

EQHRIA

Equality & Human Rights
Impact Assessment



Added Value of Human Rights



Added Value of Human Rights

The information in this section will assist you to understand and answer many of the frequently asked questions about what a human rights based approach is, and why and how it can be used in practice in policy and decision making.

Frequently asked questions on human rights and impact assessment

- Why assess human rights impact?
- What is a human rights based approach to policy and decision making?
- What is the process for assessing human rights impact?
- Are there examples of human rights impacts in the practice pilots?
- What are others in Scotland doing to assess human rights impact?

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Why assess human rights impact?

There is both a business case and a legal case for assessing human rights impact.

The business case for assessing the impact of human rights

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 people's individual circumstances 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 enhancing public ownership and legitimacy in 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 it with assurances rather than assumptions that actions are fair, not arbitrary, and that they comply with the law. This helps to prevent violations before they require redress and thus reduce both legal and financial risks and expense.

In addition to the above the integration of human rights into your impact assessment approach will assist with following:

Avoid duplication of process - it's all about people

In furthering the above objectives it is practical to use an integrated approach for integrated thinking around equality and human rights, avoiding duplication of time and effort whilst ensuring policy making which improves outcomes for everyone. Human rights are inherently "person centred" putting people at the heart of effective public service design and delivery in a consistent and clear way. It provides a legal and objective basis for ensuring a person centred approach in practice, focusing the attention of service design on what will deliver the best outcomes for people, rather than 'one size fits all' policies which seek to make people fit systems.

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The legal case for assessing human rights impact

The Human Rights Act 1998 makes it unlawful for a public body or those performing a public function to act, or fail to act, in a way that is incompatible with the European Convention on Human Rights. This means understanding human rights and taking them into account in all day to day work.

Introducing human rights while having due regard to equality in policy analysis will assist organisations meet duties under the Human Rights Act 1998 by:

- Broadening the scope of impact assessment.
- Providing a framework for balancing competing rights, interests and risks.
- Highlighting the most serious impacts.

Broadening the scope of impact assessment

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

Human rights however, belong to all of us regardless of status or any protected characteristic. As Article 1 of the Universal Declaration of Human Rights states:

‘All human beings are born free and equal in dignity and in rights.’ (Universal Declaration of Human Rights)

The universality of rights and the equal enjoyment of rights by all persons provides a different perspective on some of the policy areas considered in the case studies and pilots.

As human rights apply to everyone, taking an Human Rights Based Approach compliments an equality analysis by prompting consideration of whether the impact of a policy on people's rights is acceptable and also how a policy might drive up standards of services and enhance positive impacts for all people, not only those defined by particular characteristics. It could mean that impacts disproportionately affecting vulnerable, disadvantaged or voiceless communities are considered where they might otherwise be overlooked. This would include, for example, consideration of impacts on people living in poverty, homeless people, carers, or people with a particular health status (such as people living with HIV).

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Providing a framework for balancing competing rights, interests and risks

A human rights analysis can help balance competing rights and interests of different people. This is because very few rights are absolute. Most human rights can be interfered with when justified, in pursuit of a legitimate aim, such as the protection of the rights of others, and proportionate, that is the minimum necessary interference in pursuit of a legitimate aim. You can learn and understand more about this in our basic training resource.

By demonstrating that policy and decision making takes account of the rights of everyone an impact assessment can support the understanding that there are rights to be respected for all communities, whilst also paying regard to protected characteristic groups.

As one council officer said: “I think that’s what a lot of people forget about human rights. ...It’s not just one thing or another, you do have to balance different people’s rights and priorities.”

Local authorities have provided examples of balancing competing rights and interests in practice, including:

- The rights of Scottish Gypsy/Traveler communities to respect for private, home and family life must often be weighed alongside the right to respect for private, home and family life and to peaceful enjoyment of property of settled communities. This demonstrates how human rights are for everybody.
- In assessing its response to street begging a local authority had to consider the impact on the physical accessibility of pavements for disabled people, as well as the rights of homeless people. Taking a human rights approach the authority found that a proposed bye-law prohibiting street begging could have a disproportionate negative impact on homeless people, and the bye-law was ultimately rejected.
- A school used an Human Rights Based Approach in shaping its exclusion policy to balance the rights of the pupil subject to exclusion, such as the right to education, with the rights of the other pupils and teachers in the school.
- An understanding of human rights has assisted council officers in dealing with the privacy claims of householders refusing access to their homes for gas safety appliance checks, without which the right to life of others would be compromised.

