



Equality Impact Assessment [EIA]

Demonstrating Compliance with the Public Sector Equality Duty (PSED)

Due regard must be shown:

- ✓ Decision-makers must be made aware of their duty to have 'due regard' and to the aims of the duty
- ✓ Due regard is fulfilled before and at the time a particular policy or operational activity, that will or might affect people with protected characteristics is under consideration, as well as at the time a decision is taken. It is not a box ticking exercise.
- ✓ Due regard involves a conscious approach and state of mind. The duty must be exercised with rigour and an open mind.
- ✓ The duty cannot be delegated to another body and will always remain on the body subject to it.
- ✓ The duty is a continuing one.
- ✓ It is good practice for the public body to keep an adequate record showing that they have considered their equality duties and considered relevant questions.

1. Name and outline of policy proposal, guidance or operational activity

Introduction:

The Government intends to revise the current intimidation policy for Afghan Locally Employed Staff (LES) into the Afghan relocation and assistance policy (ARAP) to enable LES who were employed by the Ministry of Defence, the Foreign Commonwealth and Development Office (or formerly the Foreign and Commonwealth Office and Department for International Development) currently in Afghanistan to relocate to the UK.

This document considers the Public Sector Equality Duty in relation to the amendment to paragraph 276BB1(v) of the Immigration Rules.

Background

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There are currently two separate schemes to assist current and former LES in Afghanistan: the ex-gratia scheme (EGS) and the intimidation policy. This document considers changes to the intimidation policy only, which will be revised into the ARAP. The EGS will remain unchanged.

To date, 21 individuals (four LES and their dependants) have relocated to the UK under the intimidation policy. All were FCDO employees.

The existing intimidation policy is available to any current or former Afghan LES who has been employed directly by the UK Government in Afghanistan since 2001, from the first day of their employment, regardless of their role, job or length of service.

The ARAP moves away from the present policy model which is based on the investigation of alleged cases of intimidation and requires discrete evidence into an assessment-oriented approach. This will be grounded in a recognition that the situation in Afghanistan has evolved and poses a latent threat to many current and former LES in particular roles. Other assistance, such as internal moves or in country and bespoke security advice, will still be available where appropriate and reflects that not all LES are able or willing to relocate.

Relocations under the new policy will be two-speed, recognising that some LES are at more risk than others: a fast track for relocation of priority cases, and a routine track for less urgent cases. Initial risk assessment of exposure due to work with HM Forces will dictate which track is most suitable in each case. The new model will be a two-tier model to retain flexibility and agility in light of changing circumstances.

The MoD has conducted a review of employment records to consider former LES who may be eligible to apply for the revised policy. It is acknowledged that the whereabouts of individuals who may be eligible for the expanded policy may not be known – some may have left Afghanistan – and this makes it difficult to forecast with any sort of precision exactly how many will come forward to make an application and, from those, how many will be successful.

The MoD estimates that between 290 and 829 LES and their families might be relocated. Analysis of previous take-up rates indicates that figures are likely to be nearer the lower boundary, due to individuals having already relocated to the UK or elsewhere through other channels or being unwilling or unable to take up the offer. These numbers include those in service with FCDO who would also become eligible to relocate.

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2. Summary of the evidence considered in demonstrating due regard to the Public-Sector Equality Duty.

UK legislation and policy:

UK Immigration Rules: www.gov.uk/guidance/immigration-rules

Data from internal management information reporting:

Resettlement, Asylum Support and Integration (RASI) maintain Home Office records on the number of LES relocated.

MoD analysis of the likely number of LES who could be eligible to apply under the revised policy.

Published migration stats

The policies for LES do not feature in any published data as recognised immigration statistics. However, local management information has indicated that a total of 21 individuals (four former LES and family members) have relocated to the UK under the provisions of the intimidation policy, along with 1,332 (447 former LES and family members) who have relocated under the ex gratia scheme. This is a combination of information from RASI (which manages the relocation process) and UKVI (which issues visas).

3a. Consideration of limb 1 of the duty: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act.

Age

We have considered whether those of a particular age would be either directly or indirectly discriminated against by the changes to the rules and policy. We are not aware of any evidence to suggest people with this characteristic are particularly affected as the ARAP will be applied irrespective of age. The minimum age for those applying under the policy is 18 years – MoD has not advised of any upper age limit for those who were employed as interpreters. Under section 28 of the Equality Act 2010, it is clear that Part 3 (Services and Public Functions) does not apply to the protected characteristic of age, so far as relating to persons who have not attained the age of 18. The LES relocated under the intimidation policy to date were aged 35-41.

