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Equality and Human Rights Impact Assessment (EqHRIA) Form Guidance

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1. Purpose

- 1.1 This guidance document supports the Police Service of Scotland (hereinafter referred to as Police Scotland) and Scottish Police Authority (hereinafter referred to as SPA) [Equality and Human Rights Impact Assessment \(EqHRIA\) Standard Operating Procedure \(SOP\)](#).
- 1.2 It is intended to support authors by providing a step-by-step guide to completing an [Equality and Human Rights Impact Assessment \(EqHRIA\) \(Form 060-008\)](#). It is not meant to provide exhaustive guidance as the corporate knowledge on the subject being assessed will be held by you, the author. It does, however, require a proactive approach that looks beyond the minimum legal requirements.
- 1.3 Please read the instruction provided in the EqHRIA SOP before completing an EqHRIA Form.
- 1.4 The results of impact assessments are required to be published externally and can also be requested under the [Freedom of Information Act 2000](#), therefore, please ensure that they are as accessible as possible; have appropriate language; are in plain English without police jargon; and have minimum abbreviations which are fully explained where used.
- 1.5 In order to ensure that equality and human rights are at the centre of all relevant policy / practice, wherever possible use the **PANEL** (**P**articipation, **A**ccountability, **N**on-Discrimination, **E**mpowerment and **L**egality) principles, developed by the [Scottish Human Rights Commission \(SHRC\)](#) to inform your EqHRIA. This requires evidence of:
 - **Participation** – Involve people in decisions that affect their rights;
 - **Accountability** – Monitor how people are being affected and address problems;
 - **Non-Discrimination** – Treat everybody fairly and prioritise actions for mitigating / removing the biggest barriers affecting people;
 - **Empowerment** – Ensure that those affected understand their rights and are fully supported to take part in developing policy / practice which affect their lives; and
 - **Legality** – Implement all approaches within the legal rights that are set out in domestic and / or international law.
- 1.6 **Note:** Please see the EqHRIA Flow Chart at **Appendix 'D'** to this guidance for an overview of the processes involved in completing an assessment.

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2. EqHRIA Form Section 1 - Purpose and Intended Outcomes of the Policy / Practice

- 2.1 The EqHRIA process should begin with a clear understanding of the policy / practice being developed or reviewed. Think about the context within which it will operate; who it is intended to benefit; and the end results aimed for.
- 2.2 At this stage, use existing evidence / knowledge to consider people's differing needs and how they might be affected because of their age, disability, religion etc. and the potential for engagement of individuals' legal rights / freedoms so that these can be integrated into the aims and objectives.

3. EqHRIA Form Section 2 - Other Policies / Practices Related or Affected

- 3.1 From the outset it is beneficial to identify if there are other areas of business that are related to, or likely to be affected by, the policy / practice under development or review.
- 3.2 By identifying these at an early stage it may be possible to review Equality Impact Assessments (EIAs) or EqHRIAs already completed which will assist the thought process in considering relevancy and impact, and may be a valuable source of evidence / information e.g. consultation feedback from specific groups.
- 3.3 If associated policies / procedures have been identified, it may be helpful to make contact with the owning department or Policy Support to establish if an EIA or EqHRIA has been previously undertaken.
- 3.4 If the findings of your assessment have potential implications for any other policy / practice, make the relevant Owing Department aware in order to enable them to consider whether their policy / practice requires to be reviewed.

4. EqHRIA Form Section 3 – Who is Likely to be Affected?

- 4.1 Look back at the intended outcome/s and think about the groups of people likely to be affected by it. The response in section 1 will help to determine whether the policy / practice has potential relevance to equality and / or human rights and who might be affected. For example, it may only affect staff, or communities – or it may have implications for both.
- 4.2 Tick the relevant box(es) and continue to Section 3.1.

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4.3 Section 3.1 - Screening for Relevance to Equality Duty

- 4.3.1 If the policy / practice is assessed as having no direct or indirect impact on people, provide information / evidence to support this decision. Proceed to Section 5 of the form as no Equality Impact Assessment is required.
- 4.3.2 If the policy or practice is assessed as having a direct or indirect impact on people, continue and complete all relevant sections.

5. EqHRIA Form Section 4 - Equality Impact Assessment

- 5.1 Use section 4 to consider the likely impact of the policy / practice on people who may work for or use services provided by Police Scotland / SPA. Think about how the impact may differ due to the specific needs, past negative experiences and / or institutional barriers faced by some individuals and groups. It is not necessarily about numbers of people affected; more about the severity of the impact.
- 5.2 **Note:** Authors of large scale project related EqHRIAs are advised that they can, if required, adjust, add rows / columns and / or pages or replicate existing text if that would help to meet a specific need related to their particular circumstances and subject matter. **No existing text or structure within the EqHRIA Form will be deleted – only additions and adjustments are permitted.**
- 5.3 **EqHRIA Form Section 4.1 - Protected Characteristics Groups Likely to be Affected**
- 5.3.1 Use this section to assess the likely impact on groups of people protected under the [Equality Act 2010](#), as listed on the EqHRIA Form.
- 5.3.2 **Guidance on the ‘Protected Characteristics’:** The following provides useful definitions of the nine ‘protected characteristics’
<http://www.equalityhumanrights.com> and [Equality Act 2010](#).
- **Age** – ‘...a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds).’
 - **Disability** – ‘A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.’
 - **Gender reassignment** – ‘A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.’

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- **Marriage and Civil Partnership** – The Equality Act 2010 protects employees who are married or in a civil partnership against discrimination. Single people are not protected.
- **Pregnancy and Maternity** – ‘Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context.’ A woman is protected against discrimination on the grounds of pregnancy and maternity. With regard to employment, the woman is protected during the period of her pregnancy and any statutory maternity leave to which she is entitled. Also, it is unlawful to discriminate against women breastfeeding in a public place.
- **Race** – ‘People defined by their race or nationality (including citizenship) or ethnic or national origins.’
- **Religion and Belief** –. Explanatory Notes to the [Equality Act 2010](#) states the following:
 - ‘51. ... It is a broad definition in line with the freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention on Human Rights. The main limitation for the purposes of Article 9 is that the religion must have a clear structure and belief system. Denominations or sects within a religion can be considered to be a religion or belief, such as Protestants and Catholics within Christianity.
 - 52. ... “philosophical belief” ... must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others. So, for example, any cult involved in illegal activities would not satisfy these criteria.
 - 53. ... The Baha’i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism are all religions for the purposes of this provision. Beliefs such as humanism and atheism would be beliefs for the purposes of this provision but adherence to a particular football team would not be.’
- **Sex** – ‘Refers to a man or a woman.’
- **Sexual Orientation** – ‘Refers to whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.’

5.3.3 **Note:** Please refer to **Appendix ‘A’** of this Guidance for equality groups and examples of issues to consider for each when assessing potential for impact.

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5.4 EqHRIA Form Section 4.2 - Likely Impact

5.4.1 **To decide type of impact** (direct or indirect), **e.g. Positive, Negative, or No Impact**, refer to the evidence that you have used, and decide what kind of effect the policy / practice is likely to have on Police Scotland / SPA's ability to give 'due regard' to the need to:

- Eliminate discrimination, harassment and victimisation;
- Advance equality of opportunity; and
- Foster good relations between groups.

5.4.2 'Due regard' as outlined in the [Equality Act 2010](#) comprises of two linked elements: **proportionality and relevance**. The weight given to equality should be proportionate to its relevance to a particular function. The greater the relevance of a policy / practice to equality, the greater regard should be paid. The law does not require that you must achieve the three 'needs' listed above, only that you have 'due regard' to the need to achieve them.

5.4.3 Remember that equality does not mean treating everybody in the same way. If you think that there is no equality impact because the policy / practice applies to 'everyone', then reconsider that just because it applies to everyone, it does not necessarily mean that everyone will benefit or be affected equally or in the same way.

5.4.4 This is a critical consideration. People have different needs, experiences and requirements due to their particular characteristics and circumstances (think of the variation in dietary, communication or access needs, gender roles and responsibilities or in past experiences).

5.4.5 Consider the diversity within each protected characteristic, and the diversity within each group. For example, there are a range of disabilities, such as physical, sensory or certain medical conditions. Similarly religion or belief not only includes traditional religious groups such as Jewish, Muslim, Christian, but also groups with particular belief systems, such as Humanism, as well as those with no religion or belief. As a result, they may all be affected differently and some may be affected more or less than others.

5.4.6 Returning to the three 'needs' of the statutory duty to determine how the policy / practice might contribute to **eliminating discrimination**, consider whether there is evidence to indicate that it:

- may result in less favourable treatment for particular groups;
- may give rise to direct or indirect discrimination;
- may give rise to unlawful harassment or victimisation;
- may lead to discrimination arising from disability.
- builds in reasonable adjustments where these may be needed (whether for disability or language / communication).

