



How do I complete an Equality and Human Rights Impact Assessment?

EHRIA

These guidance notes accompany the Form – “Equality and Human Rights Impact Assessment: The Form.” Please use these guidance notes as you complete the impact assessment. Throughout the Guide, the word “function” is utilised as shorthand for any activity undertaken by Aberdeen City Council and refers to the full range of policy, provisions, criteria, practices and activities including the delivery of services.

Introduction

What is an Equality and Human Rights Impact Assessment (EHRIA)?

Aberdeen City Council utilise a combined impact assessment process capturing equality and human rights information/evidence.

An EHRIA is a tool that helps to systematically consider relevant evidence that you can test against functions that, in the case of the Equality Act 2010, may have an unfair or unequal effect on different groups of people within the community or the workforce and, in the case of the Human Rights Act 1998, may interfere with or violate an individual's human rights, so that we:

- Ensure that the function does not discriminate;
- Consider how the function might better advance equality of opportunity;
- Consider whether the function will affect relations between different groups; and
- Ensure that the function does not interfere unnecessarily with or violate an individual's human rights.

An EHRIA enables you to ensure that proactive steps are taken to identify and mitigate potential discrimination and interference with or violation of an individual's human rights. Effective impact assessment enables you to adapt a function to better advance equality and/or protect human rights.

A function that proactively considers equality and human rights, using relevant evidence, is likely to be more responsive to the needs of those affected.

Why should I carry out an EHRIA?

An EHRIA should be undertaken at the initial stages of developing or commencing a function.

Equality

The Equality Act 2010 (the Act) introduced a new public sector equality duty. The Act sets out the 'general duty' (See Appendix 1) which requires public authorities to pay due regard to the need to eliminate discrimination; advance equality of opportunity; and foster good relations across a range of protected characteristics. The general duty came into force on 5 April 2011. **It is not a marginal activity but a key component of what we do.**

It is important to stress that one of the specific duties requires you to 'assess the impact' of applying a function. This specific duty requires you to actively consider how your function will meet the requirements of the public sector equality duty. It is important that you record this as evidence of having paid due regard.

'Due regard' comprises two linked elements: proportionality and relevance. The weight that public authorities give to equality should be proportionate to how relevant a particular function is to equality. The greater the relevance of a function, the greater the regard that should be paid.

Human Rights

Following enactment of the Human Rights Act 1998 the rights contained in the European Convention on Human Rights (ECHR) were incorporated into United Kingdom law making them enforceable in United Kingdom Courts.

The key principle of the Act is that wherever possible there should be compatibility with Convention rights.

The Human Rights Act 1998 means that:

- Convention rights and responsibilities form a common set of binding values for public authorities' right across the UK.
- Public authorities must have human rights principles in mind when they make decisions about people's rights.
- Human rights must be part of all policy making.

How do I complete an EHRIA?

Firstly, should you require advice or guidance on how to undertake an EHRIA or how to consult with equality groups, contact:

Sandra Howard, Equalities Manager, Equalities Team, Tel: 01224 523039, Email: SHoward@aberdeencity.gov.uk

1 - EHRIA - Essential information

This part is self-explanatory and requires you to input information about your function into the EHRIA.

2 - EHRIA - Pre-screening

As a public authority we are an outward facing organisation engaging with the population of Aberdeen and, in some instances, beyond the city. To this end 90% plus of our functions and policies will impact in some way with the population of Aberdeen, our customer base and of course our workforce.

A few policies may clearly be neutral but you must have enough evidence to support this conclusion. If there is evidence to support this conclusion there is no need to carry out an EHRIA so place a tick on 'No', detail your evidence and sign off your form.

3 - Equality and Human Rights Impact Assessment

a. What are the aims and intended effects of this function?

Give a brief summary of the aims and intended effects of the function.

b. What equality and human rights data is available in relation to this function?

Provide equality data that may indicate how the function can affect groups who share the nine **Protected Characteristics**:

- Age (people of all ages)
- Disability (mental, physical, sensory and carers of disabled people)
- Gender reassignment (transsexual)
- Married or in civil partnerships
- Pregnancy and maternity
- Race (includes Gypsy/ Travellers)
- Sex (women and men)
- Religion or belief or non-belief
- Sexual orientation (Heterosexual, Lesbian, Gay and Bisexual)

This data could be internal or external and some examples will include: Job application success rate; profile of service usage etc.

The weight that public authorities give to equality should be proportionate to how relevant a particular function is to equality. The greater the relevance of a function to equality, the greater the regard that should be paid.

