



Borders Immigration Citizenship Systems

Demonstrating Compliance with the Public Sector Equality Duty (PSED)

Equality Impact Assessment (EIA)

1. New Immigration Rule providing for the discretionary refusal or cancellation of permission on the grounds of rough sleeping

Background and policy rationale

The Immigration Rules set out the requirements for those seeking entry or stay in the UK, including as a visitor, for work, study or other family routes.

An application may meet all the category specific requirements of the rules in their chosen route, but still fall to be refused on general grounds. These are set out in Part 9 of the Immigration Rules and provide for mandatory or discretionary refusal of entry clearance, leave to enter or leave to remain on the grounds of criminal or adverse behaviour.

The Statement of Changes to the Immigration Rules laid on 22 October 2020 include a new provision to refuse or cancel permission on a discretionary basis where a person is rough sleeping. The Government is committed to ending rough sleeping and is working closely with the Ministry of Housing, Communities and Local Government (MHCLG) on a joint action plan, as well as providing Local Authorities with funding to ensure people are provided with the help they need. The new Rule is designed to complement wider activity across Government and the third sector to address the problem of rough sleeping by cancelling the permission of those whose anti-social behaviour has a disruptive and detrimental effect on local communities and who refuse to engage with available support mechanisms.

The Immigration Rules only apply to foreign nationals and therefore the new rule will not apply to British citizens who are sleeping rough. It will also not apply to those with permission to stay in the UK under a protection route, those who are settled in the UK or EEA citizens who are protected by the Citizens Rights provisions in the European Union (Withdrawal Agreement) Act 2020.

The number of rough sleepers across the UK varies considerably, reflecting the population figures as a whole. In England, the 2019 rough sleeping snapshot recorded 4,266 people sleeping rough. In Wales a similar count recorded 176 people sleeping rough on one night, and in Northern Ireland a

single night count in 2018 reported 38 rough sleepers. In Scotland 1, 643 people were recorded as sleeping rough the night before an application to be registered as homeless.

The underlying policy objectives for amending the Immigration Rules in this way include:

- **public interest:** it is in the public interest to refuse to allow foreign nationals to remain in the UK when they present a disruptive and damaging effect on UK society
- **public protection:** it is legitimate to refuse permission and remove from the UK those whose conduct is not acceptable in order to reduce the risk of harm to the public: either generally or a specific group such as the elderly, vulnerable adults (for example, those with a learning disability), women or an ethnic minority group.

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

In considering whether the Home Office has had due regard to the Public Sector Equality Duty (PSED), consideration has been given to:

- 1) [Rough Sleeping snapshot in England, autumn 2019](#)
- 2) [Scottish government publication, Homelessness in Scotland 2018-19](#)
- 3) [National Rough sleeper count in Wales, November 2019](#)
- 4) [Northern Ireland Housing Executive - rough sleeping](#)
- 5) [Office for National Statistics publication - the emerging picture of UK homelessness and rough sleeping, September 2019](#)

The statistics in the above reports and guidance provide information on the composition of the rough sleeping population. Each country of the United Kingdom records rough sleeping numbers in a different way and therefore the ONS publication offers a wider composite picture of rough sleeping in the UK.

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

Consideration of the potential impact of the policy on people with protected characteristics is at part 4 of the PES.

The policy does not unlawfully discriminate and, other than as set out below, does not target people, directly or indirectly on the basis of their protected characteristic/s.

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

Under paragraph 2(1) of Schedule 18 to the EA, the requirement under section 149(1)(b) to advance equality of opportunity between those who have a protected characteristic and those who do not, does **not** have to be considered in relation to immigration and nationality functions in respect of age, race, religion or belief, where race relates to nationality or ethnic or national origins.

The following protected characteristics have been considered in respect of limb 2:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race (including colour, ethnicity and nationality)
- religion or belief
- sex
- sexual orientation

3C. Consideration of limb 3: Foster good relations between people who share a protected characteristic

The policy is expected to have a neutral effect on relations between people who share a protected characteristic.

