

Analysis of the effects on equality.

Background.

1. The Oxford University Hospitals NHS Trust must integrate and include equality considerations and foster good relations in all day to day Trust business, including the design of policies and the delivery of services.
2. The Equality Act 2010 replaces previous equality legislation. This Trust must in carrying out its duties and functions have due regard to:
 - 2.1 Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.**
 - 2.2 Advance equality of opportunity between people who share a protected characteristic and those who do not.**
 - 2.3 Foster good relations between people who share a protected characteristic and those who do not.**
3. This means the Trust must:
 - 3.1 Remove or minimize disadvantages suffered by people due to their protected characteristics.
 - 3.2 Take steps to meet the needs of people from protected groups where these are different from the needs of other people.
 - 3.3 Encourage people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

“The Act states that meeting different needs involves taking steps to take account of disabled people’s disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others”¹
4. The Act requires public authorities to take a positive pro-active approach to eliminate discrimination.

The Human Rights Act 1998.

5. The Department of Health is promoting dignity and human rights. NHS Trusts have a legal duty to protect human rights. The human rights based approach can “improve people’s health outcomes by directly supporting the delivery of more effective, better

¹ The Essential Guide to the Public Sector Equality Duty. Volume 1 of 5 Equality and Human Rights Commission. 2010

quality, person centred health care²". People have a right to be treated with dignity and respect. If people feel marginalised they may well feel disempowered and require advocacy. Staff need to be aware if vulnerable patients need help to ask and express their needs. Inequalities due to deprivation may also be considered; this is not part of equality legislation, but a government requirement to reduce inequalities. A policy may need to highlight different individual needs.

Why conduct an Equality Analysis?

6. This is a requirement to help public authorities eliminate institutional discrimination. It is a way of examining whether different groups are adversely affected by policies, plans, proposals, services or functions.
7. This process will assist policy authors create a policy that includes analysis and wider involvement.
8. This will become part of standard practice, in conjunction with current policy writing guidance. Evidence that the Trust has carried out an equality analysis is required. **Previous case law has established that equality impact assessments are an important way that public authorities can provide evidence that they are meeting the general duties.**
9. The legislation and the need to carry out an equality analysis, is to reduce direct discrimination- when an individual is treated less favourably than other persons. The legislation also aims to reduce indirect discrimination, which can occur when policy and practices put groups at risk of being discriminated against or put groups at a disadvantage.
10. Decision makers must consider sufficient information to inform their decisions, document the evidence on the form and attach the evidence to the policy/plan/proposal.

What is an Equality Analysis?

11. An equality analysis is *a way of systematically and thoroughly assessing, and consulting on, the effects that a proposed policy, plan or proposal is likely to have on people*, depending on their characteristic: race, disability, age, sex or sexual orientation, religion or belief, sexual orientation, people who have had a gender re-assignment, pregnancy or maternity and marriage and civil partnership.
12. The main purpose is to pre-empt the possibility that a proposed policy may affect one group unfavourably. The process will help identify ways to change a policy, to help reduce any adverse impact or potential discrimination. There is also a need to set objectives and plan to improve the policy, service or function. **The policy, plan or proposal must be explicit in how diverse needs will be met.**

² Human Rights and Healthcare- A Framework for Local Action. Page 6 Dept of Health 2007
The Trust Equality Plans can be found on the website and on the Equality intranet site.
Equality analysis version 7. December 2011

The process

13. The Trust needs to give the highest priority to those functions and policies that have the greatest potential to affect different protected groups in different ways; E.g. affect disabled people in different ways, or different racial groups in different ways etc.
14. The weight given and time spent assessing a particular policy should be proportionate to its relevance. This means that a human resource policy or people oriented policy should be given more time than say a lottery or equipment policy.
15. Adverse impact occurs when one particular group – or groups, has been affected less favourably or negatively, compared to another group.
16. *Example*³: A policy on maternity services may not consider the needs of women based on their religious or cultural beliefs. This could adversely impact the quality of their care.
17. *Example*: A discharge policy may not identify the specific needs of disabled people or their carer. This could adversely impact the care that is provided to these patients whilst preparing to go home or following discharge.
18. People can be affected directly when one person is treated adversely, simply because of their ethnicity, religion or belief, disability, age, gender, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership.
19. People can also be affected indirectly when a policy impacts a particular group / groups adversely. The impact may be unintentional, but unlawful and will need careful consideration. Some policies may affect different racial groups/disabled people more than others.
20. There are six key steps:
 - 20.1 Identify the aims of the policy. When writing the policy, consider and explain the likely impact on the different protected groups.
 - 20.2 Assess the likely impact of the policy – the evidence of the analysis must be available.
 - 20.3 Involve stakeholders and ensure views of the public inform the policy development. Section 242 Health Service Act, requires the Trust to involve the public in on-going service development.
 - 20.4 Decide whether to adopt the policy /plan/proposal.

³ Examples: Acknowledgement and thanks to Cambridge University Hospitals NHS Foundation Trust.

20.5 Attach the equality analysis to the policy so it can be seen on the intranet.

20.6 If the adverse impact on one group is to promote equality of opportunity for another group, then the adverse impact may be justified. There may be clinical reasons to treat groups or individuals affected by a policy differently.

20.7 Consider the risks to patients and risks to the Trust, such as safety, complaints and litigation.

Department of Health guidance is available on the ORH Equality intranet site.

Written by Jan Cottle updated Dec 2011

EQUALITY ANALYSIS

- **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.**

Please consider whether the policy or function/service/proposal, is likely to have an adverse impact on grounds of: **race, disability, age, religion or belief, sex or sexual orientation, gender re-assignment, pregnancy and maternity, marriage or civil partnership, deprivation or human rights.**

Please include this in the preparation to write a policy and refer to the "Policy on Writing Policies."

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| Equality Analysis |
| Policy / Plan / proposal name: |
| Date of Policy |
| Date due for review |
| Lead person for policy and equality analysis |
| Does the policy /proposal relate to people? If yes please complete the whole form. YES /NO |
| The only policies and proposals not relevant to equality considerations are those not involving people at all. (E.g Equipment such as fridge temperature) |
| <p>1. Identify the main aim and objectives and intended outcomes of the policy.</p> <p>Who will benefit from the policy?</p> <p>How is the policy likely to affect the promotion of equality considering: age, disability, gender, gender re-assignment, race, religion or belief, sexual orientation, pregnancy and maternity or human rights?</p> |

2. Involvement of stakeholders.

List who has been involved in the policy/proposal development? Consider external diverse views from people with the different personal characteristics. Look at the intranet equality analysis guidance for more information on seeking views and involving the public.

3. Evidence.

Look at all the evidence of the different ways the policy/ proposal may affect different groups. List the sources of data you have reviewed to decide on the impact on each of the equality groups. (E.g. national research, local population information, information on the equality intranet, PALs, complaints and patient feedback).

Population information on www.healthprofiles.info search for Oxfordshire.

Disability Have you consulted with someone who has a disability?

Attitudinal, physical and social barriers E.g People who are deaf need to have access to British Sign Language; people with a learning disability needs access to additional support and easy read information; people who have a physical disability must not be disadvantaged in accessing facilities such as for toilet/bathing.

Sex

Consider the potential impact on men and women E.g same sex accommodation and personal care.

Age

Will different age groups be affected differently? Is any age group at a disadvantage?

Race

Consider the impact of this policy/proposal on different ethnic groups such as gypsies and travellers or people who do not speak English. Consider cultural implications of what is proposed in the policy.

Sexual orientation

Consider the effect on heterosexual, gay, lesbian and bi-sexual people. Document any considerations. Consider

staff attitude and involvement of same sex partners.

