EQUALITY AND HUMAN RIGHTS ASSESSMENT GUIDANCE

An Equality and Human Rights Assessment (EHRA) is a process for considering and assessing organisational risk in relation to meeting the requirements of specific legislation:

The Equality Act 2010


The aim of the EHRA is to ensure that when a policy, procedure or initiative is devised, people’s basic rights and the needs of minority groups are consciously and properly considered – public authorities are duty bound to make the best assessment of equality risk that they can. The EHRA should inform all decision making, and this will identify any potentially discriminatory or negative consequences as well as potential benefits ensuring that, as far as possible, everyone has an equitable experience of policing services. The EHRA should be based on evidence and facts.

There is a requirement to identify whether any groups of people could be affected adversely as a result of the policy/procedure/initiative. These include the nine protected characteristic groups, which are:

- Age
- Disability
- Gender Reassignment
Marriage and Civil Partnership
Pregnancy and Maternity
Race
Religion or Belief
Sex (Gender)
Sexual Orientation.

An EHRA must be completed before decisions are made to avoid any of the nine protected characteristic groups being inadvertently disproportionately disadvantaged. The assessment is also a live, auditable document and should be reviewed and continually updated at key milestones during development to ensure continued compliance with The Equality Act 2010 and The Human Rights Act 1998.

There are many benefits to the Police Service by completing an EHRA thoroughly and with sufficient accurate detail, and these include:

- An improved, more informed decision making process,
- A more effective method of carrying out core business,
- Transparent decision making,
- Increased public confidence and satisfaction,
- Increased employee satisfaction.

A comprehensive guide to completing an EHRA can be found on the following pages.

**Equality Section**

1) Outline the main aims and objectives of the policy/procedure/initiative as this will be the focal point of what the initiative is regarding. Think both internal and external, and include expected positive outcomes. Consider what the decision is you want to make and think about what you are trying to achieve, ensuring the aims are proportionate, necessary and appropriate.

2) Detail what research has been conducted and considered. This could include information from other police forces, relevant Acts and legislation, national guidance, internal and external surveys, relevant publications, feedback from external organisations such as Black Police Association, and from internal groups such as Gay Support Network.
3) Consideration should be given to who may be affected by the initiative, particularly towards the nine protected characteristic groups, and this consultation should be appropriate and proportionate. This could be carried out through internal and external groups and the Independent Advisory Groups. Consultation may also be with staff associations and any relevant personnel where the initiative could have an impact. Any dates and outcomes should be included. Consider what questions you want to ask and what methodologies you could use.

4) Further assessment has to be made against the nine protected characteristic groups to identify whether a beneficial (positive), adverse (negative) or equality neutral impact has been identified. Rationale for all decisions, including equality neutral, should be recorded in the details section, and include the nature of any impact identified, the findings of any conclusions, and what actions have been taken to either remove, reduce or mitigate any impact upon the initiative. Details should be provided as to whom the initiative impacts on and how – think about internal and external considerations and any other specific factors which need to be taken into account.

5) If an adverse (negative) impact has been identified then further details are required stating how the adverse impact can be justified for the initiative. Even if this type of impact has been identified (which could be unintentional), it does not necessarily mean the policy/procedure/initiative cannot go ahead if it is a proportionate means of achieving a legitimate aim. In the context of the Police Service, an adverse impact can refer to a disparity in employment practices for recruitment/promotion, or externally a working practice/service which disadvantages people who may come into contact with the Police Service. It is imperative that it is made clear what action is being taken to address any adverse impact.

Further details and a table can be found on the next page which will assist when taking a proportionate approach to an EHRA.

**A Proportionate Approach**

The table below will assist you when taking a proportionate approach to an EHRA. It will identify the level of impact your proposals may have on the nine protected characteristic groups and also what level of risk this impact may have on the organisation.

It will guide you through taking a considered but reasonable and proportionate approach when demonstrating you have paid due regard to the General Equality Duty, and ensure you are satisfied that you have taken sufficient action on the risk identified:
<table>
<thead>
<tr>
<th>Impact on Protected Characteristics</th>
<th>Potential Adverse Impacts</th>
<th>Action</th>
</tr>
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</table>
| - Will impact on none of the groups or a very small number of people  
- No impact/minimum impact identified | - Short term adverse local publicity  
- Minor damage to reputation  
- Internal criticism  
- Minimum external criticism | - No major changes required to proposals  
- Consider how impact can be reduced/eliminated |
| - Will impact on large numbers of people or one or more protected characteristic groups  
- Adverse impact identified | - Sustained adverse local publicity  
- Significant damage to reputation  
- Challenges from protected characteristic groups/advocates/partners | - Action plan required  
- Consider consulting with those affected  
- Adjust proposals to remove or reduce identified impact |
| - Will impact on large numbers of people or several protected characteristic groups  
- Significant adverse impact identified | - Short term national media coverage and serious damage to reputation  
- Criticism at Local Government level or Police Standards Unit intervention  
- Criticism/challenge from high profile Advocate groups, eg. Equality & Human Rights Commission | - Consult those affected  
- Ensure that there are sufficient plans to reduce/mitigate impact |
| - Actual or potential unlawful discrimination, harassment or victimisation | - Sustained national media coverage over sustained period  
- Major damage to reputation  
- Criticism at Government level  
- Legal challenge | - Do not continue where there is actual or potential unlawful discrimination |
Protected Characteristic Groups