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- 5.4.7 In determining how the policy / practice might contribute to a **positive impact**, i.e. **advancing equality of opportunity**, consider whether the policy could help to:
- remove or minimise disadvantage;
 - meet the needs of different groups;
 - encourage increased participation of under-represented groups; or
 - take account of disabled people's impairments and any specific needs by including reasonable adjustments.
- 5.4.8 Similarly, in determining how the policy / practice might affect **good relations**, consider whether it could have a **positive impact** by contributing to:
- tackling prejudice; and / or
 - Promoting understanding.
- 5.4.9 **To decide level of impact, e.g. Low, Moderate or High**, during this key stage, you should look at the evidence and consider:
- Is there evidence of potential for discrimination / inequality or community / staff tensions?
 - Are there any community / staff concerns related to your policy / practice?
 - Are there any perceptions of negative or disproportionate impact amongst community / staff even though there is no real evidence to support these perceptions?
 - Are there any on-going positive actions or other mitigating measures underway which may help in addressing some of the impact, thereby reducing potential severity?
- 5.4.10 Careful consideration of the following factors will help you to determine who is likely to be affected and the severity of the impact. This will help to ensure a **proportionate** EqHRIA. The greater the level of relevance / impact, the greater the level of 'due regard' required.
- **High** - There is substantial evidence that people from different equality groups are (or could be) adversely affected by the policy. The policy is relevant to all or part of the respective general duties
 - **Medium** - There is some evidence that people from different equality groups are (or could be) adversely affected by the policy. The policy is relevant to all or part of the respective general duties
 - **Low** - There is little evidence that people from different equality groups are (or could be) adversely affected by the policy. The policy has little relevance the respective general duties
 - **No impact** - There is no evidence that people from different equality groups are (or could be) adversely affected by the policy. The policy has little or no relevance to the respective general duties.

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- 5.4.11 For example, a policy / practice considered to have a negative impact at a high level will require more mitigation than one that is considered negative at a low level.

5.5 EqHRIA Form Section 4.3 - Evidence Considered

- 5.5.1 This section asks you what evidence you have used in respect of groups likely to be affected by the policy / practice under development / review.
- 5.5.2 Here, record a summary of the evidence base, including details of any legislation, reports, statistics, community / staff profiles, research reviewed, or consultation carried out (by Police Scotland / SPA or others) in support of this assessment. Note any gaps in evidence and indicate any plans to consult or gather information later, in order to address those gaps in evidence.
- 5.5.3 **All** source evidence documents and consultation correspondence / feedback must be recorded on the [Equality and Human Rights Impact Assessment – Consultation Record \(Form 060-012\)](#) and retained by the Owing Department for audit purposes, as the EqHRIA Form only captures a summary of this information. **All information of a personal / sensitive nature must be treated in accordance with relevant data protection legislation.**
- 5.5.4 **Note:** Please refer to **Appendix ‘B’** of this guidance for further information and options regarding consultation and evidence gathering.

5.6 EqHRIA Form Section 4.4 - Analysis of Evidence

- 5.6.1 Use this section to summarise your analysis of the gathered evidence, information and any consultation feedback and how these findings have informed the development or review of the policy / practice. (Include justification of assessment of No Impact)
- 5.6.2 Analysing service delivery related information involves looking at not just what hard evidence / data is telling you but also the community experience or perceptions, which may be quite different and may require monitoring and / or mitigation. For example, seemingly fair and equitable decisions can sometimes attract significant negative media coverage leading to community concerns. This stage will help you to identify such issues and inform the changes to the policy / practice or other actions to be taken.
- 5.6.3 Analysing evidence / statistics in relation to employment involves making comparisons between different groups and if there is a real difference ask “why is this so?” Any difference is not necessarily negative.
- 5.6.4 A useful tool promoted by the [Advisory, Conciliation and Arbitration Service \(ACAS\)](#) is the four-fifth rule. This suggests that if any group is less than four-fifths of the rates of the group with the highest success or take up rate for example, it may indicate bias.

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5.6.5 This rule can be used at each stage of a process e.g. selection, to identify any particular difference. It is not an absolute measure, but simply identifies differences which are worth investigating further. For some statistics where the pool of people is small it may be more practical to use judgement rather than relying on this calculation.

5.6.6 An example:

An employer recruits for 30 posts and interviewed 200 people who were equally split between men and women. 20 men and 10 women were appointed:

- Male success rate 20/100 (as a percentage) – 20%;
- Female success rate 10/100 (as a percentage) – 10%;
- 4/5th of highest success rate= 16%.

5.6.7 In this example there is significant disparity because the female success rate (10%) is less than four-fifths of the male success rate (16%). Further investigation is needed to understand this difference. However, there may be entirely reasonable and non-discriminatory reasons for this difference.

5.6.8 This analysis will confirm whether or not any mitigating actions or monitoring of the impact of the policy / practice needs to be undertaken.

5.6.9 If new information comes to light at any time, during the development / review stages, that may have implications for the policy / practice under assessment, this should be considered and added to the EqHRIA Form as an auditable record of considerations and any subsequent decision/s.

6. EqHRIA Form Section 5 - Human Rights Impact Assessment

6.1 EqHRIA Form Section 5.1 – Rights / Freedoms Relevant to Policing

6.1.1 At this stage, refer to **Appendix 'C'** of this document which outlines the Convention Rights that are relevant to policing, what they mean as well as what you must consider in order to decide which rights / freedoms are engaged.

6.2 Types of rights

6.2.1 There are three types of Convention rights which are classified according to whether it is acceptable to place restrictions on them in certain circumstances. These are:

- **Absolute Rights:** must be upheld at all times. There is no justification for interference and they cannot be balanced against any public interest. Examples include the prohibition of torture and inhuman or degrading treatment (Article 3), the prohibition of slavery (Article 4); retroactive laws (Article 7); and the right to hold particular beliefs (the first part of Article 9).

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- **Limited Rights:** can only be limited under explicit and finite circumstances as laid out in the relevant Article. The terms will be different for different rights. For example, there are six instances where the right to liberty and security (Article 5) may be lawfully restricted.
- **Qualified Rights:** Rights which require a balance between the rights of the individual and the needs of the wider community. In particular, the rights in Articles 8 to 11 can be restricted where it is **lawful, necessary and proportionate** to do so in order to achieve a legitimate aim, such as public safety.

6.2.2 **Note:** a guide to which rights are absolute, limited, or qualified can be found at **Appendix 'C'**.

6.3 EqHRIA Form Section 5.2 – Assessment

6.3.1 In section 5.2 decide which rights / freedoms, if any, are likely to be protected or infringed by the policy / practice. If the policy / practice does not protect or infringe the relevant article then record 'Not Applicable'.

6.3.2 If you decide that no rights / freedoms are engaged, there is no need to continue completing the other columns in this section. However, there are three further points to note:

- be alert to any possibility that your policy / practice may discriminate against someone in the protection of a right / freedom;
- although this checklist is designed to help you identify any potential human rights impact, **it may still be necessary to obtain legal advice**. For example, the policy / practice may be particularly controversial or you may not be fully certain about whether or not certain human rights have been engaged; and
- even if you decide that the policy / practice does not engage anyone's human rights, things may change and you may need to reassess the situation.

6.4 EqHRIA Form Section 5.3 – Analysis: What evidence is there to demonstrate that the process / practice protects or infringes Human Rights?

6.4.1 If you decide that your policy / practice infringes or protects a Convention Right, the next step is to look at how it protects or infringes any of the rights and record what evidence is there to support this.

6.4.2 You should remember that interference with a right may not always stem from an action that is incompatible with Convention rights. It may also stem from a failure to take action where a right places a positive obligation on public authorities to take action to preserve a right.

6.4.3 In addition, list any gaps in information / evidence identified for later research / consultation as part of the mitigation plan. For example, an issue or concern

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might come to light which was not initially known or obvious and may need engagement with the relevant people to inform the monitoring and review process.

6.4.4 **Note: Appendix 'B'** of this guidance provides further information regarding evidence gathering and who to consult.

6.4.5 **Note: If any of the above conditions are not satisfied or you are not sure, whether a right is engaged or whether it can be infringed, seek legal advice.**

6.4.6 The Principle of Proportionality is at the heart of how the qualified rights are interpreted. Police Scotland / SPA must interfere with a right as little as possible, only going as far as is necessary to achieve the desired aim. Careful consideration of the following will help to determine proportionality.

- Is the response balanced and well considered or might it be seen as 'using a sledgehammer to crack a nut'?
- What is the problem being addressed by the restriction upon someone's rights?
- Will the restriction lead to a reduction in the problem?
- Does a less restrictive alternative exist and has it been tried?
- Does that restriction involve a blanket policy or does it allow for different individual cases to be treated differently?
- Has sufficient regard been had to the rights and interests of those likely to be affected?
- Do safeguards exist against error or abuse?
- Does the restriction show disregard for the basic ideas behind the human rights at issue?
- Is the duration of restriction likely to be for a short or longer period?

6.4.7 When reviewing a policy / practice you must remember that the rights of Articles 2, 3, 4 and 7 are Absolute, i.e. cannot be interfered with and must be protected.

6.4.8 If there is a less restrictive alternative way of achieving your desired outcome but you decide not to adopt it, you will need to record the justification for your decision.

6.4.9 **Note:** Please see **Appendix 'E'** of this guidance for good practice examples and case law.

6.5 EqHRIA Form Section 5.4 - Justification

6.5.1 When an infringement of a right / freedom has been deemed necessary for a legitimate purpose, it is essential that the legal power is identified and quoted in section 5.4, e.g. statutory or common.

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6.5.2 The distinction between absolute, limited and qualified rights can help decide what action to take when making a decision. If the policy / practice under assessment is known to interfere, with a right, then **all three** of the following conditions must be satisfied:

- **Legal Basis** - there must be a legal basis for the interference. The words used in the Articles are either 'prescribed by law' or 'according to the law'; and
- **Legitimate Aim** - the action / interference must seek to achieve a legitimate aim; these are described in **Appendix 'C'** where applicable; and
- **Necessary in a Democratic Society** – this means that the action must be no greater than that necessary to address the social need, i.e. must be **proportionate**.