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Furthermore an understanding of human rights and the concept of proportionality helps to balance rights and risks in decision making, getting the balance right between protecting people from risk of harm and upholding autonomy. Human rights require that we act to protect people at risk of serious harm. They require that any restriction on our right to live our life as we choose (our autonomy) be based on law, pursue a “legitimate aim” such as protecting the rights of others, and be the least restrictive effective means of achieving that aim. Understanding the balance of these rights and duties provides a framework for making difficult decisions on balancing risk and rights.

Highlighting the most serious impacts

Human rights are fundamentally about the human dignity of all of us and the opportunity to lead fulfilling lives.

A human rights analysis will identify where impacts on people with protected characteristic or others reach a threshold which could amount to a human rights violation. This includes but is not limited to those impacts already identified by an equality analysis. Taking an Human Rights Based Approach helps puts in place minimum standards of treatment for all regardless of whether they are from a protected characteristic group. In human rights terms everyone must be treated with dignity and respect.

In interviews council officers have said:

“I have difficulty to see where the dividing line is between the two, equality and human rights. Upholding people’s rights should include reflecting diversity and affording everyone equality of opportunity or access to services.”

“It saves complicating things of what is an equality and what is a human rights issue. For officers in the council, we shouldn’t muddy the waters by trying to work out which is one and which is the other. It is irrelevant in terms of what the council wants to achieve at the end of the day.”

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In interviews council officers have said:

“It is nice to be able to tell people we are not just planning for equality groups but for everyone.”

“You have to see the totality of impact on people and if you separate into streams then you miss the whole impact. If you make decisions about services for carers it impacts disproportionately for women but it also impacts someone’s independence or family life so you have to see it as impact on people. To take it separately you lose the sense of how the decision will impact on lots of people in lots of different ways.”

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What is a human rights based approach to policy and decision making?

A Human Rights Based Approach (HRBA) is a way of empowering people to know and claim their rights, and increases the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights.

This means raising awareness of what human rights mean and giving people greater opportunities to participate in shaping the decisions that impact on their human rights. It also means increasing the ability of those with responsibility to respect, protect and fulfil human rights. Using an HRBA which is integrated into policy-making, as well as the day to day running of organisations, ensures that standards are met for everyone.

There are some underlying principles which are important in applying an HRBA in practice, known as the PANEL Principles:

The principles of a Human Rights Based Approach: the PANEL Principles

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Participation

Everyone has the right to participate in decisions which affect their human rights. Participation must be active, free, meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.

Accountability

Accountability requires effective monitoring of human rights standards as well as effective remedies for human rights breaches. For accountability to be effective there must be appropriate laws, policies, institutions, administrative procedures and mechanisms of redress in order to secure human rights.

Non-discrimination and equality

A HRBA means that all forms of discrimination (such as age, gender, sexual orientation or ethnicity) in the realisation of rights must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most marginalised or vulnerable situations who face the biggest barriers to realising their rights.

Please refer to the Public Sector Equality Duty.

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Empowerment of rights holders

Individuals and communities should understand their rights, and be fully supported to participate in the development of policy and practices which affect their lives. Individuals and communities should be able to claim their rights where necessary.

Legality of rights

A HRBA requires the recognition of rights as legally enforceable entitlements, and is linked in to national and international human rights law.

PANEL	Principle	What this means for impact assessment
Participation	<p>Everyone has the right to participate in decisions which affect their human rights.</p> <p>Participation must be active, free, meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.</p>	<p>Who are the groups or individuals most likely to be affected by the proposal?</p> <p>What methods would you use to ensure that those affected by the policy are involved in decisions that affect their human rights, in an active and meaningful way?</p>
Accountability	<p>Accountability requires effective monitoring of human rights standards as well as effective remedies for human rights breaches.</p>	<p>Who is responsible for making sure that human rights are respected, protected and fulfilled?</p> <p>What sources of evidence (qualitative and quantitative) are you aware of that would help to inform the policy?</p> <p>Are there procedures in place for staff or service users who feel that their human rights have been or are in danger of being breached to hold the organisation to account?</p>

