



Monitoring for the purposes of Section 75 of the Northern Ireland Act 1998

Addendum

(November 2022)

This is an addendum to the Equality Commission's publication, [Section 75: Monitoring Guidance for Use by Public Authorities](#) (2007, pdf), that provides some updated information in respect of:

- [guidance](#) that the Equality Commission issued on employment equality monitoring for employment purposes in 2022,
- [data protection laws](#),
- [website accessibility](#).

1. Guidance on employment equality monitoring

Equality Commission guidance **for employers** on how to conduct monitoring for the purpose of promoting equality of opportunity in employment outlines what employers should consider when planning to monitor. The guidance provides practical suggestions, including **sample questions** that would be appropriate to ask job applicants and employees when using standard questionnaires to collect quantitative monitoring data.

The sample monitoring questionnaire reflects the corresponding questions and categories that were used in the 2021 Northern Ireland Census. It aims to help employers make better use of the Census as a comparative data source to assist with data analysis and to enable employers to draw reliable conclusions about the provision of equality of opportunity in their workplaces.

The relevance of the guidance and its associated sample questionnaire to section 75 is that public authorities **may** also use it to assist them to develop monitoring questions for section 75-related **employment purposes**. The sample questionnaire, ([see Appendix 1](#)) is particularly useful for collecting quantitative monitoring data on

an [anonymous or pseudonymous](#) basis **where using a questionnaire of that type is appropriate**. Questionnaires are likely to be most useful and convenient for employment monitoring purposes, but may also be suitable for monitoring some non-employment policies. It will be for public authorities to consider and determine for themselves the most appropriate method of monitoring, bearing in mind the nature of the function or policy under consideration.

The [Section 75 Monitoring Guide](#) continues to provide the most relevant guidance in relation to monitoring non-employment policies for the purposes of section 75. For example, **Appendix A: Definitions and Classifications** (pages 63-86) of that guidance outlines more detailed guidance on monitoring disability and political opinion, which may have more utility in non-employment scenarios.

2. Data Protection

The data protection laws have been amended and updated since 2007, not least due to the EU General Data Protection Regulation of 2016. To reflect that development, the information contained in [Appendix 2](#) of this addendum replaces the text that is in the main [Section 75 Monitoring Guide](#) at **sections 3.36 to 3.46** (pages 21-23) and at **Appendix B: Data Protection** (pages 87-89).

3. Website Accessibility

Where a public authority is collecting data using a monitoring questionnaire, it should ensure that it is available in **alternative formats** for people with accessibility requirements. Public authorities should also inform individuals as to the availability of these alternatives.

If a public authority is collecting monitoring information, or indeed, is recruiting staff or providing any of its services, through websites or mobile applications, it is obliged to comply with the *Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018*. These Regulations require, amongst other things, that the websites and mobile applications used by public bodies satisfy the WCAG 2.1AA international accessibility standard.

A failure to meet the standard is a breach of the Disability Discrimination Act's reasonable adjustment duty. Some legal defences are available. The [Government Digital Service](#) is the official source of guidance on how to meet the standard.

This is an extract from the Equality Commission's Guide to Employment Equality Monitoring (2022) and outlines that guide's sample monitoring questionnaire.

Sample monitoring questionnaire

This sample questionnaire consists of questions about the protected grounds that [employers] must, or may decide voluntarily to, monitor....

When monitoring for the purpose of promoting equality of opportunity in employment it is **recommended** that on the monitoring questionnaire you should include a space for a unique identifier, like a staff number or national insurance number, that would enable the job applicant or employee to be identified indirectly (or, **pseudonymously**) by cross-referencing to payroll or other databases or information.

Introduction to the questionnaire¹

Reference number: _____

Why we are asking you to complete this questionnaire-

In this questionnaire, we will ask you to provide us with some personal information about yourself. We are doing this for two reasons-

1. The information that you provide will help us to promote equal opportunities in employment, and
2. We **must** monitor the community background and sex of our job applicants and employees in order to comply with the Fair Employment and Treatment (NI) Order 1998 and its associated regulations.

