

**Equality Commission**

FOR NORTHERN IRELAND

# **Draft Code of Practice on Equal Pay**

**Public Consultation, December 2007**

**Acknowledgement**

This draft Code of Practice closely follows the Equal Opportunities Commission's Code of Practice on Equal Pay of 2003.

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## **INTRODUCTION**

**1.** The Equal Pay Act (NI) 1970, as amended, (the Equal Pay Act) prohibits sex discrimination in relation to contractual pay and benefits. An employer can only pay a man more than a woman for doing equal work if there is a genuine and material reason for doing so which is not related to sex. The Equality Commission for Northern Ireland (the Commission) has issued this Code of Practice on Equal Pay in order to provide practical guidance on how to avoid sex discrimination in pay structures. The Code (the Code) is aimed at employers, but employees<sup>1</sup> and their representatives or advisers – for example, from a trade union, or Citizens Advice Bureau, may also find it useful.

**2.** The Act applies to both men and women but to avoid repetition the Code is written as though the claimant is a woman comparing her work and pay with those of a man. The Equal Pay Act specifically deals with the pay of women compared to men, (or vice versa), and not to comparisons between people of the same sex.

**3.** The Code is admissible in evidence in any proceedings under the Equal Pay Act, before the Industrial Tribunal (the Tribunal). This means that, while the Code is not binding, the Tribunal may take into account an employer's failure to act on its provisions.

**4.** Despite the longstanding existence of equal pay legislation, the gender pay gap continues. For example, in 2004 women working full-time in the manufacturing industry earned 18% less per hour and part-time female workers earned 39% less per hour than full-time male workers in the sector.<sup>2</sup> Although the size of the gap varies between sectors, its existence is not disputed. Both the Government and the Commission regard the gender pay gap as unacceptable. By helping employers to check the pay gap in their organisation and by encouraging good equal pay practice, this Code reinforces the Government and Equality Commission's commitment to closing the gap between men's and women's pay.

**5.** Depending on the particular circumstances a number of other pieces of legislation can give rise to claims related to pay

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<sup>1</sup> For ease of communication the word 'employee' is used throughout this document, but it is not used as a legal term. 'Employee' should be read as referring to all people who work in an organisation.

<sup>2</sup> *Gender and Pay in the Hotel and Restaurants and Manufacturing Sectors in Northern Ireland*, Tony Dignan, Economic Research and Evaluation, Equality Commission 2006

discrimination. They include the Sex Discrimination (NI) Order 1976, the Race Relations (NI) Order 1997, the Disability Discrimination Act 1995, the Pensions (NI) Order 1995, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (NI) 2000, and the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations (NI) 2002. A female part-time cleaner, for example, could claim equal pay under the Equal Pay Act with a male part-time cleaner, but she could also claim under the Part-Time Workers Regulations, that she was being treated less favourably than a female full-time cleaner. These other pieces of legislation are dealt with in Annex B, but employers should be aware of the need to pay particular attention to the situation in respect of part-time, black and minority ethnic employees and employees with a disability.

**6.** It is in everyone's interest to avoid litigation, and the Code recommends equal pay reviews as the best means of ensuring that a pay system delivers equal pay. Employers can avoid equal pay claims by regularly reviewing and monitoring their pay practices, in consultation with their workforce. Consultation is likely to increase understanding and acceptance of any changes required. Involving recognised trade unions or other employee representatives also helps to ensure that pay systems are transparent.

**7.** The Code includes, as good equal pay practice, a summary of the Commission's guidance on how to carry out an equal pay review. The full guidance is in the Commission's Equal Pay Review Kit<sup>3</sup>.

**8.** Whilst every effort has been made to ensure that the explanations given in the Code are accurate, only the Courts or Tribunals can give authoritative interpretations of the law.

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<sup>3</sup> Equal Pay Review Kit, Step by Step Guidance, Equality Commission for NI, 2003

## **SECTION ONE: Equal pay legislation**

### **European Law**

**9.** The principle that a woman is entitled to equal pay for equal work is set out in European Union and domestic legislation. The domestic Courts interpret the Equal Pay Act in accordance with the decisions of the European Court of Justice. A woman bringing an equal pay claim will usually do so under the domestic legislation, but in some circumstances she can claim under European law.

**10. Article 141 of the EC Treaty** (previously Article 119 of the Treaty of Rome) requires Member States to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. The **Equal Pay Directive**<sup>4</sup> explains the practical application of the principle of equal pay, namely the elimination of sex discrimination in pay systems.

European law defines pay as:

*'The ordinary basic or minimum wage or salary and any other consideration, whether in cash or kind, which the worker receives directly or indirectly, in respect of his employer or employment.'*

Pensions are treated as pay under European law. Under domestic law, complaints relating to access to and benefits from pension schemes are pursued via reliance on Article 141, the Sex Discrimination (NI) Order 1976 or the Pensions (NI) Order 1995.

### **Domestic Law**

#### **The Equal Pay Act (NI) 1970**

**11.** The Equal Pay Act entitles a woman doing equal work with a man in the same employment to equality in pay and terms and conditions. The meaning of 'same employment' is considered in paragraph 21. The Act does so by giving her the right to equality in the terms of her contract of employment. The man with whom she is claiming equal pay is known as her comparator. Equal work is work that is the same or broadly similar, work that has been rated as equivalent, or work that is of equal value (see paragraphs 27-32). A woman is not entitled to equal pay for equal work if the reason for the difference in pay is genuinely for a material reason, which is not the difference of sex (see paragraph 59).

**12.** Claims for equal pay are taken through the Tribunal. If a woman succeeds in a claim:

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<sup>4</sup> European Council Directive 75/117/EEC (also contained within recast Directive 2006/54/EC)

- Her pay must be raised to that of her male comparator
- Any beneficial term in the man's contract but not in hers must be inserted into her contract
- Any term in her contract that is less favourable than the same term in the man's contract must be made as good as it is in his
- Compensation consisting of arrears of pay.

