



Office of the

**First Minister and  
Deputy First Minister**

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## **Equal Pay (Questions and Replies) Order (Northern Ireland) 2004**

### **Equality Impact Assessment on Equal Pay Questionnaires**

The attached final Equality Impact Assessment on Equal Pay Questionnaires was prepared by the Department and Learning (DEL), in respect of Article 30 of their Employment (Northern Ireland) Order 2003 made on 13 November 2003.

Article 30 of the DEL Order amended the Equal Pay Act (Northern Ireland) 1970 to give the Office of the First Minister and deputy First Minister (OFMDFM) the power to make a further Order to introduce the questionnaire procedure for equal pay cases.

OFMDFM has made this further Order, named above, on 4 August 2004, and it comes into operation on 25 August 2004.

OFMDFM would like to acknowledge thanks to DEL for their co-operation in this matter.

## EQUALITY IMPACT ASSESSMENT: EQUAL PAY QUESTIONNAIRES

### Executive Summary

#### Background

This paper provides a final Equality Impact Assessment (EQIA) for Northern Ireland of implications that may arise in Northern Ireland from the proposal to introduce a questionnaire (as used in other areas of discrimination) with a time limit within which an employer should respond to cases involving alleged sex discrimination in relation to pay. [Tribunals may draw an inference from any employer's failure to do so].

Readers should note that this EQIA is a slightly revised version of an original EQIA prepared by the Department for Employment and Learning in respect of the draft Employment (Northern Ireland) Order 2003. The Order, which was made on 13<sup>th</sup> November 2003, is the legislative framework under which the equal pay questionnaire procedure was established. The detailed implementation of the questionnaire procedure is being taken forward by the responsible Department, the Office of the First Minister and deputy First Minister. Changes in this revised EQIA are as follows:

- Incorrect references to the Burden of Proof Directive have been removed
- The table on page 11 has been modified to provide greater clarity

The original EQIA, of which this is a revised version, may be obtained online by visiting <http://www.delni.gov.uk/consultDebate/viewDetails.cfm?ConID=22> and clicking on the link entitled 'Final EqIA Equal Pay Questionnaires.pdf'.

The aim of this, and associated proposals, is to simplify and speed up industrial tribunal procedures in equal pay cases.

This EQIA follows the consultation process, for which an initial EQIA was prepared. It is based on, and should be read in conjunction with, the joint consultation material provided by the Department for Employment and Learning (DEL) and the Office of the First Minister and Deputy First Minister (OFMDFM). DEL's response to the consultation process is particularly relevant. A Regulatory Impact Assessment (RIA) has also been prepared, which is again available from DEL.

#### Purpose

The purpose of this paper is to provide a basis on which equality issues can be identified and assessed. This is to ensure that the proposal does not carry the potential to discriminate against any group, and that it promotes equality of opportunity to the greatest possible extent.

From an equality standpoint the most significant aspect of the proposal is that it is explicitly concerned with improving understanding at an earlier stage than currently. The

proposal does this by requiring the employer to provide their position in relation to the alleged discrimination through a questionnaire, within a short fixed period, at the start of the resolution process. This in turn is expected to lead to speedier and simpler resolution of the cases. It is clearly an equality promoting action as some cases in the past have taken considerable time to be so resolved. The expression '*justice delayed is justice denied*' shows the importance of time in resolution.

The focus for this final EQIA is thus to assess the impact on equality, in general and in relation to the groupings explicitly identified in the Northern Ireland Act, and consider if this potential is realised to the greatest possible extent.

### **Approach**

The proposal has been considered against the nine equality categories identified by the Northern Ireland Act (1998), in line with the guidance provided by the Equality Commission.

### **Findings**

The systematic analysis of impact under the equality categories finds that differential impact occurs in relation to age (focus on working age) and gender (particular relevance to women, but benefiting men as well).

### **Conclusion**

The proposals advance equality by aiding individuals with strong cases to achieve quicker resolution of their cases and assisting employers, by shortening processes and reducing the number of unfounded cases proceeding to full hearings.

