

**Isle of Man
Government**

Reiltys Ellan Vannin

Public Consultation



National Insurance Reform Proposals

Issued by:

The Treasury
Income Tax Division
Government Offices
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18 July 2022

National Insurance Reform Proposals

Consultation Document

This Consultation Paper is issued by the Treasury.

The purpose of the consultation is to obtain views in relation to National Insurance reform proposals. The consultation is relevant to all residents of the Isle of Man.

The closing date for responses is **7 October 2022**.

Please respond using the online survey available at www.gov.im

Confidentiality and Data Protection

The information you send may be published in full or in a summary of responses. All information in responses may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2018). Comment fields for this consultation should not include personal data.

If you have a query in relation to how this consultation has been carried out, please contact Income Tax Division by email at Consultation.ITD@gov.im

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National Insurance Reform Proposals

Consultation Document

1. Foreword by the Treasury Minister

The payment of National Insurance Contributions, and the benefits that they provide, are vital to our economy. The National Insurance scheme provides funding for benefits for those who cannot work and a pension in later life that acts as a foundation for retirement. The annual amount paid for benefits and pensions is £175 million and a further £40 million is paid to the Department of Health & Social Care (the NHS allocation). These are significant sums and ensuring that the scheme that underpins the payment of these sums remains relevant whilst supporting future economic growth will form a key part of the island's future development.

Our Island Plan contains a commitment to present to Tynwald in February 2023 proposals for reform of the current National Insurance scheme. This consultation is the start of what I envisage will be a period of engagement with individuals and businesses on how we can ensure that we have a scheme that funds the benefits and pensions we want and that all those who will benefit from it also contribute towards it.

With any form of taxation, we need to strike a balance between raising sufficient sums to fund the services we want whilst ensuring that the economy continues to thrive by attracting individuals and businesses to the island. The current scheme has changed little from the 1970s, whereas our economy and world have changed significantly.

Last year Tynwald debated a report that was commissioned by my predecessor, the now Chief Minister, highlighting a number of areas where the current scheme could be made fairer and aligned more closely to income tax. This consultation sets out how we can achieve this. The proposals will, I believe, make the scheme more equitable by removing some of the anomalies that currently exist and ensuring that the burden falls equally across all those who will benefit from the scheme.

The proper funding of benefits, pensions and our health service contribute to the sense of security that living in the island provides. I would therefore encourage as many people and businesses as possible to engage with us during this consultation so that we can ensure the scheme, which is misunderstood by many, remains relevant to the island's evolving economy by being fair, easy to understand and assisting in future economic growth.

Hon. Dr. Alexander Allinson, MHK
Minister for the Treasury

2. Introduction

The purpose of the current National Insurance scheme (hereafter 'the scheme') has not changed since its introduction in July 1948. National Insurance Contributions (NICs) are paid by employees, employers and the self-employed to help build entitlement to the State Pension and certain state benefits, such as Jobseekers Allowance and Incapacity Benefit. NICs are paid by persons in employment over the age of 16 and under state pension age, with different rates payable by those who are employed and self-employed.

Additionally, there is a direct cost to employers through the contributions that they must pay in respect of their employees. In the Isle of Man, employers paid £126.6 million in National Insurance Contributions in the 2020/21 tax year.

When the scheme was first introduced, it coincided with the introduction of the National Health Service (NHS) and it was envisaged that this new service would help those who were unable to work due to sickness get better. Part of the compulsory NICs were therefore allocated to this service to pay for this support.

NICs do not form part of the general revenue of the Isle of Man Government so they can only be used to fund the contributory benefit scheme and provide a contribution to the costs of the health service.

The Island Plan committed to delivering a National Insurance review in conjunction with the long term Economic Plan for the island, considering fairness and future funding requirements for public services including health and social care.

This consultation reviews the fairness of the National Insurance scheme and seeks views on proposed changes. It does not seek views on the funding of health, social care or funding of other public services.

The Health and Care Transformation Programme is currently undertaking a significant piece of work in relation to home, residential and nursing care, which includes a range of options for how we pay (directly or indirectly) for this care, improvements in the service and addressing perverse incentives. This work is still underway and could lead to minor amendments to the existing system, or be far reaching. The Health and Care Transformation Programme recognises that this is of significant public interest and, as such, plans to consult with the public separately.

The current scheme

The current scheme raised a total of £219.2 million in the 2020/21 tax year with the vast majority, £212 million, being paid by employees and employers. The self-employed paid £5.5 million, with the remainder made up of voluntary contributions paid by individuals not working but choosing to continue paying towards their state pension entitlement.

