

STAFF COMMISSION FOR EDUCATION AND LIBRARY BOARDS

BELFAST EDUCATION AND LIBRARY BOARD

NORTH EASTERN EDUCATION AND LIBRARY BOARD

SOUTH EASTERN EDUCATION AND LIBRARY BOARD

SOUTHERN EDUCATION AND LIBRARY BOARD

WESTERN EDUCATION AND LIBRARY BOARD

SECTION 75, NORTHERN IRELAND ACT 1998

CODE OF PROCEDURES FOR RECRUITMENT, SELECTION

AND PROMOTION AND INTERNAL TRAWL PROCEDURE

AN EQUALITY IMPACT ASSESSMENT

February 2003

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Equality Impact Assessment – Code of Procedures for Recruitment, Selection and Promotion and the Internal Trawl Procedure

EXECUTIVE SUMMARY

The Staff Commission for Education and Library Boards (the Staff Commission) and the five Education and Library Boards (the Boards) are committed to fulfilling their responsibilities under Section 75 of the Northern Ireland Act 1998. In their Equality Schemes, approved by the Equality Commission, the Staff Commission/Boards made a commitment to screen their policies and to identify those policies which would be subject to equality impact assessment. The Code of Employment and Promotion Procedures and the Internal Trawl is one of the policies earmarked for equality impact assessment.

The aim of the Code of Employment and Promotion Procedures is to secure fair and equal consideration of applications to the Education and Library Boards by people seeking to be employed (non-teaching staff) by Boards and fair and equal treatment of (non-teaching) staff who are so employed. The existing Code, which has operated since October 1993, provided that “*All posts at basic recruitment level and Head of Department or above will automatically be publicly advertised. All other posts will be trawled throughout the Education and Library Service under the centralised trawling procedure.*” In advance of the equality impact assessment, a major review of the Code was undertaken by a Working Group of representatives of the Staff Commission, the Boards, the recognised trade unions and the Equality Commission for Northern Ireland.

This equality impact assessment (EQIA) has been conducted jointly by the Staff Commission for Education and Library Boards and the five Education and Library Boards. It has been completed using both quantitative and qualitative analysis, and is based on the Practical Guidance on Equality Impact Assessment issued by the Equality Commission in April 2001.

In conducting this equality impact assessment, the following data, research and tribunal findings were taken into account:

- Employment Data
- Results of the Census of Population in 1991 & 2001
- Case Law
- Review of the Internal Trawl Procedure (1995)
- Codes of Practice

In addition, a pre-consultation exercise was conducted. Sixteen written responses were received and a number of consultation meetings were held.

An assessment of the impact of the redrafted Code of Procedures for Recruitment, Selection and Promotion and the Internal Trawl was then conducted on the equality of opportunity duty in respect of the nine categories of persons identified in Section 75. This exercise has identified the following issues:

- the potential barrier to the promotion of equality of opportunity of the internal trawl procedure (race; disability; gender; religion and dependants)
- the potential adverse impact on a number of Section 75 categories, namely gender, disability and dependants, of the use of a minimum service requirement when applying for promotion posts;
- the need to consider more specific guidance on job requirements, eligibility criteria and assessment arrangements.

The Staff Commission/Boards have proposed a range of positive measures which will, they believe, eliminate any adverse impact for the categories of persons covered by Section 75. These measures will include:

- a significant reduction in the number of posts advertised through the Internal Trawl Procedure;

- removal of the eligibility requirement that staff with less than 6 months' continuous service in a permanent capacity cannot apply for promotion to a higher graded post;
- removal of the eligibility barrier in relation to internal trawls for staff on temporary, fixed term contracts and/or Employment Support Scheme;
- incorporation of a number of substantive changes to further develop good practice and thereby promote equality of opportunity; and
- provision of comprehensive training to panel members.

The Staff Commission/Boards now wish to consult on the findings of this equality impact assessment. With this objective in mind, the availability of this report has been publicised widely in the press and has also been posted on the Staff Commission's website at www.staffcom.org.uk In addition, a series of consultation meetings will be arranged both locally and at regional level.

A copy of this report can be made available, on request, in alternative formats including in large print, in Braille, on computer disc, on audio cassette and in minority languages for those who are not fluent in English.

Arrangements for consultation are being co-ordinated by Ms Deirdre Vaughn, Senior Principal Officer - Equality, Staff Commission for Education and Library Boards, Forestview, Purdy's Lane, Belfast, BT8 7AR.

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The closing date for responses is 28th May 2003.

The outcomes of this equality impact assessment will be published in the press and the results will also be posted on the Staff Commission's website at www.staffcom.org.uk.

Equality Impact Assessment

Code of Procedures for Recruitment, Selection and Promotion and the Internal Trawl Procedure

1. Introduction

1.1 Section 75 of the Northern Ireland Act 1998 requires the Staff Commission for Education and Library Boards and the five Education and Library Boards, when carrying out their functions, to have due regard to the need to promote equality of opportunity between nine categories of persons namely:-

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without

and, without prejudice to the obligations above, to also have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

1.2 The Staff Commission/Boards set out in their Equality Schemes how they proposed to fulfil their statutory duties. Existing policies were screened to assess whether they impacted on the promotion of equality of opportunity or the duty to promote good relations using the following criteria:-

- Is there any evidence of higher or lower participation or uptake by different groups?
- Is there any evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy?

- Is there an opportunity to better promote equality of opportunity between the relevant different groups, either by altering the policy, or by working with others in government or in the larger community, in the context of the policy?
- Have consultations with relevant groups, organisations or individuals indicated that policies of that type create problems specific to any relevant group?

1.3 The Staff Commission/Boards published a detailed report on the Screening of Policies which identified those policies which would be subject to equality impact assessments. The report concluded that the Code of Employment and Promotion Procedures and the Internal Trawl Procedure should be subject to an equality impact assessment.

1.4 The purpose of this consultation document is to record the findings of an Equality Impact Assessment conducted jointly by the Staff Commission for Education and Library Boards and the five Education and Library Boards. This information can also be made available, on request, in alternative formats including in large print, in Braille, on computer disc, on audio cassette and in minority languages to meet the needs of those who are not fluent in English.

2. Background to Policy

2.1 The Staff Commission, under Schedule 15(3)(b) of the Education and Libraries (NI) Order 1986 has a responsibility to recommend appointment and promotion procedures for staff (non-teaching) of the five Education and Library Boards and to establish a Code of Employment and Promotion Procedures. The aim of the Code of Employment and Promotion Procedures, hereafter referred to as 'the Code', is *to secure fair and equal consideration of applications to the*

Education and Library Boards by people seeking to be employed¹ by Boards and fair and equal treatment of staff who are so employed.

The procedures for the appointment of teachers will be the subject of a separate equality impact assessment.

The five Education and Library Boards employ approximately 15,000 non-teaching full-time staff and approximately 11,000 non-teaching part-time staff in schools, libraries, youth, transport, catering, special education, curriculum advice and support and in a range of other services ancillary to education.

The Boards seek to ensure that high quality education, youth, library and support services exist throughout their area. The Boards recognise the value and importance of their staff as a key resource in the delivery of such high quality services.

The Boards' (non-teaching) staff are employed in accordance with the principles enshrined in the Code. Virtually all of the non-teaching staff employed by the five Education and Library Boards are subject to the National Joint Council (NJC) pay, terms and conditions of employment. The main exceptions to this are Youth and Community Workers who are employed under the Joint Negotiating Committee for Youth and Community Workers, the Curriculum, Advice and Support Services staff, posts in the Educational Psychology Service, Divisional Youth Officers, Youth Officers, and Senior Youth Officers who are employed under the Soulbury Committee.

2.2 Current Policy

The current Code was issued in October 1993. The Code of Employment and Promotion Procedures (Section 2 paragraph 2.1) states that:- "**All posts at basic recruitment level and Head of Department or above will automatically be publicly advertised. All other posts will be**

¹ employed in this context refers to non-teaching staff employed by the five Education & Library Boards

trawled throughout the Education and Library Service² under the centralised trawling procedure. This procedure requires that all such posts are internally trawled (advertised) across the five Education and Library Boards and within the Staff Commission.

