

## Equality Impact Assessment Initial Screening – Relevance to Equality Duties

**Before you complete an EIA you must read the guidance notes and unless you have a comprehensive knowledge of the equality legislation and duties, it is strongly recommended that you attend an EIA training course**

The EIA should be used to identify likely impacts on:

- Disability
- Gender (including gender identity)
- Race
- Age
- Caring responsibilities (usually only for HR policies and change management processes such as back offices)
- Religion and belief
- Sexual orientation

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

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

Katharina Walsh, Office of the Sentencing Council
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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?

<b>Aims/objectives</b>	<b>Outcomes</b>
<p>The Sentencing Council proposes a draft guideline on drug offences which has adopted the overarching format of the assault guideline. In preparing its draft guideline, the Council's aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.</p> <p>The guideline covers the following offences:</p> <ul style="list-style-type: none"> <li>- Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug</li> <li>- Supplying or offering to supply a controlled drug</li> <li>- Possession of a controlled drug with the intent to supply it to another</li> <li>- Production of a controlled drug</li> <li>- Cultivation of cannabis plant</li> <li>- Permitting premises to be used</li> <li>- Possession of a controlled drug</li> </ul>	<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 has considered both case law and current sentencing practice. For most offences, the guideline aims to increase the consistency of sentencing while leaving the average severity of sentencing unchanged.</p> <p>The Council especially seeks to uphold the current level of sentencing for those offenders playing a leading role in importation, supply and production offences (offences introducing drugs into the market) where large or very large quantities of drug are involved.</p> <p>For so-called drug “mules”, the Council considers current sentencing to be disproportionate to the levels of culpability and harm caused. An increased focus on role in the development of the sentencing ranges for these offenders may result in a downward shift in sentences for these types of offenders, to ensure that these offenders are sentenced fairly and consistently according to the severity of their offence. This should bring sentences for these offenders in line with the overall framework.</p>

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 number of different sources of evidence regarding sentencing and diversity issues have been taken into account during the development of the draft guideline on drug offences. These include: statistical evidence; academic studies and publications; responses to consultations conducted by the Council’s predecessor bodies; and reports from Government Departments and non-governmental organisations.

We have also written to a number of stakeholder groups specifically to address equalities issues regarding offences of drugs and burglary. The aim of this was to ascertain in advance of producing the draft guideline whether there were any equalities issues in particular that needed to be considered which could inform this EIA.

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, having taken into account the sources of information identified at Question 4, the Council is not aware of any significant issues with the proposed draft guideline on drug offences. Any potential impacts that have been identified – either direct or indirect – have been mentioned below.

This EIA is published as part of the consultation on sentencing for drug offences. Two consultation documents have been produced: a public and a professional version, as well as an online questionnaire. The Council is very keen to receive responses from consultees on any potential equalities issues and would welcome any available evidence regarding sentencing disadvantages on particular groups. We are also undertaking a number of consultation events with a range of stakeholders.

A full equality impact assessment will be undertaken if responses to the consultation identify significant 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 on drug offences will have a generally positive overall impact on equalities issues, as one of its principal aims is to promote consistency in sentencing. This, in combination with the applicability of starting points to *all* offenders (rather than first time offenders) and the increased transparency that the Council hopes to promote by issuing a clear guideline, should ensure that there is as little scope as possible for any discrimination.

Specifically, the guideline proposes that “mental disorder or learning disability” be treated as a mitigating factor for the offences in the draft guideline. This ensures that the needs of these offenders are taken into account during the sentencing process, thus avoiding a disproportionate adverse impact on this particular group.

In addition, the draft guideline includes “age and/or lack of maturity where it affects the responsibility of the offender” as a mitigating factor to be taken into account when determining the provisional sentence of an offender within the category range. A specific potential impact due to age was identified in response to a consultation by the Sentencing Advisory Panel. This suggested that the inclusion of an aggravating factor relating to the possession of a drug in a school may have an impact due to age, as the likelihood of those using drugs in a school

being young adults is high. Indeed, the drug research bulletins, also published as part of this consultation, show that the majority of adults sentenced for possession offences were at the lower end of the age range, with 18 – 29 year olds making up 62% of sentences. However, it must be noted that, although the guideline includes the aggravating factor “Possession of drug in a school or licensed premises” at step 2, the inclusion of the factor “age and/or lack of maturity where it affects the responsibility of the offender” as explained above would in turn ensure that this impact is taken into account.