7. EqHRIA Form Section 6 - Decision

7.1 Having analysed what the evidence / consultation is indicating, use Section 6 to record, by ticking the relevant box, how you have decided to proceed.

7.2 Select one of the following four options:

7.3 EqHRIA Form Section 6.1: Actual or potential for unlawful discrimination and / or breach of human rights have been identified and it cannot be mitigated or justified. Stop and consider an alternative approach.

7.4 EqHRIA Form Section 6.2: Proceed despite a potential for discrimination and / or interference with human rights that cannot be avoided or mitigated but which can and have been justified on legal / objective grounds

7.4.1 If you have identified potential for discrimination and / or any infringement with human rights which cannot be avoided or mitigated, **but which can and have been justified on legal / objective grounds**. Record your justification under sections 4.4 for equality and 5.4 for human rights.

7.4.2 Prior to selecting this option, the appropriate checks and balances should be completed and recorded as appropriate: for example, you may wish to seek legal opinion, or carry out additional consultation with people affected, or put in place a communications strategy. This will be dependent on the subject and circumstances.

7.5.3 If option 6.2 is selected, consider raising an action in Section 8 of the EqHRIA form to mitigate impact and monitor the effects of the decision on the protected characteristic or Convention right for which a potential negative impact was identified.

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7.5. EqHRIA Form Section 6.3: Proceed with adjustments - to remove or mitigate the identified potential for unlawful discrimination or adverse impact.

7.5.1 For the purpose of illustration (and not an exhaustive list), adjustments or mitigating actions could take the form of:

- an amendment to policy / practice or process etc.;
- the removal of a process;
- the introduction of a process;
- a training requirement;
- establishing a communications strategy;
- a monitoring plan to ensure compliance with a process;
- a monitoring plan to gather more evidence before making a decision.

7.5.2 If you select 6.3 option, provide details of mitigating actions to be taken (including plans for monitoring and further evaluation of those actions) in the Mitigation Action Plan section of the EqHRIA Form (within Section 8 of the Form). Describe any adjustments already made and further work planned.

7.6 EqHRIA Form Section 6.4: Proceed without adjustments - as no potential for unlawful discrimination / adverse impact or interference with human rights has been identified.

7.6.1 Select this option if, after consideration, the impact on equality and human rights is assessed as negligible and requires no further monitoring until the next time the policy / practice is reviewed.

8. EqHRIA Form Section 7 - Monitoring and Review of Policy / Practice

8.1 The duty to assess impact does not end with the completion of an EqHRIA Form. It needs to be viewed as a living process that requires ongoing monitoring of actual impacts after the policy / practice has been implemented.

8.2 If, after implementation, an unanticipated negative impact occurs, the policy / practice will need to be reviewed, and mitigating measures taken if required. The EqHRIA Mitigation Action Plan and Management Log (Sections 8 and 9 of the EqHRIA Form) will need to be updated accordingly.

8.3 Use Section 7 to state how you plan to monitor for impact post implementation and review policy / practice if required, and who will be responsible for ensuring that it is done.

8.4 You may wish to consider summarising what the gathered evidence, information and any consultation feedback is indicating, and how these

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findings have informed the development or review of the proposed policy / practice.

- 8.5 This analysis will confirm whether or not any mitigating actions or monitoring of the impact of the policy / practice needs to be undertaken.
- 8.6 If new information comes to light at any time, during the development / review stages, that may have implications for the policy / practice under assessment, this should be considered and added to the EqHRIA Form as an auditable record of considerations and any subsequent decision/s under Section 8 of the Form.

9. EqHRIA Form Section 8 - Mitigation Action Plan

- 9.1 It is essential for Police Scotland / SPA to evidence that 'due regard' has been had to the General Equality Duty. This requires that a record is kept of the issues identified and subsequent actions taken.
- 9.2 If a potential for negative impact has been identified in relation to equality and / or Human Rights; use section 8 to record mitigating action/s taken / to be taken, including any plans for monitoring and further evaluation of those actions.
- 9.3 Although you, as the EqHRIA author, may have identified actions to be taken, those actions will be the responsibility of the Owning Department to consider / implement.

10. EqHRIA Form Section 9 - Management Log

- 10.1 The responsibility for conducting an EqHRIA rests with the Owning Department. Section 9 provides an audit of who has been involved at each part of the submission and approval process and includes the opportunity for an Equality and Diversity specialist practitioner to provide a quality assurance check.
- 10.2 EqHRIA Form Section 9.1: EqHRIA Author Log**
 - 10.2.1 On completion of the initial EqHRIA the author will insert name and date plus any relevant comments.
- 10.3 EqHRIA Form Section 9.2: Quality Assurance Log**
 - 10.3.1 Consult with and / or pass document to a relevant Equality and Diversity practitioner for Quality Assurance. See contact list provided in EqHRIA SOP Appendix 'D'.

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10.3.2 **Note:** If there is a valid reason for not accepting advice and / or suggestions offered by those providing Quality Assurance, acknowledge the comments and justify decision on objective grounds under Author's Log at 9.1.

10.4 EqHRIA Form Section 9.3: Divisional Commander / Head of Department Log

10.4.1 The document will thereafter go to the Head of Department (or equivalent) for approval.

10.4.2 **Note: This does not require all actions to be complete as these can be mitigating actions that may take weeks or months to implement and / or review.**

10.4.3 The first 'sign-off' acknowledges the information in the EqHRIA Form and approves the actions going forward. Every sign-off includes a comments section to enable each individual to make appropriate observations and directions.

10.4.4 The Management Log is intended to act as an audit of the key people involved in the process and capture pertinent comments and directions given. This will be of assistance when staff move post as a record exists of who has been involved in the process and what direction has been given (See also Section 11 of this Guidance document).

10.5 EqHRIA Form Section 9.4: Publication of EqHRIA Results Log

10.5.1 Police Scotland / SPA have a legal obligation to publish the results of the equality impact assessment. Therefore, on completion of the assessment, internal and external publication must be arranged by the EqHRIA author in accordance with the procedures set out in the EqHRIA SOP. Use the [EqHRIA Summary of Results \(Form 060-009 \(A\)\)](#) to facilitate external publication and record on EqHRIA Section 9.4 its location and publication date with any relevant comments.

11. Record Keeping

11.1 The File Path Record field located at the top of the first page of the EqHRIA Form allows the person who carries out the EqHRIA to include where an original file, document or hard copy is stored. This is to provide ease of access to original documentation should an individual leave the department, as there is an obligation to maintain and store all EqHRIA related documentation.

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Equality Groups and Issues to Consider

Equality Group

Issues to consider

Age

- Stereotyping,
- Bullying / peer pressure,
- Access to specific activities,
- Personal safety or increased vulnerability,
- Language used which might be ageist or wrongly pitched,
- Lack of awareness of age issues,
- Awareness of personal development / relationships,
- Caring for a sibling or a parent,
- Isolation,
- Anti-social, criminal or violent behaviour targeted at children or elderly people.

Disability

- Stereotyping,
- Isolation,
- Mobility issues,
- Mental health issues, learning disabilities, conditions such as autism and Aspergers,
- Personal safety and security,
- Bullying / hate crime,
- Disability harassment. Anti-social, criminal or violent behaviour targeted at people with disabilities,
- Sensory impairment – vision / hearing,
- More than one disability (hidden / visible disabilities),
- Lack of awareness,
- Access to information – alternative formats,
- Name calling,
- Educational attainment,
- Specific requirements for medical treatment or in the event of death,
- Difficulties in communication due to learning disability or deafness: need for Appropriate Adult or British Sign Language interpreter,
- Language barriers e.g. unable to speak, read or write English
- Dietary requirements.

Gender Reassignment

- Stereotyping,
- Bullying / harassment / violence / hate crime,
- Right to privacy – intrusive questions / confidentiality of

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information,

- Time off for medical treatment,
- Support during transition stage,
- Family / relationships (same sex partners / parents),
- Specific requirements for medical treatment or in the event of death.

Marriage / Civil Partnership (Relationship Status)

- Would someone be treated differently because of their relationship status?
- Married / divorced,
- Civil partnership / dissolution of civil partnership,
- Single,
- Widowed,
- Penalties or barriers applied to married people or partners that do not apply to single people.

Pregnancy & maternity related

- Stereotyping,
- Time off for medical appointments,
- Change of duties/workstation adjustments,
- Lack of training or opportunities,
- Access to organisational information during maternity leave,
- Specific requirements for medical treatment or in the event of death,
- Dietary requirements,
- Domestic abuse / violence aimed at pregnant women.

Race

- Stereotyping,
- Name calling,
- Culture,
- Skin colour,
- Significant cultural holidays,
- Access to information – translation and interpretation,
- Racial harassment and violence - Hate crime,
- Place of birth,
- Lack of awareness,
- Status within community,
- Language barriers e.g. unable to speak or read / write English or own language,
- Cultural dress,
- No permanent address e.g. gypsy travellers.

Colour

- Would Someone be treated differently because of the colour of their skin

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Ethnic or National origins

- Stereotyping,
- Name calling,
- Culture,
- Skin colour,
- Access to information – translation & interpretation,
- Racial harassment and violence - Hate crime,
- Place of birth,
- Lack of awareness,
- Status within community,
- Language barriers.