The analysis by equality category found that there was differential impact but no discrimination. The differential impact under age reflected the focus of the proposals on those of working age. The gender impact noted that the majority of gender discrimination in pay in the workplace is believed to fall on women, but that men who face discrimination will also see benefit. The consideration of the statistical sources showed that the basic men/women pay differential is simplistic when considering discrimination, as part of the differential reflects other factors, such as societal attitudes. Notable here is the extent to which negative impacts (here we are considering only those relating to the world of work) arising from a household having young children are focused on women.

**Overall therefore the proposals will advance equality, and demonstrate the commitment to achieving equality. Increasingly, as the gender differential narrows, the impact of the legislation is concerned less with genders as a whole and more with individual cases and individual employers or sectors.**

## **1 Background**

### **1.1 An Equality Impact Assessment**

This paper is a final Equality Impact Assessment (EQIA) of the proposal to introduce a questionnaire (as used in other areas of discrimination) with a time limit within which an employer should<sup>1</sup> respond to cases involving alleged sex discrimination in relation to pay.

An EQIA represents a thorough and systematic analysis of a policy with particular reference to nine equality categories defined in the Northern Ireland Act (1998). The equality categories are:

- Religious belief
- Political opinion
- Racial group
- Age
- Marital status
- Sexual orientation
- Gender
- Disability
- Dependency (those with dependent(s) and those without).

In addition each public authority should have, without prejudice to its obligation above, *'regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group'*.

### **1.2 Purpose of this EQIA**

This EQIA has therefore two objectives:

- To ensure that no grouping, particularly the equality categories identified in the Northern Ireland Act, is disadvantaged by the introduction of the equal pay questionnaires, and
- To ensure that, as far as possible, the implementation of the questionnaires promotes good relations and equality of opportunity.

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<sup>1</sup> Tribunals may draw an inference from any employer's failure to do so.

### 1.3 General requirement for an EQIA

Section 75 of the Northern Ireland Act (1998) placed a requirement on each public authority, in this case the Department for Employment and Learning (DEL) to have due regard to the need to promote equality of opportunity. Schedule 9 of the Act sets out detailed provisions for the enforcement of these duties, including the key elements of an Equality Scheme, which is required to show '*how the public authority proposes to fulfil the duties imposed by Section 75*'.

Paragraph 4(3) of Schedule 9 of the Act requires Equality Schemes to conform with the Equality Commission's '*Guide to the Statutory Duties*'. This Guide outlines the principles of an Equality Impact Assessment and identifies seven separate elements of an EQIA.

The overall aim of an EQIA is to determine the extent of differential impact upon the relevant groups and in the light of this assessment to consider:

- (i) measures which might be employed to mitigate adverse impact; and
- (ii) alternative policies which might better achieve the promotion of equality of opportunity.

The seven elements identified in the Equality Commission's Guide are:

- Consideration of available data and research
- Assessment of impacts
- Consideration of measures – mitigating and alternative
- Formal consultation
- Decision by Public Authority
- Publication
- Monitoring

These elements are interlinked and not chronological.

This final EQIA follows one which had been produced to assist the consultation process. Comments received under that process informed the Department's Response (available from DEL), and hence this EQIA.

## 1.4 Policy Aim and Context

### Summary policy aim and objectives

In summary the policy aim and objectives are to simplify and speed up the operation of Industrial Tribunal cases relating to equal pay, by requiring an employer to answer a questionnaire at an early stage of proceedings, with the hope that this leads to fewer cases progressing to full hearings and generally providing clarification of the detailed nature of the dispute.

### Policy Context

The Equal Pay Act (Northern Ireland) 1970 is the main legislative instrument dealing with gender inequality in contractual terms, particularly pay. Although it has contributed to change over the last 30 years experience has shown it has flaws. Some provisions can even seem a barrier to effective resolution of equality issues.

Later changes (including the Equal Pay (Amendment) Regulations (Northern Ireland) 1984, which provided for equal pay for work of equal value) have proved complex to operate and have attracted criticism because a number of cases have taken many years to conclude.