The effect of this policy is that a significant number of posts are filled using the centralised Internal Trawl Procedure.

In the period 1 January 2001 – 31 December 2001, 201 posts were trawled as follows:-

BELB	NEELB	SEELB	SELB	WELB	Total
29	61	75	23	13	201

In the period 1 January 2002 – 31 December 2002, 209 posts were trawled as follows:-

BELB	NEELB	SEELB	SELB	WELB	Total
44	52	44	22	47	209

The profile of posts trawled by grade is as follows

National Joint Council Grades	No.	
	2001	2002
Senior Clerical Officer	73	66
Executive Officer	40	43
Senior Executive Officer	27	27
Administrative Officer	8	19
Senior Administrative Officer	8	17
Assistant Principal Officer	19	15
Principal Officer	3	8
Senior Principal Officer I	1	3
Senior Principal Officer II	1	-
Education Officer	3	3
Assistant Senior Education Officer	4	3
JNC Youth & Community Workers' Grades		
Senior Youth Worker	6	-
Centre Manager	1	-

² Five Education & Library Boards and the Staff Commission for Education and Library Boards

Soulbury Committee Grades		
General Adviser	3	1
Adviser	1	3
Primary Officer	1	-
Deputy Head of Youth Services	1	-
Senior Youth Officer	1	-
Senior Educational Psychologist	-	1
Total	201	209

2.3 An analysis in 1995 and an examination of the Boards' monitoring data has identified trends in the composition of the Boards' workforce. In particular these trends indicate that there is:

- a religious imbalance at various levels; and
- a gender imbalance at various levels.

2.4 Review of the Code of Employment and Promotion Procedures

In January 2001 the Staff Commission established a Working Group to review the Code. The Working Group comprised representatives of the Staff Commission, the Boards, the recognised trade unions and the Equality Commission for Northern Ireland.

The review was being undertaken in the light of:-

- (i) equality of opportunity requirements; and
- (ii) the Joint Negotiating Council's agreement on Single Status.

2.5 Equality of Opportunity Requirements

Equality of Opportunity provisions impinge on the Staff Commission's/Boards' policy on recruitment, selection and promotion in terms of:-

- (i) the requirement under anti-discrimination legislation to ensure fair participation; and to prevent direct and indirect discrimination in relation to religion, political opinion, gender, race and disability; and

- (ii) the requirement under Section 75 of the Northern Ireland Act 1998 to have due regard to the need to promote equality of opportunity in relation to the nine ‘equality categories’ and the related requirement to undertake an Equality Impact Assessment in relation to key policies.

2.6 Single Status

In 1997 a “Single Status” agreement was reached which merged the existing negotiating machinery for Administrative, Executive, Clerical, Professional and Technical and Ancillary and General staff (previously referred to as ‘white collar’ and ‘blue collar’ workers) to create a single Joint Negotiating Council. The “Single Status” agreement also required the harmonisation of conditions of service and the removal of any inequality of treatment between the two former groups of employees.

2.7 Redrafted Code

The Working Group (referred to at paragraph 2.4) has redrafted the Code of Employment and Promotion Procedures. The redraft is titled “Code of Procedures for Recruitment, Selection and Promotion”, hereafter referred to as ‘the redrafted Code’. The redrafted Code details the general principles which must be applied by those involved in the recruitment, selection and promotion process and outlines the legislative framework applicable to that process.

The redrafted Code is accompanied by practical guidance on the recruitment and selection process.

To pave the way for the EQIA pre-consultation took place on the redrafted Code. The redrafted Code was issued with a briefing paper and pre-consultation response pro forma to 253 consultees. Sixteen written responses were received and three consultation meetings were held. A summary of the responses received is contained at paragraph 3.1 (f) below.

3. Consideration of Available Data and Research

3.1 In conducting this Equality Impact Assessment the Staff Commission/Boards took fully into account data and research findings from the following sources:-

(a) Employment Data

Data relating to gender, perceived religious belief, age and disability for non-teaching staff employed in the Education and Library Boards and data relating to gender, religious belief, marital status, race and disability for applicants for posts in the Education and Library Boards.

(b) Results of the Census of Population and Housing carried out in Northern Ireland in 1991 and 2001.

(c) Case Law

Fair Employment Tribunal's decision in McCausland -v- Dungannon District Council (58/90FET). In this case the Tribunal ruled that the trawl procedure gave rise to indirect discrimination.

Fair Employment Tribunal's decision in Baird -v- Cookstown District Council (161/91FET). In this case the Tribunal concluded "particular problems can be caused for local government bodies if selection is operated through elected representatives". It stated, "The employer is liable for the actions of all participants even though the voting on selection reflects party lines. Employment selection panels, howsoever composed, should approach selection without regard to political opinions or religious beliefs, including their own opinions and beliefs."

(d) Review of the Internal Trawl Procedure (1995)

An analysis of a random sample of posts which had been trawled throughout the Education and Library Service³ was conducted in an effort to determine whether there was adverse impact on community background when posts were trawled throughout the Service.

(e) Research

Research was conducted to identify best practice in recruitment and selection to address accessibility issues and to supplement the quantitative and qualitative data available. (See Appendix 1 for details of reports utilised).

(f) Pre-consultation

During the screening of policies consultation exercise (June – October 2001) a number of issues were raised regarding the Code of Employment and Promotion Procedures and/or Internal Trawl Procedure. These are summarised below:-

- the need to consider how an internal trawl can contribute to achieving equality of opportunity;
- that all vacant posts should be advertised widely and accessibility issues addressed;
- that qualifications obtained overseas are recognised and accorded sufficient status;
- that consideration be given to difficulties carers have in employment e.g., (may not enjoy equality of opportunity with respect to career development or promotion⁴).

Furthermore, during the course of data gathering for the EQIA a pre-consultation questionnaire was issued to consultees listed in the Staff Commission's/Boards' Equality Schemes.

Written responses were received from:-

³ Boards/Staff Commission

⁴ Report on Screening of Policies, February 2002

- Independent Panel for Special Education Advice
- Northern Ireland Committee of the Irish Congress of Trade Unions
- Council for Catholic Maintained Schools
- Community Relations Council
- Presbyterian Church in Ireland
- Employers' Forum on Disability
- Multi-Cultural Resource Centre
- MENCAP
- Youth Service (NEELB)
- Disability Action
- Northern Ireland Council for Ethnic Minorities
- Staff Commission member
- Northern Ireland Public Service Alliance
- Individual response
- Al-Nisa Women's Group (BIC)
- A meeting was held with the Equality Commission for Northern Ireland, the Women's Support Network and youth workers from voluntary youth clubs in the Western Board area to obtain their views.

The responses are briefly summarised below:-

- the opportunity to contribute to the EQIA at the start of the process was welcomed;
- a number of consultees commented on the clarity of the information presented;
- most organisations indicated that the redrafted Code would have a positive effect on the promotion of equality of opportunity;
- the potential for an internal trawl procedure to exacerbate existing workforce imbalances was identified together with concerns regarding the use of trawls and their restrictive nature;
- the need to implement the good relations duty through audits, training and links with key groups was highlighted;
- concerns were expressed that carers, people with disabilities and people from ethnic minorities may not enjoy equality of opportunity

with respect to recruitment, selection, promotion and/or career development. The need for accessibility issues to be addressed through positive action/reasonable adjustment, as appropriate, was detailed;

- the need for a more comprehensive approach to employment monitoring was raised;
- the scope to further develop equality training for panel members was emphasised;
- advice on good practice in the recruitment and selection process.

A more comprehensive summary is contained at Appendix 2.