Nationality

- Stereotyping,
- Name calling,
- Culture,
- Skin colour,
- Access to information – translation interpretation,
- Racial harassment and violence - Hate crime,
- Place of birth,
- Lack of awareness,
- Status with community,
- Language barriers.

Religion or belief

- Stereotyping,
- Religious prejudice ,
- Harassment, hate-crime and targeted violence (anti-semitism, islamophobia, sectarianism),
- Values and beliefs e.g. modesty,
- Dietary requirements e.g. halal, kosher, vegan,
- Faith holidays and festivals,
- Differences in gender roles within cultures,
- Birth / bereavement arrangements,
- Dress / jewellery,
- Differences between religion and cultural requirements,
- Worshipping,
- No belief,
- Specific requirements for medical treatment or in the event of death.

Sex

- Men and women,
- Gender stereotyping,
- Educational attainment,
- Exclusionary language and behaviour,
- Inclusion to diverse activities,
- Name calling,

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- Caring responsibilities,
- Domestic abuse, coercive control, gender-based violence.

Sexual orientation

- Bullying / hate crime / targeted violence,
- Family / relationships (same sex partners / parents),
- Intrusive questions / right to privacy / confidentiality of information,
- Stereotyping,
- Personal safety.

Evidence Gathering / Consultation

Gathering pertinent evidence and conducting appropriate consultation enables proper exploration and evaluation of the impact of the policy / practice on the relevant protected characteristics and human rights. This information gathering should be pragmatic, proportionate and practical and should **make best use of information readily available to Police Scotland / SPA** through established sources or open research prior to seeking more information. All consultation should be recorded on an [Equality and Human Rights Impact Assessment – Consultation Record \(form 060-012\)](#)

Authors should consult with **relevant** key stakeholders that represent the protected characteristic which may be affected by the policy / practice.

Any consultation should be completed during the development or review of policy / practice and should always be carried out **before** the document has been signed off or authorised by internal management – this will help reduce duplication of effort and unnecessary delays to approval / implementation.

Following good practice, amendments to policies / practices under review should be **highlighted in yellow**, this allows consultees to identify the changes made to the documents.

Relevant evidence and information may be sourced from internal documents, practitioners / consultees and / or externally from internet research, e.g. Scottish Government, UK Government, partner agencies, universities, voluntary sector organisations and equality / human rights advocacy groups.

It is the responsibility of the EqHRIA author to ensure that all information used is verifiable, from a trusted source and useable within the framework of an EqHRIA, e.g. [Scottish Government Equality Evidence Framework](#) website.

For certain policies and practices, especially employment / staff related ones, consultation may still be advisable even when there seems to be sufficient evidence to support the proposal.

Early consultation, while policy / practice is being considered, is recommended with key stakeholders. In particular, contact should be made with statutory stakeholders such as Association of Scottish Superintendents (ASPS), Scottish Police Federation (SPF) and Trades Union such as Unison and Unite to discuss proposal.

This approach will assist in the early identification of any equality / human rights related issues or concerns and enable 'due regard' to be had from the outset and mitigation planned or implemented during the development stage. It will also help to reduce duplication of effort – retrospective management of adverse impacts - and produce a meaningful EqHRIA rather than a post development 'tick box' exercise.

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Additional advice and support on finding data sources and appropriate consultees can be provided by Equality and Diversity staff. Contact details are provided in the [Equality and Human Rights Impact Assessment \(EqHRIA\) SOP](#) Appendix 'D'.

Note: Authors are reminded that all national policy / procedure / guidance documents are subject to a **three week mandatory consultation** with statutory staff associations and other key stakeholders before submission to executive for approval. This is routinely carried out by Policy Support after receipt of the final draft/s and the completed EqHRIA form.

Local EqHRIA forms and policies that are not processed by Policy Support should – where appropriate be sent for consultation with **relevant** local / national key stakeholders as appropriate.

The table below is not intended to be exhaustive but provides suggested internal and external sources of information / evidence:

Internal	External
Police Scotland / SPA Mainstreaming Reports Corporate performance management data	Scottish Government / COPFS / UK Government / Home Office Scottish Government Equity Evidence Framework which brings together all the reports and statistics they produce by seven of the protected characteristics. Up to date Census data is also available at: www.scotlandcensus.gov.uk/census-results
Police Scotland and SPA Annual Employment Monitoring Reports / Staff surveys	Academic research
HMICS / Other Police Forces etc.	Equality & Human Rights Commission (EHRC) Scotland – has the remit for equality and human rights issues that are reserved to Westminster as well as those devolved to Holyrood. Scottish Human Rights Commission (SHRC) – has the remit for human rights issues devolved to Holyrood Example - EqHRIA pilots.
Service monitoring information – SCOMIS, Crime recording, Divisional Policing Plans, etc.	External Reference Groups / External Advisory Groups.

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Internal	External
Statutory Stakeholders: Scottish Police Federation (SPF), Association of Scottish Police Superintendents (ASPS), Trades Union (e.g. Unison)	Statistical bodies e.g. Registrar General for Scotland.
Diversity Staff Associations	Equality advocacy groups and stakeholder organisations (a list of such groups is available from National Safer Communities, SCD).
Scottish Policing Performance Framework	Human Rights advocacy groups.
Professional Standards / Internal Audit	Other Public Sector Authorities – NHS / Fire Service / COSLA / Local Authorities / Community Safety partnerships.
Health and Wellbeing Unit	

Articles of the Human Rights Act 1998 Relevant to Policing

Reference: [Human Rights: Human Lives - A guide to the Human Rights Act for Public Authorities, Equality and Human Right Commission \(06/2014\)](#).

Article 2 – Right to Life – Treat as absolute

What does this mean?

Everyone’s right to life must be protected by the law. There are three exceptions to the right to life. Police Scotland can only take life as a last resort and in the following circumstances:

1. When defending someone from unlawful violence.
2. When lawfully arresting someone or preventing the escape of someone lawfully detained.
3. When lawfully trying to stop a riot or insurrection.

The force used must be **absolutely necessary**. Even if the actions taken by Police Scotland fall into one of the three exceptions, if there was a viable alternative to taking life, the authority will nevertheless be in breach of Article 2.

Article 2 also includes a positive duty on Police Scotland to protect life in the following circumstances:

- When there is awareness of a real and immediate threat to someone’s life.
- If a person is under the care of Police Scotland, then there is a particular duty to safeguard that person’s life.

You must consider if the policy / practice takes cognisance of the following:

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1. If someone's life is at risk from a particular known danger then Police Scotland / SPA **must** take reasonable steps to protect the person.
2. If Police Scotland / SPA undertakes care of a person then it **must** take reasonable steps to ensure that the person is safe.
3. If a death has been caused by Police Scotland / SPA the death **must** be investigated effectively.
4. If Police Scotland is planning an operation which **may** result in the taking of life, the control and organisation of the operation must respect the requirements of Article 2.

Applicable to following areas of policing (not an exhaustive list):

<ul style="list-style-type: none">• Custody• Firearms• Public Order• Counter Terrorism	<ul style="list-style-type: none">• Emergency Planning• Crisis Negotiation• Occupational Health• Health & Safety	<ul style="list-style-type: none">• Missing Persons• Kidnap and Extortion• Bomb Threats	<ul style="list-style-type: none">• Intelligence• Threats to Life• Crime Investigation
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Article 3 – Prohibition of Torture – treat it as **absolute**

What does this mean?

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Torture, inhuman and degrading treatment or punishment is absolutely forbidden. There are no exceptions. Conduct only has to fall foul of one of these for there to be an Article 3 breach. The definitions are as follows:

Torture - deliberate inhuman treatment, whether physical or mental causing very serious and cruel suffering.

Inhuman Treatment - treatment which is less severe than torture but still causes intense physical and mental suffering.

Degrading Treatment - occurs if it arouses in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing him or her.

There is no set level of behaviour which will constitute a breach of Article 3. Factors which the European Court has said will be taken into account in a subjective test include:

- Age;
- Sex;
- Vulnerability;
- Health;
- Duration of the treatment;
- Mental and physical effects of the treatment.

You must consider if the policy / practice takes cognisance of the following:

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- **The need to avoid** any action which could result in torture, inhuman or degrading treatment;
- **The need to be aware** at all times of responsibilities under Article 3 where someone may be inadvertently placed in a humiliating position;
- **There is a positive obligation** on Police Scotland / SPA to intervene to stop torture, inhuman or degrading treatment or punishment as soon as they become aware of it, even if it is being carried out by a private individual.
- **There is a positive obligation** to investigate any allegations of torture, inhuman or degrading treatment

Applicable to following areas of policing (not an exhaustive list)

<ul style="list-style-type: none">• Custody• Prisoner Transportation	<ul style="list-style-type: none">• Interviewing of Suspects• Use of Force	<ul style="list-style-type: none">• Human Trafficking• Equality, Diversity and Dignity SOP	<ul style="list-style-type: none">• Female Genital Mutilation (FGM)
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Article 4 – Prohibition of Slavery and Forced Labour – Treat as absolute

What does this mean?

Slavery and servitude are absolutely forbidden. Forced or compulsory labour is also forbidden.

