

# Producing Equality Impact Assessments (EIAs) in the Electoral Commission: guidance

## Introduction

This guide replaces the previous tool kit which accompanied the Commission's Single Equality Scheme of 2014. It should be seen in conjunction with the new Equality, Diversity and Inclusion Strategy 2021 and Action Plan, which sets out the Commission's approach to equality, diversity and inclusion. All Equality Impact Assessments (EIAs) should reflect the issues and objectives set out in the Strategy.

This guidance sets out:

1. The principles we have followed in designing our process
2. What an EIA is and why it matters
3. The statutory requirements
4. When an EIA is required
5. How to carry out an EIA: screening and full assessment process
6. Roles and responsibilities

## 1. The principles we have followed in designing our process

The Commission's EIA process has been developed on the basis of best practice reflecting guidance from the Equality and Human Rights Commission (EHRC).

1.	Ensure a consistent approach	The Commission has guidance and processes documented, understood and followed by all.
2.	Partnership working and shared policy making responsibility	The Commission works closely with a wide range of stakeholders.
3.	Sound, constant data collection and analysis	The Commission's own research offers significant data alongside data available nationally and on a devolved basis.

4.	Positive involvement and consultation	The Commission has strong relationships with voluntary organisations and others to allow the consultation of those with 'lived experience' and from protected groups that historically have faced discrimination or less opportunity. It should be noted that consultation on EQIAs is a statutory duty in Northern Ireland.
5.	EIA training	The Commission provides training on the need for and process for carrying out EIAs.
6.	Internal systems to ensure EIAs are happening and are of sufficient quality	The Commission has documented procedures and defined roles and responsibilities for producing EIAs. All EIAs are stored on our intranet.
7.	Using EIAs to pay due regard to equality before and during policy decision making.	The Commission's procedures define how EIAs must be used where appropriate in decision making; the person who ultimately decides on the policy must do so in awareness of the findings.

## 2. What is an EIA and why does it matter?

An EIA is a formal process, and an important tool to ensure that organisations make good decisions by being aware of the wide range of impacts on different communities. There are a range of policies and procedures in any organisation to define how it carries out its functions. However, organisations can miss unintended impacts by not carrying out an EIA where appropriate, to which they have due regard as part of the process or reviewing the policy or change. For example, something like a new health and safety policy may be seen as neutral and having no relevance to discrimination or advancing equality. But in fact there are a wide range of issues that could lead to discrimination or other adverse impacts – e.g. evacuation procedures to ensure safety of people with a disability that could impact on their ability to hear an alarm, access the stairs or other factors that could limit their ability to evacuate as safely as most staff.

The purpose of an EIA is therefore to ensure that any organisation, particularly those subject to the Public Sector Equality Duties in the Equality Act 2010, takes 'due regard' when seeking to change policies or procedures (or ways of carrying out our functions) that could adversely impact on someone or groups within one of the nine protected characteristics, on our duties with regard to use of the Welsh language, on our duties under NI equalities legislation, and on other issues related to equality, diversity and inclusion. This includes staff and anyone working for the Electoral Commission or on the site of any buildings or offices (internally) and the people the Commission serves – e.g. the electorate; electoral candidates; political parties; and other similar stakeholders including applicants for jobs or others tendering for work (external). An EIA is not an optional add-on: where it is required it is an integral part of the decision making process.

And if it is not carried out where appropriate, it may be hard to show that the Commission has taken due regard or that it has sought to advance equality of opportunity when carrying out our statutory and other functions.

Where an EIA identifies potentially adverse impacts, the Commission will also need to consider what, if any, mitigation can be made to lessen or remove that impact.

The process should be proportionate to and reflect the needs of the organisation:

“The general equality duty does not set out a particular process that public authorities are expected to follow. It is up to each authority to choose the most effective approach. This will vary depending on the size of the organisation, the functions they carry out, and the nature of the particular decision.”<sup>1</sup>

It is good practice for a broader (and more diverse) group of people to consider the policy or other changes, and the Commission’s process ensures this happens through involving our EDI group. Similarly, a broader consultation may be required including the public and other external stakeholders. It is a statutory duty to consult in Northern Ireland.