Pregnancy and maternity

Will the policy affect people who are pregnant or who have children less than one year differently? Consider working arrangements, part time working, caring responsibilities and breast-feeding facilities.

Religion or belief.

Will the proposal affect people of different religions or belief differently? E.g Consider implications for practicing their religion, dietary, fasting and festivals. Consult with ORH Chaplaincy Team for advice and guidance about how the policy may affect different groups, positively or negatively.

Gender re-assignment.

Will the policy or proposal affect transgender or transsexual people differently? Consider privacy issues and potential for harassment.

Marriage or civil partnerships:

Carers Remember to ensure carers are fully involved, informed, supported and they can express their concerns. Consider the need for flexible working.

Safeguarding people who are vulnerable: How has this policy plan or proposal ensured that the organisation is safeguarding vulnerable people? (E.g by providing communication aids or assistance in any other way.)

Other potential impacts e.g. culture, human rights, socio economic e.g. homeless people

Section 4 Summary of Analysis

Does the evidence show any potential to discriminate?

Please state how the policy or proposals impact on elimination of discrimination, harassment

and victimisation. (age, disability, sex, gender re-assignment, pregnancy and maternity, race, religion or belief, sexual orientation, marriage and civil partnerships and human rights). Are there any barriers to access or engagement?

How will you reduce any negative impacts?

If your assessment shows the policy or proposal is likely to have an adverse impact on a particular group and a potential to discriminate, please decide whether to:

- Make changes that will reduce concerns.
- Consider different ways of putting the proposed policy into practice, to reduce its potential to affect some groups adversely.
- Find alternative means of achieving the policy.
- Justify the policy, even though it could affect some groups adversely.
- Are you sure you can legally justify the action?

If there is no alternative action to avoid discrimination please explain why.

- Are there aspects that could be changed? Could additional measures be taken to reduce or remove adverse impact without affecting the policy's overall aims?
- If you decide the policy needs to go through without alteration, despite adverse impact, are you sure you can legally justify this action?
- How does the policy promote equality of opportunity?

How does the policy **advance equality of opportunity?** (Age, disability, sex, gender re-assignment, pregnancy and maternity, race, religion or belief, sexual orientation and human rights). This means minimizing disadvantage and meeting the needs of people, with protected characteristics and promoting their participation.

How does the policy **promote good relations between groups?** (Promoting understanding)

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These prompts are intended to help you answer the questions more fully.

The purpose

- 1.1 What is the main purpose of the policy or function?
- 1.2 What are you trying to achieve through the policy?
- 1.3 Have you involved stakeholders, patients, carers or the public in the policy development?
- 1.4 The wider involvement would help you identify and evidence whether the policy is required and may give you some information about how the policy may be implemented to avoid any discrimination.
- 1.5 What criteria are you going to use to measure progress towards the stated outcomes?
- 1.6 Can you look at practice elsewhere and gain from their experiences?

Considering the evidence

- 2.1 What information do you need to develop an effective policy?
- 2.2 **Speak to people who will be affected by the policy.**
- 2.3 Is more information required to ensure there is not any adverse impact on a particular group?
- 2.4 **If there is insufficient information you may need to make a judgement this time and ensure that information is collected for the next review.**
- 2.5 Could other Trusts with similar policies advice as to what information they found useful? Please see the equality, diversity and human rights intranet site for sources of information.
- 2.6 In order to be fully informed before you write the policy or proposal, please consider possible sources of information such as:
PALS, Complaints analysis, risk management, demographic data, recent research findings and surveys, studies of deprivation, equality monitoring data, qualitative information from those you have involved, recommendations from inspection reports and audits.



Equality Impact Assessment

Guidance for policy makers

Equality Impact Assessment

Guidance for policy makers

First published: May 2008

Prepared by Ricky Lawrence

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Executive summary

Equality Impact Assessment is an essential part of meeting the Department's general duties towards equality. It considers what effect the Department's activities have on eliminating unlawful or unjustifiable discrimination, promoting equality of opportunity and meeting other requirements of the equality duties, such as promoting positive attitudes towards disabled people. It also enables us to show how positive effects can be maximised, and negative effects minimised or eliminated, by modifying policies and practices..

Equality Impact Assessment

1. This note provides advice for the staff of the Department of Health (including its executive agencies, the Medicines and Healthcare products Regulatory Authority (MHRA) and the NHS Purchasing and Supply Agency (PASA)) on when and how to carry out equality impact assessments (EqIAs):

- Paragraphs 2-6 set out the legal and policy background;
- Paragraphs 7-13 provide practical advice on equality impact assessment.

The Equality and Human Rights Group are happy to offer advice on EqIAs. Please let us know if there are points where you would like the guidance to say more, or if there are lessons from your experience of doing EqIA that you think might be of interest to others. Human Resources offer a one-day course on EqIA as well as a number of other courses dedicated to equality issues. Equality issues are also mainstreamed throughout the Department's range of Leadership Programmes and other key Learning & Development products (see the Learning and Development Prospectus).

The legal and policy background

Public bodies, including the Department of Health, are bound by three *general* equality duties, relating to race, disability and gender. The duties require public bodies, in carrying out their functions, to have due regard to the need to:

- eliminate unlawful discrimination;
- promote equality of opportunity; and
- take various other steps (for example, in the case of race to promote good relations between different groups, and in the case of disability and gender to eliminate harassment).

Annex A provides fuller information about the general duties, which are set out in primary legislation.

3. Certain public bodies, including the Department of Health, are also bound by *specific* equality duties, set out in secondary legislation. In particular:

- they have to publish race, disability and gender equality schemes which show how they intend to carry out the general equality duties;
- the schemes must include information about how the public body assesses and monitors the effect of its policies and practices (and of its proposed policies and practices) on equality;
- there is an expectation that public bodies will involve and consult stakeholders in assessing the impact on equality, and that they will publish the results of those assessments.

Further information about the specific duties, and about the Department's approach to discharging them, is at Annex B. Some key points about other relevant legislation are at Annex C.

4. In 2006 the Department of Health decided, as a matter of policy, to take a similar approach to equality in relation to age, religion or belief, and sexual orientation as the law (as described in paragraphs 2-3) requires it to take in relation to race, disability and gender.

5. It is worth recognising that:

Meeting the requirements of the equality duties/policies contributes to the delivery of other policies, and vice versa. There are connections and synergies between the equality duties/policies and:

- *the Department's commitment to reducing health inequalities;*
- *the goal for the NHS that the Prime Minister set out on 7 January 2008, with its emphasis on making the NHS "personal to each of us";¹ and*
- *delivering Public Service Agreement 15, to "address the disadvantage that individuals experience because of their gender, race, disability, age, sexual orientation, religion or belief";²*
- *neighbourhood renewal strategies³ and meeting the aims of local area agreements.⁴*

Even if there were no legal requirements on equality, there would be a compelling case for acting on equality, to ensure that the Department's policies and practices foster the development of services that are effective and responsive to need.

6. Because the Department regards equality impact assessment as an essential part of what the Department does, it has put in place governance arrangements that are intended to ensure that EqlAs are carried out to a high standard. In particular, it has:

- established an Equality and Human Rights Advisory Group; and
- introduced a requirement for Directors to sign off all published EqlAs.

¹ <http://www.number-10.gov.uk/output/Page14172.asp>

² http://www.hm-treasury.gov.uk/media/E/8/pbr_csr07_psa15.pdf

³ <http://www.dh.gov.uk/en/Policyandguidance/SocialCare/Socialcarereform/Localareaagreements/index.htm>

⁴ <http://www.communities.gov.uk/localgovernment/performanceframeworkpartnerships/localareaagreements/>

What is equality impact assessment?

