



Older People's Commissioner for Wales
Comisiynydd Pobl Hŷn Cymru

Equality & Human Rights Impact Assessments

Guidance for Local Authorities

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people across Wales. The Commissioner and her team work to ensure that older people have a voice that is heard, that they have choice and control, that they don't feel isolated or discriminated against and that they receive the support and services that they need.

The Commissioner and her team work to ensure that Wales is a good place to grow older, not just for some but for everyone.

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Section 12 Guidance

This Guidance is issued under Section 12 of the Commissioner for Older People (Wales) Act 2006.

Bodies subject to this Guidance issued under this section must have regard to the Guidance in discharging their functions.

<http://www.legislation.gov.uk/ukpga/2006/30/contents>

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Foreword

One of my priorities as Commissioner, as set out in my Framework for Action 2013-17¹, is to protect and improve community services – services such as day centres, public toilets, libraries and transport that are often described as ‘lifelines’ by older people.

Despite the fact that they are as important to older people’s health, independence and wellbeing as statutory health and social care services, community services across Wales are at risk due to reductions in public spending, something of great concern for many older people.

Furthermore, older people often feel that they have few opportunities to voice their concerns over changes to community services, or that their needs are not fully considered when decisions are made.

Within a challenging financial climate, I understand the difficult decisions facing Local Authorities. However, I expect Local Authorities and other key service providers to fully consider and review the implications upon older people of closing a key community service and that every effort has been made to mitigate any impact.

That is why I have published this Guidance, which is issued under Section 12 of the Commissioner for Older People (Wales) Act 2006². It is designed to ensure that robust Equality and Human Rights Impact Assessments (EHRIs) are undertaken when changes to community services are proposed, essential to ensure that there is not a disproportionate impact upon older people and that alternative approaches are considered.

This Guidance is delivered in two parts:

- Part 1 examines the importance of current Equality Impact Assessments and promotes the need to use Equality and Human Rights Impact Assessments (EHRIs) when changes to community services are being considered. Part 1 applies to all public service bodies responsible for delivering community services for older people.
- Part 2 examines the crucial role of scrutiny around changes to community services and is targeted towards elected members and officers in local government. The aim is to improve the quality of scrutiny and ensure that the impact of closing down or reducing the provision of a community

1 http://www.olderpeoplewales.com/Libraries/Uploads/Framework_for_Action.sflb.ashx

2 <http://www.legislation.gov.uk/ukpga/2006/30/contents>

service on older people is thoroughly and rigorously analysed and considered.

This Guidance was produced in collaboration with the Welsh Government and the Welsh Local Government Association, whose advice and expertise has been invaluable and I am very grateful for their contribution. I would also like to thank colleagues in the Wales Audit Office, Scottish Human Rights Commission and Welsh Local Authorities, in particular Pembrokeshire County Council and Cardiff Council, for their support in developing this Guidance.

At a time of real change for local government, this Guidance is designed to be a useful, practical document that will lead to better, high quality impact assessments. It should be embedded within working practices to ensure that high quality and thorough EHRIAs underpin future proposals on community services.

As I have consistently emphasised, protecting and improving community services will lead to cost savings for Local Authorities and other public services providers in the medium to longer term by supporting people to maintain their independence, reducing the need for costly formal support delivered through statutory health and social care services.

An innovative approach to service delivery, underpinned by effective EHRIAs can make a huge difference to our communities and, ultimately, to older people's lives.



Sarah Rochira
Older People's Commissioner for Wales

Context

The loss of key community services, such as public buses, toilets, community and day centres, libraries and lifelong learning continues to be a matter of great concern for older people. The closure or reduced provision of these services is already having an impact on their lives as a result of decisions made by Local Authorities and other public service deliverers across Wales.

The Well-being of Future Generations (Wales) Act³ is, potentially, a groundbreaking and transformative piece of legislation, which should ensure that public bodies take a longer-term, sustainable view on service delivery, with the focus on prevention and outcomes for the individual.

However, the financial outlook for Local Authorities for the coming years remains considerably challenging. Since 2010, Local Authorities have had to reduce funding by £720m, and can expect to face a further £941m budget shortfall by 2019^{4,5}. It is expected that funding will not return to 2010-11 levels until 2022-23 at the earliest, meaning the continued retrenchment of public service spending⁶.

With further budgetary reductions expected, further difficult decisions will be made on the future of community services across Wales. It is therefore imperative that Local Authorities and others fully consider the implications of these decisions on older people, an age group that often rely on these services to maintain their health, independence and wellbeing.

Whilst the Commissioner recognises the budgetary pressures placed on Local Authorities, older people must be able to continue to access community services in one form or another. Community services must not be seen not as optional costs or non-essential luxuries, but as the vital community assets that they are for individuals. It is therefore essential to take an asset-based approach and see community services as integral to delivering key policy priorities and containing the costs of statutory services.

Local government reform in Wales is also likely to have a significant impact on the structures and services provided by Local Authorities over the coming months and years. There has been a great deal of debate since the Welsh

3 <http://gov.wales/legislation/programme/assemblybills/future-generations/?lang=en>

4 <http://www.wlga.gov.uk/media-centre-l-wlga-e-bulletins/councils-and-unions-to-lobby-parliament-over-fair-funding-for-wales>

5 <http://www.wlga.gov.uk/media-centre-l-wlga-e-bulletins/latest-wao-report-issues-warning-on-cuts-to-council-services>

6 <http://www.wlga.gov.uk/media-centre-l-wlga-e-bulletins/latest-wao-report-issues-warning-on-cuts-to-council-services>

Government published its proposed local government map in the Summer of 2015 and whilst a decision on the debate on the number, size and structure of Local Authorities is yet to be made, it is crucial that the emphasis on the quality of services provided for older people and others is not lost.

This two part Guidance complements the following priorities within the Commissioner's Framework for Action 2013-17⁷:

- Embedding the wellbeing of older people at the heart of public services;
- Protecting and improving community services, facilities and infrastructure; and
- Tackling prejudice, inequality and discrimination.

This Guidance also follows on from the Commissioner's previous publications on community services:

- The Importance and Impact of Community Services within Wales (February 2014)⁸;
- Effective Engagement with Local Authorities: Toolkit for Older People (July 2014)⁹; and
- Best Practice Guidance for Engagement and Consultation with Older People on Changes to Community Services in Wales (July 2014)¹⁰.

This Guidance is published under Section 12 of the Commissioner for Older People (Wales) Act 2006¹¹. The purpose of the Guidance is to ensure that high quality EHRIAs and scrutiny on changes to community services exist across local government and other public service bodies in Wales. When changes are proposed this Guidance should help Local Authorities and other bodies to fully consider the implications on older people. Tighter and more impactful assessments and scrutiny from the outset should lead to Local Authorities and other service deliverers taking a longer-term view within current financial parameters.