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PANEL	Principle	What this means for impact assessment
Non-discrimination and equality	All forms of discrimination on grounds such as age, gender, sexual orientation, ethnicity or “other status” (such as health status or poverty) in the realisation of rights must be prohibited, prevented and eliminated. Human rights also requires the prioritisation of those in the most marginalised or vulnerable situations who face the biggest barriers to realising their rights.	<p>Have individuals or groups who are more vulnerable to human rights breaches been identified?</p> <p>How might the policy impact on these individuals or groups?</p> <p>Can you identify any actions that you could recommend that would lessen the negative impact of the policy?</p>
Empowerment	Individuals and communities should understand their rights, and be supported to participate in the development of policy and practices which affect their lives. Individuals and communities should be able to claim their rights where necessary.	What information will those affected by the policy need in order to be able to effectively influence the decision?
Legality	An HRBA requires the recognition of human rights as legally enforceable entitlements, and is linked in to national and international human rights law.	<p>What are the possible human rights impacts of the proposal? (Which rights might be engaged? What is the nature of those rights (are they absolute, qualified, limited or to be fully realised progressively)? If they are qualified rights, is any interference necessary to achieve a legitimate aim, and proportionate- that is the minimum necessary interference)</p>

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What is the process for assessing human rights impact?

In a 2010 report commissioned by the SHRC it was found through an analysis of existing practice in Human Rights Impact Assessment (HRIA) that there is considerable variation in the complexity and quality of both HRIA methodologies, and in the resulting assessments both in the UK and internationally.

The report nevertheless found that there are common methodological steps taken in most HRIAs (a screening stage, a scoping stage, evidence gathering, consultation analysis, conclusions and recommendations, publication and monitoring and review).

These process steps mirror those taken in traditional equality impact assessment processes and the legal duties around assessing equality impact (for guidance see the EHRC guide), meaning it makes sense both conceptually and practically to consider equality and human rights as part of the same policy making process.

The procedural elements in Good Practice Building Blocks 4 -10 can be understood using the four steps in the Scottish Human Rights Commission method of promoting the application of a human rights-based approach: FAIR- Facts; Analysis; Identification of Responsibilities; and Review and Report.

FAIR is a means of putting a human rights based approach into practice. It is a practical way of applying the PANEL framework as outlined above and is applied in the case study examples here.

The FAIR principles are broadly as follows:

Facts: Assessing impact requires a thorough understanding of the facts engaged by the proposed policy or practice and the potential effects on people. This will require an appropriate level of resources and consideration of relevant evidence. Most importantly it will require the meaningful participation of affected rights-holders.