Equality impact assessment is an essential part of meeting the Department's general equality duties and policies (paragraphs 2 and 4 above):

Equality impact assessment considers:

- *what effect the Department's activities have on:*
 - *eliminating unlawful/unjustifiable discrimination;*
 - *promoting equality of opportunity; and*
 - *meeting the other requirements of the equality duties (such as promoting **positive attitudes towards disabled persons**); and*
- *how positive effects can be maximised, and negative effects minimised or eliminated, by modifying policies and practices.*

It is an integral and essential part of the policy making and management processes and must inform and influence the decisions and actions that the Department takes. It needs to be based on sound evidence: lack of evidence is not an excuse for inaction but should prompt you to consider how you can obtain evidence.

8. The general equality duties require the Department to have "due regard" to the need to achieve certain equality objectives. "Due regard" means more than merely "considering" equality issues. The consideration you give to the different elements of the general duties (to eliminate discrimination, to promote equality of opportunity, etc) must be proportionate to their relevance to the function you are concerned with.

In what circumstances is equality impact assessment relevant?

The short answer is that you should start with the assumption that:

There is an equality dimension to the work you do for the Department, whatever that work is.

It would be exceptional to conclude that a DH function does not offer the opportunity to eliminate discrimination or to promote equality of opportunity (although there may be cases where it would not be proportionate to modify what you are doing in the light of these aims or of the other elements of the general equality duties). Having good health, for example, is clearly relevant to having equality of opportunity in life more generally.

10. The general equality duties described in paragraph 2 apply to the Department of Health "in carrying out its functions". That is, they are relevant to everything the Department does, including its functions of:

- employing staff and deciding on its accommodation strategy;
- making policy and issuing guidance to the NHS and local authorities;
- providing information and other services to the public and others;

Equality Impact Assessment

- allocating resources to the NHS and social care;
- procuring and commissioning services, including research.

At what stage should equality impact assessment be done?

11. The short answer is that:

Equality impact assessment is an iterative process, which needs to be done at each stage of the development and review of an activity.

That includes:

- when work on a proposal for a new initiative or policy first begins;
- when any formal or informal consultation is carried out;
- when proposals for a pilot scheme are drawn up;
- when proposals are refined in the light of consultations and/or other information (such as experience from pilot schemes);
- when final decisions are taken on what action to take;
- when the policy or initiative is reviewed;
- when considering whether to end a policy or initiative, including a pilot scheme.

12. The legislation summarised in paragraphs 2-3 above makes clear that it is necessary to assess the equality impact both of existing policies and practices and of proposed policies and practices.

13. Existing policies and practices The Department's Single Equality Scheme (SES) sets out the Department's programme for reviewing existing policies and practices for their equality impact: you should check what the SES says on this point. Many existing policies predate the introduction of the general equality duties, so information to monitor and assess their equality impact may not be readily available; it is important to take steps to address that.

14. Proposed policies and practices Equality issues must be addressed from the start of the development of new policies and practices. It is not acceptable to think about equality issues only as an afterthought: that will not meet the legal requirement to "have due regard" to equality issues. Bear in mind that proposing to end a policy or initiative (including a pilot scheme) is itself a proposed policy or practice: in deciding to end an initiative you need to consider what impact that will have on equality issues, and what lessons about equality the Department can learn from the initiative it is proposed to end.

How should EqIA be carried out?

The short answer is that:

Equality impact assessment needs to be a co-operative enterprise. Don't leave it to one person, working alone. Involve and consult stakeholders and people with expertise in the different equality areas. Build time and resources into your work programme to allow for this.

Bear in mind that the duty to carry out EqIA is a specific equality duty that is intended to ensure proper performance of the general equality duties. You **must** think about how your policy (or initiative, pilot scheme or practice) will affect performance of the general equality duties. In order to demonstrate that such consideration has taken place, it is vital to keep a record of this consideration. There have already been cases where the courts have found that public bodies have failed to carry out equality impact assessment before taking decisions or, in carrying out an assessment, have not given "due regard" to the issues they are required to consider under the general equality duties. Annex D provides a summary of relevant court cases.

16. Fuller guidance on how to carry out EqIA, and on how to keep that assessment up to date, is at Annex E. Note in particular that:

It is good practice to publish an EqIA at relevant stages, so that stakeholders can see how the Department has tackled the equality issues involved. When consulting on a policy or initiative, you should consult on your EqIA too.

Answers to some frequently asked questions are at Annex F.

Annex A to EqIA guidance: The general public sector equality duties

1. Public bodies, including the Department of Health, are bound by three statutory equality duties, relating to race, disability and gender. Common to all three duties is the requirement that:

In carrying out its functions, a public body must have due regard to the need:

- to eliminate unlawful discrimination;⁵ and
- to promote equality of opportunity.

2. In addition:

- the race equality duty includes a requirement to have due regard to the need to promote good relations between persons of different racial groups;
- the gender equality duty includes a requirement to have due regard to the need to eliminate harassment;⁶
- the disability equality duty includes requirements to have due regard to the needs:
 - to eliminate harassment of disabled persons that is related to their disabilities;
 - to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
 - to promote **positive attitudes towards disabled** persons; and
 - to encourage participation by disabled persons in public life.

3. The relevant provisions in primary legislation are:

Section 71(1) of the Race Relations Act 1976,⁷ which came into force on 2 April 2001;

Section 49A of the Disability Discrimination Act 1995,⁸ which came into force on 4 December 2006;

⁵ Annex C provides further information about what constitutes unlawful discrimination, but is not comprehensive.

⁶ See Annex C, paragraph 6, for information on how harassment is defined in the legislation on gender, race and disability.

⁷ Section 71 was substituted for the original section 71 by section 2(1) of the Race Relations (Amendment) Act 2000. Section 71(1) reads:

Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need –

- (a) to eliminate unlawful racial discrimination; and
- (b) to promote equality of opportunity and good relations between persons of different racial groups.

⁸ Section 49A, inserted into the 1995 Act by section 3 of the Disability Discrimination Act 2005, reads:

Every public authority shall in carrying out its functions have due regard to -

- (a) the need to eliminate discrimination that is unlawful under this Act;
- (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
- (c) the need to promote equality of opportunity between disabled persons and other persons;
- (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
- (e) the need to promote positive attitudes towards disabled persons; and
- (f) the need to encourage participation by disabled persons in public life.

Section 76A of the Sex Discrimination Act 1975,⁹ which came into force for these purposes on 6 April 2007.

4. A point worth highlighting, as it may not be generally recognised, is that unlawful discrimination and harassment on gender grounds include discrimination and harassment on the grounds that a person intends to undergo, is undergoing, or has undergone, gender reassignment.

Why the race, disability and gender equality duties were introduced

5. The race equality duty was introduced in 2002 following the Macpherson Report on the murder of Stephen Lawrence. It reflected concern that more effective tools were needed to tackle the institutional racism that the report identified.¹⁰ The way in which the duty calls for public bodies not only to prevent unlawful discrimination but also to promote equal opportunities recognises the fact that “not all inequality stems from discrimination, and therefore not all inequality can be addressed by legal remedy”.¹¹

6. The disability and gender equality duties were designed to take account of experience with the race equality duty.

Possible changes in future

7. *Framework for Fairness*, a Government consultation paper published in June 2007,¹² proposed that the race, disability and gender public sector equality duties should be replaced by a new single public sector equality duty. The new single duty would cover race, disability and gender, and might also extend to cover age, religion or belief, and sexual orientation. The Government is currently considering the responses to the consultation.

⁹ Section 76A was inserted into the 1975 Act by section 84(1) of the Equality Act 2006. It reads:

A public authority shall in carrying out its functions have due regard to the need –

(a) to eliminate unlawful discrimination and harassment, and
(b) to promote equality of opportunity between men and women.