The Article states that there are four types of work which are not to be considered as forced or compulsory labour:

- Work done during legitimate detention or on conditional release from detention (i.e. community service).
- Compulsory Military Service or service as a conscientious objector. (This is not applicable in Scotland because we have no National Service requirement).
- If an emergency or calamity threatens the life or wellbeing of the community, people can be required to work to help out.
- Any work which forms part of a normal civic obligation.

You must consider if the policy / practice takes cognisance of the following:

1. All staff must be properly recompensed for the work that they do.
2. There is a positive obligation on Police Scotland to intervene to stop slavery, servitude or forced or compulsory labour as soon as they become aware of it.

Applicable to following areas of policing (not an exhaustive list):

<ul style="list-style-type: none">• Human Trafficking• Sexual Crime Investigation	<ul style="list-style-type: none">• Child Protection• Vulnerable Adults	<ul style="list-style-type: none">• Police Regulations / Determination• PNB Circulars	<ul style="list-style-type: none">• Employment and contracts• Overtime
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Article 5 – Right to Liberty and Security – Can be treated as a limited right

What does this mean?

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Everyone has the right to liberty and security of person. There are six circumstances when someone's liberty can be restricted, as long as it is prescribed by law:

1. If they have been convicted by a Court.
2. If they have not obeyed a Court Order or fulfilled a legal obligation, e.g. they have not paid a criminal fine.
3. If they have been arrested and are to be brought before the competent legal authority on reasonable suspicion of committing a crime, or it is reasonably considered necessary to detain them to prevent them committing an offence or fleeing after doing so. Once arrested or detained they should be brought promptly before a judge and should be either tried within a reasonable time period, or released pending trial.
4. If they are a minor, they can be detained for schooling or for bringing them before a competent legal authority.
5. If they have been detained to stop the spreading of an infectious disease or if they are of unsound mind, an alcoholic, a drug addict or a vagrant.
6. If they are attempting unauthorised entry into the country or are to be deported or extradited.

In addition, once someone has been arrested they must promptly be informed, in a language they understand, of the reasons for the arrest and of any charges made against them.

You must consider if the policy / practice takes cognisance of the following:

1. Ensure that any detention is legal and justifiable.
2. Ensure that conditions are appropriate for the detainee.
3. Take all reasonable steps to speedily secure a legal decision by a court.
4. Obtain reliable evidence for detention on mental health grounds, from an objective medical expert.
5. Tell the person detained in a simple, clear, non-technical way why they are being deprived of their liberty.

Applicable to following areas of policing (not an exhaustive list):

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<ul style="list-style-type: none">• Custody• Detention and Arrest• Interviewing	<ul style="list-style-type: none">• Access to Solicitors• Interpreting Services	<ul style="list-style-type: none">• Appropriate Adults• Victim Support• Case Reporting	<ul style="list-style-type: none">• Criminal Justice• Prisoner Transportation
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Article 6 – Right to a Fair Trial - this is not easy to categorise but tended to be viewed that it is **limited** as it only applies in certain circumstances.

What does this mean?

It means that everyone has the right to a fair trial.

The right to a fair hearing, which applies to any criminal charge as well as to the determination of civil rights and obligations, contains a number of requirements:

1. There must be real and effective access to a court - this may require access to legal aid.
2. There must be a hearing before an independent and impartial court or tribunal established by law.
3. The hearing must be held within a reasonable time.
4. The applicant must have a real opportunity to present his or her case or challenge the case against them.
5. The court or tribunal must give reasons for its judgment.
6. There must be equality of arms between the parties, so, for example, the defence has the same right to examine witnesses against them as the prosecution has and both parties have the right to legal representation etc.
7. In criminal cases, there is a right to silence and a privilege against self-incrimination.
8. An accused person must have the right to effective participation in their criminal trial. Except for strictly limited exceptions, an accused is entitled to be physically present at his or her hearing to give evidence in person and be legally represented.
9. The hearing and judgment must be made public. Hearings can, however, be held in private where:
 - it can be shown to be necessary and proportionate and in the interest of morals, public order or national security in a democratic society, or
 - it is in the best interests of a child; or
 - it is required for the protection of the private life of the parties ; or
 - it is strictly necessary in special circumstances where publicity, in the court's opinion, would prejudice the interests of justice.
10. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to the law.

You must consider if the policy / practice takes cognisance of the following:

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In general terms the Government (UK and Scottish) will ensure legislation and procedures are in place to ensure this right, however Police Scotland / SPA should consider the following:

1. Individuals, employees or members of the public, are informed promptly, in a language they understand and in detail, the nature of the accusation made against them.
2. Ensure that individuals have free access to an interpreter if needed.
3. For internal proceedings, build in the right to a fair trial to any process of awards, appeals or decisions.
4. Ensure that any appeals process is readily available and easily understood.
5. Ensure that adequate time and facilities are given to prepare a defence or an appeal.

Applicable to following areas of policing (not an exhaustive list):

<ul style="list-style-type: none">• Custody• Access to Solicitors• Interpreting Services• Interviewing	<ul style="list-style-type: none">• Criminal Justice• Victim Support• Appropriate Adults• Case Reporting	<ul style="list-style-type: none">• Citations and Copy Complaints• Professional Standards• Counter Corruption	<ul style="list-style-type: none">• Disciplinary Process• Efficiency Process• Capability Process
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Article 7 – No Punishment Without Law – treat as **absolute**

What does this mean?

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Criminal law cannot be applied retrospectively i.e. if an act becomes a criminal offence; any person who committed the act before it was made a crime is not guilty of the crime.

1. This also applies to 'omissions to act', i.e. to circumstances where a person should have acted, but did not.

2. In addition, a heavier penalty cannot be imposed for a crime which was committed when the penalty was more lenient

However, if, at the time the act (or omission) was committed, the act was contrary to the general law of civilised nations, then trial and / or punishment is allowed.

You must consider if the policy / practice takes cognisance of the following:

In general terms the state will ensure legislation and procedures are in place to uphold this Article, however Police Scotland / SPA should consider the following:

1. Ensure that criminal laws are not applied retrospectively unless under the exception described above.

Applicable to following areas of policing (not an exhaustive list)

- Crime Investigation
- Counter Corruption

- Case Reviews
- Efficiency Processes

- Historic Criminal Investigation
- Conduct

- Professional Standards
- Disciplinary Process

Article 8 – Right to Respect for Private and Family Life – Can be treated as a **qualified** right - includes autonomy; participation in decision-making; privacy; family life; and physical and psychological integrity.

What does this mean?

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Everyone has the right to respect in relation to:

1. Private Life (no set definition but does not mean absolute right to privacy);
2. Family Life;
3. Home;
4. Correspondence.

Policies and decisions which interfere with Article 8 rights are allowed **only** if they are prescribed by law and the aim of the policy or decision is necessary in a democratic society in the interests of one or more of the following:

- national security;
- public safety, including protection of health;
- the prevention of disorder or crime; and / or
- the protection of the rights and freedoms of others.

You must consider if the policy / practice takes cognisance of the following:

1. Where possible, Police Scotland / SPA should try not to make policies or decisions which interfere with someone's right to respect for family and private life.
2. Where this is unavoidable, you must try to interfere as little as possible and make sure that any interference is necessary and proportionate.
3. If you do decide that it is necessary to interfere with someone's private or family life, then it must be lawful and be for one of the allowed reasons as described above.
4. Police Scotland / SPA may be challenged on any interference with Article 8 so evidence of the rationale for decision making in creating a policy / practice must be clear, understandable and available for audit.

Applicable to following areas of policing (not an exhaustive list):

<ul style="list-style-type: none">• Human Resources• Media• Crime Investigation	<ul style="list-style-type: none">• Third Party Reporting• Professional Standards• Counter Corruption	<ul style="list-style-type: none">• Surveillance• Intelligence• Operational Planning• Hate Crime	<ul style="list-style-type: none">• Data Protection• Information Security• Information Sharing• Equality
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			and Diversity Monitoring
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Article 9 – Freedom of Thought, Conscience and Religion – Can be treated as a qualified right.

What does this mean?

Everyone has the right to freedom of Thought, Conscience and Religion. This includes the right to:

1. change religion or beliefs and the right to worship;
2. teach, practice and observe religion or beliefs either in public or in private (called freedom to manifest in the text of the Article).

Policies and decisions which interfere with Article 9 rights are allowed **only** if they are prescribed by law and the aim of the policy or decision is necessary in a democratic society in the interests of one or more of the following:

- Public safety;
- The protection of public order; and / or
- The protection of the rights and freedoms of others.

You must consider if the policy / practice takes cognisance of the following:

1. The need to ensure policies / practices do not interfere with someone's freedom of thought, conscience and religion;
2. Where this is unavoidable, any interference must be as little as possible, necessary and proportionate;
3. If it is decided that it is necessary to interfere with someone's freedom of thought, conscience or religion, then it must be lawful and be for one of the allowed reasons described above;
4. Police Scotland / SPA may be challenged on any interference with Article 9 so evidence of the rationale for decision-making must be clear, understandable and available for audit.

Applicable to following areas of policing (not an exhaustive list):

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<ul style="list-style-type: none">• Human Resources• Media• Operational Planning	<ul style="list-style-type: none">• Hate Crime• Third Party Reporting	<ul style="list-style-type: none">• Counter Corruption• Professional Standards• Disciplinary Processes	<ul style="list-style-type: none">• Crime Investigation• Forced Marriage
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Article 10 – Freedom of Expression – Can be treated as a **qualified right.**

What does this mean?