4. Assessment of Impacts

An assessment of the possible impacts of the Staff Commission's redrafted Code and the Boards'/Staff Commission's policy to internally trawl posts is set out below:-

4.1 Religious Belief

4.1.1 McCausland -v- Dungannon District Council Case

The case McCausland -v- Dungannon District Council considered the impact of the internal trawl procedure. In this case the post of Chief Works Manager was trawled throughout District Councils and Mr McCausland, an employee of the Department of the Environment, could not therefore apply. The Tribunal ruled, in this case, that the trawl procedure gave rise to indirect discrimination. On the question of justifiability the Tribunal found that the Council had not demonstrated a real need which could outweigh the discriminating affect of the decision to internally trawl the post.

The Fair Employment Tribunal concluded "... that the trawl was a "condition or requirement" which disadvantaged all those, irrespective of religious belief, who were not local government employees." (McCausland -v- Dungannon District Council '58/90 FET')

The effect of the decision was to point out the vulnerability of promotion or recruitment procedures which place a requirement which may result in a considerably smaller proportion of Protestants or Roman Catholics being eligible for consideration when compared with the composition of the eligible labour force in the wider population.

4.1.2 Analysis of the Internal Trawl Procedure

In 1995 the Staff Commission and the Boards established a Working Party to consider the strategic personnel issues arising from the McCausland decision. An analysis of a range of posts trawled throughout the Education and Library Service was conducted. The analysis of administrative and clerical posts, as well as a range of education posts, was conducted with the assistance of the Statistics and Social Division of the Northern Ireland Civil Service. The comparisons were carried out based on the qualifications, age groups and standard occupational classification (SOC⁵) groups which were considered to be most appropriate. This analysis suggested that the continued trawling of certain posts was likely to result in disparate impact in terms of community background.

The posts identified were:

- Senior Adviser
 - Adviser
 - Senior Educational Psychologist
 - Principal Psychologist
- } Soulbury Grades
-
- Assistant Senior Education Officer
 - Education officer
 - Senior Principal Officer
 - Principal Officer
 - Assistant Principal Officer
 - Senior Administrative Officer
 - Senior Clerical Officer
- } NJC Grades

⁵ SOC is a structured approach to occupational classification. Occupations are identified and aggregated with reference to the similarity of qualifications, training, skills and experience commonly associated with the competent performance of constituent tasks (Appendix 4 refers).

On the basis of the above outcome, a number of options on a spectrum from retaining the trawl in its present form, to publicly advertising all posts were considered. However, given that a Review of Educational Administration was on-going which had resulted in the Department of Education placing a moratorium on the filling of posts it was decided to “continue the trawl under the current arrangement with an analysis of posts being undertaken”, using the McCausland test, see Appendix 3. Where such an analysis identified the potential for adverse impact the post must be publicly advertised. This practice has remained in place.

4.1.3 Statistical Analysis of Monitoring Returns

As part of this Equality Impact Assessment a further statistical analysis has been conducted based on information contained in the annual monitoring returns submitted to the Equality Commission for Northern Ireland against the N I economically active population, based on the 1991 Northern Ireland census.

The analysis at Figure 1 shows that in 1992, 58% of the Boards’ permanent non-teaching staff were Protestant compared to 60.1% in the Northern Ireland census (1991). Conversely 42% of the Boards’ permanent non-teaching staff were Catholic compared to 39.9% in the Northern Ireland Census (1991). In 2001, 54% of the Boards’ permanent non-teaching staff were Protestant compared to 53.13% in the Northern Ireland census (2001). Conversely 46% of the Boards’ permanent non-teaching staff were Catholic compared to 43.76% in the Northern Ireland Census (2001).

Figure 1

Boards profile of permanent Non-teaching staff as at 1 January 1992		Northern Ireland Census 1991 Labour Availability Data	
Protestant	Catholic	Protestant	Catholic
58%	42%	60.1%	39.9%
Boards profile of permanent Non-teaching staff as at 1 January 2001		Northern Ireland Census 2001 % of persons with community background⁶	
Protestant	Catholic	Protestant	Catholic
54%	46%	53.13%	43.76%

The SOC Groups 1-4 contain a considerable number of the grades of posts which are eligible for inclusion in the Boards/Staff Commission's internal trawl. An analysis of the religious composition of these SOC groups concluded that 45% of the Boards' non-teaching staff in 1992 and 36% in 2001 were in SOC groups 1-4 compared to 44% in the N I Census (1991). In 1992, for Protestants, 46% were in SOC groups 1-4 compared to 44% in the census; for Roman Catholics, 44% were in SOC groups 1-4 compared to 41% in the census, Figure 2 refers. In 2001, for Protestants, 35% were in SOC groups 1-4 compared to 44% in the census; for Roman Catholics 36% were in SOC 1-4 compared to 41% in the census (see footnote 6 below).

Figure 2

SOC Groups 1 - 4	Boards profile of permanent non-teaching staff by SOC as at 1 January 1992		Northern Ireland Census 1991 Labour Availability Data	
	Protestant	Catholic	Protestant	Catholic
	46%	44%	44%	41%
	Boards profile of permanent non-teaching staff by SOC as at 1 January 2001		Northern Ireland Census 1991 Labour Availability Data	
	Protestant	Catholic	Protestant	Catholic
	35%	36%	44%	41%

⁶ Under the Northern Ireland Census 2001 Labour Availability data is not yet available.

A further analysis was conducted of the religious composition of non-teaching staff in SOC groups 1 – 4 excluding basic recruitment grade posts as at 1 January 2001. It revealed for Protestants 60% occupy posts which could be classified as “promotion grades” in SOC groups 1 – 4 compared to 44% in the census; for Roman Catholics 49% occupy posts which could be classified as promotion grades in SOC groups 1 – 4 compared to 41% in the census, figure 3 refers.

Figure 3

SOC Groups 1 - 4	Boards profile of permanent non-teaching staff by SOC of promotion posts as at 1 January 2001		Northern Ireland Census 1991 Labour Availability Data	
	Protestant	Catholic	Protestant	Catholic
	60%	49%	44%	41%

Basic recruitment grade posts, non-teaching staff are publicly advertised. An analysis, Figure 4, was conducted of the religious profile of employees appointed to posts at basic recruitment levels in 2001 in SOC groups 1-4. For Protestants 34% are in SOC groups 1-4 compared to 44% in the census; for Roman Catholics, 39% are in SOC groups 1-4 compared to 41% in the census.

Figure 4

SOC Groups 1 - 4	Profile of Board employees appointed at basic recruitment levels (2001)		Northern Ireland Census 1991 Labour Availability Data	
	Protestant	Catholic	Protestant	Catholic
	34%	39%	44%	41%

4.1.4 Article 55 Review

The Boards are required to conduct triennial reviews of their employment practices to ensure the provision of fair participation among the Protestant and Roman Catholic communities (conducted under the Fair Employment Legislation). As a result a number of Boards currently use

“welcoming” statements directed at the Protestant or Roman Catholic communities.

4.1.5 Findings

There is evidence that the Internal Trawl Procedure gives rise to differential impact in relation to religion. However it is noteworthy that a large differential exists in the religious employee profile at basic recruitment grades which are posts that are publicly advertised. A large differential also exists in the Boards’ profile of permanent non-teaching staff in posts which can be identified as “promotion grades”. At the time of writing the report of the Northern Ireland Census data had just been published. It revealed a 5% decline in the Protestant population, to 53.1%, and a rise in the Catholic population to 43%. A breakdown of the community background of the Northern Ireland economically active population had not yet been published.

4.2 Political Opinion

Data is not collected on the political opinions of job applicants or employees of the Boards/Staff Commission but there has been no suggestion to date that political opinion is an issue in relation to gaining employment and/or promotion in the Boards/Staff Commission. However, during the consultation process an issue was raised regarding the composition of selection panels. It was suggested that, where possible, when elected representatives serve on selection panels their composition be representative of the widest range of political opinions and they be advised of the comments of the Fair Employment Tribunal in the case of Baird -v- Cookstown District Council 1994 (161/91 FET).

4.3 Racial Group

The Boards have not collected data on the racial ethnic origin of its staff however, since 2001 they have monitored the racial ethnic origin of job applicants. Racial ethnic monitoring of job applicants indicates that of the 18,622 job applicants received, 35 were positively identified as being people from an ethnic minority background, 0.19%.

