

# EQUALITY IMPACT ASSESSMENT ON CHANGES TO EQUAL PAY AND SEX DISCRIMINATION LAW ARISING FROM DECISIONS OF THE EUROPEAN COURT OF JUSTICE

## Background

1. In December 2000, this Department, together with the Department for Employment and Learning carried out a joint public consultation on “Equal Pay – Proposals to simplify and Speed up Industrial Tribunal Cases”. This consultation, which included a preliminary Equality Impact Assessment in relation to the package of measures as a whole, is still available on the Department’s website at <http://www.ofmdfmni.gov.uk/equality>
2. Some of these earlier proposals were examined again in the consultation “Promoting Equality of Opportunity – Implementing EU Equality Obligations in Northern Ireland”, which was issued for consultation in January 2003. An Equality Impact Assessment and draft Regulations were published and circulated with the consultation document.
3. The January 2003 Consultation Document stated at paragraph 141: “to enable us to complete an Equality Impact Assessment of these proposals, we are seeking views on their equality impact through this consultation process”. Consultees were invited to consider if the proposals had any positive or negative impacts on any of the groups included within Section 75 of the Northern Ireland Act 1998 and, taking account of the requirements of EU legislation, if there were alternative approaches to the promotion of equality of opportunity in the Regulations and if so what they were. They were also advised that taking account of the public consultation, the Equality Impact Assessment would be completed and taken into account prior to final

decisions being made and that a report of the Equality Impact Assessment would be published.

### **Consultation**

4. There was widespread consultation on the draft Regulations which were, in general, supported by a majority of respondents. Details of the responses to the specific proposals in the December 2002 consultation are set out at Annex A. Annex B summarises the main additional comments raised in both consultations and sets out the Department's responses. Annex C includes details of changes made to the draft regulations following the consultation exercises.

### **Conclusion**

5. The Department is satisfied that the Regulations properly implement the relevant decisions of the European Court of Justice. The Regulations will extend protection for men and women in relation to equal pay and sex discrimination and will not have any adverse impact on any of the Section 75 groups.

### **Publication of Results of Equality Impact Assessment**

6. This Equality Impact Assessment will be published on the Department's website <http://www.ofmdfmi.gov.uk/equality> and copied to those listed in the Department's Equality Scheme.

**Office of the First Minister and deputy First Minister  
April 2004**

## **ANALYSIS OF RESPONSES TO DECEMBER 2000 CONSULTATION ON EQUAL PAY AND SEX DISCRIMINATION (29 RESPONSES)**

### **EQUAL PAY**

**Proposal 7: It is proposed that the two year time limit on back pay in equal pay cases should be replaced, via EC regulations, with a time limit in line with limitation periods already provided for in relation to contractual matters - six years from the date of commencement of proceedings.**

#### **Consultation response**

A majority agreed with the proposal to extend the 2 year limit, though some supporters thought that, rather than extending it to 6 years, there should be no limit at all. Some of those who did not support a change expressed concerns about the financial impact on employers, whilst others noted possible conflict with data protection obligations in keeping records for a 6 year period.

#### **Statistical details**

26 respondents answered this question (response rate = 89%). Of these 18 (69%) agreed with the proposal to replace the 2 year limit, and 8 (31%) did not agree.

### **SEX DISCRIMINATION**

**Proposal 8: It is proposed, via EC regulations, to enable tribunals to consider claims about discrimination taking place within six months of the end of employment. It is also proposed to enable tribunals to consider claims about discrimination taking place after this period if it is just and equitable and to provide a set of factors for the tribunal to take into account when considering whether it is just and equitable.**

#### **Consultation response**

A clear majority agreed with this proposal. Some respondents thought that employers needed a guarantee that extra record-keeping would not run counter to Data Protection Act obligations. Of those who did not agree, some were concerned that the 6 month limit might not comply with the Coote decision, whilst others did not support the provision of a set of factors to help tribunals consider a just and equitable extension to the 6 month period, arguing that tribunals should be allowed to exercise their own discretion.

#### **Statistical details**

24 respondents answered this question (response rate 83%). Of these 17 (71%) agreed with the proposal, 6 (25%) disagreed and 1 (4%) was unsure.

## EQUAL PAY AND SEX DISCRIMINATION - OTHER COMMENTS

COMMENTS RECEIVED	DEPARTMENT'S RESPONSE
<b>EQUAL PAY</b>	
There should be no limit on back pay.	<p>We are satisfied that the Regulations properly implement the decisions of the ECJ and domestic courts. The limitation applied is the same as that for contractual matters.</p> <p>The back pay limit can be extended in concealment and disability cases.</p>
New proposed sections 2A(2) and 2A(2A) about equal value cases should be omitted.	These have been omitted pending further consideration.
An encouraging number of other comments about equal pay were received.	Although these are outside the scope of these Regulations, these comments will be considered in the context of the proposed single Equality Bill.
<b>SEX DISCRIMINATION</b>	
The limit for claims of discrimination occurring within 6 months of the end of the employment might not comply with the Coote decision.	Provision now applies to discrimination occurring at any time after employment, where there is a close connection to the employment relationship.

## CHANGES MADE TO THE REGULATIONS FOLLOWING THE CONSULTATION EXERCISE

Since the consultations were completed the following changes were made to the draft regulations:

### **Equal Pay**

- to remove the draft provisions relating to
  - the 'no reasonable grounds' defence, and
  - other changes to the rules for equal value cases

so as to give time for further consideration of these issues. It is planned that these Equal Pay provisions will be re-introduced in tandem with associated changes to the rules of procedure for equal value cases.

- to add provisions to change procedural rules which apply to equal pay complaints by members of the armed forces.

### **Sex Discrimination**

In the December 2000 consultation it was proposed that protection from post-employment discrimination should be provided for the 6 months following the end of the employment. In response to that consultation, and the commitment stated in the January 2003 consultation to extend full protection for post-employment discrimination across all the grounds, the Regulations now provide protection which will apply at any time after the employment has ended, provided that there is a clear link with the former employment.