¹⁰ The concept of institutional racism is sometimes misunderstood. In February 2007, the report of the Equalities Review (commissioned by the Prime Minister) noted that “Though widely misinterpreted to mean that all individuals in an institution should be regarded as racist, a close reading of the [Macpherson] report shows that the idea behind the term was exactly the reverse: that even where there was good will and substantial effort by individuals to eliminate different kinds of discrimination, the rules, culture and habits of a particular body could frustrate efforts to stamp out disadvantage.”

¹¹ Equalities Review.

¹² <http://www.communities.gov.uk/documents/corporate/pdf/325332>

Annex B to EqIA guidance: The specific public sector equality duties and the Departments approach to them

1. In addition to the general equality duties described in Annex A, some public bodies also have specific equality duties. This annex provides further information about the specific duties that apply to the Department of Health, and about the Department's approach to discharging them.

2. The specific duties that apply to the Department of Health relate to:

- equality schemes (for race, disability and gender – see paragraphs 3-7 below);
- monitoring as an employer (for *race* – see paragraph 8 below);
- reporting on progress towards equality of opportunity between *disabled* persons and others made by public authorities operating in its policy sector (see paragraph 9 below).

Equality schemes

3. Certain bodies (including the Department of Health) have to publish race, disability and gender equality schemes that show how they intend to carry out the general equality duties.

4. **Content** Secondary legislation (see appendix to this annex) sets out what race, disability and gender schemes must include.

5. **Consultation, involvement and implementation** In the case of *disability* and *gender*, the legislation also makes provision on:

- consulting/involving others when preparing the scheme;¹³
- implementing the scheme.¹⁴

6. **Review** In all three cases (race, disability and gender), there is provision for review of schemes (or of aspects of schemes) at intervals of no more than three years. The legislation on *race* requires a review of the assessment of functions and policies, or proposed policies, for their relevance to the body's performance of its general race equality duty.¹⁵ In the case of

¹³ For *disability*, Regulation 2(2) of the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 ("the 2005 Regulations") says that "an authority shall involve in the development of the Scheme disabled people who appear to that authority to have an interest in the way it carries out its functions." For *gender*, Article 2(2) of Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006 ("the 2006 Order") says that "In preparing a Scheme, a listed authority shall consult its employees, service users and others (including trade unions) who appear to it to have an interest in the way it carries out its functions."

¹⁴ For *disability*, Regulation 3 of the 2005 Regulations says that an authority must, within three years from preparation of a Scheme, take the steps which it has been required to set out in the Scheme by virtue of regulation 2(3)(c) [which requires that the Scheme include a statement of "the steps which that authority proposes to take towards the fulfilment of its section 49A(1) duty"], and put into effect its arrangements, which it has been required to set out in the Scheme by virtue of regulations 2(3)(d) and (e)[quoted in the appendix to this annex] for gathering and making use of information. For *gender*, there are similar requirements in Article 3 of the 2006 Order. In the case of *race*, a duty to implement the scheme is implied, although not expressly stated in the legislation.

¹⁵ Article 2(3) of the Race Relations Act 1976 (Statutory Duties) Order 2001 ("the 2001 Order").

disability and *gender*, the requirement is to review the scheme itself and to publish a revised scheme.¹⁶

7. **Annual reporting** In the case of *gender*, there is a requirement “to take such steps as are reasonably practicable to publish annually a report summarising the actions that the authority has taken towards the achievement of the objectives identified” as necessary for the purposes of meeting its general and specific gender equality duties.¹⁷ In addition, certain public authorities (including the Department of Health) are required to report annually on the implementation of their *disability* equality scheme. The report must include a summary of the steps taken as required by the scheme, the results of information-gathering the authority has to carry out, and the use it has made of such information.¹⁸

Monitoring by employers

8. For *race*, there is a duty on certain public bodies to monitor, by reference to the racial groups to which they belong, the numbers of staff in post and applicants for employment, training and promotion.¹⁹ Where the body has 150 or more full time staff, further details are required (for example, the numbers of staff from each group who receive training, or who cease employment). The results of the monitoring must be published annually.

Overview of progress in relation to disability

9. Certain Secretaries of State, including the Secretary of State for Health, have a duty to publish a report at least once every three years (beginning not later than 1 December 2008).²⁰ The report has to:

- (a) give an overview of progress towards equality of opportunity between disabled persons and other persons made by public authorities operating in the Secretary of State’s policy sector; and
- (b) set out the Secretary of State’s proposals for the coordination of action by public authorities operating in that sector so as to bring about further progress towards equality of opportunity between disabled persons and other persons.

The Department of Health’s approach to carrying out the specific duties

10. Since 2007, the Department of Health has aimed to meet the requirements to produce equality schemes for race, disability and gender by publishing a Single Equality Scheme, which covers action not only in relation to those three areas but also in relation to age, religion or belief, and sexual orientation (see paragraph 4 of the main paper for DH’s policy on those further areas).

11. The requirements set by the legislation on race, disability and gender equality schemes differ in detail. However, where appropriate, the Department aims to adopt as best practice in some areas what is already a legal requirement in other areas.

12. For example, there are legal requirements for a public body:

¹⁶ *Disability*: Regulation 2(4) of the 2005 Regulations. *Gender*: Article 4 of the 2006 Order.

¹⁷ Article 6 of the 2006 Order.

¹⁸ Regulation 4(2) of the 2005 Regulations.

¹⁹ Article 5 of the 2001 Order.

²⁰ Regulation 5 of the 2005 Regulations.

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- to “involve” in the development of its *disability* equality scheme “disabled people who appear [to the public body] to have an interest in the way it carries out its functions”;
- “to consult its employees, service users and others (including trade unions) who appear to it to have an interest in the way it carries out its functions” when it prepares its *gender* equality scheme;
- to include in its *race* equality scheme its arrangements for “consulting on the likely impact of its proposed policies on the promotion of race equality”.

Each of these legal requirements is different, and it is essential that the Department fulfils each of them.

13. However, the Department’s policy is, as a matter of good practice, to involve and consult where appropriate even where there is no specific legal requirement. For that reason, it aims, for example, to consult race stakeholders on its equality scheme.

14. The legislation requires equality schemes to include material about actions, methods and arrangements for carrying out equality impact assessment. The current Single Equality Scheme is available on the Department’s website.

Annex C to EqIA guidance: Other relevant legislation

1. The duties set out in Annexes A and B apply to public bodies. Other legislation makes provision on discrimination, harassment and equality more generally, including the following.

Discrimination

2. In the Race Relations Act 1976:

Part I defines racial discrimination (section 1). Racial discrimination includes treating a person less favourably than others on racial grounds. The term “racial grounds” is defined in section 3 as meaning “any of the following grounds, namely colour, race, nationality [defined in section 78 as including citizenship] or ethnic or national origins”;

Part II generally prohibits discrimination in the employment field;

Part III generally prohibits discrimination in other fields, including in education (section 18), in the carrying out of functions by public authorities (section 19B), in the provision of goods, facilities and services (section 20) and in the disposal and management of premises (section 21).

3. In the Sex Discrimination Act 1975:

Part I defines sex discrimination (sections 1-2) and discrimination on the grounds of gender reassignment (section 2A: this covers treating a person less favourably on the grounds that that person intends to undergo, is undergoing or has undergone gender reassignment). The Act applies to people of any age, including children;

Part II generally prohibits discrimination in the employment field;

Part III generally prohibits discrimination in other fields, including in the exercise of functions by public authorities (section 21A), in education (section 22), in the provision of goods, facilities and services (section 29), and in the disposal or management of premises (section 30).