We will process the information you give us lawfully in line with our duties and your rights under equality law and data protection law.

Your answers will not be used to make any unlawful decisions affecting you, whether in a recruitment exercise or during any employment with us.

We will treat your answers in the strictest confidence. To protect your privacy, you should not write your name on this questionnaire. The form will carry a unique reference number, and only our monitoring officer will be able to match this to your name.

You have certain rights in respect of the personal data we handle as part of our monitoring. These include the right to know what personal information we are processing about you, and the right to ask us to correct any mistakes in that data.

You can find out more about how we will handle your information by contacting [enter details of your data protection officer], or by consulting our privacy notice [include a link if the questionnaire is being distributed electronically or include a copy of it with hardcopy monitoring questionnaires].

You do not have to answer the questions in this questionnaire. There is no penalty if you choose not to, but for the reasons given above we encourage you to answer.

¹ To adapt this introduction for use when monitoring in non-employment contexts, appropriate amendments would be needed; e.g. removing the employment-related references and by referring to section 75 of the Northern Ireland Act 1998 as the relevant legal basis.

Fair Employment questions²

Community background and sex

All [registered employers and specified public authorities](#) must monitor the **community background** and **sex** of their job applicants and employees.

Based on the [Fair Employment \(Monitoring\) Regulations \(NI\) 1999](#) and on guidance in our associated [Step-by-Step Guide to Monitoring](#), we recommend that the questions are asked as outlined below.

Community background

Regardless of whether you practice a religion, most of us in Northern Ireland are seen as being members of either the Protestant or Roman Catholic communities. We are, therefore, asking you to indicate your community background by ticking the appropriate box below.

Please indicate the community to which you belong by ticking the appropriate box below.

I am a member of the Protestant community

I am a member of the Roman Catholic community

I am not a member of either the Protestant or the Roman Catholic communities

Sex

Please indicate your sex by ticking the appropriate box below.

Male

Female

If you do not complete this questionnaire or if you answer that you are not a member of either community, we are permitted to use a residuary method, which means that we can make a determination of your community background on the basis of any written personal information about you that we hold on file or application form.

Note: It is an offence under the Fair Employment legislation for a person to knowingly give false information in connection with the preparation of the monitoring return.

² *Community background* is not a section 75 ground. The sample question is principally designed for use in employment contexts for the purposes of the Fair Employment & Treatment (NI) Order 1998. The extent to which it may be used as a proxy for monitoring wider aspects of religious belief or political opinion (which are section 75 grounds) in non-employment contexts is better explored in the main Section 75 Monitoring Guide at **Appendix A** (see pages 80-84).

Additional monitoring questions – other categories

Gender Reassignment & Gender Identity questions

As noted above, the Fair Employment legislation obliges many employers to monitor the **sex** of their job applicants and employees.³

Employers may also decide to monitor other, wider aspects of gender. This is commonly done under the headings of **gender reassignment** and/or **gender identity**.

- **Gender reassignment** is a protected equality ground. The Sex Discrimination (NI) Order 1976 prohibits discrimination in employment against people who intend to undergo, are undergoing or have undergone gender reassignment.⁴ The term “gender reassignment” has a specific statutory definition under the Sex Discrimination (NI) Order and our suggested question is based on this. A question about gender reassignment was not included in the 2021 Northern Ireland census.
- **Gender identity:** The [United Nations](#) describes gender identity as “*a deeply felt and experienced sense of one’s own gender*”...it is...“*distinct from sexual orientation and sex characteristics.*” Although it encompasses the male and female genders, it is often associated too with non-statutory terms such as transgender, non-binary and gender fluid. Unlike sex and gender reassignment, gender identity is not a protected ground under equality law in Northern Ireland and, as such, there is no statutory definition of the term. Our suggested question is based on the corresponding questions that were included in the 2021 English and 2022 Scottish censuses. A question about gender identity was not included in the 2021 Northern Ireland census.