Age – defined as a reference to a person having a particular age (e.g., 34 years old) or being within an age group (e.g., 25-35 year olds). This includes all ages, from young children to the elderly.

Disability – a person has a disability if they have a physical or mental impairment which has a long term and substantial adverse effect on their ability to carry out normal day-to-day activities. Long term means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the person’s life. Substantial means more than minor or trivial. The duty to consider reasonable adjustments for people with disabilities is anticipatory – this means a public authority must not wait until a person with a disability wants to use a service or commence employment to consider reasonable adjustments, and when developing a policy/procedure/initiative the public authority should anticipate what barriers may impede a person with a disability and properly consider reasonable adjustments. Consideration should be given to physical, social or communication barriers.

Gender Reassignment – defined as a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex. Consideration should be given to issues such as privacy of data, harassment (both internal and external), time off for medical appointments, etc.

Marriage and Civil Partnership – marriage is defined as any formal union between a man and a woman and same sex couples which are all legally recognised in the UK. Same sex couples can also have their relationship legally recognised as civil partnerships (civil partners must not be treated less favourably than married couples). Consideration should be given to the impact of proposal on couples, for example, shift patterns and flexible working.

Pregnancy and Maternity – pregnancy is defined as the condition of being pregnant. Maternity is defined as the period after giving birth (the protected period) which is 26 weeks after giving birth. Consideration should be made to return to work arrangements, part time working, child care arrangements, etc.

Race – refers to a group of people defined by their colour, nationality and ethnic or national origins. A racial group can be made up of two or more distinct racial groups who share a colour, nationality or origin. Consideration should be given to the impact on these different ethnic groups with regards to barriers and communication.

Religion or Belief – this includes any religion and any religious or philosophical belief. This also includes a reference to a lack of or no religion or belief.

Sex (Gender) – this refers to a man or woman of any age. In relation to a group of people it refers to either men and/or boys, or women and/or girls. Consideration should be given to working hours, locations, access to training, part time working, etc.
Sexual Orientation – defined as a person’s sexual orientation towards persons of the same sex, persons of the opposite sex, and persons of either sex. It relates to how people feel as well as their actions. Consideration should be given to heterosexual people as well as lesbian, gay and bi-sexual people.

Legal Obligations

Under the Equality Act 2010, a public authority is obliged to evidence that during decision making, ‘due regard’ has been paid to all elements of the General Equality Duty in respect of the nine protected characteristics, to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act – this applies to all the protected characteristics;
- Advance equality of opportunity between people who share a protected characteristic and those who do not – having due regard, in particular to the need to:
  a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic,
  b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it,
  c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- Foster good relations between people who share a protected characteristic and those who do not – having due regard in particular to the need to:
  a) Tackle prejudice, and
  b) Promote understanding.

Due Regard

‘Due Regard’ means consciously thinking about the above three aims of the General Equality Duty as part of the decision making process before reaching a decision, for example, what impact your proposals may have on people and what you can do to eliminate or reduce this impact. By completing an EHRA you are capturing considerations and decisions to evidence due regard has been paid.

Any actions which may need to be taken into consideration to eliminate or reduce any impact include:

- To ensure the initiative is essential in order to carry out any functions,
- That you are unable to find another way of achieving the aims of the initiative that has a less discriminatory effect,
- That you believe that the means you have employed to achieve the aims of the initiative are proportionate, necessary and appropriate,
- The benefits far outweigh any potential discriminatory effect.
Human Rights Section

The European Convention on Human Rights came into force in the UK in 1953 and created convention rights and freedoms. The Human Rights Act 1998 gives further effect to these conventional rights and fundamental freedoms with, for example, a right for an individual to bring proceedings against a public authority.

The Human Rights Act 1998 makes it unlawful for public authorities to act in a way that is incompatible with a Convention Right. The Act is about treating individuals fairly and with dignity and respect, whilst still safeguarding the rights of the wider community. The Rights concern matters of life and death, but also cover everyday life issues, for example, what a person can say and do, their beliefs, their right to a fair trial and many other similar basic entitlements.