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- The partners and especially the children of LES span different age ranges, but subject to appropriate verification, the Home Office will deal with them equally when arranging relocation to the UK, except that the Rules for dependants only include minor children, and will not include adult dependent children over the age of 18. Additionally, to be classified as a 'partner' of a Relevant Afghan Citizen, the Rules require that the partner must be over the age of 18 at the date of the application.
- Spouses and qualifying partners who must be 18 or over at the time of entering the UK, and children who travel to the UK for relocation as part of a recognised family group, will be given leave to remain in the UK in line with the lead principal (LES). Confirmed family groups will be included in the fee exemption when settlement applications are submitted. In addition, parents can apply to have the status of UK-born children brought in line with parents who relocated, and they may also be included in the settlement application free of charge.
- We aim to replicate as far as possible the conditions for the original policy – and more generally the Immigration Rules pertaining to family members. In general terms, those applying as dependent children must be under the age of 18 years – those applying as partners must be aged 18 years or over and those applying as the principal, must themselves be aged 18 years or over.

Disability

The development of this revised policy, its use and decisions to grant leave has and will not be based on the protected characteristics of disability. The Home Office does not collect or process data in respect of this protected characteristic for immigration purposes. The Rules considered here apply regardless of this protected characteristic. As a result, there is no direct impact based on this characteristic and no indirect impact has been identified at the present time. When the proposals are implemented, any emerging impacts not identified at this stage will be recorded and analysed when the Equality Impact Assessment is reviewed.

Reasonable Adjustments – The Rules considered here apply regardless of this protected characteristic. As a result, there is no direct impact based on this characteristic and no indirect impact has been identified at the present time. When the proposals are implemented, any emerging impacts not identified at this stage will be recorded and analysed when the Equality Impact Assessment is reviewed.

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Gender Reassignment

The development of this revised policy, its use and decisions to grant leave has and will not be based on the protected characteristics of gender reassignment. The Home Office does not collect or process data in respect of this protected characteristic for immigration purposes. The Rules considered here apply regardless of this protected characteristic. As a result, there is no direct impact based on this characteristic and no indirect impact has been identified at the present time. When the proposals are implemented, any emerging impacts not identified at this stage will be recorded and analysed when the Equality Impact Assessment is reviewed.

Marriage and Civil Partnership

Spouses and civil partners are able to accompany Afghan LES relocating to the UK, or to join them at a later date, provided they meet the requirements of paragraph 276BK1 of the Immigration Rules. In introducing the new policy, we aim to replicate as far as possible the conditions for the original policies – and more generally the Immigration Rules - pertaining to family members.

When the proposals are implemented, any emerging impacts not identified at this stage will be recorded and analysed when the Equality Impact Assessment is reviewed.

Pregnancy and Maternity

The development of this revised policy, its use and decisions to grant leave has and will not be based on the protected characteristics of pregnancy. The Home Office does not collect or process data in respect of this protected characteristic for immigration purposes. The Rules considered here apply regardless of this protected characteristic. As a result, there is no direct impact based on this characteristic and no indirect impact has been identified at the present time. When the proposals are implemented, any emerging impacts not identified at this stage will be recorded and analysed when the Equality Impact Assessment is reviewed.

Race

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There is direct discrimination on the basis of race (nationality). The intimidation policy applies only to Afghan nationals and is in recognition of the role they played supporting the UK in Afghanistan.

Direct discrimination on grounds of nationality or national origin is permissible because the scheme is provided for by the Immigration Rules: paragraph 17 of Schedule 3 to the Equality Act 2010.

Religion or Belief

We are not aware of any evidence to suggest people with this characteristic are particularly affected as the intimidation policy is applied irrespective of religion or belief. It is recognised that there is a potential indirect impact on the basis of religion or belief, if the majority of interpreters and other LES were predominantly of one religion, due to the fact that in Afghanistan the majority of the population is Muslim. However, the intimidation policy is applied irrespective of religion or belief, and any such indirect impacts are considered to be justified as a proportionate means of achieving a legitimate aim: to acknowledge the debt the UK owes to those who supported HM Forces in Afghanistan, without whose support the HM Forces would undoubtedly have faced a much more difficult situation.

Where such matters are raised, we will consider this in the context of the information available. Where the protected characteristic does impact on the ability to apply for settlement, this will be considered as part of the overall assessment of the application.

Sex

The LES were working primarily as interpreters, accompanying HM Forces on the front line and in often hostile environments. The LES who have so far relocated have been male. The existing intimidation policy is available to any current or former Afghan LES who has been employed directly by the UK Government in Afghanistan since 2001, from the first day of their employment, regardless of their sex, but those employed by the MoD were all men. FCDO currently employs five or six women. The MoD did not aim its recruitment at men in particular but the fact that all those recruited were men reflects the cultural norms in Afghanistan, in that the majority of females do not work outside the home and would not travel without a male relative.

It is acknowledged that in Afghanistan, there will be fewer women than men in a position to take advantage of this policy. However, the policy will be applied irrespective of sex, and any such indirect impacts are considered to be justified as a proportionate means of achieving a legitimate aim: to acknowledge the debt the UK owes to those who supported HM Forces in Afghanistan, without

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whose support the HM Forces undoubtedly would have faced a much more difficult situation. The Rules in relation to dependants do not differentiate on the grounds of sex and are not anticipated to have any indirect impact on these grounds.

Unmarried, female FCDO employed LES may be indirectly discriminated against as it may be difficult for them to travel to and settle in the UK because travelling unaccompanied through Afghanistan may be difficult due to cultural norms. The FCDO currently employs five or six unmarried female LES. In such instances, we would discuss with them practical options around how relocation could take place in a way that is acceptable in order to minimise the extent to which they are disadvantaged.