4. Foreseeable impacts of policy proposal on people who share protected characteristics

Protected characteristics

Age

No **direct** discrimination has been identified on the grounds of age.

According to the 2019 rough sleeping snapshot in England the majority of those sleeping rough on one night are over 26. In Scotland a similar single night count is not done but statistics are based on the numbers who apply to register as homeless, and show that 63% of those who slept rough the night before the application were aged 25-49, compared with the percentage of the Scottish population in the same age group (40%). In Northern Ireland and Wales the age of rough sleepers is not included in the above publications.

The ONS publication shows that the majority of those seeking help for homelessness are aged 25-49.

Where an immigration decision affects a young person, either because the action is taken against a parent or, in very rare cases against the young person themselves, section 55 of the [Borders, Citizenship and Immigration Act 2009](#) must be considered. Section 55 requires the Secretary of State to

make arrangements for ensuring that immigration, asylum and nationality functions are discharged bearing in mind the need to safeguard and promote the welfare of children who are in the UK. This statutory duty extends to all Home Office staff and those acting on behalf of the Home Office when carrying out immigration and asylum functions in relation to children within the UK.

Under 18s who are homeless will usually be provided with accommodation by Children's Services by their local authority.

As rough sleeping is the primary identification criterion, any **indirect** discrimination on the grounds of age is not automatically unlawful and can be justified as it is proportionate to achieving the legitimate aim of protecting the public, by cancelling the permission of foreign nationals who cannot support themselves and who present a risk of harm by their anti-social behaviour. Further, the Department considers that since it is inevitable that the age profile of rough sleepers will be either somewhat higher or somewhat lower than the average age profile of the population at large, the threshold that must be met to justify an element of differential treatment is not particularly high.

Disability

No **direct** discrimination has been identified on the grounds of disability.

Statistics show that a disproportionate number of those sleeping rough may have disability, including mental health issues. The ONS publication comments that trends suggest an increase in the complexity of homeless needs in recent years, particularly in relation to physical and mental health conditions. Scottish figures record that over 50% of those seeking help with homelessness have one or more support needs such as mental health issues, substance dependencies or learning disabilities.

Mental health and physical disability also feature highly as elements of a priority needs assessment for accommodation according to the ONS publication.

If a decision is made to refuse or cancel permission in relation to a disabled person the individual may experience greater disadvantage e.g. if they are removed from the UK they may have less access in the destination country to support services for their disability.

There are features of the immigration system which guard against the risk of discrimination on the grounds of disability in relation to rough sleeping. In particular, the fact that the power to refuse or cancel permission is a discretionary in nature means that the decision-maker in a particular case will be able to take account both of the question of whether a person's disability contributed to the fact that they are sleeping rough, and also to the question of whether their disability means that they would be particularly disadvantaged by a decision to refuse or cancel their permission.

As rough sleeping is the primary identification criterion, any **indirect** discrimination on the grounds of disability is not automatically unlawful and can be justified as it is proportionate to achieving the legitimate aim of protecting the public, by cancelling the permission of foreign nationals who cannot support themselves and who present a risk of harm by their anti-social behaviour.

Gender reassignment

No **direct or indirect** discrimination has been identified on the grounds of gender reassignment. Gender reassignment is not recorded in any of the above publications.

Pregnancy and maternity

No **direct** discrimination has been identified on the grounds of pregnancy and maternity.

Although pregnancy is not recorded in the above publications, all four nations would prioritise a pregnant woman if she presented as homeless. It is therefore likely that there are proportionately fewer pregnant women sleeping rough as a percentage of the total rough sleeping population.

In the event that a pregnant woman had her permission to stay cancelled on the grounds of rough sleeping, a medical assessment would be conducted to determine her suitability to be removed, if necessary, by waiting until she has given birth. As rough sleeping is the primary identification criterion, any **indirect** discrimination on the grounds of pregnancy and maternity is not automatically unlawful and can be justified as it is proportionate to achieving the legitimate aim of protecting the public, by cancelling the permission of foreign nationals who cannot support themselves and who present a risk of harm by their anti-social behaviour.

