

Equality and Human Rights Commission

Assessing impact and the Public Sector Equality Duty

A guide for public authorities
in Scotland

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1 | Introduction

Context for this guide

This guide is one of a series written by the Equality and Human Rights Commission (the Commission) to explain how public authorities can meet the requirements of the Equality Act 2010 (the Act), which harmonises and replaces previous equalities legislation. The Act includes a public sector equality duty which replaced the separate duties relating to race, disability and gender equality. The public sector equality duty came into force on 5 April 2011.

There are eight guides giving advice on the public sector equality duty in Scotland:

1. Essential guide to the public sector equality duty
2. Equality outcomes and the public sector equality duty
3. Evidence and the public sector equality duty
4. Involvement and the public sector equality duty
5. Assessing impact and the public sector equality duty
6. Mainstreaming the equality duty
7. Employee information and the public sector equality duty
8. Board diversity and the public sector equality duty

The Essential guide gives an overview of the requirements of the public sector equality duty.

Legal status of this guide

This guide gives advice on how to meet the public sector equality duty. It will help public authorities to comply with their legal duties under:

- Section 149 of the Equality Act 2010 (the public sector equality duty), and
- The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended.

Aim of this guide

This guide aims to help authorities subject to the public sector equality duty to implement the duty as it relates to assessing impact. The guide provides more detailed advice to supplement the information set out in the Essential guide to the public sector equality duty.

Who this guide is for

This guidance provides advice to two types of public authority: those that are subject only to the public sector equality duty and those that are also subject to the specific duties under the 2012 regulations mentioned above ('listed authorities'). The different requirements for each type of public authority are set out clearly throughout this guide.

The guide is aimed at those responsible for implementing the public sector equality duty in public authorities in Scotland. It will be of interest to staff right across public authorities, but particularly those involved with assessing impact, as well as those engaged in business planning, procurement, analysis, performance management, human resources, grant making, governance and scrutiny.

The guide will also assist those who have an interest in the work of public authorities such as service users, voluntary bodies, unions, and equality organisations.

Content of this guide

This guide will help you deal with a number of issues raised by the regulations. It:

- Explains the obligations of listed authorities to assess and review policies and practices under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (the specific duties) as amended
- Explains the purpose of assessing impact and how this relates to the other requirements of the public sector equality duty
- Provides advice on assessing impact
- Advises on methods for assessing impact, and lists points for practical consideration.

This guidance is for public authorities in Scotland. Separate guidance on the public sector equality duty is available for public authorities in England (and bodies with non-devolved functions in Scotland and Wales) and public authorities in Wales. These reflect the differences in the specific duties for England and Wales.

This guide was last updated in October 2016 Visit our website (www.equalityhumanrights.com) to see whether it has been replaced by a more recent version.

2 | Assessing impact and the public sector equality duty

The public sector equality duty is here referred to as the ‘general equality duty’ and is set out in the Equality Act. If you are listed in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended, you are also covered by specific duties, which are designed to help listed authorities meet the general equality duty. Further information on the public sector equality duty can be found in our *Essential guide to the public sector equality duty*.

The General Equality Duty

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

- Eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

This guidance refers to these three elements as the three ‘needs’ mentioned in the general equality duty and so when we discuss the general equality duty we mean all three needs.

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

The ban on age discrimination in services and public functions came into effect on 1 October 2012. As the ban does not extend to people under 18 this limits the scope of

the duty to have due regard to the need to eliminate 'unlawful discrimination' under the first aim of the duty (although it does not limit the other two aims).

The Specific Duties

The purpose of the specific duties in Scotland is to help those authorities listed in the Regulations in their performance of the general equality duty.

What the Specific Duties require on assessing impact

Public authorities covered by the Specific Duties

The specific duties require each listed authority to:

- where and to the extent required to fulfil the general equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs of the general equality duty;
- in making the assessment, consider relevant evidence relating to persons who share a protected characteristic (including any evidence received from those persons);
- in developing a policy or practice, take account of the results of any assessment in respect of that policy or practice;
- publish, within a reasonable period, the results of any assessment where it decides to apply the policy or practice in question;
- make arrangements to review and where necessary revise any policy or practice that it applies in the exercise of its functions.