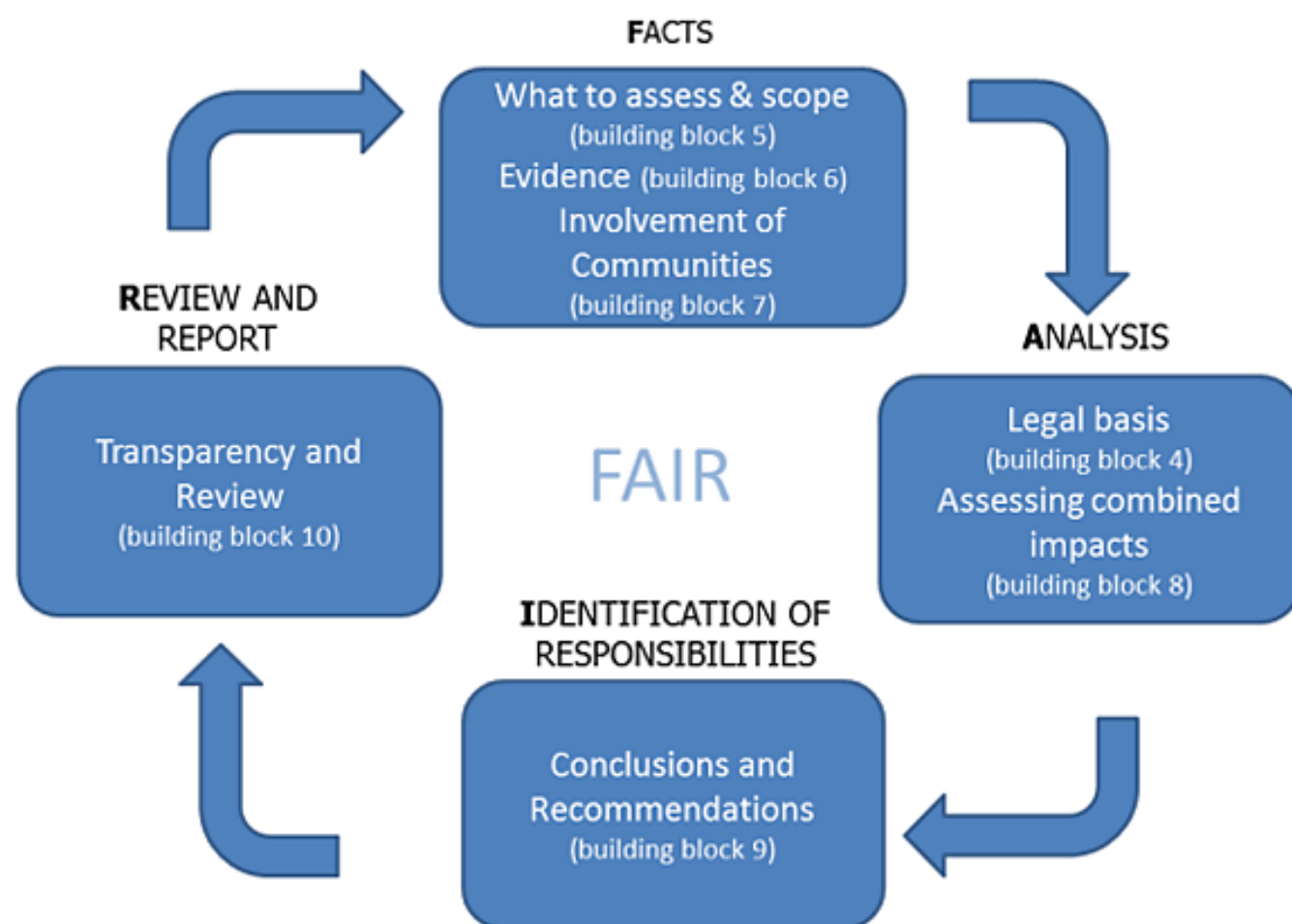
Analysis: Assessing impact requires undertaking an analysis of the potential positive and negative impacts of the proposed policy or practice on equality and on the human rights at stake.

Identification of responsibilities: Where the policy or proposal engages equality and human rights issues, assessing impact requires deciding whether changes should be made and identifying responsibility for these changes.

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Review and reporting: Assessing impact requires consideration of how the implementation of the function or policy will be monitored and how the results of an impact assessment will be reported.

This diagram demonstrates the process of EQHRIA, in relation to the Good Practice Building Blocks which follow.



The Commissions believe that impact assessments should be a way of applying a human rights based approach in practice. They should see human rights both as a means, or way of doing things, driven by human rights and equality standards and principles, as well as an end to be achieved- the FAIR approach seeks to achieve this in practice.

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Are there examples of human rights impact in the pilot studies?

Fife Council pilot - Welfare reform and lone parents

During 2013 / 2014 in Fife, a pilot impact assessment was carried out on the impact of welfare reform on lone parents. Some examples of potential human rights impacts and related recommendations are outlined below:



Right to life

Evidence was presented of people being unable to cope with the change in their circumstances due to welfare reform and contemplating suicide. This flagged the increased need for joined up and/or additional support being made available for vulnerable adults with mental health issues. Outcomes included improved exchange and sharing of information regarding suicide risk and prevention as well as adult and child protection.

Right not to be subjected to torture, inhuman or degrading treatment or punishment

During the pilot, evidence was presented of physical and mental suffering due to changes in financial circumstances and in some cases adults not being able to look after children, leading to child protection issues. Furthermore, issues were raised which cumulatively could give rise to human rights concerns. These included people having to choose between heating their homes or buying food, children going to school in damp, smelly clothing because families cannot afford to heat their homes and not being able to buy winter clothes for their children. This highlighted the need for information sharing about additional support initiatives such as insulation, food banks and credit unions, as well as be a greater awareness of adult and child protection issues. It also led to the recommendation of training and awareness raising for frontline staff.

