

# **Lay Magistrates Eligibility Legislation and Policy Equality Impact Assessment**

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## **1 Introduction**

1.1 The Northern Ireland Court Service ('Court Service') came into existence on 18 April 1979 by virtue of section 69 of the Judicature (Northern Ireland) Act 1978. The Minister responsible for the Court Service is the Lord Chancellor. The Administrative Head of the Court Service is the Director supported by four Directors with responsibility for:

- Operations
- Policy and Legislation
- Corporate Services
- Publicly Funded Legal Services
- Judicial Services

The main business of the Court Service is:

**To facilitate the conduct of the business of the Supreme Court, County Courts, Magistrates' Courts, Coroners' Courts and certain Tribunals.**

**To give effect to judgments to which the Judgments Enforcement (Northern Ireland) Order 1981 applies; and**

**To provide the Lord Chancellor with policy advice and legislative support relating to his ministerial responsibilities in Northern Ireland**

As a department that values diversity the Court Service recognises the importance of taking account of the needs and views of the society it serves. Moreover, the Court Service is committed to fulfilling its obligations under section 75 of the Northern Ireland Act 1998 ('the Act'), and this Equality Impact Assessment ('EIA') has been carried out against those commitments and in accordance with Equality Commission guidelines.

## **2 Background**

**Commitment to Equality of Opportunity**

2.1 Section 75 of the Act requires the Court Service in carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between:

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

and in addition and without prejudice to its obligation above, the Court Service shall in carrying out its functions relating to Northern Ireland, have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

2.2 In accordance with Schedule 9 to the Act the Court Service published its Equality Scheme in February 2002, detailing how it proposed to fulfil its responsibilities under section 75 and in particular a commitment to consider the impact of both existing and proposed policies on equality of opportunity.

### 2.3 **The Belfast Agreement**

The Belfast Agreement of 1998 identified in Paragraph 4 of the Policing and Justice section that one of the four aims of the Criminal Justice System was to ***‘be responsive to the communities concerns, and encouraging community involvement where appropriate’***

### 2.4 **The Criminal Justice Review**

- 2.5 Included in the terms of reference of the Criminal Justice Review Group was the requirement to consider *‘measures to improve the responsiveness and accountability of...lay participation in the Criminal Justice System’*

The review made a series of recommendations for the future of lay involvement in the Justice system amongst which was the creation of a new judicial post of Lay Magistrates created by relieving Justices of the Peace (JP’s) of their Criminal Justice Functions and amalgamating these with the functions currently performed by members of the Youth and Family Proceedings Courts Lay Panel.

- 2.6 The review highlighted the importance of securing a Lay Magistracy that is broadly reflective of Northern Ireland society, in particular by community background and gender.

- 2.7 An overview of the Court Services’ plans to establish the Lay Magistracy and roles and responsibilities of those involved.

### 3. **Aims of the Legislation and Policy**

- 3.1 The Justice (NI) Act 2002 (‘The Justice Act’) established primary legislation for the implementation of the recommendations of the Review. The Justice Act details a framework for eligibility for appointment to the office of Lay Magistrate. In particular, it provides for a requirement to undertake the necessary training within one year of appointment and basic eligibility criteria that must be met to be considered for appointment. The criteria are:

- **Residence** - S/he should reside or work in, or within a prescribed distance of, the County Court Division to which the appointment relates
- **Holding of an office or occupation** – s/he or a person related to or otherwise connected with him/her should not hold an office or occupation of a prescribed description, or have been selected for a candidate for election to a prescribed body.

- Bankruptcy – a bankruptcy order should not have been made against him/her or his/her estate sequestered or a composition or arrangement made or a trust/deed granted for his/her creditors, or
- Criminal Convictions – s/he should not have been convicted of a prescribed offence.

3.2 The Justice Act also states that the Lord Chancellor may make further provisions about eligibility for appointment as a Lay Magistrate. The Lay Magistrates (Eligibility) (NI) Order 2004 (The Order) makes further provision in relation to the ‘prescribed’ residence, offices or occupations, and criminal convictions’ referred to above. The underpinning policy document sets out the policy on the appointment of individuals whose work may be or be perceived to be incompatible with the duties of a Lay Magistrate.

3.3 The draft Order and policy have been compiled in such a way as to make as wide a range of individuals eligible for appointment as Lay Magistrate as possible.

3.4 The draft Order sets out the offices and occupations held by individuals, and in certain circumstances their spouse, partner or close relative, that are deemed to present a real or perceived conflict of interest, when assessed against the consideration described below. In considering those who should be ineligible for appointment the Lord Chancellor has had regard to

- The perceived authority, influence and profile of the individuals within the listed bodies and their connection with the Criminal Justice System
- The interface and association of Organisations closely related to and involved in the Criminal Justice System, and
- The size of the jurisdiction

Lay Magistrates will be appointed strictly on **merit** in line with competence based selection criteria. Candidates will be required to possess six essential qualities: good character; understanding and communication; social awareness; maturity

and sound temperament; sound judgement; and commitment and reliability. Issues such as personal conduct and conflicts of interest will also be looked at **to assess personal suitability for the office.**

3.5 The appointments process will encompass the principles of **equal opportunities and equality.** An essential consideration, therefore, will be to encourage applications for appointment from all sections of the community in Northern Ireland. The Lord Chancellor will appoint a Lay Magistracy which appears to him to be best qualified regardless of gender, ethnic origin, marital status, sexual orientation, age political opinion, religion, with or without dependants, and subject to the physical requirements of office, disability. Furthermore the Lord Chancellor has an overriding discretion in making these appointments.

