## ECU_RGB logo.tifECU_3 Line Strapline RGB.tifBriefing September 2011

Equality impact assessment and the Research Excellence Framework

# REF2014+strapline logo.JPGContact details

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# Introduction

The funding bodies require all HEIs to conduct an equality impact assessment (EIA) on their policy and procedures for selecting staff for the Research Excellence Framework (REF). The EIA should inform the institution’s code of practice and be kept under review as submissions are prepared.

This briefing provides institutions with practical information on carrying out an EIA in relation to their REF code of practice. It is aimed at REF managers and equality and diversity staff and has been commissioned by the REF team.

This briefing should be read alongside the [Assessment framework and guidance on submissions](http://www.hefce.ac.uk/research/ref/pubs/2011/03_11/) (REF 02.2011, July 2011).

ECU has chosen to use the term equality impact assessment in this briefing but HEIs may choose to use other terms for example, equality analysis or inclusive policy making.

# What is an EIA?

The Higher Education Funding Council for England (HEFCE) describes an EIA as:

‘…the thorough and systematic analysis of a policy or practice to determine whether it has a differential impact on a particular group. It can be seen as a quality control mechanism by which HEIs can evaluate their activities and best meet the needs of their stakeholders. This can lead to better value for money, increased productivity and maximisation of resources leading to a more efficient and effective working and learning environment.’

[www.hefce.ac.uk/pubs/hefce/2004/04\_37](http://www.hefce.ac.uk/pubs/hefce/2004/04_37)

Essentially, EIAs are planning tools that enable HEIs to build equality into their mainstream mechanisms of policy-making, including change management proposals and processes. The former Department for Children Schools and Families produced an excellent summary of the background to the use of EIAs in the UK. This resource may be useful in explaining the concept of impact assessments to colleagues. [www.ecu.ac.uk/inclusive-practice/equality-impact-assessment](http://www.ecu.ac.uk/inclusive-practice/equality-impact-assessment)

# Why are EIAs required by the funding bodies?

## Legislative compliance

### England, Scotland and Wales

The Equality Act 2010 places requirements on HEIs through the public sector equality duty to eliminate discrimination, harassment and victimisation that is prohibited under the act, advance equality and foster good relations in relation to the protected characteristics of**:**

* age
* disability (includes carers of disabled people)
* gender reassignment
* pregnancy and maternity
* race
* religion or belief
* sex (includes breastfeeding and childcare)
* sexual orientation

**Marriage and civil partnership** is also covered by the equality duty in regards to eliminating prohibited conduct in employment functions only and thus will need to be considered in the REF.

HEIs are required to show due regard to the equality duty and in order to do so need to understand the effect of their REF staff selection policy and procedures on their ability to meet the requirements of the equality duty. An EIA is a method to do this. It is a specific statutory requirement in Wales and Northern Ireland. The Equality and Human Rights Commission (EHRC) has significant powers to enforce HEIs responsibilities under the Equality Act, including the ability to launch official inquiries and formal investigations.

### Northern Ireland

Section 75 of the Northern Ireland Act 1998, requires HEIs to assess the likely impact of their policies on the promotion of equality of opportunity:

* Between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
* Men and women generally
* Persons with a disability and persons without
* Persons with dependants and persons without

The Equality Commission Northern Ireland has significant powers to enforce HEI responsibilities section 75 of the Northern Ireland Act 1998, including the ability to launch official inquiries and formal investigations.

## **In light of legislative requirements, the four UK funding bodies require all HEIs submitting to the REF to conduct EIAs on their policies and procedures for selecting staff for the REF.**

## Ensure effective selection of staff

As noted by HEFCE (see above), EIAs ‘lead to better value for money, increased productivity and maximisation of resources leading to a more efficient and effective working and learning environment’. They will, for example, help to ensure that an institution’s REF policy on the selection of staff is appropriate from the point of implementation, thereby reducing the need to respond to issues later on.

EIAs on staff selection procedures will require an initial investment of staff time to conduct analyses of staff data and to organise and follow up on any consultation exercises required. However, EIAs will reduce the long-term and more significant costs incurred in responding to difficulties during the final submission, complaints of discrimination or legal challenges that may otherwise arise if equality issues are not properly considered during the development of the code of practice.

# EIA methodology

The EHRC has emphasised that ‘individual public bodies [in England, Scotland and Wales] need to develop their own EIA methodology to fully reflect the precise nature of their business and ensure consistency’.[www.equalityhumanrights.com/uploaded\_files/eiaguidance.pdf](http://www.equalityhumanrights.com/uploaded_files/eiaguidance.pdf)

Other organisations have also produced guidance and materials on impact assessment processes:

