

## Equality Impact Assessments – Guidance

### Introduction

Under the Equality Act 2010, the Moray Council has a duty to consider and address the impact of all its policies or activities on the different groups protected under the Act. The protected groups are:

- Race
- Disability
- Sex
- Maternity and pregnancy
- Age
- Marriage and civil partnerships
- Sexual orientation
- Gender reassignment

In considering and addressing the impact, the Moray Council needs to

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

The law requires that the Moray Council demonstrates that it has considered and addressed potential impacts in its decision making. The Moray Council has chosen to do this through an Equality Impact Assessment. In this guidance the term “activity” is used as an umbrella term covering policies, procedures, guidance and decisions.

An Equality Impact Assessment should be carried out as part of the development of policies/activities. The outcome of the assessment should be reported before a decision is made to proceed with the activity.

The Moray Council has adopted a form which lets you summarise how the impact on protected groups has been considered and addressed during the development of the activity. The form consists of 13 questions and an action plan.

### Summary of the process

An Equality Impact Assessment consists of the following steps

1. Decide if an EIA is required
2. State the aims and objectives of the activity.

3. Collect and analyse available evidence.
4. Identify gaps in available evidence and plan actions to fill the gaps.
5. Identify positive or negative impacts on protected groups. Negative impacts are those that can lead to unlawful discrimination. Positive impacts are those that are aimed at reducing inequality or promoting good relations between the various groups. Positive impacts tend to be aimed at specific protected groups, for example reasonable adjustments.
6. Identify mitigating actions to reduce or remove negative impacts.
7. Identify actions to monitor potential impacts.
8. Report the outcomes of the assessment to the Equality and Diversity Corporate Advisory Forum for approval.
9. Report the outcomes of the assessment to the relevant committee(s).
10. If the committee decides to go ahead with the activity despite potential negative impacts, then it will need to justify this decision.

The lead officer involved in developing the activity will have the responsibility for ensuring that steps 1 to 9 are carried out as part of the development process. At any stage of the assessment they can contact the Equal Opportunities Officer for guidance. The full assessment will need to be presented to the Equality and Diversity Corporate Advisory Forum for approval. The outcome of these stages of the assessment (question 12) will need to be presented to elected members in the committee report. Please see the new Equalities section (4g) in the guidance notes on the Committee Reports format.

If an impact has been identified, the full EIA will need to be appended to the committee report, and the impact and mitigating actions added in the summary of implications under the Equalities section.

Elected members of the relevant committees have the responsibility for the final decision and, where necessary, the justification of a decision which may have an adverse impact on one or several of the protected groups.

The equality duty does not prevent authorities from making difficult decisions, nor does it stop them from making decisions which may affect one group more than another. It does require authorities to make decisions in a fair, transparent and accountable way, based on evidence and the involvement of community groups, particularly those that may be affected.

### **Deciding if an EIA is needed**

An EIA will not be required if an activity has no relevance to the general PSED. Table 1 shows the general duties and the protected groups to which they apply and it can be used when deciding whether or not an EIA will be required.

### **An EIA is not required if**

- The reason for the report is simply for the committee to note and consider.
- It concerns implementation of legislation. Scottish Government impact assessments can be found on following link:  
<http://www.scotland.gov.uk/Topics/People/Equality/18507/EqualityImpactAssessmentSearch>. Exceptions are if the implementation has budgetary or staffing implications.
- It concerns changes in management structure.
- The recommended actions don't affect people.
- The report is to inform the committee on performance or budget monitoring.
- A proposed consultation is included in the recommendations.

**Table 1: General Equality duties by protected group**

	Race	Disability	Sex	Religion or belief	Marriage and civil partnership	Sexual orientation	Pregnancy and maternity	Gender reassignment	Age (only applies to people aged 18 or over)
Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the act									
Advance equality of opportunity between people who share a protected characteristic and people who do not share it									
Foster good relations between people who share a protected characteristic and people who do not share it									

If it's decided that an EIA is not required this should be noted in the appropriate section of the committee report as 'An equality impact assessment has been carried out and no impact has been identified'. Reports will be monitored and if it is subsequently noted that reports which indicate that no impact has been identified do have equalities issues which would require to be addressed appropriate procedures will be initiated by Committee Services, in consultation with the Equal Opportunities Officer, to ensure compliance with the relevant Regulations