Any consideration made by an authority about whether or not it is necessary to assess the impact of applying a policy or practice is not to be treated as an assessment.

Public authorities covered only by the General Equality Duty

Although there is no specific requirement under the general equality duty to assess the impact of policies or practices, the principles of assessing impact may help you to meet the requirement to pay due regard to the needs of the general equality duty.

A note on terminology

This guidance uses the term ‘policy’ as shorthand for any activity of your organisation. Therefore ‘policy’ should be understood broadly to embrace the full range of your policies, provisions, criteria, functions, practices and activities including the delivery of services – essentially everything you do.

This guidance uses the term ‘equality groups’ to mean ‘persons who share a relevant protected characteristic’ and where reference is made to ‘equality groups and communities’, this includes ‘any person who appears to the authority to represent the interests of those persons’.

3 | The duty

You will have been familiar with the practice of assessing impact from the previous duties for race, disability and gender. However, the previous duties involved the assessment of impact in relation to equality for a particular group. It is important to note that the present specific duty for assessing impact differs from the previous duties as it requires authorities to assess the impact of applying a proposed new or revised policy or practice **against the needs of the general equality duty**.

Therefore, the starting point for assessing impact is the three needs of the duty: ensuring that the policy does not discriminate unlawfully; considering how the policy might better advance equality of opportunity; and considering whether the policy will affect good relations between different groups.

The impact of the policy on equality groups should be assessed under each need of the duty. This shift in emphasis is important because the specific duties are designed to support the fulfilment of the general equality duty and so assessing impact is one tool to help you meet the general equality duty.

4 | What does ‘assessing impact’ mean?

The requirement to assess impact means that you must consider how a policy will impact on the needs of the general equality duty. In making the assessment you must consider relevant evidence, including evidence received from equality groups. Having considered all of these elements, you must take account of the results of such assessments. This requires you to consider taking action to address any issues identified, such as removing or mitigating any negative impacts, where possible, and exploiting any potential for positive impact. If any adverse impact amounts to unlawful discrimination, the policy must be amended to avert this.

It is important to stress that the specific duty requires you to ‘assess the impact’ of applying a policy. You are not required to follow a specific methodology or complete a particular template in order to meet the specific duty. The specific duty requires you to actively consider how your policy will meet the requirements of the general equality duty, and it is important that you record this as evidence of having paid due regard.

Although this guide suggests an approach for assessing impact, it is for authorities themselves to decide how to meet their obligations in relation to assessing impact.

5 | Why assess the equality impact?

The specific duty to assess impact is intended to be carried out within a listed authority's existing systems and frameworks and to improve outcomes for those who experience discrimination and disadvantage. Assessing impact is an effective way of improving policy development and service delivery, making sure that you consider the needs of your employees and the communities you serve, identify potential steps to advance equality and foster good relations, and do not discriminate unlawfully.

Assessing impact enables you to:

- **Take effective action on equality**

Preventing unlawful treatment, advancing equality and fostering good relations requires more than just avoiding certain actions and behaviour. Proactive steps should be taken to identify potential discrimination and to remove it, and to consider how you can adapt a policy or practice to better advance equality. Policies should, for example, meet the needs of your staff and the population served. They should also make sure there is equal access and opportunity for all, while recognising that providing the same service in the same way to everyone can sometimes create a disadvantage for those with different needs.

- **Develop better policies and practices, based on evidence**

A policy or practice which proactively considers equality, particularly through the use of evidence, is likely to be a better quality policy or practice, in the sense that it is more responsive to the needs of all those affected. Assessing impact provides a mechanism to build equality considerations into policy- and decision-making, providing a clear and structured way to consider evidence about the needs of equality groups.