The potential outcomes from any EIA are as follows and more than one may apply to a single proposal:

<b>Outcome 1:</b>	<b>No Major Change</b> – where the EIA demonstrates the proposed decision is robust; there is no potential for discrimination or adverse impact. All opportunities to promote equality have been taken.
<b>Outcome 2:</b>	<b>Adjust the decision</b> – where the EIA identifies potential problems or missed opportunities. Adjust the proposed change to remove the barriers or better promote equality.
<b>Outcome 3:</b>	<b>Continue with the proposed course of action</b> – where the EIA identifies potential adverse impact or missed opportunities to promote equality. Here, a clear justification must be made for continuing without making any change and must be in line with the statutory duty to have due regard. Compelling reasons need to be given to continue, and it is expected that this outcome would be very rare or non-existent.
<b>Outcome 4:</b>	<b>Stop the proposed course of action</b> – this is where the course of action is likely to lead to unlawful discrimination. It must be stopped and removed. It is expected that this outcome would be very rare or non-existent.

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<sup>1</sup> [EHRC Guidance](#)

### 3. The statutory basis for EIAs

#### Statutory requirements in England, Wales and Scotland

The Equality Act 2010 (the Act) brings together and replaces the previous anti-discrimination laws with a single Act. It simplifies and strengthens the law, removes inconsistencies and makes it easier for people to understand and comply with it. The majority of the Act came into force on 1 October 2010.

The Act includes a new Public Sector Equality Duty (the 'general duty'), replacing the separate duties on race, disability and gender equality. This came into force on 5 April 2011.

In exercising their functions, public bodies are required to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not

The Act explains that having due regard for advancing equality of opportunity in the second aim involves:

- removing or minimising disadvantages experienced 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 with protected characteristics to participate in public life or in other activities where their participation is disproportionately low. This is particularly relevant to the Commission in voter registration and participation in the voting process.

The general duty covers the following protected characteristics:

1. **Age** – for example, UK employers can no longer set an age for retirement or state that they want applicants of a particular age for jobs.
2. **Gender reassignment** – refers to individuals, whether staff, who either: (1) have undergone, intend to undergo or are currently undergoing gender reassignment (medical and surgical treatment to alter the body). (2) do not intend to undergo medical treatment but wish to live permanently in a different gender from their gender at birth.
3. **Sex** – men and women (There is currently no recognition of non-binary identities in the Equality Act but it is good practice to recognise individuals definition of choice including their choice of pronouns like he/him or she/her or they/their)

4. **Marriage and Civil and Partnership** – Civil partners must be treated the same as married couples on a wide range of legal matters.
5. **Race** – including ethnic or national origin, colour or nationality – historically based on discrimination against Black and Minority Ethnic communities but also there are other significant examples like Irish Travellers.
6. **Disability** – a person is ‘disabled’ if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
7. **Pregnancy and maternity** – protections and rights for employees; but managers should also be aware of the rules around employing or interviewing pregnant women - it is against the law to take pregnancy into account in recruitment. It would however be perfectly valid for an employer to have specific policies in relation to safety at work for pregnant women.
8. **Sexual orientation** – you must not be discriminated against on the grounds of being gay, lesbian, bisexual or heterosexual.
9. **Religion or belief** – including people who have no religious belief.

### **Additional statutory requirements in Wales**

In Wales legislation defining the equal status of the Welsh language also applies.

Under section 5 of the Welsh Language Act 1993 we are required to prepare a scheme which sets out the measures we propose to take to use the Welsh language in the provision of our services to the public in Wales. The Welsh Language Measure (Wales) 2011 requires us to treat the Welsh and English languages equally when providing services to the public in Wales. The Commission is listed in Schedule 6 of the Welsh Language Standards (No. 2) Regulations 2016. By Regulation 2 of the 2016 Regulations the standards set out therein apply to the Commission (“the Standards”).