7 http://www.olderpeoplewales.com/en/Publications/pub-story/13-05-23/Framework_for_Action.aspx

8 http://www.olderpeoplewales.com/en/Publications/pub-story/14-02-25/The_Importance_and_Impact_of_Community_Services_within_Wales.aspx

9 http://www.olderpeoplewales.com/en/Publications/pub-story/14-07-01/Effective_Engagement_with_Local_Authorities_Toolkit_for_Older_People.aspx

10 http://www.olderpeoplewales.com/en/Publications/pub-story/14-07-01/Canllawiau_ymarfer_gorau_ar_gyfer_ymgysylltu_ac_ymgynghori_%c3%a2_phobl_h%c5%b7n_ar_newidiadau_i_wasanaethau_cymunedol_yng_Nghymru.aspx

11 <http://www.legislation.gov.uk/ukpga/2006/30/section/12>

Previous research and evidence in this area suggests that impact assessments in Wales could be improved. For example:

- A toolkit for carrying out EIAs, prepared by the NHS Centre for Equality and Human Rights (2012), stated that EIA ‘is in its infancy and is a developing process...the process may seem cumbersome...however, over time undertaking EIAs will become more routine and a body of knowledge, shared good practice and evidence to inform the process will be developed’¹².
- The Welsh Local Government Association and NHS Centre for Equality and Human Rights ‘Review of the use of Equality Impact Assessments in the Public Sector’ (2013) found that scrutiny and oversight of EIAs needs to be strengthened, and that the quality of EIAs varies between and within public sector organisations. It also found that a negative perception of EIAs still remains within organisations, and that a focus shift is required from minimising risks for the service deliverer to improving the service and subsequent outcomes for service users¹³.
- The Wales Audit Office report ‘Supporting the Independence of Older People: Are Councils Doing Enough?’ (2015) found that the quality of information in EIAs is not always robust enough to demonstrate potential impacts, and that more needs to be done to ensure compliance with the Public Sector Equality Duty¹⁴.

The voices of older people are heard throughout the Commissioner’s work and their views, concerns and priorities are reflected in the Guidance. A series of discussions were held with older people’s networks and groups in Autumn 2015, and the Commissioner’s office met with older people at the following venues: Bridgend, Gwalchmai (Anglesey), Haverfordwest (Pembrokeshire), Blaenavon (Torfaen), Llandudno (Conwy), Abergavenny (Monmouthshire), Cardiff, Carmarthen (Carmarthenshire), Wrexham, Connah’s Quay (Flintshire).

As listed bodies under the Commissioner for Older People (Wales) Act, all Local Authorities and other relevant bodies must have due regard to this Guidance.

Future changes to community services must not proceed without a full and robust analysis of the impact that these will have on the health, independence, wellbeing and rights of older people.

12 <http://www.wales.nhs.uk/sites3/Documents/256/NHS%20CEHR%20Toolkit.pdf>

13 <http://www.wlga.gov.uk/equalities-publications/report-l-review-of-the-use-of-equality-impact-assessments-in-the-public-sector/>

14 <http://www.audit.wales/system/files/publications/Independence-Older-People-2015-English.pdf>

Equality Impact Assessments (EIAs)

EIAs have previously been perceived in a negative and derogatory way. EIAs have been described as being bureaucratic and time-consuming, an additional administrative burden and an unnecessary demand for individuals with limited capacity and resources. In England, EIAs were discarded by the Prime Minister in 2012¹⁵. EIAs remain in Wales, and whilst some Local Authorities have made more progress with EIAs than others, research suggests that EIAs are yet to be thoroughly embedded into budget, service delivery and policy decisions¹⁶.

Changing the perception of EIAs and the starting point is crucial. EIAs are for everyone: they are about people, not paperwork. EIAs can be hugely beneficial for both providers and service users. Service providers need to recognise that EIAs add value and can lead to better, more informed decisions. Furthermore, EIAs can help Local Authorities and other deliverers, in the medium to long term, to reduce spending and allocate funding in smarter, more cost-effective ways, particularly when a community service requires an alteration or upgrade to accommodate those with protected characteristics, or when a Local Authority or other body is open to legal challenge following a decision on a community service proposal.

In local government, EIAs help officers and elected members to analyse policies and practices to make sure they do not discriminate or disadvantage people. EIAs are there to help make comparisons between groups of service users and to determine whether there are significant differences between groups and indications of bias. EIAs improve and promote equality, ensuring that equality issues have been consciously considered throughout the decision-making process.

EIAs help to assess whether a policy “has a disparate impact on persons with protected characteristics”¹⁷, that these groups are fully taken into consideration and, where possible, allow Local Authorities and other bodies to put in place mitigating actions that can help to overcome potential negative impacts.

EIAs are required for any proposal i.e. service, policy, strategy, initiative that could have a negative impact on groups with protected characteristics. Regarding community services, any proposal that involves closing down or reducing the provision of, for example, public buses, public toilets, libraries, day and community centres, and lifelong learning, will impact on older people.

¹⁵ <https://www.gov.uk/government/speeches/prime-ministers-speech-to-cbi>

¹⁶ http://www.equalityhumanrights.com/sites/default/files/documents/Wales/PSED_Wales_docs/psed_progress_local_govt.pdf

¹⁷ <http://researchbriefings.files.parliament.uk/documents/SN06591/SN06591.pdf>

The Equality and Human Rights Commission provides the following guidance on EIAs:

Assessing the impact on equality of proposed changes to policies, procedures and practices is not just something the law requires, it is a positive opportunity for public authorities to ensure they make better decisions based on robust evidence. It will help you to demonstrate compliance if you:

- Ensure you have a written record of the equality considerations you have taken into account;
- Ensure that your decision-making includes a consideration of the actions that would help to avoid or mitigate any negative impacts on particular protected groups;
- Make your decisions based on evidence;
- Make your decision-making process more transparent.

In assessing impact, Local Authorities should also consider how the policy or practice could better advance equality of opportunity and how it will affect relations between groups. Impact assessment is a continuing duty and not a ‘tick box’ exercise. Due regard must be given to the result of assessments. Having due regard to the equality duty means that it is a duty of substance that should be exercised with rigour and an open mind.

In addition to being a legal requirement, EIAs help Local Authorities to identify the needs of all service users. EIAs can help officers to consider and look at services from another point of view, and have also been described as a valuable “tool to encourage service managers to consider the equality issues within their service and to act upon the findings of the assessments”¹⁸.