The largest single expenditure from the National Insurance Fund is in relation to the state retirement pension, for example in 2020/21 a total of £184.4 million was paid out. Each year

the Treasury receives a payment from the UK for pensions we pay on their behalf e.g. in 2020/21 a payment of £45.3 million was received.

The NHS Allocation

A proportion of all the National Insurance contributions received each year is allocated as a contribution to the Health Service; this is known as the "NHS Allocation".

The amount paid is based on employees' earnings and the profits that self-employed make, not the amount of National Insurance that is actually paid, for instance, the NHS Allocation was £38.9 million in respect of the 2020/21 tax year.

3. Fairness

Any expansion to the scope of who pays or the income that is subject to NICs should be done in a manner that is equitable, ensuring that those who benefit are also those who have contributed.

National Insurance is paid by those individuals in employment with different rates payable by those who are employed and self-employed.

A significant driver of behaviour when it comes to National Insurance is that it is only charged on income from employment and therefore significantly differs from income tax in this respect. This means that individuals who are under state pension age and have income from other sources such as investments, rents, dividends and interest from savings and occupational or private pensions do not pay NICs. These individuals fall into two categories, those who have retired and are not working and those who are working through a company where they can determine how they are rewarded for their employment. This consultation is only interested in individuals who are still working.

Most individuals in employment have no input into how they will be paid and the vast majority of the working population are rewarded for their employment on a monthly or weekly basis by payments of salary directly to them, which will be subject to Class 1 NICs.

Self-employed individuals pay two different classes of National Insurance – Class 2 and 4. Class 2 is a prescribed amount, which must be paid monthly, whilst Class 4 is calculated based on profit in a similar way to income tax, which is then paid annually.

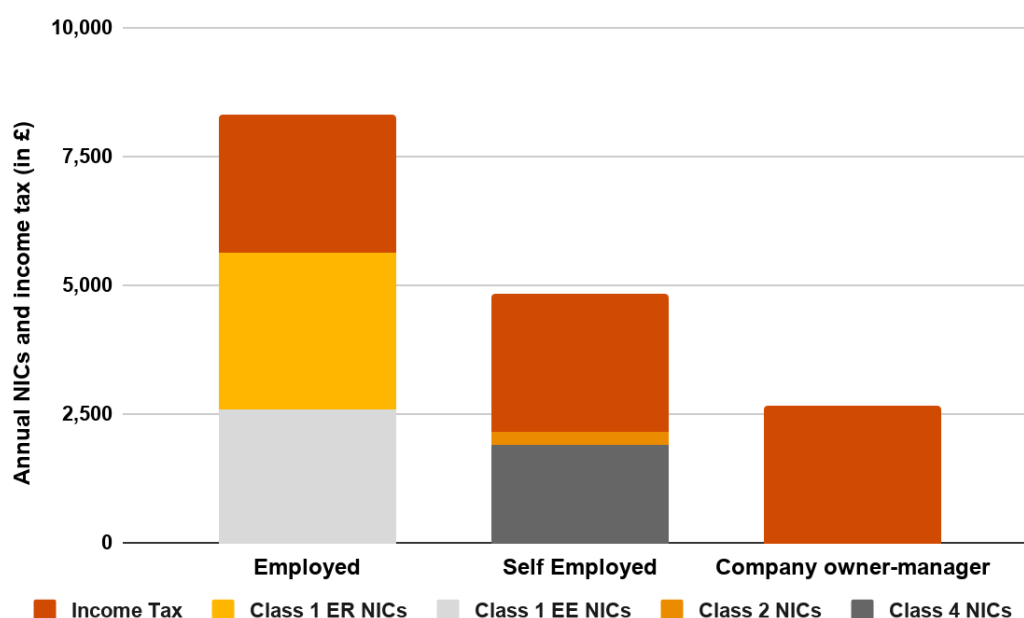
It is not uncommon for self-employed individuals to incorporate their business (i.e. set up and trade as a limited company) where they can then determine how and when they are remunerated (due to either the position they hold in the company or the amount of control they have over the company). This structure is often referred to as an "owner managed business" (OMB).

As National Insurance is only charged on income derived from employment the most common way for OMBs to reduce the amount of National Insurance they pay is to reward themselves

by some other method, the most common being the payment of a dividend. As dividend income is a return on an investment it is not subject to National Insurance but it is subject to income tax. It is also common for the OMBs to pay a small salary, usually below the level at which National Insurance becomes payable, to ensure that they still qualify for National Insurance funded benefits and the state pension.

The National Insurance Scheme treats individuals with different legal statuses differently when it comes to their liability to pay NICs. In the past this was reflected in the benefits and state pension they received, however, these differences have largely been removed and in relation to the state pension, everyone now builds up entitlement equally regardless of their liability to pay National Insurance.

