

EQUALITY AND HUMAN RIGHTS SCREENING TEMPLATE

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SCREENING TEMPLATE

See the Screening Template Guidance Notes for further information on the 'why' 'what' 'when', and 'who' in relation screening, for background information on the relevant legislation and for help in answering the questions on this template (follow the links).

(1) INFORMATION ABOUT THE POLICY/DECISION

1.1 Title of policy/decision

Education Sector Staff Transfer Scheme

1.2 Description of policy/decision

- **what is it trying to achieve? (aims/objectives)**
- **how will this be achieved? (key elements)**
- **what are the key constraints? (e.g. financial, legislative)**

This scheme is made under Sections 9 & 22 and Schedule 2 and 3 of the Education Bill 2008 and sets in place the arrangements for the transfer of staff from the Education Sector RPA affected groups into the Education and Skills Authority (ESA) (excluding Department of Education (DE) staff who will be subject to a separate transfer scheme).

The scheme confirms that existing contractual terms and conditions of employment including pension arrangements will be protected in accordance with current employment legislation including the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 and the Acquired Rights Directive on which TUPE is based, the Education Bill, (Section 9, Schedule 2, Paragraph 2 and Section 22, Schedule 3, Paragraph 3) and the 3rd Guiding Principle and addendum recommended by the Public Service Commission (PSC) and accepted by the Executive (supported by the RPA Code of Practice on Staff Transfers). These transfers are deemed relevant transfers for the purposes of TUPE by virtue of said Section 9, Schedule 2, Paragraph 2(4) and Section 22, Schedule 3, Paragraph 3(4). The scheme also makes provision for staff to access dispute resolution procedures (as outlined at Paragraph 8 of the scheme) and for payment of compensation to staff who experience a material detriment to their existing terms and conditions and who can demonstrate actual loss as a result (as outlined at Paragraph 9 of the scheme.)

The scheme includes the elements included in the RPA Code of Practice on Staff Transfers recommended by PSC and affirmed by the Executive. The contents are as follows:

- Identification of transferring staff by location/business unit/post as appropriate
- Date of transfer, post/grade and location
- Contractual terms and conditions
- Pension arrangements and protection
- Disputes resolution arrangements
- Provision for the payment of compensation for actual loss
- Recognition of Trades Unions

1.3 Main stakeholders affected

(e.g. staff, actual or potential service users, other public sector organisations, voluntary and community groups, trade unions/professional organisations or private sector organisations)

Staff employed in the Education Sector RPA affected organisations in NICIE and CnaG, and all the staff of the 5 ELBs, CCMS, CCEA, Youth Council for NI and the Staff Commission for ELBs. The Trade Unions recognised within the sector and DE who is the main stakeholder in the RPA process as the sponsor department for the affected organisations.

A separate staff transfer scheme has been agreed for DE staff who will transfer to ESA.

1.4 Who is responsible for (a) devising and (b) delivering the policy ie is it DE, a Whitehall department, EU etc

- **What is the relationship?**
- **Have they considered this issue any equality Issues?**

The Education and Skills Authority Implementation Team (ESAIT) on behalf of DE, in co-operation with the main stakeholders are responsible for devising and delivering the policy.

Equality issues have been considered as part of the RPA process.

1.5 Other policies/decisions with a bearing on this policy/decision

- **what are they?**
- **who owns them?**
- **Are there any linkages to other NI departments/NDPBs**

The Executive's Code of Practice on Staff Transfers, relevant legislation and the PSC Guiding Principles.

The Northern Ireland Library Authority (NILA) Staff Transfer Scheme which is a broadly similar scheme, implemented in relation to approximately 1000 staff transferring from the ELBs to NILA on 1 April 2009 as part of the RPA process. The NILA scheme was also subject to equality screening.