There are 168 standards. These require the Commission to treat the Welsh and English languages equally when providing services to the public in Wales (the service delivery standards). There are further standards requiring the Welsh language to be given particular consideration (the policy making standards). There are standards which apply to the day to day work of the Commission (the operational standards). There are a number of supplementary standards which apply, too. Finally, there are the record keeping standards which require a record to be kept of both internal and external Welsh language related matters.

In particular Standard 84 specifies that when an organisation formulates a new policy or review or revises an existing policy, it must consider what effects, if any, positive or adverse, the policy decision would have on: (a) opportunities for persons to use the Welsh language and (b) treating the Welsh language no less favourably than the English language. Standard 85 requires bodies to see whether proposals could be formulated to have positive or increased positive effects on these outcomes, and Standard 86 requires bodies to ensure that proposals do not have adverse effects or have decreased adverse effects.

## The position in Northern Ireland

Specific legislation applies in Northern Ireland which is different to legislation in GB.

As a public authority the Commission has obligations in accordance with Section 75 of the Northern Ireland Act 1998, which requires all government bodies to protect and promote the right to equality, ensuring that equality of opportunity and good relations are principal considerations in the construction of policies, policy implementation and the provision of services. As well as ensuring the giving of due regard to the nine identified equality areas under s. 75(2), public authorities are also required under s. 75(2) to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

In addition Irish Travellers are an identified group under the Race Relations Northern Ireland Order 1997. Political opinion and dependants are also unique protected characteristics in Northern Ireland.

To monitor the likely impact of policies on the promotion of equality of opportunity a two-step equality assessment approach should be adopted by the Commission as below,

1. Screening, through which the Commission undertakes a review of the Policy at the beginning to identify if the policy may have any major equality impact issues, and
2. An Equality Impact Assessment (EQIA), which may be considered prudent if the policy affects a large group of people and is central to the principle of equality of opportunity. The Commission should consider how they could reduce this possible impact, which may include the possibility of an alternative policy. The Commission as part of the EQIA should allow for a twelve week consultation period with individuals in NI who may be affected by the policy. Results of the EQIA should be published.

The Commission is also required under Section 49A of the Disability Discrimination Act 1995 as amended by Article 5 of the Disability Discrimination (NI) Order 2006 to promote positive attitudes towards disabled individuals and encourage participation in public life.

The Commission is required to submit a five-yearly review of its Equalities Scheme to the Equality Commission for Northern Ireland (ECNI). It is also required to submit an annual report. One of the categories in this report is the number of EIA screenings carried out and the number of EIAs produced.

## 4. When should you do an EIA?

An EIA is likely to be required for various types of change:

- changes to organisational policies and functions
- key decisions
- changes to policies and/or procedures that set criteria or guidelines for others to use

There are no hard and fast criteria for what constitutes a decision or a change significant enough to require an EIA: this will vary depending on circumstance and area of business

and is not set out in statute. It is important to be proportionate in deciding whether to carry out an EIA. The following advice is intended only to provide guidelines; it should be applied on a case by case basis.

The Commission takes many operational decisions in the conduct of its business in many areas such as registration, political financing, enforcement, application of performance standards for ROs and EROs, releasing information, awarding contracts and recruitment. Clearly it would be entirely disproportionate to carry out an EIA for each of these decisions, which are taken in line with defined policies and procedures, although there may be exceptions where an operational decision raises particular issues which might require one. Where those policies and procedures are reviewed and/or new policies and procedures introduced, there is likely to be a stronger case for carrying out an EIA: the greater the proposed change, the stronger that case is likely to be. If the change has a likelihood of affecting bigger numbers of people (HR or recruitment policies), or engages matters or issues associated with protected characteristics (accessibility of toilets for example), then an EIA is more likely to be needed. The screening process is designed as a simple tool to help reach a decision as to whether a full EIA is required. The Commission keeps its policies and procedures under review, and as part of this policy owners should review the cumulative impact of decisions to ensure that the policies which guide them are not having unintended impacts.

### **Examples**

A City Council carried out a review of polling districts, polling places and polling stations. It published an EIA which looked at the implications for different parts of the electorate.