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.

There is no current evidence of which the Council is aware which suggests additional work that could be done to promote equality of opportunity. However, following the consultation, we will be able better to determine whether further work to promote equality of opportunity could be done in relation to the draft guideline.

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.

One group of offenders identified in the draft guideline on drug offences is that of the so-called drug “mule”. It is often assumed that women are more likely to be drug mules, with a higher level of coercion placed upon them (although this assumption is often contested). Whether or not this is the case, there is the potential for the guideline to impact on women offenders with caring responsibilities, for example drug “mules” of foreign nationality. The majority of drug traffickers prosecuted are males, although the proportion of females has been rising steadily in recent years. However, opinions contrast on the matter of gender: Tracy Hulling (1995) states there is a breadth of international evidence to suggest a dramatic increase in female participation in the international trafficking of illicit drugs. Harper et al (2002) using Home Office statistics suggests that the proportion of females in the total number of those sentenced for Drug Importation under the Misuse of Drugs Act (1971) has increased from 15% to 19% between 1989 and 1995.<sup>1</sup> The proportion of women sentenced for Drug Importation of Class A and B drugs in 2009 was 26%.<sup>2</sup> Maden et al however, suggests that when women who are normally resident overseas are excluded from the female prison sample, the proportion of women of African-Caribbean origin (the social demographic normatively associated with drug trafficking) falls from 20 to 13%.<sup>3</sup> It is therefore difficult to determine whether the proposals in the guideline would have a disproportionate impact on offenders due to their

<sup>1</sup> Harper, R; Harper, G & Stockdale, J (2002) 'The Role and Sentencing of Women in Drug Trafficking Crime' *Legal and Criminal Psychology* 7(1) 101-114.

<sup>2</sup> Unpublished Data, Ministry of Justice 2009

<sup>3</sup> Maden, A; Swinton, M & Gunn, J (1992) 'The Ethnic Origin of Women Serving a Prison Sentence' *British Journal of Criminology* 32(2) pg. 218-221 (Online, Available at:

<http://bjc.oxfordjournals.org/content/32/2/218.full.pdf>, Accessed: 1/11/2010)

sex, but since the research bulletin shows that women made up 20% of all adults sentenced for importation and exportation offences, this is an impact which should be mentioned.

With regard to race, there have been suggestions of likely disproportionate impacts due to the presence of open drug markets in areas with a high concentration of certain racial groups. A response to the SAP's consultation suggested that because of enduring socio-economic disadvantage, certain ethnic groups concentrated in such localities may well be disproportionately affected, by virtue of their subordinate roles. In addition, statistics on race and the criminal justice system (MOJ, 10 June 2010) state that, as at 30 June 2009, members of BME groups accounted for 27% of the overall prison population including foreign nationals (83,454) compared to 25% of the overall population (76,190) in 2005. The fact that ethnic minorities are disproportionately represented across the criminal justice system suggests that therefore the draft guideline may have a potential indirect impact on this group of offenders. Differences in disposal types according to ethnicity is also a factor which is suggested by the statistics, but it is important to note that this may be as a result of a number of factors (such as, for example, the difference in plea rates amongst ethnic groups) which might instead be driving the differences in disposal type and severity of sentence and it is therefore difficult to determine whether an adverse impact would be likely.

The Council is not aware of any adverse impact the draft guideline may have on any of the other groups identified at the beginning of this document, however it would welcome any comments in response to the consultation documents, which ask a specific question in relation to issues of equality and diversity.

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

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.**

There is little evidence at the moment that the draft guideline will have an 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 impacts and will review this decision following the consultation.

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, and this will be supported by the Crown Court Sentencing Survey. Sentencing in the magistrates' courts will be monitored using existing Ministry of Justice sentencing statistics data.

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 drug offences 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: 28 March 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**