

# NHS SCOTLAND RESILIENCE

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## PREPARING FOR EMERGENCIES

Guidance for Health Boards in  
Scotland

Annex: Equalities, Human Rights  
and Resilience Planning

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# 1. INTRODUCTION

**1.1** This document is an Annex to the NHSScotland Guidance *Preparing For Emergencies*.

**1.2** The Equality Duty requires Health Boards and other public bodies to consider the needs of all individuals, including staff, when developing policy, designing and delivering services.

**1.3** This Annex summarises public sector duties under Equalities and Human Rights legislation. It highlights specific issues for those concerned with resilience-planning to consider in the process of preparing for emergencies. It contains checklists to assist resilience planners in the process of

assessing and understanding the impact of their organisations major incident plans and responses to various scenarios on people protected by the Equalities and Human Rights legislation.

**1.4** It is important that Health Boards understand how different people will be affected by their activities when responding to major incidents so that services are appropriate to meet the needs of different people.

**1.5** The information in this Annex has been compiled with the assistance of NHS Health Scotland and The Scottish Human Rights Commission.

## 2. THE PUBLIC SECTOR EQUALITY DUTY

**2.1** The public sector equality duty (known as the 'General Duty') covers protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief, sexual orientation and marriage and civil partnerships. It requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

# 3. HUMAN RIGHTS AND RESILIENCE PLANNING

**3.1** The Human Rights Act 1998 applies in its entirety but some rights can be derogated in exceptional circumstances including in cases of public emergency. This is defined as,

*'an exceptional situation of crisis or emergency which afflicts the whole population and constitutes a threat to the organised life of the community of which the community is composed'.*

**3.2** A public emergency must be actual or imminent, potentially affect the whole nation and threaten the continuance of the organised life of the community.

**3.1** In most situations to which this guidance applies it is unlikely that the UK would formally derogate from Convention rights. The normal rules of respect for absolute rights and legality, necessity and proportionality of interference with qualified rights would therefore apply.

**3.4** Human Rights under the European Convention on Rights (ECHR) fall broadly into three categories:

**Absolute rights** - cannot be infringed under any circumstances and include Article 3 (the prohibition of torture, inhuman and degrading treatment or punishment), Article 2 (the right to life), Article 4 (prohibition of slavery and forced labour) and Article 7 (no punishment without law);

**Limited rights** - can be limited in certain circumstances as set out in the ECHR and include Article 5 (the right to liberty and security); and

**Qualified rights** - that the state can lawfully interfere with in certain circumstances and include Article 8 (the right to a private and family life, home and correspondence) and Article 10 (freedom of expression).

**3.5** An interference with a qualified right must have a legal basis, pursue a legitimate aim (such as public health or the protection of the rights of others), and be the least restrictive measure capable of achieving that aim (the tests of legality, necessity and proportionality).

## **Application of Human Rights issues: examples in resilience planning**

**3.6** There may be a range of situations where human rights issues are engaged in times of an emergency, be it a 9/11 type attack or a pandemic outbreak such as Swine Flu or Norovirus. It is important that all measures taken by Government to enable services to cope with significant staff shortages and other impacts of emergencies respect human rights, including the avoidance of arbitrary limitation of rights, and discriminatory treatment, and it is vital that individuals are protected from ill-treatment and detention.

### Swine flu/Norovirus Pandemic

**3.7** In the case of an outbreak of Swine flu or Norovirus, emergency services may be required to confine infected people to a certain area in order to prevent spread of the virus. Such measures could lead to potential breaches of Article 5 of the ECHR which is a limited right, protecting an individual's right to liberty. Article 5 contains a list of legitimate grounds for the deprivation of liberty, and procedural guarantees associated with deprivation of liberty.

**3.8** It is important to note that Article 5(1)(e) of the ECHR permits the lawful detention of persons for *'the prevention of the spreading of infectious diseases.'*

**3.9** A pandemic outbreak could also impact upon the right to respect for private and family life under Article 8 of the ECHR. Any restriction on contact with family members, for example, should be the least restrictive option which could achieve the aim of protecting public health. Proportionality should be assessed based on the impact of particular individuals, taking into account their specific conditions and circumstances. This may be relevant in contexts of quarantine.

**3.10** The conditions of detention in which infected persons may be held may give rise to human rights issues under Article 3 of the ECHR.