It is proposed to amend the Equal Pay Act (NI) in order to introduce a questionnaire (as used in other areas of discrimination) with a time limit for the employer to respond, setting out their position to the Tribunal.

### Scope

The proposals relate to gender-based discrimination in relation to pay.

From an equality standpoint the most significant aspect of the proposal is that it is explicitly concerned with identifying and clarifying, at an earlier stage than currently, the employer's position and understanding in relation to the alleged discrimination. This in turn is expected to lead to speedier and simpler resolution of the cases. This is clearly an equality promoting action as some cases in the past have taken considerable time to be so resolved.

The proposal therefore has a *prima facie* contribution to equality, in that its purpose is to ensure greater entitlement to protection against discrimination.

The scope is therefore concerned with the following:

- Those employees<sup>2</sup> alleging discrimination in pay (on a gender basis)
- Those employers facing Tribunal cases
- Protecting employees from discrimination arising
- Generating a culture of equality.

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<sup>2</sup> The groups that will be most directly affected by the policy will be men and women taking forward a case for equal pay under the Equal Pay Act (NI) 1970 or a case for sex discrimination under the Sex Discrimination (NI) Order 1976.

Others expected to be affected by the proposals include:

- Households of those directly affected, including dependants
- Those wishing to work as an employee
- Other employers
- Wider society – benefiting from a culture of fairness.

It is intended that the scheme should benefit all target groupings. This EQIA attempts to identify any sub-groupings with needs differing substantially from those of the rest of the target group, and who may require the scheme's implementation to be tailored accordingly.

The nature of the proposal is however to simplify and speed up existing processes, rather than alter entitlement or provide fundamentally new rights or obligations. Hence the equality-relevant aspect of the proposals is concerned more with helping to ensure that equality is in practice achieved rather than providing new grounds on which to assess or consider it.

### **Policy implementation and interaction with other public bodies**

The Department, DEL, has responsibility for strategic policy in relation to employment rights in Northern Ireland. The consultation was carried out jointly with the Office of the First Minister and Deputy First Minister as that Department has responsibility for the Equal Pay Act (Northern Ireland) 1970.

The proposal acts on the operation of the Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET).

No wider impact on public policy is expected. In the case that a public body was the subject of alleged discrimination it would be subject to the proposal in the same way as any other employer.

### **1.5 Screening Exercise**

The policy was screened and this EQIA was carried out.

## 2 Data and Initial Assessment, Consultation

### 2.1 Consideration of data and research

The data required for an equality impact assessment of equal pay questionnaires is information as to the extent of discrimination on pay, broken down by the equality categories (eg age, marital status and so forth).

In this case the proposal is limited to gender-based cases.

#### Pay Gap / Gender Differential

While the pay gap between men and women has narrowed in recent years it still exists. The table below reproduces (in italics) the detailed assessment of the pay differential for 1996-1999 provided in the consultation EQIA.

That shows that in that four year period, in GB women's and men's pay rose by around the same amount, and although in NI women's pay rose less than men's, the figures represent a larger proportionate rise for women than men in both areas.

**Table 1**  
**Average gross hourly earnings, excluding overtime**  
**(£)**

	men						Women					
	Full-time		Part-time		All		Full-time		Part-time		All	
	NI	GB	NI	GB	NI	GB	NI	GB	NI	GB	NI	GB
<b>2002</b>					10.26						9.16	
<i>1999</i>	9.19	10.75	7.20	7.47	9.03	10.64	7.99	8.70	5.94	6.46	7.20	8.14
<i>1998</i>	8.91	10.31	9.27	7.18	8.94	10.22	7.51	8.24	5.82	6.09	6.88	7.71
<i>1997</i>	8.60	9.82	7.23	6.98	8.49	9.74	7.16	7.88	5.72	5.78	6.63	7.36
<i>1996</i>	8.21	9.49	6.46	5.93	8.11	9.37	6.94	7.52	5.31	5.13	6.36	6.92

Source: New Earnings Survey and Northern Ireland New Earnings Survey.