The table below highlights the main differences between employed, self-employed and owner-managed companies in relation to the amount of National Insurance and income tax that is paid.



Source: Isle of Man Government data, PwC Analysis ([GD 2021/0040](#))

As can be seen from the above table, there is a significant difference in the total tax liability for each case for someone on median wages (£30,836, 2019 Isle of Man Earnings Survey).

Whilst the above table shows the significant difference in the amounts of NICs that are paid it does not reflect the effect this has on the individual's entitlement to claim National Insurance funded benefits.

Prior to the 2019 reforms of the Manx State Pension, individuals who were employed were entitled to a wider range of benefits than those who were self-employed, the most significant

being Jobseekers Allowance and the Additional Pension component of the State Pension. Since the 2019 reforms, both the employed and self-employed now accrue equal rights to the State Pension. The reduction of the differential in benefit entitlement whilst simplifying the benefit system does now raise questions over the amount of National Insurance that self-employed individuals pay compared to individuals who are employed.

Turning to individuals who structure their employment via their own company, the effect on their benefit entitlement can be even more contrasting.

If the owner structures their income from either dividends or loans from the company, then they will pay no National Insurance but they will also not build up any entitlement to the State Pension or other contribution based benefits. However, it is common for the owner-manager to organise for their company to pay them a salary that just exceeds the Lower Earnings Limit (£120 pw) but is less than the primary threshold (£138 pw). As a result, the individual and the company will pay no National Insurance but the individual will be entitled to the full range of National Insurance funded benefits. The financial benefit of this arrangement has been enhanced since the reforms of 2019 as now individuals can build up entitlement to a State Pension of £202.23 compared to £141.85.

The scope of National Insurance, albeit on a broader basis, was previously consulted on in 2012 as part of the Tax Strategy Consultation and was favourably received; however, no changes were implemented following the consultation. Given the increasing pressures on our current benefit scheme and future health provision, reforms in respect of fairness with regards to NICs need to be re-considered.

Question 1

Do you think all working persons (under state pension age) should pay NICs irrespective of how they structure their affairs?

Yes/No

Please provide further information or comments that you may consider relevant

Question 2

Do you think that an employee who 'owns' their business (OMB) should pay National Insurance which aligns with that of a self-employed individual?

Yes/No

Please provide further information or comments that you may consider relevant

4. Merging Class 2 and Class 4

Self-employed earners are currently subject to two different classes of National Insurance Contributions, Class 2 and Class 4.

The Class 2 contribution is charged at a weekly rate of £5.40 and must be paid for each week that an individual is self-employed regardless of whether they earn anything; it is normally paid monthly via Direct Debit or cheque. The Class 4 contribution is based on an individual's annual profits from self-employment and is charged on an annual basis and collected as part of the individual's annual income tax assessment.

Class 4 is charged at 8% on profits between £7,176 and £42,796 and at 1% on all profits over £42,796.

It is only the payment of Class 2 contributions that gives rise to entitlement to contributory benefits.

In January 2012 the Treasury consulted on the "Payment of Class 2 Self-Employed National Insurance Contributions" in which it proposed that self-employed people should pay their Class 2 contributions for the whole of the tax year linked to their Class 4 contributions: i.e. on or before 6 January. Where it is known that someone will not be self-employed for the whole of the year, e.g. they reach state pension age or they become an Incapacity Benefit recipient, the amount of Class 2 contributions, which they are asked to pay, will reflect this. Treasury does not foresee any negative effect on entitlement to benefits from this method.

Treasury now intends to move forward with the above proposal and is seeking views on the approach.

Question 3

Do you agree that the merged payment of Class 2 and Class 4 National Insurance should be due and payable on 6th January following the year of assessment?

Yes/No

Please provide further information or comments that you may consider relevant

5. Payment of National Insurance over State Pension Age

In August 2015, the Treasury consulted on proposed changes to National Insurance for workers over State Pension Age. Overall, the responses to the proposal that both employed and self-employed workers over State Pension Age should be subject to National Insurance Contributions was not very positive.

After consideration of the many comments received against the proposal, the economic climate and the practice regarding neighbouring jurisdictions at the time, Treasury decided not to introduce immediate change to NICs for workers over state pension age.

Further analysis has since been carried out. It is clear that a relatively small number of individuals, approximately 700, who have reached State Pension Age, and are employed, would be liable to pay NICs if the exception were removed. A significant number of these people are in vital roles such as education and health and therefore it is imperative that any decision does not have an adverse economic impact.

