentation that was consulted in developing the guide. In addition, a section on useful sources is added to enable social landlords to carry out further research. This information should be useful in supporting them to develop organisational equality data collection procedures.

The list is set out covering the following issues:

- ➔ Law
- ➔ Regulatory guidance
- ➔ Other government guidance
- ➔ Good practice guidance
- ➔ Other guidance
- ➔ General texts and research
- ➔ Useful websites



Law

Key law cited

The Data Protection Act 2018

The General Data Protection Regulation 2016

The Equality Act 2010

Explanatory notes

TSO, 2010, Explanatory Notes Equality Act 2010 – Chapter 15, Revised Edition, Norwich: TSO.

Secondary legislation

S1 2018 No. 952 The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018

SSI No. 403 The Equality Act 2010 (Commencement No. 13) (Scotland) Order 2017.

SSI No. 162 The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.

SSI No. 254 The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2015.

SSI No. 159 The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2016.

Other law cited

Domestic Abuse (Scotland) Act 2018

Housing (Scotland) Act 2010

Freedom of Information (Scotland) Act 2002

Housing (Scotland) Act 2001

Regulatory guidance

This section includes a range of codes and standards issued by four regulatory bodies. These are, in alphabetical order:

- the Equality and Human Rights Commission;
- the Information Commissioner's Office;
- the Public Services Ombudsman; and
- the Scottish Housing Regulator.

The Equality and Human Rights Commission

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The Scottish Housing Regulator

The Scottish Housing Regulator, 2019, Scottish Social Housing Charter – Technical Guidance for Landlords, Glasgow: The Scottish Housing Regulator.

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The Scottish Housing Regulator, 2016, Use of Equality and Diversity Information by Scottish Social Landlords – A thematic inquiry, Glasgow: The Scottish Housing Regulator.

Other government guidance

The Scottish Government, 2019. Guide to Successful Tenant Participation, Edinburgh: The Scottish Government.

The Scottish Government, 2017, Health and Social Care Standards, Edinburgh: The Scottish Government.

The Scottish Government, 2017, The Scottish Social Housing Charter 2017, Edinburgh: Scottish Government.

The Scottish Parliament: Equal Opportunities Committee, 2016, Removing Barriers: race, ethnicity and employment, Edinburgh: Scottish Parliament.

The Scottish Government, 2012, Collecting Equality Information Series, Guidance note on asking questions on age, Edinburgh: The Scottish Government.

The Scottish Government, 2012, Collecting Equality Information Series, Guidance note on asking questions on religion/belief, Edinburgh: The Scottish Government.

Good practice guidance

This includes references from professional bodies that support social landlords to develop and implement quality housing services.

Chartered Institute of Housing

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York Consulting and Conboy, M, 2018, Impact Report – A life changing experience 20 years on, Glasgow: PATH Scotland.

Useful websites

Care Inspectorate (<https://www.careinspectorate.com/>)

Chartered Institute of Housing (<http://www.cih.org/scotland>)

EHRC (<https://www.equalityhumanrights.com/en/commission-scotland>)

ICO (<https://ico.org.uk/about-the-ico/who-we-are/scotland-office/>)

Public Sector Ombudsman (<https://www.spsso.org.uk/>)

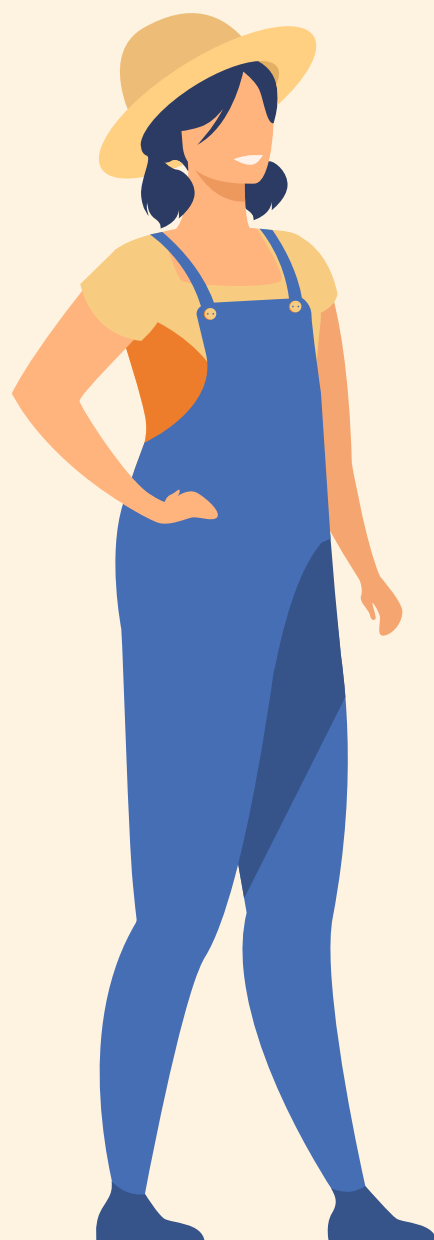
Scottish Federation of Housing Associations (<https://www.sfha.co.uk/>)

Scottish Government (<https://www.gov.scot/>)

Scottish Housing Regulator (<https://www.housingregulator.gov.scot/>)

Stonewall Scotland (<https://www.stonewallscotland.org.uk/>)

Glossary of Terms



The Glossary explains legal and technical terms that are commonly in equality and data protection matters.