4. In the Disability Discrimination Act 1995:

Part I defines disability and disabled person (section 1);

Part II deals with discrimination (defined in section 3A) in the employment field;

Part III deals with discrimination in other areas, including in relation to goods, facilities and services (section 19), in the carrying out of functions by public authorities (section 21B), and in relation to premises (section 22).

5. In addition, in relation to employment:

- the Equal Pay Act 1970 gives a person a right to the same contractual pay and benefits as a person of the opposite sex for like work in the same employment, where the man and the woman are doing:

- like work; or
 - work rated as equivalent under an analytical job evaluation study; or
 - work that is proved to be of equal value;
- the Employment Equality (Age) Regulations 2006 (2006/1031), the Employment Equality (Religion or Belief) Regulations 2003 (2003/1660), and the Employment Equality (Sexual Orientation) Regulations 2003 (2003/1661) prohibit discrimination, harassment and victimisation in employment and vocational training on the grounds of, respectively:
 - age;
 - religion, religious belief, or similar philosophical belief;
 - sexual orientation (including orientation towards persons of the same or another sex or both).
6. In relation to the provision of goods, facilities and services:
- The Equality Act (Sexual Orientation) Regulations 2007 make it unlawful for a person concerned with providing goods, facilities or services to the public to discriminate on the grounds of sexual orientation through:
 - refusing to provide a person with those goods, facilities or services;
 - refusing to provide goods, facilities or services of the same or similar quality; or
 - refusing to provide goods, facilities or services in the same or similar manner or on the same or similar terms.
 - Part 2 of the Equality Act 2006 makes it unlawful for a person concerned with providing goods, facilities or services to the public to discriminate on the grounds of religion or belief through:
 - refusing to provide those goods, facilities or services; or
 - refusing to provide goods, facilities or services of the same or similar quality; or
 - refusing to provide goods, facilities or services in the same or similar manner or on the same or similar terms.

Harassment

7. Harassment is defined in section 3A of the Race Relations Act 1976, section 4A of the Sex Discrimination Act 1975, and in various points in the Disability Discrimination Act 1995 (including section 3B). There are differences in the wording of the various provisions, but broadly speaking, the main points are that:

A person subjects another to harassment where:

- on grounds of race or ethnic or national origins; or
- on grounds of the other's sex; or

- on the ground that the other person intends to undergo, is undergoing or has undergone gender reassignment; or
- for a reason which relates to the disabled person's disability,

he engages in unwanted conduct which has the purpose or effect of—

- (a) violating that other person's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

Civil Partnership

8. The Civil Partnership Act 2004 creates a new legal relationship of civil partnership, which two people of the same sex can form by signing a registration document. It also provides same sex couples who form a civil partnership with parity of treatment in a wide range of legal matters with opposite-sex couples in a marriage.

Gender Recognition

9. The Gender Recognition Act 2004 makes it possible for a person of either gender who is aged at least 18 to apply for a gender recognition certificate on the basis of a) living in the other gender or b) having changed gender under the law of a country or territory outside the United Kingdom. The Act prescribes circumstances in which a Gender Recognition Panel must issue a full or an interim gender recognition certificate to an applicant. Where a full gender recognition certificate is issued, the person's legal gender becomes for all future purposes the acquired gender; so, for example, a male-to-female transsexual person will be legally recognised as a woman in English law. On the issue of a full gender recognition certificate, the person is entitled to a new birth certificate (provided a UK birth register entry already exists for the person) reflecting the acquired gender. Recognition is not retrospective, so the certificate does not rewrite the person's gender history, but the new gender applies for the interpretation of enactments, instruments and documents made before as well as after the issue of a certificate. There is a prohibition on disclosure of information relating to a person's application for a certificate or the gender history of a successful applicant.

Mental Capacity

10. The Mental Capacity Act 2005 governs decision-making for people who lack capacity to make decisions for themselves or who have capacity and want to make preparations for a time when they may lack capacity in the future. It sets out who can take decisions, in which situations and how they should go about this. It provides a statutory framework to empower and protect those who lack capacity to make some decisions for themselves, including adults with learning disabilities or dementia, older people, and people with acute medical conditions. In many cases, those who lack capacity will fall within the remit of disability legislation. The Mental Capacity Act has important implications for policies relating to choice. If you are working on such a policy, you need to consider how those who lack capacity can be helped to exercise choice. You also need to consider what the implications for your policy would be if a person who has had capacity in the past, and who has made a choice at that point, comes to lack capacity.

For further information about the Act, see the following information provided by the Office of the Public Guardian:

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<http://www.publicguardian.gov.uk/mca/mca.htm>

<http://www.publicguardian.gov.uk/mca/code-of-practice.htm>

and the DH page:

<http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityAct2005/index.htm>

Annex D to EqIA guidance: EqIA case law

1. In *BAPIO v Home Secretary and SofS for Health - R (on the application of Bapio Action Ltd and another) v Secretary of State for the Home Department* [2007] EWHC 199 (QB), [2007] All ER (D) 127 (Feb) the Home Office was found to be in breach of section 71(1) for failing to carry out a race equality impact assessment in relation to a change in the Immigration Rules. The judge held –

"If there had been a significant examination of the race relations issues involved in the change to the Immigration Rules, there would have been a written record of it. In my judgment, the evidence before me does not establish that the duty imposed by section 71 was complied with.

In any event, there was a subsequent REIA the sufficiency of which has not been challenged. In these circumstances, there will be a declaration that the SofS for the Home Dept failed to comply with his duty under section 71 of the RRA."

This case demonstrates that a failure to perform a specific duty could lead to breach of the general duty.

2. In *R (on the application of Eisai Ltd) v National Institute for Clinical Excellence* [2007] EWHC 1941 (Admin) [2007] All ER (D) 67 it was held that in issuing guidance the National Institute for Clinical Excellence (NICE) had not given proper consideration to its duties under section 71 of the Race Relations Act 1976 to promote equal opportunities and to have due regard to the need to eliminate discrimination. It was held unreasonable and unlawful to overlook that responsibility. There was no evidence that before issuing the guidance any thought was given to obligations under anti-discrimination law and the guidance would have to be amended.

3. In *R on the application of Priti Hansraj Chavda and others v London Borough of Harrow* [2007] EWHC 3064 (Admin), a judicial review was brought against the local authority's decision to restrict care services to people with critical needs only. One of the grounds of challenge was that the decision-making process did not comply with the authority's general disability duty under section 49A of the Disability Discrimination Act (DDA) 1995. The claimant succeeded on this ground. Paragraph 2.34 of the former Disability Rights Commission's statutory code of practice (which must be taken into account by public authorities) states that "due regard" in section 49A of the DDA comprises two linked elements – relevance and proportionality and requires public authorities to do more than simply give consideration to disability equality. The local authority had carried out an equality impact assessment that the decision-makers had seen and the summary referred to "potential conflict with the DDA" but the Court held that the oblique reference was not sufficient to give a busy councillor any idea of the serious duties imposed by the DDA. He also stressed that in the absence of a proper record of such consideration it was legitimate to conclude that no proper consideration had been given (the court relied on the *BAPIO* case in relation to this point). The decision was therefore unlawful.

4. In *Baker & Ors, R (on the application of) v Secretary of State for Communities and Local Government & Ors* [2008] EWCA Civ 141 the Court of Appeal held that the race equality duty under section 71 of the Race Relations Act was not a duty to eliminate unlawful racial

discrimination or promote equality of opportunity and good relations between persons of different racial groups. Rather, it was a duty to have due regard to the need to achieve those goals. The failure to make explicit reference in a decision was not determinative of whether section 71 had been complied with. It was good practice nonetheless to make reference to the duty in all cases where the duty is in play since it is more likely to ensure that relevant factors are taken into account. The case also gives further guidance as to what due regard means. The regard that is due is that which is appropriate in all the circumstances, in this case, the importance of the decision to the areas of life of the members of the disadvantaged group and the extent of the inequality on the one hand and the countervailing factors that are relevant to the function which the decision making is performing (in this case the need to protect the green belt and apply planning guidance PPG2).