Treasury has reviewed the impact of introducing NICs for individuals over State Pension Age. On balance, it does not seem equitable that individuals who chose to remain in work pay NICs without receiving additional State Pension or access to contributory benefits. At this time, Treasury therefore does not intend to further consult on paying NICs for individuals over State Pension age.

6. Aligning Definitions

Since the introduction of the current Social Security scheme in 1948, there has been a Social Security reciprocal agreement between the island and the UK. This has required the island to apply the same rates, limits and thresholds for National Insurance as applied in the UK to ensure that an individual's entitlement to benefit is maintained across both jurisdictions.

The changes made to the reciprocal agreement from April 2016 allows the island significantly more latitude in applying legislation. However, there is still a requirement to keep the structure

of the current scheme similar to that which operates in the UK so that entitlement to short-term contributory benefits remains equal in both jurisdictions.

This requirement to maintain a similar structure to the UK does limit the island's ability to radically overhaul the current structure of the scheme but changes to the rates of National Insurance paid, the earnings thresholds and what income is chargeable to National Insurance are all possible.

In order to simplify the income tax and National Insurance systems, where it is practical to do so, Treasury intends to align the definitions of employment income and benefits by virtue of employment.

Question 4

Do you have any further information or comments that you may consider relevant?

7. Rates and Thresholds

The following table details the National Insurance rates and thresholds for the 2022/23 tax year. Changes to these rates and thresholds will form part of the budget process.

Rate / Thresholds (per week unless stated otherwise)	22/23
Lower Earnings Limit, Class 1 (LEL)	£123
Lower Earnings Limit, Class 1 (LEL) monthly	£533
Upper Accrual Point (UAP)	n/a

Upper Accrual Point (UAP) monthly	n/a
Upper Earnings Limit, Class 1 (UEL)	£823
Upper Earnings Limit, Class 1 (UEL) monthly	£3,567
Primary Threshold	£138
Primary Threshold (monthly)	£598
Secondary Threshold	£138
Class 1 employees primary rate of NI (between primary threshold and UEL)	11%
Class 1 employees' additional rate of NI (above UEL)	1%
Class 1 employers' rate of NI (on all earnings above secondary threshold)	12.80%
Employee's contracted -out rebate (COSR schemes only)	N/A*
Employer's contracted-out rebate, salary related scheme (COSR)	N/A*
Class 2 rate self-employed	£5.40
Class 2 rate self-employed - yearly total	£280.80
Class 2 small earnings exception level (annual)	£7,176

Class 2 rate for volunteer development workers	£6.15
Class 2 rate for share fishermen	£6.70
Class 3 voluntary contributions	£15.85
Class 4 lower profit limits (annual)	£7,176
Class 4 upper profit limits (annual)	£42,796
Class 4 rate between the lower and upper limits	8%
Class 4 rate above the upper limit	1%

8. Glossary of Terms

Class 1 Employees

Employees earning more than £138 a week will pay National Insurance at 11% on all earnings above this amount up to £823 per week, and 1% on all earnings thereafter. Employed workers do not pay National Insurance after they reach state retirement age.

Employers

Employers have a separate liability for National Insurance Contributions. This is calculated in the same way as employee National Insurance Contributions but is charged at a single rate of 12.8% on all earnings above £138 per week. Unlike employees, employers continue to be liable to pay National Insurance Contributions even when their employees are over the state retirement age.

Class 2 Self-employed people must pay Class 2 contributions, which are currently £5.40 per week (£280.80 per year). This contribution provides access to certain contributory benefits. If an individual is self-employed throughout an entire tax year, they will need to pay 52 weekly Class 2 contributions to have a “qualifying year”.

If your earnings, that is money left after expenses, are less than £7,176, you can apply for a Small Earnings Exception, which means you are no longer liable to pay Class 2 contributions. Not paying Class 2 contributions may affect your entitlement to benefits.

- Class 3** Voluntary contributions - you can pay them to fill or avoid gaps in your National Insurance record. These can only be paid until you reach State Pension Age.
- Class 4** Self-employed people earning profits of £7,176 or more a year.
- Lower earnings limit** The amount of earnings an employed worker must earn in a period, normally a week or month, for that period to count towards a "qualifying year". For the 2022/23 tax year, it is £123 per week.
- Primary threshold** This is the point at which an employed worker starts to pay National Insurance Contributions. During the 2022/23 tax year, this threshold is £138 per week.
- Secondary threshold** This is the point at which an employer starts to pay National Insurance Contributions. During the 2022/23 tax year, this threshold is £138 per week.
- Upper earnings limit** This is the point at which an employed worker stops paying National Insurance at the main rate of 11%. The worker pays National Insurance at 1% on any earnings over this limit. For the 2022/23 tax year, it is £823 per week.

