

Protected characteristics in data guidance

Equality Impact Assessment Record

February 2022

Equality Impact Assessment Record

Title of policy/ practice/ strategy/ legislation etc.	Protected Characteristics in Data Guidance	
Minister	Cabinet Secretary for Social Justice, Housing and Local Government/Minister for Equalities and Older People	
Lead official	Jon Hunter	
Officials involved in the EQIA	Name	Team
	Dan Craig, Roanna Simpson, Liz Hawkins	Equality Analysis
Directorate: Division: Team	Housing and Social Justice, Communities Analysis Division, Equality Analysis Team	
Is this new policy or revision to an existing policy?	Revised policy – data on protected characteristics is already routinely collected by Public Bodies in Scotland	

Screening

Policy Aim

The aims of producing guidance are:

- to improve the collection of data about protected characteristics by public bodies in Scotland
- to encourage the collection of data about protected characteristics by public bodies in Scotland
- to support bodies to analyse and present this data more effectively
- for this data to be used

This policy aims to bring the guidance in line with current methods for gathering and disseminating data on protected characteristics to enable organisations to develop better policy and services which deliver better and more equal outcomes. This includes highlighting the importance of disaggregation of data both along the lines of protected characteristics, and

intersectionality with other socio-demographic characteristics (while preserving privacy), as intersectionality can give insight into the experiences of different groups in society, and how particular characteristics can combine to impact on an individual's experiences.

The guidance contributes to all National Outcomes in the sense that we need data on people with different protected characteristics to monitor performance against these Outcomes.

Who will it affect?

The policy may affect public bodies - i.e. the way that they collect data from people, what data is collected and published and how the questions are asked, however, as the guidance is not changing substantively, any effect is likely to be minimal. Because the guidance relates primarily to the collection of data about protected characteristics, all people are likely to be impacted.

What might prevent the desired outcomes being achieved?

Technology - existing systems used to collect data from people who use public services could be affected, though with the changes being minimal there should be little disruption to operations.

Buy in - there may be lack of buy in from public bodies and they may not have the resources to review their data collection systems. However, as the guidance is not substantively changing, there should be minimal impact on and investment required from public bodies. Data may be collected differently across organisations, which will limit options for data linkage and comparability, and therefore the wider utility of the data.

Stage 1: Framing

Results of framing exercise

The guidance is needed as part of a routine update to guidance across all protected characteristics following the release of Scotland's new census questions for 2022. The guidance will be brought in line with the 2022 census and the questions used by Scotland's major household surveys.

Better data collection should mean a higher quality of data available for public bodies and the government to use to base decisions on. Comparability with and across a range of Scottish and UK-wide surveys, such as the Scottish Household Survey, Scotland's Census 2022, the Labour Force Survey, and Family Resources Survey, will enable policy makers to design and review policies within a larger UK framework. This will allow analysts to collect data in a way that captures the diversity of people in Scotland and enable the design of appropriate services.

It will affect a large number of people – service users, service providers generally because it will determine how data is collected from them.

Extent/Level of EQIA required

A full equality impact assessment is required. Ultimately the recommended questions in the guidance will influence how data on protected characteristics is collected.

The guidance will also be used to encourage an intersectional approach, and therefore have potentially wider impacts on equality groups. Intersectional analysis gives insight into the experiences of different groups in society, and how particular characteristics can combine to impact on an individual's experiences. Being able to identify cases where combinations of factors result in disadvantage provides a more complete understanding of outcomes for people with different protected characteristics and enables policies to be developed and action taken to address these issues.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic ¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
Age	The recommended questions set out in the refreshed guidance note are designed to identify respondents who may have rights under the Equality Act 2010 ² .		Questions to remain in line with the main Scottish household surveys.
Disability	Section 1(2) of the Disability Discrimination Act (1995) ³ broadly defined someone as disabled if 'he or she has a physical or mental impairment which has a substantial and long-term adverse effect on her or his ability to carry out normal day-to-day activities'. This legislation has been super-ceded from 1 October 2010 by provisions contained within the Equality Act. While the definition of disability in		Questions have been kept in line with ONS harmonised questions

¹ Refer to Definitions of Protected Characteristics document for information on the characteristics

² It should be noted that the estimate will not reflect the total number of people who may have rights under the Equality Act which extends rights to other groups, including people with progressive conditions which may be non-symptomatic or in remission, since the effects may not meet the definition set out here.

³ <https://www.legislation.gov.uk/ukpga/1995/50/section/1/1996-05-17>

Characteristic ¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
	<p>the Equality Act is similar to that which preceded it, the legislation now no longer requires a disabled person to demonstrate their impairment adversely affects their ability to carry out a normal day-to-day activity in at least one of a specified list of capacities such as moving, speech, continence.</p> <p>The recommended questions set out in the refreshed guidance note are designed to identify respondents who may have rights under the Equality Act 2010.</p>		
Sex	The guidance will not specifically cover the collection of data on sex, but will encourage public bodies to take an intersectional approach to data analysis.		
Pregnancy and Maternity	The guidance will not specifically cover the collection of data on pregnancy and maternity, but will encourage public bodies to take an intersectional approach to data analysis.		

Characteristic ¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
Gender Reassignment	The guidance will not specifically cover the collection of data on gender reassignment, but will encourage public bodies to take an intersectional approach to data analysis.		
Sexual Orientation	The recommended questions set out in the refreshed guidance note are designed to identify respondents who may have rights under the Equality Act 2010.		Questions to be brought in line with the 2022 Scottish Census
Race	The recommended questions set out in the refreshed guidance note are designed to identify respondents who may have rights under the Equality Act 2010.		Questions to be brought in line with the 2022 Scottish Census
Religion or Belief	The recommended questions set out in the refreshed guidance note are designed to identify respondents who may have rights under the Equality Act 2010.		Questions to be brought in line with the 2022 Scottish Census
Marriage and Civil Partnership	N/A		

Characteristic¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
(the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)			

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			<p>Updating guidance may help eliminate victimisation of people of different ages by public bodies in the process of asking questions. Familiarity with the questions on behalf of the question answerer may increase the accuracy of reporting which has implications for affecting policy that eliminates unlawful discrimination against people of different ages.</p> <p>The proportion of adults living with limiting long-term conditions increases with age. Services and policies focused on eliminating discrimination, harassment and victimisation of disabled people and communities are likely to have a positive impact on older people.</p>
Advancing equality of opportunity	X			<p>Updating guidance to maintain a continuity of data will enable public bodies' to compare data over longer time periods, evidencing where action is needed to advance equality of opportunity for people of different ages.</p>

Age	Positive	Negative	None	Reasons for your decision
				<p>The proportion of adults living with limiting long-term conditions increases with age. Services and policies focused on improving equality and opportunity for disabled people and communities are likely to have a positive impact on older people.</p>
<p>Promoting good relations among and between different age groups</p>	<p>X</p>			<p>Updating guidance, while maintaining familiarity with the questions, may help to ensure that the questions are asked appropriately and respectfully, potentially reducing harassment and victimisation of people of different ages.</p> <p>Additionally, good data gathering and continuity of data will help support policy makers when making decisions that affect people of different ages, which may help promote good relations among and between them.</p> <p>The proportion of adults living with limiting long-term conditions increases with age. Services and policies focused on promoting good relations among and between disabled and non-disabled people are likely to have a positive impact on older people.</p>

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			<p>Updating guidance may help eliminate victimisation of disabled people by public bodies in the process of asking questions. Familiarity with the questions on behalf of the question answerer may increase the accuracy of reporting which has implications for affecting policy that eliminates unlawful discrimination against disabled people.</p> <p>The proportion of adults living with limiting long-term conditions increases with age. Services and policies focused on eliminating discrimination, harassment and victimisation of older people are likely to have a positive impact on disabled people and communities.</p>
Advancing equality of opportunity	X			<p>Updating guidance while maintaining familiarity with the questions, may help to ensure that the questions are asked appropriately and respectfully, potentially reducing harassment and victimisation of disabled people.</p> <p>Additionally, good data gathering and continuity of data will help support policy makers when making decisions that affect disabled people, which may help promote good</p>

Disability	Positive	Negative	None	Reasons for your decision
				<p>relations among and between disabled and non-disabled people.</p> <p>Updating guidance to maintain a continuity of data will enable public bodies' to compare data over longer time periods, evidencing where action is needed to advance equality of opportunity for disabled people.</p> <p>The proportion of adults living with limiting long-term conditions increases with age. Services and policies focused on improving equality and opportunity for older people are likely to have a positive impact on disabled people and communities.</p>
Promoting good relations among and between disabled and non-disabled people	X			<p>The proportion of adults living with limiting long-term conditions increases with age. Services and policies focused on promoting good relations among and between people of different age groups are likely to have a positive impact on disabled people and communities.</p>

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good relations between men and women			X	

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			Updating guidance may help eliminate victimisation of people of different sexual orientations by public bodies in the process of asking questions. Familiarity with the questions on behalf of the question answerer may increase the accuracy of reporting which has implications for affecting policy that eliminates unlawful discrimination against people of different sexual orientations.

Sexual orientation	Positive	Negative	None	Reasons for your decision
Advancing equality of opportunity	X			Updating guidance to maintain a continuity of data will enable public bodies' to compare data over longer time periods, evidencing where action is needed to advance equality of opportunity for people of different sexual orientations.
Promoting good relations	X			Updating guidance, while maintaining familiarity with the questions, may help to ensure that the questions are asked appropriately and respectfully, potentially reducing harassment and victimisation of people of different sexual orientations. Additionally, good data gathering and continuity of data will help support policy makers when making decisions that affect people of different sexual orientations, which may help promote good relations among and between them.