Good Practice

Wrexham County Borough Council, with support from the Equality and Human Rights Commission and the Welsh Local Government Association, has developed ‘Equality Impact Assessment: Are We Being Fair?’ The template covers all equality assessment needs from initial screening to a full Impact

¹⁸ <http://researchbriefings.files.parliament.uk/documents/SN06591/SN06591.pdf>

Assessment by following the six steps¹⁹:

- Screening the equality needs of the proposal
- Data collection and evidence
- Involvement and consultation
- Assessing impact and strengthening the proposal
- Procurement and partnerships
- Monitoring, evaluating and reviewing

In addition, the Council also considers poverty, caring and the Welsh language as additional characteristics for the purposes of EIAs. By taking a wider view of the protected characteristics the Council hopes to encourage a more holistic approach to the needs of all communities in designing or delivering their services.

The Equality Act 2010 and the Public Sector Equality Duty (PSED) have helped to raise the profile of EIAs. The 2014 review of the PSED in Wales found that EIAs were being widely used to make a difference to service delivery. They were also being consistently reviewed to make them more user-friendly, more evidence-based and more proportionate²⁰.

The positive perception of EIAs is therefore very important in shaping community service proposals and can be cost-effective for the Local Authority in the long term. A different starting point is required: EIAs are about improving services for people, they are not about compliance. Practical advice on impact assessments may be found on P31.

**“Some things seem to be a fait accompli...we have no say in the matter”
(Bridgend SHOUT Group members)**

EIAs must be an integral part of the decision-making process from the outset, and sufficient time must be allocated to complete the EIA process. In local government, an EIA should be at the core of the Cabinet’s decision-making process with its findings and identified actions explored and considered thoroughly.

¹⁹ http://www.wrexham.gov.uk/top_navigation/equality.htm

²⁰ http://www.equalityhumanrights.com/sites/default/files/publication_pdf/review_of_psed_in_wales_-_full_report.pdf

Good Practice

In the Vale of Glamorgan, the County Council proposed a reconfiguration of the Adult Community Learning Service due to funding reductions to the Adult Community Learning Grant. Engagement with the Older Persons Forum found that older learners would be significantly impacted by the proposal, affecting their ability to gain new skills to re-enter or remain in the labour market. As the EIA demonstrated that older people would be directly affected by the proposal, the County Council decided to work closely with the Strategy Coordinator and Older Persons Forum to secure additional funding for the future development of new course provision for older learners and others²¹.

This resulted in the Council agreeing to set a discretionary rate for older learners in the cost recovery programme model that ensured that the Arts, Leisure and Wellbeing Programme remained affordable but financially sustainable in the longer term. In addition, the free Skills and Employability Programme 'Get Back on Track' continues to be well used by older learners and increased numbers amongst men who are 50 years old and older.

²¹ http://www.valeofglamorgan.gov.uk/Documents/_Committee%20Reports/Cabinet/2014/14-07-14/Adult-Community-Learning-Service-Restructure---Part-1----Appendix-2.PDF

Human Rights Assessments

A **rights based approach** is one in which human rights instruments are employed proactively i.e. to prevent human rights violations from happening, rather than to simply name and remedy violations retrospectively, in order to achieve the following:

- To empower people using public services (rights-holders) to understand, claim and enjoy their human rights;
- To increase the ability and accountability of those delivering public services (duty-holders) to respect, protect and fulfil human rights duties;
- To deepen understanding of the relationships between rights-holders and duty-holders in order to help bridge the gaps between them; and
- To create the conditions under which all people can live in dignity and develop their full potential.

A **Human Rights Assessment (HRA)** is a practical way of applying a rights based approach. As a tool for policy and practice improvement, it offers a means of doing things, driven by human rights standards and principles, as well as an end in terms of creating the conditions in which rights can be enjoyed.

Combining Equality Impact Assessments with Human Rights

Assessments (i.e. EHRIAs) is an efficient and effective means to integrate equalities and human rights into governance, policy and decision-making structures. A combined assessment tool can:

- Avoid duplication of time and effort
- Achieve better outcomes for people

Equalities and human rights are core to achieving national and local performance outcomes that aim to improve quality of life and opportunities. They focus the attention on what will deliver the best outcomes for people, rather than 'one size fits all' policies and practices that often seek to fit people into systems. HRAs extend the benefit of EIAs, as they aim to improve outcomes for everyone - i.e. those with protected characteristics and those without - and ensure that actions that could have a disproportionate impact upon vulnerable, disadvantaged or seldom heard communities are considered where they might otherwise be overlooked.

- Improve performance

When human rights are considered and assessed, based on evidence and the meaningful involvement of communities, stronger relationships are built and it is easier to demonstrate fairness, transparency, accessibility, enhancing public ownership and legitimacy in policy and decision-making.

- Ensure compliance with the law

Proactively taking account of human rights and equality in the exercise of an organisation's functions provide it with assurances rather than assumptions that actions are fair, not arbitrary, and that they comply with law. This helps prevent violations before they require redress and thus reduces both legal and financial risks and expense.

Good Practice

In a Welsh context, a human rights based approach is not new. For example, Betsi Cadwaladr University Health Board has put human rights at the heart of a toolkit for ward sisters and charge nurses focusing on nutrition and hydration²². In addition, the Board's Equality Impact Assessment incorporates human rights alongside protected characteristics²³. The outcomes have been improved knowledge and awareness about human rights, and the provision of useful learning and a practical human rights based toolkit which other health organisations may wish to adopt.

²² <http://www.wales.nhs.uk/sitesplus/861/opendoc/224485>

²³ http://www.wales.nhs.uk/sitesplus/documents/836/Chirk%20MIU%20update_1_.pdf

Impact Assessments: What is the Legal Framework?

The introduction of the Equality Act 2010 simplified the discrimination legislative framework²⁴. The characteristics protected under the Act are:

- Race (including ethnic or national origin, colour or nationality)
- Disability
- Gender
- Age
- Gender reassignment
- Marriage and Civil Partnership
- Pregnancy and maternity
- Religion or belief
- Sexual orientation

The Act amalgamated pre-existing equality duties and added six new protected characteristics. Age was included as a protected characteristic because, according to the UK Government, “We know older people (and others)...all have different needs and may face different levels of discrimination or barriers to accessing services”²⁵.

The Equality Act 2010 places a General Duty on public bodies, which includes a statutory requirement to undertake EIAs. Under the Public Sector Equality Duty (PSED), in carrying out their public functions public bodies are required to give due regard (i.e. give appropriate weight) to the need to:

- Eliminate unlawful discrimination harassment and victimisation;
- 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 relevant protected characteristic and those who do not.

The new Duty replaced separate duties on race, disability and gender equality, and covers the characteristics listed above. Its aim is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. The Duty is there to support older people who may face ‘double’ or ‘multiple’ discrimination on the grounds of age and e.g. disability or sexual orientation.