A survey of 22,600 industrial and non-industrial civil servants in January 2001 identified 31 black employees, 0.1% of those employed. There were no black employees among the 1,400 industrial civil servants (DFP 2001⁷).

McGill and Oliver (March 2002) concluded “there is an under-representation of people from ethnic minorities in public sector employment” and “that under-representation was likely to be most severe at senior levels, but no data has been published on this”.

During the EQIA pre-consultation exercises concerns were raised regarding the use of the internal trawl. In the context of the provision of the Youth Service it was stated that “ethnic minority staff are mainly located in the voluntary sector and cannot move to senior posts in the Education and Library Boards”.

The Commission for Racial Equality in its Northern Ireland Code of Practice for Employees states “it is unlawful for employers to restrict access to opportunities for promotion or training in a way which is discriminatory. It is therefore recommended that:-

- (a) job and training vacancies should be made known to all eligible employees, and not in such a way as to exclude or disproportionately reduce the numbers of applicants from a particular racial group;
- (b) employers seek employees through the use of media which is accessible to all potential applicants”. (paragraph 2.10).

While there is no quantitative data on the racial origin of the Boards’ workforce the qualitative information available together with the information on job applicants suggests that there is an under-

⁷ The report from the Department of Finance & Personnel on the composition of the Northern Ireland Civil Service staff grouped ‘ethnic origin’ as either ‘white’ or ‘other’ – 31 respondents chose ‘other’

representation of black and minority ethnic communities employed by the Boards. However, the Northern Ireland census 2001 disclosed that the vast majority of people in Northern Ireland were white and born in the Province. In total, 99.15% classified themselves as white, 0.2% were Chinese, 0.2% were of mixed ethnic origin, 0.1% were Indian. The Traveller Community was estimated at 0.1%.

4.4 Age

Information on the age profile of employees has been derived from the Boards' payroll systems. The comparator data has been taken from the Labour Force Survey Summer 2002, economically active employees.

The analysis shows that the Labour Force Survey (LFS) has a higher percentage in the younger age groups compared to the Boards – 43% versus 25% under 34 years. Conversely, the Boards have a higher percentage in the older age groups compared to the LFS – 46% versus 30% in the 45+ age group. The percentages in the 35-44 age group are similar.

During the preparation of this EQIA there have been no issues raised to indicate that the redrafted Code and/or Internal Trawl Procedure negatively impacts in respect of a person's age. The difference between the two groups above is more likely to reflect the experience/educational requirements for posts within the service.

Most posts within the Boards have a compulsory retirement age of 65, which in practice means that applicants aged 65 or over are excluded.

Age is a criterion in a number of posts e.g. Bus Drivers - justification is in relation to the requirements of the licence itself (current PCV Category D Licence holder must be age 21). There is a potential for differential impact to arise on grounds of age, where age is a criterion it is felt to be justifiable.

4.5 Marital Status

Information on marital status can be derived from the Boards’ payroll system, Figure 5 refers. It is however based on information provided by employees at the time of appointment and a person’s marital status may change during the period of employment.

Figure 5

Data on the marital status of job applicants across the five Boards		Northern Ireland Census 2001	
	%		%
Single	43.17	Single	33.11
Married	49.31	Married	48.45
Widowed	0.99	Widowed	7.81
Divorced	3.53	Divorced	4.12
Other	3.01	Other	6.51

Given the earlier qualification of the Boards’ data and that no issues have been raised to suggest that such a differential impact exists, there is no reason to believe that a person’s marital status will have an adverse impact in regard to the application of these procedures. Issues of family status are addressed under the heading of Dependants.

4.6 Sexual Orientation

Data is not collected on the sexual orientation of employees or applicants for jobs in the Boards. There is no evidence to suggest that there is differential impact in respect of a person’s sexual orientation.

The Coalition on Sexual Orientation in their publication ‘Equality and Sexual Orientation’ calls for a clear statement of equality of opportunity on job advertisements and the advertisement of positions in lesbian, gay bi-sexual, transsexual (LGBT) press and within the LGBT community organisations.

4.7 Gender

At paragraph 4.1.2 reference is made to an analysis of a range of posts conducted in 1995. The analysis of administrative and clerical posts was conducted with the assistance of the Statistics and Social Division of the Northern Ireland Civil Service. This analysis suggested that the continued trawling of certain posts is likely to result in disparate impact in terms of gender. The posts identified were:

- Senior Adviser
 - Adviser
 - Senior Educational Psychologist
 - Principal Psychologist
- } Soulbury Grades
-
- Assistant Senior Education Officer
 - Education officer
 - Senior Principal Officer
 - Principal Officer
 - Assistant Principal Officer
 - Administrative Officer
 - Senior Executive Officer
 - Executive Officer
 - Senior Clerical Officer
- } NJC Grades

The Internal Trawl Procedure was more likely to have a potential disparate impact on women at senior levels and on males at the NJC grades up to and including Principal Officer level.

As part of this EQIA, a further statistical analysis has been conducted based on information contained in monitoring returns to the Equality Commission.

This analysis, Figure 6, has shown that there are significant differences in gender between the Boards and also between the period 1992 and

2001 for all Boards. The largest difference in 1992 was in the North Eastern Board with 28% males and the smallest difference was in the Western Board with 36% males. By 2001 the margin between genders had increased in all Boards, again the Western Board had the smallest difference.

Figure 6

Boards gender profile of permanent non-teaching staff as at 1 January 1992 and 1 January 2001

1992					
	BELB	NEELB	SEELB	SELB	WELB
Male	29%	28%	30%	32%	36%
Female	71%	72%	70%	68%	64%

2001					
	BELB	NEELB	SEELB	SELB	WELB
Male	26%	20%	21%	21%	30%
Female	74%	80%	79%	79%	70%

An analysis, Figure 7, of non-teaching staff by gender and SOC shows that at SOC Groups 1-3 there is an under-representation of women, this is by and large the managerial, senior administrative, professional and technical grades. An under-representation of males has been identified at executive, administrative, clerical and secretarial levels whose grades are included at SOC Group 4.

Figure 7

Gender profile of the Boards permanent non-teaching staff by standard occupational classification (SOC)

		1992			2002			
SOC	No.	Male	No.	Female	No.	Male	No.	Female
1	217	4.4%	155	1.4%	208	6.0%	253	2.1%
2 ⁸	1234	24.8%	1137	10.1%	313	9.0%	610	5.1%
3	817	16.4%	632	5.6%	644	18.5%	720	6.0%
4	285	5.7%	2905	25.9%	285	8.2%	2574	21.6%
5	335	6.7%	15	0.1%	275	7.9%	1	-
6	1319	26.5%	4542	40.4%	1093	31.4%	5918	49.5%
7	0	-	47	0.4%	0	-	74	0.6%
8	633	12.7%	23	0.2%	603	17.3%	31	0.3%
9	137	2.8%	1774	15.8%	65	1.9%	1763	14.8%
Total	4977	100%	11230	100%	3486	100%	11944	100%

As part of positive action programmes, some Boards are using “welcoming” statements directed at males or females.

During consultations with women’s groups, whilst it was acknowledged that the Internal Trawl Procedure provided a career path for staff and given the large numbers of women at SOC Group 4, it could be argued to be advantageous in the promotion of equality for women, it was unanimously the view of the groups represented that the trawl should be abandoned with all posts being publicly advertised.

There is evidence that the Internal Trawl Procedure gives rise to differential impact in relation to gender. However, it is again noteworthy that the largest gender differential exists at senior and basic recruitment levels which are posts that are more likely to be publicly advertised.

⁸ Since April 1998 the Further Education sector is no longer included in the Boards’ monitoring returns, this has a significant impact at SOC 2.

4.8 Disability

Monitoring of employees on grounds of disability has its roots in the Disabled Persons (Employment) Acts (NI) 1945 and 1960 which required Boards to employ a 3% quota of registered disabled people.