The 16 Convention Rights are:

<table>
<thead>
<tr>
<th>Article</th>
<th>Right Description</th>
<th>Limitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 2</td>
<td>Right to life</td>
<td>Limited</td>
</tr>
<tr>
<td>Article 3</td>
<td>Prohibition of torture</td>
<td>Absolute</td>
</tr>
<tr>
<td>Article 4</td>
<td>Prohibition of slavery and forced labour</td>
<td>Absolute</td>
</tr>
<tr>
<td>Article 5</td>
<td>Right to liberty and security</td>
<td>Limited</td>
</tr>
<tr>
<td>Article 6</td>
<td>Right to a fair trial</td>
<td>Limited</td>
</tr>
<tr>
<td>Article 7</td>
<td>No punishment without law</td>
<td>Absolute</td>
</tr>
<tr>
<td>Article 8</td>
<td>Right to respect for private and family life</td>
<td>Qualified</td>
</tr>
<tr>
<td>Article 9</td>
<td>Freedom of thought, conscience and religion</td>
<td>Qualified</td>
</tr>
<tr>
<td>Article 10</td>
<td>Freedom of expression</td>
<td>Qualified</td>
</tr>
<tr>
<td>Article 11</td>
<td>Freedom of assembly and association</td>
<td>Qualified</td>
</tr>
<tr>
<td>Article 12</td>
<td>Right to marry</td>
<td>Limited</td>
</tr>
<tr>
<td>Article 14</td>
<td>Prohibition of discrimination</td>
<td>Limited</td>
</tr>
<tr>
<td>Article 1, Protocol 1</td>
<td>Protection of property</td>
<td></td>
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<tr>
<td>Article 2, Protocol 1</td>
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<td>Article 3, Protocol 1</td>
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<tr>
<td>Article 1, Protocol 13</td>
<td>Abolition of the death penalty</td>
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</tbody>
</table>
Not all Convention Rights carry the same weight. They are grouped into three broad types – Absolute Rights, Limited Rights and Qualified Rights:

- **Absolute Rights** – States cannot opt out of these rights under any circumstances, not even during war or public emergency. There is no possible justification for interference with them and they cannot be balanced against any public interest – they can never be taken away or withheld.

- **Limited Rights** – These are rights that are not balanced against the rights of others but which are limited under explicit and finite circumstances.

- **Qualified Rights** – These are rights that can be interfered with in order to protect the rights of other people or the public interest. An interference with Qualified Rights may only be justified where the State can show that the restriction:
  
  a) Is lawful – this means that it is in accordance with the law, which must be established, accessible and sufficiently clear.
  
  b) Has a legitimate aim – the restriction must pursue a permissible aim as set out in the relevant Article. Public authorities may only rely on the expressly stated legitimate aim when restricting the right in question. Some of the protected interests are national security, protection of health and morals, prevention of crime and protection of the rights of others.
  
  c) Is necessary in a democratic society – the restriction must fulfil a pressing social need and must be proportionate to that need. Consideration should be given to whether you are restricting one person’s rights to protect the rights of another individual, and if so whose right will be restricted, who is protected and why this is necessary. Also consider if there is another way to achieve the aim identified in (b) and possible ways to mitigate the impact on the individual’s rights.

1) Identify which, if any, of all the 16 Convention Rights are affected by the initiative.

2) Decide whether the initiative will impact on any of the Convention Rights identified in question 1, and do they interfere with the Rights in a way that might restrict them – assess any impact both positive and negative.

If any of the Rights which have been identified are Absolute and/or Limited, no further assessment of these Rights are required – this is because there is no possible justification for interference with them and they cannot be balanced against any public interest or the rights of others.
3) If any of the Rights which have been identified are Qualified Rights, then a balancing exercise needs to be undertaken. This is sometimes referred to as the three stage test (questions a – c as listed on the EHRA):

   a) There has to be a law for the action – decide whether there are any laws which are connected with the right.
   b) Is the legitimate aim of the initiative to protect someone or a situation? What is the ultimate goal you are trying to achieve?
   c) Is the action proportionate to reach a legitimate aim?

Sometimes the Rights of the individual are balanced against the Rights of others. In terms of proportionality, it may be useful to consider the following questions to determine whether a restrictive act is proportionate or not:

- What is the problem that is being addressed by the restriction?
- Will the restriction in fact lead to a reduction in that problem?
- Does a less restrictive alternative exist, and has it been tried?
- Does the restriction involve a blanket policy or does it allow for different cases to be treated differently?
- Has sufficient regard been paid to the rights and interests of those affected?
- Do safeguards exist against error or abuse?
- Does the restriction in question destroy the very essence of the Convention Right at issue?