**13.** The woman can compare any term in her contract with the equivalent term in her comparator's contract. This means that each element of the pay package has to be considered separately and it is not sufficient to compare total pay. For example, a woman can claim equal pay with a male comparator who earns a higher rate of basic pay than she does, even if other elements of her pay package are more favourable than his.

**14.** Once a woman establishes that she and her comparator are doing equal work it is up to her employer to show that the explanation for the pay difference is genuinely due to a 'material factor' that is not tainted by sex discrimination. This defence is known as the 'genuine material factor' defence. For example, an employer may argue that the man is paid more because he is better qualified than the woman.

### **The Sex Discrimination (NI) Order 1976**

**15.** The Equal Pay Act applies to pay or benefits provided under the contract of employment. The Sex Discrimination (NI) Order 1976, as amended, (Sex Discrimination Order) complements the Equal Pay Act. It covers non-contractual issues such as recruitment, training, promotion, dismissal and the allocation of benefits, for example, flexible working arrangements or access to a workplace nursery.

**16.** The Sex Discrimination Order also covers non-contractual pay matters, such as promotion and discretionary bonuses. Decisions about performance markings in a performance-related pay scheme are aspects of treatment which could be challenged under the Sex Discrimination Order if discriminatory. By contrast, where those decisions result in different levels of pay, that difference and the terms of the scheme could be challenged under the Equal Pay Act. This means that if a woman wishes to make a claim in respect of non-contractual or discretionary payments her claim will be made under the Sex Discrimination Order. If a woman considers that a

term in a collective agreement or an employer's rule is discriminatory and may affect her, it can be challenged under the Equal Pay Act or the Sex Discrimination Order, depending on whether it is contractual or not. If there is any doubt as to which piece of legislation a payment falls under, legal advice should be sought.

### **Protection against victimisation**

**17.** The Sex Discrimination Order also protects employees from being victimised for making a complaint (unless this is both untrue and made in bad faith) about equal pay or sex discrimination, or for giving evidence or information about such a complaint.

Victimisation because a woman intends to bring a claim is also unlawful. The 'complaint' does not have to be by way of lodging a claim with the Tribunal, but also includes any discussion or correspondence about the matter between the woman and her employer. The protection against victimisation also includes not only the woman bringing the claim, but also anyone who assists her, for example, her comparator and any trade union or employee representatives.

## **The scope of the Equal Pay Act**

### **Employers**

**18.** The Equal Pay Act applies to all employers irrespective of their size and whether they are in the public or the private sector.

### **Employees**

**19.** The Equal Pay Act applies to:

- All employees (including apprentices and those working from home), whether on full-time, part-time, casual or temporary contracts, regardless of length of service
- Other workers (e.g. self employed) whose contracts require personal performance of the work, including office holders
- Employment carried out for wholly or mainly in Northern Ireland
- Employment carried out on ships registered in Northern Ireland or on aircraft registered in the UK operated by someone based in Northern Ireland unless the employee works wholly outside Northern Ireland<sup>5</sup>.

**20.** The Equal Pay Act also applies to Armed Services personnel, but there is a requirement to first make a complaint to an officer under the relevant service redress procedures and submit a complaint to the Defence Council under those procedures before presenting a claim to the Tribunal<sup>6</sup>.

### **Same employment**

**21.** A woman can claim equal pay with a man working:

- For the same employer at the same workplace
- For the same employer but at a different workplace where common terms and conditions apply, for example at another branch of a store
- For an associated employer; for example, at her employer's parent company
- European law also allows a comparison to be made between employees who do not work for the same employer, but who are *'in the same establishment or service'*. As there is no clear definition of *'in the same*

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<sup>5</sup> Northern Ireland includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland and certain areas designated in relation to employment in the offshore and gas industry.

<sup>6</sup> Section 6A(5) of the Equal Pay Act, read in conjunction with the Service Redress Procedures

*establishment or service*' this is an area of law on which specific legal advice should be sought. However, European law as it currently stands suggests a comparison can only be made where the differences in pay are attributable to a 'common source' and there is a single body, responsible for and capable of remedying the pay inequality, for example where pay differences arise from a sector-wide collective agreement or from legislation.

### **The pay package**

**22.** The Equal Pay Act covers all aspects of the pay and benefits package, including:

- Basic pay
- Non-discretionary bonuses
- Overtime rates and allowances
- Performance related benefits
- Severance and redundancy pay
- Benefits under pension schemes
- Hours of work
- Company cars
- Sick pay
- Fringe benefits such as travel allowances.

### **Comparators**

**23.** A woman can claim equal pay for equal work with a man, or men, in the same employment. It is for the woman to select the man or men with whom she wishes to be compared, and her employer cannot interfere with her choice of comparator(s). She can claim equal pay with more than one comparator, but to avoid repetition the Code (and the law) is written as though there is only one comparator.

**24.** The comparator can be:

- Someone with whom she is working at the present time, subject to the usual time limits (see paragraphs 47-48)
- Her predecessor or her successor.

**25.** The comparator does not have to give his consent to being named. If the woman's equal pay claim is successful, the result will

be that her pay is raised to the same level as his<sup>7</sup>. There will not be any reduction in the comparator's pay and benefits.

**26.** There are a number of ways in which a woman may be able to select a comparator. These include:

- Her own knowledge and experience
- The internal grievance procedure (see paragraph 36)
- The equal pay questionnaire (see paragraph 37)
- Discovery / Disclosure (that is, documents). Once a woman has filed her claim with the Tribunal, provided that she has shown that her contractual terms are less favourable than those of male colleagues, she can apply for discovery / disclosure to enable her to name appropriate comparators.

