

EQHRIA

Equality & Human Rights Impact Assessment



10 Good Practice Building Blocks



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10 Good Practice Building Blocks

10 Good Practice Building Blocks for Assessing Impact on Equality and Human Rights

Dr James Harrison,
University of Warwick



See film at www.scottishhumanrights.com/eqhria/

Making outcomes real through evidence based decision making

The 10 Good Practice Building Blocks set out here are designed to assist public authorities and those carrying out public functions in Scotland to undertake equality and human rights impact assessments (EQHRIAs) that will lead to better outcomes for the individuals and communities they serve.

“I think across the full range of services that we provide we need to address human rights and equalities thoroughly, early and in a meaningful way so we avoid unintended consequences, comply with the law and, importantly, we just provide better outcomes for people.” **David Martin, Chief Executive, Renfrewshire Council.**

The building blocks were developed by experts who have undertaken and advised on EQHRIAs in a wide range of policy areas all over the world. They were then tested and revised as a result of the pilot studies that took place in Fife and Renfrewshire. For more details of the pilot see the reports and click here for specific examples of the human rights issues identified.



The building blocks are designed for use by a wide range of organisations and are key to ensuring that organisations undertake robust and meaningful impact assessments that have a positive effect on policy outcomes. The building blocks do not provide a methodology for assessing impact, which is the responsibility of each organisation to develop, taking into account their own individual policy context. But any organisation that is developing or revising its EQHRIA methodology may wish to take into account the building blocks set out below alongside the Equality and Human Rights Commission non-statutory guidance for public authorities in Scotland on Assessing Impact and the public sector equality duty.

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The building blocks are divided into organisational and process elements.

Organisational building blocks - These are the key steps that need to be taken by senior management in any organisation to create an environment which will encourage and facilitate EQHRIAs that have a positive impact on policy outcomes.

Process building blocks - These relate to the EQHRIA process itself and are the core elements that need to be undertaken in any individual EQHRIA. The process elements can be organised and understood according to the Scottish Human Rights Commission's FAIR Framework which can assist in bringing a rights based approach to decision making.

Organisational building blocks

- 1- Senior Level Commitment and Engagement
- 2- Timing and Capacity to Influence Decisions
- 3- Staff, Training and Resources

Process building blocks

- 4- Understanding the legal basis of EQHRIA
- 5- Deciding What to Assess and the Scope of the Assessment Process
- 6- Evidence to Support Assessments
- 7- Involvement of Communities
- 8- Assessing Combined Impacts
- 9- Conclusions and Recommendations
- 10- Transparency and Review

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Building block 1: Senior level commitment and engagement

Oliver Reid, Chief Executive's Service Manager
Renfrewshire Council



See film at www.scottishhumanrights.com/eqhria/

Why is senior level commitment and engagement important?

The business case

EQHRIAs have the potential to positively transform decision making processes across organisations so that they promote equality and human rights outcomes as well as avoiding potential violations and legal challenge. This will

only happen if senior management commit to producing robust and meaningful EQHRIAs and engage with the reports that are produced as a result.

Senior managers need to recognise that integrating equality and human rights into governance, policy and decision-making structures will help to:

- **Achieve better outcomes for people** - Equality and human rights are core to achieving national and local performance outcomes which aim to improve the quality of life and opportunities for all people across Scotland.
- **Improve performance** - The consideration of human rights and equality issues will assist in improving performance in delivering high quality public services as efficiently, effectively and economically as possible as they will ensure they are responsive to peoples' needs at the point of delivery.
- **Demonstrate accessibility and accountability** - Where equality and human rights are assessed, based on evidence and the meaningful involvement of communities, stronger relationships will be built and it will be easier to demonstrate fairness, transparency, accessibility and accountability thereby providing public ownership and legitimacy to policy and decision making.
- **Ensure compliance with the law** - Proactively taking account of human rights and equality in the exercise of an organisation's functions will provide assurances rather than assumptions that actions are fair, not arbitrary, and that they comply with the law, preventing violations before they require redress and added expense. Public authorities have a legal duty under the Human Rights Act 1998 to act compatibly with human rights law and duties under the Equality Act 2010 to meet the public sector equality duties.

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The legal case

Under the Human Rights Act 1998 all public authorities, or those whose functions are of a public nature, have a duty to act in a way that is compatible with the European Convention on Human Rights. This means understanding human rights and taking them into account in all day to day work. Impact assessment is one practical means of doing this.

The Equality Act (Specific Duties) (Scotland) Regulations 2012 introduced a specific duty on Scottish public authorities to assess the impact of applying a proposed new or revised policy or practice against the needs of 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.

These requirements apply across the 'protected characteristics' of age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex and sexual orientation and to a limited extent to marriage and civil partnership.

For further guidance on the central role elected members in Scottish local authorities can play in ensuring Scotland's councils meet their statutory obligations under The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 is published by the Improvement Service and EHRC.

What are the practical considerations?

When senior managers within an organisation regularly communicate to staff that EQHRIAs are important, and that senior managers will utilise them, this will encourage those staff involved in undertaking EQHRIAs to put time and effort into the process. In order to facilitate this, organisations need to think about the following key issues:

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- **Training for senior managers:** Public authorities need to consider what is required to ensure that senior managers have a commitment to and understanding of the EQHRIA process. It is particularly important that senior decision-makers (such as Chief Executives, Councillors, Chairs and Board members etc) receive adequate training which equips them for their scrutiny role and to ensure that impact assessment influences decision-making at all levels.

- **Support and commitment to the EQHRIA process:** Senior managers need to take specific actions to support the EQHRIA process by ensuring:

1. EQHRIAs are built into organisational decision-making processes and action is taken to implement their findings (building block 2).
2. Staff carrying out EQHRIAs have the expertise, training and support required in order to carry out proper assessments (building block 3).
3. That the combined impact of different policies is assessed (building block 8).