9. Appendix - Equality Impact Assessment (EQIA)

Equality Impact Assessment (EQIA) Template

EQIAs make services better for everyone and support value for money by getting services right first time.

EQIAs enable us to consider all the information about a service, policy or strategy from an equalities perspective and then action plan to get the best outcomes for staff and service-users¹. They analyse how all our work as a Government might impact differently on different groups². They help us make good decisions **by considering and using robust evidence to inform decisions** instead of making decisions based on assumptions.³

Before proceeding with an EQIA, you should have undertaken an equality screening using the Equality Screening Template. If the outcome of this demonstrates a negative impact on protected groups, only then should you proceed with an EQIA⁴

Guidance notes are provided throughout by hovering your cursor over the footnote (eg: Age¹³)

It is also advisable to carry out EQIAs in a group to ensure that the assessment of the policy is not subjective.

For further information please send your query to equality@gov.im

Equality Impact Assessment (EQIA)	
Title of EQIA⁵	Payment of National Insurance Contributions by persons who have reached State Pension Age
Department/Office/Statutory Board⁶	Treasury
Division (if applicable)	Income Tax Division
Focus of EQIA⁷	<p>An employed/self-employed individual who reaches State Pension Age (SPA) is exempted from the liability to pay National Insurance Contributions (NICs). This has been the case since the introduction of NICs in 1948.</p> <p>From 1948 to 1989 “the Earnings Rule” was in place. This meant that where an individual who had reached SPA and had earnings above a certain limit the Basic State Pension was progressively reduced. The Earnings Rule was aimed at reducing the pensions bill on the basis that those working and with reasonable incomes did not need to claim the State Pension. However, the rule disincentivised individuals of SPA to work and in fact encouraged some to leave work to claim their State Pension. It also contributed to pensioner poverty by limiting the income of pensioners who may have been prepared to work in order to increase their income. The Earnings Rule was abolished in 1989.</p> <p>The result being that the age exception for NICs remains, without the balance of the Earnings Rule. Employer contributions are still paid without regard to SPA.</p> <p>The purpose of the current National Insurance Scheme has not changed since the introduction of the scheme in July 1948. National Insurance Contributions (NICs) are paid by employees, employers and the self-employed to</p>

help build entitlement to the State Pension and certain state benefits, such as Jobseekers Allowance and Incapacity Benefit.

When the scheme was first introduced, it coincided with the introduction of the NHS and it was envisaged that this new service would help those who were unable to work due to sickness get better. Part of the compulsory NICs were therefore allocated to this service to pay for this support.

NICs do not form part of the general revenue of the Government and can only be used to fund the contributory benefit scheme and provide a contribution to the costs of the NHS.

Considering the purpose of NICs, it may be considered unreasonable and unequitable that individuals above SPA pay NICs towards a State Pension and contributory benefits when they cannot accrue a greater State Pension or claim any of the contributory benefits.

It should be noted however that individuals above SPA tend to be major users of the NHS which part of NICs are allocated to.

On balance, it does not seem equitable that individuals who chose to remain in work pay NICs without receiving additional State Pension or access to contributory benefits.

In August 2015, the Treasury consulted on proposed changes to National Insurance for workers over State Pension Age. Overall, the responses to the proposal that both employed and self-employed workers over State Pension Age should be subject to National Insurance Contributions was not very positive.

After consideration of the many comments received against the proposal, the economic climate and the practice regarding neighbouring jurisdictions at the time, Treasury decided not to introduce immediate change to NICs for workers over state pension age.

Further analysis has been carried out and it is clear that a relatively small number of individuals who have reached State Pension Age and are employed/self-employed would be liable, if the exception were removed, to pay NICs.

Update on previous EQIA and outcomes of previous actions if applicable⁸				
What actions did you plan last time? (List them from the previous EQIA)	What improved as a result? What outcomes have these actions achieved?	State briefly what further actions you need to take? (add these to the Action plan below)		
N/A				
Review of information, equality analysis and potential actions				
Protected characteristic Groups from the Equality Act 2017	What do you know⁹ about your service users or staff? Summary of data about your service-users or staff	What do people tell you¹⁰? Summary of consultation	What does this mean¹¹? Impacts identified from data and/or consultation	What can you do¹²? All potential actions to: <ul style="list-style-type: none"> • advance equality of opportunity, • eliminate discrimination, and • foster good relations
Age¹³	Small number of individuals who have reached State Pension Age and are employed/self-employed would be liable to pay NICs	Responses not positive to payment of NICs above SPA	<ul style="list-style-type: none"> • Poor relations with individuals above SPA • Possible increase in pension poverty as may encourage individuals to leave work 	Treasury has decided not to consult again on the payment of NICs by individuals over SPA