### **Equal pay for equal work**

**27.** The comparator may be doing the *same* job as the woman, or he may be doing a *different* job. She can claim equal pay for equal work with a comparator doing work that is:

- The *same*, or broadly similar (known as **like work**)
- *Different*, but which is rated under the same job evaluation scheme as equivalent to hers (known as **work rated as equivalent**)
- *Different*, but of equal value in terms of demands such as effort, skill and decision-making (known as **work of equal value**).

### **Like work**

**28.** Like work means the woman and her comparator are doing the same or broadly similar work. Job titles could be different, yet the work being done could be broadly similar - the nature of the work actually being done needs to be considered. Where differences exist the Tribunal will look at the nature and extent of the differences, how frequently they occur, and whether they are of practical importance in relation to the terms and conditions of the job. Like work comparisons that have succeeded, in the particular circumstances of the case, include:

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<sup>7</sup> Where a job evaluation scheme has been used to determine pay, and as a result the comparator receives pay protection (is red-circled), raising his pay above that determined by the scheme, the woman may be entitled to benefit from the pay protection. Legal advice should be sought.

- Male and female cleaners doing 'wet' and 'dry' cleaning in different locations on the same site
- A female cook preparing lunches for directors and a male chef cooking breakfast, lunch and tea for employees.

### **Work rated as equivalent**

**29.** Work rated as equivalent means that the jobs being done by the woman and her comparator have been assessed under the same analytical job evaluation scheme as being equivalent, that is, they have been assessed as having the same number of points, or as falling within the same job evaluation grade<sup>8</sup>. Criteria against which jobs may be assessed may include, for example, effort, skill or decision-making. Work rated as equivalent comparisons that have succeeded in the particular circumstances of the case include where a woman and a man had been placed in the same job evaluation grade, but the employer had refused to pay the woman (who had been evaluated as having fewer points) the rate for the grade.

### **Work of equal value**

**30.** Work of equal value means that the jobs done by the woman and her comparator are different, but can be regarded as being of equal value or worth. This can be measured by comparing the jobs under headings such as effort, skill and decision-making.

**31.** Comparing jobs on the basis of equal value means jobs that are entirely different in their nature can be used as the basis for equal pay claims. Job comparisons can be made both within a particular pay/grading structure and between different structures or departments, for example, in a printing firm, between a bindery and a press room. Equal value is likely to be relevant where men and women are in the same employment but do different types of work.

Equal value comparisons that have succeeded in the particular circumstances of the case, include:

- Cooks and carpenters
- Speech therapists and clinical psychologists
- Kitchen assistants and refuse workers.

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<sup>8</sup> A woman can compare herself to a man whose job has been rated at a lower value, but who receives more pay.

**32.** A woman can claim equal pay under more than one heading. For example, a woman working as an administrator in a garage could claim 'like work' with a male administrator working alongside her and 'equal value' with a mechanic.

### **Pregnant women and women on maternity leave**

**33.** During the period of Ordinary Maternity Leave<sup>9</sup> a woman's contract remains in place and all of her contractual terms and conditions must continue, with the exception of her normal pay (i.e. wages or salary). The position with regard to bonuses, occupational pension rights, and the provision of maternity benefits over and above those required by the statutory scheme is unclear, and specific legal advice will be needed.

**34.** When a woman is on Additional Maternity Leave<sup>10</sup>, even though her contract remains in place, her contractual terms cease to apply, except for some limited exceptions not relevant to pay. However, her entitlement to paid leave under the Working Time Regulations (NI) continues to accrue, and in some circumstances it may be unlawful under either the Equal Pay Act or the Sex Discrimination Order to treat a woman on maternity leave differently than other workers, for example by failing to pay her a bonus. The situation will vary according to the facts and again, this is an area where detailed legal advice should be sought.

**35.** Pay increases continue to accrue while a woman is on maternity leave and she is entitled to the benefit of any pay increases that she would have received had she been at work<sup>11</sup>.

### **Raising the Matter with the Employer Grievance Procedure**

**36.** Before making an equal pay complaint to the Tribunal a woman is normally required by law to raise a grievance with her employer<sup>12</sup>. A failure to comply with the statutory grievance procedure can lead to a rejection of the Tribunal application or the reduction of any Tribunal award by up to fifty per cent. The statutory grievance procedure affects the date by which proceedings must be lodged, extending the time limit for doing so

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<sup>9</sup> Under the Work and Families (NI) Order 2006 Ordinary Maternity Leave is 26 weeks for all mothers.

<sup>10</sup> Under the Work and Families (NI) Order 2006 all women are entitled to 26 weeks' Additional Maternity Leave starting after their Ordinary Maternity Leave.

<sup>11</sup> *Gillespie and others v Northern Health and Social Services Board (1996) ECJ*

<sup>12</sup> Employment (NI) Order 2003, Schedules 2 and 3

by three months<sup>13</sup>. **Service of an equal pay questionnaire does not constitute raising a grievance.**

### **The Equal Pay Questionnaire**

**37.** A woman is entitled to write to her employer asking for information that will help her establish whether she has received equal pay and if not, what the reasons for the pay difference are. There is a standard form which can be used to do this. The focus of the questionnaire is on establishing whether she is receiving less favourable pay and contractual terms and conditions than a colleague or colleagues of the opposite sex, and whether the employer agrees that she and her comparator are doing 'equal work'. The woman can send the questionnaire to her employer either before she lodges her claim with the Tribunal or within 21 days of doing so. Copies of the questionnaire can be obtained from the Commission, and online on the Office of the First Minister and the Deputy First Minister's website<sup>14</sup>.