Race (including colour, nationality, or ethnic or national origins)

No **direct** impacts have been identified on the grounds of race.

Of course, as an immigration measure, refusal or cancellation of leave will not affect British citizens but can affect people of other nationalities. For the purposes of the Equality Act, the protected ground of race includes nationality. But these measures are set out in the Immigration Rules and thus benefit from the general exception in Schedule 23 to that Act for acts authorised by legislation.

The majority of rough sleepers in the UK are British citizens. Of those foreign nationals rough sleeping in England, 22% are EU citizens, while less than 4% are non-EEA. Ethnicity is not always recorded by local authorities, but where it is, the reason a person is homeless may disproportionately affect those of

certain ethnicity. For example, the main reason given by Asian women for being homeless is because of domestic violence.

However, as rough sleeping is the primary identification criterion, any **indirect** discrimination on the grounds of race is not automatically unlawful and can be justified as it is proportionate to achieving the legitimate aim of protecting the public, by cancelling the permission of foreign nationals who cannot support themselves and who present a risk of harm by their anti-social behaviour.

Religion or belief

No **direct or indirect** discrimination has been identified on the grounds of Religion or belief. Religion or belief is not recorded in any of the above publications.

Sex/ gender

No **direct** discrimination been identified on the grounds of gender or sex.

By far the majority of rough sleepers in the UK are male, although the reasons for being homeless differs between the genders. For example, more women state domestic violence as a reason for being homeless than men.

While statistically more men than women fall to be considered under the general grounds for refusal policy, this reflects the gender composition of those who sleep rough.

Given that rough sleeping is the primary identification criterion, any **indirect** discrimination on the grounds of gender is justifiable as a proportionate means of achieving the legitimate aim of protecting the public, by cancelling the permission of foreign nationals who cannot support themselves and who present a risk of harm by their anti-social behaviour.

Sexual orientation

No **direct or indirect** discrimination has been identified on the grounds of sexual orientation. Sexual orientation is not recorded in any of the above publications.

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 intention behind the policy is aimed at reducing the number of those sleeping rough and either helping them into support or removing them from the UK. Irrespective of their protected characteristics, these are individuals who have chosen to refuse support offered and to engage in anti-social behaviour which causes harm to other individuals or to wider society. Furthermore, if it was considered to be indirectly discriminatory, we believe that this would be lawful in the light of the general grounds for refusal policy

objectives described in section 1 above, notably public interest and public policy.

We do not expect the rule to be used often. The proportion of rough sleepers who are non-EEA nationals to whom the rules would immediately apply is less than 4% of the total number of rough sleepers in the UK and we anticipate therefore that only a small number of people would be caught by the new rule. We do not have figures for the number of rough sleepers who are arrested for anti-social behaviour or for the immigration status of non-EEA rough sleepers, but those without status will be subject to immigration enforcement action in the normal way. In addition, as the rule is discretionary, it will not always be appropriate to cancel permission, even where both a refusal of support and anti-social behaviour exist; for example in the case of those who are vulnerable as a result of physical or mental health needs, or being a victim of trafficking or modern slavery.

Published guidance will explain the purpose of the policy and who it is aimed at. The transparency of the policy should reassure people that it is not aimed at any group based on their protected characteristics and despite the possibility that they will share protected characteristics with those who are affected by the policy, the crucial difference is the particular conduct of the few that sets them apart and brings them within scope of the policy.

The public sector equality duty is a continuing one and as this policy comes into force the Home Office will continue to assess any equalities impacts that come into play. Should any adverse consequences come to our attention, the Home Office will consider how best to respond to the findings.

6. Review date

Ongoing

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:

Matthew Bligh
Deputy Director
Enforcement and Criminality Policy Unit
BICS Policy and International Group

Lead contact:

Fiona Johnstone

Date: November 2020

For monitoring purposes all completed PES documents **must** be sent to the PSED dedicated inbox; PSED@homeoffice.gov.uk

Date sent to PSED Inbox: