

Public sector equality duty:
A toolkit for trade union reps



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Introduction

The public sector equality duty has now been in place since 2011, with the specific duties in place since 2012. Under the duty, public sector employers are responsible for ensuring that they not only eliminate discrimination, but that they also actively promote gender equality in the workplace.

Close the Gap completed assessments of employers' reporting on work to meet the duty, on the first round of reporting in April 2013¹, and the second round in April 2015², with a focus on gender and employment.

The first assessment identified significant room for improvement in public sector employers' responses to PSED across all aspects of the duty. Employers failed to recognise data collection, interpretation and use as a process. Some employers were stronger in data collection but then provided insufficient or weak analysis. Others had ostensibly better outcomes but these were not based on the data collected. Inconsistencies were also evident around the calculation of the gender pay gap and employers' understanding of the causes and types of occupational segregation.

The findings of the 2015 assessment showed that of those employers assessed, compliance with PSED has largely regressed, with the majority of employers having lower overall scores than in the 2013 assessment. Just under a third achieved an improved score. Similar themes were identified.

Close the Gap has used the findings of this work to develop this updated guidance for trade union reps. Although this guidance focuses on gender and employment, it covers fundamental principles such as mainstreaming, impact assessment, and the process of data gathering, analysis and use. As a rep you may find this guidance useful when considering these principles in relation to other protected characteristics.

¹ http://www.closesthegap.org.uk/content/resources/1450180414_CTG-Working-Paper-12—Monitoring-Scottish-public-bodies-compliance-with-the-public-sector-equality-duty.pdf

² <http://www.closesthegap.org.uk/content/resources/Making-Progress—An-assessment-of-employers-compliance-with-PSED-November-2015.pdf>

The trade union movement has long campaigned for equal pay, flexible working practices and access to childcare, and it is important that trade union reps are able to use the tools provided by the duty to continue this work.

This toolkit is designed to give you an understanding of the duty as it relates to gender and employment. It describes what employers are obliged to do under the duty, and how you can use the duty for the benefit of your members. It focuses in particular on the following:

- Gathering, using and publishing employment data;
- Gender mainstreaming;
- Developing equality outcomes;
- Calculating and using gender pay gap information; and
- Publishing an equal pay statement, including occupational segregation information.

Important contextual information for union reps will appear in [GREY boxes], and checklists to assist you in checking the employer's work to meet the duty will appear in [ORANGE boxes].

WHAT YOU NEED TO KNOW: Gender inequality – society and labour market

The public sector equality duty requires public sector employers to play a role in tackling entrenched and widespread gender inequality.

Women do not enjoy equality with men in Scotland. Women are the majority of unpaid carers, lone parents, recipients of social security and low-paid workers. This means women are not able to participate in society on equal terms with men, because they do not have access to the same resources or opportunities. The causes of women's inequality are complex and numerous, and interact in multiple ways.

Gender stereotyping begins from birth, shaping girls' and boys' early experiences of development and education. Combined with gendered assumptions about young women's and men's capabilities and preferences, this results in gender segregation in subject choice, and patterns of occupational segregation across all sectors of the labour

market. Gendered assumptions also influence the disproportionate burden of unpaid domestic labour shouldered by women.

Gender norms, segregation in education and skills acquisition, and women's unequal share of unpaid labour interact to constrain women's employment. Male-oriented workplace cultures, the pressure of balancing work and family life, and the gendered skills pipeline see women clustered into a small number of low-paid, undervalued occupations such as admin, retail and care. This leads to higher levels of women's poverty, and consequently child poverty, and female pensioner poverty. It also has an impact on household budgets, and local economies, as there is simply less money to spend.

The business case for gender equality is well rehearsed. We know employers that take steps to address women's inequality at work benefit from a reduction in costs through lower turnover, improved employee morale and motivation, and higher levels of productivity. We know diverse workforces are more creative as men and women have different experiences and perspectives. We know gender equality has the potential to improve public service delivery, as services better reflect and meet the needs of communities. And yet many employers still see taking steps to address gender inequality as a cost to be avoided, and fail to take meaningful action to effect change for women in the workplace.

Trade unions can help to tackle women's labour market inequality by ensuring gender is considered and prioritised in the development of their bargaining priorities and negotiating strategies. Senior officials can take steps to ensure that women's perspectives are included by supporting women to become workplace reps and using their positions to amplify women's voices. As reps, you can ensure employers take action to address gender inequality in the workplace by using the public sector equality duty to hold public sector employers to account. You can also ensure the issue of women's labour market inequality remains high on unions' and employers' agendas by including the duty and women's employment as regular agenda items of joint negotiating committees and branch meetings.

What is the public sector equality duty?

The public sector equality duty forms s149 of the Equality Act 2010. It is a positive duty which requires public sector employers to take a proactive and organised approach to tackling institutional discrimination, and aims to mainstream equality into these public bodies in practical ways.

The duty covers the following protected characteristics: age, disability, sex (gender), gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The public sector equality duty also covers marriage and civil partnerships, with regard to eliminating unlawful discrimination in employment.

There are two elements to the public sector equality duty. The general duty, which applies to all public bodies, and the specific duties, which are specific to Scotland, and apply to listed public sector employers. The specific duties provide a framework to help public sector employers to meet the general duty.

General duty

The general equality duty requires public sector employers, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

Specific duties

The specific duties in Scotland were created by secondary legislation in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended. They came into force in May 2012. They require listed public sector employers to:

- Report on how they are mainstreaming equality into everything they do.
- Publish equality outcomes and report on progress against these.
- Assess and review policies and practices.
- Gather information on the composition of their workforce, and on recruitment, development, and retention of their employees, and use and publish this information.
- Publish gender pay gap information.

- Publish statements on equal pay, including occupational segregation information.
- Consider award criteria and conditions in relation to public procurement.
- Publish a board diversity succession plan.

New regulations were introduced in 2015 and 2016, the former bringing additional listed public sector employers into the scope of the duties. The regulations introduced in 2016 reduced the employee threshold for gender pay gap reporting and the publication of equal pay statements from 150 to 20, and introduced a new requirement on a number of listed public sector employers to publish the gender composition of their boards, and to produce succession plans to increase board diversity.

The purpose of the specific duties in Scotland is to help those employers listed in the regulations in their performance of the general duty. It should be noted that different specific duties apply to public sector employers in Wales, and different specific duties again apply to public sector employers in England.