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			Updating guidance may help eliminate victimisation of people of different ethnicities by public bodies in the

Race	Positive	Negative	None	Reasons for your decision
				<p>process of asking questions. Familiarity with the questions on behalf of the question answerer may increase the accuracy of reporting which has implications for affecting policy that eliminates unlawful discrimination against people of different ethnicities.</p>
Advancing equality of opportunity	X			<p>Updating guidance to maintain a continuity of data will enable public bodies' to compare data over longer time periods, evidencing where action is needed to advance equality of opportunity for people of different ethnicities.</p>
Promoting good race relations	X			<p>Updating guidance while maintaining familiarity with the questions, may help to ensure that the questions are asked appropriately and respectfully, potentially reducing harassment and victimisation of people of different ethnicities.</p> <p>Additionally, good data gathering and continuity of data will help support policy makers when making decisions that affect people of different ethnicities, which may help promote good relations among and between them.</p>

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			Updating guidance may help eliminate victimisation of people of different religions/beliefs by public bodies in the process of asking questions. Familiarity with the questions on behalf of the question answerer may increase the accuracy of reporting which has implications for affecting policy that eliminates unlawful discrimination against people of different religions/beliefs.
Advancing equality of opportunity	X			Updating guidance to maintain a continuity of data will enable public bodies' to compare data over longer time periods, evidencing where action is needed to advance equality of opportunity for people of different religions/beliefs
Promoting good relations	X			Updating guidance while maintaining familiarity with the questions, may help to ensure that the questions are asked appropriately and respectfully, potentially reducing harassment and victimisation of people of different religions/beliefs.

Religion or belief	Positive	Negative	None	Reasons for your decision
				Additionally, good data gathering and continuity of data will help support policy makers when making decisions that affect people of different religions/beliefs, which may help promote good relations among and between them.

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership ⁴	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	

⁴ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring
Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	Yes: Positive impacts for the protected characteristics of age, disability, ethnic group, religion/belief and sexual orientation
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ⁵ ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

This guidance update is part of a refresh of all guidance notes on questions for gathering data about protected characteristics. The questions will be harmonised with the Scottish 2022 census questions for gathering data on ethnic group, religion/belief, and sexual orientation. The questions will be harmonised with the ONS harmonised standards for gathering data on disability. The questions will be harmonised with the main Scottish household surveys for gathering data on age. This enables continuity and comparability of data across long periods of time and across a range of surveys that use the same and comparable questions.

Harmonisation allows analysts and policy makers to make impactful decisions with a greater wealth of information and within the wider context of the Scotland, which should help develop better outcomes for people and communities with different protected characteristics.

⁵ See EQIA – Setting the Scene for further information on the legislation.

Including information on the disaggregation of data from an intersectionality standpoint will enable better understanding of how protected characteristics combine and how this impacts people, informing the development of better policy and services.

Monitoring and Review

This guidance will be reviewed and refreshed periodically by members of the Equality and Social Justice Analysis Team. The next review should take place following the next census.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for **Protected Characteristics in Data Guidance** and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Audrey MacDougall

Position: Deputy Director: Covid 19 Analysis Division and Chief Social Researcher

Authorisation date: 15/02/2022

Annex 1: Planned Changes

All guidance notes

- Add information on the importance of and advice on the collection of data in a way that enables intersectional analysis
- Add 'prefer not to say' options to the harmonised questions and provide guidance on its use
- Improve accessibility by providing html versions of the guidance

Age

- Add information and advice on using explicit age ranges and how to manage unknown ages
- Add information and advice on the definition of adult and child in Scottish law
- Add specific wording for proxy responses to the age question
- Provide advice on banding when reporting age data

Disability

- Add information regarding the ongoing work towards a harmonised question based in the social model of disability

- Add clarity to lead-in statements for interviewers regarding fluctuating conditions, new diagnoses, and limiting conditions
- Add information and advice for the collection of proxy responses for disability data
- Improve clarity of how the answers to the questions determine disabled status
- Updating the question responses to be inclusive of those with multiple conditions or illnesses, and to bring the language about impairments in line with current terminology

Ethnic Group

- Add advice on grouping data and reporting grouped data where sample sizes are too small to report
- Add new online format for the harmonised question
- Remove references to comparing data across censuses as NRS does not currently have advice on this for the new response options
- Update the response options to be in line with Scotland's Census 2022
- Update the response options of the linked religion question to be in line with Scotland's Census 2022
- Update advice on language around "minority ethnic" groups vs BME/BAME to be in line with current terminology

Religion

- Move suggested question on religious practice forward to increase knowledge of this issue
- Update the response options to be in line with Scotland's Census 2022

Sexual Orientation

- Consolidate existing questions for different survey formats into a single question for use in all surveys
- Move the information on the ONS Sexual Identity project to an annex
- Removal of discussion that singles out this question as more sensitive than other questions on protected characteristics
- Update language defining sexual orientation and the response options to be more in line with the Equality Act 2010



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