The Commission made a number of changes to our policies around flexible working as a result of the Covid-19 pandemic. An EIA was carried out on these proposed changes to ensure that there would be no unintended adverse impact on equalities.

If in doubt, consult the Commission's EDI lead and ensure that the reasons for taking the decision are documented on the screening form.

On occasion proposals may only apply in part of the UK. In this case the EIA need only be carried out for that part, although with an eye to any implications for the rest of the UK. As set out above, different legislation applies in Northern Ireland.

## **5. How to do an EIA: screening and full assessment**

The first question to ask yourself is whether you need to embark on the process at all. The EHRC is clear that the process of assessing equalities impacts needs to be proportionate. For example an EIA may be needed at the start of a project but it would not be necessary to produce a new one at each stage of the project. Section 4 gives guidelines. If in doubt seek advice from the EDI lead, but remember the concept of proportionality.

### **Screening**

If you decide that there may be a potential impact on equalities, the next stage is to complete a screening form using the Commission template. You will need to consider the policy from the point of view of each protected characteristic. You should ensure that you consult colleagues in Wales to ensure compliance with the requirements on Welsh language; with colleagues in Northern Ireland to ensure compliance with the legislation there; and with colleagues in Scotland. If your conclusion is that there is likely to be no adverse effect on equalities, explain your assessment on the form. You will then need to seek agreement from the EDI lead and sign-off from the relevant Director. Ensure that the screening form is saved in the Skynet folder.

### Carrying out an EIA

If your conclusion from the screening is that there is evidence for a potential impact on one or more groups you will need to complete a full assessment.

To complete the EIA you will need to examine each protected characteristic, Welsh language requirements and requirements under NI legislation, and assess the impact of the proposed change. Different groups are likely to be affected in different ways, and some groups may well not be affected at all. You are advised to talk to the EDI lead before starting work on the assessment. You should also alert the EDI group and agree whether some level of input from them is required, for example finding a volunteer to provide input to the EIA; it would be good practice to explain to the group why the change is proposed. At this stage you should add the EIA to the list of EIAs maintained on Sharepoint and shared regularly with the EDI group.

You may find the following sources of research helpful:

[Commission research](#); Staff Survey data; staff diversity data; recruitment data; ONS demographic data; and good practice guides by the Government (including Devolved Parliaments) or its agencies (e.g. EHRC or other Equality Commissions).

The table below sets out the issues you may want to consider for the nine protected characteristics:

	Protected characteristic	Issues to consider and good practice
1.	Age	Particular areas to consider internally are person specifications or job adverts that state or imply age which cannot be justified. Check whether there are any tendencies for age groups to be less successful at any stage of the recruitment process. Externally you will want to consider whether any changes are likely to make it harder for example for older people to vote or to supply information for regulatory purposes.



	Protected characteristic	Issues to consider and good practice
2.	Gender reassignment <sup>2</sup>	<p>Gender reassignment discrimination needs to be considered in recruitment, promotion, training, dismissal and redundancy. A transsexual job applicant is not required to tell the employer they have changed gender either before or if they get the job. Trans-inclusive policies cover matters such as use of toilets, changing and shower facilities, and changing the employee's personal records. The <a href="#">ACAS guide</a> may be helpful.</p> <p>Language should be checked to ensure there is no inadvertent discrimination.</p>
3.	Sex (including but not the same as gender)	<p>The clearest form of sex discrimination is the proportion of men:women in the workplace. Under-representation of women or men should be considered but under-representation of women at senior levels is more common; as is higher pay for men. Compulsory Gender Pay Gap reporting applies for organisations of 250 staff or more. Discrimination may arise more generally if policies or practices have a disproportionate impact on one sex over another, e.g. core working hours.</p> <p>The Equality Act does not explicitly protect non-binary identities. However, it is good practice for forms, online identity etc to enable self-classification.</p> <p>Language should be checked to ensure there is no inadvertent discrimination.</p>
4.	Marriage and Civil and Partnership	<p>Applies to any such partnership. As above, ensure language does not create inadvertent discrimination.</p>
5.	Race (including ethnicity)	<p>This is defined in the Equalities Act as including colour, nationality, ethnic/national origins and ethnicity and race.</p> <p>Recruitment and performance management are the two highest risk areas of potential racial discrimination in the workforce. Career progression is also identified as an important issue by the Race at Work Charter. It is</p>

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<sup>2</sup> Although the 2010 Act uses the term transsexual, the Women and Equalities Commission have recommended that the term trans should be used.