The table has been updated for this EQIA with the most recent figure available, giving data for 2002. This shows that average hourly pay continues to converge, from a position where men were paid an average of 25% more in 1999 in Northern Ireland to less than half that differential (12%) in 2002.

Given that absence from the workplace to have children is acknowledged to adversely impact on women's earnings after their return (missed promotion, career change and other factors are all significant here) it may be that some (even much) of this differential

is linked with having dependants. There are other factors too, such as occupational preference that needs to be considered and the data adjusted for.

It follows that assuming a gender differential in pay is entirely accounted for by discrimination in the workplace is simplistic. This is considered further in the assessment of equality categories below.

### Case Load

The most recent available records held by the Office of the Industrial Tribunals and the Fair Employment Tribunal show that the number of cases taken forward in Northern Ireland under the equal pay and sex discrimination legislation in recent years is as follows:

**Table 2**  
**Case Load – Registrations by Jurisdictions**

Period	Jurisdiction	Total
2001 – Mar 02 (15 months)	Equal Pay	334
	Sex Discrimination	973
2000	Equal Pay	197
	Sex Discrimination	359
1999	Equal Pay	146
	Sex Discrimination	660
1998	Equal Pay	149
	Sex Discrimination	617

The table shows that a considerable number of cases are registered each year, and that there are signs of an increase, although figures do fluctuate. Examining the longer trend, over the last ten years and more, suggests that there is a persistent increase in cases registered in this area (jurisdiction), although it is also widely believed, and this would appear to be borne out by the declining pay differential, that inequality is falling.

## 2.2 Consultation process and consultees

On 11 December 2000 the Department of Higher and Further Education, Training and Employment – now the Department for Employment and Learning (DEL) – with the Office of the First Minister and Deputy First Minister (OFMDFM) carried out a joint public consultation on proposals to simplify and speed up industrial tribunal cases on equal pay, and to implement the EU Burden of Proof Directive (EC97/80).

The consultation, 'Consultation on equal pay: proposals to simplify and speed up Industrial Tribunal cases / Burden of proof implementation', proposed amending existing legislation in order to introduce a questionnaire as used in other areas of discrimination. 26 responses dealing with this substantive issue were received before the consultation's closing date of 28 February 2001. DEL's response to the public consultation, analysing the views received and setting out the action that is planned as a result, is available from the employment rights section of the Departmental web-site at <http://www.delni.gov.uk>.

### **3 Key Findings**

#### **3.1 Assessment of Impacts by Equality Categories**

Impact in this final EQIA focuses on the existence and extent of any adverse impact on any grouping arising from the proposal.

This assessment includes the specific examination of each of the nine equality categories, identified in the Northern Ireland Act (1998), for any differential impact. In advance of considering those equality categories individually, this EQIA considers the extent to which the proposal makes a commitment to equality more generally.

##### **General contribution to equality**

The introduction of the equal pay questionnaires will accelerate resolution of discrimination cases. This promotes equality directly (by creating fairness in individual cases) and indirectly, in contributing to the general culture of fairness.

##### **Equality Testing Against Equality Categories**

Each of the nine equality categories outlined in the Northern Ireland Act (1998) is first tested for having the potential for a differential impact. The possible nature and scale of such a impact can then be examined in greater depth.

The table overleaf presents the results of the relevance testing of this policy area against the statutorily required nine equality categories.

**Potential Relevance Testing  
by Equality Category**

<b>Category</b>	<b>Potential relevance</b>
<b>Age</b>	Relates to workers, typically age range 16 to 65
<b>Marital status</b>	No relevance
<b>Gender / Men and Women generally</b>	Strong relevance – basis of intervention
<b>Persons with a disability</b>	No direct relevance
<b>Persons with dependants</b>	Some apparent relevance but this is indirect – as any relevant discrimination is on gender
<b>Political opinion</b>	no direct relevance
<b>Racial group</b>	
<b>Religious belief</b>	
<b>Sexual orientation</b>	

## Implications

This initial EQIA therefore notes that the proposal has a *prima facie* equality implication (positive or adverse) for the following categories:

- Age
- Gender

These are considered individually below.

