

Is this the end of Equality Impact Assessments (EIAs)?



In a speech to a CBI conference in 2012, David Cameron said 'We are calling time on Equality Impact Assessments'. He said 'You no longer have to do them if these issues have been properly considered...we don't need all this extra tick-box stuff'. What did he mean?

This **briefing paper** helps clarify truth from fiction in relation to EIAs. It explores the legal requirements, implications for inspection outcomes, and reflects on the Prime Minister's comments.

First – the legal requirements.

What are EIAs?

All providers have a duty (called the general duty) to have 'due regard' to the need to:

- Eliminate discrimination, harassment, victimisation
- Advance equality of opportunity
- Foster good relations



Assessing impact on equality involves looking at your equality information and the results of any engagement to understand the impact (or potential impact) of your policies, practices or decisions on people with different protected characteristics. 'Policies and practices' includes the full range of policies, procedures, processes, practices and decision-making. Equality impact assessments (EIAs) are an effective tool that organisations use to assess impact. They help you to:

- capture relevant information for assessing impact on equality, and
- document decisions made, for example any mitigating actions and any further opportunities to advance equality or foster good relations

Is there a legal requirement to carry out EIAs?

It's true that there is no longer a 'specific duty' to produce a document called an EIA¹. However, assessing impact on equality of your activities is essential to having due regard to the aims of the general duty. In their January 2012 publication '**Meeting the equality duty in policy and decision-making**' (revised edition) the Equality and Human Rights Commission (EHRC) state:

¹ Since Sept 2011, listed public sector organisations have two specific duties; to publish equality information by Jan 2012 and then annually, and to publish equality objectives by April 2012 and then every four years. You can read **LSIS guidance** on these two specific duties here, guidance on the Equality Act 2010 [here](#), and guidance for governors on equality and diversity [here](#).

‘Understanding the effect of your policies and practices on people with different protected characteristics is an important part of complying with the general equality duty.’

In January 2013, the Equality and Human Rights Commission published **‘Technical Guidance on the Public Sector Equality Duty’**. The guidance gives a practical explanation of how to comply with the duty, including outcomes from case law. While not statutory guidance, it ‘may be used as evidence in legal proceedings’. You can download the Technical Guidance [here](#). The guidance states:

‘A body subject to the duty needs to give advance consideration to issues of discrimination before making any policy decision that may be affected by them. This means it should actively examine its current and proposed policies and practices to ensure that they are not discriminatory or otherwise unlawful under the Act...Assessing impact on equality...involves considering whether a policy or practice could be revised or delivered in a different way to better advance equality or foster good relations.’



Case Law

Case law has established the importance of assessing impact on equality for organisations. Outcomes from court cases means that providers should be aware that:

- Due regard means considering the impact of the duty before policies are finalised or decisions are made
- decision-makers, such as senior managers, governors and trustees must be aware of the duties
- ‘due regard’ must be exercised with vigour – a ‘tick box’ approach to EIA is not enough
- the process of ‘due regard’ should be documented and transparent
- when negative effects are identified, they cannot be ignored.

How should we be assessing impact on equality?

Many organisations have already assessed the impact of their activities on equality by carrying out EIAs on their existing policies and practices in relation to race, disability and gender. They have now extended their process to include the other protected characteristics of the Equality Act 2010. When assessing impact, the duty doesn’t set out a particular process to follow – it is up to the organisation to choose

a method that works for them. However, the most effective approach is to embed the process into day-to-day decision-making, planning and policy review.

Take a look at EHRC guidance 'Meeting the equality duty in policy and decision-making' for a suggested approach to the EIA process. You can download this publication [here](#).



Meeting the general duty, including assessing impact on equality, is an on-going requirement. The Technical Guidance states:

As with all the aims of the duty, to have due regard to the need to eliminate discrimination and other prohibited conduct is a continuing obligation. A body subject to the duty should remain alert to new evidence...and take appropriate action'

Next – inspection.

Will inspectors want to see our EIAs?

Equality and Diversity continues to feature highly during inspection, and is integral to and explicitly informs all three key headline grades.

It's true that the 2012 inspection framework, compared to the previous inspection framework, has less of a focus on policies, procedures and paperwork, and more of a focus on teaching, learning and assessment. Inspectors are more interested in the **impact** of what you do, rather than underpinning documentation. Inspectors will therefore be less interested in seeing a 'file' of completed EIAs, and more interested in the impact of decision-making on E&D practice and outcomes.



However, inspectors will want to know whether what you are doing is embedded in practice, rather than just a 'one-off', so evidence is important. (And, don't forget that case law has also shown the importance of evidence – see previous page)

Are equality impact assessments mentioned in the 2012 inspection framework?

Indirectly, yes. Take a look at the leadership and management section, paragraph 175 for example:

- **the impact of a provider's work in relation to equality and diversity is thoroughly assessed and appropriate actions are taken in response**

You can view and download the 2012 Inspection Framework [here](#).

So, back to David Cameron's remarks.

It's true that some organisations carry out equality impact assessments in a bureaucratic, 'tick-box' manner, and David Cameron is right to be critical of this approach. Theresa May, the Home Secretary, launched 'Think, Act, Report', to encourage business to improve transparency on pay and wider equality issues. She said 'promoting equality of opportunity and equal treatment isn't just here right thing to do – it's also crucial to promoting growth'.

A meaningful and effective approach to assessing impact on equality helps enable organisations to embed equality throughout the organisation.

The focus is on outcomes, not process. EIAs are not an end in themselves – the purpose is to achieve real and practical improvements for specific groups of people. Most good impact assessments are likely to lead to change and bring about greater equality.

Perhaps the answer is not to throw the baby out with the bath water by ceasing to carry out EIAs. Rather, the challenge for organisations is to ensure that EIAs are carried out in a simple, effective and meaningful manner.

If you are considering 'abandoning' EIAs, you might want to reflect on Ofsted's Sept 2012 thematic report '**How Colleges Improve**'. This survey examined the key factors that contributed to sustained high performance or improvement in colleges, and also considered factors that impede improvement. This report shows clearly that equality and diversity is integral to organisations who are centres of excellence. In contrast, E&D often has a low priority in organisations judged to be satisfactory but not improving or declining. Ofsted's April 2012 good practice report '**Apprenticeships for Young People**' also highlights the importance of equality and initial assessment. It's worth bearing in mind that EIAs are a key tool to help organisations to embed equality and diversity so this is integral to all practice.

And finally, a review of inspection reports since September 2012 shows that promoting understanding of equality and appreciation of diversity feature in recommendations for improvement in teaching, learning and assessment.

Equality and Quality go hand in hand.

Read Ofsted's thematic report on 'How Colleges Improve' [here](#), and 'Apprenticeships for Young People' [here](#).



Read the speech by the Prime Minister [here](#) and Theresa May's speech [here](#).

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