If there is no information available about whether or not an activity will have an impact, then an EIA is required in order to ensure that evidence will be gathered. An EIA will always be required when

- Services are withdrawn
- When there is a change in the way a service is delivered
- When conditions or eligibility criteria are imposed
- When an impact is likely
- When a large number of service users are affected by a service
- When the impact is unknown

## The Form

### Question 1: Aims and objectives of the activity

These will be as stated in the document outlining the activity. You may also want to include information about the background that led to the development of the activity. This information can be important in cases where a decision to go ahead with the proposed activity is taken despite the potential of an adverse impact and there is a need to justify the decision.

### Question 2: List the evidence that has been used in this assessment

One of the aims of the Equality Act 2010 is that decision making has to be based on evidence and should involve those that might be affected. Public authorities will be required to publish evidence used in its decision making. Data used should be as up-to-date as possible.

The best information to base decisions on is public consultation, especially with groups that might be affected by the activity. The Scottish Government has issued guidance on consultation with equality groups<sup>1</sup>. They define consultation as: *[providing] opportunities for all those who wish to express their opinions on an area of our work (such as identifying issues, developing or changing policies, testing*

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<sup>1</sup> Reid – Howie Associates: *Good Practice Guidance, consultation with equality groups*. Scottish Executive Central Research Unit and Equality Unit 2002.

*proposals or evaluating provision) to do so in ways which will inform and enhance that work.*

Guidance from the Equality and Human Rights Commission and existing case law also make it clear that impact assessments and consultations should be part of the decision making process and not carried out after the decision has been made.

It will not be possible or practical to consult on every activity. When deciding on whether or not to carry out a consultation the following considerations need to be taken into account:

- Scale of the activity. Does it affect a large number of the population?
- Scale of the impact. Does it affect people in one or more important aspects of their lives?
- Severity of the impact (even if it affects only a small number of people). Can it put some people in the community at a severe disadvantage?
- Does it directly affect funding to an external service provider? If that is the case, the provider(s) involved should be consulted at an early stage.

There are many different ways of consulting the public on policies or activities. If you want support or advice on consultations, contact the **Community Support Unit Manager, Ian Todd on 01343 557012.**

If you would like to involve the Moray Equalities Forum in a consultation, please contact **Don Toonen, Equal Opportunities Officer on 01343 563321.**

A wide range of sources of additional information exist which can be used in carrying out an equality impact assessment. These include:

- Census, [www.gro-scotland.gov.uk](http://www.gro-scotland.gov.uk) .
- Statistics, <http://www.scotland.gov.uk/Topics/Statistics>  
<http://www.statistics.gov.uk>, <http://www.geo.ed.ac.uk/home/scotland/stats.html>
- EHRC triennial review, <http://www.equalityhumanrights.com/key-projects/triennial-review/>
- Customer satisfaction surveys.
- Equality impact assessments for similar activities. These can be found on most councils' and other public bodies' websites.
- Moray CHP health report,  
<http://www.scotpho.org.uk/nmsruntime/saveasdialog.asp?IID=4333&sID=5625>
- Internal data. This can include monitoring information, customer feedback, information from previous equality impact assessments.

### **Questions 3 and 4: Identify gaps in information and plan actions to fill the gaps**

It is not always possible to get information about all the protected groups. Lack of information does not mean that there will be no impact. Due consideration should be given to the following questions:

- Does the activity expressly exclude certain groups?
- Are there conditions applied to the activity which may indirectly lead to certain groups being excluded?

If these questions can't be answered with existing data or through consultation, the implementation of the activity will need to be monitored. The steps that will be taken to monitor and review the activity should be identified in this section and will also need to be included in the action plan.

Note: it is unlikely that monitoring will provide reliable data on all equality groups. Questions on sexual orientation or gender reassignment, for example, generally result in high levels of non-response or may in other ways not give a complete picture. There is even evidence to suggest that including such questions as part of the monitoring process could, in itself, lead to a negative impact. People may be suspicious of the reasons for asking such questions as part of, say, the process of applying for a license or for access to specific council services.