It will be for employers to decide which of the categories, or both, they will choose to monitor. In terms of framing appropriate questions, we suggest-

³ The Sex Discrimination (NI) Order 1976 prohibits discrimination against men and women on the protected ground of sex in relation to a wide range activities, such as (a) employment, (b) the provision of goods, facilities and services to the public, (c) education and (d) the disposal and management of premises (such as residential property). The section 75 ground that corresponds most closely to the protected ground of “sex” is “*men and women generally*”.

⁴ The Sex Discrimination (NI) Order also prohibits discrimination on the ground of gender reassignment in relation to (a) the provision of goods, facilities and services to the public, and (b) the disposal and management of premises (such as residential property).

Gender reassignment

Gender reassignment is defined in law as being a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex and includes any part of such a process.

Have you gone, or do you intend to go, through any part of such a process? This could include changing your name, wearing different clothes, taking hormones or having any gender reassignment surgery.

Yes

No

I prefer not to say

Gender identity

What best describes your gender identity?

Male

Female

Non-binary

I prefer to self-describe as _____

I prefer not to say

Is this gender identity the same as your sex at birth?

Yes

No

I prefer not to say

Racial and ethnic group questions

Racial group is a protected category under the Race Relations (NI) Order 1997. That law prohibits discrimination in employment on the grounds of race, colour, nationality and ethnic or national origins.⁵

Racial group is also a category to which the [section 75](#) duty of public authorities applies.⁶

A person's racial or ethnic group may depend on several factors including nationality, colour, descent, shared religion, shared language, shared culture and traditions. While there are merits in allowing people to answer by way of a self-identifying category, there is also a need to ensure that the information collected may be analysed easily. It may, for example, be more difficult for smaller employers to do this the longer the list of identities grows.

The following questions are based on the corresponding questions asked in the 2021 Northern Ireland Census. They are questions about three particular identities (country of birth; national identity; ethnic group) that are commonly deemed to reflect elements of racial or ethnic group.

In some cases, religious belief can also be an indicator of a person's racial or ethnic group and we have suggested an appropriate question for that in a [separate section](#) below.

In some cases too, a person's use of a main or first language can also be an indicator of their racial or ethnic group. We have not suggested an appropriate question in relation to language, but you may decide to monitor language if it would assist you to develop or review your employment policies. The corresponding questions about language that were included in the 2021 Northern Ireland Census were: (a) What is your main language? and (b) How well can you speak English? Employers may consider that qualitative information may also assist in this regard.

⁵ The Race Relations (NI) Order 1997 also prohibits discrimination on the protected ground of *race* in relation to a wide range of other activities, such as (a) the provision of goods, facilities and services to the public, (b) education, (c) the exercise of public functions and (d) the disposal and management of premises (such as residential property).

⁶ The legal definition of "racial group" for the purposes of the Race Relations (NI) Order 1997 and section 75 is the same.

Racial or ethnic group

A person's racial or ethnic group may depend on several factors including nationality, colour, descent, shared religion, shared language, shared culture and traditions. To reflect this complexity, we ask three different questions. You can answer as many as you like – or none at all – and you can use the space after the “any ethnic group not mentioned above” option to describe yourself in your own words if you prefer.

Country of birth

My country of birth is: _____

National identity

(e.g. British, Irish, Northern Irish, English, Polish, Filipino, Canadian, etc.)

