



Ministry of Defence

EQUALITY ANALYSIS

Guidance and Template

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EQUALITY ANALYSIS

Introduction

1. The MOD is a large, complex organisation responsible for making a wide range of decisions. This spans decisions about overarching policies to day-to-day decisions which affect specific individuals. Equality Analysis is a means of considering the potential impact on different groups protected from discrimination by the Equality Act 2010. This Act places a duty on public sector organisations (the Public Sector Equality Duty) to integrate consideration of equality into their day-to-day business and to show due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality 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.

The protected characteristics are: age, disability, gender reassignment, pregnancy or maternity, race (including ethnic or national origins, colour or nationality), religion or belief (including lack of belief), marriage or civil partnership, sex and sexual orientation¹. For the purposes of the Act the Ministry of Defence, the Armed Forces and the Ministry of Defence Police are subject to the Public Sector Equality Duty.

2. The Equality Act and the Equality Duty therefore represent a good opportunity for the MOD to review its approach. The resulting Guidance and Template is a simplified process which aims to reduce bureaucracy, increase user-friendliness and thereby deliver more effective equality outcomes for the benefit of all staff. It will also help to demonstrate both internally and externally that the MOD takes equality seriously, treats people fairly and understands the benefits of a diverse workforce.

Equality Analysis and due regard

3. In order to comply with the Equality Duty and show due regard to the principles set out in paragraph 1, public sector organisations are required to consider the effect of their decisions, policies, procedures and practices (all activity) on those people with characteristics protected from discrimination by the Act. There are two reasons for this:

- to consider if there are any unintended consequences that potentially discriminate against some groups, and
- to consider if there are opportunities to improve on what is being proposed or improve by removing discriminatory aspects of existing policies.

4. The term 'due regard' means consciously thinking about improving equality outcomes as part of the process of decision-making. Consideration of the impact of particular decisions, policies, procedures and practices on those people with the protected characteristics is known as Equality Analysis. Equality Analysis replaces the former requirement known as Equality and Diversity Impact Assessment. The aim of the new

¹ The Armed Forces are exempt from anti-discrimination legislation for the protected characteristics of age and disability.

process is to deliver improvements in equal treatment and equality of opportunity for staff and service users.

5. At all stages, the MOD is required to demonstrate how it has exercised due regard/serious consideration to the need to improve equality outcomes by demonstrating evidence of engagement with protected characteristic groups (the Department is required by law to engage with disabled members of staff). Under the new Equality Duty, public authorities are not required to follow any specific methodology or template, but they need to be able to show that they have had due regard to the aims set out in the general duty. A systematic approach, such as this revised Equality Analysis Template, is an important business tool which, if used effectively, can help improve policy development and service delivery; help to ensure compliance with legal obligations under the Equality Duty and build trust and confidence between the Department and its employees.

6. Case law has established that equality impact assessment/analysis, if conducted in an effective and timely manner, is an important way that public authorities can be sure they are meeting their legal obligations. It has also established that equality impact assessment/analysis should be clearly documented as it is a useful means for demonstrating compliance in court. This remains relevant under the new Equality Duty and the risk of non-compliance can be significant; for example, Disability Discrimination Employment Tribunals have given awards close to £400K.

Who, what and when

7. Equality Analysis is the responsibility of the decision-maker or sponsor of the policy, procedure or practice under consideration, whether civilian or military, and that individual should be held accountable for ensuring that Equality Analysis has been undertaken. It involves considering the likely effects before decisions are made and involves subsequent monitoring of what happens in practice. It starts prior to policy development or during the early stages of a policy, procedure or practice review and continues throughout its development and implementation.

8. Just as with any policy or plan being developed where early questions are ‘how much will it cost or are there any Health and Safety implications?’, so at a similar stage, it is necessary to ask ‘what might its effect be on people with the protected characteristics?’ This will help increase transparency and enable the best possible policy outcome to benefit all stakeholders and improve our ability to meet the needs of our own personnel and those members of the general public who use our services or facilities, e.g. shared sports facilities or “open days”.