### Age

Those affected will be primarily those of working age. While a differential impact arises by age, society has identified age, both young and elderly, as a criterion under which individuals should be either barred from work (if young), or not required to participate in it (if elderly). The Employment Framework Directive will, when introduced, outlaw discrimination in employment and training on the grounds of age.

Thus no equality impact arises.

### Gender

This is at the heart of the proposals, which seek to eradicate gender-based inequalities in pay.

The effect of the proposals is to assist the Tribunal process, which is the prime means by which the legislative position requiring equality is enforced. It follows that any measure, such as this proposal, which assists the effective operation of the Tribunal system is one which promotes equality.

### Summary on nature of differential impact

The above analysis shows that differential impact arises, in relation to two of the nine equality categories.

However in no case is a differential impact within an equality category found to be adverse.

Rather the proposal will directly act to aid the attainment of greater equality in the workplace as between the two genders.

The proposals are neither directly nor indirectly discriminatory.

## 3.2 Equality of Opportunity and Promotion of Good Relations

The proposals act to promote equality and hence also equality of opportunity by encouraging employers to remunerate on the basis of ability and contribution rather than on gender. This widens opportunity for all.

The achievement of greater equality is likely to contribute to the promotion of good relations between genders, but no wider impact on good relations is expected.

### **3.3 *Consideration of Measures: mitigating and equality promoting***

The proposals are found above to be equality promoting with no adverse implications or discrimination arising and hence mitigating measures are not relevant.

### **3.4 *Establishment of scale of impact***

The emphasis at this final stage shifts towards measuring any differential impact, the earlier EQIA being concerned with identification as the intention behind the EQIA process is to eliminate such differential impact where possible.

A Regulatory Impact Assessment (RIA) has also been prepared for this consultation stage. That RIA found the impact to be very small, and not capable of measurement.

The RIA is available from DEL and should be read in conjunction with this EQIA and the supporting consultation material.

## **4 Conclusions**

### **4.1 Differential Impacts by Equality Categories**

The analysis of impact by equality category, described in 3.1 above, shows that there is the potential for differential impact, but that this is not associated with discrimination.

Differential benefit (there is no adverse impact) will be felt by employees who are discriminated against on gender grounds, primarily, but not exclusively women. [Indeed in 2000, a class action involving a number of men meant that the total number of men seeking equal pay through the Tribunal system was 107, in comparison with 90 women].

Perhaps more importantly than the direct impact, the proposal provides enhanced protection for all facing discrimination, and this promotes a culture of equality in general.

The analysis does not find the proposal as having a significant effect on the promotion of good relations amongst those of differing religious belief, political opinion or racial group, though it may contribute to improved relations between genders.

**Overall this Equality Impact Assessment finds that the proposed introduction of a questionnaire in equal pay cases has a positive impact on equality in the workplace.**

### **4.2 Decision by Public Authority, Publication and International Obligations**

The proposal will be implemented by the Department for Employment and Learning.

No new international obligations arise.

### **4.3 Mitigation of Adverse Impact**

No adverse impact arises. Accordingly no mitigation is proposed.

#### **4.4 Monitoring**

DEL will be responsible for monitoring observance in line with its existing responsibilities and procedures already in place in relation to Tribunal activity. This includes:

- ❑ the number of cases initiated by gender
- ❑ the duration of all cases referred to OITFET by gender
- ❑ the number of cases settled before proceeding to tribunal by gender
- ❑ the number of cases withdrawn before proceeding to tribunal by gender
- ❑ the number of cases won by the claimant by gender
- ❑ the number of cases won by the respondent
- ❑ the number of cases involving retrospective settlement between two and six years by gender
- ❑ the number of cases brought within six months of the claimant leaving the respondent's employment by gender
- ❑ The level of compensation awarded by gender

Any adverse impacts identified as a result of this monitoring will be investigated and addressed.

No special or differential monitoring techniques or tools are required.