Pilot practice example:

In Renfrewshire council officers from across services received training on equality and human rights, senior management and corporate management teams were briefed on new impact assessment guidance including human rights, the Leadership board was also briefed and an awareness raising campaign led across the Council. An equality and human rights briefing session was delivered to elected members of the Council.

Reflections on the importance of senior level commitment and engagement from pilot:

“It’s essential for the whole organisation to be bought into it but clearly there’s a major political and managerial role... you’ve got to be visible, you’ve got to be committed to it you have to make sure you’re investing the time and the resources in teams and employees and also use it thoroughly, and regularly, at the start of service design processes.” **David Martin, Chief Executive, Renfrewshire Council**

“It is important that the senior officers within the council are comfortable with the approach because many of the changes that are getting made will be getting put up in their name for councillors to be able to make decisions on.” **Paul Vaughan, Senior Manager, Fife Council**

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Building block 2: Timing and Capacity to influence decisions

Timing: Impact assessments need to be undertaken sufficiently early so that the results of an assessment are able to influence the decisions being made.

Capacity to influence decisions: A clear and transparent process for serious consideration of EQHRIAs by those who are making decisions about current and future policies should be articulated.

Oliver Reid, Chief Executive's
Service Manager Renfrewshire Council



See film at www.scottishhumanrights.com/eqhria/

Why is timing and capacity to influence decisions important?

The business case

Conclusions and recommendations of EQHRIAs should have the potential to lead to actual policy change or mitigation of any negative impacts on service users. If senior managers do not ensure that EQHRIAs have a real influence on key decisions, they are likely to:

1. Waste considerable staff time and effort
2. De-motivate staff involved in EQHRIA who will not take them seriously in future and
3. Be unable to use equality and human rights analysis to ensure better outcomes for people, to improve performance, demonstrate accountability, and ensure compliance with the law.

Legal case

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 require listed authorities, where and to the extent necessary to fulfil the equality duty, to assess the impact of applying a proposed new or revised policy or practice against the need to eliminate discrimination, advance equality of opportunity and foster good relations. A listed authority must take account of the results of the assessment in respect of the policy or practice.

What are the practical considerations?

Timing: To take it seriously you have to do it early: A robust and meaningful EQHRIA takes time and effort to complete (see building blocks 4-10 for guidance on the key elements of the process). Where impact assessments appear to be little more than 'tick box' exercises it is often because they are undertaken at the last minute and read like what they are - an attempt to justify or minimise the impact of a decision that has already been made.

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EQHRIAs then become a final bureaucratic hurdle to be overcome rather than a useful tool for developing and improving policy. Senior managers need to think about this issue at a strategic level and consider when EQHRIAs need to be started and finished in order to ensure that there is sufficient time to make a proper assessment, rather than leaving issues of timing to individual assessors. This will ensure each assessment can produce conclusions and recommendations to feed into policy-making processes.

Capacity to influence decisions: Different organisations will have different decision-making processes for different policy issues (e.g. by elected Council members, by a senior board, by an operational director etc.). Senior managers must set out a clear process so that decision-makers know when and how they take into account EQHRIAs when they are making relevant decisions. This process should be transparent so that assessors understand how their assessments feed into an organisation's decision-making and can see how their assessments have had an impact on decisions that have been made.

Additionally, in City of Edinburgh Council 'A Framework to Advance Equality and Rights' was introduced for 2012 to 2017. It specifically aims to embed a rights based approach into the work of the council and considers when impact assessment should be undertaken and the process for embedding in decision making. In the framework it is outlined that the Council's approach to mainstreaming equality and rights (i) identifies all of the Council's main relevant areas of business, (ii) sets mainstreaming objectives that indicate what will be done to integrate equality and rights as core elements of this business, (iii) clarifies who will take responsibility for implementation with specific reference to the leaders in the organisation (e.g. elected members, chief officials and senior managers) and (iv) provides an ongoing assessment about whether or not the mainstreaming objective has been met, partially met or not met. The full details of this approach are described within the Council's 'Mainstreaming Equality and Rights Plan 2012 /17'.

Pilot practice examples:

In Fife an EQHRIA was carried out on the impact of welfare reform legislation on lone parents with a view to inform future policy interventions in a proactive rather than responsive way, ensuring that the results of the assessment would meaningfully inform actions taken.

In Renfrewshire guidance on impact assessment was updated as part of the pilot and a new template to ensure that impact assessment results are reported in a standards format and submitted with board reports was devised. Additionally, the "Equal Opportunities" implications in the standards Council Board report template has been updated to ensure all decisions makers are able to pay due regard to equality and human rights.

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Reflections on the importance of timing and capacity to influence decisions from pilot:

“You definitely need to look at the timing of it all, you can’t just assume that because you have gone to a board and you’ve had something reviewed then you start an impact assessment: you need to look at it the moment you start to think about any kind of proposal or policy that is to be developed then you should be thinking about an impact assessment.” **Yasmeen Khan, Senior Policy Officer, Renfrewshire Council**

“I think in this current climate, we have to take the opportunity to demonstrate to people that this isn’t an additional burden and actually by considering these issues at the start, you have the potential to look at more innovative ways of developing services, and develop services more effectively because they are actually based on what people need, not on what policy makers or planners think is the right thing to do.” **Alastair Pringle, Director, EHRC**

“What you actually need to create meaningful and robust equality and human rights impact assessment processes that really can drive decision making is to start the process early when you’re trying to devise your budget and do it at a stage when it really can affect the outcomes.”