My national identity is: _____

Ethnic group

Please indicate which of the following applies to you

White Chinese

Irish Traveller Roma

Indian Filipino

Black African Black Other

Mixed ethnic group (please state which): _____

Any ethnic group not mentioned above (please state which)

I prefer not to answer any of the above questions

Religious belief questions

Religious belief is a protected category under the Fair Employment & Treatment (NI) Order 1998. That law prohibits discrimination in employment on the ground of religious or similar philosophical belief, although the law does not require employers to monitor that ground – “community background” being the mandatory category instead.⁷

⁷ The Fair Employment & Treatment (NI) Order 1998 also prohibits discrimination on the protected ground of *religious belief* (although not philosophical belief) in relation to a wide range of other

Religious belief is also a category to which the [section 75](#) duty of public authorities applies.⁸

The mandatory question on [community background](#) that many employers are obliged to ask under the Fair Employment law can be a useful indicator of religious belief for many in the Northern Ireland population, however, some employers may also decide to monitor religious belief in more detail.

Employers who might do this (most likely public authorities for [section 75](#) purposes) will need to decide for themselves why they may need such levels of detail for employment purposes and of the best way to collect it.

The following question is based on the corresponding one that was asked in the 2021 Northern Ireland Census, which means that it can be used by employers to compare the profile of their workforces against that of the wider population.

Employers may also wish to list additional response options, such as non-Christian religions, such as Islam and Judaism.⁹

Religious beliefs

Please indicate your religious beliefs.

Roman Catholic Presbyterian

Church of Ireland Methodist

Other (please specify which): _____

None

I prefer not to say

Age

Age is a protected category under the Employment Equality (Age) Regulations (NI) 2006. That law prohibits discrimination in employment on that ground.¹⁰

activities, such as (a) the provision of goods, facilities and services to the public, (b) further and higher education, and (d) the disposal and management of premises (such as residential property).

⁸ The legal definition of “religious belief” for the purposes of the Fair Employment & Treatment (NI) Order 1998 and section 75 is the same.

⁹ For an example of an appropriate question refer to the main Section 75 Monitoring Guide at **Appendix A** (see page 82).

¹⁰ At present there is no corresponding equality law in Northern Ireland that prohibits age discrimination outside of the fields of employment or the provision of further and higher education.

Age is also a category to which the [section 75](#) duty of public authorities applies.

Date of birth provides the most accurate record of age and maintains that accuracy as time passes.

Age

Please state your date of birth: _____

I prefer not to say

Disability questions

Disability is a protected category under the Disability Discrimination Act 1995 (DDA). That law prohibits disability discrimination in employment.¹¹

Disability is also a category to which the [section 75](#) duty of public authorities applies.¹²

The DDA provides a [legal definition of disability](#) for these purposes and it is common for employers to incorporate that into their monitoring questionnaires.

The suggested question outlined here uses identity and person-first language instead. It is preferred by most disabled people and is based on the corresponding questions that were asked in the 2021 Northern Ireland Census.

Some disabled people may not consider that they have disabilities. For example, older people whose daily activities become permanently limited by the loss of function that comes with age may not consider this as an “impairment”, or that it amounts to their having a disability. We, therefore, suggest that employers use prompts to help people reflect on the nature and impact of their condition.

Some employers may decide to seek further details about the nature of their job applicants’ or employees’ disabilities: if so, we have suggested additional questions that may be asked for that purpose. Large employers may decide to add in more

¹¹ The Disability Discrimination Act 1995 also prohibits disability discrimination in relation to a wide range of other activities, such as (a) the provision of goods, facilities and services to the public, (b) the exercise of public functions and (e) the disposal and management of premises (such as residential property). Disability discrimination in the provision of education is prohibited by a separate law; the Special Educational Needs & Disability (NI) Order 2005.

¹² The legal definition of “disabled person” for the purposes of the disability discrimination laws and section 75 is the same

categories, for example for visual and aural impairment, if this can help them understand different support requirements.¹³

Employers will be mindful of their duty to make reasonable adjustments for disabled people, but, as noted [in [Appendix 2](#)], questions about that are best asked on a standard application form rather than on a monitoring questionnaire.

¹³ A wider set of disability-related questions, and methods for collecting them, that may be more appropriate for use in non-employment contexts is available in the main Section 75 Monitoring Guide at **Appendix A** (see pages 70-76).