2) SCREENING THE POLICY/DECISION

2.1 In terms of groupings under Section 75, what is the make up of those affected by the policy/decision?

This Staff Transfer Scheme applies to the entire workforce of the affected organisations (as defined at paragraph 1.3) with the exception of NICIE and CnaG where only a small number of staff may transfer and would not be statistically significant. Relocation may be required for a very small number of staff as a result of the staff transfer and consultations are on-going with the relevant organisations, Trade Unions and staff concerned.

Group	Please provide details																				
Gender	<p>DE data for teaching staff in all the affected organisations indicates 74% females and 26% males.</p> <p>The Fair Employment annual monitoring returns for 2009 for all other staff in the affected organisations indicates 81% females and 19% males.</p>																				
Age	<p>DE data for teaching staff in all the affected organisations indicates:</p> <table border="0"> <tr> <td>Age 25 & under</td> <td>5%</td> <td>Age 26-30</td> <td>15%</td> </tr> <tr> <td>Age 31-35</td> <td>16%</td> <td>Age 36-40</td> <td>16%</td> </tr> <tr> <td>Age 41-45</td> <td>12%</td> <td>Age 46-50</td> <td>13%</td> </tr> <tr> <td>Age 51-55</td> <td>15%</td> <td>Age 56-60</td> <td>7%</td> </tr> <tr> <td>Age over 60</td> <td>1%</td> <td></td> <td></td> </tr> </table> <p>Data on date of birth is available for all other staff but is not classified. A detailed analysis of the data at this time was not deemed to be practical within the timeframe or necessary given that all staff within the affected organisations will have equal right of transfer to ESA and protection of existing terms and conditions of employment.</p>	Age 25 & under	5%	Age 26-30	15%	Age 31-35	16%	Age 36-40	16%	Age 41-45	12%	Age 46-50	13%	Age 51-55	15%	Age 56-60	7%	Age over 60	1%		
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Religion	<p>The Fair Employment annual monitoring returns for 2009 from all the affected organisations indicates 49% Protestant, 47% Roman Catholic and 4% not determined.</p> <p>Teachers are an exempted occupation under The Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) and data is not collected.</p>																				
Political Opinion	Data is not collected on political opinion																				
Marital Status	Some data on marital status can be derived from payroll systems however the data is provided by the employee at the time of appointment and is not consistently updated. The data available on marital status is therefore unreliable.																				
Dependent Status	Data is not collected on dependent status however given the high percentage of female workers affected; this could be used as an indicator of employees with responsibility for dependants.																				
Disability	Monitoring disability has its roots in the Disabled Persons (Employment) Acts (NI) 1945 and 1960. Since 1997 monitoring disability has been on the basis of definitions contained in the Disability Discrimination Act 1995. A single system for monitoring disability has not been used therefore the data on disability is unreliable.																				
Ethnicity	Not all of the affected organisations collect data on ethnicity therefore the data available is not meaningful.																				
Sexual Orientation	Data is not collected on sexual orientation.																				

2.2 Is there any indication or evidence of higher or lower participation or uptake by different groups?

All staff across the affected organisations (as defined at paragraph 1.3) will have an equal right under TUPE to transfer to ESA on their existing terms and conditions of employment.

The profile of staff (provided at paragraph 2.1).indicates that it is strongly skewed in terms of gender but all staff employed at 31 December 2009 will transfer. This applies in relation to all Section 75 groups.

2.3 Is there any indication or evidence that different groups have different needs, experiences, issues and priorities in relation to the policy/decision?

All staff across the affected organisations (as defined at paragraph 1.3) will have an equal right under TUPE to transfer to ESA on their existing terms and conditions of employment.

At the date of transfer ESA envisages that the majority of staff will remain in their current location. For some staff, following the date of transfer their location and/or post may be subject to future change as decisions are made on the location of the ESA Headquarters accommodation and the full organisational design. If the transfer results in a change of location there is a potential for negative impact on the grounds of gender, disability and dependants.

Relocation at the date of transfer may be required for a very small number of staff. Consultations are on-going with the relevant organisations, Trade Unions and staff concerned.

