

EQUALITY IMPACT ASSESSMENT ON IMPLEMENTATION OF EU EMPLOYMENT FRAMEWORK DIRECTIVE ON SEXUAL ORIENTATION DISCRIMINATION

Background

1. An Equality Impact Assessment was included with the Consultation Document which was issued for consultation in January 2003. The draft regulations were published and circulated with the Consultation Document.
2. The Consultation Document stated “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

3. There was widespread consultation on the draft Regulations and as part of the process meetings were held with a range of key stakeholders including the churches, COSO, the Equality Commission.

4. In response to consultation two key issues were raised. The first related to the powers of the Equality Commission and the second related to draft Regulation 8 in respect of genuine occupational qualifications.

Powers of ECNI

5. The Regulations published with the Consultation included 3 regulations extending the powers of ECNI in relation to sexual orientation to give it a general duty (to work towards the elimination of discrimination, promote equality of opportunity and keep the legislation under review), a research and education function and the power to issue codes of practice. The majority of respondents agreed that ECNI's powers should be extended as proposed, and some argued for a range of further powers. While it is not possible under these Regulations to give ECNI the full range of powers that are in place for other grounds, the Regulations have been revised to include an additional power for ECNI to support individual complainants. This significant measure will mean that complainants or prospective complainants in a sexual orientation case will be able to get the same support from the Commission that is available on other grounds.

Genuine Occupational Qualifications

6. The draft Regulations included provision for an exception for genuine occupational requirements and the draft consultation document drew attention to this (paragraphs 47-53). In particular the consultation document stated “ these provisions will be narrowly drawn. Legislation on **sexual orientation** (emphasis added),

religion and race will make it clear that occupational requirements must be “genuine” ”.

7. In response to consultation, the churches (representatives of the ‘religious belief’ category under Section 75) said that this exception did not go far enough in meeting the needs of church-based organisations and that it would negatively impact on their ability to employ in certain posts only those who adhered to the teachings of the church. They were also concerned to ensure that the same approach applied in Northern Ireland as in the rest of the United Kingdom. Officials met the churches to discuss this and explained that advice had been sought from senior Counsel on whether or not a more specifically described exception for the churches would be possible without infringing the principle of non-regression from existing provisions.
8. Officials also met with COSO (Coalition on Sexual Orientation) and the Equality Commission to discuss the draft Regulations and at these meetings the issue of a possibly more specific exception for church-based organisations was openly discussed. Both COSO and the Equality Commission expressed strong concerns about any narrowing of the non-discrimination provisions. All parties were advised that the Department had sought legal advice on this issue and on reaching his decision the Minister would take account of the various views expressed and legal advice.
9. Following receipt of opinion from senior counsel confirming that there was no risk of regression, the proposed draft Regulation was reviewed and a revised wording was proposed which aimed to take

account of all the views expressed. The Department wrote seeking views on this revised proposal from those key stakeholders who had expressed views on this. The Northern Ireland Human Rights Commission was also copied into this correspondence on its request.

10. A number of groups have written to the Department pressing for a more widespread consultation on the revised wording and suggesting that without this the Department may be in breach of its statutory duty under Section 75 of the Northern Ireland Act 1998. The tenor of this correspondence suggests that the opposition to the revised wording may be widespread among a number of interest groups

Assessment of Impacts

11. The Equality Impact Assessment included within the draft Consultation Document stated “it is our view that the new Regulations should have a positive impact on Equality of Opportunity, in particular:
 - new protection against discrimination in the employment field will be introduced for people of different sexual orientation;”.
12. The document also explained that because we are using Regulations under the European Communities Act 1972 to implement the Directive we are restricted in what we can do.
13. It could be argued that by including an additional genuine occupational requirement in respect of the religious organisations (as per the revised Regulation 8) this may narrow the protection from discrimination for people of different sexual orientation and this

amounts to an adverse impact. It could equally be argued that the revised wording does nothing more than specify the circumstances in which the original proposed genuine occupational qualification might be applied in a specific set of circumstances. If a genuine occupational requirement related to sexual orientation as set out in regulation 8 is relied upon, and a potential candidate believes if he/she has been discriminated against because of the application of this requirement, he/she will be able to make a complaint to a Tribunal and it will be for the employer to defend the use of the requirement in the light of the particular circumstances of the job. Genuine occupational requirement exceptions exist in other anti-discrimination legislation.

14. It could also be argued that without the revised wording the Regulation would adversely impact upon people of different religious belief.
15. Arising from the consultation the Department has revised the Regulations to enable the Equality Commission to support individual complainants. Provisions to prohibit discrimination in the appointment of office holders, and by trustees and managers of occupational pension schemes have also been added to the draft. These are significant measures, which will increase the effectiveness and positive impact of the Regulations.
16. Overall, given that no legislative protection existed previously, even with the revised draft wording which attempts to balance the equally strongly held views emerging from consultation on a genuine occupational qualification of two Section 75 categories, the Sexual

Orientation Regulations will have a positive impact on equality of opportunity for people of different sexual orientations.

Decision

17. Taking account of this Equality Impact Assessment and consultation carried out in relation to the Sexual Orientation Regulations, the Department has decided to provide additional powers to ECNI to enable it to support complainants. The Department has also decided to proceed with the revised wording of Regulation 8 (copy attached, Annex A) without further consultation on this point since this is unlikely to produce any new matters which need to be taken into account in reaching a decision on how to proceed. However in line with paragraph 4(c) and (d) of Schedule 9 of the Northern Ireland Act 1998 we will monitor any adverse impact of this policy on the promotion of equality of opportunity and, if necessary, the policy may be revised in the light of experience. The Department will consult the Equality Commission, which will have responsibility arising from the Regulations to keep the legislation under review as part of this monitoring. It will make public this monitoring in our annual review of progress on the implementation of our Equality Scheme.

Publication of Results of Equality Impact Assessment

18. This Equality Impact Assessment will be published on the Department's website and copied to those listed in the Department's Equality Scheme.