			<ul style="list-style-type: none"> • Possible impact on availability of workers for employers, particularly in key roles • Individuals paying NICs but not able to accrue additional State Pension or claim contributory benefits 	
Disability¹⁴	N/A	N/A	N/A	N/A
Gender reassignment¹⁵	N/A	N/A	N/A	N/A
Pregnancy and maternity¹⁶	N/A	N/A	N/A	N/A
Race/ethnicity¹⁷	N/A	N/A	N/A	N/A

Religion or belief¹⁸	N/A	N/A	N/A	N/A
Sex/Gender¹⁹	N/A	N/A	N/A	N/A
Sexual orientation²⁰	N/A	N/A	N/A	N/A
Marriage and civil partnership²¹	N/A	N/A	N/A	N/A
Human Rights ²²	N/A	N/A	N/A	N/A
Assessment of overall impacts and any further recommendations²³				

Treasury is not satisfied that it is equitable to bring forward the payment of NICs for employed/self-employed individuals who have reached SPA. It has been noted in the public consultation, due to be launched in July 2022, that NICs for those above SPA will not be taken forward at this time as it is not considered equitable.

Evidence of data and/or consultation that informed your EQIA

Title (of data, research or consultation – add link or appendices)	Date	Did you identify any gaps in data? State what action you will take²⁴
Internal National Insurance Report	February 2022	Detailed the small number of postings where an individual is over SPA, would be liable to pay NICs and the area in which they work.
Proposed changes to National Insurance for Workers over State Pension Age <ul style="list-style-type: none"> • Consultation document • Response document 	2015/16	EQIA not completed as prior to the Equality Act 2017

Action Plan²⁵			
Impact identified and group(s) affected	What will you do to reduce or eliminate negative impact?	Expected outcome	Timeframe
Age – working individuals who have reached SPA	Treasury has decided not to proceed with a proposal for payment of NICs by workers over SPA	Included in consultation but no proposal or question. Confirmation that at this time Treasury does not intend to bring forward payment of NICs by workers of SPA and above	Consultation to launch in July for 12 weeks
EQIA sign-off			
Person responsible for EQIA:		Audrey Christian – Deputy Assessor	
Email copy to Equality Team at equality@gov.im for record keeping			

Guidance end-notes

¹ The following principles, drawn from case law, explain what we must do to fulfil our duties under the Equality Act:

- **Knowledge:** everyone working for Government must be aware of our equality duties and apply them appropriately in their work.
- **Timeliness:** the duty applies at the time of considering policy options and/or before a final decision is taken – not afterwards.
- **Real Consideration:** the duty must be an integral and rigorous part of your decision-making and influence the process.
- **Sufficient Information:** you must assess what information you have and what is needed to give proper consideration.
- **No delegation of Public Sector Equality Duty:** Government is responsible for ensuring that any contracted services which provide services on our behalf can comply with the duty, are required in contracts to comply with it, and do comply in practice. It is a duty that cannot be delegated.
- **Review:** the Public Sector Equality Duty is a continuing duty. Ensure that there is a formal process of monitoring and review.
- **Proper Record Keeping:** to show that we have fulfilled our duties we must keep records of the process and the impacts identified. Retain copies of equality screening documents and EQIA and forward a copy to Equality@gov.im

NB: Filling out this EQIA in itself does not meet the requirements of the equality duty. All the requirements above must be fulfilled or the EQIA (and any decision based on it) may be open to challenge. Properly used, an EQIA can be a tool to help us comply with our equality duty and as a record to demonstrate that we have done so.

² **Our duties under the Equality Act 2017**

As a public sector organisation, we have a legal duty to show that we have identified and considered the impact and potential impact of our activities on all people with 'protected characteristics' (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership).

This applies to policy decisions. Policy is a broad term under the Act and includes policies, practices, services and decisions that affect both our service users and our employees. The level of detail will depend on what you are assessing, who it might affect, those groups' vulnerability, and how serious any potential negative impacts might be. We use this EQIA template to complete this process and evidence our consideration.