Disability

Think about how much your current daily activities are affected. Remember to:

- include any health condition and problems related to aging, or
- consider any treatment, medication or devices, such as a hearing aid, that you may receive or use

Choose “Yes, limited a lot” if you rely on support from others, such as friends or home-help services, to carry out your usual day-to-day activities.

Day-to-day activities include everyday tasks, for example, eating, washing, walking and going shopping. Include problems related to old age.

Are your day-to-day activities limited because of a health problem or disability which has lasted or is expected to last at least 12 months?

- No
- Yes, limited a little
- Yes, limited a lot
- I prefer not to say

If you answered “yes”, please indicate the nature of your impairment by ticking the appropriate box or boxes below.

- Physical impairment, such as difficulty using your arms, or mobility issues requiring you to use a wheelchair or crutches
- Sensory impairment, such as being blind or having a serious visual impairment, or being deaf or having a serious hearing impairment
- Mental health condition, such as depression or schizophrenia
- Learning disability or difficulty, such as Down’s Syndrome or dyslexia, or cognitive impairment, such as Autistic spectrum disorder
- Long-standing or progressive illness or health condition, such as cancer, HIV infection, diabetes, epilepsy or chronic heart disease
- Other (please specify): _____
- I prefer not to say

Sexual orientation question

Sexual orientation is a protected category under the Employment Equality (Sexual Orientation) Regulations (NI) 2003. That law prohibits discrimination in employment on that ground.¹⁴

Sexual orientation is also a category to which the [section 75](#) duty of public authorities applies.

The following question is based on the corresponding one that was asked in the 2021 Northern Ireland Census.

Sexual orientation

Please indicate your sexual orientation by ticking the appropriate box below.

- I am straight (heterosexual)
- I am gay or lesbian
- I am bisexual
- I prefer to self-describe as: _____
- I prefer not to say

Marital or civil partnership status question

Married or civil partnership status is a protected category under the Sex Discrimination (NI) Order 1976. That law prohibits discrimination in employment on that ground.¹⁵

Marital status is also a category to which the [section 75](#) duty of public authorities applies.

The following question is based on the corresponding one that was asked in the 2021 Northern Ireland Census.

¹⁴ In addition, a separate law, the Equality Act (Sexual Orientation) Regulations (NI) 2006, prohibits discrimination on the protected ground of *sexual orientation* in relation to a wide range of other activities, such as (a) the provision of goods, facilities and services to the public, (b) education, (c) the exercise of public functions and (d) the disposal and management of premises (such as residential property).

¹⁵ Married or civil partnership status is a protected ground under the Sex Discrimination (NI) Order 1976 only in the field of employment.

Marital or civil partnership status

Please indicate your marital or civil partnership status

Single (never married or in a civil partnership):

Married or in a civil partnership:

Separated
(but still married or in a civil partnership):

Divorced, or formerly in a civil partnership
that is now legally dissolved:

Widowed, or surviving partner from
a registered civil partnership:

I prefer not to say:

Dependants and caring responsibilities

Having dependents or not is a category to which the [section 75](#) duty of public authorities applies.

It is open to employers to frame their own questions in relation to whether job applicants or employees have dependents and caring responsibilities, ensuring that the information being collected has a purpose. For example, it may be appropriate to ask a simple question as to whether a person has dependents or not; e.g. *“Do you have dependants: yes or no?”*, or to seek additional information about the particular kinds of people who are being cared for. By way of comparison, the 2021 Northern Ireland Census focused on the time that people spent in their caring roles (e.g. 1 to 19 hours per week, 20 to 34 hours, etc.)

The following question is in two parts.

Dependants and caring responsibilities

Do you have dependants or caring responsibilities for family members or other persons?