Annex E to EqIA guidance: How to do equality impact assessment

Stage 1: Initial scoping assessment and action plan

1. At the start of your work, you need to consider systematically how the action you envisage might impact on each of the equality areas. Questions to ask are:

Promoting equality of opportunity

a) whether the policy/practice is likely to impact differently on people of different races; on disabled people; and on people of different genders (it is a legal requirement to have due regard to the need to promote equality of opportunity for these three categories of people); on “trans” people;²¹ on people of different ages; on people of different religions or beliefs; and on people of different sexual orientations (it is DH policy to consider equality of opportunity for these four categories of people);

and if so:

b) whether the likely impact is positive or negative; and

c) how significant the impact is likely to be; whether it would be proportionate to adjust the policy or practice to increase the positive impact and/or reduce the negative; and if so, how.

or, if the answer to a) is no:

d) whether there are opportunities to promote equality of opportunity that could be taken if the policy/practice were adjusted;

and whatever the answer to question a):

Eliminating unlawful/unjustifiable discrimination

e) whether the policy/practice is likely to help to eliminate unlawful/unjustifiable discrimination.

2. In answering a), bear in mind that:

- it is unlikely to be meaningful to consider the question from the point of view of, for example, “disabled people” generally. You need to consider the question from the points of view of people with specific disabilities (physical, sensory, mental, learning; issues of mental incapacity may also arise) and combinations of disabilities;
- there are several publications that will help you identify points to bear in mind. (For example, the Department has recently commissioned guides on trans, age, sexual orientation and religion or belief in relation to the NHS services: these provide useful background and identify issues that might arise). Contact Equality and Human Rights Group for further information about these;

²¹ The term “trans” is used of a) people who intend to undergo, who are undergoing, or who have undergone, gender reassignment (who are protected from unlawful discrimination and harassment on gender reassignment grounds by the Sex Discrimination Act 1975) and also b) a wider group of people, who may for example live in another gender without undergoing, or intending to undergo, gender reassignment.

- you need to take account of any available data that are relevant to your work. At national level, the Department is working to increase the availability of data about health and social care in relation to the various equality strands. Where data are not available at national level, smaller scale surveys may nevertheless provide useful information. If data are not available, you may need to consider commissioning something. Contact your analyst for further advice;
- there could be unexpected, as well as, or instead of, expected, impacts. For example, initially there was lower take up of the breast cancer screening programme by women with learning disability than by women generally. There was no intention to disadvantage women with learning disabilities in introducing the programme, but the facts showed that extra steps had to be taken to ensure that they could benefit equally from the programme.

3. Question b) takes account of the fact that differential impact could be:

- negative, that is, reduces equality of opportunity, as in the case of cancer screening and women with learning disability mentioned above; or
- positive, that is, increases equality of opportunity. For example, rates of heart disease are higher in people with some ethnic backgrounds than in the population at large; so *in principle* improvements to services for heart disease are likely to be of particular benefit to people with those ethnic backgrounds. By addressing a health inequality they face, the policy should help them to achieve more equality of opportunity. Again, however, it is important not to assume that because your intentions are good (to promote equality), delivery of the policy or practice will necessarily achieve your aims. For example, there could be barriers to people accessing the service that need to be tackled.

4. Question c) asks you to think about how great the impact might be in terms of scale or significance. For example, how many people is it likely to affect? How strong is the likelihood of the impact occurring? It might not be proportionate to modify a policy if the chance of a negative impact occurring is slight (although there would be a case for monitoring implementation of the policy, to ensure that there is no significant negative impact).

5. Question d) may seem to overlap with questions a) and b). If you have concluded there that the policy/practice does not have a positive differential impact, this question is to remind you to consider whether there is any way the policy or practice could be adjusted to achieve the goal of promoting equality of opportunity. Again, the question of proportionality needs to be borne in mind.

6. The questions at paragraph 1 above consider elements that are common to all three statutory general equality duties (see Annex A, paragraph 1). You *must* also consider the other elements of the general equality duties, and question d) is an appropriate point at which to do so. These other requirements (see Annex A, paragraph 2) are the requirements to give due regard to the needs:

- to promote good relations between people of different racial groups;
- to eliminate harassment on gender (and gender reassignment) grounds, and harassment of disabled persons that is related to their disabilities;

- to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
- to promote positive attitudes towards disabled persons; and
- to encourage participation by disabled people in public life.

7. There is no legal requirement to give due regard to the need to promote, for example, good relations between men and women, but you *may* do so at this point if you think this relevant in the context of the policy/practice you are working on. *We strongly encourage* you to consider at this point whether there are opportunities to eliminate harassment in relation to race, age, religion or belief, or sexual orientation.

8. Question e) deals with the effect on unlawful/unjustifiable discrimination. It may be tempting to assume that unlawful discrimination does not occur, simply because it is unlawful – but it would be wrong to make that assumption, as continued legal claims of unlawful discrimination show. Additionally, unjustifiable discrimination can occur in areas where it has not been made unlawful.

9. It is an essential part of the policy-making process that you think through, and record, the reasons and evidence for your assessments. Trying to answer the questions at this stage will give you some hypotheses that you can test out in discussions and consultations at the next stage; and/or it might help you to identify a lack of the data that you need to answer the questions. In either case, working through the questions should help you to identify the action you need to take next. Planning for that action is the next stage of the initial scoping assessment and action plan.

10. **You should use the template in the appendix to this annex to help you record your decisions at this stage and the reasons for them.** Doing so will ensure that you consider the necessary questions, and keep a record of your preliminary conclusions. The format has been designed so that, if you decide to publish your initial EqlA, you will have a text suitable for publication (once you have filled the gaps and deleted the instructions on how to complete the template and the material in square brackets that does not apply).

Stage 2: Consulting and involving people with expertise in the different equality areas as well as in the specific policy area

11. Completing the template at Appendix 1 will help identify the action you need to take next. Many of the actions you might take (such as commissioning research) are normal parts of policy-making within DH, and we have not attempted to provide guidance here on how to do them.

12. However, as noted in paragraphs 12 and 13 of Annex B, the equality legislation sets some particular requirements on consultation and involvement, and the Department of Health aims to adopt similar approaches more widely where appropriate. General advice on consultation and stakeholder engagement is available on DELPHI. You will have ideas on who the stakeholders are for your specific area. The Equality and Human Rights Group has details of organisations that have particular expertise in one or more of the equality areas. These

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organisations *may* be able to help you identify equality issues relevant to the work you are dealing with, but bear in mind that there are many other calls on their time. If you propose to ask an organisation for help, you should approach it at an early stage to establish whether and how it might be able to help.

Stage 3: Revised assessment

13. When the actions set out in the action plan at the end of the initial scoping assessment have been completed, it should be possible to produce a revised assessment. Use the template at Appendix 1 for this, adapting the heading to refer to a Revised Assessment and Action Plan. This time, the action plan is likely to set out how you will monitor implementation of your policy/practice to ensure that the intended effects are achieved.

Monitoring the policy/practice and reviewing your Equality Impact Assessment in the light of the monitoring information

14. Equality impact assessment needs to inform the decision to implement a particular policy or practice, and stages 1-3 above are concerned with the stages leading up to that decision. However, it is important to keep the equality impact of the policy/practice under review after that decision is taken. No later than the time that the decision to implement is taken, you should also draw up a plan for monitoring and reviewing the equality impact of the policy/practice in question. This means deciding what data to collect on the impact of the policy, and setting a date for review. Suitable review dates may vary depending on the nature of the particular policy/practice, but it may make sense to align the review dates with those you adopt for Impact Assessment purposes.