	Protected characteristic	Issues to consider and good practice
		<p>increasingly seen as good practice to publish analysis of any Ethnicity Pay Gap.</p> <p>In reaching decisions which affect stakeholders it is important to consider both whether there is inherent racism in the existing approach and whether it could be changed to remove racism. Language is crucial.</p> <p>It should be noted that in Northern Ireland Irish travellers are a specifically protected community.</p>
6.	Disability	<p>The definition of 'disabled' under the <a href="#">Equality Act 2010</a> comprises a physical or mental impairment that has a substantial and long-term negative effect on ability to do normal daily activities. This covers a very wide range of impairments, for example HIV infection, cancer, people on the autism spectrum, dyslexia and dyspraxia.</p> <p>The following should be considered before making any assumptions about the ability of candidates, employees or any person with a disability to work or carry out activities for the Commission or receive information or access any Commission premises, services or information.</p> <p>Reasonable Adjustments – to remove or reduce barriers that would place a disabled person at a substantial disadvantage:</p> <p>An organisation can treat disabled people better or 'more favourably' than non-disabled people and sometimes this may be part of the solution.</p> <p>The adjustment or adjustments must be effective in helping to remove or reduce any disadvantage the disabled worker is facing:</p> <ul style="list-style-type: none"> <li>• <a href="#">Reasonable adjustments</a></li> <li>• <a href="#">What do we mean by reasonable?</a></li> </ul> <p><a href="#">Access to Work</a> is a publicly funded employment support grant scheme that aims to support disabled people start or stay in work. It can provide practical and financial support for people who have a disability or long term physical or mental health condition. Support can be provided where someone needs support or adaptations beyond reasonable adjustments.</p> <p>The Commission has a specific Northern Ireland Disability Action Plan in line with our statutory commitments.</p>

	Protected characteristic	Issues to consider and good practice
7.	Pregnancy & Maternity	Examples of discrimination can include unfair treatment on the grounds of pregnancy-related conditions, breastfeeding or recent giving birth. Good practice may include ensuring women on maternity leave or men on paternity leave are kept informed of events in the workplace and vacancies and not discriminated against in decisions on redundancy or other employment issues.
8.	Sexual Orientation	This protects the rights of gay, lesbian, and bi-sexual communities. Read the <a href="#">guidance from Stonewall</a> for more information.
9.	Religion & Belief	Whilst the Commission is a small organisation, advertising and recruitment must reflect the full diversity of religions in the UK and monitor for significant anomalies with recruitment or staff composition.  In Northern Ireland there are specific provisions on discrimination against Catholics and Protestants and political beliefs. These are set out in more detail below.

You will need to check in addition for compliance with the Welsh language standards 84, 85 and 86 as set out in section 3 above. These specify that proposals should be formulated so as to have positive or increased positive effects, and to avoid adverse or increased adverse effects on opportunities for people to use the Welsh language and to treat the Welsh language no less favourably than the English language. You should engage with the Welsh language adviser to help you form an assessment against these standards.

You will also need to check for compliance with legislation in Northern Ireland. There is a statutory duty to promote equality between:

- people of different religious belief
- people of different political opinion
- people of different racial group
- people of different age
- people of different marital status
- people of different sexual orientation
- men and women generally
- people with a disability and people without
- people with dependants and people without

It is also a statutory duty to have regard to the desirability of promoting good relations between people of different religious belief, political opinion or racial group. For example, job vacancies need to be drafted and advertised in a way which is appropriate to different communities.

You are also advised to engage with colleagues in Scotland: whilst there are no additional statutory requirements you will want to ensure that you are reflecting any circumstances or issues particular to Scotland.