Yes No I prefer not to say

If you answered “yes”, are your dependants or the people you look after (you may tick more than one box)

- a child or children

- disabled person or persons

- an elderly person or persons

- other

If “other”, please describe who you care for: _____

I prefer not to say

Political opinion

Political opinion is a protected category under the Fair Employment & Treatment (NI) Order 1998. That law prohibits discrimination in employment on that ground, although it does not require employers to monitor it – “community background” being the mandatory category instead.¹⁶

Political opinion is also a category to which the [section 75](#) duty of public authorities applies and, for that reason, monitoring people on this ground is more likely to be relevant to public authorities.¹⁷

Our separate guidance on section 75 monitoring: [Monitoring Guidance for Use by Public Authorities \[2007\]](#) is the best source of guidance.¹⁸

If an employer is considering monitoring political opinion for employment purposes, they should contact the Equality Commission to discuss.

¹⁶ The Fair Employment & Treatment (NI) Order 1998 also prohibits discrimination on the protected ground of *political opinion* in relation to a wide range of other activities, such as (a) the provision of goods, facilities and services to the public, (b) further and higher education, and (d) the disposal and management of premises (such as residential property).

¹⁷ The meaning of “political opinion” for the purposes of the Fair Employment & Treatment (NI) Order 1998 and section 75 is the same.

¹⁸ See, in particular, **Appendix A** of the main guide at pages 83-84.

Other non-statutory questions

Some employers may decide to monitor other characteristics that are not protected grounds under equality law, but which may further help them remove barriers to employment or career progression. These could include socio-economic background or educational attainment, for example. The data protection laws are also likely to apply to the processing of such personal data.¹⁹

¹⁹ Such categories are not section 75 grounds either.

THE DATA PROTECTION LAWS

Guidance on the data protection laws

The best source of guidance on the data protection laws is the [Information Commissioner's Office](#) (ICO). The ICO is the statutory regulator for those laws, with various powers including considering complaints about alleged breaches of individuals' information rights and issuing guidance to employers and others. We have included many references to the ICO's guidance and hyperlinks to its website in this Appendix.

The data that are collected for equality monitoring purposes is deemed to be [personal data](#) if the persons to whom it relates can be identified from it, either directly or indirectly. Where that is so the data protection laws will apply to your [processing](#) of it; a wide ranging term that includes, but is not limited to, collecting, storing, retrieving, using, analysing, disclosing and disposing of such data.

The main data protection laws are the-

- Data Protection Act 2018, and
- UK General Data Protection Regulation (UK GDPR)

The data protection principles apply to all of your activities and not only to those relating to equality monitoring for section 75 purposes; therefore, if you already have satisfactory arrangements in place – such as safeguards that satisfy the [security principle](#) and relevant [policies and compliance documentation](#) - then it may simply be a matter of applying them to your equality monitoring processes.

For example, you must be open with the people whose personal data you are processing. Usually, you will do this by issuing a [privacy notice](#). You may already have one that covers your general data processing activities.

Some organisations may also need to carry out a data protection impact assessment (DPIA), which is a process to help you identify and minimise data protection risks. The ICO has published [guidance](#) on when and how to carry out a DPIA and a [sample DPIA template](#).

Check with your **data protection officer**, if you have one, or ask the team who deals with **information management** in your organisation whether arrangements and documents like these already exist.

Planning to monitor – anonymous or pseudonymous data?

In sections 3.14 to 3.20 of the main [Section 75 Monitoring Guide](#) (pages 15-16), there is a discussion about the differences between **snapshot** and **linked or tracked data**; an important topic that public authorities should consider when planning to monitor any particular function or policy. That guidance remains valid.

There is, however, a change to the terminology used. The ICO notes a distinction between [anonymous and pseudonymous data](#). In summary, snapshot data is easier to collect **anonymously**, but that cannot strictly be done for linked or tracked data. Where the latter is collected using a personal identifier (e.g. not the person's name, but a unique reference number) it can be described as **pseudonymous** data.

Data that is genuinely anonymous is not [personal data](#) and the data protection laws do not apply to your processing of it. Conversely, the data protection laws do apply to the processing of pseudonymous data.