²⁴ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

²⁵ <http://researchbriefings.files.parliament.uk/documents/SN06591/SN06591.pdf>

To implement the General Duty the following principles were drawn from case law on the previous equality duties. In order to meet the General Duty, a public authority must ensure:

- **Knowledge:** Meeting the duty involves ‘a conscious approach and state of mind’
- **Timeliness:** The duty arises before and at the time that a particular policy is under consideration and a decision is taken
- **Meaningful consideration:** Consideration of the three aims of the General Duty must form an integral part of the decision-making process
- **Sufficient information:** The decision-maker must consider what information they have as well as what further information might be needed to give proper consideration to the General Duty
- **Review:** public bodies must have regard to the aims of the General Duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed
- **Non-delegation:** Anyone exercising public functions on behalf of a public body is required to meet the duty

The Equality and Human Rights Commission’s review of the PSED in Wales (2014) found that the Duty has helped to raise the profile of the equality agenda, has provided a clear structure and focus for equality work, and has promoted cultures of inclusivity, fairness and respect²⁶. The Duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept under review. In other words, the duty applies to any decisions that affect people’s lives.

The broad purpose of the specific duties in Wales i.e. devolved powers is to help listed bodies in their performance of the General Duty and to aid transparency. The specific duties are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011²⁷.

26 http://www.equalityhumanrights.com/sites/default/files/publication_pdf/review_of_psed_in_wales_-_full_report.pdf

27 [http://www.assembly.wales/Laid%20Documents/SUB-LD8462%20-%20The%20Equality%20Act%202010%20\(Statutory%20Duties\)%20\(Wales\)%20Regulations%202011-08032011-211975/sub-ld8462-e-English.pdf](http://www.assembly.wales/Laid%20Documents/SUB-LD8462%20-%20The%20Equality%20Act%202010%20(Statutory%20Duties)%20(Wales)%20Regulations%202011-08032011-211975/sub-ld8462-e-English.pdf)

The specific duties in Wales cover:

- Objectives
- Strategic Equality Plans
- Engagement
- Assessing impact
- Equality information
- Employment information
- Pay differences
- Staff training
- Procurement
- Annual reporting
- Publishing
- Welsh Ministers' reporting
- Review
- Accessibility

The Human Rights Act 1998 places a duty on public authorities to act in ways that are compatible with the European Convention on Human Rights²⁸. Public authorities have an obligation to act in accordance with the Human Rights Act 1998 and to take human rights into account in their day-to-day work. This is the case whether delivering a service directly to the public or devising new policies or procedures. The purpose of the Human Rights Act is to support a culture of respect for everyone's human rights and ensure that promoting and upholding these rights is a feature of everyday life.

“We find out the hard way. You go to use something and it's closed... sometimes we read announcements in the paper, that's ok if you can read English...I think older ethnic minority people are excluded from consultations, it's more of an effort for them (those consulting) to come to us...older ethnic minority women won't go to meetings as it's too inhibiting.” (Women Connect First members, Cardiff)

Introducing human rights, while also having due regard to equality in policy and practice impact analysis, assists organisations to meet duties under the Human Rights Act by:

- Broadening the scope of impact assessment;
- Providing a framework for balancing competing rights, interests and risks; and
- Highlighting the most serious impacts.

²⁸ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

In applying a human rights approach, it is important to consider the PANEL principles, which set out what this kind of approach means in practice²⁹:

Participation

Everyone has the right to participate in decisions which affect their human rights. Participation must be active, free, meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.

Accountability

Accountability requires effective monitoring of human rights standards as well as effective remedies for human rights breaches. For accountability to be effective there must be appropriate laws, policies, institutions, administrative procedures and mechanisms of redress in order to secure human rights.

Non-discrimination and equality

A human rights approach means that all forms of discrimination (such as age, gender, sexual orientation or ethnicity) in the realisation of rights must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most marginalised or vulnerable situations who face the biggest barriers to realising their rights.

Empowerment of rights-holders

Individuals and communities should understand their rights and be fully supported to participate in the development of policy and practices which affect their lives. Individuals and communities should be able to claim their rights where necessary.

Legality of rights

A human rights approach requires the recognition of rights as legally enforceable and is linked in to national and international human rights instruments.

“They (service changes) are actually done before we know about it. It’s no good then, is it? You can’t change things back!” (Blaenavon Older People’s Forum, Torfaen)

²⁹ <http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach>

In addition to the Human Rights Act 1998, other key relevant instruments for older people in Wales are:

- UN Convention on the Rights of Persons with Disabilities
- UN Principles for Older Persons 1991

UN Convention on the Rights of Persons with Disabilities³⁰

The purpose of the UN Convention on the Rights of Persons with Disabilities is to promote, protect and ensure the full and equal enjoyment of all human rights by persons with disabilities. It covers a number of key areas such as accessibility, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life, and equality and non-discrimination. The convention requires a shift in thinking about disability from a social welfare concern, to a human rights issue, which acknowledges that societal barriers and prejudices are themselves disabling.

UN Principles for Older Persons 1991³¹

In a manner similar to the UN Convention on the Rights of Persons with Disabilities, the UN Principles for Older Persons represent a fuller set of rights and are more tailored to the particular issues faced by older people e.g. social exclusion. As such, they offer guidance for public bodies on how to discharge their duties under the Equality Act 2010 and Human Rights Act 1998 towards older people.

In proposing changes to community services, Local Authorities should have particular regard to Principle 18 of the United Nations Principles for Older Persons, which states that older people should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution to society.

Additionally, as the UN Principles sit on the face of the Social Services and Well-being (Wales) Act 2014³², familiarity with the principles will increasingly be demanded of public bodies.

“We’re not consulted with on Equality Impact Assessments because we’ll give them the wrong answers! People in different departments in Local Authorities need to talk to one another in order to provide better services.” (Flintshire 50+ Action Group members)

30 <http://www.un.org/disabilities/convention/conventionfull.shtml>

31 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx>

32 <http://gov.wales/topics/health/socialcare/act/?lang=en>

When should I be carrying out an Equality & Human Rights Impact Assessment?

Undertake an EHRIA on a community service proposal from the start. Carrying out an EHRIA towards the end of the process can lead to several issues, including: the proposal may still contain potentially discriminatory activity or adverse impact, it may lead to a missed opportunity in promoting equality or human rights, it does not meet the legal requirements of the public sector duties and it leaves the Local Authority open to compliance action or legal challenge.