Compliance with the duty requires a conscious, proactive approach. The Equality and Human Rights Commission (EHRC) states “General regard to the issue of equality is not enough to comply.” In order to meet the duty, public sector employers must take into account the different needs of women and men, consider the impact of gender roles and stereotyping, anticipate and identify different effects of policies and practices on women and men, and take action to address these.

What does the duty mean for trade unions?

Trade union reps have an important role to play in representing their members in the public sector. Women make up over two thirds of the public sector workforce, yet are hugely under-represented in senior roles and over-represented in the lowest paid jobs. Occupational segregation, an unequal share of caring responsibilities, and pay discrimination mean that women in Scotland are still paid less than men for doing work of equal value. Understanding the duty will help you tackle these issues when negotiating with public sector employers.

You should also ensure you understand the duty so that you can use it as a negotiating tool to address issues and improve working conditions for your members. If you know what your employer should be doing to comply with the duty, and you identify something they have failed to do, you can use the duty to persuade the employer to take action.

Which employers are covered?

The general duty

- Employers which carry out public functions, for example, government departments; local authorities; police, fire, and prison services; armed forces; colleges and universities; NHS; inspection bodies; and, non-departmental public bodies (NDPBs).
- Some private sector employers are covered as well, for example, those which carry out public functions on behalf of a public body, whereby they would be exercising functions which would otherwise be carried out by the state. For example, privatised utilities, private security firms managing contracted-out prisons, and GPs providing services under a contract to health boards. But these private employers are covered by the duty only to the extent of their public functions, not their private activities such as contracts with private firms or employment of staff.

The specific duties

- Many of the employers that are subject to the general duty are also covered by the specific duties. Details of these 'listed' employers can be found in Appendix 2 of Essential Guide to the Public Sector Equality Duty: A guide for public authorities (Scotland) published by EHRC Scotland.
- Listed employers include Scottish Government; NDPBs that are headquartered in Scotland; all colleges and universities; all NHS health boards; all local authorities; and police, fire and prison services.

What employers have to do

The general duty

Public sector employers in Scotland, when carrying out their functions, must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not, such as women and men; and,
- Foster good relations between people who share a protected characteristic and those who do not, such as women and men.

These are the requirements of the general duty and are at the core of the duty.

What does this mean?

Eliminate unlawful discrimination, harassment and victimisation

This means that employers have to consider how to end all forms of unlawful discrimination, harassment and victimisation, as prohibited by the Equality Act, not only in relation to employment but also with regard to the employer's other activities such as policy-making and service delivery.

Advance equality of opportunity

This may mean treating women and men differently in recognition of the fact that because of their sex or gender roles, they are not in the same position. This includes positive action measures. For example, where an action is aimed at overcoming previous disadvantage, this would be in recognition of the fact that men and women are not starting from an equal footing. However, treating women and men differently is only lawful to the extent allowed by the Equality Act. Positive action measures which an employer may undertake could include pre-employment training for women who are applying for a role in which women are under-represented, and providing shadowing opportunities for women seeking to progress to senior roles.

Foster good relations

This means having due regard to the need to tackle prejudices (for example, tackling sexualised bullying in schools) and promote understanding (for example, promoting understanding of barriers faced by women in the labour market).

All employers will have to analyse which of their activities could make a difference to gender equality, and prioritise actions to achieve equality between women and men.

The specific duties

The specific duties set out the steps that employers should take to help them meet the general duty, and include actions on the gender pay gap, equal pay, and occupational segregation. Under the specific duties, a listed employer must publish a document or documents that include:

- A report on the progress it has made in mainstreaming the general duty into its day to day operations.
- Information disaggregated by gender, and all other protected characteristics, on the recruitment, development and retention of staff.
- Details of the progress that the employer has made in gathering and using the information to better meet the general duty.

- A set of equality outcomes and the progress made to achieve these.
- Information on the gender pay gap within the organisation.
- An equal pay statement covering the protected characteristics of sex, race and disability, which includes information on occupational segregation.
- A plan to increase board diversity.
- Equality impact assessments which should be carried out on an ongoing basis, and published soon after completion.

The duty requires that public sector employers involve people who share a protected characteristic, and those that represent them, such as trade unions, in the development of work to meet their duty. It is also essential that public sector employers use relevant information when developing their equality outcomes, equal pay statement, and corresponding actions plans. This includes:

- employee information;
- pay data;
- occupational segregation information; and,
- research from specialist equalities bodies.

Involving people, and using findings from data analysis and research, will help public sector employers to ensure that the work they plan to do to meet the duty is meaningful and relevant to their organisation.

At the time of publishing, the next reporting deadline for public sector employers is 30 April 2017, and subsequent reports must be published at intervals of not more than two years, with a new set of equality outcomes required every four years. Public sector employers must publish this information on their websites so that anyone can look at it. More detailed information about what each of these elements should cover is included in the next section of this toolkit.



What employers have to do: mainstreaming

It is the aim of the duty that gender equality is mainstreamed into the day to day work of public sector employers. Each listed public body is required to publish a report on the progress it has made in mainstreaming the duty.

WHAT YOU NEED TO KNOW: What is gender mainstreaming?

Gender mainstreaming is a process whereby efforts to promote gender equality are not only restricted to specific projects and initiatives to help women, but are also incorporated into the design and delivery of all services, policies and practices. It is important to note that a dual approach is necessary; mainstreaming gender into service delivery, policy and practice, while also implementing specific measures to address gender inequalities. Both approaches go hand-in-hand, and one cannot replace the other.

Public sector employers have an important role to play in tackling gender inequality because of their proximity to the everyday lives of women and men. Trade union reps have an equally important role to play in holding public sector employers to account on this. Mainstreaming gender in public sector employment policy and practice and service delivery will help to address gender inequality in wider society through the shifting of gender norms, and challenging stereotypical assumptions about men and women.

Historically, employment policies and public service delivery have been viewed as gender-neutral, and it is often assumed that services and policies benefit or affect women and men equally. However, structural inequalities are still embedded in society and women do not enjoy equal access to resources. Consequently, public bodies' services may have an unintended, differential impact on women and men.

An example of a policy that has a differential impact on women and men is the delivery of employability programmes. Employability programmes do not consider occupational segregation, or the specific barriers to employment faced by women, in their design or delivery. As a result, these programmes replicate gendered patterns of skills acquisition and employment, which sees women clustered into jobs such as cleaning, caring and retail. This entrenches occupational segregation, and widens the gender pay gap.