The difference between those two terms can be illustrated with a common workplace example. Many, if not most, people will have been asked at one time or another to complete an equality monitoring questionnaire for employment purposes.

- **Anonymous data** - if a completed monitoring questionnaire contains no information that allows the job applicant or employee to be identified directly by name or indirectly by using other indicators, such as a reference number, to link back through payroll or other databases or information, then the form is anonymous.
- **Pseudonymous data** - if a completed monitoring questionnaire contains information, such as a unique identifier like a staff number or national insurance number, that allows the job applicant or employee to be identified indirectly by cross-referencing to payroll or other databases or information, then the form is pseudonymous.

Planning to monitoring – other important considerations

Where data protection laws will apply (e.g. as where the data is collected pseudonymously), give careful consideration to this when planning equality monitoring in relation to that data.

[All of the data protection principles](#) apply throughout the whole process of monitoring personal data and different principles may have greater prominence at different stages. In relation to the planning stage the [data minimisation principle](#) and the [lawfulness element](#) of the [lawfulness, fairness and transparency principle](#) are particularly relevant.

(a) The Data minimisation principle

The data minimisation principle requires that the personal data you are processing is-

- **adequate** – sufficient to properly fulfil your stated purpose (i.e. in this case, promoting equality of opportunity in relation to your performance of your public functions);
- **relevant** – has a rational link to that purpose; and is
- **limited to what is necessary** – you do not hold more than you need for that purposes.

(b) The lawfulness principle

In relation to monitoring for equal opportunities purposes, there are two factors to consider-

(i) Lawful basis

You must have a [valid lawful basis](#) for processing personal data and be able to show that your reason for doing so is necessary for that purpose. Under data protection law, **six lawful bases** are available. In relation to equality monitoring, three of these are likely to be most relevant-

- the [legal obligation ground](#) is likely to be most relevant to the duties that are imposed on registered employers and specified public bodies by the [Fair Employment legislation](#) to monitor the **community background** and **sex** of their job applicants and employees,
- the legal obligation ground and the [public task ground](#) are likely to be most relevant to public authorities who are designated for the purposes of [section 75 of the Northern Ireland Act 1998](#) and who are monitoring in relation to the equality categories of that duty,
- the [legitimate interests ground](#) is likely to be most relevant to those organisations who cannot rely on the legal obligation or public task grounds.

You must determine your lawful basis before you begin processing personal data and you should document it.

Determining your lawful basis for processing personal data

[The ICO](#) is the best source of guidance about doing this; for example, they provide an [interactive tool](#) that may help you.

(ii) Special category data - other conditions

In addition, most of the data that are typically collected for equality monitoring purposes, would be considered to be [special category](#) data. As such, you need to show that **one or more additional conditions** are satisfied before you can process that data. You must determine which condition you are relying on before you begin monitoring these categories, and you should document it.

Under data protection law, a wide range of potential valid conditions are outlined. For further guidance on these matters, you should consult your **data protection officer**, if your organisation has one, or the [ICO](#).

Collecting data - developing an environment of trust

Some people may be reluctant to respond to questions that they feel are very **personal or sensitive**. Where you are collecting data through a monitoring questionnaire, its introduction should aim to establish your good faith in requesting this information and to encourage respondents to answer the questions.

Your introduction should reflect the data protection safeguards and principles outlined in the main [data protection policies and compliance documents](#) and privacy notice, that your organisation has adopted more generally.

This will help you to comply with the various data protection duties and principles, such as the [purpose limitation principle](#) and the [accountability principle](#) and with your [duty to provide privacy information](#).

Your form and its introduction:

- should be, whether it is paper-based or online-based, designed so that it is separable easily from any application form or other information that may identify the applicant or person in question.
- should **not** ask people to state their **names or addresses** on the form. This does not prevent you from allocating a unique identifier, such as a reference number, to the form, but thought should be given to this – see [anonymous or pseudonymous data](#).

