

Equality Impact Assessment Initial Screening – Relevance to Equality Duties

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

Draft guideline on assault offences

2. Individual officer(s) & Unit responsible for completing the Equality Impact Assessment:

Nigel Patrick, Office of the Sentencing Council

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives

The Sentencing Council proposes a new format for this guideline, which will become the model for all future offence specific guidelines. In addition, the Council went back to first principles in relation to crimes of violence in developing this guideline with the primary policy objectives of promoting greater consistency of sentencing and increasing public confidence in sentencing.

Outcomes

In preparing this guideline, the Council has had regard to its statutory duties set out in section 120 of the Coroners and Justice Act 2009. The proposed draft guideline reflects the fact that the Council wants to address the recent increase in average custodial sentence lengths through changes in sentencing for less serious offences while maintaining the availability of the existing sentences for more serious offenders.

4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings submissions or business reports, comparative policies from external sources and other Government Departments)

A broad range of information and evidence about sentencing and diversity issues has been taken into account during the development of the draft guideline. Statistical evidence, case reports, reports from Government Departments and NGOs, academic studies and textbooks have informed the assessment of equality impact. The draft guideline has also reflected some of the information submitted in response to earlier consultations conducted by the Sentencing Advisory Panel (SAP) and Sentencing Guidelines Council (SGC) on assault guidelines.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people? If so, what are the gaps in the information and how and when do you plan to collect additional information?

Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.

Currently, there is little evidence to suggest there are equalities issues with the existing assault guideline or likely to be issues with the proposed draft guideline. However, the Council is very keen to receive responses from consultees on potential equalities issues and would welcome any available evidence regarding sentencing disadvantages on particular groups. A full Equality Impact Assessment will be undertaken if responses to the consultation identify adverse equality impacts.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

The Council anticipates that the guideline will have a generally positive equalities impact. The guideline's principal objective is to promote greater consistency in sentencing by giving courts a structured decision making process to follow. The Council considers that the increased consistency and transparency in the sentencing process should ensure that there is less scope for any discrimination.

Specifically, the guideline proposes that mental disability or illness be treated as a mitigating factor where it is linked to the commission of the offence, and that assault offences which are racially or religiously aggravated, or which are motivated by, or demonstrating, hostility to the victim based on the victim's sexual orientation or disability (or presumed sexual orientation or disability), should be indicative of higher culpability.

Also, the guideline incorporates content from the existing guideline, *Overarching Principles: Domestic Violence*, in order to ensure that courts can more easily take account of aggravating and mitigating factors which are common in assault cases involving domestic violence.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

The Sentencing Council has no feedback or evidence to suggest that the existing assault guideline requires amendment on the basis of promoting equality. The Council has incorporated some content from existing overarching principles guidelines in addition to what is covered in the existing assault guideline. This includes some content from the domestic violence guideline as well as the guideline on the overarching principles of seriousness. Through the consultation exercise, the Council will identify whether there is any scope for the new guideline to promote equality further.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

It has been suggested by the British Psychological Society, in response to the SAP consultation on assault offences in 2005, that people with some learning and mental health disabilities may have an increased tendency to comply with those in perceived authority and are therefore potentially adversely affected by the guideline treating assaults committed by gangs or groups as an indicator of higher culpability.

As in the existing assault guideline, the Council is proposing to treat remorse as a mitigating factor. It has been suggested that this policy may favour female offenders who exhibit traditional signs of remorse (C. Hedderman and L. Gelsthorpe (ed.), *Understanding the Sentencing of Women*, Home Office Research Study 1997). Also, the Judicial Studies Board Equal Treatment Bench Book suggests that cultural background can be a strong influence on how a person uses body language, as well as its meaning and interpretation. It has been suggested that cultural differences in the use of eye contact and body posture may sway a sentencer's opinion about whether a defendant is remorseful (C. Hedderman and L. Gelsthorpe (ed.), *Understanding the Sentencing of Women*, Home Office Research Study 1997). The Council will monitor how frequently remorse is treated as a mitigating factor and will be able to assess whether this has any equalities impact.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

N/A

10. Is a full Equality Impact Assessment Required?
(If no, please explain why not)

No

There is little evidence at the moment that the draft guideline will have any adverse impact on equalities issues which would warrant a full Equality Impact Assessment at this time. However, the Council will consult a range of interested bodies during the consultation exercise in order to seek views on the draft guideline and whether or not there are any potential equalities impact and will review this decision following the consultation.

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

If your proposed new or changed legislation, policy, strategy, project or service involves an Information and Communication Technology (ICT) system and you have identified equality impacts of that system, a focused full EIA for ICT specific impacts should be completed. The ICT Specific Impacts template is available from MoJ ICT or can be downloaded from the Intranet at: <http://intranet.justice.qsi.gov.uk/justice/equdiv/equal-impact.htm> , and should be referenced here.

11. If a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

The Sentencing Council will conduct a 12 week consultation exercise and following publication of the definitive guideline, the Council has a statutory duty to monitor the impact of the new guidelines. This monitoring will be aided by the introduction of the Crown Court Sentencing Survey which will allow the Council to monitor the frequency of the presence in assault cases of certain aggravating and mitigating factors which could have potential equalities impact. Sentencing in the magistrates' courts will be monitored using existing Ministry of Justice sentencing statistics data. Once the viability of the Crown Court Sentencing Survey has been established, the Council will consider whether a similar exercise could be extended to the magistrates' courts.

12. Name of Senior Manager and date approved

(Note - sign off at this point should **only** be obtained if:

- there are no equality impacts
- the changes have promoted equality of opportunity

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA**, including the review mechanism. The summary will be published on the external MoJ website.

The Council has had regard a wide variety of information and evidence relating to sentencing and its equalities impact. It is expected and intended that the guideline on assault will help to promote equality of opportunity and will reduce the potential for discrimination as it is designed to promote greater consistency in sentencing. However, the Council will assess the responses to the consultation exercise for any ways to reduce the potential for any adverse equalities impact. Following publication of the definitive guideline, the Council will monitor the impact of the guideline.

Name (must be grade 5 or above): Rosalind Campion

Department: Office of the Sentencing Council

Date: 13 October 2010

Note: If a full EIA is required hold on to the initial screening and when the full EIA is completed send the initial and full screening together. **If a full EIA is not required send the initial screening by email to the Corporate Equality Division (CED), for publication. Where an EIA has also been completed in relation to ICT specific aspects, email this to CED and copy to MoJ ICT**