“Timing is absolutely vital. If you’re only doing these kind of processes at the last minute just before your final budget has to be approved it’s unlikely then that you’re going to make decisions to re-apportion budgets in particular ways. If, however, you’re making your assessments early enough in the budget cycle to allow you to debate and think through thoroughly the way in which you’re apportioning your finance then it can be a really powerful tool for making, still hard decisions, but sensible, evidence-based thought through decisions and that would be the starting point for then building up an impact assessment process that can be meaningful”. **Professor James Harrison, University of Warwick**

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Building block 3: Staff, Training and Resources

Vital to the success of EQHRIA are:

Yasmine Khan, Senior Policy Officer
Renfrewshire Council



See film at www.scottishhumanrights.com/eqhria/

1. The staff who undertake assessments
2. The training that those staff receive
3. Resources available to staff to enable them to undertake assessments including databases of relevant evidence and examples of good practice.

Organisations should make sure that they have put in place appropriate staffing, training and resources to effectively support the assessment process.

Why are staff, training and resources to support assessments important?

The business case

Public authorities will only obtain robust and meaningful EQHRIA that improve policy outcomes if they provide EQHRIAs with appropriate levels of staffing, training and resources to support assessments.

The legal case

There is no legal requirement under The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 regarding training and resources. However a court could consider non-statutory guidance published by the Equality and Human Rights Commission, including Assessing impact and the public sector equality duty when deciding whether the actions of an authority have been reasonable.

This guidance explains how appropriate training and resources support assessment of impact which is robust.

Rhona McGraff, Welfare Reform
Programme, Renfrewshire Council



See film at www.scottishhumanrights.com/eqhria/

What are the practical considerations?

There is no single model for conducting an EQHRIA in all subject areas. For instance, an EQHRIA of a particular transport policy will require a completely different form of knowledge and expertise from an EQHRIA of a particular housing policy.

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Different organisations will also develop different models of undertaking EQHRIAs depending on their existing practices and procedures, for instance, does primary responsibility for undertaking the EQHRIA lie with the subject specialist (housing, transport etc.) or the specialist in human rights and equality? Public authorities will therefore develop different models for how they undertake assessments accordingly. But all public authorities must think at a strategic level about three key issues in relation to EQHRIA:

1. The staff who undertake EQHRIAs
2. The training that those staff receive
3. Resources available to staff undertaking EQHRIAs

Each of these issues are discussed below in turn:

1. The Staff who Undertake EQHRIAs

Public authorities should put in place a process for evaluating the staffing levels that are required for each EQHRIA. There should be an identifiable lead for any EQHRIA, responsible for undertaking and recording the EQHRIA. Senior managers should consider the size and complexity of the EQHRIA and as a result identify:

- the most appropriate person to undertake this lead role,
- the time needed by that person to undertake the assessment,
- and whether there is a need for other staff to play a supporting role.

2. Training for Assessors

There should be a training programme put in place to support those undertaking EQHRIAs. The training programme will differ depending on the organisational context, and so the first step for any public authority will be to undertake an evaluation of training needs. The most important question in deciding on the training required will be where primary responsibility for undertaking the EQHRIA lies (with the subject specialist or the specialist in human rights and equality).

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 likely that your organisation will have training arrangements in place and so you may wish to refresh or adapt this training (e.g. to ensure that it supports the impact assessments requirements of the new equality duty and incorporates consideration of human rights).

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Training should focus on the ‘why’ as well as the ‘how’ of impact assessments. This means that it should not simply focus on how the assessment process is completed (screening, evidence gathering etc.) It should also explain the importance of the equality and human rights obligations and the issues they are likely to uncover. The training should not only include key human rights and equality principles (e.g. proportionality), it should also provide concrete examples of the sorts of issues that might arise in the organisation (or department) undertaking assessments and how human rights and equality principles are applied in that context.

Those who are undertaking assessments who are not human rights and equality specialists will require significant on going training and/or support from equality and human rights specialists while they are undertaking the EQHRIA. Training should be delivered on a regular basis to cover new staff and decision-makers and to provide refresher training for existing staff and decision-makers.

3. Resources to Support EQHRIAs

It is important that resources are developed which are specific to the needs of particular organisations and the people who will be using them. For example, materials that are relevant to the assessment of the policies of a hospital will be very different from those of a prison. Even different departments in public authorities will require different support and guidance. For instance a department in a local authority responsible for adult social care will have very different needs from a department dealing with housing policy.

Organisations often produce toolkits, guidance and other materials which are generic, abstract and focus on guiding assessors through the process of undertaking an assessment (screening, consultation, evidence gathering etc.) These may not necessarily be helpful in practice to individual assessors trying to understand the relevance of their policy or decision to equality and human rights and may lead to an increased reliance on specialised support.

In practice the two most important resources for assessors are likely to be:

1. Examples of Good Practice and Other Context-Specific Guidance
2. A Database of Relevant Evidence and Statistics that can be used in the Assessment Process.

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1. Examples of Good Practice and Other Context-Specific Guidance

The best examples of good practice are completed EQHRIAs which are relevant to the department/organisation in question. These can then become models for how assessments should be undertaken and applied accordingly. Any other guidance which is produced should be as specific as possible to the issues faced by the assessor. For instance it should concentrate on demonstrating how to apply human rights and equality principles to specific relevant scenarios; and identify the particular groups and individuals who should be the focus of any consultation and the barriers to engaging with them. Illustrations showing how EQHRIA have led to improved policy outcomes are also useful to demonstrate the potential value of the assessment. EQHRIA guidance should also include comprehensive sections on the sort of evidence that might be required (with specific examples) and where that evidence can be found.

2. Databases of Relevant Evidence and Statistics that can be used in the Assessment Process.

The collection of evidence is vital to support a robust and meaningful EQHRIA (see building block 6). Often sources of evidence will be difficult to find and complicated to interpret (e.g. data on the Office of National Statistics website, or long narrative reports produced by government departments). It is inefficient and unfeasible to expect each assessor as part of an individual EQHRIA process to gather together this evidence independently from original sources.