The glossary provides a summary of the meanings of key terms used in the guide. This is not intended as a precise statement of linguistic meaning, but a plain language overview. Legal definitions are retained, however, for specific legal concepts.

The terms are in alphabetical order to support accessibility for the reader.

Big data	This concept refers to data that is extremely large and is, therefore, difficult to process with traditional data base systems and software.
Data	Data refers to distinct facts that are limited in value until it is processed and analysed to produce meaningful information. Data is the plural of “datum.” Strictly speaking, one datum could constitute knowledge, but the latter requires a range of data to be meaningful in practice. Thus, to know that Tenant x is a disabled person provides little meaningful information. But to know that Tenant x is a disabled person who requires information in Braille provides information on which it is possible to provide an appropriate service.
Anonymisation	<p>The term anonymisation is a term that is used to convert personal data into anonymised data. This is data that no longer enables a data subject to be identified. Anonymised data is no longer personal data and is of particular relevance within research and/or other organisational reports/studies that the social landlords wishes to retain.</p> <p>Another anonymisation technique is pseudonymisation that requires the use of additional information to identify the person concerned. This can only be unlocked by a separate “key” held by the data controller or data processor (see Carey and Welfare in Carey, 2018, page 23). Pseudonymised data remains personal data within data protection law.</p>
Data controller	<p>A data controller is “the natural or 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”</p> <p>(GDPR, 2016, Article 4 (7)).</p>
Data processor	<p>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”</p> <p>(GDPR, 2016, Article 4 (8)).</p>
Data subject	The data subject is the natural person about whom data is collected. This includes anyone who is either identified or identifiable. Identification can be done, for example, through personal data that the data controller processes about the data subject.

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.
Information	Information is intended to convey something positive as in knowledge gained through research and study. It is possible to have information that is erroneous.
Institutional discrimination	This is not a legal concept but is a term used to refer to internal organisational practices – including policies and practices – that may often discriminate indirectly due to the rigidity of organisational rules and failure (by organisations) to monitor the effects of policies in practice. This includes the important theoretical concept of structured omission, a process whereby failure to examine issues that are relevant to social justice serves to promote ignorance of those issues and consequent non-action to address relevant concerns (see Montgomery, 2011, pages 66-67).
Mainstreaming of equality	<p>In the words of the (EHRC, 2016(A)), page 9:</p> <p><i>“Mainstreaming equality simply means integrating equality into the day-to-day working of an authority. This means taking equality into account in the way the authority exercises its functions. In other words, equality should be a component of everything an authority does.”</i></p> <p>Mainstreaming the equality duty has a number of benefits including:</p> <ul style="list-style-type: none"> • equality becomes part of the structures, behaviours and culture of an authority; • an authority knows and can demonstrate how, in carrying out its functions, it is promoting equality; and • mainstreaming equality contributes to continuous improvement and better performance.”

Personal data	<p>This refers to personal data about data subjects. Social landlords collect and process a large quantity of personal data in implementing their housing services. The term is defined in the GDPR, 2016, Article 4 (1):</p> <p><i>“Personal data means any information relating to an identified or identifiable natural person.”</i></p>
Positive action	<p>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.</p>
Protected characteristics	<p>These are the categories on which it is unlawful to discriminate in law.</p>
Social landlord ⁷⁵	<p>The term “social landlord” is defined in law, as follows:</p> <p><i>“Social landlord” means a registered social landlord, local authority landlord or a local authority which provides housing services</i></p>
Special categories of data	<p>This is defined by 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.</p>
Unlawful discrimination	<p>This term refers to the diverse forms of unlawful discrimination that are set out in the Equality Act 2010.</p>
Victimisation ⁷⁶	<p>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).</p> <p>A ‘protected act’ is:</p> <ul style="list-style-type: none"> • making a claim or complaint of discrimination (under the Equality Act). • helping someone else to make a claim by giving evidence or information. • making an allegation that you or someone else has breached the Act. • doing anything else in connection with the Act.”

⁷⁵ See the Housing (Scotland) act 2010, section 165.

⁷⁶ This term is defined in the Equality Act 2010, section 27.



Glasgow and West of Scotland
Forum of Housing Associations

ALACHO
ASSOCIATION OF LOCAL AUTHORITY CHIEF HOUSING OFFICERS



**Scottish Housing
Regulator**

sfha
Scottish Federation of
Housing Associations

We are housing Scotland