- **Be more transparent and accountable**

Assessing the impact of policies allows you to demonstrate to your stakeholders that you have considered equality in carrying out your functions. You will be better equipped to respond to any queries or challenges from stakeholders.

For further information on evidence and involvement see our guides Evidence and the public sector equality duty and Involvement and the public sector equality duty.

6 | Which policies should be impact assessed?

The duty to assess impact applies to new or revised policies as well as to existing policies. However, this does not mean that everything an authority does requires a detailed assessment of impact. The extent to which policies should be subject to assessment will depend on questions of relevance and proportionality.

You will also need to assess the impact of the way a policy is implemented by your organisation, even when it has originally been developed outside of your organisation – for example if a national strategy has been introduced. This will help you ensure that you understand the implications of the policy for your own organisation, services and community.

Remember that having due regard to equality across all of your functions may also involve assessing impact against the three needs of the general equality duty (mentioned in section 2 of this guide) of a number of decisions that are interlinked or made together, for example when conducting a major review of services. This would mean ensuring that you have sufficient relevant information to understand the cumulative effect of all these decisions.

Example: Assessing the impact of policy proposals on equality

A local authority is making changes to policies for funding and delivering social care, day care, respite for carers and community transport.

Small changes in each of these policies may have a relatively minor effect on disabled and older people, but the cumulative effect of changes to these areas could have a significant effect on the participation in public life of these groups.

The actual and potential effect on equality of all these proposals, and appropriate mitigating measures, should be examined and understood so that gaps do not continue or widen.

7 | When should you assess impact?

Assessing impact is not an end in itself but should be an integral part of policy development and decision-making. The regulations say that it is the *impact* of applying a proposed new or revised policy that must be assessed. This means the assessment process must happen before a policy is decided. The assessment cannot be retrospective, or undertaken near the end of the process, but should instead be integral to the earliest stage of the development of proposed policies or practices, and in the revision of existing policies or practices.

Assessing impact does not end with the introduction of the new or revised policy; it is important to monitor the actual impact of the policy as it is implemented, and revisit the assessment as part of any review. Therefore, assessment of impact should be considered as an ongoing, end-to-end process, from early discussions right through to the final decision about whether to go ahead with a policy or service change and beyond, to monitor the actual impact of the implementation.

8 | Who should be involved in assessing impact?

Decisions on who should be involved in assessing impact will vary. You may find it helpful to have a team of people support an assessment to bring a range of experience and expertise to the process. There should be an identifiable lead for the assessment, responsible for recording and developing the assessment.

Assessing impact should form part of the development and revision of policy, so it makes sense for the person or team responsible for the policy area to lead on the assessment. The person or group must have a detailed understanding of the policy area and must be in a position to ensure that changes can be made to a developing policy where they are required.

Often, the individuals involved in an assessment may not have expertise in equality so training will be important. If an organisation has specialist equality staff, they will have an important role in ensuring that their colleagues are properly trained, and in supporting staff to assess impact.

Board members, Councillors and other decision-makers must actively consider the general equality duty when deciding whether to approve a new or revised policy or practice. Assessing impact is an important part of this, as reinforced by recent case law decisions which have found that:

- Compliance with the duty involves a conscious approach and state of mind. General regard to the issue of equality is not enough to comply.
- The duty places equality considerations, where they arise, at the centre of policy formulation, side by side with all other pressing circumstances (such as financial constraints), however important these might be.
- The duty is on the decision maker personally in terms of what he or she knew and took into account. A decision maker cannot be assumed to know what was in the minds of his or her officials giving advice on the decision.

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- The duty must be complied with before and at the time a particular policy is under consideration, as well as at the time a decision is taken. A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- A public authority must consciously think about the need to do the things set out in the general equality duty as an integral part of the decision-making process. Having due regard is not a matter of box ticking. The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision. There should be evidence of a structured attempt to focus on the details of equality issues.
- A public authority should keep records of its consideration of the needs of the general equality duty in making decisions. If it is challenged it will be difficult to demonstrate that it has had due regard to the needs of the general equality duty if records are not kept.