Evidence needs to be made available to assessors in such a way that it can be easily used in the assessment process, for instance by summarising long reports or providing accessible direct links to relevant data sources. Public authorities should therefore develop databases of relevant evidence and statistics. Individual departments or small organisations are unlikely to have the resources to develop such databases independently. Therefore organisations should consider creating shared resource databases (for instance NHS boards or local authorities creating databases of relevant information jointly with other boards/authorities across the country etc.)

Pilot practice examples:

In Renfrewshire training was delivered in equality and human rights to council officers across services. Additionally, officers within the Chief Executive's Service developed a knowledge hub consisting of a wide range of evidence on Renfrewshire's diverse population, key issues and emerging trends (see building block 6 on evidence gathering) and impact assessment support, information and guidance is being developed for publication on the Council's intranet Renfo. Furthermore, capacity building packages are being developed to advance thinking, understanding and knowledge of equality and human rights.

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For equality and human rights training resources detailing the applicable legal frameworks see the Training Resource section.

Reflections on training, resources and support from pilot:

“...we should never assume when we are looking at undertaking an impact assessment that everybody that would be involved in the assessment would have equality and human rights awareness and they have the expertise or they can look through the equality and human rights lens.....We are quite familiar with looking at vulnerable and marginalised but we don't connect that through the lens of equality and human rights.”

“To build that knowledge, what Renfrewshire has done as part of this the pilot project, one of the spin-offs has been that we have developed an e-learning module.” **Yasmine Khan, Senior Policy Officer, Renfrewshire Council**

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Building block 4: Understanding the legal basis of EQHRIA

To undertake an EQHRIA that will have a positive effect on policy outcomes, assessors must have knowledge of key human rights and equality principles and law. They must also understand how to apply key principles and law to the issues that they are assessing.

Why is understanding the legal basis of EQHRIA important?

Muriel Robison, Equality Law
Consultant and Trainer



See film at www.scottishhumanrights.com/eqhria/

The business case

EQHRIAs based on a sound understanding of human rights and equality principles and law will allow policymakers to take account of human rights and equality issues when they make key decisions. Such EQHRIAs will provide assurances rather than assumptions that actions are fair, not arbitrary, and that they comply with the law, preventing violations before they require redress and added expense.

The legal case

Regulation 5 of The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires listed authorities, where and to the extent necessary to fulfil the equality duty, to assess the impact of applying a proposed new or revised policy or practice against the need to eliminate discrimination, advance equality of opportunity and foster good relations.

In making the assessment, a listed authority must consider relevant evidence relating to people who share a relevant protected characteristic.

A listed authority must:

- Take account of the results of the assessment in respect of the policy or practice;
- Publish, within a reasonable period the results of any assessment of a policy or practice it decides to apply; and
- Make appropriate arrangements to review and, where necessary, revise any policy or practice that it applies in the exercise of its functions to ensure that, in exercising its functions, it complies with the equality duty.

Any consideration by a listed authority as to whether or not it is necessary to assess the impact of applying a proposed new or revised policy or practice is not to be treated as an assessment of its impact.

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The Human Rights Act 1998 provides that it is unlawful for a public authority to act in such a way as to contravene the European Convention of Human Rights and assessment of impact provides an opportunity to ensure that applying a proposed new or revised policy or practice will not do so.

What are the practical considerations?

EQHRIAs should use recognised national and international legal frameworks as the basis for assessment. In the UK context this means that the Equality Act and Human Rights Act are indispensable elements of any impact assessment process. But applying human rights and equality obligations to specific areas of public policy such as health, education, housing or transport is not an easy task. Therefore considerable training, support and examples of good practice will be required for assessors to be able to apply these legal frameworks appropriately (see building block 3).

Organisations should also consider utilising other international human rights standards that provide more detailed elaborations of particular equality and human rights issues. For instance, the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities; the Convention on the Elimination of Discrimination Against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Pilot practice example:

In Renfrewshire training was delivered in equality and human rights to council officers across services. Additionally, officers within the Chief Executive's Service developed a knowledge hub consisting of a wide range of evidence on Renfrewshire's diverse population, key issues and emerging trends (see Building block 6 on evidence gathering) and impact assessment support, information and guidance is being developed for publication on the Council's intranet Renfo. Furthermore, capacity building packages are being developed to advance thinking, understanding and knowledge of equality and human rights.

For equality and human rights training resources detailing the applicable legal frameworks see the Training Resource section.

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Reflections on understanding the legal basis for EQHRIA:

“Equality and Human Rights Impact Assessment, if it’s done properly, gives organisations an opportunity to ensure that they are meeting their legal obligations both under the Equality Act and the Human Rights Act.”

“It’s important that assessors are supported and that they undertake training to ensure that they are aware of, and have knowledge of, not only the Equality Act but also the Human Rights Act principles. And that is the only way to ensure that Equality and Human Rights Impact Assessment is carried out properly...”

“Obviously there are huge risks in that they [public bodies] can be challenged for failures in relation to the Equality Act and the Human Rights Act. Undertaking Equality and Human Rights Assessment is one way to feel confident that you are managing those risks and hopefully that you are not facing challenges in the future.” **Muriel Robison, Equality law consultant and trainer**

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Building block 5: Deciding What to Assess and the Scope of the Assessment Process

It is important that organisations develop effective and robust processes for deciding when they need to undertake an EQHRIA ('screening'). Once the decision to undertake an assessment has been made, then organisations need to think carefully about the time and resources needed to carry out the assessment (the 'scope' of the assessment).