Everyone has the right to freedom of expression. This includes:

1. Freedom to hold opinions;
2. Freedom to receive and impart information and ideas.

However, Policies and decisions which interfere with Article 10 rights are allowed **only** if they are prescribed by law and the aim of the policy or decision is necessary in a democratic society in the interests of one or more of the following:

- National Security, Territorial Integrity, Public Safety;
- Prevention of Disorder or Crime;
- Protection of Health and Morals;
- Protection of the reputations or rights of others;
- Prevention of the disclosure of information received in confidence; and / or
- Maintenance of the authority and impartiality of the judiciary.

You must consider if the policy / practice takes cognisance of the following:

- The need to ensure non-interference with freedom of expression;
- Where this is unavoidable, any interference must be as little as possible, necessary and proportionate;
- If it is decided that it is necessary to interfere with someone's freedom of expression, then it must be lawful and be for one of the allowed reasons;
- Police Scotland / SPA may be challenged on any interference with Article 9 so evidence of the rationale for decision-making must be clear, understandable and available for audit; and
- Police Scotland / SPA must take action to secure Article 10 rights when they are lawful, as well as refrain from interfering with them.

Applicable to following areas of policing (not an exhaustive list):

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<ul style="list-style-type: none">• Human Resources• Media	<ul style="list-style-type: none">• Counter Corruption• Professional Standards	<ul style="list-style-type: none">• Public Order• Operational Planning	<ul style="list-style-type: none">• Hate Crime• Crime Investigation
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Article 11 – Freedom of Peaceful Assembly and Association – Can be treated as a qualified right.

What does this mean?

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Everyone has the right to freedom of:

1. Peaceful assembly;
2. Association with others - this includes the right to form and / or join a trade union.

However, Policies and decisions which interfere with Article 10 rights are allowed **only** if they are prescribed by law and the aim of the policy or decision is necessary in a democratic society in the interests of one or more of the following:

- National Security;
- Public Safety;
- Prevention of Disorder or Crime;
- Protection of Health and Morals;
- Protection of the reputations or rights and freedoms of others.

You must consider if the policy / practice takes cognisance of the following:

1. The need to ensure that there is no interference with the freedom of peaceful assembly and association;
2. Where this is unavoidable, any interference must be as little as possible, necessary and proportionate;
3. If it is decided that it is necessary to interfere with someone's Article 11 rights, then it must be lawful and be for one of the allowed reasons;
4. Police Scotland / SPA may be challenged on any interference with Article 11 so evidence of the rationale for decision-making must be clear, understandable and available for audit; and
5. Police Scotland / SPA must take action to secure Article 11 rights when they are lawful, as well as refrain from interfering with them.

Applicable to following areas of policing (not an exhaustive list):

<ul style="list-style-type: none">• Human Resources• Employment Practices• Media	<ul style="list-style-type: none">• Public Order• Operational Planning	<ul style="list-style-type: none">• Crime Investigation	<ul style="list-style-type: none">• Hate Crime
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Article 14 – Prohibition of Discrimination

What does this mean?

This is not a standalone right. It piggy-backs onto other rights as it must be attached or linked to one of the other rights i.e. discrimination in the exercise of your right to respect for private and family life.

Everyone is entitled to enjoy their Convention rights without discrimination on any ground, such as:

- Sex,
- National or social origin, Race, Colour, Religion,
- Association with a national minority,
- Property,
- Language,
- Birth,
- Other Status,
- Political or other opinion.

Article 14 only prohibits discrimination in relation to Convention rights. This means that Article 14 must be attached to another Convention right before a claim of discrimination will be heard.

You must consider if the policy / practice takes cognisance of the following:

1. The need to ensure that there is no form of discrimination on any grounds;
2. If it is necessary to treat some people more favourably than others, there must be a legitimate justification for it;
3. Any interference with Article 14 must pursue a legitimate aim and be proportionate;
4. Police Scotland / SPA may be challenged on any interference with Article 14 so evidence of the rationale for decision-making must be clear, understandable and available for audit; and
5. In practice Police Scotland / SPA should assess the potential for discrimination as part of assessing impact on equality which is a section of the Equality and Human Rights Impact Assessment process.

Applicable to following areas of policing (not an exhaustive list):

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<ul style="list-style-type: none">• Equality Impact Assessment	<ul style="list-style-type: none">• Human Resources	<ul style="list-style-type: none">• Hate Crime• Crime Investigation	<ul style="list-style-type: none">• Operational Planning
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The First Protocol: Article 1 – Protection of Property – Can be treated as a qualified right.

What does this mean?

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Every natural or legal person is entitled to the peaceful enjoyment of their possessions. This article relates to individuals and businesses.

However, a state can deprive someone of their property as long as it is in the public interest and subject to conditions provided for by law.

A state can enforce laws which control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

You must consider if the policy / practice takes cognisance of the following:

- The need to ensure that there is no interference with the right to peaceful enjoyment of possessions;
- Where this is unavoidable, any interference must be as little as possible, necessary and proportionate;
- If it is decided that it is necessary to interfere with someone’s possessions, then it must be lawful;
- Police Scotland / SPA may be challenged on any interference with The First Protocol, Article 1 so evidence of the rationale for decision-making must be clear, understandable and available for audit; and
- Police Scotland / SPA must take action to secure The First Protocol, Article 1 rights when they are lawful, as well as refrain from interfering with them.

Applicable to following areas of policing (not an exhaustive list):

<ul style="list-style-type: none">• Productions• Lost and Found Property	<ul style="list-style-type: none">• Crime Investigation• Seizure of Property	<ul style="list-style-type: none">• Custody	<ul style="list-style-type: none">• Crime Scene Examination
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The Human Rights Act and Workplace Practice

A human rights approach to managing workplace practices not only supports Police Scotland / SPA to operate within the law, but can also help the reputation of Police Scotland / SPA as a model employer.

Key Points

- The values embodied in human rights legislation mean that all communities in Scotland and Police Scotland / SPA staff can expect to be treated with fairness, respect, equality, dignity and autonomy.
- The principles provide a useful framework for employers to create a positive culture of inclusion, value and respect.
- This culture can foster improved working relationships and contribute to productivity and business performance.

As public authorities, Police Scotland / SPA must ensure that none of their policies, strategies or procedures infringes the human rights of communities or staff.

Workplace Practice

The following articles are generally seen as having the most relevance in employment. The following examples show some potential workplace issues for Police Scotland / SPA that would require careful consideration of Convention rights.

Article 2 - Right to Life

This right has been interpreted to extend to the protection of “health and physical integrity”.

Potential Issues

- Public authorities have a positive duty to protect the public from risks to their health and safety and from harmful environmental exposure.
- A failure on the part of an employer to ensure a safe and healthy working environment could result in a challenge.

Article 6: The right to a fair trial

This article could be invoked at any stage in internal or external hearings, such as a professional tribunal, disciplinary, grievance procedure or compensation claim.

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Potential issues:

- The need for hearings to be held by people of equal professional standing, especially if a person's professional status might be removed.

Article 8: The right to respect for private and family life, home and correspondence

Numerous areas of corporate behaviour could potentially result in an actual or perceived breach of an employee's right to privacy.

Potential issues include:

- Disclosure of information, protection of data, access to personal records, access to government information, collection of medical data and many other similar issues need to be reviewed in light of Article 8.
- Many employers monitor the use of email and the Internet, yet few have a policy in place to regulate such monitoring.
- Other areas of challenge could include random searches, drug and alcohol testing, conduct outside work, compulsory medical testing, the use of private investigators, stress and harassment.

Article 9 - Freedom of thought, conscience and religion

The right to hold religious beliefs, and the freedom to hold none, is absolute, but the right to manifest these is subject to certain restrictions, depending on the particular circumstances. Article 9 rights have been afforded considerable protection from interference.

Potential issues include:

- Dress codes and the desire to integrate religious wear alongside corporate uniform.
- There have been a number of challenges in respect of expression and manifestation of belief and time off work for religious beliefs.

Article 10: The right to freedom of expression

Article 10 includes the right to hold and express opinions and to receive and impart information and ideas to others. This right to freedom of expression is a qualified right, which means that formalities, conditions, restrictions or penalties may be imposed on the exercise of this right if they are prescribed by law.

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Potential issues include:

- Workplace discussions, where widely different or opposing views are expressed.
- Procedures around whistle-blowing when informing on improper practices of employers where it is a protected disclosure.

Article 11 - Freedom of assembly and association

This article protects the rights of the individual to join political parties, trade unions, professional associations and clubs of any kind. It also sets out the right to protest in a peaceful way against the state or an employer, as long as the individual does not commit any wrongful act and conducts themselves peacefully without violence or the threat of violence. It also ensures the right not to associate with, or to take part in, an assembly against one's will.

Potential issues include:

- Relations with trade unions and staff associations.
- Staff membership of extreme political groups.