Several advice and recommendation documents on conducting successful impact assessments have been published. A few examples are included below (and are reflected in the template in Annex A):

The Equality and Human Rights Commission has identified five key stages to carry out an Equality Impact Assessment (EIA)³³:

Stage 1	Pre-policy development or policy review planning i) Deciding whether a policy or service requires an EIA ii) Scoping the EIA
Stage 2	Policy drafting and assessing impact
Stage 3	Putting in place monitoring, evaluation and review approaches
Stage 4	Signing off and publishing the policy
Stage 5	Monitoring and reviewing the action plan

The guide produced by the NHS Centre for Equality and Human Rights suggests eight steps to undertake a successful impact assessment (IA)³⁴:

Step 1	Preparation: Fully understand the policy or service you are assessing. You also need to assess proposals to stop providing services
Step 2	Considering Resources & Relevance: Exhaust all avenues to obtain information, qualitative and quantitative data
Step 3	Assessment of Impact: Review and evaluate the information, determine the impact on whom

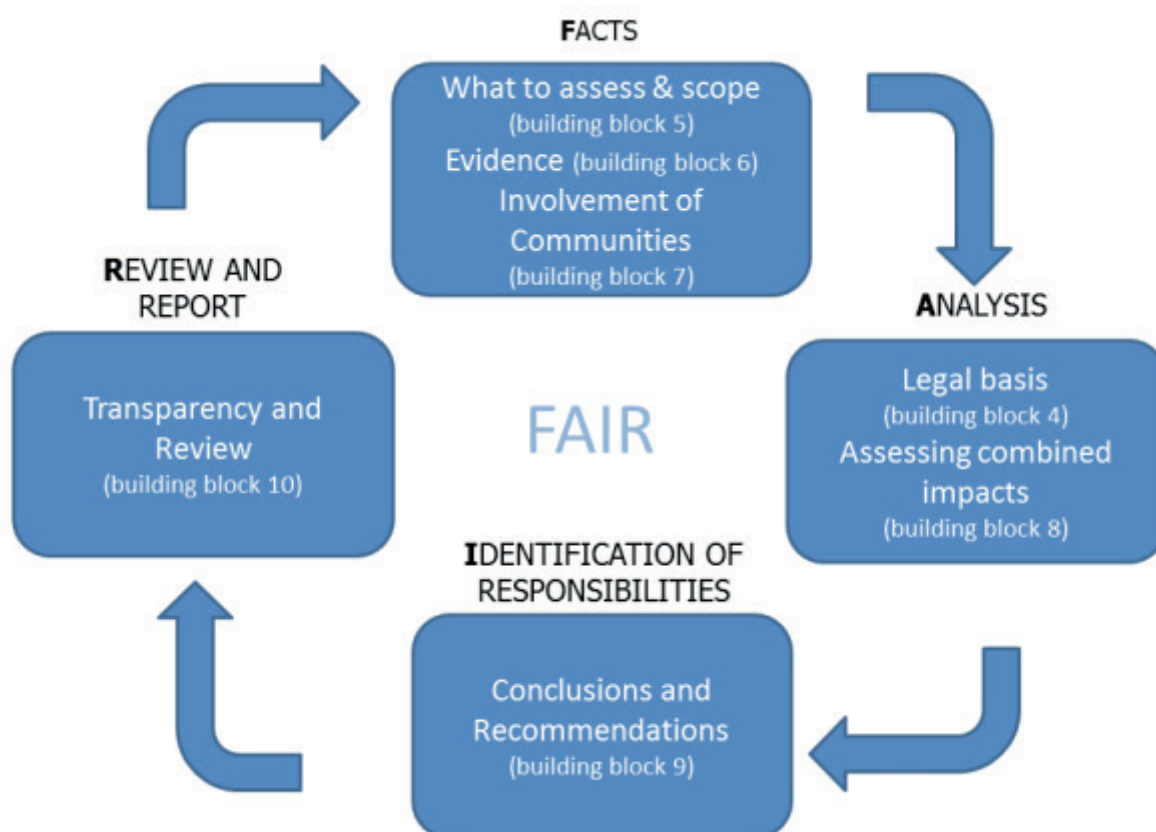
33 http://www.alcohollearningcentre.org.uk/_library/eiaguidance.pdf

34 <http://www.eiapractice.wales.nhs.uk/eight-steps>

Step 4	Recommendations: Focus on fairness is essential, consider the changes and improvements to be made
Step 5	Consultation: Summarise what you have compiled into a draft IA report, submit for consultation
Step 6	Decision-making: Use the information obtained to decide a course of action, devise a formal action plan
Step 7	Outcome Report: Full IA reports should be made publicly available, in a variety of formats and versions
Step 8	Monitoring: Consistently monitor the changes and impact, both negative and positive

“There’s no problem with consultations...it’s just that changes to services are done anyway due to the funding cuts!” (Abergavenny Action 50+ Group member, Monmouthshire)

The Scottish Human Rights Commission suggests a four step process to undertaking an integrated Equality & Human Rights Assessment³⁵:



35 <http://www.scottishhumanrights.com/eqhria/eqhriatrainingfair>

FAIR is a means of putting a human rights based approach into practice and a practical way of applying the PANEL principles. The FAIR principles are as follows:

- **Facts:** Assessing impact requires a thorough understanding of the facts engaged by the proposed policy or practice and the potential effects on people. This requires an appropriate level of resources and consideration of relevant evidence. Most importantly it will require the meaningful participation of affected rights-holders.
- **Analysis:** Assessing impact requires undertaking an analysis of the potential positive and negative impacts of the proposed policy or practice on equality and on the human rights at stake.
- **Identification of responsibilities:** Where the policy or proposal engages equality and human rights issues, assessing impact requires deciding whether changes should be made and identifying responsibility for these changes.
- **Review and reporting:** Assessing impact requires consideration of how the implementation of the function or policy will be monitored and how the results of an impact assessment will be reported.

Good Practice

Bridgend County Borough Council proposed to relocate Bridgend's central library to a newly refurbished life centre that is being operated in partnership with social enterprise Halo Leisure. The EIA identified the potential impact of the proposal on both younger and older people. A series of consultation events were held together with online and paper versions of the consultation document. Although it was found that the proposal positively impacted on people of all ages due to better facilities and opportunities, feedback also suggested that some older people would find it difficult to visit the new location.

Ensuring that existing users were not disadvantaged was identified as a priority, and a range of options were therefore explored, including a shop-mobility extension to the new library location, awareness raising of bus routes and increased service provision. The result is a more accessible central library, an additional bus stop for library and life centre users, and parking concessions for users of the library car park. Older people can access a range of services through the co-location, including the free swimming initiative, exercise referral, indoor bowling and a cafeteria to support social participation³⁶.