The ESA Location Strategy will be the subject of a separate exercise within the Department of Finance and Personnel (DFP) Policy Framework for the Location of Public Sector Jobs. The ESA Location Strategy will be subject to screening and Equality Impact Assessment (EQIA) as appropriate.

2.4 Is it likely that the policy/decision will meet those needs?

Where staffs have disputes as a result of the RPA the scheme makes provision for such staff to access dispute resolution procedures (as outlined at Paragraph 8 of the scheme) and for payment of compensation to staff who experience a material detriment to their existing terms and conditions and who can demonstrate actual loss as a result (as outlined at Paragraph 9 of the scheme.)

2.5 What other feedback, complaints, statistics, surveys, research reports, previous consultations or additional information is available to assess and screen the impact of this policy/function.

Extensive consultation over a prolonged period has taken place with key stakeholders, in particular Trade Unions and this has informed the development and agreement of the scheme.

Statistical data in relation to groupings under Section 75 (as outlined in paragraph 2.1) was available to inform the screening process.

2.6 Is there an opportunity to better promote equality of opportunity or good relations by altering the policy/decision or working with others in government or in the larger community?

Group	Suggestions
All Section 75 Groups	The ESA will adhere to the requirements of employment and equality legislation and will positively seek to promote equality of opportunity.
<i>N.B. continue as appropriate</i>	

2.7 What changes to the policy/decision – if any – or what additional measures would you suggest to ensure that it promotes good relations?

No changes are proposed as part of the specific implementation of the Education Sector Staff Transfer Scheme.

2.8 Is there any evidence or have previous consultations with relevant groups, organisations or individuals indicated that particular policies create problems that are specific to them?

Consultations with affected organisations and Trade Unions have indicated if the transfer results in a change of location, there is a potential for negative impact on some staff and in particular those in the Section 75 groupings of gender, disability and dependent status. The ESA Location Strategy will be subject to separate screening and EQIA as appropriate.

2.9 Please detail what data you will collect in the future in order to monitor the effect of the policy/decision on any of the groups under Section 75?

ESA will collect and analyse data on the number and nature of any complaints lodged in accordance with paragraph 8 of the scheme, by staff in order to monitor the effect of the scheme on the Section 75 groups.

(3) SHOULD THE POLICY/DECISION BE SUBJECT TO EQUALITY IMPACT ASSESSMENT?

Equality impact assessment procedures are confined to those policies/decisions considered likely to have significant/major implications for equality of opportunity.

**If your screening has indicated that a policy/decision is likely to have an adverse differential impact, how would you categorise it?
Please tick.**

Significant/major impact	
Low impact	✓

Do you consider that this policy/decision needs to be subjected to a full equality impact assessment?

Yes	
No	✓

Please give reasons for your decision.

The scheme provides for all staff across the affected organisations (as detailed in paragraph 1.3) at 31 December 2009 the equal right of transfer to ESA with their contractual terms and conditions of employment, pension arrangements and continuity of employment protected.

(4) DISABILITY DISCRIMINATION

4.1 Does the policy/decision in any way discourage disabled people from participating in public life or does it fail to promote positive attitudes towards disabled people?

NO

4.2 Is there an opportunity to better promote positive attitudes towards disabled people or encourage their participation in public life by making changes to the policy/decision or introducing additional measures?

NO

4.3 Please detail what data you will collect in the future in order to monitor the effect of the policy/decision with reference to the disability duties?

ESA will collect and analyse data on the number and nature of any complaints lodged in accordance with paragraph 8 of the scheme, by staff in order to monitor the effect of the scheme on the Section 75 groupings including disability.