- should reassure respondents that their data will be **managed sensitively and securely**. You will need to outline their rights under the data protection laws and where they can get further information. You should outline why you are collecting the data and how you are going to use, store and dispose of their information.
- should reassure respondents that their answers will **not be used to make any unlawful decisions** affecting them, such as deciding whether to offer or to refuse them employment or services. Decision-makers, such as selection panel members, for example, will not be shown the monitoring information.
- should clearly state that **answering the questions is voluntary** – job applicants and service-users do not have to provide the requested information, although you may, and should, encourage them to provide it.

Collecting data – questions about disability and reasonable adjustments

Public authorities should be mindful of their duty to make reasonable adjustments for disabled people, whether it is in relation to employment or in the provision of goods and services or in the performance of their other functions.

For that reason we recommend that employers and service-providers, in particular, should invite people to disclose any specific requirements they may have in order to ensure that these needs are met in appropriate circumstances.

Such information is **not monitoring data** because it should be used by the employer or service-provider to address the particular individual's specific needs. It would be best not to include **that particular** question on an equality monitoring questionnaire.

Asking such a question is different to and separate from monitoring "disability" [pseudonymously](#) by way of an equality monitoring question, similar to how employers collect monitoring data on community background, sex or race.

Any question about "disability" that is collected on an equality monitoring questionnaire should be treated with the same safeguards that one are applied to other monitoring data that is collected in that way. For instance, it should not be provided to the members of job selection panels and it should be used only for the specific monitoring purposes for which it was initially collected; e.g. as part of a set of aggregated data used to monitor and analyse trends within the workforce.

In employment contexts, if a job applicant is successful and becomes your employee, we recommend that you ask them at the beginning of their employment, such as during an induction meeting, whether they are disabled and/or have any specific requirements. That should be done in confidence, such as during a private

induction meeting. Again, this information is **not** *monitoring data* because it should be used to address the particular employee's specific needs during their new employment.

Storing data

Whether you store monitoring data, in paper files or on electronic databases, is largely a matter for your own discretion, subject to having safeguards that satisfy the data protection [security principle](#).

You should be mindful of the data protection [storage limitation principle](#). You should have a clear policy on retention periods. You should ensure that you erase or anonymise personal data when it is no longer needed – this will reduce the risk that it becomes irrelevant, excessive, inaccurate, or out of date.

Maintaining accuracy

Be alert to your duties under the data protection laws to keep data **accurate** and **up-to-date** ([the accuracy principle](#)). For example, some data collected from a new employee (e.g. age, disability, marital status, whether they have dependents) will, or may, change with time. That may require you to re-survey your employees periodically to ensure that their personal data is still accurate, or give them the opportunity to alert you to relevant changes, which you should then record.

In addition, inaccurate data may have other causes. For example, mistakes may occur where you manually input responses from paper into software systems. You should have a system for rectifying those errors in line with the [rights of individuals to have them corrected](#).

The same principles apply to non-employment scenarios and occasions may occur when inaccuracies in that context will need to be corrected too.

Review and act on what you have learned

This is the most important part of the monitoring process, a fact that is often overlooked. It is the main purpose for which monitoring data is collected and, as such, a failure to review and act on it is likely to breach the various [data protection principles](#).

Moreover, a failure to review the data is also likely to be a breach of those arrangements of your organisation's [section 75 equality scheme](#) for assessing the likely impact of policies adopted, or proposed to be adopted, on the promotion of equality of opportunity and for monitoring any adverse impact of those policies.

Sharing equality monitoring data

It is unlikely that you will consider sharing the personal data you collect during monitoring with any other organisation. However, if you **outsource the IT systems** that you use to collect or store the information, for example, you will need to make sure that your relationship with your supplier is governed by a **contract that deals with data protection issues**. The [ICO offers advice](#) on this.

In addition, pay particular attention to [the guidance that the ICO](#) has issued in respect of data that might be transferred outside the United Kingdom.