With respect to human rights impact consider any available evidence regarding each individual right being considered and its engagement with the particular function. See para.5 and Appendix 3 for further guidance.

c. List the outcomes from any consultation that relate to equalities and/or human rights issues

Ensure the outcomes from any consultation mentioned here relate to equalities and/or human rights issues. Where applicable, **it is also important at this stage to show that you have followed the Revised National Standards for Community Engagement 2016.**

This data could be internal or external and some examples where human rights are engaged will include: Eviction processes - Article 8 – Right to family life; Licensing Board Hearings – Article 6 - Right to a fair trial.

Including equality groups in your consultation will help you understand the impact of your functions on these groups. For more information/guidance on how to involve equality groups in your consultation contact Sandra Howard, Equalities Manager, Equalities Team, Tel: 01224 523039, Email: SHoward@aberdeencity.gov.uk; or any member of the Equality Team.

d. Financial Assessment

If applicable, carry out a financial assessment.

e. How does this function contribute to the public sector equality duty

To show how your function contributes to achieving the public sector equality duty please consider the following;

Eliminating discrimination: Is there evidence to indicate that the function:

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

Advancing equality of opportunity: Does the function help to:

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

Fostering good relations: Does the function help to:

- tackle prejudice; and
- promote understanding.

f. How does this function link to the Council's Equality Outcomes?

Does the function contribute to achieving one or more of the 15 agreed equality outcomes. Please see the outcomes in Appendix 2 and assess relevance. It is important to mention the relevant outcomes and how the assessed function contributes to its achievement.

4. Equality Impact Assessment – Test

For each of the listed protected characteristics and from your evidence and research listed at 3 above, decide if the function is going to have a positive, neutral or negative impact. Place a tick in the relevant box stating the impact and provide your evidence and, if applicable, justification where a genuine determining reason exists.

5. Human Rights Impact Assessment - Test

Does this function have the potential to interfere with or violate an individual's Human Rights?

Not all the Convention rights are formulated in the same way. The different types of Convention rights are sometimes explained as:

- **Absolute rights**, which include Article 3, the right to protection from torture, inhuman and degrading treatment and punishment; Article 4, the prohibition on slavery and enforced labour; and Article 7, protection from retrospective criminal penalties. **Interference with or violation of these rights is prohibited.**
- **Limited rights**, which include Article 2, the right to life; Article 5, the right to liberty; Article 6, the right to a fair and public hearing; Article 12, the right to marry and to found a family; Article 14, the right not to be subject to discrimination and Protocol 1, Article 3, the right to free elections, all of which are limited under explicit and finite circumstances, set out in the ECHR itself, which provides exceptions to the general rights.
- **Qualified rights**, which include Article 8, the right to respect for private and family life; Article 9, the right to religion and belief; Article 10, the right to freedom of expression; Article 11, the right to assembly and association; Protocol 1, Article 1, the right to peaceful enjoyment of property and Protocol 1, Article 2, the right to education. Interference with these is permissible only if what is done:
 - A. has its basis in law, and
 - B. is done to secure a permissible aim set out in the relevant Article, for example for the prevention of crime, or for the protection of public order or health, and

- C. is necessary in a democratic society, which means it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued

Proportionality:

The points at A, B and C above are very important tests to see if interference by any public authority in an individual's rights is allowed under the ECHR. **Test C is critical regarding proportionality.** This means that, even if a particular policy or action that interferes with a Convention right pursues a legitimate aim this will not justify the interference **if the means used to achieve the aim are excessive in the circumstances.**

Any interference with a Convention right should be carefully designed to meet the objective in question and must not be arbitrary or unfair. Do not "use a sledgehammer to crack a nut". However, even taking all these considerations into account, interference in a particular case may still not be justified because the impact on a particular individual or group is just too severe.

State which rights may be affected by ticking the appropriate box(es) and stating how.

If you answer "no" to this question, then go straight to 6- Assessment Rating.

Remember though, as a public authority we are an outward facing organisation. To this end 90% plus of our functions will impact in some way with the population of Aberdeen, our customer base and of course our workforce.

A basic introduction regarding what you need to consider about such articles can be found in "Ours to Own - Understanding Human Rights" by the Equality and Human Rights Commission.

http://thezone/cg/community_planning/eia_advice.asp

Further details are also available in Appendix 3.

If in doubt regarding Human Rights assessment seek assistance!

6. EHRIA Summary

Having considered all of these elements, you must take account of the results of such assessments, giving a rating for the overall assessment and take any action required accordingly. Using the traffic light signal ratings sends a very clear, visual message to officers, elected members and the public of the consequences of accepting your function. Please see the assessment rating below for more information.

Assessment Rating:

After completing this document, rate the overall assessment as follows:

Red: As a result of performing this assessment, it is evident that the function will discriminate (directly, indirectly, unintentionally or otherwise) against one or more of the nine groups of people who share Protected Characteristics; or it is evident that we will

violate an individual's human right(s). It is essential that the use/implementation of the function be suspended until further work or assessment is performed and the discrimination and/or violation of particular human rights are removed. **Further professional advice should be sought in this instance.**

Red Amber: As a result of performing this assessment, it is evident that a risk of negative impact exists to one or more of the nine groups of people who share Protected Characteristics. However, a genuine determining reason may exist that could legitimise or justify the use of this proposal and further professional advice should be taken.