* Equality Commission in Northern Ireland guidance on Section 75 [www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf](http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf)
* EHRC (2009) Equality impact assessment guidance: a step-by-step guide to integrating equality impact assessment into policy making and review [www.equalityhumanrights.com/uploaded\_files/eiaguidance.pdf](http://www.equalityhumanrights.com/uploaded_files/eiaguidance.pdf)
* EHRC (2009) Equality impact assessment quick-start guide: a step-by-step guide to integrating equality impact assessment into policy making and review [www.equalityhumanrights.com/uploaded\_files/PSD/equality\_impact\_assessment\_guidance\_quick-start\_guide.pdf](http://www.equalityhumanrights.com/uploaded_files/PSD/equality_impact_assessment_guidance_quick-start_guide.pdf)
* Scottish government Equality and diversity impact assessment toolkit [www.scotland.gov.uk/Publications/2005/02/20687/52425](http://www.scotland.gov.uk/Publications/2005/02/20687/52425)
* Welsh Assembly government (2010) Inclusive policy making guidance <http://wales.gov.uk/topics/equality/publications/ipmguide2/?lang=en>

# EIAs and the REF

HEIs are required by the funding bodies to conduct an EIA on their policy and procedures for selecting staff in the REF. The four UK funding bodies have considered the equality impact of their policies and guidance through an analysis of the RAE, the work of the Equality and Diversity Advisory Group and public consultations.

An EIA on the selection of staff for the REF will need to explore the equality impacts of proposed policy and processes. For example:

* will the selection policy pose a barrier to eligible staff from a particular group? Table 2: Summary of equality legislation on pages 36 – 38 of the [Assessment framework and guidance on submissions](http://www.hefce.ac.uk/research/ref/pubs/2011/03_11/) includes equality considerations in relation to the REF.
* how will the selection policy be communicated to all eligible staff, including those who are currently absent.
* if there are thresholds for selection, will there be a negative impact on certain groups who may be eligible to submit reduced outputs

When conducting an EIA, an institution can consider a range of information that may indicate the likely impact on its ability to show due regard to the equality duty:

* Analysis of the institution’s submission to the RAE 2008 and the findings from any evaluation that followed
* Analysis of HESA staff data of staff who are eligible to submit to the REF and staff who are selected during mock exercises
* Lessons from mock exercises, including feedback from staff from protected groups
* Any other engagement with staff from protected groups that may inform an HEI’s selection policy and procedures or the institution’s code of practice more generally.

Institutions may wish to conduct more than one EIA for example on each policy or procedure that relates to the selection of staff for the REF. However, there is no need for institutions to repeat EIAs, EIAs can be reviewed at key points:

* When identifying staff who are likely to be selected, are they representative of the staff within the institution who are eligible to submit? If not, institutions need to consider if there are equality related reasons for staff not being selected.
* When considering appeals e.g. have any appeals highlighted issues that have a negative impact on a particular protected group and if so, do policy and procedures for selecting staff need to be revised?
* When preparing the final submission. Have all equality related issues that have arisen during mock exercises been taken into consideration? Where institutions have not undertaken mock exercises, an analysis of eligible staff who are selected will need to be undertaken to ensure there are no equality related barriers to selection.

# Engagement with staff from protected groups

In order to demonstrate due regard to the equality duty of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998, HEIs will need to consider information gained from engaging with staff in their EIA. Engagement may be a one off event or repeated over a period of time. It may be formal or informal. It may be focused on the REF specifically or on issues affecting research staff more broadly. In the context of the REF engagement could involve:

* seeking feedback from staff from protected groups on their experiences of any mock exercises that are conducted.
* consulting with staff networks on the proposed policy and procedures
* involving staff representatives in policy and procedure formulation

The EHRC has published guidance on involving people in decision and policy making. [www.equalityhumanrights.com/uploaded\_files/PSD/involvement\_guidance\_final\_new.pdf](http://www.equalityhumanrights.com/uploaded_files/PSD/involvement_guidance_final_new.pdf)

# Positive and negative impacts

An EIA should help to identify both positive and negative outcomes and can help ascertain where outcomes can be prevented or justified within the permits of the law or where the impact is positive, extended to other protected groups.

For example, an analysis of a mock exercise shows that the majority of eligible female staff were selected within chemistry (where women are underrepresented). This percentage was higher than for many other units of assessment. Using this data, the institution explores whether there are barriers to women’s selection that it was unaware of and to establish if anything different occurred within chemistry that can be applied to other units of assessment and to other protected groups.

Where a particular policy or procedure is found to have a negative impact on a protected group, HEIs are required to explore alternative procedures and ensure that there are no other steps that can be taken to mitigate the impact. For example, if disabled staff are underrepresented in the submission, can the policy be changed to ensure that more disabled staff are selected? If selection is based on predicted quality of outputs and panel criteria alone then it is unlikely that the policy can be changed. However, if selection is based on quality thresholds that have been developed without consideration for equality then it is likely that the policy can be changed.

If a policy cannot be changed HEIs can still consider actions to support staff during the remainder of the census period with the ultimate aim of increasing staff selection from particular protected groups. For example, would mentoring be of benefit or could additional support be provided for attendance at conferences?

Where changes are made to the proposed policy or procedures, affected groups will need to be engaged to ensure that the changes are fit for purpose. If changes cannot be made to the policy, the decision to proceed will need to be justified within the permits of law.