Joint and partnership working

Authorities are increasingly working in partnership with other agencies. Partnership working has a number of benefits – for example, partnerships can tackle issues which are beyond the scope of action for an individual organisation, or can pool resources and offer one another support. It can also ensure that policies developed by different public authorities do not duplicate effort, and that any involvement of relevant groups is coordinated and does not overburden the people concerned.

There may also be instances where there is shared responsibility for policy-making and implementation, where a policy is developed by one authority, to be implemented by other partners or organisations.

In a partnership, authorities that are subject to the general equality duty carry their duty into that partnership. Where a decision is taken in that partnership, therefore, authorities must be able to demonstrate due regard for the general equality duty. If a policy originates with you but your authority is not responsible for its implementation, you should assess the potential impact of the policy as it develops, and also consider how you will ensure that you continue to meet your duties as the policy is implemented elsewhere. This may include setting out how you will monitor the actual impact, and review the monitoring information to make sure that the policy has the effect intended. Alternatively, if you are responsible for implementing a policy which has been developed elsewhere, you should consider any initial assessment of impact and undertake your own assessment to make sure that equality is duly considered at this stage.

In this context, it makes sense that relevant partner organisations work together to ensure that the assessment of such policies at different levels is closely coordinated. This helps ensure that there is no duplication of effort, that responsibility is clearly allocated and that information is properly shared to enable effective assessment of impact.

Relevant evidence

The specific duty requires authorities to consider relevant evidence relating to equality groups and evidence received from equality groups themselves. Evidence includes in-house information such as monitoring data, external research or national data. In undertaking an assessment, you should consider the information available and make use of any analytical capacity available in your organisation, for example consulting statistics and research colleagues or performance management and quality improvement staff. These colleagues may have valuable knowledge about equality issues, or wider performance information from across the organisation, which may be helpful to you. Please see our guide *Evidence and the public sector equality duty* for more information.

Involvement of equality groups and communities in assessing impact

Although the regulations do not specifically require the involvement of equality groups and communities when assessing impact, you may choose to involve equality groups and communities as one way of helping you to understand the impact of your policy proposals on these groups. Involving employees, service users, trade unions and others in the assessment allows those affected by the way you carry out your functions to give feedback or share their experience, providing evidence that you might not otherwise hear.

You may also find it useful to involve relevant equality groups and communities when monitoring the implementation of policies, to determine the actual impact of the policy and discover what, if any, changes are required. You might also benefit from their input when you are considering how policies and practices may need to be revised to comply with the general equality duty. Please see our guide *Involvement and the public sector equality duty* for more information.

9 | Review and revision

A listed authority must make such arrangements as it considers appropriate to review and, where necessary, revise any policy or practice that it applies in the exercise of its functions, to ensure that it complies with the general equality duty in the exercise of these functions.

Particular review arrangements are a matter for each listed authority but you are required to arrange for your existing policies and practices (which may already have been impact assessed under previous equality duties) to be reviewed and, if necessary, assessed for impact according to the duty to assess against the 'needs' of the general equality duty. As a result of this assessment, policies and practices may need to be revised.

It is good practice to publish a timescale for review and revision work to take place. Any work you undertake to identify the relevance of functions and gather evidence will help support decisions on your review arrangements. Reviewing is an ongoing requirement to ensure that the exercise of these functions complies with the general equality duty.

10 | Assessing impact in practice

Ensuring an organisation-wide approach

As noted above, the regulations do not stipulate a particular method which authorities should use in assessing the impact of their policies. Individual authorities should develop their own approach to assessing impact which fully reflects the nature of their business and ensures consistency across the organisation. As noted above, the duty requires you to assess the impact of applying a proposed new or revised policy or practice **against the needs of the general equality duty** and you will need to take this into account.

The process for assessing impact is likely to vary depending on the policy in question, and the size, resources and functions of your authority. Whatever the method used, it should allow a clear and structured approach to considering each element of the general equality duty and the impact on equality groups under each of those needs.