**38.** If the woman takes a case to the Tribunal, the employer's replies to the questionnaire should simplify the proceedings because the key facts will have been identified in advance. If the employer fails, without reasonable excuse, to reply within eight weeks, or responds with an evasive or equivocal reply, the Tribunal may take this into account at the hearing. The Tribunal may then draw an inference unfavourable to the employer, for example, that the employer has no genuine reason for the difference in pay.

### **Responding to requests from an employee for information Transparency**

**39.** Transparency means that pay and benefit systems should be capable of being understood by everyone (employers, employees and their trade unions). Employees should be able to understand how each element of their pay packet contributes to total earnings in a pay period.

**40.** It is advisable for an employer to keep records that will allow him or her to explain why he or she did something, showing clearly

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<sup>13</sup> Guidance on the use of the statutory grievance procedures can be obtained via the Labour Relations Agency at [www.lra.gov.uk](http://www.lra.gov.uk). See also the Department of Employment and Learning publications *Resolving Disputes at Work* at [www.delni.gov.uk/index/publications/pubs-employment-rights/other-employment-rights-publications](http://www.delni.gov.uk/index/publications/pubs-employment-rights/other-employment-rights-publications).

<sup>14</sup> [www.ofmdfmi.gov.uk.equalpay.pdf](http://www.ofmdfmi.gov.uk.equalpay.pdf)

what factors he or she relied on at the time that the decision on pay was made. Employers should be aware that employees may bring complaints or make enquiries about pay decisions which were taken many years previously, since when the person who took the decision may have left the organisation. For this reason it is advisable for employers to keep records that may, in the future, help them to explain why pay decisions were made.

**41.** Bearing in mind the guidance given in the preceding paragraphs, when responding either to a grievance or to the questionnaire employers need to state whether or not they agree that the woman is doing equal work. If they do not agree that the woman's work is equal to that of her comparator, they should explain in what way the work is not equal. If they agree that the woman's work is of equal value, determine the reason or cause for the difference.

### **Confidentiality**

**42.** The principle of transparency set out above does not mean that an individual has the automatic right to know what another individual earns. The principle of transparency means that a woman has the right to know how the calculations are made, not the content of the calculation. It is necessary to balance the ideal of transparency with the rights of individual privacy. The equal pay questionnaire cannot be used to require an employer to disclose confidential information, unless the Tribunal orders the employer to do so. A woman can use the questionnaire to request key information and it is likely that in many cases an employer will be able to answer detailed questions in general terms, while still preserving the anonymity and confidentiality of employees.

### **The Data Protection Act**

**43.** Much of the information requested will not be confidential but some information, such as the exact details of a comparator's pay package, may be confidential to that person. Personal data is protected by the Data Protection Act 1998 and can only be disclosed in accordance with data protection principles<sup>15</sup>. Pay records will usually be personal data covered by the Data Protection Act. The disclosure of confidential information in the employment context is also protected by the implied duty of trust and confidence owed by an employer to an employee.

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<sup>15</sup> Schedule 2

**44.** Responding to an equal pay questionnaire or to a request for information during the course of Tribunal proceedings is a developing area of law and, if in doubt, an employer should seek specific advice from the Information Commissioner<sup>16</sup> and/or take legal advice.

### **Disclosure of information to trade unions or employee representatives**

**45.** Under the Trade Union and Labour Relations (NI) Order 1995 an employer is under a duty, on request, to disclose to a recognised trade union, information to enable constructive collective bargaining. Information about pay and terms and conditions of employment usually comes within the duty to disclose, but it is important to note that the duty applies only to information for collective bargaining.

**46.** It also represents good practice for employers who do not recognise trade unions to communicate regularly with their workforce and, where appropriate, their representatives.

### **Bringing an equal pay claim**

#### **The time limits for applying to an Industrial Tribunal**

**47.** If a woman wishes to lodge a claim with the Tribunal she must do so within the prescribed time limits. **It is her responsibility to ensure that she does so.** The guidance below should be read bearing in mind that time limits will be extended if the statutory grievance procedures apply.

**48.** The Equal Pay Act and the Sex Discrimination Order have different time limits.

- Claims under the Equal Pay Act can be taken at any time up to six months after leaving the employment with the employer (as opposed to leaving the particular post about which the equal pay claim is made, but remaining in the same employment). This time limit also applies to equal pay claims taken where a stable relationship with an employer has come to an end<sup>17</sup>. The time limit can be extended only

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<sup>16</sup> [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk), and see useful addresses at page

<sup>17</sup> Demonstrating that a stable relationship exists or existed is relevant to an employee who has been employed on a series of temporary contracts. This is a question of fact for a Tribunal. It affects the time limit for lodging proceedings, as where a stable relationship exists the time limit for lodging proceedings runs from the end of the relationship, and where it does not, the time limit runs from the end of each contract.

where the employer deliberately conceals the existence of pay inequality from the complainant, or the complainant is a minor or of unsound mind<sup>18</sup>.

- In contracting out situations the time limit runs from the date of the contracting out in respect of periods of service up to that date
- Claims under the Sex Discrimination Order can be taken within three months of the alleged act of discrimination, subject to the Tribunal's discretion to extend the time limit where it is just and equitable to do so
- As a result of the requirement on Armed Services personnel to use the relevant Service Redress Procedure referred to in paragraph 20, different rules apply. In the case of the Equal Pay Act, the time limit is nine months from the end of the period of service, and in the case of the Sex Discrimination Order, the time limit is six months from the date of the act complained of. The time limits can be extended only as described above.

**49.** The fact that a woman is paid less than a man doing equal work does not necessarily mean that she is suffering sex discrimination in pay. In making a decision about a case the Tribunal has to assess the evidence about:

- The work done by the woman and her comparator.
- The value placed on the work (sometimes with the advice of an Independent Expert<sup>19</sup>), in terms of the demands of the jobs.
- The pay of the woman and her comparator and how it is arrived at.
- The reasons for the difference in pay.