Zahida Ramzan, Policy Co-ordinator
(Equalities), Fife Council



See film at www.scottishhumanrights.com/eqhria/

The business case

Public authorities that attempt to undertake the same detailed assessment process for all their policies and practices will become overwhelmed by the task and will not be able to produce robust and meaningful assessments. Authorities should therefore develop mechanisms for 'screening out' policies that have minimal or no human rights or equalities impact and therefore do not require a full assessment. This allows authorities to put the majority of their time and resources behind those issues where there are potentially the most serious human rights and equality issues arising.

The legal case

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires listed authorities, where and to the extent necessary to fulfil the equality duty, to assess the impact of applying a proposed new or revised policy or practice against the need to eliminate discrimination, advance equality of opportunity and foster good relations.

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

Any consideration by a listed authority as to whether or not it is necessary to assess the impact of applying a proposed new or revised policy or practice is not to be treated as an assessment of its impact.

What are the practical considerations?

1. Screening

A screening process should be developed which ensures decisions on whether or not to undertake an assessment are rational and informed by appropriate evidence. Screening is not to be considered as assessment of impact. Rather it allows organisations to screen out policies that have minimal or no human rights or equalities impact and therefore do not require a full assessment.

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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 develop their own questions that are most appropriate to identify where assessments are most needed in relation to their own policy contexts:

- Does the policy in question relate to an area where important equality issues are likely to be raised? (e.g. disabled people's access to public transport; the gender pay gap; racist or homophobic bullying in schools, etc.)
- Does it relate to an area where there are significant human rights issues raised (e.g. funding for services to assist people women who are victims of rape and sexual violence or individuals with particular care needs)
- Does it relate to a policy where there is significant potential for reducing inequalities, or improving human rights outcomes? (For example, improving access to health services for transsexual people, or increasing take-up of apprenticeships by female students.)
- To what extent does the policy affect service users, employees or the wider community? 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)?
- To what extent is there evidence that the policy in question is important to particular groups?
- Does it relate to an area where your organisation has set equality outcomes?

Scope

Where an EQHRIA is deemed appropriate, then organisations need to consider carefully the resources and time that are required in order to ensure that the assessment is properly carried out.

There should always be an identifiable lead for any EQHRIA, responsible for undertaking and recording the EQHRIA. Senior managers should consider the size and complexity of the EQHRIA and as a result identify the most appropriate person to undertake this lead role, the time needed by that person to undertake the assessment and to what extent there is a need for other staff to play a supporting role.

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Where EQHRIAs are undertaken of complex policy areas (e.g. changing a hospital's appointments policy), it will be very helpful to bring together subject-specific expertise from a number of different groups at an early stage (e.g. doctors, nurses, patients, administrators etc.) in order to identify what all the possible impacts of a particular policy might be. It is also vital to engage affected communities at the earliest possible stage of the assessment, since these communities will provide invaluable evidence of the impact of policies and practices on groups and individuals, and will help assessors to better understand the scale of the assessment needed, how the assessment should be carried out, and what possible impacts need to be looked at (see Building Block 7 for more details on consultation processes).

Reflections on why is deciding what to assess and the scope of the assessment process important:

"The guidance states that when the types of policies and procedures that an impact procedure should be done on and also which ones shouldn't, for example routine annual reports and performance reports don't need an impact assessment" **Zahida Ramzan, Policy Co-ordinator (Equalities) Fife Council**

"Obviously organisations have to take what we call a proportionate approach to this, they have to give consideration in the first instance to whether or not their particular policy impacts on a large number of people and whether it might disproportionately impact on particular disadvantaged groups and so it is not the case that it would be sensible to undertake equality and human rights impact assessment in relation to every decision that's made." Muriel Robison, Equality law consultant and trainer

"I would emphasise that it cannot be done by one person in isolation. It is important to look at the time needed... It depends on the policy and its complexity." **Council officer, Renfrewshire Council (ODS Consulting evaluation report)**

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Building block 6: Evidence to Support Assessment

EQHRIAs should be supported by robust and reliable evidence which is sufficient to support any conclusions and recommendations that are reached. Where insufficient evidence exists, assessors should identify processes for collecting evidence that fills the gaps.

Peter Rub and Graeme McTavish,
Renfrewshire Council



See film at www.scottishhumanrights.com/eqhria/

Why is evidence to support assessment important?

The business case

Use of appropriate supporting evidence is central to any EQHRIA methodology. Without evidence any conclusions drawn are likely to reflect only the assessor's own knowledge, experience and/or prejudices. Assessments that are not based on sound evidence will not lead to better policy outcomes.

The legal case

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires listed authorities, where and to the extent necessary to fulfil the equality duty, to assess the impact of applying a proposed new or revised policy or practice against the need to eliminate discrimination, advance equality of opportunity and foster good relations.

In making the assessment, a listed authority must consider relevant evidence relating to people who share a relevant protected characteristic (including any received from such persons).

What are the practical considerations?

There are likely to be many sources of evidence that are already available to inform the assessment, such as:

- demographic information
- service-level monitoring data
- external research and statistics
- recommendations from audit and inspection reports
- internal monitoring data
- local, national and international data sets,
- published and unpublished research reports
- and evidence from consultation with users.

10 Good Practice Building Blocks

It is inefficient and unfeasible to expect each EQHRIA process to gather together this evidence independently from original sources. Evidence needs to be made available to assessors in such a way that it can be easily used in the assessment process (Building block 5).

However, existing evidence may need to be supplemented for the specific policy under consideration. 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.

Where insufficient evidence exists to support conclusions about what the likely impact will be, then assessors should work out what evidence is necessary that would allow them to draw conclusions and make recommendations. As a result, they may need to commission further research, or involve relevant groups to gather evidence from them (Building block 7 on involvement of communities). Decisions about how much evidence to gather should take into account the severity of the human rights/equality issue faced.