### **Question 5: Are there potential impacts on protected groups?**

When thinking about potential impacts of the activity, it is important to think of positive impacts as well as negative. Remember that the equality impact assessment is not just about eliminating unlawful discrimination, but also about advancing equality of opportunity and promoting good relations between the different groups within the community.

### **List of functions where impacts are likely to occur**

This is not an exhaustive list. Some of these will be obvious but be careful not to be guided by "common sense" when gauging whether or not there will be an impact. Common sense is a poor guide when dealing with diversity. The impact assessment has to be based on evidence.

- Transport: age, disability, pregnancy and maternity
- Health
- Community Care
- Children and families
- Waste disposal (kerbside collection)

- Decisions that affect funding to organisations representing specific groups. These should as a minimum include consultation with the affected organisations.
- Communication and information strategies
- Housing
- Decisions that affect staffing levels or terms and conditions of work.

Be aware of elements of an activity which may lead to indirect discrimination. These are conditions that apply equally to all groups but may put certain groups at a disadvantage. Examples of these are:

- Mobile breast screening units which are not accessible to wheelchair users
- Producing information in one format only.
- Standard size changing rooms in leisure centres which may pose barriers to wheelchair users, people who need assistance from a carer when changing clothes or parents with children.

Where any impacts amount to unlawful discrimination steps must be taken to remove those impacts.

#### **Question 6: What are the potential negative impacts?**

Give more detailed information for each of the “negative” boxes ticked under question 5. The more specific the information is, the easier it is to formulate mitigating steps in question 7.

#### **Question 7: Have the affected groups been consulted?**

If an impact has been identified or is likely then it is necessary to consult those who may be affected by the activity. Such consultations don't always need to be on a large scale, it may involve a number of telephone calls or informal meetings with organisations representing various equality groups. These can give you good qualitative information about how they might be affected and what mitigating steps can be taken to minimise the impact. For more far reaching policies it is recommended to refer to the community engagement manual.

#### **Question 8: Identify mitigating actions to reduce or remove negative impacts**

These should, as much as possible, be based on consultation. Involve those who may be affected and ask them what steps can be taken to minimise negative impacts. Examples of mitigating steps are:

- Offering information in alternative formats or languages.



- Liaise with organisations who face cuts in funding to identify alternative funding sources.

### **Question 9: What steps can be taken to promote good relations between various groups**

The public sector equality duty goes beyond eliminating discrimination: there is also a positive duty to promote good relations between the various groups in the community. This is something that should be considered when conducting public consultations on issues which clearly affect particular groups.

An example where this has been done is in the Licensing Board's Support and Guidance to Trade and Community. Although the aim of the activity was to inform license holders on the Licensing (Scotland) Act 2005 and the Gambling Act 2005, it was decided that the publications could also be used to promote good relations and to inform license holders on the Equality Act 2010.

### **Question 10: How does the policy/activity create opportunities for advancing equality of opportunity?**

This can be particularly relevant if an activity is being developed in response to observed underrepresentation of particular protected groups or if additional action is being taken to ensure that services are more equally accessible. Examples are

- Offering translations or alternative formats
- Creating additional facilities for disabled people, pregnant women or breastfeeding mothers.
- Extending opening hours to accommodate different religions.

### **Question 11: What monitoring arrangements will be put in place?**

We must keep an open mind and accept that there might be consequences that could not have been foreseen. It is therefore recommended that we build in systems that enable us to monitor the impact of an activity once it has been implemented. This can give useful information for future impact assessments

### **Question 12: What is the outcome of the assessment?**

Tick the relevant box. These outcomes will have to be reported to committee before it makes its decision. See also section 4 (g) in the guidance notes on the Committee Reports format.

If the outcome is 3: the activity will have a negative impact which cannot be mitigated fully, question 12 will need to be completed.

At this stage the assessment should be sent to the equal opportunities officer who will give feedback and/or submit it to the Equality and Diversity Corporate Advisory Forum for approval.

**Question 13: Set out the justification that the activity can and should go ahead despite the negative impact.**

In some cases it may be inevitable that decisions have to be taken that will impact more on specific protected groups. Serious consideration has to be given in these circumstances to justifying the decision.

The two tests currently applied in the courts are:

- Does the measure serve a legitimate aim? This aim must not be discriminatory.
- Is the measure proportionate? This requires weighing up whether the same aim can be achieved by less discriminatory means.