**50.** In *like work* and *work rated as equivalent* claims the procedure is the same as in any other employment case. There are special Tribunal procedures for *work of equal value* claims<sup>20</sup>.

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<sup>18</sup> Section 2ZB Equal Pay Act (NI) 1970

<sup>19</sup> From a list held by the Labour Relations Agency

<sup>20</sup> These are to be found at Schedule 3 of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (NI) 2005 (SI2005/150) and at Section 2A of the Equal Pay Act (NI) itself.

## **Assessing equal value**

**51.** The concept of equal pay for work of equal value means that a woman can claim equal pay with a man doing a completely different job. In comparing such jobs the Tribunal will apply techniques akin to analytical job evaluation, whereby the demands on the jobholders and the skills required of them are assessed using objective criteria. The Tribunal may also appoint an Independent Expert to assess the value of the jobs. The Tribunal-appointed Independent Expert may make a detailed study of an employer's pay system and the employer would be required to cooperate with any such exercise.

**52.** Employers should be aware that they, and the woman bringing the claim, might also appoint someone with equal pay expertise to act as an expert on their behalf. It is important when dealing with experts to be clear who is the Independent Expert appointed by the Tribunal and who is acting for the parties to the claim.

## **The employer's defence**

**53.** The possible defences against an equal pay claim are as follows:

- The woman and the man are not doing equal work
- For equal value claims only - the jobs being done by the woman and the man have been evaluated and rated differently under an analytical job evaluation scheme that is free of sex bias. An analytical job evaluation scheme evaluates jobs according to the demands made on the jobholders. **A non-analytical job evaluation scheme does not provide a defence to a claim**
- The difference in pay is genuinely due to a material factor, which is not the difference of sex.

## **The job evaluation defence**

**54.** Where employers use analytical job evaluation schemes they need to check that the scheme has been designed and implemented in such a way that it does not discriminate on grounds of sex. An analytical evaluation discriminates on the grounds of sex where values have been attributed to the different demands against which it has measured the jobs, and these values cannot be justified irrespective of the sex of the person on whom these demands are made.

**55.** A job evaluation scheme will be discriminatory if it fails to include, or properly take into account, a factor, or job demand, that is an important element in the woman's job (such as caring demands in a job involving looking after elderly people), or if it gives an unjustifiably heavy weighting to factors that are more typical of the man's job (such as the physical demands of being employed as a gardener).

**56.** A woman may also challenge a job evaluation scheme on the basis that instead of a factor, say, 'mental concentration' (in her job) being awarded fewer points than 'physical effort' (in her comparator's job), it should have received the same or more points. Similarly, she may argue that 'physical effort' (in his job) has been overrated compared with the skill her job requires for 'manual dexterity'. Even where she has received the same or more points than a man for a particular factor, she may still argue that the demands of her job under this factor have been underrated, that is, that the difference in points under the factor should have been bigger.

**57.** Employers also need to check the outcomes of the job evaluation for sex bias. This means checking what impact the scheme has had on women and men, that is, how many women and how many men have moved up or down the grades. Any ensuing pay protection (red-circling) should be phased out as soon as is practicable<sup>21</sup>.

**58.** The Commission has produced a guidance note recommending that matters, such as the following, should be considered as a matter of good practice<sup>22</sup>. In order to check that a scheme is non-discriminatory, an employer needs to look at matters such as:

- Whether statistics recorded on pay are broken down by gender.
- Whether the scheme is appropriate to the jobs it will cover.
- If a proprietary scheme is used does the supplier have equal opportunities guidelines?
- If any groups of workers are excluded from the scheme, are there clear and justifiable reasons for their exclusion?

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<sup>21</sup> The Equal Pay Review Kit Guidance Note 4: Job Evaluation Schemes free of sex bias

<sup>22</sup> see footnote 21

- Is the composition of the job evaluation panel/steering committee representative of the jobs covered by the scheme and are the members trained in job evaluation and avoiding sex bias?
- Are the job descriptions written to an agreed format and assessed to a common standard?
- Are trained job analysts used and have the jobholders been involved in writing their own job descriptions?
- Where the scheme uses generic/bench mark jobs are these free from sex bias?
- Are the factor definitions and levels exact and are detailed descriptions provided for each factor? Do the factors cover **all** the important job demands?

If a job evaluation scheme is to remain free of sex bias it should be monitored. The employer (and not the job evaluation supplier or consultant) will need to show that the scheme is non-discriminatory.

### **The 'genuine material factor defence' - testing for sex discrimination**

**59.** The Tribunal tests for sex discrimination by first establishing a difference in pay or terms between the woman bringing the claim and a man doing equal work, and then asking whether the difference is due to discrimination or some other factor that does not amount to sex discrimination. This means that an employer can pay a man more than a woman for doing equal work, but only if the reason for doing so – the factor which the employer regards as the reason for the difference in pay – is not related to the sex of the jobholders.

**60.** The employer will have to show that the factor, or factors, on which he or she relies is free from both direct and indirect sex discrimination:

- Direct sex discrimination occurs when the difference in pay or terms is directly related to the difference of sex. For example, where a man is paid more than his female colleague who performs equal work because the employer assumes that he will have greater domestic financial responsibilities.
- Indirect sex discrimination, in relation to pay, arises where, although performing equal work:

- A requirement, provision or condition adversely impacts on women; or
- Although the reason for the difference is unclear, men statistically earn more than women. In such a situation, a large pool of employees has to be compared and the statistical difference has to be substantial; or
- A factor, such as a bonus, is applied to the predominantly male group, but is not offered to the predominantly female group.