(5) CONSIDERATION OF HUMAN RIGHTS

5.1 Does the policy/decision affect anyone's Human Rights? [PLEASE COMPLETE THE TABLE BELOW]

ARTICLE	POSITIVE IMPACT	NEGATIVE IMPACT = human right interfered with or restricted	NEUTRAL IMPACT
Article 2 – Right to life			✓
Article 3 – Right to freedom from torture, inhuman or degrading treatment or punishment			✓
Article 4 – Right to freedom from slavery, servitude & forced or compulsory labour			✓
Article 5 – Right to liberty & security of person			✓
Article 6 – Right to a fair & public trial within a reasonable time			✓
Article 7 – Right to freedom from retrospective criminal law & no punishment without law.			✓
Article 8 – Right to respect for private & family life, home and correspondence.			✓
Article 9 – Right to freedom of thought, conscience & religion			✓
Article 10 – Right to freedom of expression			✓
Article 11 – Right to freedom of assembly & association			✓
Article 12 – Right to marry & found a family			✓
Article 14 – Prohibition of discrimination in the enjoyment of the convention rights			✓

1 st protocol Article 1 – Right to a peaceful enjoyment of possessions & protection of property			✓
1 st protocol Article 2 – Right of access to education			✓

*If the effect you have identified is positive or neutral please move on to **Question 5.3.***

5.2 If you have identified a likely negative impact who is affected and how?

N/A

At this stage we would recommend that you consult with your line manager to determine whether to seek legal advice and to refer to Equality Guidance and Co-ordination Unit to consider:

- *whether there is a law which allows you to interfere with or restrict rights*
- *whether this interference or restriction is necessary and proportionate*
- *what action would be required to reduce the level of interference or restriction in order to comply with the Human Rights Act (1998).*

5.3 Outline any actions which could be taken to promote or raise awareness of human rights or to ensure compliance with the legislation in relation to the policy/decision.

N/A

Policy/Decision Screened by*: Jill Dowie
(ESAIT HR Project)

Date: 4/11/09

FOR COMPLETION BY EQUALITY GUIDANCE AND CO-ORDINATION UNIT

Quality Assured by: Richard Magowan Date: 4/11/09

Screening Out Agreed / ~~Screening Out Not Agreed~~

Comments: _____

Date Division/Branch Informed: 4/11/09

If Screened Out:

Start of Consultation: 9/11/09 End of Consultation:* 4/12/09

Placed on Internet by: _____ Date: _____

If Screened In:

Date EQIA issued: _____

The consultation period must be a minimum of 8/12 weeks.

The Education Sector Staff Transfer Scheme was subject to extensive consultation over a prolonged period with affected organisations and Trade Unions and agreed on 12 October 2009. Given the timescale for the implementation of statutory requirements under TUPE, this consultation is being undertaken without prejudice to the TUPE legislative requirements, namely ESA will take over all contracts of employment of transferring staff and in doing so, terms and conditions of employment, pension arrangements and continuity of employment will be protected. For this reason it is not practical to operate a minimum 8 week consultation period. All comments on the scheme should be made as soon as practical and no later than 4 December 2009.

Main Groups Relevant to the Section 75 Categories	
<u>Category</u>	<u>Main Groups</u>
Religious belief	Protestants; Catholics; people of non-Christian faiths; people of no religious belief
Political opinion	Unionists generally; Nationalists generally; members/supporters of any political party
Racial Group	White people; Chinese; Irish Travellers; Indians; Pakistanis; Bangladeshis; Black Africans; Black Caribbean people; people with mixed ethnic group
“Men and women generally”	Men (including boys); women (including girls); trans-gendered people
Marital status	Married people; unmarried people; divorced or separated people; widowed people
Age	For most purposes, the main categories are: children under 18, people aged between 18-65, and people over 65. However, the definition of age groups will need to be sensitive to the policy under consideration
“Persons with a disability”	Disability is defined as: A physical or mental impairment, which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities as defined in Sections 1 and 2 and Schedules 1 and 2 of the Disability Discrimination Act 1995
“Persons with dependants”	Persons with personal responsibility for the care of a child; persons with personal responsibility for the care of a person with an incapacitating disability; persons with personal responsibility for the care of a dependant elderly person
Sexual orientation	Heterosexuals; bi-sexuals; gays; lesbians

Please forward a copy of the completed Screening Form to:-

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