9. Equality Analysis should not be a one-off exercise but continuous to enable informed equality considerations to be taken into account at all the key points in the decision-making process. It should also be remembered that all policies, procedures and practices that are covered by this process also require TU engagement in line with Departmental procedures. It is not just for policies, procedures and practices that require TU consideration or Management Board approval but any development or activity that could have the potential to have an effect on protected characteristic groups. The sorts of issues that will need to be considered are set out at Annexes A and B.

10. The approach for any particular decision, policy, procedure or practice should be proportionate. This means taking an approach that is suitable to the Department's size,

resources and functions and to the importance of the activity to equality and good relations. For example, where a decision, policy, procedure or practice results in indirect discrimination for a small group of people, MOD must be able to demonstrate that the course of action pursued is justifiable as a proportionate means of achieving a legitimate aim (e.g. to maintain operational capability and effectiveness), is the least discriminatory possible and that MOD has taken any possible effective action to mitigate the impact or desist from that course of action.

A step-by-step approach

11. The approach set out below aims to help improve equality outcomes for the Department and to meet our legal requirement to demonstrate due regard under the Equality Duty.

Step 1: Identify who is responsible for the decision, policy, procedure or practice, define the desired outcome and collect initial evidence (informal consultation, evidence of discussions);

Step 2: Judge the impact (who is affected and how) based on the evidence gathered and the relevance to equality and to the protected characteristic groups;

Step 3: Plan and consider mitigation or process to reduce the impact and test any assumptions;

Step 4: Complete the Equality Analysis Template (Annex C);

Step 5: Decision-making and publication;

Step 6: Monitor and review.

Record keeping

12. Decision-makers and policy, procedure or practice sponsors, whether military or civilian, should use the Template at Annex C for recording the results of the Equality Analysis before decisions are made. Any proposal that is likely to affect staff is subject to Trade Union consultation. The Trade Unions, along with the Management Boards that approve the proposed decision, policy, procedure or practice, will expect to see the fact that analysis has been undertaken and, if relevant, the results of the Equality Analysis. In addition, in the event of a subsequent challenge to a policy, procedure or practice in the courts or by the Equality and Human Rights Commission or other stakeholders, the Department will need to be able to produce evidence that the potential impact of the decision, policy, procedure or practice on people with the protected characteristics was taken into consideration and mitigated as much as possible. Completion of the Template at Annex C will assist the Department to do this.

13. Evidence can be provided by various sources e.g. statistics (where available and relevant) or notes from meetings to demonstrate engagement. It should be quantitative and qualitative with clear facts and findings set out and, where relevant, should also include mitigation and any potential for the policy, procedure or practice to effectively reduce or remove perceived or existing inequalities, advance equality of opportunity and foster good relations.

14. Records of the results of Equality Analysis should be kept on the appropriate policy files to be drawn on should these be required at a later date and the fact that analysis has been undertaken and its outcome should be included in the policy document. Whilst TLBs should promulgate their internal governance and quality assurance programmes, a small monitoring group, which includes external expertise, will be established to review a proportion of these forms to assure that they stand up to scrutiny.

Training and further information

15. An e-learning package is being developed by the Defence Academy covering the principles underlying Equality Analysis. More detailed information about the requirement for Equality Analysis is available from the Equality and Human Rights Commission at [EHRC - Home](#) and the [Advisory, Conciliation and Arbitration Service \(ACAS\)](#). There is also a Civil Service guide: 'The public sector Equality Duty - Considering equality when developing policy and services' which provides further understanding of what is meant by the term 'due regard' and includes examples of relevant case law. The document is at: <http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/21/104020111116-Considering%20equality.pdf>

16. The Department has a range of Diversity Focus Groups in place (Ethnic Minority, Disability, Gender & LGBT) who are available to provide advice, support and guidance to assist with Equality Analysis (as stated previously, the Department is required by law to engage with disabled members of staff). In addition you should engage with the Department's recognised Trade Unions who have access to equality networks, resources and experience. Early engagement with these groups, bodies or with local networks is an important step and should not be overlooked in the interests of time. Military personnel who require further advice should consult the single Service Equality and Diversity teams.