If you have concluded that the policy or proposed change will have no adverse impacts (Outcome 1), you will need to seek advice from the EDI lead. You will also need to send the EIA to the EDI group to seek their view: this may be done by e-mail, at a full meeting of the group or at a smaller meeting. They will offer a recommendation. You should then seek sign-off from the relevant Director (or exceptionally Directors where there is a shared responsibility) on the basis of these recommendations.

If you conclude that there is a risk of adverse impacts (Outcome 2), you will need to consider how to amend the proposal so as to mitigate against those impacts. You should then revisit the relevant sections of the EIA and consult with the EDI lead. Once you are content that the proposal will not adversely affect equality you should seek advice from the EDI lead, a recommendation from the EDI group and then sign-off from the relevant director.

If the EIA raises issues of which ET should be aware and/or if you conclude that external consultation is required, you must submit it to ET with agreement from the relevant Director. A 12-week consultation is mandatory in Northern Ireland but not elsewhere in GB. You should seek advice from Comms before proceeding further as to whether this is required and if so what would be the most appropriate format.

It is difficult to envisage circumstances in which either a proposal would be found to have an adverse effect but need to continue unamended (Outcome 3), or in which a proposal could have such a serious impact that the change could not go ahead (Outcome 4). But should this exceptionally be the case you will need to bring the issues to ET for decision.

All completed EIAs must be stored in the dedicated area of Sharepoint.

The race equality duty specifically requires publication of assessments on race equality schemes, and publication is recommended as good practice in other areas of the PSED. It is therefore good practice to publish EIAs. It is mandatory to do so in Northern Ireland. You should liaise with colleagues in Communications about appropriate approach, timing and format.

Assessing the impact on equality is an ongoing process that does not end once a policy has been agreed or implemented. The Directorate, in conjunction with the EDI Lead and the Equality and Diversity Group, should agree a review period which matches the aims of the proposed change. It should also ensure that equality is included as appropriate in plans to evaluate the effects.

## 6. Roles and responsibilities

It is the responsibility of:

- the officer leading on the proposal to consider:
  - whether a screening is needed and on the basis of that whether an EIA is needed
  - to agree the approach with their management chain
  - to familiarise themselves with the guidance and template
  - to produce a first draft
  - to liaise with the EDI lead
  - to manage internal consultation and any external consultation that may be required
  - to seek advice from the the EDI lead, agreement and recommendation from the EDI group and sign-off from the Director (or exceptionally Directors) for the completed assessment
- the relevant Director (or exceptionally Directors) to:
  - agree the approach
  - keep the process under review
  - sign off the final assessment
- the EDI lead to:
  - provide advice and input
  - to offer support to the drafting process
  - to advise on the final assessment
- the EDI group to:
  - remain abreast of EDIs currently being worked on
  - to decide whether to offer support as a critical friend
  - to review the EIA on the basis of advice from the EDI lead and provide a recommendation to the Director
- The Welsh language advisor to provide advice on compliance with Welsh language standards 84, 85 and 86
- Colleagues in Northern Ireland to provide advice on any specific implications under Northern Ireland legislation
- Colleagues in Scotland to advise on any specific implications for Scotland
- ET to take final decisions on consultation and, where necessary, on the handling of EIAs which identify adverse effects

# Appendix A: Useful resources

- The Equality and Human Rights Commission (EHRC) – Promoting and upholding equality and human rights ideals and laws across England, Scotland and Wales: [Home Page | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://equalityhumanrights.com)
- Equality Guidance for Scottish public authorities: [Guidance for Scottish public authorities | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://equalityhumanrights.com)
- The Equality and Human Rights Commission (EHRC) – Wales: [Guides to the PSED in Wales | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://equalityhumanrights.com)
- Equality Commission for Northern Ireland: <https://www.equalityni.org/Home>
- Guidance: [ECNI – Public Authorities in Northern Ireland – Equality Commission NI \(equalityni.org\)](https://www.equalityni.org)
- EIA Guidance for Northern Ireland: [S75Advice-ScreeningEQIA.pdf \(equalityni.org\)](https://www.equalityni.org)