Remember that **Impact Assessments are not a one-off**, they are an on-going cyclical process, as demonstrated by the Continuous Approach Model³⁷:



“This move to everything being online is no good for some older people, whether there are classes in libraries or not...even if they do consult, they don’t necessarily pay any attention to what people say. We need to know what changes have taken place in our area.” (Participant at discussion session involving local networks and led by Hywel Dda Local Health Board, Carmarthen Library, Carmarthenshire)

³⁶ Bridgend County Borough Council Report to Cabinet (December 2012) ‘Welsh Public Library Standards and the proposal to relocate Bridgend Town Library to Bridgend Recreation Centre’

³⁷ http://www.alcohollearningcentre.org.uk/_library/eiaguidance.pdf

What should I do when carrying out an Equality & Human Rights Impact Assessment?

Be sharp and concise. Think ‘outside the box’ and consider a proposal from different viewpoints. Challenge your own findings and ask others for their views. EHRIAs are based around four core questions:

- What is the purpose of the policy?
- How is it seeking to achieve this?
- Who benefits and how? (and who doesn’t and why?)
- What are any ‘associated aims’ attached to the policy?

When carrying out an EHRIA around changes to community services, consider the following:

- **Proportionality:** Proposals with high relevance, including strategic budgetary decisions and changes to service delivery, should always be subject to an assessment for impact on people with protected characteristics, as well as relevant others who are marginalised or vulnerable.
- **Relevance:** When deciding whether a proposal should be assessed, relevance to the General Duty should be considered. Some proposals may be relevant to some, but not all, protected characteristics. Should a decision be made to not undertake an EHRIA, this should be explained and recorded.
- **Screening for relevance:** Some Local Authorities have developed a ‘screening’ mechanism to determine whether a policy should be subject to assessment. Screening is a short, sharp exercise that helps to determine relevance; it should not replace proper assessment. Research suggests that many IAs are ‘screened out’ without consideration of relevant evidence and with no consideration of the likely impact on groups such as older people³⁸. An effective screening tool could include questions such as: Would this proposal significantly affect how functions are delivered to older people? Would it discriminate against older people³⁹?

38 http://www.equalityhumanrights.wales.nhs.uk/sitesplus/documents/1120/EqIA_Guide%20for%20Board%20Members%20%28English%29.pdf

39 http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Assessing%20Impact%20and%20the%20Equality%20Duty%20Wales_0.pdf

Good Practice

Conwy County Borough Council used local socio-demographic information and consultation to avoid radical cuts in its library services that might have impacted adversely on older people and disabled people. 'As a result of the consultation, the library service extended its mobile library and home library coverage, amended opening times in their five major libraries and has been engaged in working with local communities to set up Community Libraries in five localities to suit community demands. This has included greater use of volunteers to enhance the core service provided by the Local Authority'.

Through working with the community, who have taken over the management of library buildings while the Local Authority provides a full professional library service, this work has prevented the five smaller libraries from being closed⁴⁰.

What are possible Equality & Human Rights Impact Assessment outcomes?

There are four types of conclusions and recommendations that can be reached:

- No major change: the EHRIA demonstrates the proposal is robust and can be justified, there is no potential for discrimination or adverse human rights impact and all opportunities to promote equality have been taken.
- Adjust the proposal: the EHRIA identifies potential problems or missed opportunities. Adjusting or adapting the proposal is needed to remove barriers, eliminate any bias, better advance equality or foster good relations.
- Continue with the proposal: the EHRIA identifies the potential for adverse impact or missed opportunities to promote equality. The justifications for continuing with the proposal must be clearly set out, and should be included in the EHRIA and in line with the duty to have due regard. Compelling reasons are required to justify the proposal.
- Stop and remove the proposal: The proposal includes actual or potential unlawful discrimination, and the EHRIA shows bias towards one or more groups. The proposal must be stopped or removed⁴¹.

40 http://www.equalityhumanrights.com/sites/default/files/publication_pdf/review_of_psed_in_wales_-_full_report.pdf

41 <http://www.eiappractice.wales.nhs.uk/what-is-an-equality-impact-assessment->

Good Practice

According to the Public Sector Equality Duty review in Wales, Monmouthshire County Council has improved its EIA process, now requiring all proposals to Council to come with a completed EIA that is considered early on in the decision-making process. This new approach resulted in various outcomes for the community. For example, a proposal to turn off street lights at night was found to be potentially distressing for older people. Following an appeals process, the proposal was therefore amended to ensure it does not discriminate against older people⁴².

“We represent forums and groups and have access to consultations... what about people who don’t come to these meetings, how do they get to say what they want?” (50+ Central member, Pembrokeshire)

“I don’t know who my councillor is, let alone impact assessments...most people living around here are older people, so it’s common sense that the changes to the bus services would affect them.” (Llandudno Hubbub Older People’s Forum members, Conwy)

⁴² <http://www.equalityhumanrights.com/publication/review-public-sector-equality-duty-psed-wales>

Useful Recommendations

- **An EHRIA is not an end in itself** – it is a way of ensuring and showing that due regard has been paid to the equality and human rights duties. EHRIAs should be well informed, based on good evidence and meaningful consultation.
- EHRIAs should not be done retrospectively. **They should be an integral part of policy development and review from the start and reviewed regularly.** They are not a one-off or separate exercise. **They focus on outcomes, service improvements and solutions to problems, not the process itself.**
- EHRIAs must meet the legal requirements to eliminate discrimination, advance equality of opportunity, foster good relations and ‘go further’. As well as addressing discrimination or adverse impact, they are also about positive promotion of equality of opportunity, improving access, participation in public life and good relations, equality, and creating the conditions under which we can all live in equality, dignity and freedom.
- EHRIAs consider all the characteristics and possible marginalised and vulnerable groups who may be affected (identified at the start of this Guidance).
- **The quality of an assessment is not measured by the number of pages produced but by the quality of the analysis,** the action taken as a result, and the outcomes achieved through implementation. EHRIAs are thorough and well thought out but not necessarily excessively long. Proportionality is a key principle: generally, the larger the change and/or resource, the more this should be reflected in the size and depth of the EHRIA⁴³.
- In addition to ensuring that impact assessments are an integral part of the policy development process, the information that can be gained from involvement and consultation are essential, and as such would usually be carried out as part of the main development process.
- **Lack of data is not an excuse for not assessing impact or to conclude there is no impact.** Some data will always be available, and where it is not, it must be actively gathered.

43 http://www.equalityhumanrights.wales.nhs.uk/sitesplus/documents/1120/EqIA_Guide%20for%20Board%20Members%20%28English%29.pdf

- EHRIAs should be understandable and accessible to a range of people, and should be published regardless of outcome⁴⁴.
- The assessment should always inform the final decision on a policy (in line with the duty to have due regard, described in the 'Continue with the proposal' outcome (P28))^{45,46}.