Right to a fair hearing

Those involved with the pilot heard evidence about an increase in people being sanctioned for failing to comply with conditions through the cessation of benefits without little prior notice. There was found to be little or no support available to deal with the sanction letter or appeals process. Claimants were also unaware that the sanctions may be at the discretion of Job Centre staff. This led to a recommendation that funding should be provided to local groups and law centres to help people appeal such decisions. Dialogue with job centres may also be considered to examine their work provision programmes for lone parents and in particular the sanctioning of lone parents where this would have a disproportionately negative impact. Additional steps which could be considered include the inclusion of childcare in the work programme and flexibility of sign on times to fit around childcare responsibilities.

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Right to respect for private, home and family life

A considerable number of issues related to this right were highlighted by the evidence. These included lone parents and children living in inadequate and sub-standard accommodation which cannot be maintained or heated due to lack of resources; shared accommodation giving rise to child protection issues - 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.

Right to property

Immediate sanctions removing benefits may engage the right to peaceful enjoyment of their possessions, which requires striking a fair balance between the right of the individual and the public interest. Again, this highlighted the need for engagement with job centre staff to ensure that they are sensitive to the situation of lone parents and other vulnerable individuals when exercising their discretion in applying sanctions. It also identified the need for additional support to people in the appeals process.

For more on the Fife Council pilot please see the section on the Pilot Local Authorities.

Renfrewshire Council pilot - Delivery of advice service proposals

In Renfrewshire the pilot impact assessment was carried out during 2013 / 2014 on changes to the provision of advice services. Some examples of the potential human rights impacts that were identified are outlined below;

Right to life, and Right not to be subjected to torture, inhuman or degrading treatment or punishment

It was recognised that advice services regularly deal with individuals who are vulnerable and may be struggling to cope, and there was recognition 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 also recommended that procedures are put in place to deal with vulnerable individuals, particularly those at crisis point. It was identified that training, support and capacity building of service users and third sector delivery partners should be monitored.



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Right to a fair hearing

It was considered likely that specialist legal advice and choice of where to access information and advice for advocacy and representation will be reduced due to reduced funding of third sector delivery partners. Access to information may also be an issue for certain service user groups, due to language and literacy barriers.

Right to respect for private, home and family life

Information sharing can help improve the service to clients, but engages privacy rights. Similarly the proposed increase in self-serve (phone/internet) information and advice in public areas also raises privacy issues which must be considered. Recommendations were made to ensure compliance with the Data Protection Act and to ensure clarity around internal and external information sharing. The development of a single ICT referral and tracking system to support a streamlined customer journey would be considered. The improvement of digital inclusion through better support and updated or replaced IT systems to allow user friendly access for all groups and individuals would also be considered.

Right to non discrimination

New advice services could potentially lack the necessary understanding of equality and human rights. Training and support is therefore required. A recommendation was made that equalities and human rights requirements are within service specifications for advice commissioning. This should be standardised and monitored to identify actual equality and human rights impacts. Better recording of demand levels and service user demographics was also recommended. Further recommendations were made around accessibility of advice services in various locations, investment in a shared resource of interpreters and translators and ensuring a variety of means are used to allow access to services for clients e.g. home visits, email, telephone, as well as face to face and internet appointments.

For more on the Renfrewshire Council pilot please see the section on the Pilot Local Authorities.

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What are others in Scotland doing to assess human rights impact?

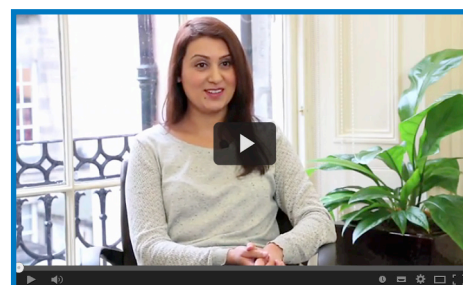
Other public bodies in Scotland are introducing integrated impact assessment models, including:

- The City of Edinburgh Council introduced a “Framework to Advance Equality and Rights 2012-2017” - read the Framework document.
- NHS Health Scotland has published an integrated Health Inequalities Impact Assessment tool which has been extensively piloted with the Scottish Government Health Directorate and NHS boards. A detailed ‘Answers to frequently asked questions’ publication is also helpful.

If your organisation has resources on integrated EQHRIA please let us know.

For links to further resources on impact assessment in general please see our Other Resources section.

Arma Sayed, Project Officer,
NHS Health Scotland



See film at www.scottishhumanrights.com/eqhria/