In the case of human rights, if it is evident that there is an interference with an individual's human rights and there is risk the function may be interpreted as a violation of the particular human right(s) consideration should be given to whether the particular human right concerned is an absolute, limited or qualified right. **Further professional advice should be sought in this instance.**

Amber: As a result of performing this assessment, it is evident that a risk of negative impact exists to one or more of the nine groups of people who share Protected Characteristics and/or interference with an individual's particular human right(s) these risks may be removed or reduced by implementing the actions detailed within the Action Planning section of this document.

Green: As a result of performing this proposal there does not appear to have any adverse impacts on people who share Protected Characteristics or interference with an individual's particular human right(s) and no further actions are recommended at this stage.

Reason for that decision

Please detail the evidence which has led to the rating you have chosen.

Review of function impact

Assessing impact does not end with the introduction of new or revised functions. Assessment of impact should be considered as ongoing, to monitor the actual impact of the function.

The following timescales are suggested to review ongoing functions dependent on their respective initial assessment rating:

Red – 12 months

Red Amber – 18 months

Amber – 24 months

Green – 36 months

7. - Action Planning

Identify any risks and then the actions proposed to remove or reduce risks of adverse outcomes.

If, as a result of your assessment, you find there is a negative impact on any of the equality target groups or risk of interference with or violation of any other human rights, you should take action to modify the function, such as removing or mitigating any negative impacts, where possible, and exploring any potential for positive impact.

If any adverse impact amounts to unlawful discrimination or a violation of an individual's human rights, the function must be amended to avert this.

It is important to remember that you must put any modified function through the EHRIA process to ensure that there are no negative impacts for any other groups or interference with or violation of other human rights.

However remember the duties and obligations contained in the Equality Act 2010 and the Human Rights Act 1998 do not prevent us from taking many difficult decisions such as reorganisations, relocations, redundancies, or service reductions, nor do they stop us from making decisions that may affect one group more than others. Whilst we have a duty to involve community groups of interest, this does not give them the right of veto regarding any of our functions, rather they enable us to demonstrate that we are making decisions in a fair, transparent and accountable way and considering the needs and rights of different members of our communities.

8. - Sign off

The final stage of the EHRIA is formally to sign off the document as being a complete, rigorous and robust assessment.

If you are reporting to committee you should also include the EHRIA with your draft committee report as part of the committee report consultation stage.

Please note that, should you make changes to your committee report/function after the consultation stage, you should review and amend your EHRIA to reflect these changes.

Who should sign off the EHRIA?

At least three signatures are required. The first signature is yours, as the person completing the EHRIA, plus any other who was involved with you in completing the EHRIA.

You will require a second signature. This will be the person who has checked the EHRIA. It could be a colleague, one who is designated as an equality champion for your service, or your line manager.

Appendix 1 - The General Duty

The Equality Act 2010 s.149 sets out the General Duty that requires a public authority to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- 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.

These are sometimes referred to as the three aims or arms of the general equality duty. The Act explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Appendix 2

Aberdeen City Council Equality Outcomes (2017 - 21)

The Generic Equality Outcomes for all Aberdeen City Council's Services are:

E.O. 1: We have engaged and committed leaders, with the council and partners working together to reduce inequality, remove barriers and promote a culture of respect.

E.O. 2: We have a clear action plan in place to deliver a human rights based culture within Aberdeen City Council.

E.O. 3: Older people and younger people have an empowered, actively involved community voice.

E.O. 4: Physical and social barriers are removed for those with a disability to access services and public space.

E.O. 5: We have in place support for BSL users to access services, information on services and to be involved in making improvements for the deaf and deaf/blind communities.

E.O. 6: There is learning provision and accommodation in place to meet the needs of Gypsy/ Traveller families.

E.O. 7: Aberdeen is a city of sanctuary with positive relations amongst Aberdeen's diverse communities, where everyone is welcome and respected, regardless of religion, belief or background.

E.O. 8: In Aberdeen there is a culture in which women's lives, opportunities and confidence are improved.

E.O. 9: Aberdeen is an LGBT+ friendly city where LGBT+ communities can confidently express their identity and views.

Employment Equality Outcomes (2017 – 21)

The Employment Equality Outcome is:

E.O. 1: Aberdeen City Council - a fair employer

The two actions that sit below this equality outcome are:

1. We will maintain a diverse workforce and a culture that is free from unlawful discrimination and;
2. Achieve and maintain pay equality within the workforce.

