

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

Department of Education (DE) 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 Staff Transfer Scheme has been developed in accordance with the Education Bill 2008 and the other legislative requirements arising from the 3rd Guiding Principle, issued by the Public Service Commission (PSC) and accepted by Government. The scheme sets in place the arrangements for the transfer of staff, who wholly or mainly perform operation functions, from the Department of Education (DE) to the Education and Skills Authority (ESA)

The scheme confirms that staff can either choose to transfer to the ESA on a temporary transfer arrangement for a maximum period of three years or transfer with existing contractual terms and conditions of employment including pension arrangements 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, Clause 22 (3) of, and Schedule 5 to, the Education Bill 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). The scheme also makes provision for staff to access dispute resolution procedures (as outlined at Paragraph 8 of section 2 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 section 2 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 Department of Education who wholly or mainly perform operational functions which will transfer to the ESA and Departmental Trade Union side (TUS).

The Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 1981 and 2006, which are designed to protect the rights of employees when a transfer occurs from one employer to another, state that staff engaged 'wholly or mainly' on a transferring function will automatically transfer with the function. However, it does not specify any fixed percentage, ie there is no definition of what constitutes 'wholly or mainly'.

In consultation with TUS, DE set the 'wholly or mainly' percentage level at more than 60%.

A separate staff transfer scheme has been agreed for the Education Sector 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 Department of Education, in co-operation with the main stakeholders are responsible for devising and delivering the policy.

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 those staff who wholly or mainly perform operational functions which will transfer to the ESA. The total number of staff involved is approximately 170.

Group	Please provide details
Gender	The Northern Ireland Civil Service (NICS) Equal Opportunities monitoring information indicates 61% female and 39% male.
Age	The NICS Equal Opportunities monitoring information indicates: Age 25 & under 11% Age 26-30 16% Age 31-35 10% Age 36-40 11% Age 41-45 20% Age 46-50 16% Age 51-55 9% Age 56-60 6% Age over 60 1%
Religion	The NICS Equal Opportunities monitoring information indicates 41% Protestant, 56% Roman Catholic and 3% not determined.
Political Opinion	Data is not collected on political opinion
Marital Status	Some data on marital status can be derived from the NICS Equal Opportunities monitoring information, 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	The NICS Equal Opportunities monitoring information indicates 5% of staff have declared that they have a Disability. There may be staff who have not declared their disability, therefore the data on disability is unreliable.
Ethnicity	The NICS Equal Opportunities monitoring information indicates 1% of staff identified that they are from a minority racial group.
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 employed in the Department of Education who wholly or mainly perform operational functions (as defined at paragraph 1.3) will have an equal right under temporary transfer or TUPE arrangements 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 skewed in terms of gender and religion, however as all staff employed wholly or mainly on operational functions at the date of transfer will transfer there is no indication that the policy will have a negative impact on these groups at this point in time. 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 (as defined at paragraph 1.3) will have an equal right under temporary transfer or TUPE arrangements to transfer to ESA on their existing terms and conditions of employment.

At the date of transfer ESA envisages that all staff (as defined at paragraph 1.3) 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. There will be a separate equality proofing once location has been defined.

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 staff 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 Section 2 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 Section 2 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 Union 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 DE 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 staff 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 Section 2 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 detailed in paragraph 1.3 at the date of transfer 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 Section 2 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*: Maura McCusker

Date: 23 November 2009

FOR COMPLETION BY EQUALITY GUIDANCE AND CO-ORDINATION UNIT

Quality Assured by: Richard Magowan Date: 23/11/09

Screening Out Agreed

Date Division/Branch Informed: 23/11/09

If Screened Out:

Start of Consultation: 18 December 2009

End of Consultation*: 17 February 2010

Placed on Internet by: _____ Date: _____