Most services, policies and practices have a differential impact on women and men – this is true for public sector employers, and for trade unions. It is therefore important for public bodies, in all of their functions, to account for the different positions of women and men; to consider the impact of gender norms and stereotypes; and to anticipate different impacts on women and men. This approach can also help trade unions to design and develop policies which meet the needs of their male and female members.

Women's experience of inequality is not universal, but rather shaped by multiple identities. It is crucial that policy and practice recognises and reflects the complexities of women's lives, and therefore public sector employers must consider groups of women who share more than one protected characteristic, for example, black and minority ethnic women; disabled women; and lesbian, bisexual and transgender women.

Under the specific duties public sector employers are required to publish information about how they have integrated the duty into all of their functions. Women are beneficiaries of services and policies to a greater extent than men, as both service users and public sector workers, therefore gender mainstreaming should be appropriately prioritised by all public sector employers.

Employers should develop a plan to show how they will mainstream the duty into the exercising of their functions. You should check the employer's plan to ensure that it is meaningful and relevant to the organisation, and that it describes how the employer considers and accounts for the differential impact of its policies and practices on women and men. You could also survey members to find out their views on how the employer is meeting their duty to employees, and if they feel equality is genuinely considered in policy and practice.

You may find it useful to request specialist equalities training to build an understanding of the specific issues which are relevant for each protected characteristic. This will build your capacity to understand what employers should be doing to meet the duty, and to identify any issues. It may also be helpful to involve Equality Reps in work carried out on the duty, and to speak with your union's national equalities official.

CHECKLIST FOR THE REPORT ON MAINSTREAMING

What you should ensure the employer has done:

- The employer has published a report on mainstreaming.
- The report contains the employee information that it should have gathered.
- The report contains examples of concrete steps taken to mainstream equality.
- The report includes information on mainstreaming equality in all functions, including employment, and not just for service provision.



What employers have to do: gather and use employee information

Under the duty, employers have to gather information on their employees, and they must use that information to enable them to better perform the duty. This means they must analyse the information to identify inequalities, issues and trends, and use their findings to develop work to meet the duty, for example in setting their equality outcomes and corresponding action plans.

Good quality data monitoring enables the differential impact of policy and practice on women and men to be identified and mitigated. This is particularly important in the current context of austerity and public spending cuts, which have had a disproportionate impact on women with 86% of austerity ‘savings’ from 2010-2020 being taken from women’s incomes; an issue which many unions are organising around.

The duty describes employee information as including the **composition** of an organisation’s employees, and information on the **recruitment, development, and retention** of those employees. Gathering information and monitoring of equalities is essential to achieving gender equality. If the characteristics of employees are unknown then they cannot be considered when setting policy.

The duty does not specify what employee information should be gathered under the categories of composition, recruitment, development and retention; however the Equality and Human Rights Commission’s guidance on the duty is clear on what employers should usefully gather. This is important, as the purpose of gathering information is to use it to inform work to meet the duty. It is therefore important that employers gather the information they need to do this, and not just the minimum under each category.

For example, gathering information only on the number of workers who are on maternity leave will not give an employer an insight into issues faced by those workers in the workplace. An employer would require to gather information on how many of these workers return to work following maternity leave, and whether they

returned to the same job on the same working pattern, in order to identify any barriers faced by women in this process.

This section provides a detailed breakdown of what employee information employers should gather, and why. If you identify that an employer has not gathered all of the information specified you should ask why, as it is unlikely they will be considered to be doing everything they can to perform the duty.

This is not an exhaustive list: employers should consider gathering data on issues identified by trade unions, HR functions, or through staff surveys.

It is recommended that employers include a narrative describing the issues and trends identified in the data gathered, in order to make it accessible to the general public.

Composition

Alongside information on basic staff composition, it is considered best practice to include information, disaggregated by gender, on:

- Occupation of part-time posts;
- Occupation of fixed term and/or temporary posts;
- Flexible working applications and success rates;
- Grievances, including those relating to harassment; and,
- Disciplinary incidents, including those relating to harassment.

This information will enable employers to identify gendered patterns of employment, including where women are located in their workforce, and examine how flexible working functions in their organisation.

Recruitment

Information gathered on recruitment should include the following, disaggregated by gender and grade:

- Applications for jobs;
- Shortlisted applicants; and
- Appointments.

This information will enable employers to identify barriers to the recruitment of women across their organisation, and help them identify where practice could be improved.

Development

Development covers all employee training and development opportunities, and also employee promotion. This includes training that is essential to a job; courses which might facilitate promotion; shadowing, coaching and mentoring; and other opportunities that allow workers to develop their skills. Information gathered on development should include the following, disaggregated by gender:

- Workers who access training;
- Workers who request training and are denied, by gender and working pattern;
- Workers who participate in coaching or mentoring;
- Workers who are identified for internal development programmes; and
- Workers who are promoted.

This information will enable employers to identify whether men or women are the main beneficiaries of training and development opportunities, to identify if workers who work part-time are able to access training and development opportunities to the same degree as full-time workers, and provides an evidence base for action to address unequal access to training. It will also allow any gender imbalances in promotions to be identified.

Retention

Retention covers workers who return to work following a period of absence, and the different reasons for termination of employment with a public authority. Information gathered on retention should include the following, disaggregated by gender:

- Voluntary redundancies;
- Compulsory redundancies;
- Dismissals; and,
- Retirement grounds.

It is considered good practice for employers to include information on the uptake of shared parental leave in their organisation. Employers should also include information on the following:

- Proportion of women returning to work following maternity leave;
- Destination of women returning to work following maternity leave.

This information will enable employers to identify issues which constrain women's return to work following maternity leave, and provides a basis for widening uptake of shared parental leave. It also allows for identification of potential trends in redundancies and dismissals.

WHAT YOU NEED TO KNOW: Data gathering, analysis and use as a process

Good quality data monitoring is an important tool for identifying inequalities in a workplace, and measuring performance and progress on equalities work; however data monitoring is not an end in itself. Employers are required to use the data gathered to inform the development of work to meet the general duty.