In 1992, each Board surveyed its non-teaching staff to establish the extent of disability among Board employees and to ascertain needs with a view to ensuring that staff with disabilities are provided with the necessary support to enable them to continue to play a full role in the Board. The outcomes were similar across the five Boards, for ease of analysis the results of a representative Board are featured in this EQIA.

A total of 51.7% of employees returned the questionnaire. The number of employees who consider themselves to have a permanent disability shown as a percentage of those surveyed was:

	Registered⁹ Disabled	Non-Registered Disabled	Total
Male Number	11	36	47
%	0.2	0.8	1.1
Female Number	1	65	66
%	0.0	1.4	1.4
Total Number	12	101	113
%	0.3	2.2	2.5

Of the 113 employees who declared they had a disability, the largest numbers were in the category ‘other’. It accounted for **58** (51%) of all people with disabilities. Asthma, heart disease and diabetes in order of frequency equated to 64% of the types of disability which made up this category. Mobility and hearing were next at **27** (24%) and **15** (13%) respectively, while vision, dexterity/co-ordination and psychiatric/mental accounted for the remaining **13** (12%) employees.

⁹ The monitoring mechanism in place in 1992 was based on those people who were registered as disabled under the provisions of the Disabled Persons (Employment) Acts (NI) 1945 and 1960

A breakdown of employees with a disability by gender and location identified that by gender, the proportions were 41% male and 59% female. The higher proportion of female employees is explained by the fact that females account for approximately 80% in the total number of employees surveyed. There is evidence that there were more male employees, particularly in the age category (50-59) with disabilities. The Labour Force Survey (LFS) identifies that the proportion of males with a disability was slightly higher for males (20%) than females (19%), but for the age group 45-59 a higher proportion of women were disabled than men, 33% and 32% respectively.

Since January 1997 the Boards have monitored all job applicants using the definitions of disability contained in the Disability Discrimination Act 1995.

It is clear from the information above that a single system has not been used to monitor employees/job applicants on the grounds of disability. This has hampered the analysis and assessment of impact. The Spring 2002 LFS estimates that one in five (20%) persons (203,000) of working age in Northern Ireland had a current long-term disability. Out of the 203,000 disabled persons of working age at Spring 2002, 66,000 were in employment. It is also clear from the data available that, notwithstanding the earlier qualification of the Boards' monitoring data, there is an under-representation of people with disabilities in employment in the Boards. The under-representation is greatest at senior levels. At the pre-consultation stage of this EQIA, a concern was identified that excessive use of internal trawls could maintain or indeed add to any prevailing workforce imbalance. The exclusion of some staff engaged on Employment Support Contracts¹⁰ from promotion posts advertised through the Internal Trawl Procedure has an adverse impact on people with disabilities.

¹⁰ Staff who have become disabled and are retained on an employment support contract remain eligible to apply for promotion posts under the internal trawl. People employed directly under the employment support contract are not eligible to apply for posts advertised under the internal trawl procedure.

The need to make reasonable adjustments when assessing candidates with a disability against criteria was emphasised at the pre-consultation stage. Furthermore, an issue was raised that it was important to assess a disabled applicant's merits as they would be if any reasonable adjustment required under the Act had been made.

Finally, research has indicated that the process of recruitment and selection can be inaccessible to people with disabilities. Job advertisements in newspapers do not adequately target some groups of people with disabilities e.g., people with a learning disability. In the sample survey referred to above, in the category of people with a learning disability, there were no employees.

All jobs which are publicly advertised by the Boards are automatically notified to the Training and Employment Agency who in turn refer them to the Disablement Employment Advisers.

4.9 Dependants

Information is not collected from employees and/or job applicants in relation to their responsibilities as a 'carer'. Four-fifths of part-time staff in the Boards are female (85.2%). The Equality Commission's Monitoring Report No. 12, 2001, states "the Boards represent almost half (47.9%) of the part-time monitored public sector workforce". In some cases this reflects the nature of the work available e.g., school meals, classroom assistants, but it is also an indicator, given the high percentage of female workers in this category, of people with responsibility for dependants.

Research has also shown that due to the pressures of caring, many carers are not in employment and those who are may not enjoy equality of opportunity in respect of career development or promotions. During the consultation exercise on the screening of policies, a number of carer groups expressed a concern that the Internal Trawl Procedure could hamper the return to work of carers who had left the service because of their domestic responsibilities.

Qualitative data suggests that people with dependants are also more likely to be employed on temporary or short-term contracts. The exclusion of temporary or fixed-term contract employees from the internal trawl procedure is therefore likely to have a differential impact on employees with dependants.

4.10 General

In addition to the various matters referred to above, a number of issues have been raised which are capable of cutting across all or some of the nine categories of persons specified in Section 75. They are:-

- **Internal trawl** – the practice of internally trawling posts could hinder the promotion of equality of opportunity. The following Codes of Practice:-
 - Fair Employment Code of Practice (1989);
 - Removing Sex Bias from Recruitment and Selection (1995 EOC NI);
 - Code of Practice for the Elimination of Discrimination in the Field of Employment against disabled persons or persons who have had a disability (1996); and
 - Code of Practice for Employers for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment (1999 CRENI);

advise against this practice and recommend that employers ensure, as far as practical, that they make all eligible and suitably qualified persons aware of vacancies and encourage them to put themselves forward for consideration. It is noteworthy that Health and Personal Social Services Trusts, Health Boards and District Councils now publicly advertise all job vacancies.

- **Qualifying requirement** – when applying for a promotion post, an employee must have a minimum of six months service in a permanent

capacity – concerns were raised that this may in effect indirectly have an adverse impact on a number of the categories within Section 75, namely gender, disability and dependants.

- **Good practice** – the need for more specific guidance on job requirements and eligibility criteria and assessment arrangements to reflect good practice and ensure full consideration of equality issues in the recruitment and selection process.

5. Consideration of Measures to Mitigate any Adverse Impacts

- 5.1** The Boards/Staff Commission have given careful consideration to the measures that might be taken to eliminate, or at least mitigate, the adverse impacts which have been identified in the previous section of this report.

In order to mitigate any adverse impact in the implementation of the Staff Commission's redrafted Code of Procedures for Recruitment, Selection and Promotion and the Boards'/Staff Commission's policy to internally trawl posts the following actions are proposed.

5.2 Internal Trawl Procedure

5.2.1 Pre-consultation

The Internal Trawl Procedure is the aspect of the EQIA which provoked most debate.

The Trade Unions, as members of the Working Party, established to review the Code, have cited the benefits of an internal trawl procedure as:-

- providing a mechanism to facilitate women in moving through the management structure;

- a return for the Boards' on their investment in the training and development of staff; and
- the creation of career development opportunities for staff which are positive for the organisation.

However, there is both qualitative (feedback from consultees) and quantitative data (monitoring information) which suggests that the internal trawl has a differential impact, particularly in the equality categories, religious belief, gender, race, disability and dependants, (see Section 4 Assessment of Impacts).

The Boards/Staff Commission, mindful of their duty to take account of how they can positively contribute to the promotion of equality, are proposing to move to a position whereby an increased number of posts will be publicly advertised.

5.2.2 Public Advertisement of Posts

Initially, it is proposed that the Boards/Staff Commission will seek to recruit externally in relation to the following:-

- (i) All posts on Joint Negotiating Council for Youth & Community Workers' grades (see Appendix 5)

During the pre-consultation on this EQIA representations were made regarding the use of an internal trawl for the advertisement of youth and community worker posts. It was pointed out that this policy excluded staff from the voluntary youth sector from making application for promotion posts in the Boards. For this reason all such posts will be publicly advertised (Section 4.3 refers).

- (ii) All posts on Soulbury Committee grades (see Appendix 5)

The analysis of posts suggests that the continued use of the internal trawl could give rise to disparate impact in terms of religion and gender in relation to a number of the above posts. (Section 4.1.3 and 4.7 refers). Furthermore, for posts such as

Senior Adviser, the criteria would generally include a requirement for a teaching qualification yet teachers in schools are not eligible to apply for internally trawled posts. It is the Boards'/Staff Commission's view that it is difficult to justify the retention of an internal trawl procedure in respect of such posts.