**61.** Whether a defence succeeds or fails will always depend on the circumstances of the case and there is no such thing as an automatic or blanket defence. The defences that are likely to succeed include allowances such as night-shift payments. Factors such as different market rates of pay for different specialisms or different levels of skills and experience have been successful in some cases but not in others.

**62.** The factor put forward to explain the difference in pay has to be significant; it has to be the real reason for the difference and it must not be connected with the sex of the people doing the job. For example, if the employer considers that the reason for paying the comparator more than the woman bringing the claim is that people will not do the work for the lower rate of pay, then the employer would have to bring evidence of actual difficulties in recruiting and retaining people to do the job being done by the male comparator.

**63.** Where a woman is claiming equal pay on the basis that the two jobs are work of equal value, indirect discrimination may arise where one of the jobs is done by a much higher proportion of women than the other job. The onus lies on the employee to provide evidence of significant disparate impact.

**64.** In such a case, if the Tribunal accepts that the jobs are of equal value, the employer will need to provide objective justification for the pay difference between the two kinds of job. This is a higher standard of justification than that of the material factor defence.

**65.** Objective justification is proven where, although women are adversely affected, the disparity exists in order to achieve a

legitimate objective, and the means of doing so are appropriate and necessary.

An example of objective justification is a pay system that makes an additional payment to employees working unsocial hours, in which most of the employees getting the bonus are men. Here the employer would have to show that:

- There is a real business need to create a system to encourage a particular group of employees to work unsociable hours, and
- The additional payments meet that need, and
- The payments are an effective way of meeting that need, and do not go beyond what is necessary to achieve it (that is without the payment, the extra work would not be done, and the payment is only made when the workers actually do the work).

### **Awards of equal pay**

**66.** If the woman succeeds in her claim she is entitled to:

- An order from the Industrial Tribunal declaring her rights;
- Equalisation of contractual terms for the future (if she is still in employment);
- Compensation consisting of arrears of pay.

Back pay can be awarded up to a maximum of six years from the date that proceedings were lodged with the Tribunal. Special rules apply where the woman is under a disability<sup>23</sup> or the employer has concealed a breach of the Equal Pay Act. In addition, the Industrial Tribunal may award interest on the award of compensation. With up to six year's worth of back pay being awarded, the interest element of any award may be considerable.

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<sup>23</sup> In the Equal Pay Act, disability refers to a minor or a person of unsound mind within the meaning of the Limitation (NI) Order 1989.

## **SECTION TWO: Good equal pay practice**

### **Introduction**

**67.** The loss to women arising out of the gender pay gap is well documented<sup>24</sup>, but organisations also lose out by failing to properly reward the range of skills and experience that women bring to the workforce. The most commonly recognised risk of failing to ensure that pay is determined without sex discrimination is equal pay cases being taken against the organisation. The direct costs of a claim can include not only any eventual equal pay award to the woman bringing the claim (see paragraph 65) but also the costs of time spent at a hearing, and the costs of legal representation.

The indirect costs are harder to quantify, but include lower productivity on the part of those employees who consider that they are not getting equal pay and on the part of managers whose time is taken up in dealing with the claim.

**68.** Tackling the gender pay gap reduces the risk of litigation. It can also increase efficiency by attracting the best employees, reducing staff turnover, increasing commitment, and reducing absenteeism. Pay is one of the key factors affecting motivation and relationships at work. It is therefore important to develop pay arrangements that are right for the organisation and that reward employees fairly. Providing equal pay for equal work is central to the concept of rewarding people fairly for what they do.

### **The essential features of an equal pay review**

**69.** Employers are responsible for providing equal pay and for ensuring that pay systems are transparent. Pay arrangements are frequently complicated and the features that can give rise to sex discrimination are not always obvious. A structured pay system is more likely to provide equal pay and is easier to check than a system that relies primarily on managerial discretion. The Labour Relations Agency provides basic advice on the various different types of pay systems and on job evaluation.

**70.** The advice given in paragraphs 39 - 46 on transparency and confidentiality are also relevant to equal pay reviews. If in doubt, an employer should seek specific advice from the Information Commissioner, and or, take legal advice.

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<sup>24</sup> See footnote 2 above

**71.** While employers are not required, by law, to carry out an equal pay review, this Code recommends equal pay reviews as the most appropriate method of ensuring that a pay system delivers equal pay free from sex bias. Whatever kind of equal pay review process is used, it should include:

- Comparing the pay of men and women doing equal work. Here employers need to check for one or more of the following: like work; work rated as equivalent; work of equal value. ***These checks are the foundation of an equal pay review.***
- Identifying any equal pay gaps.
- Eliminating those pay gaps that cannot satisfactorily be explained on grounds other than sex.

These features are the same whatever the size of the organisation and they are essential. **A pay review process that does not include these features cannot claim to be an equal pay review.** Moreover, an equal pay review is not simply a data collection exercise. It entails a commitment to put right any sex based pay inequalities and this means that the review must have the involvement and support of managers with the authority to deliver the necessary changes.

**72.** The validity of the review and success of subsequent action taken will be enhanced if the pay system is understood and accepted by the managers who operate the system, by the employees and by their unions. Employers should therefore aim to secure the involvement of employees and, where possible, trade union representatives, when carrying out an equal pay review, bearing in mind its legal duties under the Data Protection Act.

### **Voluntary equal pay reviews**

#### **A model for carrying out an equal pay review**

**73.** The Commission recommends a five-step equal pay review model:

**STEP 1:** Deciding the scope of the review and identifying the data required

**STEP 2:** Determining where men and women are doing equal work

**STEP 3:** Collecting pay data to identify equal pay gaps

**STEP 4:** Establishing the causes of any significant pay gaps and assessing the reasons for these

**STEP 5:** Developing an equal pay action plan and/or reviewing and monitoring.

The Equal Pay Review Kit sets out the detail of the model recommended here and provides supporting guidance notes.