HEIs should record any steps that have been taken to change the policy or mitigate the impact to ensure that any negative impact does not constitute unlawful discrimination and can be justified to a third party. The justification for decisions, as well as any actions that will be taken to mitigate impact, would need to be recorded in the EIA report, which can assist HEIs in ensuring that actions are implemented. This evidence will be needed if a legal challenge is made.

Further information

The statutory codes of practice on the Equality Act 2010 contain information on what constitutes unlawful discrimination in England, Scotland and Wales [www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice](http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice).

ECU has written a summary of anti discrimination law in Northern Ireland which includes further sources of information can [www.ecu.ac.uk/publications/anti-discrimination-law-in-northern-ireland](http://www.ecu.ac.uk/publications/anti-discrimination-law-in-northern-ireland).

# Reporting EIA findings

Most EIA guidance includes example templates that HEIs can adapt to local circumstances to report the findings of EIAs. In relation to REF procedures, a final EIA report would normally be expected to include:

* an analysis of the potential impact of the proposals based on staff data and information gathered during mock exercises, engagement with staff and from the RAE 2008 in relation to the protected characteristics**.**
* the steps that will be taken to change potentially discriminatory proposals, mitigate their impact or justify them where the law permits
* an action plan, setting out the actions that will be taken to minimise the risk of negative impact on particular protected groups including clear lead responsibilities for implementation, agreed timescales and arrangements for ongoing monitoring and review of the action plan.

The funding bodies expect all institutions to publish their EIAs after the submissions have been made as a matter of good practice.

# Frequently asked questions

## Who should be responsible for conducting EIAs?

While it may be useful to have an individual overseeing the EIA process, it is not recommended that responsibility for conducting an EIA rests solely with an individual. A range of skills is needed to conduct EIAs and so a team with the following qualities is best placed to fulfil this function:

* knowledge and understanding of the policy to be impact assessed
* knowledge and understanding of equality
* an ability to be objective about the policy
* an ability to analyse both qualitative and quantitative data

Some HEIs may use consultants or external agencies to conduct EIAs. However, the EHRC has advised that, while external support and expertise can be helpful in building capacity, EIAs should not routinely be conducted by external consultants. Where HEIs have joint consultative committees or other similarly representative bodies, an HEI may consider delegating the task to such a group, with involvement and advice of a person with the relevant knowledge and understanding of equality legislation and EIAs.

## What does due regard mean?

Due regard comprises two linked elements, proportionality and relevance. ECU recommends that to demonstrate due regard as employers, institutions need to consider the **relevance** of the equality duty when developing, evaluating and reviewing policies (including, for example, those relating to the REF).

To consider **proportionality**, HEIs should determine:

* the relevance of the policy to protected groups
* the relevance of the policy to the public sector equality duty
* any concern previously raised about policy or practice
* any information indicating an adverse impact on a protected group

## How detailed does an EIA need to be?

An EIA is not a simple five-minute ‘tick box’ exercise, or an exercise of going through the motions to claim that a particular policy or practice is non discriminatory without proper consideration of the issues involved.

An effective EIA should involve a meaningful assessment of the impact a policy or practice may have from an equality perspective. If an EIA does not involve proper consideration of the relevant evidence and data available and if it does not involve genuine reflection on possible ways to mitigate negative impacts the policy or practice in question may have on equality, then it is unlikely to stand up under scrutiny.

The more robust the process of conducting an EIA, the greater the legal cover afforded to the institution if the EIA is subsequently challenged or if the HEI seeks to rely on the EIA in a legal case.

## Is training required for staff involved in EIAs?

ECU recommends that staff responsible for conducting the EIA on the staff selection policy and procedures for the REF receive training on the purpose of EIAs as well as the HEI’s processes for conducting, reviewing and monitoring EIAs.

## When should an EIA be conducted?

HEIs must not retrospectively conduct an EIA on their policy and procedures for selecting staff. EIAs should be conducted at the outset of policy and procedure development. As highlighted in the guidance on submissions, mock exercises can be used to inform your institutions EIA and the EIA itself should inform your institution’s code of practice. It should then be reviewed at key stages of the selection process.

## When should EIA reports be published?

While publication of EIAs is not a legal requirement in all four nations of the UK, the funding bodies expect institutions to publish their EIAs after the submissions have been made as a matter of good practice. The published information should include the outcomes of any actions taken to prevent discrimination or advance quality.

Publication is consistent with the fact that most EIA reports could be disclosed under the Freedom of Information Act 2000. However, some EIA reports may contain information which can identify individuals and therefore some parts of the report may need to remain confidential, to ensure compliance with the Data Protection Act 1998. For further information on freedom of information and data protection issues visit the Information Commissioner’s Office. [www.ico.gov.uk](http://www.ico.gov.uk)

## Where is help available?

Your HEI’s equality and diversity team will be able to guide you through the process of impact assessment and will be able to let you know about any training or materials that your HEI has available. Your institution may also have an officer specifically responsible for quality processes or impact assessment.

For further advice on conducting EIAs and other equality issues contact the ECU’s advice service. [www.ecu.ac.uk/your-questions/advice-service](http://www.ecu.ac.uk/your-questions/advice-service)

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