Education and Children's Services Equality Outcomes (2017 – 21)

E.O. 1: Children and young people with a disability and their families are supported and included enabling them to achieve their full potential

E.O. 2: Pre-birth children (unborn babies) at risk due to issues that parents are dealing with such as; mental health, substance use and domestic abuse are identified at an earlier stage

Vulnerable pregnant women are identified and supported at an early stage

E.O. 3: Lesbian, Gay, Bisexual and Transgender (LGBT) children and young people feel safe, respected and included in school

E.O. 4: All children and young people in Aberdeen have an understanding of their rights and develop the ethos and culture to improve well-being and develop every child's talents and abilities to their full potential.

E.O. 5: External Cultural/Arts organisations who receive investment from Aberdeen City Council actively promote and engage with those with protected characteristics in designing, planning and delivering activity.

The Mainstreamed Equality Principles

So that the Equality Outcomes from 2015-17 do not get lost or diluted as we set our proposed new Equality Outcomes, these have been mainstreamed into the “way we work around here”. These will become our Best Practice principles. To help mainstream this approach and to promote these principles, we propose a network of Equality Ambassadors across the organisation.

The Mainstreamed Equality Principles are:

1. An engaged community
2. An informed community
3. An accessible City
4. A safe community
5. Equality and Diversity welcomed and celebrated
6. Services understand and take into consideration Protected Characteristics specifications – Trained staff and robust EHRIAs.

Appendix 3 – ECHR - The Rights

The ECHR rights protected by the Human Rights Act 1998 are listed below with potential scenario's that could emerge where public authorities should consider each right. **(Please note that the scenarios are illustrative only.)**

Article 2: Right to life (Limited right)

Example: If a public authority undertakes the care of a person, for example by putting them in prison or placing them in a home, then it must take appropriate steps to ensure that the person is safe.

Article 3: Prohibition of torture and inhuman and degrading treatment (Absolute right)

Example: If a public authority undertakes to care for other people, especially those who are vulnerable because of their age (young or old) or for some other reason such as physical or mental health.

Article 4: Prohibition of slavery and forced labour (Absolute right)

Example: If a public authority has powers to regulate employers in relation to things like working conditions and health and safety.

Article 5: Right to liberty and security (Limited right)

Example: If a public authority has a role in reviewing the detention of mental health patients.

Article 6: Right to a fair trial

Example: Where a public authority has a role in decision-making procedures in the public sector, for example planning, child care, confiscation of property etc.

Article 7: No punishment without law (Absolute right)

Example: Where a public authority is engaged in disciplinary action that leads to punishment, where the offence falls within the Convention concept of a criminal offence.

The rights in Articles 8 to 11 inclusive below are qualified rights and may be limited where that is necessary to achieve an important objective. The precise objectives for which limitations are permitted are set out in each Article – they include things like protecting public health or safety, preventing crime and protecting the rights of others.

Article 8: Right to respect for private and family life

Example: Right engaged when managing housing, personal information etc.

Article 9: Freedom of thought, conscience and religion

Example: When a public authority is engaged in reviewing policies to determine how far, in particular situations, people can articulate and promote their own beliefs; making decisions about the allocation of work duties etc.

Article 10: Freedom of expression

Example: When a public authority is engaged in broadcasting, media and press work; regulation of communications or the internet; writing speeches or speaking in public.

Article 11: Freedom of assembly and association

Example: When a public authority is making decisions regarding public protests, demonstrations or marches.

Article 12: Right to marry and to found a family (Limited right)

Example: When a public authority is registering marriages or civil partnerships.

Article 14: Prohibition of discrimination (Limited right)

Example: Article 14 is relevant to all people working in public authorities. It will be relevant where any of the Convention rights are engaged – even if there is no breach of the other Convention right concerned – particularly in any circumstances where different groups are treated in different ways.

The rights in Article 1 and to some extent Article 2 of Protocol 1 below are also qualified rights and may be limited where that is necessary to achieve an important objective. (See above note to Articles 8-11)

Article 1 of Protocol 1: Protection of property

Example: When a public authority is taking decisions about planning, licensing or allowing people to exercise a trade or profession etc.

Article 2 of Protocol 1: Right to education

Example: When a public authority is taking decisions teaching or school administration, providing non-school-based education, education policy etc.

Article 3 of Protocol 1: Right to free elections (Limited right)

Example: When a public authority is arranging elections.

Note: Where consideration is being given to a qualified right (as indicated above) it is strongly recommended that the permissible aims regarding interference with the right, as set out in the particular Article, are considered. Full details of each ECHR right can be found in Schedule 1 of the Human Rights Act 1998. Details are available at the following link

<http://www.legislation.gov.uk/ukpga/1998/42/schedule/1>.

If unsure please seek further advice from the Equalities Team.