**3.11** Article 3 is an absolute right from which no derogation or exception is permitted at any time. Further, Article 3 requires the State to take positive measures for protection from ill-treatment.

### Triage

**3.12** Following a natural disaster or terrorist attack, emergency services will be stretched to the limit and medical staff will be thin on the ground. Medical services and health providers may be required to triage patients and in doing so will need to guard against risks to life (Article 2) and to leaving patients in circumstances which would amount to cruel, inhuman or degrading treatment, within the meaning of Article 3.

**3.13** Positive obligations under each right require health and other public authorities to take all reasonable steps to avoid real and immediate risks to life or of degrading treatment. This has implications for due diligence in the design and delivery of systems of prioritisation.

# 4. EQUALITIES, HEALTH AND HUMAN RIGHTS: IMPACT ASSESSMENT CHECKLISTS

**4.1** This checklist is intended to inform and prompt discussion when assessing the Equalities, Health and Human Rights impact of policies, plans/strategies and procedures in relation to emergency preparedness<sup>1</sup>.

**4.2** Its aim is to identify 'potential' areas of impact and where further work may be needed to determine *whether* these apply and *how significant* they are. Health Boards may adopt their own approach to Health Inequalities Impact Assessment.

**4.3** Some of the issues to think about when considering the ways in which a plan could have differential impacts on different population groups are outlined below<sup>2</sup>. It is not an exhaustive list, and is provided simply as initial pointers to stimulate thinking.

## 1. Equality and human rights issues: all equalities groups

### What to consider when developing plans/strategies

- Ensure language and images in any communications are inclusive and appropriate.
- Communications should use the National Standards for Community Engagement.
- Consider potential to promote positive attitudes and equal opportunities for all population groups.
- Consider potential to foster positive good relations between different groups and encourage participation in public life for all groups.
- Consider potential to address discrimination (direct, indirect and victimisation), harassment and personal harm against any population group.
- Consider the potential to better understand and address assumptions, prejudice and stereotyping of different population groups.
- Consider how to address confidentiality, privacy and data protection issues.
- Consider how to collect demographic information on each of the groups for profiling of access to/outcomes of services and initiatives.

<sup>1</sup> Health Inequalities Impact Assessment guidance. see [www.healthscotland.com/equalities](http://www.healthscotland.com/equalities)

<sup>2</sup> See also <http://www.healthscotland.com/Equalities/characteristics/index.aspx>

## 2. Equalities Impact Assessment Checklists

**Which groups of the population do you think will be affected by your major incident policy/plan?**

Population groups	How might these groups be affected differentially by the policy/ plan etc.?
<ul style="list-style-type: none"> <li>• Older people, young people and children</li> <li>• Women, men and transgender people (includes issues relating to pregnancy and maternity)</li> <li>• Disabled people (includes physical disability, learning disability, sensory impairment, chronic conditions, mental health problems)</li> <li>• Minority ethnic people (includes Gypsy/ Travellers, non-English speakers)</li> <li>• Refugees and asylum seekers</li> <li>• People with different religions or beliefs (includes people with no religion or belief)</li> <li>• LGBT and heterosexual people</li> <li>• People in different socio-economic groups (includes those living in poverty/ people of low income)</li> <li>• People in different social classes</li> <li>• Homeless people</li> <li>• People involved in the criminal justice system</li> <li>• People who have low literacy</li> <li>• People in remote, rural and/or island locations</li> <li>• Carers</li> <li>• Staff (includes people with different work patterns)</li> <li>• Others (please add):</li> </ul>	



### Assessing the positive or negative impacts of the plan

Which population groups could be affected by these impacts?	Population group(s) affected	What will the Health Board do to rectify or minimise these impacts?
<p>What impact will the policy have on <b>equality</b>?</p> <ul style="list-style-type: none"> <li>• Discrimination against groups of people</li> <li>• Promoting equality of opportunity</li> <li>• Tackling harassment</li> <li>• Promoting positive attitudes</li> <li>• Promoting good relations between different groups</li> <li>• Community capacity building</li> </ul>		
<p>What impact will the policy have on <b>lifestyles</b>?</p> <ul style="list-style-type: none"> <li>• Diet and nutrition</li> <li>• Exercise and physical activity</li> <li>• Substance use: tobacco, alcohol or drugs</li> <li>• Sexual health</li> <li>• Learning and skills</li> </ul>		
<p>What impact will the policy have on the <b>social environment</b>?</p> <ul style="list-style-type: none"> <li>• Social status</li> <li>• Employment (paid or unpaid)</li> <li>• Income</li> <li>• Crime and fear of crime</li> <li>• Family support and social networks</li> <li>• Stress, resilience and community assets</li> <li>• Participation and inclusion</li> <li>• Control</li> </ul>		