The following are the specific duties in the Act. You must give 'due regard' (pay conscious attention) to the need to:

- **Eliminate unlawful** discrimination, victimisation and harassment or other conduct prohibited under the Equality Act.
- **Promote equality of opportunity.** This means the need to:
 - Remove or minimise disadvantages suffered by different protected groups

- Take steps to meet the needs of different protected groups
- Encourage protected groups to participate in public life or any other activity where participation is disproportionately low
- Consider if there is a need to treat disabled people more favourably, as permitted by the Equality Act.
- **foster good relations between people who share a protected characteristic and those who do not.** This means:
 - Tackle prejudice
 - Promote understanding

³ EQIAs are always proportionate to:

- The size of the service or scope of the policy/strategy
- The resources involved
- The numbers of people affected
- The size of the likely impact
- The vulnerability of the people affected

The **greater** the potential adverse impact of the proposed policy on a protected group (e.g. disabled people), the more vulnerable the group in the context being considered, the more thorough and demanding the process required by the Act will be.

⁴ **When to complete an EQIA:**

- When planning or developing a new service, policy or strategy
- When reviewing an existing service, policy or strategy
- When ending or substantially changing a service, policy or strategy
- When there is an important change in the service, policy or strategy, or in the city (eg: a change in population), or at a national level (eg: a change of legislation)

Assessment of equality impact can be evidenced as part of the process of reviewing or needs assessment or strategy development or consultation or planning. It does not have to be on this template, but must be documented. Wherever possible, build the EQIA into your usual planning/review processes.

Do you need to complete an EQIA? Consider:

- Is the policy likely to be relevant to any people because of their protected characteristics?
- How many people is it likely to affect?

- How significant are its impacts?
- Does it relate to an area where there are known inequalities?
- How vulnerable are the people (potentially) affected?

If there are potential limited adverse impacts on people but you decide not to complete an EQIA it is usually sensible to document why.

⁵ **Title of EQIA:** This should clearly explain what policy you are assessing

⁶ **Department/Office/Statutory Board:** Area responsible for the policy being assessed

⁷ **Focus of EQIA:** A member of the public should have a good understanding of the policy and any proposals after reading this section. Please use plain English and write any acronyms in full first time - eg: 'Equality Impact Assessment (EQIA)'

This section should explain what you are assessing:

- What are the main aims or purpose of the policy?
- Who implements, carries out or delivers the policy? Please state where this is more than one person/team/body and where other organisations deliver under procurement or partnership arrangements.
- How does it fit with other services?
- Who is affected by the policy? Who are the external and internal service-users, groups, or communities?
- What outcomes do you want to achieve, why and for whom? (Eg: what do you want to provide, what changes or improvements, and what should the benefits be?)
- What do existing or previous inspections of the policy tell you?
- What is the reason for the proposal or change (financial, service, legal etc)? The Act requires us to make this clear.

⁸ **Previous actions:** If there is no previous EQIA or this assessment is of a new policy, then simply write 'not applicable'.

⁹ **Data:** Make sure you have enough data to inform your EQIA.

- What data relevant to the impact on protected groups of the policy is available? (Check Sharepoint Equality database in addition to your own sources)
- What further evidence is needed and how can you get it? (Eg: further research or engagement with the affected groups).
- What do you already know about needs, access and outcomes? Focus on each of the protected characteristics in turn. Eg: who uses the service? Who doesn't and why? Are there differences in outcomes? Why?

- Have there been any important demographic changes or trends locally? What might they mean for the policy?
- Does data/monitoring show that any policies create particular problems or difficulties for any groups?
- Is the service having a positive or negative effect on particular people in the community, or particular groups or communities?
- Use local sources of data or national ones where they are relevant. Look to the United Kingdom for data where local data gaps exist but consider developing local data.

¹⁰ **Consultation:** You must engage appropriately with those likely to be affected to fulfil the equality duty.

- What do people tell you about the policy?
- Are there patterns or differences in what people from different groups tell you?
- What information or data will you need from communities?
- How should people be consulted? Consider:
 - (i) Meetings with groups/external organisations/individual who represent the negatively impacted characteristic
 - (ii) Focus Groups
 - (iii) Workshops
 - (iv) Survey questionnaires (ensure different formats available – paper; accessible docs; online)
 - (v) Web based discussion group
- Make sure you:
 - (a) consult when proposals are still at a formative stage;
 - (b) explain what is proposed and why, to allow intelligent consideration and response;
 - (c) allow enough time for consultation;
 - (d) make sure what people tell you is properly considered in the final decision.
- Try to consult in ways that ensure all perspectives can be considered, where proportionate.
- Identify any gaps in who has been consulted and identify ways to address this.

¹¹ Your EQIA must address any actual and potential impacts.

- The equality duty does not stop decisions or changes, but means we must conscientiously and deliberately confront the anticipated impacts on people.
- Be realistic: don't exaggerate speculative risks and negative impacts.