**STEP 1: Deciding the scope of the review and identifying the data required**

**74.** In scoping the review employers need to decide:

- Which employees are going to be included? It is advisable to include all employees who are deemed to be in the same establishment or service (see paragraph 21)
- What information will be needed? Employers will need to collect and compare broad types of information about all the various elements of pay, including pensions and other benefits; the personal characteristics of each employee, that is, gender; full-time or part-time; qualifications relevant to the job; hours worked and when and where they work these; length of service; role and time in grade and performance related pay ratings<sup>25</sup>.
- It is particularly important to ensure that information is collected about part-time, temporary and casual employees. The information will vary depending upon the type of organisation, its pay policies and practices and the scope of the review.
- Who should be involved in carrying out the review? An equal pay review requires different types of input from people with different perspectives. There will be a need for knowledge and understanding of the pay and grading arrangements; of any job evaluation schemes; and of the payroll and human resource systems. It can also be helpful to have someone with an understanding of equality issues, particularly the effects of indirect discrimination in pay systems
- When to involve the workforce? Employers need to consider when to involve the trade unions or other employee representatives
- Whether expert advice is needed? Employers may also wish to consider whether to bring in outside expertise. The Labour Relations Agency can provide practical, independent and

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<sup>25</sup> The Equality Commission Equal Pay Review Kit Guidance Note 2: Data Collection, provides detailed guidance on the information required to carry out an equal pay review

impartial advice on the employee relations aspects of equal pay reviews.

### **Include broader equality grounds in the review**

**75.** This Code is concerned with an important, but narrow, aspect of sex discrimination in employment – the pay of women compared to men doing equal work, (or vice versa). It does not deal with comparisons on the grounds of, for example, ethnicity or disability. However, as a matter of good practice employers may also want to look at broader equality grounds. Before deciding to do so it may be helpful to consider the quality of the information available to the employer, and whether it is adequate for the purposes of carrying out a wider review. To ensure the relevant provisions of anti-discrimination legislation are taken into account, it would be appropriate to seek advice from the Commission.

**76.** Public Sector and other designated organisations obliged by the Northern Ireland Act to adopt an Equality Scheme should ensure that their pay review deals with any pay gaps between workers from different groups as well as the gaps between men's and women's pay.

### **STEP 2: Determining where men and women are doing equal work**

**77.** In Step 2 employers need to check whether men and women are performing: like work; work rated as equivalent; or work of equal value.

***These checks determine where men and women are doing equal work. They are the foundation of an equal pay review.***

### **Example<sup>26</sup> determining where men and women are doing equal work**

Human Resources and the unions met to agree which areas to examine. According to the HR manager, 'we already had an idea of where the discrepancies were'. Data collection was on the basis of figures from: the personnel database, the pay database, the performance pay database and the starters and leavers database. A small local consultancy had helped to introduce a new job evaluation scheme; however, the basis for making equal work comparisons was predominantly by existing grade. The organisation looked at global differences, differences by grade and

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<sup>26</sup> Case study taken from *Monitoring Progress Towards Pay Equality*, Neathey, Dench & Thomson, Institute for Employment Studies, EOC 2003

differences by components of pay (basic pay, overtime and allowances).

**78.** Employers who do not have analytical job evaluation schemes designed with equal value in mind will need to find an alternative means of estimating whether men and women are doing equal work. The Equal Pay Review Kit includes suggestions as to how this can be done<sup>27</sup>. Employers who do use analytical job evaluation schemes need to check that their scheme has been designed and implemented in such a way and at all times so as not to discriminate on grounds of sex<sup>28</sup>.

### **STEP 3: Collecting pay data to identify equal pay gaps**

**79.** In Step 3 employers need to collect and compare pay information for men and women doing equal work by:

- Calculating average basic pay and total earnings
- Comparing access to and amounts received of each element of the pay package. To ensure comparisons are consistent, when calculating average basic pay and average total earnings for men and women separately, employers should do this either on an hourly basis or on a full-time salary basis (grossing up or down for those who work fewer, or more, hours – excluding overtime – per week than the norm).

**80.** Employers then need to review the pay comparisons to identify any gender pay gaps and decide if any are significant enough to warrant further investigation. It is advisable to record all the significant or patterned pay gaps that have been identified.

### **Example<sup>29</sup> - data collection and analysis**

The organisation had a well-established process for undertaking equal pay audits. Data were brought together and presented in tabular form by the data analysis section of the human resources department. The data were then reviewed, analysed and commented on by the head of employee relations, who shared the data with trade union representatives. Union and management worked together to develop action points arising from the data.

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<sup>27</sup> The Equal Pay Review Kit Guidance Note 5: Assessing Equal Value

<sup>28</sup> The Equal Pay Review Kit Guidance Note 4: Job Evaluation Schemes Free of Sex Bias

<sup>29</sup> Case study taken from *Monitoring Progress Towards Pay Equality*, Neathey, Dench & Thomson, Institute for Employment Studies, EOC 2003

## **STEP 4: Establishing the causes of any significant pay gaps and assessing the reasons for these**

**81.** In Step 4 employers need to:

- Find out if there is a genuine and material reason for the difference in pay that has nothing to do with the sex of the jobholders.
- Examine their pay systems to find out which pay policies and practices are contributing to any gender pay gaps.
- Bear in mind that in small and medium-sized organisations, pay statistics may be misleading due to relatively low numbers of staff at each grade.