Publishing your Equality Impact Assessment

15. It is good practice to publish your EqlA at relevant stages, so that stakeholders can see how the Department has tackled the equality issues involved. It is also a legal requirement that the race equality scheme should set out the arrangements the relevant public body makes for publishing the results of its assessments: you need to check what you propose to do is consistent with what the DH Single Equality Scheme says on this point. Obvious times to publish an EqlA are:

- when consulting on a proposed policy/practice;
- when announcing a decision on how to take the proposed policy/practice forward;
- when the policy/practice is reviewed.

If your policy/practice is one that requires an Impact Assessment, you will find that the Impact Assessment template prompts you to include the results of your Equality Impact Assessment.

16. Your Equality Impact Assessment should be published with the document or consultation paper to which it relates. If the EqlA is very lengthy, it might make sense to publish it separately – but if you take this approach you must ensure that the main document alerts readers to the existence of the EqlA and tells them where it can be found/how to obtain a copy.

17. If you are publishing a consultation paper, it must invite comments on the EqlA: for example, has the EqlA identified the relevant equality issues? Does the consultation paper make proposals that tackle the equality issues in an appropriate way?

18. Bear in mind that the guidance on making DH publications accessible and on providing translations applies to EqIAs. See [Delphi Home>Business support>DH publications and publishing>Accessibility and Translations](#).
19. The DH External Gateway helps to identify the key issues and stakeholders to be considered in developing and communicating policy. One of the criteria the External Gateway applies when a part of DH seeks agreement to publish a document is whether there is evidence of:
- an EqIA to be published as part of a proposal/document, or alongside it and cross-referenced from it. Consultation papers must invite comments on their EqIAs.
 - clearance for the EqIA from Equality and Human Rights Group (EHRG) or confirmation that EHRG are content for publication without an EqIA.
20. All published EqIAs must be signed off by the relevant Director.

Appendix to annex E to EqIA guidance

Aim to complete each of the gaps in this template in no more than 80 words, but ensure that you give the reasons for each of your conclusions (for example, the information that led you to conclude that the impact would be as you describe it to be). You may need more than 80 words to do this. If so, put the extra information in an annex. Resist the temptation simply to cross-refer to a longer document (for example a consultation paper): any EqIA should be a self-contained document.

Initial scoping assessment and action plan for [insert name of proposal]

Summary of the purpose and aim of the proposal

State what the purpose and aim of the action envisaged is.

Assessment

The outline below should be completed for each of the following in turn, ie: race, disability, gender, transgender, age, religion or belief, and sexual orientation. Don't overlook:

- *the need to consider the specific points noted in paragraph 6 of Annex E;*
- *the fact that people are not defined solely by their race, or disability, or gender, etc; there might be a particular impact on, for example, disabled women, in which case you should explain this under disability and cross-refer to that explanation under gender (or vice versa, if that makes more sense in the context of your proposal).*

1. The proposal is thought/We are unable to judge whether the proposal is likely/not likely to impact differently on people on grounds of their [identify equality area]. The reasons and evidence for this are ... *If negative:* We have considered alternative steps or mitigation that could be taken which would achieve the desired aim without the adverse impact identified, and the results are ...

EITHER If the answer is "likely":

2. The differential impact is thought likely to be *positive/negative*. The reasons and evidence for this are ... The impact is thought likely to be *high/medium/low*. The reasons and evidence for this are ...

OR If the answer is "not likely":

2. We have considered whether there are opportunities to promote equality of opportunity that could be taken if the proposal were adjusted. We have concluded that the answer is *no/yes*, because ... However, our reasons and evidence for not making that adjustment are ...

OR If the answer is "We are unable to judge":

2. For action planned to enable us to judge the likely impact of the proposal, see the action plan below.

Whatever the answer to a):

3. The proposal is thought *likely/not likely* to help to eliminate unjustifiable discrimination. The reasons and evidence for this are ...

Record of decision and Action plan

In the light of the initial scoping assessment above, we have:

- decided to revise the policy (by [making what changes?]) in order to increase the expected positive effects or to reduce the expected negative effects/OR decided not to amend the policy, because [...]; and
- identified the need to carry out the following further work:
 - data collection and/or research;
 - consultation with and involvement with stakeholders and specialist organisations;
 - consideration of changes to the proposal to increase the positive impact/reduce the negative impact in equality terms.

[In each case, give details of who will do what, how and when, and of to which point in the assessment above the action to be taken relates.]

OR have not identified the need for further work. *[This might be appropriate where the initial assessment provides a basis for concluding with confidence that the proposal has no negative equality impact and that it would not be proportionate to adjust it to increase the positive impact. Such situations, however, are likely to be relatively unusual. If you are not confident of the conclusions, it is sensible to test them in consultation].*

Signed by the relevant Director:

Name:

Directorate:

Annex F to EqIA guidance: Frequently asked questions

1. The policy I'm working on is to treat everyone in a particular set of circumstances in the same way, so I'm already doing enough to meet the requirements on equality?

You must not assume that.

The equality duties don't take the form of saying "treat everyone equally". Instead, they are about eliminating unjustifiable discrimination, and promoting equality of opportunity. Sometimes it is necessary to treat people differently in order to give them equality of opportunity. For example, a person whose first language is not English may need information to be provided in a different language to have an equal opportunity of accessing it.

Additionally, it is important to bear in mind that the disability equality duty requires public bodies to have due regard to the need "to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons" (see Annex A.2).

2. The policy I am working on is specifically designed to focus on one sector of the population. Does that make it incompatible with the equality duties?

Not necessarily. As explained in the answer to question 1, sometimes it is necessary to treat people differently in order to promote equality of opportunity.

Sometimes it may be helpful to set the policy you are working on in a wider context in order to assess the equality impact. For example, it would not be possible to defend a decision *arbitrarily* to target a service (for example, screening for a particular disease) on one particular group of people. But a decision to target that group of people could be exactly what is needed to promote equality of opportunity if there is sound evidence to show that that group of people are at higher risk than others of developing the disease.

Bear in mind the requirements in the race and disability duties to promote good relations between people of different races/positive attitudes to disabled people. An arbitrary decision to favour one group of people over others is unlikely to achieve that.

3. I don't have to do an Impact Assessment, so I don't have to do Equality Impact Assessment either?

There is sometimes confusion between "impact assessment" (IA, previously known as Regulatory Impact Assessment) and "equality impact assessment" (EqIA).

The Department for Business, Enterprise and Regulatory Reform has the policy lead on IA. Government policy is that IAs must be carried out in defined sets of circumstances (for example, when the economic costs of implementing a set of regulations will be above certain thresholds).

The circumstances in which EqIA needs to be done are not defined in the same way. *Equality impact assessment needs to be done for all policies and practices, not just those meeting the IA criteria.*

4. How does EqIA link to the other impact assessments that need to be done? (for example Impact Assessment, Health Impact Assessment)

The focus of the different assessments is on different things, and the circumstances in which they need to be carried out differ. But you may find that some of the material you use for one assessment is also relevant to another.

5. My policy is going to be implemented by NHS bodies/local authorities/arm's length bodies, so I can leave equality impact assessment to them?

That is not the case. It is necessary for both DH and other public bodies to take account of equality issues.

Policies are often decided at national level and then implemented at local level in ways that take account of local circumstances. It is rare for the Department to prescribe exactly what must happen at local level, leaving no scope for decision-taking at local level.