You must publish the results of any assessment that relates to a policy or practice that you decide to apply. This needs to be done within a reasonable time. Where there is a gap between the decision to apply a policy or practice and the implementation of that policy or practice, a listed authority should ensure that the results of the assessment of impact are published as soon as possible after the date of the decision. In the interests of transparency and openness, authorities should take steps to record the process and outcome of an assessment. Authorities may wish to develop a template to record this information, to ensure a consistent approach. However, the completion of a formal template should not be the primary focus of an assessment.

You can be guided and prompted by a template, but it should not constrain or limit the assessment, which should be focused on understanding the effects of a policy or practice in relation to the three needs of the general duty, and taking any necessary action as a result.

Training

To support assessment of impact, and performance of the general equality duty, it is important that staff receive training. Training should be appropriate to the particular responsibilities of the staff involved, and tailored to the authority's own method for assessing impact.

It is particularly important that senior decision-makers in public authorities (such as Chief Executives, Councillors, Chairs and Board members) receive adequate training which equips them for their scrutiny role in ensuring the general equality duty is mainstreamed within the organisation, and to ensure that impact assessment influences decision-making at all levels.

Training should not be seen as a one-off exercise. It should be delivered on a regular basis to both cover new staff and decision-makers and provide refresher training for existing staff and decision-makers.

How to assess impact

The degree and depth to which the process of impact assessment is carried out should be in proportion to the extent to which the policy or practice in question is likely to affect an authority's ability to fulfil the needs of the general equality duty. In order to determine the degree and depth of the impact assessment process which should take place in relation to any particular policy, it would be helpful to develop criteria to determine whether:

- the policy or practice is a major one in terms of scale or significance, or
- there is a clear indication that, although the policy or practice is minor, it is likely to have a major impact on some equality groups.

This is not a question merely of the numbers of people affected but of the degree of impact. A policy which has an extremely negative impact on a small number of people may be of greater relevance than one which has only a minor impact on a large number of people.

Screening

Many authorities find screening useful in determining whether full assessments of impact are required and to help determine the relevance of a policy or practice to the

general equality duty. The regulations make it clear that screening is not to be considered as assessment of impact.

You will be best placed to use the evidence you have in order to identify what implications there may be, but you may find the following questions helpful as part of a screening exercise. This is not an exhaustive list. Individual authorities should consider what prompts are most appropriate to identify relevance within their particular context.

- Does the policy affect service users, employees or the wider community, and therefore potentially have an effect in terms of equality? Remember that the relevance of a policy will depend not only on the number of people affected, but also the significance of the effect on them.
- Is it a major policy, significantly affecting how functions are delivered?
- Will it have a significant effect on how other organisations operate (for example, a national strategy, an inspection framework or criteria for funding)?
- Does it relate to functions that previous involvement activities have identified as being important to particular protected groups?
- Does it relate to an area where your organisation has set equality outcomes?
- Does it relate to an area where there are known inequalities? (For example, disabled people's access to public transport; the gender pay gap; racist or homophobic bullying in schools, etc.)
- Does it relate to a policy where there is significant potential for reducing inequalities or improving outcomes? (For example, improving access to health services for transsexual people, or increasing take-up of apprenticeships by female students.)

A screening exercise is not to be treated as an assessment of impact and therefore you do not need to publish screening exercises. However, if you decide not to assess the impact of any policy, you will have to be able to explain your decision. To do this, it is helpful to keep a full record of how you reached your decision.

Step-by-step guide

This section sets out a step-by-step guide to assessing the equality impact of policies. It is important to reiterate that this is a suggested approach, not a prescribed process under the specific duty. As mentioned above, authorities should develop a method which best fits their own circumstances.

Scoping the assessment

When proposing to develop a new policy, or revise an existing policy, you should consider equality at the earliest possible opportunity. At this stage, you may find it helpful to consider the following:

- **What are the aims of the policy, and how do these relate to equality?**

You should begin the assessment process with a clear understanding of the policy being developed or reviewed. This includes understanding the purpose of the policy; the context within which it will operate; who it is intended to benefit, and the results aimed for.