EQUALITY ANALYSIS: ISSUES FOR CONSIDERATION

- What is the purpose of the decision, policy, procedure or practice? What should it achieve? What are the desired outcomes?
- Who is the policy for, what benefit is intended and who else could it affect (e.g. Service and/or civilian personnel, their families or dependants, veterans, contractors' personnel, the general public, etc.)?
- Is the policy directly discriminatory? (A policy will be directly discriminatory if implementing it treats, for example, citizens of one country less favourably than those of another because of nationality which includes a stereotypical assumption about them or their behaviour. Direct discrimination is illegal, except with very limited exceptions.) Legal advice will need to be sought about any policy that may involve direct discrimination.
- Does the policy present an opportunity to generate positive outcomes for one or more of the protected characteristic groups.
- Does any particular requirement placed on a MoD contractor have a more significant effect on anyone with one or more of the protected characteristics? Do contracts for goods or services cover the conduct of contractors and sub-contractors and require them to comply with MoD's diversity policies?
- Is the policy, procedure or practice indirectly discriminatory? A policy may be indirectly discriminatory where the application of a provision, criterion or practice, puts someone with a protected characteristic at particular disadvantage or has a more significant effect on them when compared with their counterparts. If so, can the aims of the policy be achieved by alternative means or, alternatively, can it be objectively justified. Legal advice should be sought about whether such objective justification is likely to stand up to scrutiny by the courts.
- Does the policy, procedure or practice include stereotypical assumptions?
- Is the policy, procedure or practice readily understandable? Use plain English.
- Is the policy, procedure or practice accessible? Consider e-options, Braille, audio, non-English versions, appropriate print fonts for the visually impaired, etc if appropriate and make sure these are known to be available to those concerned.
- Are there barriers to people with the protected characteristics benefitting from the policy, procedure or practice?

- Where people with the protected characteristics have particular needs, are they addressed?

DIRECT AND INDIRECT DISCRIMINATION

Examples of Direct Discrimination i.e. less favourable treatment of a diversity group than their comparators on prohibited grounds	Examples of Indirect Discrimination i.e. the application of a provision, criterion or practice which puts a diversity group at a particular disadvantage when compared with their counterparts
<ul style="list-style-type: none"> • Women (including girls) than men (including boys), or vice versa, because of their sex. (Note: Special treatment afforded to women in connection with pregnancy or childbirth is lawful). • Those of a particular race, colour, nationality or ethnic or national origins than others, because of racial grounds. (Note: Segregating a person from others because of race is treating him or her less favourably). • Those of a particular religion or belief (or none) than others, because of religion or belief. (Note: "Belief" means any religious or philosophical belief.) • In Northern Ireland, those who are Catholic or Protestant or because they are presumed to be from one of these communities; or because they are presumed to be nationalist, republican, loyalist or unionist. • Those who are married or in a civil partnership than others who are not, because of their status. (Note: Discrimination against unmarried people because of their status is not of itself unlawful but will need to be justified.) • Those who have or have had a disability (particular consideration needs to be given to people who may have a "hidden" disability such as those with a mental illness, epilepsy, diabetes, dyslexia, etc.) than others who are not or have not been disabled, for a reason which relates to their disability. • Those of a particular age group than others who are older or younger, because of their age. (Note: Direct discrimination on grounds of age, such as a maximum or 	<ul style="list-style-type: none"> • Minimum height, physical fitness or strength requirements (women or older people). • A requirement to work full time (women, who are more likely than men to have childcare responsibilities). • A mobility obligation (women, who are more likely than their partners to be the 'second earner' and thus less able to relocate). • Recruitment practices which exclude job seekers from inner city areas (ethnic minority groups). • Selection or promotion criteria stipulating language ability, place or length of residence or domestic qualifications (foreign nationals) • Refusing time off work on Sundays, Saturdays or Fridays (Christians, Jews or Muslims, respectively). • A ban on headwear (Sikh or Jewish men, who may wear a turban or skull cap, respectively, and Muslim women, who may wear a headscarf). • A requirement that all applicants for a job must have served in an organisation associated particularly with either the Protestant or Roman Catholic community in Northern Ireland (members of the other community). • A job advertisement stipulating a low upper age limit for applicants (married people, who are less likely than unmarried people to be under the age in question.) • A telephone information service (deaf people).

minimum age limit on entry to training, will need to be justified).