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 include plans for gathering evidence and a timescale within which it will be done in your plans to monitor and review the policy (Building block 10 on transparency and review). A lack of evidence should never be used as a reason for inaction.

Pilot practice example:

In Renfrewshire an extensive data gathering and compilation exercise was undertaken gathering together a wide range of evidence on the overall population of Renfrewshire, disaggregated by equality groups and various other groups providing a better understanding of the equality and human rights potential impacts of changes to advice services. This evidence database is being centralised on the intranet and internet of the Council.

10 Good Practice Building Blocks



Reflections on evidence gathering from pilot:

“The evidence is crucial to the methodology for impact assessment. Without the evidence those conducting the assessment will use their own experience and their own knowledge rather than the facts.”

“There is a wide range of demographic data available from the Scottish Government at the census website. There is also internal monitoring data that we have within our organisation. There is research and data sets available from other government agencies; things like Scottish Household Survey, Criminal Justice Survey. There are also other public organisations like End Child Poverty. There is also published and unpublished research reports, and there is also recommendations from Inspection and Audit Reports.....We can also contact partner organisations and maybe tap into their data that they would normally publicise or put out into the general public.”

“What we are going to be doing is consulting the different service departments. We are asking them what information they would like to see within the knowledge bank and asking them what information they can provide for the knowledge bank.”

“Because it was expanded to include human rights, we didn’t just concentrate on the nine protected characteristics dealing with equalities. The human rights agenda basically covers everybody.” **Peter Rub, Policy and Research Analyst Officer, Renfrewshire Council**

10 Good Practice Building Blocks

Building block 7: Involvement of Communities

EQHRIAs should include effective consultation and/or participatory processes which allow those who are (potentially) affected to have a voice, and their views to be taken into account in the assessment process.

Rhona Cunningham, Manager,
Fife Gingerbread



See film at www.scottishhumanrights.com/eqhria/

Why is involvement of communities important?

The business case

The involvement of affected groups and the gathering of evidence from these groups will ensure stronger relationships are built and it will be easier to demonstrate fairness, transparency, accessibility and accountability thereby improving public ownership and demonstrating the legitimacy of policy and decision making.

EQHRIAs undertaken without consultation may miss potentially serious impacts. Assessors may also make inaccurate assumptions about how those affected will respond to a policy. For example they might believe that affected groups could use another service which may not be appropriate or they may fail to understand the impact of a policy when combined with other policy changes affecting the same group (see also Building Block 8 on Assessing Combined Impacts).

The legal case

A human rights based approach to the design, development and delivery of public services requires a high degree of participation, from all communities, civil society and others. The participation of individuals in decision making and where appropriate the design of services is also a core procedural component of the human rights framework referenced in many of the international treaties such as the International Covenant on Economic, Social and Cultural Rights and Convention on the Rights of Persons with Disabilities. Participation must be active, free and meaningful and give due attention to issues of accessibility, including access to information in a form and a language which can be understood.

There is no legal requirement under The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 to involve communities in assessment of impact. However a court could consider non-statutory guidance published by the EHRC, including Involvement and the public sector equality duty when deciding whether the actions of an authority have been reasonable. This guidance explains how involvement of communities can support assessment of impact which is robust.

10 Good Practice Building Blocks

What are the practical considerations?

Consultation processes should be genuinely participatory and have the potential to influence the conclusions of the assessment. Most importantly this means that assessors need to think about:

- **The timing of consultations** – Consultations need to start as early as possible in the assessment process, so that they can help assessors to make decisions about the scope of the assessment process (see Building Block 6 on Evidence). If consultations take place too late in the process, there will be a momentum behind policy that makes it difficult to change.
- **Barriers to consultation** - Consultation processes therefore have to be designed with a view to overcoming barriers to participation. The particular barriers to any consultation process will depend on the context in which that consultation is taking place but may include language barriers, literacy problems, time constraints (e.g. as a result of caring responsibilities), access issues (e.g. meetings in venues that cannot be entered, lack of computer access for online consultations) and lack of faith that the consultation is genuine. Assessors therefore need to ensure that they are creating accessible assessment processes generally, and pay particular consideration of the needs of groups and individuals identified as important to the consultation.
- **Explaining how consultation processes have affected the EQHRIA** - There needs to be a transparent procedure whereby responses to consultations are discussed and assessors demonstrate how the outcomes of the EQHRIA are affected.

Pilot Practice examples:

In Fife, council officers worked closely with Fife Gingerbread, a group representing lone parents and conducted a series of interviews directly with lone parents. The independent evaluation of the pilot found that “there was a clear feeling that the evidence gathered from the five interviews with lone parents provided a richness and flavour to subsequent work, reminding participants that impact assessment is related to people and has an impact on real lives.” Fife Gingerbread also participated in the impact assessment workshop day.

In Renfrewshire, the evidence gathering process involved two focus group discussions with people who shared protected characteristics (or represented those who did), as well as wider community consultation work undertaken as part of the Review of Advice Services. The focus groups involved participants from the Diversity and Equality Alliance Group, and others with an interest in equality and advice – such as the youth service, CAB and an advocacy organisation. This qualitative information about experiences and perceptions was particularly important, because there was a lack of good statistical and research evidence to inform the impact assessment.