Equality & Human Rights Impact Assessment Checklist

1. I have used the Brown Principles, Gunning Principles and/or PANEL Principles in my EHRIA.
2. I have addressed the four key questions for EHRIAs and specific questions for older people.
3. I have approached the proposal from different perspectives, considered the different forms of discrimination and do not require further information to make an informed decision.
4. Both the positive and negative consequences for older people have been fully explored.
5. Older people have been consulted and engaged with on the proposal, and their feedback is reflected in the EHRIA.
6. The EHRIA has been published online along with supporting publications on how the decision was reached. The EHRIA is accessible bilingually and available in other formats e.g. for those with visual impairments, and also available for those offline.
7. I can answer the Dignity Challenge: older people who may be impacted by the decision have been given the same consideration and respect I would want for myself or a family member.
8. I have considered how the proposal impacts on older people and in line with the Older People's Commissioner's 'Quality of Life' model. I have also considered how it relates to the asset-based approach i.e. investing in older people as assets and increasing their £1bn annual contribution to the Welsh economy.

⁴⁴ University of Bradford 'How to conduct equality impact assessment and analysis' (2011)

⁴⁵ http://www.acas.org.uk/media/pdf/s/n/Acas_managers_guide_to_equality_assessments.pdf

⁴⁶ http://www.equalityhumanrights.wales.nhs.uk/sitesplus/documents/1120/EqIA_Guide%20for%20Board%20Members%20%28English%29.pdf

Checklist: Practical Advice

1	<p>Brown Principles⁴⁷</p> <p>Public bodies must ensure:</p> <ul style="list-style-type: none">• Knowledge: decision-makers should be aware of the implications of the General Duty when making decisions about their policies and practices• Timeliness: the General Duty arises before and at the time a particular policy is under consideration and a decision is taken i.e. an EIA is not a ‘rear-guard action’• Analysis must be rigorous: consultation and engagement with older people must be meaningful• Non-delegation: the General Duty rests with the public authority even if they have delegated functions to other organisations• Continuing duty: the General Duty must be revisited on a continuous basis• Record keeping: transparency about how the decision was reached is crucial <p>Gunning Principles⁴⁸</p> <ul style="list-style-type: none">• Consultation must take place when the proposal is still at a formative stage;• Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;• Adequate time must be given for consideration and response; and• The product of consultation must be conscientiously taken into account.
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47 <http://researchbriefings.files.parliament.uk/documents/SN06591/SN06591.pdf>

48 <http://www.eiapractice.wales.nhs.uk/consultation-gunning-principles->

1 (cont)	<p>Panel Principles⁴⁹</p> <ul style="list-style-type: none"> • Participation • Accountability • Non-discrimination and equality • Empowerment of rights-holders • Legality of rights
2	<ul style="list-style-type: none"> • What is the purpose of the policy? Do you have a detailed understanding? • How is it seeking to achieve this? • Who benefits and how? (and who doesn't and why?) • What are any 'associated aims' attached to the policy • Does the policy affect older people? • Is it a major proposal, significantly affecting how functions are delivered in terms of older people? • Does it relate to an area where there are known inequalities? • Does it relate to a policy where there is significant potential for reducing inequalities or improving outcomes for older people? • Does it relate to an area where there is a lack of published research or other evidence?
3	<ul style="list-style-type: none"> • Have different forms of impact and discrimination been considered? When assessing impact, Local Authorities and other public service bodies should take into account the fact that discrimination regarding community services may be direct or indirect. • Direct discrimination would occur where an older person is treated less favourably because of a protected characteristic. Indirect discrimination occurs where a provision, criterion or practice is applied to everyone but only disadvantages those with a protected characteristic in a way that cannot be justified.
4	<ul style="list-style-type: none"> • If negative, are you in a position to ensure that changes can be made where required? • Do you have support and leadership of senior management?

⁴⁹ <http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach>

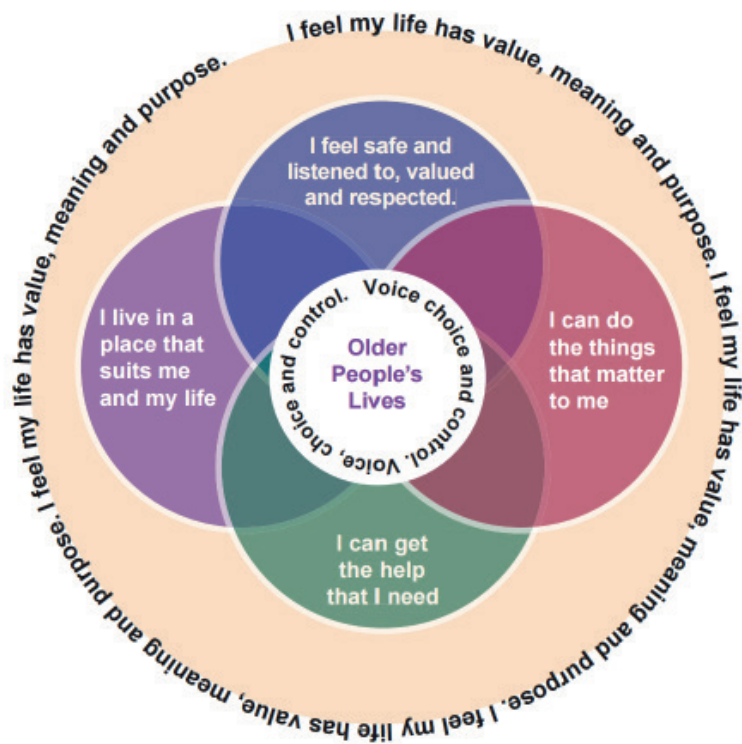
5	<ul style="list-style-type: none"> • Engagement is a two-way process that involves active listening. It means the on-going involvement of older people, their forums/networks and statutory and voluntary sector organisations that represent their interests, through informal consultation or discussion • Consultation is also a two-way process that enables older people to contribute. It is a more formal, focused, but open process which is to be used if substantial or controversial changes to policies or practices affecting older people are under consideration • In addition to an Older People’s Champion (an elected member representing the views of older people), each Local Authority has a 50+ Forum who can provide their views and experiences regarding a community service proposal. In addition, there are other local networks, forums and groups of older people who can contribute to the EIA. When engaging with groups, consider the National Principles for Public Engagement in Wales (see Annex B)⁵⁰
6	<ul style="list-style-type: none"> • Local Authorities and other bodies should take active steps to ensure transparency and openness in respect of the processes adopted and the subsequent decision making, including clear accountability for decisions taken. • All Local Authorities and others should ensure that they proactively place, within the public domain, for example through their websites, full documentation leading to decisions made that result in changes to community services.
7	<p>The UK Government ‘Dignity in Care Campaign’ (2006) identified key issues as part of their Dignity Challenge⁵¹. These include:</p> <ul style="list-style-type: none"> • Support people with the same respect you would want for yourself or a member of your family • Enable people to maintain the maximum possible level of independence, choice and control • Listen and support people to express their needs and wants