- Women who are pregnant or on maternity leave, who need no comparator, because of their pregnancy or taking maternity leave.
- Those who are lesbian, gay or bisexual than those who are heterosexual, or vice versa, because of sexual orientation.
- In-transition or post-transition (including pre or post-operative) transsexual people because of gender reassignment. (Note: a post-operative transsexual must be treated for all purposes as being in their acquired gender)
- Banning animals from a particular area or premises (blind people who rely on guide dogs or those with hearing difficulties who have dogs to help them).
- Requiring a driving licence to do a job (could adversely affect some disabled people).
- Health screening (disabled and older people).
- A redundancy policy that has sickness absence (which may disadvantage disabled people) or length of service (which may disadvantage young people or women – the latter because they are more likely to take career breaks) as a selection criterion.
- Job advertisements seeking applicants who are “energetic”, with a given number of years’ experience (which may disadvantage older, younger or disabled people) or specific qualifications (which may disadvantage those with equivalent qualifications).
- A Performance related Pay or Bonus selection policy that has sickness absence as a decision criteria. This may disadvantage disabled staff, pregnant women or older workers.

Notes:

1. The Armed Forces are exempt from anti-discrimination legislation for the protected characteristics of age and disability.
2. Discrimination can only be allowed if it can be shown to be a proportionate means of achieving a legitimate aim and that any possible mitigating action has been taken.



MINISTRY OF DEFENCE EQUALITY ANALYSIS TEMPLATE

Name of decision / policy / procedure / practice / activity	
Name of Sponsor/Lead: Post Title & Contact No	
Type (Delete as appropriate)	New policy, procedure, activity/practice Change Review Other (describe)
Review Date	

1. Establishing relevance to equality

Do you believe there might be an impact on MoD personnel or service users because of their:

Age; disability²; gender identity or reassignment; marital or civil partnership status; pregnancy or maternity; community background (Northern Ireland only); race; religion or belief; sex; or sexual orientation

Y
☐

N
☐

2. If yes to any, please describe what the potential impact is. Why do you believe there might be an impact?

² The Armed Forces are exempt from anti-discrimination legislation for the protected characteristics of age and disability

3. If you believe there is no potential impact on any of the groups listed above, please state why. What evidence do you have to support your view³?

4. Does the policy contribute to meeting the general equality duties to which MOD is subject? These are:

- eliminating unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act
- advancing equality of opportunity between people who share a protected characteristic and those who do not
- fostering good relations between people who share a protected characteristic and those who do not

5. What individuals, groups or organisations have been engaged to help with the equality analysis?

6. Please indicate what potential impact has been identified as a result of any evidence gathering and engagement and show which groups the impact applies to. Were changes made at this stage as a result of this evidence gathering/engagement?

³ Supporting documentation can be appended as a file or attached as a separate annex.

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7. If there is still a potential impact, please state what changes can be made to eradicate or reduce this impact. If changes are possible please outline how these will be made and when. If no changes are possible, please say why.

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8. If you have indicated a potential impact but believe that this can be justified, what is the justification? Have you taken advice when making this decision and if so, from whom?

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9. When will this policy next be reviewed? How will you monitor any impact in the intervening period?

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10. I am satisfied that all available evidence has been accurately assessed for its potential impact on groups with protected characteristics. Mitigation, where appropriate, has been identified and dealt with accordingly.

Signed by Sponsor/Decision Maker:	Date:
Rank/Grade: (SCS PB1 or military equivalent)	
Name:	