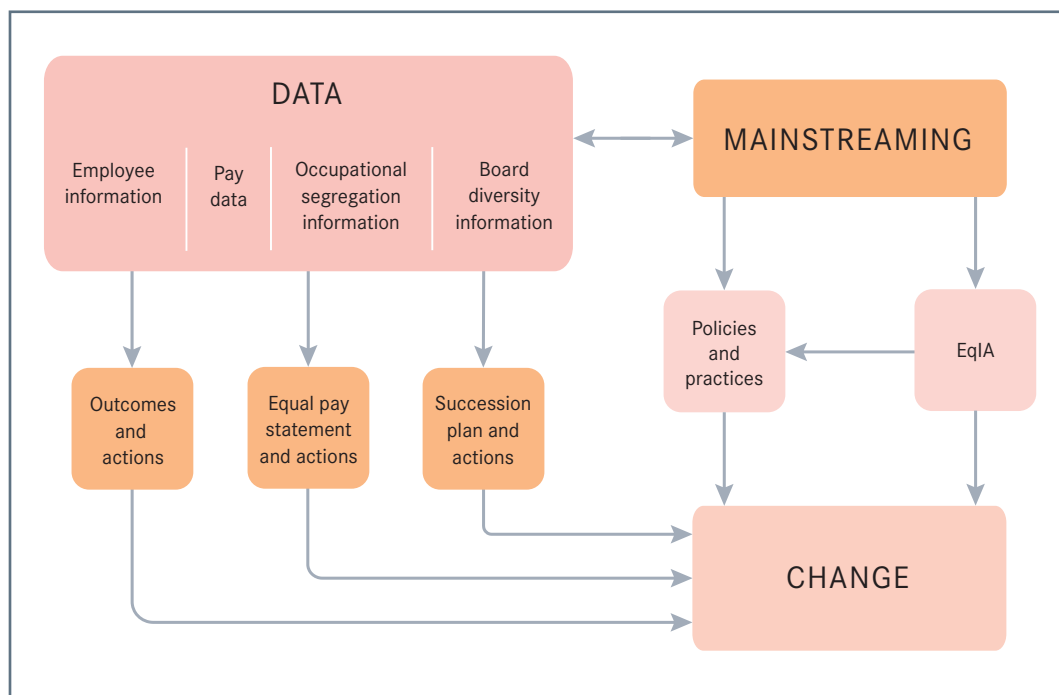
Effective gathering, analysis and use of employee data is necessary at all stages of the design, delivery and evaluation of policy and practice. If work to meet the duty is based on trends identified through data analysis it will be both measurable and relevant to the organisation. You should use your involvement to reinforce the importance of this.

EXAMPLE OF PROCESS

- Stage 1: The first cut of employee data shows that fewer women than men are successful in internal promotion. Only 20 per cent of internal promotions are women. Of those women who apply for internal promotion 3 per cent are successful, compared with 12 per cent of their male counterparts.
- Stage 2: This first data cut is analysed across multiple characteristics to identify any patterns which better explain the initial observation. This shows that women who work part-time are concentrated in the group of workers unsuccessful in seeking promotion. No women or men who were promoted worked part-time.
- Stage 3: In order to gather qualitative information, targeted surveys and focus groups are run with workers, including managers and HR. The employer also consults with the union rep, and the rep agrees to run a focus group with members who have applied for promotion in the relevant period. It is identified that 85 per cent of staff involved in recruitment processes have a perception that some managerial roles are unsuitable for part-time work. This is supported by the findings of the rep's focus group, which find that members who work part-time feel discouraged from applying for promotion because they feel their working pattern is not considered compatible with more senior roles.
- Stage 4: The quantitative and qualitative data are used to develop appropriate interventions. Recruitment processes are reviewed to ensure all roles are advertised as suitable for flexible working. All staff involved in recruitment processes are given training on equalities, and line managers are given training on implementing flexible working. A realistic target is set for increasing the number of women successful in internal promotion. The authority aims to increase the proportion of promotions awarded to women to 40 per cent within the next five year period.

Stage 5: The next year's employee data is gathered and analysed. Progress is able to be assessed using the measures previously set, and women are found to constitute 28 per cent of internal promotions.

This diagram illustrates the importance of gathering and using data, and how this core process impacts on all other aspects of the duty.





What employers have to do: equality outcomes

WHAT YOU NEED TO KNOW: What is an equality outcome?

An equality outcome is a result which you seek to achieve which will further one or more of the needs of the general duty. An outcome is a change, for example an improvement or a reduction, and is distinct from an output, which is an action you might undertake in order to achieve an outcome.

For example, consider a local authority whose workforce is 70% female, but women only occupy 25% of senior roles. A possible outcome would be 'Occupational segregation is reduced in the top four grades of the organisation'. The local authority may instead choose 'We will implement a women's development programme', however this is an output, not an outcome.

The distinction is important, as the result is what is required by the duty. An employer may list a number of actions, but these may not effect change. The outcome is the defining purpose of the actions planned.

Setting equality outcomes

Employers are required to publish a set of equality outcomes that will enable them to meet the general duty. Employers should publish a new set of outcomes every four years.

In preparing their equality outcomes, employers must:

- take reasonable steps to involve people who share a protected characteristic, and those who represent the interest of those people, such as trade unions; and

- consider relevant evidence relating to people who share a relevant protected characteristic, including employee information gathered under the duty, surveys undertaken by the trade union, and research from specialist equalities bodies.

Employers should also develop an action plan for each outcome, comprising a set of actions which will help them achieve the required change. The evidence used to develop an outcome also provides the basis for progress indicators.

The employer should seek your input on issues affecting your members who share a protected characteristic, for example members who have a disability, or female members; however you should also negotiate to get union participation in the outcome setting process. You should seek to jointly set the equality outcomes with the employer and jointly review the progress towards achieving the equality outcomes. In setting the outcomes, employers should consider all relevant evidence including information gathered about the workforce, the gender pay gap, occupational segregation, as well as evidence directly from members.

You are ideally placed to identify which issues are the most pressing at a local workplace level and this knowledge should inform the process for setting equality outcomes. For example, you may already have identified that work should be undertaken to increase the number of women in management. If you are unsure of what issues are priorities for your members you might find it useful to undertake a survey to identify these. If you require assistance to identify which issues are most relevant, Close the Gap can provide support and guidance in doing this.

Reporting on progress

Employers are required to report on progress made in meeting their outcomes every two years after the outcomes are set. Progress reports should include information on indicators and an accompanying narrative on the work that has been done, and progress towards meeting outcomes.