<p>What impact will the policy have on the <b>physical environment?</b></p> <ul style="list-style-type: none"><li>• Living conditions</li><li>• Working conditions</li><li>• Pollution or climate change (waste, energy, resource use)</li><li>• Unintentional injuries and public safety</li><li>• Transmission of infectious disease</li></ul>		
<p>How will the policy impact on <b>access to</b> and <b>quality of services?</b></p> <ul style="list-style-type: none"><li>• Healthcare</li><li>• Transport</li><li>• Social services</li><li>• Housing services</li><li>• Education provision</li><li>• Culture and leisure services</li><li>• Communicating information, consultation and involvement</li></ul>		

### 3. Human Rights Impact Assessment Checklist

Which human rights could be affected by the policy, plan or procedure?

Which population groups could be affected by these issues?	Effects	Population group(s)	What will the Board do to ameliorate these effects?
Life (Article 2, ECHR)	<ul style="list-style-type: none"> <li>• Basic necessities such as adequate nutrition, clean and safe drinking water</li> <li>• Suicide</li> <li>• Risk to life of/from others</li> <li>• Duties to protect life from risks by self/others</li> <li>• End of life questions</li> <li>• Duties of prevention, protection and remedy, including investigation of unexpected death</li> </ul>		
Freedom from ill-treatment (Article 3, ECHR)	<ul style="list-style-type: none"> <li>• Fear, humiliation</li> <li>• Intense physical or mental suffering or anguish</li> <li>• Prevention of ill-treatment, protection and rehabilitation of survivors of ill-treatment</li> <li>• Duties of prevention, protection and remedy, including investigation of reasonably substantiated allegations of serious ill-treatment</li> <li>• Dignified living conditions</li> </ul>		
Liberty (Article 5, ECHR)	<ul style="list-style-type: none"> <li>• Detention under mental health law</li> <li>• Review of continued justification of detention</li> <li>• Informing reasons for detention</li> </ul>		

<p>Fair hearing (Article 6, ECHR)</p>	<ul style="list-style-type: none"> <li>• Staff disciplinary proceedings</li> <li>• Malpractice</li> <li>• Right to be heard</li> <li>• Procedural fairness</li> <li>• Effective participation in proceedings that determine rights</li> </ul>		
<p>Private and family life (Article 8, ECHR)</p>	<ul style="list-style-type: none"> <li>• Private life</li> <li>• Family life</li> <li>• Home</li> <li>• Correspondence</li> <li>• Reputation</li> <li>• Physical and moral integrity (e.g. freedom from non-consensual treatment, harassment or abuse)</li> <li>• Personal data, privacy and confidentiality</li> <li>• Sexual identity</li> <li>• Autonomy and self-determination</li> <li>• Relations with family, community</li> <li>• Participation in decisions that affect rights</li> <li>• Legal capacity in decision making, supported participation and decision making, accessible information and communication to support decision making</li> <li>• Participation in public life</li> <li>• Participation in leisure and cultural life</li> <li>• Clean and healthy environment</li> </ul>		

Freedom of thought, conscience and religion (Article 9, ECHR)	<ul style="list-style-type: none"> <li>• Conduct central to beliefs (such as worship, appropriate diet)</li> </ul>		
Freedom of expression (Article 10, ECHR)	<ul style="list-style-type: none"> <li>• To hold opinions</li> <li>• To express opinions and receive and impart information and ideas without interference</li> </ul>		
Freedom of assembly and association (Article 11, ECHR)	<ul style="list-style-type: none"> <li>• Meetings, marches and demonstrations</li> <li>• Choosing whether to belong to a trade union</li> </ul>		
Marriage and founding a family (Article 12, ECHR)	<ul style="list-style-type: none"> <li>• Capacity</li> <li>• Age</li> </ul>		
<b>Protocol 1</b> (Article 1, 2, 3, ECHR)	<ul style="list-style-type: none"> <li>• Peaceful enjoyment of possessions</li> <li>• Right to education</li> <li>• Right to elections/vote</li> </ul>		



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