Qualified Rights which may be applicable to the Police Service

Article 8 – Right to respect for private and family life:

Everyone has the right to respect for their private and family life, their home and their correspondence. A person has the right to live their life with personal privacy as is reasonable in a democratic society, taking into account the rights and freedoms of others. Any interference with a person’s body or the way the person lives their life is likely to affect their right under this Article. This includes freedom to choose one’s own sexual identity, freedom to choose how one looks and dresses, freedom from intrusion by the media, and personal information such as official records, photographs, letters, diaries and medical information to be kept private and confidential. This Right may be restricted where there is a recognised legitimate aim such as national security, public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others – this interference should be lawful and justification considerations recorded on the EHRA.

Article 9 – Freedom of thought, conscience and religion:

This protects people’s rights in relation to a broad range of views, beliefs, thoughts and positions of conscience as well as to their faith in a particular religion. The State is never permitted to interfere with a person’s right to hold a particular belief. It can only restrict their right to manifest a belief where there is a recognised legitimate aim, such as public safety, protection of public order, health
or morals, or the protection of the rights and freedoms of others – this interference should be lawful and proportionate and recorded on the EHRA.

**Article 10 – Freedom of expression:**

Everyone has the right to hold opinions and to receive opinions and information without interference. The Right includes freedom to express views. Expression can cover holding views or opinions, speaking out loud, publishing articles/books/leaflets, television or radio broadcasting, internet communication, forms of commercial information and many other activities. It can also cover the right to receive information from others. You can express yourself in ways that other people will not like or may even find offensive, however offensive language to a particular racial or ethnic group would be an example of where a lawful restriction on expression might be imposed. The Right may be subject to restrictions where there is a recognised legitimate aim, such as interest of public safety, national security, prevent disorder or crime, protect health or morals, protect the reputations or rights of others, prevent the disclosure of information received in confidence, and maintain the authority and impartiality of the judiciary – this interference should be lawful and proportionate and recorded on the EHRA.

**Article 11 – Freedom of assembly and association:**

Everyone has the right to assemble with other people in a particular way, and the right to associate with other people, as well as the right not to take part in an assembly or join an association if that is their choice. Freedom of assembly applies to static meetings, marches, public processions and demonstrations – the Right must be exercised peacefully, without violence or the threat of violence, and in accordance with the law. Freedom of association includes the right to form a political or non-political party/association, and the right not to join and not be a member of an association or other group. The Right may be restricted where there is a recognised legitimate aim, such as national security, public safety, prevention of disorder or crime, protection of health or morals, protection of the rights and freedoms of others – this interference should be lawful and proportionate and recorded on the EHRA.

**Code of Ethics Section**

The Code of Ethics sets out the principles and standards of behaviour that promote, reinforce and support the highest standards from everyone who works within the police service. The Code is founded upon nine policing principles which were built on the Nolan principles for public life, and these principles should underpin every decision and action across policing. In accepting to abide by the Code of Ethics, everyone is committed to the principles and standards of behaviour, and these will assist everyone in doing the right thing when faced with difficult and complex decisions.
Consideration needs to be given to the nine policing principles, as listed below, as to how the policy/procedure/initiative will meet the standards which are expected by the police service in both the development and delivery of the initiative (some will be more applicable than others depending on the subject of the initiative):

1. Accountability – you are answerable for your decisions, actions and omissions.
2. Fairness – you treat people fairly.
3. Honesty – you are truthful and trustworthy.
4. Integrity – you always do the right thing.
5. Leadership – you lead by good example.
6. Objectivity – you make choices on evidence and your best professional judgement.
7. Openness – you are open and transparent in your action and decisions.

Link to The Code of Ethics:


Review of Assessment

The EHRA is a live, auditable document and should be continually reviewed in order to properly inform the decision making process is accurate and precise.

Reviews of the EHRA should be built into the process in order to capture data in the future which could impact on the policy/procedure/initiative. Amendments or adjustments may need to be made at any given time, if new evidence indicates there is an impact on one or more of the protected characteristic groups, or any of the Convention Rights. Also if new or existing legislation is
made/changed then this could have an impact on the content of the assessment, so amendments should not wait until any agreed review date. A review date should be built in so that any previously unidentified differential impact may be addressed. The frequency of reviews should be determined by the author of the assessment depending on it’s content, and this should be between 1 and 3 years.

Full details of the review and date completed should be recorded on the EHRA, detailing what has changed or been amended, or if no amendments have been made. All information and reasons for any changes should be captured in order to maintain a full audit trail of all revisions.

For help in completing an EHRA please contact Ruth Williams, Legal Officer (Equality and Human Rights).