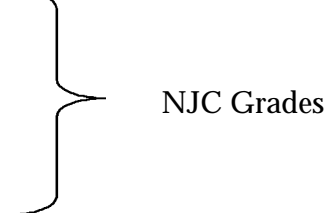
- (iii) Posts on National Joint Council (NJC) grades (see Appendix 5)
Clerical Officer is the basic recruitment grade for all clerical, administrative and executive posts. Clerical Officer posts are publicly advertised. However, in the Library Service, Senior Clerical Officer is the basic recruitment grade and all such posts are publicly advertised.

An under-representation of males has been identified at executive, administrative and clerical levels whose grades are included at SOC Group 4 (Section 4.7 refers). It is therefore proposed that all Senior Clerical Officer and Executive Officer posts be publicly advertised.

In addition, equality issues have emerged during the course of the EQIA in regard to the profile of posts at senior NJC grades namely, Principal Officer, Senior Principal Officer, Education Officer and Assistant Senior Education Officer. The proposal to remove such senior NJC grades from the internal trawl procedure is based on the equality issues which emerged (Section 4 refers) but it also takes account of the policy change across the civil and public services which is to publicly advertise more posts at senior levels.

5.2.3 Internal Trawl

It is proposed that the Internal Trawl Procedure will therefore be confined to the following grades:-

- Assistant Principal Officer
 - Senior Administrative Officer
 - Administrative Officer
 - Senior Executive Officer
- 

The rationale for the retention of the above grades in the Internal Trawl Procedure is that the gender profile of the Boards' permanent non-teaching staff by standard occupational classification, Figure 7 page 24 refers, confirms that women are progressing through the management ranks. However, it must be acknowledged that an under-representation of women still exists at senior managerial levels.

In 2001 and 2002, 201 and 209 posts respectively were internally trawled using the centralised trawl procedure. The proposed revision to this policy in relation to the increased public advertisement of posts would mean that approximately 70% of posts trawled in 2001 and 54% of those trawled in 2002 would now be publicly advertised.

Before posts at the levels specified above are internally trawled the “McCausland test” will be applied. Where such an analysis identifies the potential for adverse impact the post will be publicly advertised.

The Boards/Staff Commission will monitor and rigorously examine over a 2/3 year period the operation of the internal trawl. If an equality analysis of posts internally trawled gives cause for concern, the Boards/Staff Commission will review their decision to retain the Internal Trawl Procedure for the NJC grades specified above.

5.2.4 Qualifying Requirements

In addition, it is proposed that the following **qualifying requirements** be removed:

- (i) removal of the **eligibility requirement** that staff with less than 6 months' continuous service in a permanent capacity cannot apply for promotion to a higher graded post;

- (ii) removal of the **eligibility barrier** in relation to internal trawls for Board/Staff Commission staff on temporary or fixed term contracts; and for staff on Employment Support Contracts within the Education and Library Boards (Section 4.8 and 4.9 refers).

5.3 Code of Procedures and Guidelines for Selection Panel Members

The Boards/Staff Commission propose to incorporate the following substantive amendments to the above draft documents:

Code of Procedures

Page 7, delete final paragraph. Substitute:

“An employer also discriminates against a person with a disability by failing, without justification, to comply with the statutory duty that is imposed on the employer which requires the employer to make reasonable adjustments to their arrangements or the physical features of their premises to prevent them having the effect of placing the person with a disability at a substantial disadvantage compared to persons who are not disabled.”

Page 10, add final bullet point:

“- job descriptions, personnel specifications, application forms and summaries of terms and conditions of employment will, if requested, be provided in alternative formats, for example in large print, in Braille, on audio cassette or on computer disc.”

Page 11, paragraph 3.5, add:

“Where possible, when elected representatives serve on selection panels, their composition will be representative of the widest range of political opinion.”

Page 16, paragraph 3.9, add to first paragraph:

“When inviting candidates to interview, Boards are advised to ask if candidates have any special requirements so that adequate preparations

can be made for any reasonable adjustment to facilitate the interview arrangements for candidates with a disability.”

Page 16, paragraph 3.9 footnote added re medical examination – to read:-
“A person with a disability can be asked to attend a pre-employment medical if this is required of all candidates, however, if a Board insists on a medical check for a person with a disability and not for others without justification, this may constitute unlawful discrimination”.

Guidelines for Selection Panel Members

Page 4, paragraph 1.7, add to personnel specification:

“Consider:

- *what personal, educational, physical, mental and other health requirements are necessary for performing the job bearing in mind (a) that such requirements may impact adversely and/or discriminate against persons with a disability and (b) that there is a need for flexibility as a consequence of the duty to make reasonable adjustments for persons with a disability;*
- *that requiring communication skills to be of a level higher than those which are actually necessary for the job may impact adversely and/or discriminate against persons with a disability and those from minority racial ethnic groups who are not fluent in written and/or spoken English;*
- *that qualification and experience requirements may impact adversely and/or discriminate against certain groups who have lacked opportunities for gaining the specified qualifications and experience, for example young people, persons with a disability and persons with dependants;*
- *that lack of qualifications and experience may be overcome with the development of abilities through training and the provision of other reasonable adjustments;*
- *that voluntary work experience is as relevant as equivalent paid work experience.”*

Page 6 paragraph 1.7 add before penultimate sentence:-

“Given the Boards’/Staff Commission’s commitment to recruiting people with disabilities, applicants with a disability will be offered an interview if the person meets the essential criteria”.

This policy will be stated in job advertisements/trawl notices, as appropriate.

Page 7, paragraph 1.8, add final paragraph:

“It is important to apply standards/factors/criteria consistently to all, however, where an adjustment is required for an applicant this should be clearly documented.

Consideration should be given to:

- *making a reasonable adjustment for persons with a disability even if this may result in some inconsistency in the treatment of job applicants. The Code of Practice for the Elimination of Discrimination in the Field of Employment against disabled persons or persons who have had a disability cites many examples of the types of reasonable adjustments that may be made. These include allowing a person with a learning disability to bring a supportive person to assist when answering interview questions, or allowing a longer time for an interview to a person who is deaf and who is using a sign language interpreter to communicate;*
- *The Race Relations Code of Practice for Employers for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment advises, for example, that applicants should not be disqualified because they are unable to complete an application form unassisted unless personal completion of the form is a valid test of the standard of English required for safe and effective performance of the job.”*

Page 8, paragraph 1.9, add:

“For example, selection tests which contain irrelevant questions or exercises on matters which may be unfamiliar to racial minority applicants

should not be used, e.g. general knowledge questions on matters more likely to be familiar to indigenous applicants. In the revision of such tests, or the way the results of such tests/exercises are assessed – it may be necessary to take account of specific disabled candidates, except where the nature and form of the test/exercise is necessary to assess a matter relevant to the job. It may, for instance, be a reasonable adjustment to accept a lower “pass rate” for a person whose disability inhibits performance in such a test/exercise.”

Page 9, paragraph 1.10, add final bullet:

“- any reasonable adjustments required when establishing the interview arrangements.”

Page 10, delete final paragraph.

Page 11, delete first paragraph. Substitute:

“However, caution is required, especially if the questions are being asked as part of the interview because:

- they may make the candidate feel that they are not being treated fairly as the panel is focusing on disability rather than ability; and*
- without detailed information about the job and its environment the candidate may not be best placed to answer such questions at interview.*

It is also important to recognise that a person’s disability is not the sole factor to be considered. Panel members should be aware that they have a statutory duty to also consider what reasonable adjustments can be made to enable the person with a disability to perform the job. Panel members should be aware that they may have to postpone making their selection decision on the day of the interviews. The final decision may have to await the outcome of investigations into issues about reasonable adjustments.

Training of Panel Members

All Board/Members/Officers involved in recruitment and selection must be provided with training and guidance on the provisions of the redrafted Code, the Board's policy and the legislative provision related to the promotion of equality of opportunity and good practice as it relates to recruitment, selection and promotion.