In setting priorities for health and social care, the Department needs to take account of equality issues at national level. When a PCT or local authority acts on those priorities at local level, it needs to take account of its local population (whose composition may vary from that for England overall). It is helpful to the NHS and local authorities if the work the Department does sets out the equality issues. That avoids the need for bodies at local level to reinvent the wheel from scratch: they can take account of the information the Department has already identified, and make use of it in considering the equality issues that arise in their own circumstances.

Background: NHS bodies and local authorities generally are bound by the same general and specific equality duties as the Department of Health. The other bodies that DH deals with are generally bound by the general equality duties (paragraph 2 of the main paper) but not by the specific equality duties (paragraph 3 of the main paper). The appendix to this annex provides fuller details.

6. Can I see some examples of how others have tackled EqIAs?

Yes. There are some recent examples on the EqIA page on Delphi. For help in identifying others (particularly assessments that might have tackled issues similar to those facing you), contact Equality and Human Rights Group.

7. How does the legislation on equality relate to that on human rights?

The requirements created by the legislation on equality are not the same as those created by the Human Rights Act 1998. You need to ensure that you comply with them both. There is separate guidance available on the Human Rights Act.

8. How do I balance the requirement for monitoring information against the need to reduce the 'burden of bureaucracy'?

Consult your analyst/statistician. (The Department's Single Equality Scheme sets out what is being done to improve the availability of equality data at national level).

9. How can I deal with cross-cutting equality issues?

That will depend on the nature of your policy. First you need to consider systematically what scope there is for the policy or practice to impact differently on people affected by more than one of the equality areas (for example, a disabled Muslim man). If you identify potential issues, you need to discuss them with people who might be affected, to take account of their viewpoint; and then, in the normal way, you need to consider whether you can adapt the policy to increase any positive impact or reduce any negative impact.

Appendix to Annex: The equality duties and bodies of interest to DH

The general equality duties

1. The general equality duties for gender and disability apply to any “public authority”, which is defined for these purposes broadly as any person who has public functions (with certain exceptions, which are unlikely to be relevant for DH purposes). So the gender and disability general equality duties generally apply to the public bodies with which the Department of Health works (including NHS bodies, local authorities and non-departmental public bodies).

2. The general race equality duty applies to bodies listed in Schedule 1A of the Race Relations Act 1976. Listed bodies that are most likely to be of interest to the Department of Health are shown in the table below.²²

The specific equality duties

3. The table below also shows which bodies most likely to be of interest to DH are currently (March 2008) required to produce equality schemes. From time to time, bodies are added to the list of those to whom the duties apply; so those listed were not necessarily bound by the duties from the date the duties first came into force generally.

| | Race general duty* | Specific (scheme) duty | | |
|--|-----------------------------------|-------------------------------|-------------------|---------------|
| | | Race | Disability | Gender |
| NHS bodies | | | | |
| Special and strategic health authorities | Yes | Yes | Yes | - |
| NHS trusts, PCTs | Yes | Yes | Yes | Yes |
| NHS Foundation trusts | Yes | - | Yes | Yes |
| Local authorities | | | | |
| Within England, a county council, London borough council, or district council; Greater London Authority; Common Council of the City of London in its capacity as a local authority or port health authority; Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in his capacity as a local authority; Council of the Isles of Scilly | Yes | Yes | Yes | Yes |
| A port health authority constituted by an order under section 2 of the Public Health (Control of Disease) Act 1984 | Yes | - | - | - |
| Other bodies | | | | |
| Administration of Radioactive Substances Advisory Committee | Yes | - | - | - |
| Audit Commission for local authorities and | Yes | Yes | Yes | Yes |

²² In some areas (for example medical examinations under the Immigration Act 1971), DH works closely with the Home Office and immigration authorities. Section 71A of the Race Relations Act 1976 provides that “in relation to the carrying out of immigration and nationality functions”, the duty to have due regard to the need to promote “equality of opportunity” does not apply.

Equality Impact Assessment

| | | | | |
|---|-------------------|---|-----|-----|
| the NHS in England and Wales | | | | |
| Commission for Healthcare Audit and Inspection | Yes ²³ | - | Yes | Yes |
| Commission for Patient and Public Involvement in Health | Yes | - | Yes | - |
| Commission for Social Care Inspection | Yes ²⁴ | - | Yes | Yes |
| Council for Healthcare Regulatory Excellence | - ²⁵ | - | Yes | Yes |
| Council for the Regulation of Health Care Professionals | Yes ²⁶ | - | - | - |
| General Chiropractic Council | Yes | - | Yes | Yes |
| General Dental Council | Yes | - | Yes | Yes |
| General Medical Council | Yes | - | Yes | Yes |
| General Optical Council | Yes | - | Yes | Yes |
| General Osteopathic Council | Yes | - | - | Yes |
| General Social Care Council | Yes | - | Yes | Yes |
| Health Professions Council | Yes | - | - | - |
| Health Protection Agency | Yes | - | Yes | Yes |
| Human Fertilisation and Embryology Authority | Yes | - | Yes | Yes |
| Independent Regulator of NHS Foundation Trusts | Yes | - | Yes | - |
| Joint Committee on Vaccination and Immunisation | Yes | - | - | - |
| National Biological Standards Board | Yes ²⁷ | - | - | - |
| Nursing and Midwifery Council | Yes | - | Yes | Yes |
| Postgraduate Medical Education and Training Board | Yes | - | Yes | Yes |
| Royal College of Anaesthetists | Yes** | - | - | - |
| Royal College of General Practitioners | Yes** | - | - | - |
| Royal College of Midwives | Yes** | - | - | - |
| Royal College of Nursing | Yes** | - | - | - |
| Royal College of Obstetricians and Gynaecologists | Yes** | - | - | - |
| Royal College of Ophthalmologists | Yes** | - | - | - |
| Royal College of Paediatrics and Child Health | Yes** | - | - | - |
| Royal College of Pathologists | Yes** | - | - | - |
| Royal College of Physicians | Yes** | - | - | - |
| Royal College of Psychiatrists | Yes** | - | - | - |
| Royal College of Radiologists | Yes** | - | - | - |
| Royal College of Speech and Language Therapists | Yes** | - | - | - |

²³ The Health and Social Care Bill amends the Race Relations Act to replace this with a reference to the Care Quality Commission.

²⁴ The Health and Social Care Bill amends the Race Relations Act to remove this reference.

²⁵ But see footnote to next entry.

²⁶ The Health and Social Care Bill amends the Race Relations Act to replace this with a reference to the Council for Healthcare Regulatory Excellence.

²⁷ The Health and Social Care Bill amends the Race Relations Act to remove this reference.

Equality Impact Assessment

| | | | | |
|---|-------|---|---|---|
| Royal College of Surgeons of England | Yes** | - | - | - |
| Royal Pharmaceutical Society of Great Britain | Yes** | - | - | - |
| Standing Dental Advisory Committee | Yes | - | - | - |
| Standing Medical Advisory Committee | Yes | - | - | - |
| Standing Nursing and Midwifery Advisory Committee | Yes | - | - | - |
| Standing Pharmaceutical Advisory Committee | Yes | - | - | - |
| Unrelated Live Transplant Regulatory Authority | Yes | - | - | - |

*Bodies bound by the general race equality duty are also bound by the duty in Article 5 of the Race Relations Act 1976 (Statutory Duties) Order 2001 to monitor staff etc by racial group and to publish the results annually, except that the duty in Article 5 does not apply to the Standing Dental Advisory Committee, Standing Medical Advisory Committee, Standing Nursing and Midwifery Advisory Committee or the Standing Pharmaceutical Advisory Committee, or, except in respect of their Scottish functions, the Administration of Radioactive Substances Advisory Committee and the Unrelated Live Transplant Regulatory Authority.

** in respect of its public functions (and in the case of the Royal Pharmaceutical Society in respect of its statutory functions and the regulation of the pharmacy profession).