CHECKLIST FOR EQUALITY OUTCOMES

What you should ensure the employer has done:

- The union is consulted as part of involvement activities.
- The union and the employer jointly set equality outcomes.
- The equality outcomes are correctly worded as outcomes, and not outputs.
- The employer has involved groups of people with shared protected characteristics, and those who represent them such as trade unions.
- The employer has considered relevant evidence, including any provided by groups participating in consultation activities, such as trade unions.
- The employer has published a set of equality outcomes, and has set an action plan, including concrete steps and measurable progress indicators, which it will undertake to meet them.
- The union and the employer jointly review progress towards achieving the equality outcomes.



What employers have to do: gender pay gap information

In addition to the information required in the mainstreaming report, the duty requires public sector employers with 20 or more employees to publish a gender pay gap figure, which is the percentage difference between men's and women's average hourly pay, excluding overtime.

Employers are required to publish a single organisational figure. This information should be easily accessible on their website so that anyone can look at it. Employers should provide an accompanying narrative which outlines the context for the gender pay gap figure, and includes an analysis of any change to the figure since the last time it was reported. The narrative should also describe what steps have already been taken to tackle the causes of the pay gap, the impact this has had, and any changes to the equal pay policy or action to address unequal pay as a result.

Headline gender pay gap figures are a useful measure of women's position in the labour market. However, a single figure can mask inequalities at grade and departmental levels. It is possible for an organisation to have a very low or no pay gap but for women still to be clustered in the lower grades and under-represented in senior positions.

Occupational segregation, a lack of flexible working, and pay discrimination contribute towards the pay gap. You should ensure that you are familiar with the causes and how they manifest within your employer's organisation.

WHAT YOU NEED TO KNOW: The gender pay gap

Causes of the gender pay gap

Occupational segregation

There are two types of occupational segregation: horizontal and vertical.

Horizontal segregation sees women and men are clustered into different occupations and sectors. In a public authority, this may mean that there are more women working in care and cleaning jobs, and more men working as maintenance workers. There are many factors which underlie this segregation including gender norms, and stereotyping of men's and women's capabilities, preferences and skills; the culture associated with male-dominated occupations and sectors; and, access to training and development opportunities and apprenticeships in different sectors. Occupational segregation restricts choices for men and women, and the jobs most likely to be done by women are those that are associated with low pay, and fewer opportunities to progress.

Vertical segregation sees men over-represented in senior roles in an organisation. Women tend to work at a more junior grade than men across all occupational sectors, and more likely to be clustered in the bottom grades of most organisations. In the health service in Scotland women make up 71 per cent of the workforce, yet only 38 per cent of CEOs³. In education women make up 63 per cent of secondary school teachers, yet only 41 per cent of head teachers⁴. The invisible barrier that prevents women from progressing to senior levels, despite ostensibly fair recruitment and promotion procedures, is called the 'glass ceiling'.

Organisations usually find they have two 'glass ceilings': one directly above the most senior administrative workers, and one above the team leader grade. There is more information about what you can do to reduce occupational segregation on pages 33 to 34.

³ Engender (2017) *Sex and Power in Scotland* <https://www.engender.org.uk/content/publications/SEX-AND-POWER-IN-SCOTLAND-2017.pdf>

⁴ Ibid

Caring roles and inflexible working practices

Women are more likely than men to have primary caring roles for children, sick people, older people and disabled people.

Research by Equality and Human Rights Commission found that one fifth of women experienced harassment or negative comments relating to their pregnancy, and one in nine mothers was dismissed, made compulsorily redundant or treated so unfavourably they felt compelled to resign.⁵ In addition to pregnancy and maternity discrimination, there is evidence that the increasing cost of childcare, and the withdrawal of state support for it in the form of tax credits, is causing women to leave their jobs, or reduce their hours, in an effort to balance family budgets.

A lack of flexible working in many workplaces means that women are required to look for part-time work to balance their caring responsibilities with their work. As most part-time work is in low-paid, stereotypically female occupations, this means that many women are underemployed, and their skills are lost to their employer and the economy.

Discrimination embedded within pay systems

The single most significant cause underpinning the pay gap is discrimination embedded within pay systems. Public sector pay modernisation processes mean a range of public sector employers are now actively addressing past gendered pay inequalities. Sectoral agreements on pay transparency and equality were reached between local government, health service and higher education employers. This has had a positive impact across the public sector; however problems remain and it is important that trade unions critically examine employers pay structures to identify the ways in which these affect female and male workers, and ensure employers take action to address gaps that cannot be objectively justified.

⁵ IFF Research (2015) *Pregnancy and maternity related discrimination and disadvantage – First findings: Surveys of employers and mothers*, Equality and Human Rights Commission and Department for Business Innovation and Skills: London

It is rare to find employers who discriminate directly and intentionally on the grounds of pay, but many employers are unaware of the different impacts that seemingly objective pay practices have on men and women. There can be many factors within pay systems that lead to inequalities including:

- Individuals being appointed to different points on the pay scale;
- Different job and grade titles for virtually the same jobs;
- Stereotypically male jobs having disproportionate access to bonus earnings;
- Women having less access to high-paid shift and overtime work;
- Performance related pay being unfairly awarded;
- Women not receiving the same access to training; and
- Sex bias in analytical job evaluation schemes grading women's jobs lower.

Equal pay reviews

The most effective way for an organisation to uncover unequal pay is to carry out an equal pay review. The key elements of an equal pay review are:

- Identifying jobs involving similar levels of skill, effort, decision-making, and knowledge (work of equal value);
- Comparing the pay of women and men doing like work, work rated as equivalent, and work of equal value;
- Identifying gaps and the reasons that the gaps exist; and
- Eliminating those pay gaps that cannot satisfactorily be explained on grounds other than sex.

The issue of equal pay should be a priority for unions and reps when negotiating local and national pay agreements. You should seek the employer's commitment to undertaking regular equal pay reviews as part of these negotiations, adequately prioritise issues affecting pay inequality, and ensure any pay deal is analysed to identify and remedy any unfair differential impact on male workers or female workers.

Close the Gap has developed a toolkit for trade union reps on equal pay reviews, which can be found on our website: www.closesthegap.org.uk

Measuring the gender pay gap

There are two measures of the pay gap, **mean** and **median**.

The **mean average** is calculated by adding all individual employees' hourly rate of pay and dividing by the total number of employees. The mean is a useful measure as it includes the highest and lowest rates of pay, and because those on the highest rates of pay tend to be men, and those on the lowest are more likely to be women, it captures a more complete picture of the pay gap.