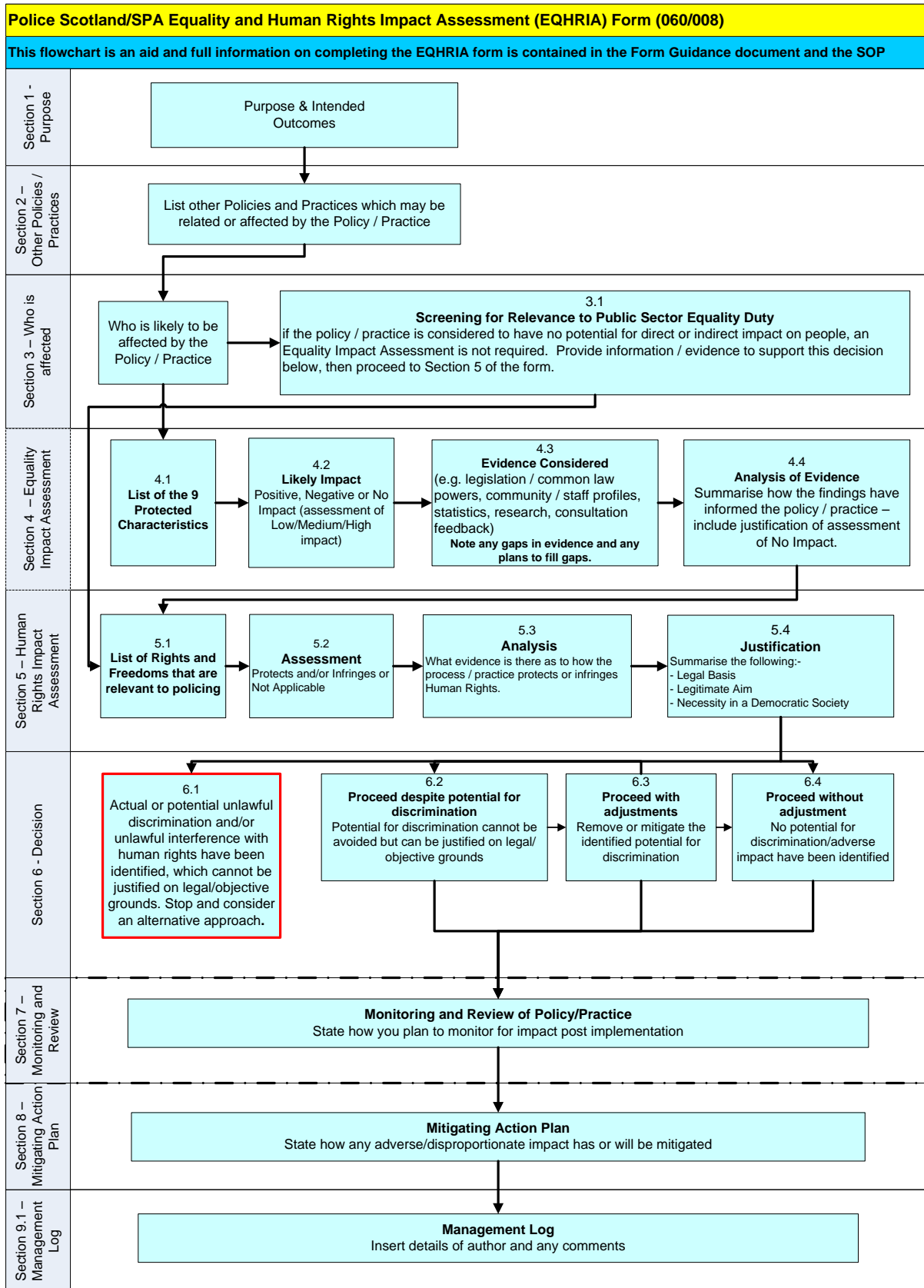
Article 14: (Prohibition of discrimination) in Practice

This broad-ranging provision prohibits the exclusion of access to all of the other rights for any reason of individual status, including race, religion, political views, and association.

Potential issues include:

- Employment and severance issues and equality between full, part-time and retained staff and volunteers.
- Access to training due to part-time working.

Flowchart – Equality and Human Rights Impact Assessment



Case Law / Practice Examples

Article 2 (Right To Life) In Practice

Article 2 Case Study 1: Osman v the United Kingdom (1998)

A teacher had developed an unhealthy interest in one of his pupils that included following him home, locking him in a classroom, vandalising his home and victimising his school friend. The teacher's behaviour was reported to the headmaster and to the police. The teacher subsequently and unexpectedly shot the pupil and his father, injuring the pupil and killing his father. The European Court of Human Rights found that that the police had not failed in their duty under Article 2 to safeguard the father's right to life. There was insufficient proof that the teacher posed a real and immediate threat to life which the police knew about or ought to know about. The positive obligation to safeguard life must not impose an impossible or disproportionate burden on public authorities.

Article 2 Case study 2: Rabone and Anor v Pennine Care NHS Foundation Trust (2012)

A woman with recurrent depressive disorder had attempted suicide on several occasions. She was initially assessed by the hospital as being at high risk of deliberate self-harm and suicide but, following treatment, she was reassessed as moderate to high risk of self-harm. Her father was concerned about her condition and urged the hospital not to allow her home on leave or to discharge her too soon. Subsequently, the woman asked for home leave and was granted it for two days and nights against her parents' wishes. During her home leave she killed herself. The Supreme Court held that the Trust had a duty to take reasonable steps to protect her from the real and immediate risk of suicide and that it had failed to do all that could reasonably have been expected to prevent the risk.

Article 3 (Prohibition of Torture) in Practice

Article 3 Case Study 1: O.O.O. (and Others) v Commissioner of Police for the Metropolis (2011)

This case was brought by four young Nigerian women who were brought to England illegally, made to work in conditions of servitude and subjected to physical and emotional abuse that amounted to inhuman and degrading treatment. The High Court found that the Metropolitan Police had failed to take operational measures to protect victims of human trafficking, and had failed in their investigative duty under Article 3 after they received credible complaints of the alleged abuse. The claimants were awarded damages of £5,000 each.

Article 3 Case Study 2: R (C) v Secretary of State for Justice (2008)

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Secure Training Centres were established to accommodate vulnerable teenagers in custody. Until July 2007, physical restraint could only be used as a form of discipline in situations where it was necessary to prevent escape, damage to property or injury. Then new rules were introduced that expanded the permissible use of restraint to circumstances where it was 'necessary for the purposes of ensuring good order and discipline'.

In this case, the Court of Appeal quashed the new rules on the basis that they breached Article 3. The Court of Appeal found that the use of physical restraint that includes the deliberate infliction of pain is degrading and an infringement of human dignity in breach of Article 3. It could not be justified as being strictly necessary for ensuring good order and discipline. Where a person has been deprived of their liberty and is dependent on the state, and is young and vulnerable, the state is under a special obligation to treat them with humanity.

Article 4 (Prohibition of Slavery and Forced Labour) in Practice

Article 4 Case study 1: R v Balira (2011):

A 21-year-old woman, Ms M was brought to the UK from Tanzania by the defendant Mrs B. Ms M claimed that her passport had been confiscated and that Mrs B kept her as a slave in her flat in South London under unbearable conditions. Ms M alleged that she was forced to share a bed with Mrs B's 12-year-old son and was subjected to vicious assaults where she was punched and slapped on a regular basis.

Ms M was never paid for the work that she had done. Mrs B was prosecuted once the authorities were alerted to situation. The jury convicted Mrs B under section 71 of the Coroners and Justice Act 2009 of the offence of holding a vulnerable young woman in servitude and she was found guilty of forcing her to work as a slave for six months. She was sentenced to six months imprisonment and was ordered to pay Ms M £3,000 in compensation.

Article 4 Case Study 2: CN v the United Kingdom (2008):

A 23-year-old woman travelled to the UK to escape from the sexual and physical violence she had experienced in Uganda. She entered the UK on a false passport and visa obtained by family members who then made her work in the care industry. In her final job, she was put to work as a live in carer for an elderly couple. She did not receive payment for her work. She was advised that she should not talk to anyone, as she could easily be arrested or come to harm in London. She was permanently on-call during the day and night. She was allowed only a couple of hours leave one Sunday of each month, but was not permitted to travel on public transport, and was kept at the elderly couple's house at all times, with instructions not to leave or talk to anyone.

Her asylum claim failed and the police discontinued their investigation into her allegation on the basis that they found no evidence of her having been trafficked. At that point there was no relevant offence in English criminal law which applied to

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forced labour or servitude of that kind. The European Court of Human Rights upheld the complaint that there had been a failure properly to investigate her complaints and that this failure was, at least in part, rooted in defective legislation, which did not effectively criminalise the domestic servitude of which she complained, which was contrary to Article 4.

Article 5 (Right to Liberty and Security) in Practice

Article 5 Case Study 1: KB and Others v Mental Health Review Tribunal and Secretary of State for Health (2002):

KB and others were patients detained under the Mental Health Act 1983. Each of them applied to a Mental Health Review Tribunal for a review of their detention. In each case, the hearing arranged by the Tribunal was repeatedly adjourned, leading to delays of up to 22 weeks.

Delays may result in the unjustified detention of patients who, if their cases had been considered earlier, would have been discharged. Cancellations of hearings, particularly if repeated, have other consequences: distress and disappointment for the mentally vulnerable patient, the risk of damage to his or her relationship with the psychiatrists and other hospital staff, and loss of trust in the tribunal system.

KB and others argued that their cases were typical and that, on the specific facts of their cases, the delays they suffered could not be justified. The court found in each case that the delay in hearing each application was not justified and that the claimants had not received a speedy hearing as required by Article 5.

Article 5 Practice Example (Provided by the British Institute of Human Rights):

A hospital psychiatric department held a number of mental health detainees who spoke little or no English. Members of a user-led mental health befriending scheme were concerned about the fact that the services of an interpreter were not available when detaining these patients. They used human rights arguments based on the right to liberty (under Article 5) and the right not to be discriminated against on the basis of language (under Article 14) to argue successfully for a change in the hospital's practice of failing to provide an interpreter.