- **Which aspects of the policy are particularly relevant to each element of the general equality duty?**

You should identify which aspects of the policy are relevant to the general equality duty; this will help you focus on the most important areas. This does not mean that other aspects should be excluded from the assessment.

The inter-relationship of policies will also need to be considered. For example, in employment, where a policy on promotion is being assessed, the impact of policies on training and development may also need to be considered in order to gain a full picture of any barriers or opportunities for each equality group.

Where the impact goes beyond the area for which the person(s) undertaking the impact assessment is responsible, this should be anticipated and those responsible for other relevant areas should be involved in the process as early as possible.

- **To which of the equality groups is the policy relevant?**

The assessment should, at least initially, consider the impact of the policy for each of the protected characteristics. Diversity within, as well as between, groups should be taken into account: for example, considering people with different disabilities or people from different racial groups. Understanding the implications of having more than one protected characteristic will also be important. For example, the issues of relevance to women will vary once race, religion and age are taken into consideration. If it is decided that assessment is not relevant to some groups, this should be recorded and explained.

- **Which equality groups and communities might it be helpful to involve in the development of the policy?**

As outlined above, there is no legal requirement to involve particular groups when assessing impact, but you may find information from involvement activity useful in developing your policy. Before carrying out particular involvement activities, you should first review data from recent consultations, involvement and research. This could be on a recent related policy or recent impact assessments undertaken by colleagues or from other research studies, or evidence from other authorities. As well as ensuring consistency, this can help to build confidence among equality groups and communities, who can see that their evidence is being acted on. Being asked similar questions repeatedly, without visible action, is a common cause of dissatisfaction with involvement.

- **What evidence is already available about the needs of relevant groups, and where are the gaps in evidence?**

It is important to have as much up-to-date and reliable evidence as possible about the needs and experiences of the different groups the policy is likely to affect. You are likely to have a pool of general information to draw on, such as demographic information, service-level monitoring data, external research and statistics, and recommendations from audit and inspection reports. However, this may need to be supplemented for the specific policy under consideration.

You may find it difficult to gather the necessary information about particular groups. Where there is insufficient information to properly assess the policy, appropriate and proportionate measures may be required to fill these gaps, such as commissioning research, or involving relevant groups. You may find it useful to work with partners to fill these gaps or you may find that partners have information that you could use.

Where it is not possible to gather new information in time to inform the assessment, you should consider including such actions in your plans to monitor and review the policy. A lack of evidence should never be used as a reason for inaction.

Analysing information to assess the impact

Once relevant evidence has been collected, it needs to be applied to the policy as it is developed or reviewed. You should make a judgement at each stage of the process as to what the likely effect will be and consider whether changes are needed to the policy in question.

The duty requires you to assess the impact of your policy or practice against the needs of the general equality duty. This will involve considering whether the

evidence indicates that there is likely to be a differential impact on particular equality groups, and particularly whether this impact is disproportionately negative.

In considering whether the policy eliminates discrimination you should consider whether there is evidence to indicate that:

- the policy may result in less favourable treatment for particular groups;
- the policy may give rise to indirect discrimination;
- the policy may give rise to unlawful harassment or victimisation;
- the policy may lead to discrimination arising from disability;
- the policy builds in reasonable adjustments where these may be needed.

In determining how the policy contributes to advancing equality of opportunity, you should consider whether it will help you to:

- remove or minimise disadvantage;
- meet the needs of different groups;
- encourage increased participation of particular groups; and
- take account of disabled people's impairments.

Similarly, in determining how the policy will affect good relations, you should consider whether it will help you to:

- tackle prejudice; and
- promote understanding.