Such training will include equality awareness.

Employment Monitoring

The Boards/Staff Commission are reviewing current employment monitoring systems. In the context of this review, the Boards/Staff Commission have considered the Equality Commission's Draft Consultation Document "Equality Monitoring". The Boards/Staff Commission submitted a detailed response to the Equality Commission's guidance, further guidance on monitoring from the Equality Commission is awaited.

The Boards/Staff Commission will review its monitoring strategy to ensure effective equality monitoring of both employees and job applicants.

Affirmative/Positive Action

In addition to the affirmative/positive action measures outlined at 5.2 and 5.3 above, the Boards/Staff Commission will individually consider, in accordance with the statutory provision, what affirmative/positive action is required as a result of the findings of this Equality Impact Assessment. The Boards/Staff Commission will seek advice on the development of affirmative/positive action measures from Section 75 groupings.

6. Formal Consultation

6.1 The Staff Commission/Boards now wish to consult as widely as possible on the findings of this Equality Impact Assessment. With this objective in mind the Staff Commission/Boards propose to take the following actions:

- press releases will be prepared and submitted to various media outlets;
- prominent advertisements inviting the public to comment on this matter will be placed;
- this report will be issued to all of the consultees listed in the Staff Commission's and each Board's Equality Scheme and to any member of the public on request;
- a copy of this report will be posted on the Staff Commission's website;
- individual consultation meetings will be arranged with representatives of particular interest groups; and
- this report can be made available, on request, in alternative formats including in Braille, in large print, on computer disc, on audio cassette and in minority languages for those who are not fluent in English.

6.2 The arrangements for consultation are being co-ordinated, on behalf of the Staff Commission and the five Boards by Ms Deirdre Vaugh, Senior Principal Officer - Equality, Staff Commission for Education and Library Boards, Forestview, Purdy's Lane, Belfast, BT8 7AR, to whom all enquiries should be made.

Telephone: 028 9049 1461 Typetalk: 18001 028 9049 1461

Fax: 028 9049 1744 E-mail: deirdre.vaugh@scelb.org.uk

6.3 The closing date for responses is **Wednesday 28 May 2003.**

7. Publication of the results of this Equality Impact Assessment

- 7.1** The outcomes of this Equality Impact Assessment will be published in the press and results will also be posted on the Staff Commission's website.

APPENDIX 1

Sources of Information

Coalition on Sexual Orientation. Equality and Sexual Orientation: A Guide to Involving and Consulting the Lesbian, Gay, Bi-sexual and Transsexual Community'. CoSO. June 2001

Commission for Racial Equality for Northern Ireland (CRENI). Code of Practice for Employers for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment. CRENI. August 1999

Connolly, Paul and Keenan, Michaela. "Opportunities for All" Minority ethnic peoples' experiences of education, training and employment. University of Ulster. 2001

Connolly, Paul and Keenan, Michaela. Racial Attitudes and Prejudice in Northern Ireland. University of Ulster. 2000

Department for Employment and Learning. Labour Market Bulletin No. 16. DEL (NI) November 2002

Department of Economic Development. Fair Employment in Northern Ireland Code of Practice. December 1989

Department of Trade and Industry. Women in Northern Ireland. DETI. July 2002

Education and Library Boards/Staff Commission for Education and Library Boards. Report on Screening of Policies. ELBs/SCELBs. December 2001

Employers' Forum on Disability. Resource Manual (Recruitment Section)

Equality Commission for Northern Ireland. Monitoring Report No 12: A Profile of the Northern Ireland Workforce: Summary of Monitoring Returns. 2001

Equal Opportunities Commission. Removing Sex Bias from Recruitment and Selection: A Code of Practice. March 1995

Fair Employment Commission for Northern Ireland, Fair Employment Case Law, Religious and Political Discrimination in Employment. Fourth Edition

Holder, Daniel. Latinoamerica Esta – A study on Latin American Community in Northern Ireland: Experiences with public bodies and at the workplace. December 2000

MENCAP. Making it Work: A Guide to Employing People with a Learning Disability. MENCAP. April 2002

McGill, Paul and Oliver, Quinton. A wake-up call on race: implications of the Macpherson report for institutional racism in Northern Ireland: A report for the Equality Commission for Northern Ireland. 2002

APPENDIX 2

Summary Of Qualitative Data Received Through The Pre-consultation Process

Date	Source	Issue
24 June 2002	Al-Nisa Women's Group	<ul style="list-style-type: none"> • No specific comments
28 June 2002	NEELB Youth Service	<ul style="list-style-type: none"> • Concerns re: internal trawl and possible negative impact on: <ul style="list-style-type: none"> - women returnees; - youth staff in voluntary sector; (ethnic minority staff mainly in this sector).
10 July 2002	CCMS	<ul style="list-style-type: none"> • No specific comments.
17 July 2002	Community Relations Council	<ul style="list-style-type: none"> • Questions to address/assist in the promotion of good relations.
24 July 2002	Presbyterian Church in Ireland	<ul style="list-style-type: none"> • Welcomed the clarity of the procedures • Questioned the restrictive nature of the internal trawl (not inclusive of entire education sector).
31 July 2002	Multi-Cultural Resource Centre	<ul style="list-style-type: none"> • Referred to research reports • Details of emerging ethnic minority communities in Northern Ireland
31 July 2002	MENCAP	<ul style="list-style-type: none"> • Submission of 3 guides regarding people with a learning disability and employment (includes barriers to employment).
2 August 2002	Disability Action	<ul style="list-style-type: none"> • Welcomed commitment to alternative formats; • Expressed caution re: excessive use of internal trawl; • Emphasised the importance of monitoring all categories covered by Section 75; • Questioned the Boards' scope to amend procedures - how are such amendments equality proofed; • Suggested a review of Code every 3 years; • Recommended that staff on Employment Support Contracts be eligible for promotion; • Emphasised the importance of disability awareness training; • Validation of tests etc.; • Training of Staff Commission observers;

Date	Source	Issue
2 August 2002 continued	Disability Action	<ul style="list-style-type: none"> • Collection of information required to make any reasonable adjustment; • Provision of any reasonable adjustment; • Questions about disability at interview; • Consideration of information on attendance records.
5 August 2002	NICEM	<ul style="list-style-type: none"> • Welcomed methodology used, concerns re: timeframe for consultation; • Recommended monitoring of employees on grounds of race as a pre requisite to the EQIA; • Emphasised the need for positive action where under-representations are identified; inclusion of a section on permissible affirmative action; • Identified the need for anti-racism training of panel members; <ul style="list-style-type: none"> ▪ Referred to specific research reports.
7 August 02	NIC-ICTU	<ul style="list-style-type: none"> • Welcomed methodology adopted, including the involvement of Trade Unions in the process; • Code likely to positively impact on the promotion of equality; • Recognised the potential for internal trawls to exacerbate existing workforce imbalances – review regularly; • Emphasised the importance of good relations audits.
7 August 2002	NIPSA	<ul style="list-style-type: none"> • Involved in drafting – no further comment at this stage.
22 August 02	Equality Commission	<ul style="list-style-type: none"> • Review of legal definitions; • Advice of various Codes of Practice re: internal trawl; • Concern re: qualifying requirements; • Advice re: good practice in Recruitment & Selection.

Date	Source	Issue
3 October 02	WELB (feedback from voluntary youth clubs in the Western area)	<ul style="list-style-type: none"> • Exclusion of Youth Workers in the voluntary sector from Education and Library Boards' Internal Trawl.
	Staff Commission member	<ul style="list-style-type: none"> • Indicated procedures likely to have a positive impact; • Questioned eligibility requirements for promotion posts; • Use of tests/assessment centres – need for a consistent approach; • Inclusion of a Staff Commission observer pro forma document.
	Employers' Forum on Disability	<ul style="list-style-type: none"> • Advice re: legal provisions; • Welcomed reference to range of alternative formats • Clarified that an assessment of a disabled candidate's performance is made in the context of any reasonable adjustment; • Consider how reasonable adjustments are recorded during the process.
	Independent Panel for Special Education Advice	<ul style="list-style-type: none"> • Indicated procedures likely to have a positive impact.
	Individual Personal response	<ul style="list-style-type: none"> • Concern re: internal trawl - recommended it cease.