The **median average** is calculated by listing all employees' hourly rate of pay, and finding the midpoint. The median is not skewed by very low hourly rates of pay or very high hourly rates of pay, and gives a more accurate representation of the 'typical' difference. However, because of this, it can obscure gendered pay differences.

There is no consensus on which is the best measure, and instead it can be helpful to publish both, giving preference to the mean, which will give a deeper understanding of any pay gaps.

The **combined, or overall, pay gap figure** (which includes full and part-time employees) provides the most complete picture in relation to gendered pay inequalities. It can also be helpful to calculate the full-time and part-time pay gaps. The **full-time pay gap** is calculated by comparing women's full-time average hourly pay with men's full-time average hourly pay. The **part-time pay gap** is calculated when comparing women's part-time average hourly pay with men's full-time, and is usually much higher than the combined figure and is illustrative of the concentration of part-time work in lower grade jobs.

It is important that employers do not use the full-time pay gap figure as the headline figure for their organisation, as it omits the experience of part-time workers.

It can also be helpful to publish pay gaps by grade and or/department.

Calculating the pay gap

The single pay gap figure should include all employees, including those in senior grades, even if pay in those grades is determined in a different way from other employees. It should also include all full-time and part-time employees, and employees on permanent and fixed term contracts.

Calculating hourly rates of pay

Determine the basic (excluding overtime) **hourly rate of pay** for each employee. If the basic pay data is expressed as an annual salary, then employers should divide this until they have an hourly rate. This will enable the pay of part-time employees to be compared with full-time employees.

Calculating the mean pay gap

Example:

Table 1

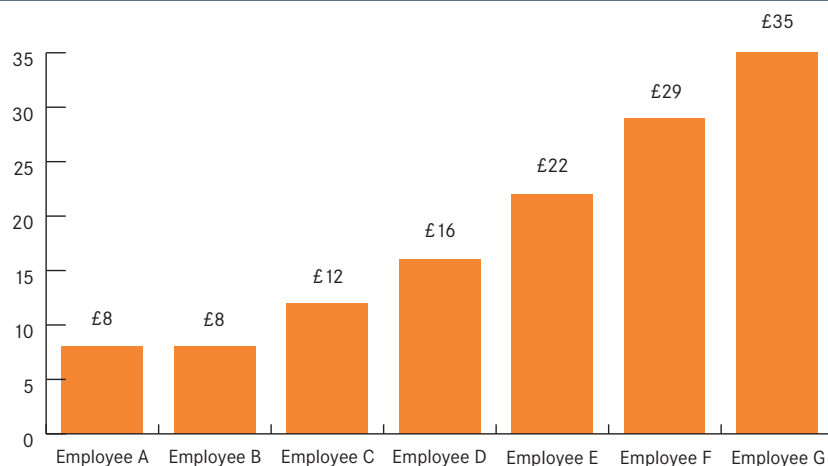


Table 1 shows the hourly pay for employees A to G. To calculate the mean hourly pay rate, use the following formula.

Sum of all employees' rate of pay ÷ Total number of employees =

$£8 + £8 + £12 + £16 + £22 + £29 + £35 \div 7 = £18.57$

The mean hourly pay rate is therefore £18.57

Use this calculation to determine the mean hourly pay rate for female employees, and the mean hourly pay rate for male employees.

To calculate the mean pay gap, use the following formula.

$$\frac{A - B}{A} \times 100$$

A = mean hourly rate of pay of male employees
B = mean hourly rate of pay of female employees

The median pay gap

Example:

Table 2



Table 2 shows the hourly rate of pay for employees A to G. The red circle marks the midpoint, and the median hourly rate of pay is therefore £16.00.

To calculate the median pay gap, use the following formula.

$$\frac{C - D}{C} \times 100$$

C = median hourly rate of pay of male employees
D = median hourly rate of pay of female employees

CHECKLIST FOR THE GENDER PAY GAP INFORMATION

What you should ensure the employer has done

- The employer has published a gender pay gap figure using accurate calculations.
- The employer has published the overall figure, and not just the full-time figure.
- The figure includes all staff, including senior management.
- The figure is available is easily accessible on the employer's website.



What employers have to do: equal pay statement

Employers with 20 or more employees are required to publish an equal pay statement, including information on occupational segregation. From 30 April 2017, employers are required to publish an equal pay statement on race and disability, as well as gender. The Coalition for Racial Equality and Rights has produced guidance on race and disability and equal pay statements⁶ which can be found on their website. Like the report on mainstreaming, the equal pay statement should be easily available on an employer's website for anyone to look at.

The equal pay statement should set out how the employer intends to deliver equal pay for all staff and the measurable steps they will take to achieve this. When writing an equal pay statement, employers should consider each of the causes of the gender pay gap, as described on pages 24 to 26.

Developing an equal pay policy

Within the equal pay statement, public sector employers are required to outline their policy on equal pay between men and women. An equal pay policy should:

- commit the organisation to carry out an equal pay review, and to monitor pay regularly in partnership with trade union(s)/employee representatives;
- set objectives specific to the organisation;
- identify the action to be taken;
- implement that action in a planned programme, in partnership with the union;
- assign responsibility and accountability for the policy to a senior manager; and,
- commit the organisation to set aside necessary resources to achieve equal pay.

The development of an equal pay policy should be informed by the gathering and analysis of gender-disaggregated employee data. Analysis of the data will provide an understanding of the causes of the gender pay gap within an organisation, and the actions that can be taken to achieve equal pay for staff.

⁶ <http://www.crer.org.uk/images/PDFs/PSEDequalpay2017x>

The analysis of employee pay data can help identify any potential equal pay issues, and should be used to inform the development of the equal pay policy.

Occupational segregation

As set out on page 24, occupational segregation is one of the major causes of the gender pay gap. **Horizontal segregation** refers to the clustering of men and women into different **types** of work. In a public sector employer, this may mean that there are more women working in care and cleaning jobs, and more men working as maintenance workers. **Vertical segregation** refers to the clustering of men and women into different levels of work. In a public sector employer, this means more men working as senior managers, and more women working in the lowest grades.

Employers need to provide data on occupational segregation in a way that captures both horizontal and vertical segregation within the organisation. The may look something like the following matrix.