In an assessment, it is seldom acceptable to state simply that a policy will universally benefit everyone, and therefore individuals with protected characteristics will automatically benefit. The analysis should be more robust than this, demonstrating consideration of all of the available evidence and addressing any gaps or disparities revealed. Specific steps will sometimes be required in order to address an existing disadvantage, meet different needs or accommodate difference and diversity. Failure to recognise this can perpetuate inequalities between or within communities and groups.

For example, a policy on tackling gender-based violence will need to assess its potential impact on ethnic minority communities as well as gay and disabled people. An effective impact assessment will help make you aware of any particular needs and the likely wider effects of implementing the policy.

Policies that are specifically intended to increase equality of opportunity will also need to be considered to ensure that the policy is lawful and will actually achieve the intended equality goals. Steps may also be needed to address the potential for any

resentment or perception of more favourable treatment among other communities and groups. This would be an important consideration in terms of the 'good relations' element of the general equality duty.

Identifying the equality impact may be easier for policies that have been in place for a time, given that you are likely to have evidence at least regarding the three previous duties for race, gender and disability, and you will have gathered information about how the policy has operated in practice. However, you may not have information relating to the impact in relation to the other protected characteristics such as age, and you may need to focus on this.

For new policies, you will need to make a measured assessment about the potential impact, based on evidence. The policy should be evaluated against all the evidence assembled, and a reasonable judgement made as to whether the policy has, or is likely to have, significant positive or negative consequences for particular groups or communities.

You are required to take account of the results of your assessment in the development of a new or revised policy or practice. Having considered the potential or actual impacts, you should be in a position to make an informed judgement on what should be done. There are four main steps that you can take:

- **Option 1: No major change** – your assessment demonstrates that the policy is robust. The evidence shows no potential for unlawful discrimination and that you have taken all opportunities to advance equality of opportunity and foster good relations, subject to continuing monitoring and review. If you reach this conclusion, you should document the reasons why and the evidence used to support your decision.
- **Option 2: Adjust the policy** – this involves taking steps to remove any barriers, to better advance equality or to foster good relations. It may be possible to remove or change the aspect of the policy that creates any negative or unwanted impact. You may also decide to introduce additional measures to reduce or mitigate any potential negative impact.

Remember that it is lawful under the Equality Act to treat people differently in some circumstances, for example taking positive action or putting in place single-sex provision where there is a need for it. It is both lawful and a requirement of the general equality duty to consider if there is a need to treat disabled people differently, including more favourable treatment where necessary.

The impact of any changes needs to be fully understood and assessed to ensure that they do not have unintended consequences and can really achieve the result expected.

Example: Assessing the impact of proposed changes

A local authority is considering withdrawing funding from a project which supports the needs of older people in ethnic minority communities, many of whom do not speak English.

As part of its impact assessment of the proposed policy, it considers the provisions it would need to put in place within its mainstream social work services in order to ensure that the same clients would be able to access these services or other voluntary sector service provision in the future, and how it would be able to monitor this access.

- **Option 3: Continue the policy** – this means that you adopt or continue with the policy, despite the potential for adverse impact. As part of the impact assessment, you should clearly set out the justifications for doing this, and how you believe that decision is compatible with your obligations under the duty. In cases where you believe discrimination is not unlawful because it is objectively justified, it is particularly important that you record what the objective justification is for continuing the policy, and how you reached this decision.
- **Option 4: Stop and remove the policy** – if there are adverse effects that are not justified and cannot be mitigated, you should consider stopping the policy altogether. If a policy leads to unlawful discrimination it should be removed or changed. For guidance on what is unlawful discrimination, refer to the Commission’s guidance and Codes of Practice on the Equality Act concerning employment, goods and services and equal pay, which are available on our website.

Having determined potential impact and identified the action required to address any issues which have arisen, authorities must then take action to implement any necessary changes. You may find it helpful to develop an action plan setting out the actions which have been identified, the individuals responsible for implementing the actions, and the timescales for completion.

The result of the assessment and the reasons for it will then need to be brought to the attention of the decision-maker, if that is not the person assessing the policy.