#### 4. **Assessment of Impact - Equality Screening**

4.1 The Lay Magistrates' Eligibility and Selection Policy was screened on 14<sup>th</sup> October 2002 to identify any equality implications. Substantive points to emerge were: -

- Imbalance in the age profile of the current lay panel members (retired people are attracted to the posts as are women who are not in employment and have limited caring responsibilities).
- People with particular disabilities could be excluded
- People with caring responsibilities would have particular needs in relation to court sittings.

4.2. In response to these concerns and to assist in achieving the objective of the Lay Magistrates project (to secure merit based lay participation in the justice system that is community reflective): -

- Specialist consultants have been engaged by the Court Service to develop an **extensive** outreach campaign for Lay Magistrates
- Recruitment documentation will highlight that applications are welcome from people with a disability who are able to carry out the full range of magisterial duties, either unassisted or with the benefit of certain

reasonable adjustments in accordance with section 6 of the Disability Discrimination Act 1992

- Ministerial approval has been given to remunerate Lay Magistrates for sitting in court, which will facilitate people taking up appointment as a Lay Magistrate, including those with caring responsibilities.

## **5. Consideration of Alternative Policies**

- 5.1 In conducting this EIA the Court Service gave due consideration to whether there were any alternatives to the policy outlined which would achieve the same outcome of promoting a fair and equitable system of justice or alternatively which would better promote equality. It is not considered that there is any viable alternative.

## **6. Public Consultation**

- 6.1 Ministerial approval was obtained to proceed with public consultation on 2<sup>nd</sup> December 2003 and in accordance with the Northern Ireland court Service Equality Scheme.
- 6.2 Consultation documentation relating to both the draft Eligibility Order and the policy underpinning the draft Order was issued to 447 interested parties. By the close of consultation 64 responses had been received and the majority were supportive. A summary of the responses (70 in total) is provided.

## **7. Responses to Consultation and Assessment of Impact**

- 7.1 Within the context of equality of opportunity the substantive concerns to emerge related to
- Age limits

- Need to target underrepresented groups
- Arbitrary exclusion of certain professions and of their spouse, partners or close relatives.

## 7.2 **Age Limits**

A retirement age of 70 is prescribed for Lay Magistrates in the Justice Act. This is consistent with holders of other judicial offices both in Northern Ireland and England and Wales.

- 7.3 As a result of the public consultation exercise the 65-year ceiling has been removed. The statutory retirement age for Lay Magistrates will remain unchanged at 70 with each term of appointment five years renewable subject to satisfactory performance. Candidates who are appointed and are close to the upper age limit must be able to demonstrate their ability to provide a satisfactory return for the investment in training, in terms of availability to sit and to undertake their full share of the complete range of duties. Whilst there are no lower age limits, all candidates will have to demonstrate the essential qualities of the post through the examples given during the competence based selection process.

## **Need to Target Underrepresented Groups**

- 7.4 This need to target underrepresented groups has been recognised and a wide range of (some 200) groups are being be contacted in advance of the commencement of the recruitment campaign.
- 7.5 The official launch of the campaign on 14 May was followed by an intensive TV, radio and press advertising campaign right across Northern Ireland.

## **Arbitrary Exclusion of Certain Professions, their Spouses, Partners or Close Relatives**

- 7.6 This point is made in the context that by disallowing police officers, their spouses etc from appointment, then there is a negative impact on the Protestant Community.
- 7.7 The Order was adjusted to only contain the offices or occupations that most obviously create a conflict with the independence of the Lay Magistracy. The policy document provides guidance in relation to all other cases. A person holding an office listed in the policy **will normally be eligible to serve in a different county court division** which is consistent with the policy intention of making as many people eligible as possible.
- 7.8 However, Public confidence in the administration of justice and the integrity of the judicial system requires that there are no real or apparent conflicts of interest in relation to the holding of judicial office. Police officers and others in the prosecution system are inextricably linked with investigative and prosecutorial functions - as a result it would be inappropriate for them to hold judicial office.

## 8. **Publication**

- 8.1 This EIA is accessible on the Court Service's Internet website at <http://www.courtsni.co.uk/> Requests for other accessible formats can be made to Information Services, Information Centre, Northern Ireland Court Service, Ground Floor, Windsor House, 9-15 Bedford Street, Belfast, BT2 7LT. The Court Service will inform the general public about the availability of this document by press release.
- 8.2 To enable any affected groups and individuals to consider this EIA the Court Service will ensure that any information associated with this EIA is accessible, understandable and readily available. Consideration will be given to making information available on request in formats such as Braille, large print, disk, audiocassette, and in minority languages to meet the needs of those who are not fluent in English.

## 9 **Monitoring**

9.1 The Court Service will establish a system to monitor the impact of the policies detailed in this EIA in order to identify their effects on the relevant groups and to assess progress towards equality of opportunity. This will be reviewed annually and the results published on the Court Service's website and in the Annual Review of the operation of the Court Service Equality Scheme.

9.2 Monitoring arrangements may be developed in partnership with the Northern Ireland Statistics and Research Agency (NISRA). Monitoring may include

- Targeted/Specified research as and when required
- Monitoring of complaints

## 10 **Summary**

10.1 As a consequence of the findings of the EIA and the incorporation of the results of the public consultation exercise the Northern Ireland Court Service has made the following changes in response to the issues raised.

- A widespread outreach campaign prior to the commencement of the recruitment and selection process will target a widespread audience and target underrepresented groups.
- The policy regarding the upper age limit has been amended to consider applications from individuals nearing the upper age limit where such applicants can demonstrate their ability to provide a satisfactory return for the investment in training, in terms of availability to sit.