- Be detailed and specific so decision-makers have a concrete sense of potential effects. Instead of “the policy is likely to disadvantage older women”, say how many or what percentage are likely to be affected, how, and to what extent.
- Questions to ask when assessing impacts depend on the context. Examples:
 - Are one or more protected groups affected differently and/or disadvantaged? How, and to what extent?
 - Is there evidence of higher/lower uptake among different groups? Which, and to what extent?
 - If there are likely to be different impacts on different groups, is that consistent with the overall objective?
 - If there is negative differential impact, how can you minimise that while taking into account your overall aims
 - Do the effects amount to unlawful discrimination? If so the plan must be modified.
 - Does the proposal advance equality of opportunity and/or foster good relations? If not, could it?

¹² Consider all three aims of the Act: removing barriers, and also identifying positive actions we can take.

- Where you have identified impacts you must state what actions will be taken to remove, reduce or avoid any negative impacts and maximise any positive impacts or advance equality of opportunity.
- Be specific and detailed and explain how far these actions are expected to improve the negative impacts.
- If mitigating measures are contemplated, explain clearly what the measures are, and the extent to which they can be expected to reduce / remove the adverse effects identified.
- An EQIA which has attempted to airbrush the facts or carry out a tick box exercise is an EQIA that is **vulnerable to legal challenge and carries both financial and reputational risks to the Government.**

¹³ **Age:** People of all ages

¹⁴ **Disability:** A person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The definition includes: sensory impairments, impairments with fluctuating or recurring effects, progressive, organ specific, developmental, learning difficulties, mental health conditions and mental illnesses, produced by injury to the body or brain. Persons with cancer, multiple sclerosis or HIV infection are all now deemed to be disabled persons from the point of diagnosis.

¹⁵ **Gender Reassignment:** In the Act a transgender person is someone who proposes to, starts or has completed a process to change his or her gender. A person does not need to be under medical supervision to be protected.

¹⁶ **Pregnancy and Maternity:** Protection is during pregnancy and any statutory maternity leave to which the woman is entitled.

¹⁷ **Race/Ethnicity:** This includes ethnic or national origins, colour or nationality, and includes refugees and migrants, and Gypsies and Travellers. Refugees and migrants means people whose intention is to stay in the UK for at least twelve months (excluding visitors, short term students or tourists). This definition includes asylum seekers; voluntary and involuntary migrants; people who are undocumented; and the children of migrants, even if they were born in the UK.

¹⁸ **Religion and Belief:** Religion includes any religion with a clear structure and belief system. Belief means any religious or philosophical belief. The Act also covers lack of religion or belief.

¹⁹ **Sex:** Both men and women are covered under the Act.

²⁰ **Sexual Orientation:** The Act protects bisexual, gay, heterosexual and lesbian people

²¹ **Marriage and Civil Partnership:** Only in relation to due regard to the need to eliminate discrimination.

²² **Human Rights:** All staff should be aware of their obligations under the Human Rights Act (2001) and incorporated into law in the European Convention on Human Rights. Section Six of the Human Rights Act makes it unlawful for a public authority to act in a way which is incompatible with a Convention right. The underlying intention of the Act is to create a Human Rights culture in public services. Questions relating to the human rights implications of public sector policies and procedures include:

- will it affect the right to life of an individual?
- will someone be deprived of their liberty or have their security threatened?
- could this result in a person being treated in a degrading or inhuman manner?
- could this result in a person not having a fair, independent and impartial hearing?
- is there a possibility a person will be prevented from exercising their beliefs?
- will private and family life be interfered with?

If the answer is yes to any of these questions, the activity should be reviewed to avoid impacting upon Human Rights.

²³ **Assessment of overall impacts and any further recommendations**

- Make a frank and realistic assessment of the overall extent to which the negative impacts can be reduced or avoided by the mitigating measures. Explain what positive impacts will result from the actions and how you can make the most of these.
- Countervailing considerations: These may include the reasons behind the formulation of the policy, the benefits it is expected to deliver, budget reductions, the need to avert a graver crisis by introducing a policy now and not later, and so on. The weight of these factors in favour of implementing the policy must then be measured against the weight of any evidence as to the potential negative equality impacts of the policy.

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- Are there any further recommendations? Is further engagement needed? Is more research or monitoring needed? Does there need to be a change in the proposal itself?

²⁴ If you identify a data gap, you can continue with your policy whilst you gather additional data. Once the data is received you should revisit the policy to see if adjustments are required

²⁵ **Action Planning:** The Equality Duty is an ongoing duty: policies must be kept under review, continuing to give 'due regard' to the duty. If an assessment of a broad proposal leads to more specific proposals, then further equality assessment and consultation are needed.



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