

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

Definitive guideline on burglary offences.

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

Vanessa Watling, 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?

<p>Aims/objectives</p> <p>The Sentencing Council aims to:</p> <ul style="list-style-type: none"> • promote a clear, fair and consistent approach to sentencing; • produce analysis and research on sentencing; and • work to improve public confidence in sentencing. <p>The Council has produced a definitive burglary guideline to support the achievement of these aims, specifically in relation to burglary offences.</p> <p>The definitive burglary guideline, informed by the consultation process, will apply to the sentencing of all offenders over 18 sentenced in both the magistrates' and Crown Court.</p>	<p>Outcomes</p> <p>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.</p> <p>The Council's intention is that the guideline will result in:</p> <ul style="list-style-type: none"> • a more consistent approach to sentencing for burglary offences; • a continuation of the current level of sentences given for burglary offences; and, • increased public understanding of sentencing and in particular sentencing for burglary offences.
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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 was taken into account during the development of the guideline. Statistical evidence, case reports, reports from Government Departments and NGOs, academic studies and textbooks have informed the guideline and the equality impact assessment. In addition two consultation papers were issued, one tailored for legal professionals and one for members of the general public. 460 responses were received to consultation.

Alongside the consultation, resource impact assessment and this initial equality impact assessment the Council has published a analysis and research bulletin that sets out key data in relation to the sentencing of offenders for burglary offences. The bulletin can be found on the Sentencing Council's website. **www.sentencingcouncil.gov.uk**

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.

Prior to the preparation of the guideline and this equality impact assessment the Council wrote to a range of bodies with an interest in equality matters and asked if there were any matters in relation to burglary they were particularly concerned about. No issues were identified.

Data is available on the age, sex and ethnicity of burglary offenders and these demographics are provided in the accompanying analysis and research bulletin. The Council has sought to consider if there are any variations in sentence outcomes amongst burglary offenders. However, a lack of information on two key variables make it difficult to undertake this work:

The first limitation is that comprehensive data does not exist on the severity of the offence associated with each sentence. This makes it impossible to distinguish whether any differences observed in sentence severity result from differences in , for example, age, gender or ethnicity, or are rather because there are differences between these groups as to the severity of the offences committed.

The second limitation is the lack of data on whether a guilty plea was made (this data is available only for sentences in the Crown Court) and the actual discount received where a plea was made (in all cases). The data available to the Council details the final sentence outcomes after any discount for a guilty plea has been applied. However, it is known that a higher proportion of BME defendants plead not guilty than of white defendants. (*Statistics on Race and the Criminal Justice System 2008/09*, Ministry of Justice, 2010) which means that, other things equal, differences in sentences post guilty plea adjustments would be expected, though this is not expected to be specific to burglary as an offence.

The Crown Court Sentencing Survey, launched by the Council on 01 October 2010, seeks to fill these data gaps at least for cases passing through the Crown Court. Once the survey results are considered robust enough for analysis, the Council will be in a position to provide a fuller equalities analysis.

The Council would also like to highlight the limitations of the ethnicity data used by the Council. The data is based on the ethnicity of the offender *as perceived by the police officer dealing with the case*. It is not self-recorded and is therefore subject to error of judgement. The Ministry of Justice are currently in the process of using a variety of sources of ethnicity data to produce a more robust record of ethnicity. The Council anticipate that this work will improve the quality of equalities work conducted in the future.

Limited data is available on the characteristics and experiences of victims of burglary through both the British Crime Survey and the Witness and Victims Experience Survey (WAVES).

A question was included in both the professional and public consultation documents asking respondents to identify any equalities issues and if possible provide evidence.

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 for burglary offences. The Council considers that the increased consistency and transparency in the sentencing process should ensure that there is less scope for any discrimination.

In particular the draft guideline includes the following factors:

- Victim deliberately targeted (which can include for reasons of vulnerability or hostility based on disability, race, sexual orientation etc) is a step 1 factor indicating higher culpability. This addresses issues of victims being targeted because of their older age (*Distraction burglary amongst older adults and ethnic minority communities*, Home Office, 2003) and where they may have been recent victims of burglary and/or may know the burglar (Table 1.10, *British Crime Survey*, Home Office, 2009/10)
- a mental disorder or learning disability where it is linked to the commission of the offence is a step 1 factor indicating lower culpability and a mental disorder or learning disability where it is not linked to the commission of the offence is a factor reflecting personal mitigation at step 2;
- being a sole or primary carer for dependent relatives is a step 2 factor reflecting personal mitigation;
- age and/or having lack of maturity where it affects the responsibility of the offender is also treated as personal mitigation at step 2.

Whilst domestic violence is not commonly associated with burglary it can be present and the Council felt that it was appropriate that these factors were included. We have therefore included as an aggravating factor:

- Victim compelled to leave their home (in particular victims of 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 consultation paper asked whether there were any equality or diversity matters that the Council should specifically consider. The vast majority (85% of professional respondents and 76% of public respondents) felt that there were no equality or diversity matters that needed to be specifically considered. One respondent did feel that further data would be useful on the sentences given to black and minority ethnic offenders and to female offenders to see if sentences were higher compared to others. The Ministry of Justice will be publishing statistics on race and the criminal justice system on the 20 October 2011.

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.

The Council's expectation is that the guideline will result in a continuation of the current level of sentences given for burglary offences and is not aware of any evidence that suggests that the proposed changes will have an adverse impact on any different groups of people. However, it is aware of the following matters that have been raised previously as potentially adverse impacts which are considered below.

The Council has reviewed the information submitted in response to the domestic burglary consultation conducted by the Sentencing Advisory Panel (SAP) published in 2010. The SAP stated that the majority of responses considered there not to be any reasons for concern in relation to equalities impacts. One response considered that insufficient concern had been given to the particular needs of offenders aged 18-24. This is a topic that the Council consulted on in relation to Assault (see *Assault guideline – Response to the consultation*) and concluded in light of the consultation responses that a factor of "age and/or lack of maturity where it affects the responsibility of the defendant" at step 2 of the guideline provided the appropriate scope for discretion and judgement and this factor has also been included in burglary.

One other response to the SAP consultation expressed concern that there would be an indirectly disproportionate effect on those from BME communities because of the prevalence of drug dependency and the way in which that dependency is managed. The professional consultation asked whether the guideline should include further details about the sentencing of dependent offenders. In light of the responses we received the Council felt that there was merit in putting something additional information about dependant offenders. The guidelines now say for domestic and non domestic burglary: "where the defendant is dependant or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under S 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate length custodial sentence."

As in the *Assault Definitive Guideline* and in line with current practice 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 through the Crown Court Sentencing Survey and will look 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.

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N/A

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

No

The consultation produced no further evidence that the guideline will have any adverse impact on equalities to warrant a full Equality Impact Assessment.

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.gsi.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 Council has a statutory duty to monitor the impact of the new guidelines. This monitoring will be undertaken through the introduction of the Crown Court Sentencing Survey which was launched in October 2010 and 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 to a wide variety of information and evidence relating to sentencing and its equalities impact. It is expected and intended that the guideline on burglary will help to promote equality of opportunity and will reduce the potential for discrimination as it is designed to promote greater consistency in sentencing. Following its implementation 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: 12 October 2011

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**