Where such matters are raised, we will consider this in the context of the information available. Where the protected characteristic does impact on the ability to apply for relocation or subsequent settlement, this will be considered as part of the overall assessment of the application.

Sexual Orientation

The development of this revised policy, its use and decisions to grant leave has and will not be based on the protected characteristics of and sexual orientation. The Home Office does not collect or process data in respect of this protected characteristic for immigration purposes. The Rules considered here apply regardless of this protected characteristic. As a result, there is no direct based on this characteristic and no indirect impact has been identified at the present time. When the proposals are implemented, any emerging impacts not identified at this stage will be recorded and analysed when the Equality Impact Assessment is reviewed.

3b. Consideration of limb 2: Advance equality of opportunity between people who share a protected characteristic and people who do not share it.

In relation to the exercise of immigration and nationality functions, this does not apply to the protected characteristics of age or race (except for colour).

In respect of the protected characteristics of disability, religion or belief, race (colour), gender reassignment, pregnancy and maternity, sex and sexual orientation, we consider that these proposals are likely to be neutral as regards advancing equality of opportunity. The policy does enable those injured during the course of their duties to relocate to the UK and several have already done so under the ex gratia scheme.

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3c. Consideration of limb 3: Foster good relations between people who share a protected characteristic and persons who do not share it

The revision of the intimidation policy into the ARAP in Paragraph 276BB1(v) will provide further recognition of the commitment and bravery of LES in Afghanistan and the support they provided to HM Forces.

We do not expect any negative reaction as the Afghan LES receive widespread support as a result of their contribution and the commitment which they provided through their employment with the UK. Whilst LES are not given automatic settlement on entry to the UK, it expands the current approach to enable additional Afghan LES to relocate thereby contributing to the promotion of good relations.

4. Summary of foreseeable impacts of policy proposal, guidance or operational activity on people who share protected characteristics

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
Age	NO	N/A	N/A
Disability	NO	N/A	N/A
Gender Reassignment	NO	N/A	N/A
Marriage and Civil Partnership	NO	N/A	N/A

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Pregnancy and Maternity	NO	N/A	N/A
Race	YES	There is direct discrimination on the basis of race (nationality). The intimidation policy applies only to Afghan nationals and is in recognition of the role they played supporting the UK in Afghanistan.	Direct discrimination on grounds of nationality or national original is permissible because the scheme is provided for by the Immigration Rules: paragraph 17 of Schedule 3 to the Equality Act 2010.
Religion or Belief	YES	It is recognised that there is a potential indirect impact on the basis of religion or belief, if the majority of interpreters and other LES were predominantly of one religion, due to the fact that in Afghanistan the majority of the population is Muslim. However, the intimidation policy is applied irrespective of religion or belief, and any such indirect impacts are considered to be justified as a proportionate means of achieving a legitimate aim: to acknowledge the debt the UK owes to those who supported HM Forces in Afghanistan, without whose support the HM Forces would undoubtedly have faced a much more difficult situation.	Where such matters are raised, we will consider this in the context of the information available. Where the protected characteristic does impact on the ability to apply for settlement, this will be considered as part of the overall assessment of the application.

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<p>Sex</p>	<p>YES</p>	<p>The LES were working primarily as interpreters, accompanying HM Forces on the front line and in often hostile environments. The LES who have so far relocated have been male. The existing intimidation policy is available to any current or former Afghan LES who have been employed directly by the UK Government in Afghanistan since 2001, from the first day of their employment, regardless of their sex, but those employed by the MoD were all men. FCDO currently employs five or six women. The MoD did not aim its recruitment at men in particular but the fact that all those recruited were men reflects the cultural norms in Afghanistan, in that the majority of females do not work outside the home and would not travel without a male relative.</p> <p>It is acknowledged that in Afghanistan, there will be fewer women than men in a position to take advantage of this policy.. However, the policy will be applied irrespective of sex, and any such indirect impacts are considered to be justified as a proportionate means of achieving a legitimate aim: to acknowledge the debt the UK owes to</p>	<p>Where such matters are raised, we will consider this in the context of the information available.</p> <p>Where the protected characteristic does impact on the ability to apply for settlement, this will be considered as part of the overall assessment of the application.</p>
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Sexual Orientation	NO		

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5. In light of the overall policy objective, are there any ways to avoid or mitigate any of the negative impacts that you have identified above?

The approach set out above will make it easier for those who feel that their safety is threatened as a result of their work alongside UK forces in Afghanistan to relocate in the UK.

6. Review date

April 2022

7. Declaration

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

SCS sign off: As below

Name/Title: Oliver Carlisle, Head of Family Policy Unit

Directorate/Unit: Family Policy Unit, Sovereign Borders Directorate

Lead contact: Tracey Titman

Date: 12 February 2021

For monitoring purposes all completed EIA documents **must** be sent to the PSED@homeoffice.gov.uk

Date sent to PSED Team: 25 February 2021

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