APPENDIX 3

Extract from the Fair Employment Commission for Northern Ireland, Fair Employment Case Law, Religious and Political Discrimination in Employment, Fourth Edition

McCausland -v- Dungannon District Council

58/90 FET

Mr McCausland, a Catholic who lived in the Dungannon District Council area applied for the post of Chiefs Works Manager in his local Council. He had become aware that the position had become vacant due to the death of the previous incumbent. The Council however did not advertise the post generally but sought applications from local government service staff in Northern Ireland by issuing a trawl notice to each District Council. They did not therefore consider Mr McCausland's application. In so doing they were following the relevant appointment procedures laid down by the Local Government Staff Commission. In the event only 17 candidates applied for the post, all of whom were Protestant. Mr McCausland believed himself to have better qualifications and experience for the post than the successful candidate and brought an application to the Fair Employment Tribunal.

Statistical evidence accepted by the Tribunal showed that there were 1,039 Protestants and 423 Catholics in Standard Occupational Classifications 1, 2 and 3 employed in Local Government. The parallel statistics for the Northern Ireland workforce was 50,170 Protestants and 28,159 Catholics. This meant that 2.07% of Protestants could comply with the requirement as opposed to 1.5% of Catholics.

As a defence to the entire claim however the Respondent suggested that the Local Government Code was a requirement of an instrument made under an enactment within the meaning of S.41 (1) of the Fair Employment (NI) Act. Thus it argued that nothing in the Fair Employment (NI) Acts rendered it unlawful.

1. Tribunal

The Tribunal first dealt with the matter of the defence under S.41. Looking at all the available evidence as to the status of the Local Government Staff Commission Code, however, the Tribunal accepted that it did not set out mandatory requirements but rather guidelines and recommendations. It concluded:-

“The Tribunal does not find that the Code has met the definition as provided for in S.41 of the Act. The Tribunal is not satisfied that the respondent can avail of the S.41 defence, and so we proceed to look at the two types of unlawful discrimination i.e. direct and indirect which are claimed by the applicant”.

The Tribunal dismissed the claim of direct discrimination as it did not find that the trawl itself was a religious based criterion. It went on to consider the elements of indirect discrimination.

“The Tribunal found that the trawl was a “condition or requirement” which disadvantaged all those irrespective of religious beliefs, who are not local government employees”.

The Tribunal accepted that the applicant was prevented from applying for the post and that those that were not prevented from applying came from Standard Occupational Classification Grades 1, 2 and 3. This therefore was the appropriate pool for comparison.

The Tribunal however dismissed the applicant’s claim on the basis that 15 Catholics per thousand who could comply was not a considerably smaller proportion than 20 Protestants per thousand who could comply with the trawl condition. The applicant appealed.

**16 September 1992 FET
M P Price
Vice President**

2. Court of Appeal

The Court of Appeal having considered submissions in the case decided to refer the matter back to the Tribunal for further consideration. It confirmed that the appropriate formulation in determining whether indirect discrimination had occurred was

$$\frac{PY}{PT} \quad \text{compared to} \quad \frac{CY}{CT}$$

where P signifies Protestant, C signifies Catholic. Y is those who can comply and T is the total.

Concerned though that the Tribunal may have misled itself the Court of Appeal spelt out that the Tribunal should have compared the percentages obtained, viz 1.5% and 2.1 % with each other. This would mean that as 1.5 is 71% of 2.1, that the chances of success for Catholics when the trawl requirement applied was 29% less than that of Protestants. Having regard to this the Tribunal was asked whether the proportion of Catholics who can comply with the trawl requirement was considerably smaller than the proportion of Protestants who can comply with it.

**30 June 1993
CA (NI)
Kelly LJ**

3. Court of Appeal

The Tribunal having answered the question posed to it by the Court of Appeal in the affirmative i.e. that the proportion of Catholics who can comply with the requirement was considerably smaller than the proportion of Protestants that can comply, the Court of Appeal then considered whether it was right to interfere with that decision. McDermott LJ giving the judgement of the court first of all stated:

“We have no doubt that a proportionate comparison is necessary in order to discharge the test contained in section 16(2) (b). The first step is to determine if there is a disparity between the particular group’s presence in a relevant population and that group’s representation in the Occupational position under scrutiny. The second step is to enquire if such disparity meets the “considerably smaller test”.

On definition of “considerably”, the Court commented that it would consider that “a good deal” would be the most relevant of the dictionary definitions but stated:

“Substituting “a good deal” for “considerably” in Section 16 (2) (b) provides no more specific pointer to what is or is not “considerably smaller”. In our judgement Parliament has chosen to leave these words undefined relying on the good sense and experience of the “three man jury” (the Tribunal) to produce a fair and relevant conclusion”.

The Court declined to endorse the introduction of the 4/5th rule, a guideline applied in American discrimination cases, as a means of determining adverse impact. If this were to be done it concluded that it should be done by Parliament and not by judicial decision.

Finally, having endorsed the Tribunal’s revised conclusion, the Court sent the case back to the Tribunal to rule on the outstanding question of justifiability of the trawl system.

**21 October 1993 FET
CA (NI)
McDermott LJ**

4. Tribunal

The Tribunal was informed during the course of proceedings that the internal trawl requirement had been abandoned and welcomed that. It still had to find however whether the Respondent had established a reasonable need for its decision to abide originally by the Code. It concluded:

“It is a difficult balancing exercise for this Tribunal but on the balance of probabilities we do not find the Respondent has demonstrated a reasonable need which could outweigh the discriminatory effect of the condition”.

The Tribunal however found that although the Applicant had been unlawfully discriminated against, the discrimination was “unintentional and accidental” and therefore that the applicant was not entitled to an award of compensation.

**20 December 1993 FET
M P Price
Vice President**

APPENDIX 4

Standard Occupational Classification

Major Groups

Number of the Major Group	Major Groups
1	Managers and Administrators
2	Professional Occupations
3	Associate Professional and Technical Occupations
4	Clerical and Secretarial Occupations
5	Crafts and Skilled Manual Occupations
6	Personal and Protective Service Occupations
7	Sales Occupations
8	Plant and Machine Operatives
9	Other Occupations

APPENDIX 5

Profile of Proposed Mitigation Measures re Internal Trawl Procedure

Joint Negotiating Committee for Youth & Community Workers' Grades		
	Current Position	Proposed Change
Trainee	Publicly Advertised	No change
Level 1	Publicly Advertised	No change
Level 2	Publicly Advertised	No change
Level 3	Internal Trawl	Publicly Advertise
Soulbury Committee Grades		
Psychologist	Publicly Advertised	No change
Senior Educational Psychologist	Internal Trawl	Publicly Advertise
Principal Psychologist	Internal Trawl	Publicly Advertise
Assistant Adviser/Advisory Officer	Publicly Advertised	No change
Senior Adviser	Internal Trawl	Publicly Advertise
Divisional Youth Officer	Publicly Advertised	No change
Youth Officers	Internal Trawl	Publicly Advertise
Senior Youth Officer	Internal Trawl	Publicly Advertise
National Joint Council Grades		
Clerical Officer	Publicly Advertised	No change
Senior Clerical Officer	Internal Trawl	Publicly Advertise
Executive Officer	Internal Trawl	Publicly Advertise
Senior Executive Officer	Internal Trawl	No change
Administrative Officer	Internal Trawl	No change
Senior Administrative Officer	Internal Trawl	No change
Assistant Principal Officer	Internal Trawl	No change
Principal Officer	Internal Trawl	Publicly Advertise
Senior Principal Officer (grades I & II)	Internal Trawl	Publicly Advertise
Education Officer	Internal Trawl	Publicly Advertise
Assistant Senior Education Officer	Internal Trawl	Publicly Advertise