Decision-making

The general equality duty requires decision-makers to have ‘due regard’ at the point of decision-making. Case law has made clear that the general equality duty places equality considerations, where they arise, at the centre of policy formulation, side by side with all other pressing circumstances (such as financial constraints), however important these might be. In this way, decision-makers have a ‘scrutiny’ role in determining whether the impact assessment has been robust enough, and gives them sufficient information to enable them to pay due regard to equality when making their decision.

Decisions will involve careful balancing and may finally represent the best accommodation between different interests. For example, if the assessment suggests that two or more groups could be adversely affected by a proposal, and the needs of the two groups are in conflict, then an appropriate balance will need to be found for the groups and policy in question. When balancing such interests, it is important to consider how the decision will affect relations between different groups, as required by the general equality duty. It is important to ensure that the conclusions reached can be explained, particularly where the evidence can be interpreted in different ways.

Documenting your assessment is important to ensure that the general and specific duties are being met. It was held in *R (Kaur and Shah) v London Borough of Ealing* that: “The process of assessments should be recorded ... records contribute to transparency. They serve to demonstrate that a genuine assessment has been carried out at a formative stage. They further tend to have the beneficial effect of disciplining the policy-maker to undertake the conscientious assessment of the future impact of [his/her] proposed policy.”¹

Publication

The regulations require that where an assessment has been made and the policy is implemented, the results of any assessment are published ‘within a reasonable period’ of the decision to apply the policy. Publishing results of assessments will increase transparency and accountability, and we suggest that you publish your impact assessment results as soon as possible after the implementation decision is taken.

¹ *R (Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2026 (Admin).

The results of an assessment should include both your consideration of relevant evidence and any changes that you have made as a consequence of your consideration.

Monitoring impact

An assessment of impact of **new** policies will help anticipate the likely effects of the policy on different communities and groups. However, the reality is that the actual impact of the policy will only be known once it has been introduced and implemented. Therefore, systems to enable monitoring and review of the actual impact of the policy form an important part of impact assessment and should be clearly set out and understood by staff.

Review of policies and practices

Authorities must also make arrangements to review and, where necessary, revise existing policies and practices. You may want to introduce a rolling programme of review and base it on proportionality. For example, prioritise policies that have a high relevance to equality, such as budget decisions or changes to local services such as a withdrawal of service or funding.

Remember that the specific duties, including the requirement to assess impact, are measures which authorities should take to meet the general equality duty. In this way, the general equality duty is still applicable to ongoing operation of policies, even where they have been subject to impact assessment. Public authorities need to satisfy themselves on an ongoing basis that they are continuing to meet each of the needs of the general equality duty.

11 | Key points to remember

- In assessing impact, authorities should start by asking what impact the policy will have on their ability to meet each of the needs of the general equality duty for each equality group.
- Assessing impact involves identifying what steps could be taken to advance equality and foster good relations, not only to eliminate discrimination.
- Assessing impact is an integral part of policy development and review, informing policy as it develops. If integrated well, impact assessment is a tool for improved policy-making and should not result in unnecessary additional activity.
- The purpose is not to complete a specific form or template, but to understand the effects of a policy or practice on equality, and take necessary action as a result.
- The time and effort involved should be in proportion to the relevance of the policy to equality.
- Without good evidence, a proper assessment of impact will be difficult to achieve. A lack of information is not an excuse for inactivity.
- The insights from involving employees, service users, trade unions and others affected are useful evidence for your assessment.

Publishing assessments will increase accountability and transparency.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website www.equalityadvisoryservice.com
Telephone 0808 800 0082
Textphone 0808 800 0084
Hours 09:00 to 20:00 (Monday to Friday)
10:00 to 14:00 (Saturday)
Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: scotland@equalityhumanrights.com. The Commission welcomes your feedback.

Alternative formats

This guide is available as a PDF file and as a Microsoft Word file from www.equalityhumanrights.com. For information on accessing a Commission publication in an alternative format, please contact: scotland@equalityhumanrights.com

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