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Article 6 (Right to a Fair Trial) in Practice

Article 6 Case Study 1: Begum v Tower Hamlets LBC (2003):

The Council offered the applicant accommodation which she said was unacceptable. The Council's re-housing manager conducted a review and decided that the applicant should have accepted the flat. The applicant appealed on the ground that she had not had a hearing before an independent tribunal, because the re-housing manager was not independent. The House of Lords (in its judicial capacity, and at the time the highest UK court) held that the housing allocation decision was a 'determination of civil rights', but that she had had a fair hearing before an independent tribunal, even though the re-housing manager was not independent. The whole review procedure (the reviewing officer's decision plus an appeal to the County Court) provided the protections required by Article 6.

Article 6 Case Study 2: DG v Secretary of State for Work and Pensions (ESA) (2010):

DG appealed against a decision to refuse him Employment and Support Allowance (ESA), which was taken after a medical examination. Even though DG requested Jobcentre Plus to contact his GP (also his nominated representative), no evidence was sought from the GP or DG's social worker. At the First Tier Tribunal, on the advice of Jobcentre Plus, DG waived his right to an oral hearing. The appeal was dealt with on paper and dismissed. On appeal, taking into account the bad advice from Jobcentre Plus, the claimant's difficulties arising from his mental health problems, and the failure of both the Department for Work and Pensions and the tribunal to communicate with his GP, the Upper Tribunal found that DG did not have a fair hearing of his appeal as required by Article 6.

Article 7 (No Punishment without Law) in Practice

Article 7 Case Study 1: R v Secretary of State for the Home Department, ex parte Utley (2004):

In 1995, a man was convicted of various sexual offences, including rape. He was sentenced to 12 years' imprisonment. He was released after serving two-thirds of his sentence, subject to licence conditions, until three-quarters of the way through his sentence. However, had he been convicted and sentenced at the time the offences took place, the legal provisions then in force would have entitled him to be released on remission without conditions. He argued that the imposition of licence conditions rendered him subject to a heavier penalty than that which was applicable at the time the criminal offence was committed, and that this was a breach of Article 7.

The House of Lords (in its judicial capacity, and at the time the highest UK court) disagreed. They held that Article 7 would only be infringed if a sentence imposed on a defendant exceeded the maximum penalty which could have been imposed under the law in force at the time the offence was committed. That was not the case here because, even at the date of the offences, the maximum sentence for rape was life

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imprisonment. Article 7 was not intended to ensure that the offender was punished in exactly the same way as would have been the case at the time of the offence, but merely to ensure he was not punished more heavily than the maximum penalty applicable at the time of the offence.

Article 8 (Right to Respect for Private and Family Life) in practice

Article 8 Case Study 1: Peck v the United Kingdom (2003):

A man suffering from depression attempted suicide by cutting his wrists on the street. CCTV cameras filmed him walking down the street with the knife. The footage was then published as film and as photographs without his consent and without properly concealing his identity. The European Court of Human Rights held that, although the filming and recording of the incident did not necessarily interfere with his privacy, the disclosure of the CCTV footage by the local authority constituted a serious interference with his right to a private life. In this case there were insufficient reasons to justify disclosure of the footage without the man's consent and without masking his identity. Accordingly, disclosure of the material was a disproportionate interference with his private life.

Article 8 Case Study 2: R (on the application of Catt and T) v Metropolitan Police:

This relates to a Supreme Court judgment on an Article 8 disclosure issue, using the European Court of Human Rights definition in the 2002 Pretty v United Kingdom case. This says:

"The concept of 'private life' is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person ... It can sometimes embrace aspects of an individual's physical and social identity ... Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by article 8 ... Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world."

Article 9 (Freedom of Thought, Conscience and Religion) in Practice

Article 9 Case Study 1 (Employment): Eweida v the United Kingdom (January 2013):

British Airways' decision to prevent Nadia Eweida, a Christian employee, from wearing a visible crucifix in a customer service role was disproportionate and unjustifiably breached her Article 9 right to manifest her beliefs at work. Although there was no religious requirement for her to wear a visible crucifix and she could have found another job which allowed her to do so, the European Court of Human Rights concluded too much weight had been given to the employer's corporate image in this case, and not enough to Ms Eweida's right to wear a visible crucifix. Allowing the visible crucifix to be worn did not significantly affect British Airways' corporate image.

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Article 9 Case Study 2 (Employment): Ladele v the United Kingdom (January 2013):

A Christian marriage registrar who refused to perform civil partnerships for same-sex couples due to her religious beliefs lost her job and claimed her employer (Islington Council) had acted in violation of her Article 9 rights, amongst other claims. The domestic courts and the European Court of Human Rights dismissed her claims. In relation to Article 9 they decided that, where other rights were relevant, the employer's use of its corporate 'equality and dignity' policy to refuse to exempt an employee from those particular duties was justifiable. The wide discretion given to the employer in this case to strike an appropriate balance between competing considerations had not been exceeded. The argument that Ms Ladele's employer should have accommodated her conscientious objection was also rejected.

Article 9 Case Study 3: Begum v the Head Teacher and Governors of Denbigh High School (2006):

Where a school provided a range of school uniform options to pupils, after consultation with local mosques, then that school's subsequent decision to prevent a female Muslim pupil from wearing an impermissible form of dress at school (a jilbab – that looked similar to a long coat) did not breach the pupil's Article 9 manifestation rights, according to the House of Lords.

The majority of the House of Lords (in its judicial capacity, and at the time the highest UK court) ruled that the pupil's Article 9 right to manifest her religion had not been interfered with in this case because she had chosen a school where such a policy existed and there were other schools nearby that she could have chosen to attend which permitted wearing of the jilbab, enabling her to comply with her religious beliefs.

Article 10 (Freedom of Expression) in Practice

Article 10 Case Study 1: Observer and the Guardian v the United Kingdom (1991):

The Guardian and Observer published some excerpts from Peter Wright's book, Spycatcher, which contained material alleging that MI5 had conducted unlawful activities. The Government succeeded in claiming an injunction preventing further publication until proceedings relating to a breach of confidence had been concluded. Subsequently, the book was published in other countries and then in the UK. The Guardian complained that the continuation of the injunction infringed Article 10.

The European Court of Human Rights held that although the injunction was lawful, as it was in the interests of national security, once the book had been published, there was insufficient reason for continuing the publication ban. The injunction should have been discharged once the information was no longer confidential.

Article 11 (Freedom of Peaceful Assembly and Association) in Practice

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Restrictions:

The state is allowed to limit the Article 11 rights of members of the armed forces, police and civil service, provided these limitations can be justified. This is based on the idea that it is a legitimate aim of democratic society for these people to be politically neutral, and thus restricted from being closely associated with a particular political cause.

Article 11 Practice Example:

The police have recognised their legal obligation to facilitate public protest.

In August 2010 the English Defence League (EDL) planned a protest in Bradford. A counter demonstration by Unite Against Fascism was also planned. The protest was not welcomed by some local people, who wanted the protest banned. Violence was feared, as previous protests by EDL had led to violent clashes.

West Yorkshire Police had a duty to protect the protest unless there was clear evidence that violence would occur. They facilitated the protest by carrying out a human rights impact assessment, and engaging with people, in particular the Muslim community of Bradford, about the right to peaceful protest. Although some people in the community were initially upset, they realised that the police had to allow the protest, and engaged with the police on how to persuade young people not to get involved in criminal activity around the protest.

Article 14 (Prohibition of Discrimination) in Practice

Article 14 Case Study 1: Ghaidan v Godin-Mendoza (2004):

Mr Godin-Mendoza shared a flat with his same-sex partner, who was the tenant. When the tenant died the landlord claimed possession. The county court judge ruled that Mr Godin-Mendoza could not succeed to the tenancy of the flat as a surviving spouse under the Rent Act 1977. He could succeed to an assured tenancy as a member of the original tenant's family – but this was a less advantageous status.

The Court of Appeal overturned this decision in Mr Godin-Mendoza's favour, and the landlord appealed. The House of Lords (in its judicial capacity, and at the time the highest UK court) held that the interpretation of the Rent Act concerned the right to respect for a person's home guaranteed by Article 8, and must not be discriminatory; it must not distinguish on the grounds of sexual orientation unless this could be justified.

In this case, the distinction had no legitimate aim and was made without good reason – the social policy considerations that were relevant to spouses should also apply to same-sex couples.

The difference of treatment infringed Article 14 read in conjunction with Article 8. The court used its interpretative powers under the Human Rights Act to allow the Rent Act to be read in a way that complied with Convention rights – that is, as

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though the survivor of a same-sex couple were the surviving spouse of the original tenant. The landlord's appeal was dismissed.

First Protocol, Article 1 (Protection of Property) in Practice

Protocol 1 Case Study 1: Davies & Anor v Crawley Borough Council (2001):

The local authority adopted a street trading scheme which made some of its streets prohibited for trading and some that required payment of a fee to trade. This affected Mr Davies' business as he owned a mobile snack van trading on a street designated as prohibited.

The local authority offered Mr Davies the opportunity to move to a street where trading was permitted but where payment of a fee to trade was required. Again it was found that the council has struck a fair balance as there was a need to ease traffic congestion on the street in question.