

Equality duties for justice organisations: key messages

This note provides information for justice organisations to help meet their equality duties including collecting the relevant data.

The Public Sector Equality Duty

The Public Sector Equality Duty (PSED) is a legal requirement for public authorities and organisations carrying out public functions.

The purpose of the PSED is to make sure that public bodies think about how they can improve society and promote equality in every aspect their day-to-day business.

The PSED applies to many justice organisations in Scotland including:

- Community Justice Scotland
- Police Scotland
- Scottish Police Authority
- Scottish Prison Service
- Scottish Courts and Tribunals Service
- Scottish Fire and Rescue Service
- Scottish Legal Aid Board.

The PSED has two parts. These are:

- the general duty
- the Scottish specific duties.

The general equality duty

The three aims of the [general duty](#) are to make sure that public bodies, have due regard of the need to:

- put an end to unlawful behaviour that is banned by the Equality Act 2010, including discrimination, harassment, victimisation
- advance equality opportunities between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a relevant protected characteristic and those who do not

Definition of 'due regard'

The general equality duty is not prescriptive. Having 'due regard' means that you have:

- made yourself fully aware of what the PSED requires

- understood what the PSED requires
- put this knowledge into practice

Although there is no standard legal definition of 'due regard', various court cases have clarified the general duty and what 'due regard' means.

These court cases have made clear that you need to be able to show that you have an adequate evidence base for decision making. Developing an evidence base involves collating relevant information on staff and service users.

Scottish specific equality duties

The [Scottish specific equality duties](#) are tools to enable better performance of the general duties.

Scottish justice organisations, along with other public bodies, are required to report on certain equality outcomes every two or four years. Good data and evidence is required to report on these equality outcomes. Reporting on these duties should be published in a manner that is accessible to the public.

Data collection

Data on staff and service users needs to be collected to evidence outcomes and comply with the equality duties. Developing this evidence base could involve collecting either quantitative or qualitative data. Gathering qualitative insights on the experiences of groups of people may be a more practical approach than collecting quantitative data in some situations.

The General Data Protection Regulation (GDPR) does not prevent public authorities from processing personal data for the purposes of the general or specific duties. However, it is important that any processing is done legally.

In collecting and processing data you should:

- ensure that data collection is in line with the [seven data protection principles](#)
- ensure that when you are processing personal data you fulfil at least one of the [six lawful bases](#) under Article 6 of the GDPR. For example, the processing is necessary for carrying out statutory functions
- have a clear purpose for collecting data and demonstrate why it is needed
- treat equality data with greater care than other personal data as it is likely to be [special category data](#) which needs more protection because it is sensitive
- ensure that a [Data Protection Impact Assessment](#) is completed and a privacy notice is available
- Ensure that data collection is proportionate and kept to a minimum
- only use data for its stated purpose. Data that was collected for monitoring should not be used for other purposes

- anonymise data for monitoring purposes. Anonymous data that cannot be used to identify a person is not personal data
- develop a data culture that develops skills and resources, procedures, security, leadership and accountability

Further Resources

- [EHRC paper on the public sector equality duty and data protection](#)
- [EHRC Guidance for Scottish public authorities](#)
- [Scottish Government protected characteristics collection guidance](#)
- [Information Commissioner's Office \(ICO\) GDPR guidance and resources](#)
- [ICO guidance for organisations](#)