Grade	HR		Operations		Finance		Total	
	Men	Women	Men	Women	Men	Women	Men	Women
7								
6								
5								
4								
3								
2								
1								
Total								

You should ensure employers provide a narrative to contextualise the data, and to demonstrate an understanding of equal pay and occupational segregation issues within their organisation.

An equal pay statement should also list comprehensive details of the employer's policies and practices to promote equal pay between men and women. It is helpful if this includes details of related policies that support gender equality, for example, a flexible working policy and a training and development policy.

Many public sector employers are likely to have been taking steps to reduce barriers to women's progression to senior roles, but these efforts will take time to be reflected in the distribution of women and men in organisations. It is useful for the employer to summarise these steps, and to report on progress in subsequent equal pay statements and mainstreaming reports.

WHAT YOU NEED TO KNOW: Actions to address occupational segregation

In developing actions to address gendered occupational segregation, employers should ensure that actions prioritise outcomes for staff, rather than focus on processes such as the development of complex monitoring procedures and policy development. You can find examples of trade union activity on occupational segregation in our report *Shifting the Balance*.⁷

You should work with employers to consider what occupational segregation looks like in the organisation, in order to develop meaningful actions to address this. However, consideration could be given to a range of factors which can have a different impact on men and women, and therefore entrench occupational segregation.

The places and ways in which jobs are advertised

Evidence shows that women are less likely to apply for jobs for which they do not have all the essential and desirable criteria. If jobs are not formally advertised then women, who tend to have less access to informal workplace networks, are less likely to be aware of development and promotion opportunities. Employers and trade union reps should examine recruitment practices to see if simple changes, like removing unnecessary criteria, and ensuring all jobs are advertised, will enable a more diverse range of people to apply for vacancies.

Recruitment processes

It is good practice to have gender balance on recruitment panels, wherever possible. Robust equalities training should be given to all recruitment panel participants to ensure that questions are not asked of female candidates that are not asked of male candidates.

Training and development opportunities

Part-time, low-paid women are the group of workers least likely to be offered training and development opportunities in the workplace, but they are also the most likely to be over-qualified for their job. It is also

⁷ <https://www.closesthegap.org.uk/content/resources/ShiftingBalance2017-Report.pdf>

not uncommon for training to be scheduled to take place at a time when part-time staff are not working, or for it to be held at an off-site location which may be difficult for some staff, such as those with caring responsibilities, to attend. You should work with employers to ensure that all workers have an equal opportunity to access training and development and are able to develop their skills.

Workplace culture

Employers should be aware of the ways in which the working environment impacts on men and women differently. For example, networking events that require participation in an activity stereotypically seen as male, such as golf or football, may exclude female workers, and networking events which are held outwith working hours may be inaccessible to those with caring responsibilities.

Presenteeism

There is overwhelming evidence that longer hours can be harmful to both workers and productivity. Many women perceive that promoted posts will require a significant increase in hours spent at the office, which can be challenging for workers with caring responsibilities, and acts as a disincentive. You should negotiate with employers on developing flexible working practices which can support workers to work smarter rather than longer.

Mentoring and networking

Many women struggle to access informal work networks, particularly those that are based on after-work socialising. Creating, or supporting female workers to participate in, women-only networks can help to build cross-organisational relationships, emphasise that the organisation values difference, and can help drive cultural change. Trade union reps can encourage employers to do so.

CHECKLIST FOR THE EQUAL PAY STATEMENT

What you should ensure the employer has done

- The employer has published an equal pay statement.
- The equal pay statement is available on the employer's website.
- The employer has committed to carrying out an equal pay review, or has included information on a recently completed or in progress equal pay review, in partnership with the trade union, to regularly monitor pay.
- The employer has set objectives on equal pay, and created actions to achieve these.
- Actions to address unequal pay contained in the employer's previous equal pay statement or action plan have been implemented.
- The equal pay statement names which senior manager is responsible for this work. This should not be the CEO.
- The employer has published information on horizontal and vertical occupational segregation for gender, race and disability.



What employers have to do: publish a board diversity succession plan

The specific duties require public sector employers to use information on the diversity of their board, broken down by all relevant protected characteristics, to support succession planning. Employers are also required to publish their board's gender breakdown. A board diversity succession plan should include the steps the employer will take to increase board diversity.

There is a clear business case for diverse boards, in that there is a strong link between diversity in senior positions and financial performance and governance. Having diverse teams in place brings a range of skills and experience to an organisation. In the public sector, this means enabling the design and delivery of services which are more likely to meet the needs of a broader range of service users.

Occupational segregation and a lack of flexible working opportunities at senior levels are significant factors contributing to women's under-representation at senior management and board level. It is good practice for employers to take action to address vertical occupational segregation, as this will help improve the gender balance of their talent pipeline. It is also important that employers consider the whole of the duty when developing a succession plan. This means examining the diversity issues identified in their board information alongside the issues identified in their employee information, and considering how their equality outcomes, equal pay action plan, and mainstreaming work will shape and contribute to the aims, and the delivery, of the succession plan.

WHAT YOU NEED TO KNOW: Women and boards

Women experience a range of gendered barriers to entering and progressing to senior positions, including those at board level. This includes assumptions about a gendered skills gap, and a cultural perception that board memberships are for men. The timing of meetings can also adversely affect women's ability to participate because of their disproportionate responsibility for unpaid care work. The ways in which vacancies are advertised can also be a gendered barrier to women applying.

CHECKLIST FOR BOARD DIVERSITY SUCCESSION PLAN

What you should ensure the employer has done

- The employer advertises vacant board positions in a range of locations, including in ways which are targeted specifically at women. This is more likely to attract a greater diversity of clients.
- The employer has ensured women are given capacity building opportunities and encouragement to apply for board positions.



What employers have to do: equality impact assessment

Equality impact assessment is a way of examining policies, proposals and plans to detect and assess their differential impact on men and women so that any potential inequalities can be addressed implementation.

Under the specific duties, public sector employers are required to assess the impact of applying a proposed, new, revised or existing policy or practice. 'Policies and practices' covers all the proposed and current activities that a public body carries out, including its employment and service delivery functions.

In assessing the impact of policies and practice, public sector employers must:

- consider the relevant evidence relating to those who share a protected characteristic, and those who do not, such as women and men;
- take account of the results of the policy or practice;
- publish the results of the assessment, within a reasonable time, if they decide to implement a policy or practice; and
- review and, where necessary, revise existing policies and practices.