10 Good Practice Building Blocks



Reflections on involving communities from practice pilot:

“You can do an impact assessment by getting a group of professionals round the table and you all go through your view of what’s happening. If you want to do a tick box exercise then do it like that. But if you want to really find out what it’s like for people in the communities, what it’s like for their life, what it’s like struggling with your children then speak to them.” **Rhona Cunningham, Manager, Fife Gingerbread on involving communities**

“It helps you to build relations with members of the community out there who are going to be impacted, because they feel valued, they feel that if they have been consulted the council or any organisation is serious about what this is going to mean in terms of an impact on the communities or on the individuals.” **Yasmeen Khan, Senior Policy Officer, Renfrewshire Council**

“The council is committed to working much differently with communities to the way we have in the past. It’s more about working jointly, doing things with people rather than, arguably, to people.” **David Martin, Chief Executive, Renfrewshire Council**

“The more that people are involved in making decisions about their lives, the more they are empowered, then the more they take responsibility for making sure that these policies and decisions work as effectively as they are intended to.” **Professor Alan Miller, Chair, Scottish Human Rights Commission**

“It was about giving voices to people who don’t get heard, sharing experiences in their own words, and knowing that these are going somewhere.” **Council officer, Fife Council** (ODS consulting evaluation report)

“Traditionally, professionals sit round the table with a gridded sheet, using a tick box approach. This approach means there is a face to the situations, and encourages a focus on real impact on people.” **Council officer, Fife Council** (ODS consulting evaluation report)

10 Good Practice Building Blocks

Building block 8: Assessing Combined Impacts

Organisations should develop mechanisms for assessing the combined impact of different policies and practices on the same groups or individuals. This is because a series of changes to different policies or services could have a severe impact on particular groups or individuals.

Dr James Harrison,
University of Warwick



See film at www.scottishhumanrights.com/eqhria/

Why is assessing combined impacts important?

The business case

Vulnerable and disadvantaged groups and individuals are likely to be impacted by the policies and practices of a wide variety of public sector organisations as well as departments within each organisation. EQHRIAs which only assess the policies of an individual department or organisation in isolation are likely to miss the cumulative impacts of multiple policy changes on groups and individuals. For instance, the decision to charge for services will have more impact on a particular group using those services if they are also experiencing cuts in benefits and cuts in access to other services at the same time.

EQHRIAs undertaken without consultation may miss potentially serious impacts. Assessors may also make inaccurate assumptions about how those affected will respond to a policy. For example they might believe that affected groups could use another service which may not be appropriate or they may fail to understand the impact of a policy when combined with other policy changes affecting the same group (see also Building Block 8 on Assessing Combined Impacts).

The legal case

Human rights law is regarded as “case specific” and “victim-led”. This means that the courts will consider the individual circumstances of each case and whether a particular situation has cumulatively led to the thresholds of a right being engaged or breached. While the court will not prescribe how the public body should address the situation, if an individual is left in circumstances which, for example, could be seen as inhuman or degrading or a breach of private, home and family life then a violation may be found in that instance. This means in order to ensure that rights are not violated public bodies, and those carrying out public functions, may want to consider how the cumulative impacts of multiple policy changes on groups and individuals are assessed.

10 Good Practice Building Blocks

There is no legal requirement under The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 regarding combined impacts. However a court could consider non-statutory guidance published by the Equality and Human Rights Commission, including Assessing Impact and the public sector equality duty when deciding whether the actions of an authority have been reasonable. This guidance explains how assessment of impact should consider the cumulative effect of related decisions.

What are the practical considerations?

Commitment of senior managers will be needed in order to assess the combined impact of policies:

1. across a single public authority and/or
2. across a number of public authorities who have an impact on individuals in a particular place

In some situations, the starting point will be to consider all the individual EQHRIAs carried out across different departments/organisations. In other situations, you may start with a combined EQHRIA of the impact of policy changes across a wide number of departments/organisations. In either case, it is vital that public authorities communicate with each other about the combined impacts of their policies and take appropriate action as a result.

Reflections on assessing combined impact:

“Your standard impact assessments are undertaken by many public authorities up and down the country will involve an individual department making an assessment of an individual policy, a budget, a practice etc. and coming to a conclusion of what the equality and human rights impacts of that policy, budget or practice are. But if we think about this from a human rights perspective the human being is the most important part of the process.....

Sometimes decisions can be made by different organisations or different departments within an organisation and it's the combined effect of all of those different decision making processes that can lead to real problems for equality and human rights within the community.”

“By getting in the room to begin with and talking about those kind of issues they can then plan an impact assessment process that is going to give them an insight into how to plan and mitigate the effects on the people most likely to be affected by the decision making process.” **Dr James Harrison, University of Warwick**

10 Good Practice Building Blocks

Building block 9: Conclusions and Recommendations

Assessments should include clear conclusions, recommendations for action and identification of the person or persons responsible for taking that action.

Pamela Rennie, Senior Policy Officer,
Renfrewshire Council



See film at www.scottishhumanrights.com/eqhria/

Why is applying the results of assessments important?

The business case

Clear conclusions and recommendations for action are vital if EQHRIAs are to lead to better policy outcomes.

The legal case

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires listed authorities, where and to the extent necessary to fulfil the equality duty, to assess the impact of applying a proposed new or revised policy or practice against the need to eliminate discrimination, advance equality of opportunity and foster good relations.

Authorities are required to take account of the results of an assessment in the development of a new or revised policy or practice and where an assessment has been made and the policy implemented, the results of any assessment are required to be published 'within a reasonable period'.

What are the practical considerations?

There are five types of conclusions and recommendations that can be reached:

1. No negative human rights or equality impact found (or a positive impact identified) and therefore no recommendations required;
2. A negative human rights and/or equality impact has been found and a recommendation is made to change the policy or bring in additional measures to remove or mitigate the negative impact or to better advance equality or to foster good relations;
3. A negative human rights and/or equality impact has been found and a recommendation is made to stop/remove the policy;
4. A negative human rights and/or equality impact has been found but there is no recommendation to change the policy as a result. Where negative human rights and/or equality impacts are identified then failure to recommend any action as a result should be fully explained and justified;

10 Good Practice Building Blocks

5. It has been impossible to ascertain (some of) the impacts of the policy in question because of insufficient evidence. Where this is the case, a precise plan should be provided for how and over what timescale this evidence will be collected to allow conclusions and recommendations to be made.