50 Consider contacting e.g. Age Cymru, Age Connects, Contact the Elderly, The Women’s Institute, Merched y Wawr, Cylch Cinio, Men’s Sheds, University of the Third Age, One Voice Wales, Wales Council for Voluntary Action. Further information here: <http://www.olderpeoplewales.com/en/assistance/links.aspx>

51 <http://www.cfps.org.uk/publications?item=6960&offset=0>

8

Older People's Commissioner for Wales' 'Quality of Life' model



Annex A: Equality & Human Rights Impact Assessment on Changes to Community Services Template

INTRODUCTION & CONTACT INFORMATION	
Local Authority & Directorate/Service Area (or other body)	
Name of Lead Officer(s) completing the EHRIA	
Head of Service(s) responsible for the proposal	
Contact telephone numbers and email addresses	
Date EHRIA completed	
DETAILS REGARDING THE COMMUNITY SERVICE PROPOSAL	
Name of the proposal (policy, strategy, initiative or practice)	
Is the proposal a revision to existing policy, strategy or practice or is it a new proposal?	
What is the purpose/objective of the proposal? How is it seeking to achieve this?	
Please provide background information on the proposal and any research undertaken.	

<p>What actions could be taken to achieve the same aim/ purpose/ objective by an alternative means?</p>	
<p>Who is the proposal intended to help? Who will be the main beneficiaries?</p>	
<p>What to assess & scope</p>	<p>Have you undertaken a screening assessment to determine if a full assessment is required?</p> <ul style="list-style-type: none"> • Does the policy in question relate to an area where important equality issues are likely to be raised? • To what extent does the policy affect service users, employees or the wider community? • Does it relate to an area where your organisation has set equality outcomes? <p>Is a full Equality & Human Rights Impact Assessment (EHRIA) required?</p> <p>Where an EHRIA is deemed appropriate, have you assessed the resources and time required to ensure that the assessment is properly carried out?</p> <p>Is there an identifiable lead?</p> <p>Have you identified what degree of evidence gathering, consultation etc. is reasonable and proportionate for your assessment?</p> <p>Is your assessment being undertaken on an area which requires broad subject-specific expertise?</p> <p>Other factors to consider:</p> <ul style="list-style-type: none"> • Sustainable development • Economic deprivation • Health and Wellbeing • Welsh Language

<p>Evidence</p>	<p>Do you have as much up-to-date and reliable evidence as possible about the needs and experiences of the different groups the policy is likely to affect?</p> <p>There are likely to be many sources of evidence that are already available to inform the assessment, such as demographic information, research, internal monitoring data and evidence from consultation with users.</p>
<p>Involvement of Communities</p>	<p>What arrangements have been made to consult or engage with equalities or marginalised groups?</p> <p>Have you considered:</p> <ul style="list-style-type: none"> • The timing of consultations: aim to start as early as possible in the assessment process • Barriers to consultation: consultation processes have to be designed with a view to overcoming barriers to participation • Explaining how consultation processes have affected the EHRIA: There needs to be a transparent procedure whereby responses to consultations are discussed and assessors demonstrate how the outcomes of the EHRIA are affected <p>What were the findings?</p> <p>Has a questionnaire/survey been carried out with e.g. an older people’s forum/network? Are there key issues and concerns emerging?</p>

ANALYSIS	
Legal Basis	What are the impacts on groups with protected characteristics as outlined in the Equality Act 2010 or other marginalised or vulnerable groups? What about individuals who have multiple protected characteristics?
	What are the potential impacts (positive, neutral and negative)? Is there any evidence of higher or lower take-up or satisfaction by any of the identified groups? Are there ‘associated aims’ with the proposal i.e. positive or negative knock-on impacts on other groups?
	How does this proposal meet the requirements of the General Duty?
	If there are limitations or barriers to access, do these amount to unlawful discrimination?
	Is the proposal to be carried out wholly or partly by contractors or in partnership with other organisations? If yes, how will you comply with equality and human rights legislation?
Moral Basis	Have the Brown Principles been applied?
	Have the Gunning Principles been applied?
	Have the PANEL Principles been applied?
	Has the Dignity Challenge been applied?
	How does the proposal relate to the Older People’s Commissioner’s ‘Quality of Life’ model and asset based approach for older people?

Assessing combined impacts	<p>In Scotland, there is no legal requirement under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 regarding combined impacts. However a court could consider non-statutory guidance published by the Equality and Human Rights Commission, including ‘Assessing Impact and the Public Sector Equality Duty’ when deciding whether the actions of an authority have been reasonable. This guidance explains how assessment of impact should consider the cumulative effect of related decisions.</p>
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IDENTIFICATION OF RESPONSIBILITIES

Conclusions and Recommendations	<p>Do you have sufficient information and evidence to make an informed judgment?</p> <p>Are the conclusions of the assessment, including the (potential) severity of the human rights and/or equality impact clearly stated?</p> <p>Where action is required, are the person or persons who will implement the recommendations identified, as well as the fact that they have been notified of the need for the change and the timescale within which this change will occur?</p> <p>Are there any actions being taken forward to mitigate impact on older people? Should the proposal be taken forward, what (alternative) provision is in place for older people?</p> <p>Where recommendations can only be acted upon if they are approved by another decision-maker or decision-making body (e.g. a finance committee, elected members of a Local Authority etc.), do the recommendations clearly set out the process by which that will occur?</p> <p>Has the EHRIA been fully completed by the Lead Officer and approved by the relevant manager in each service area?</p>
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REVIEW AND REPORT

Transparency and Review

Have you published:

- The methodology used for carrying out the EHRIA?
- A report on your EHRIA (including details of consultations and other evidence used to inform the assessment; conclusions, recommendations and further monitoring required; and a person identified as responsible for the EHRIA in question)?
- In accessible formats to interested groups?

Have you set up post-assessment monitoring and review procedures to consider whether recommendations have been implemented, whether they have been effective, and what the ongoing impacts of the policy or practice are?

How will the EHRIA be taken forward in the scrutiny process? (see Part 2 of the Guidance for further information)

Annex B: National Principles for Public Engagement in Wales⁵²

1. Engagement is effectively designed to make a difference
2. Encourage and enable everyone affected to be involved, if they so choose
3. Engagement is planned and delivered in a timely and appropriate way
4. Work with relevant partner organisations
5. The information provided will be jargon free, appropriate and understandable
6. Make it easier for people to take part
7. Enable people to take part effectively
8. Engagement is given the right resources and support to be effective
9. People are told the impact of their contribution
10. Learn and share lessons to improve the process of engagement

⁵² http://www.participationcymru.org.uk/media/288366/pc_national_principles_poster3.pdf