In relation to meeting the general duty, employers must:

- ensure that the policy or practice does not discriminate unlawfully;
- consider how the policy or practice might better advance equality of opportunity; and
- consider whether the policy or practice will affect good relations between different protected characteristics, such as women and men.

Using evidence to develop an impact assessment

Public sector employers must consider relevant evidence, including evidence from equality organisations, and other groups that represent people who share a protected characteristic, such as trade unions. Where a negative impact or missed opportunity to promote equality is identified through an impact assessment, employers must consider taking action to address the issues, for example,

removing negative impact, where possible, and exploiting any potential for positive impact.

Equality impact assessment provides a mechanism to build equality considerations into policy development and decision making, providing a clear and structured way to consider evidence about the needs of equality groups.

A CHECKLIST FOR IMPACT ASSESSMENT

What you should ensure the employer has done

- The employer has carried out equality impact assessments for all major policies.
- Each impact assessment has been carried out at the beginning of the process where a policy is being proposed or revised, and considers the design and delivery of the policy.

SIX-STEP PROCESS	
What the employer should do	What trade union reps should do
Step 1: Identify the main aims of the policy	
<ul style="list-style-type: none"> Identify what the policy will do and what effect it will have on staff, in particular, establish whether the policy affects both women and men or just women or men. If it affects only women or men, it should be decided if that is appropriate and consistent with the aims of the policy. 	<ul style="list-style-type: none"> Confirm what the main aim of the policy is and check that the employer has identified the effects it will have on women and men. Once any effects on groups of staff are identified, determine whether this is appropriate and consistent with the aims of the policy.
Step 2: Collate existing information	
<ul style="list-style-type: none"> Establish what is already known about women's and men's experiences in relation to the policy. Review existing policy information and research including the experiences of staff. 	<ul style="list-style-type: none"> Ensure that the employer has collected, and is using, accurate information to inform decisions. It might be useful to find out the experiences of members.
Step 3: Filling knowledge gaps	
<ul style="list-style-type: none"> If necessary, seek further information from gender and employment specialist organisations such as Close the Gap and Equate Scotland. 	<ul style="list-style-type: none"> Again, check that the information the employer is using is accurate. It may be useful to survey members for additional information.

SIX-STEP PROCESS

What the employer should do

What trade union reps should do

Step 4: Applying the knowledge

- Determine what this information tells you; what will the impacts of the new policy be and will it make things better or worse for women and men?
- How does this compare with existing policies?

- Has the employer identified the real impacts of the new policy and who it will affect?
- Have any groups of workers been omitted?

Step 5: Making changes to the policy

- Decide whether any changes need to be made. These should be both proportionate to the aims and impact of the policy and should also promote equality of opportunity.
- If changes are being made, it should be clear how they will be made and by whom.

- Check that the employer has identified all the changes that need to be made in light of the aims of the duty.
- Ensure that the employer has stated who will be making the changes and how this will happen.

Step 6: Monitor and sign-off

- Establish a monitoring framework to assess the policy to ensure its impact is not discriminatory. Agree with the trade unions what information will be required to measure future progress.
- The impact assessment should be jointly signed off by the employer and the trade union(s).
- Publish findings in an accessible format.

- Agree with the employer the process by which the impact of the policy will be measured.
- Ensure that this is done in partnership with the trade union.
- Jointly sign off the impact assessment.



Glossary

Diversity

The recognition and valuing of difference, in its broadest sense. It is about creating a culture and practices that recognise, respect, value and harness difference for the benefit of service users, members of the public and workers.

Due regard

This concept is based on 'proportionality' and 'relevance'. It is the weight given to gender equality, which should be proportionate to its relevance to a particular function. The greater the relevance of the function to the duty, then the greater the regard that should be paid to it.

Equality

Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration - recognising the diversity of different groups of women and men.

Equal value

As defined by the Equality Act 2010, an individual can claim equal pay with a comparator of the opposite sex where work is different, but which would be assessed as equal in value in terms of demands such as effort, skill and decision-making.

Equal pay review

A process which looks at pay arrangements within an organisation to find, and address, gender discrimination. It involves comparing the pay of groups of workers who are doing equal work in the organisation and then investigating any gaps between men's and women's pay.

Gender

Refers to roles, attitudes, values and behaviours that men and women are encouraged to adopt by society. These characteristics can vary depending on the society around us. For example, historically, gender role stereotyping would suggest that women should look after children at home while men go to work in the formal labour market.

Gender mainstreaming

Making sure that gender issues are built into the processes and outputs of a public body. It is an approach to integrating gender considerations into all facets of work. It involves ensuring that a gender perspective and the goal of gender equality is central to all activities, whether policy development, research, advocacy, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects. It integrates a gendered awareness into each aspect of work, rather than considering gender separately.

Intersectional

An intersectional approach considers the combined impacts of two or more characteristics. For example, an individual with a hearing impairment may require a BSL interpreter to participate in a training course. A woman who works part-time may require a course that takes place across two mornings, rather than one full day. A woman with a hearing impairment who requires BSL interpretation and works mornings only may require training and support that has a higher unit cost, which, on the basis of cost may be inappropriately rejected by a manager.

Occupational segregation

Refers to the clustering of men and women into different types of work (horizontal segregation) and into different levels of work (vertical segregation).

Outcome

The result that the employer aims to achieve. For example, the number of female joinery apprentices is increased by 12 percentage points and occupational segregation is reduced.

Public function

A 'public function' is one defined in the Human Rights Act 1998, and private and third sector organisations carrying out such a function must meet the requirements of the general duty in respect of that function.

Policy

An umbrella term for everything we do: legislation, strategies, services and functions.

Succession planning

The process whereby an organisation makes plans to ensure its workforce and leadership talent pool reflect the attributes and skills necessary to fulfil future board recruitment needs. For public sector employers, succession planning must include work to widen diversity in their workforce and leadership talent pool to ensure future board diversity.

References

Equality and Human Rights Commission (2014) *Essential Guide to the Public Sector Equality Duty: A Guide for Public Authorities (Scotland)*, Glasgow
Civil Service (2012) *Best practice guidance on monitoring equality and diversity in employment*, London

Further information

www.closesthegap.org.uk
www.equalityhumanrights.com



Close the Gap works in Scotland on women's participation in the labour market. We work with employers, trade unions and policymakers to enable and encourage action to address the causes of women's inequality at work.

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