The following points are particularly important for ensuring that conclusions and recommendations are acted upon:

- The conclusions of the impact assessment, including the (potential) severity of the human rights and/or equality impact should be clearly stated.
- Where action is required, the person or persons who will implement the recommendations should be identified, as well as the fact that they have been notified of the need for the change and the timescale within which this change will occur.
- Where recommendations can only be acted upon if they are approved by another decision-maker or decision-making body (e.g. a finance committee, elected members of a local authority etc.), then recommendations should clearly set out the process by which that will occur (in accordance with Building Block 2 above).

Recommendations should also be made for any further monitoring that is required to assess the on going impacts of the policy in question (see Building Block 10 for further details on monitoring and review).

Pilot practice examples

Example recommendations for action in the practice pilot included the following:

- In the Fife Council practice pilot on welfare reform and lone parents evidence was presented relating to lone parents living in inadequate and sub-standard accommodation which cannot be maintained or heated due to lack of resources and literacy levels, privacy issues and inadequate childcare provision acting as barriers to people being able to complete job and benefit applications. This led to recommendations around better information sharing for frontline staff to improve support for affected lone parents as well as local support to help people complete information online and in private, with support to access affordable childcare.

10 Good Practice Building Blocks

- In the Renfrewshire Council practice pilot on the delivery of advice service proposals evidence was presented relating to the right to life and the right not to be subjected to torture, inhuman or degrading treatment, as it was recognised that advice services regularly deal with individuals who are vulnerable and may be struggling to cope and contemplating suicide or pose a risk to others. As a result it was identified that good practice regarding the protection of vulnerable adults must be maintained in changes to advice service provision. It was recommended that specific requirements are incorporated into service specifications in commissioning and procurement of services, and that provision is monitored so as not to lose good practice/delivery already in place. It was further identified that training, support and capacity building of service users and third sector delivery partners should be monitored.

For full reports of the practice pilots and recommendations made please see the Pilot Reports section and the Added Value of Human Rights section for a summary of human rights impacts and recommendations.

Reflections on recommendations for action in impact assessment from pilot:

“The impact assessment on the review of advice services certainly did identify potential impacts for equalities and human rights. And our impact assessment team went onto identify, I suppose you could call them, recommendations for action so that we could mitigate potential or actual impacts.”

“I think applying the results of impact assessment is important especially for advice services. Advice services are about making sure that people are aware of their rights and responsibilities. Ultimately it’s about raising the quality of life for vulnerable people, groups and communities. So the equality and human rights ethos sits well with the advice services’ ethos.”

“Our impact assessment day brought together a range of services with a different set of perspectives.....It was good to bring together a range of perspectives because you could tease out what those impacts might be and what you might be able to do for it.”

“Reflections would be that you embed equality and human rights in your project work so whether that’s about a service or a policy, you take it alongside developing that service or policy so that when you have some recommendations the actions are there to be taken forward.” **Pamela Rennie, Senior Policy Officer, Renfrewshire Council**

10 Good Practice Building Blocks

Building block 10: Transparency and Review

Key information in relation to the EQHRIA should be published in a way that it timely and clear and makes EQHRIAs accessible, particularly for groups and individuals likely to be affected by the policy in question.

Procedures should be put in place for reviewing the on going impact of the policy or practice in question after the EQHRIA has taken place.

Paul Vaughan, Senior Manager,
Fife Council



See film at www.scottishhumanrights.com/eqhria/

Why is transparency and review important?

The business case

Transparency and accountability allows for participation and monitoring by individuals and groups with an interest in the issues concerned. It also has the potential to improve outcomes by highlighting impacts that might have been missed.

On-going monitoring is vital to ensure that any action that is taken as a result of the assessment has the desired effect.

The legal case

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires listed authorities, where and to the extent necessary to fulfil the equality duty, to assess the impact of applying a proposed new or revised policy or practice against the need to eliminate discrimination, advance equality of opportunity and foster good relations.

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires listed authorities, where and to the extent necessary to fulfil the equality duty, to assess the impact of applying a proposed new or revised policy or practice against the need to eliminate discrimination, advance equality of opportunity and foster good relations.

A listed authority must:

- Take account of the results of the assessment in respect of the policy or practice
- Publish, within a reasonable period, the results of any assessment of a policy or practice it decides to apply

10 Good Practice Building Blocks

There is no legal requirement under The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 regarding monitoring and review. However a court could consider non-statutory guidance published by the EHRC , including Assessing Impact and the public sector equality duty when deciding whether the actions of an authority have been reasonable. This guidance explains how assessment of impact should include monitoring and review of actual impact.

What are the practical considerations?

Information that should be published will include:

- The methodology used for carrying out EQHRIAs and
- The report on any EQHRIA which has been carried out including details of consultations and other evidence used to inform the assessment; conclusions, recommendations and further monitoring required; and a person identified as responsible for the EQHRIA in question.

EQHRIAs should be displayed in such a way that they are easily accessible to interested groups and individuals. This means that they should be clearly signposted on relevant web pages of the organisation's website, and not simply catalogued in a long list of EQHRIAs on a single web page.

Post-assessment monitoring and review procedures should be set up to consider whether recommendations have been implemented, whether they have been effective, and what the on-going impacts of the policy or practice are. The monitoring procedures should specify: who is responsible for monitoring the policy, the date when the policy will next be reviewed and what evidence would trigger an early review. The procedures should also specify if there is any data which needs to be collected on an on-going basis and how often it will be analysed. Consideration should also be given as to how to continue to involve affected groups and communities in the monitoring process.

Practice pilot example:

In Renfrewshire a template to ensure that impact assessment results are reported to Elected Members in a standard format and publicised with Board Reports on the Council website was devised and was rolled out from August 2013.