### **Example<sup>30</sup> – finding out which policies and practices are contributing to the gender pay gap**

The review showed a 23 per cent gap in the average basic pay of men and women across the organisation. In grades with a large enough number of staff to make a comparison, 50 per cent had variances of five per cent or greater in favour of either men or women. Starting pay was not found to be an issue, nor was performance pay. A key area of concern identified by the review was premium payments for working unsocial hours. These were paid at the rate of 20 per cent of basic salary to some grades. However, in 1998 these payments were restricted to existing staff. The period since 1998 had seen an increase in the number of female recruits into what were traditionally male areas. Due to the change in the rules they were not eligible for the premium payments. The result was that overall in the eligible grades, men received on average two and a half times the amount of earnings from premium pay that women received.

**82.** Pay systems vary considerably. Pay systems that group jobs into pay grades or bands have traditionally treated jobs in the same grade or band as being of broadly equal value, either because they have been evaluated with similar scores under a job evaluation scheme, or because they are simply regarded as equivalent. However, recent years have seen a trend towards structures with fewer, broader grades or bands and greater use of performance pay and market factors. A single broad band or grade may contain jobs or roles of significantly different value because it encompasses a wide range of job evaluation scores. This, coupled

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<sup>30</sup> Case study, in amended form, taken from *Monitoring Progress Towards Pay Equality*, Neathey, Dench & Thomson, Institute for Employment Studies, EOC 2003

with a wider use of other determinants of pay and more complex methods of pay progression, means that it is important for employers to check all aspects of the pay system from a variety of standpoints: design, implementation, and impact on men and women<sup>31</sup>

### **STEP 5: Developing an equal pay action plan and/or reviewing and monitoring**

**83.** Where the reason for the pay difference is connected with sex, employers will need to provide equal pay for current and future employees. In cases of indirect discrimination, the employer may be able to objectively justify the difference (see paragraph 65).

**84.** Employers who find no gaps between men's and women's pay, or who find gaps for which there are genuinely non-discriminatory reasons, should nevertheless keep their pay systems under review by introducing regular monitoring undertaken jointly with trade unions. This will ensure that the pay system remains free of sex bias.

**85.** A useful way of planning and taking practical action is for employers to develop an Employment Equality Plan. This is essentially an action plan that complements an Equal Opportunities and or Equal Pay Policy and assists in the implementation of the commitments described in them and provides a framework for the taking of positive or affirmative action. An Employment Equality Plan is designed to provide an employer with a practical framework to assess his or her current employment policies across all, or any, of the statutory equality grounds; to identify shortcomings in policies and practices and to develop further action plans for taking further action to promote equality of opportunity<sup>32</sup>.

#### **Example<sup>33</sup> – developing an action plan**

Following the review, an Action Plan looking at internal processes was developed. This is ongoing and is reviewed through partnership processes. The aim is to integrate equal pay issues into employee relations' work. Early action has been in relation to

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<sup>31</sup> The Equal Pay Review Kit Guidance Note 6: Reviewing your payment systems, policies and practices.

<sup>32</sup> Further information and advice on developing an Employment Equality Plan is available from the Equality Commission

<sup>33</sup> Case study taken from *Monitoring Progress Towards Pay Equality*, Neathey, Dench & Thomson, Institute for Employment Studies, EOC 2003

internal recruitment processes. This included looking at whether people were encouraged (or not) to apply for particular jobs. This lack of recognition of potential opportunities was closing off progression routes to some groups, and impacting on the organisational gender pay gap. The organisation also found that it had a body of staff (mainly women) that did not seek promotion. A challenge for the organisation was to encourage more women to aim for promotion, especially once they had fewer family responsibilities. The remuneration manager anticipated that the gender pay gap in the main staff would fall from the 13 per cent identified in the pay review to under five per cent over the following five years. A recent repeat of the review had already shown a fall, however, the decline in the gap might not always be maintained. This is because the company's pay system is highly market sensitive and a tightening of the labour market in areas in which men are in the majority (such as Information Technology) would have a negative impact on the downward trend.

### **SECTION THREE: An equal pay policy**

#### **The organisation's intentions in respect of equal pay**

**86.** It is good equal pay practice to provide employees with a clear statement of the organisation's intentions in respect of equal pay. Evidence of an equal pay policy may assist an employer's defence against an equal pay claim

**87.** It is recommended that an equal pay policy should:

- Commit the organisation to carry out an equal pay review and to monitor pay regularly in partnership with trade union/employee representatives
- Set objectives
- Identify the action to be taken
- Implement that action in a planned programme in partnership with the workforce
- Assign responsibility and accountability for the policy to a senior manager
- Commit the organisation to set aside the resources necessary to achieve equal pay.

**88.** Everyone involved in setting the pay of staff should be committed to and, if possible, trained in the identification of sex discrimination in the pay process.

**89.** The Equality Commission has produced a model equal pay policy<sup>34</sup> which may be found at Appendix A.

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<sup>34</sup>Equality Commission, Equal Pay Model Policy, March 2007

## **Annex A**

### **Model Policy on Equal Pay**

This organisation supports the principle of equality of opportunity in employment and believes that, as part of that principle, pay should be awarded fairly and equitably. We believe that it is both good practice and in the organisation's best interests to have a pay system which is fair and non-discriminatory.

We recognise that in order to achieve equal pay for employees doing equal work we should operate a pay system which is transparent, based on objective criteria and free from sex bias.

#### **Legislative framework**

The right to equal pay for equal work for men and women is a fundamental principle of European Community law and is a legal right under domestic law. The relevant European and domestic legislation is:

- Article 141 of the EC Treaty
  - Equal Pay Directive [Council Directive 75/117/EEC]
- and
- Equal Pay Act (NI) 1970 as amended
  - Sex Discrimination (NI) Order 1976 as amended
  - Pensions (NI) Order 1995.

#### **Definitions**

**Pay:** For the purpose of this policy, 'pay' is the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which an employee receives, directly or indirectly, in respect of his or her employment. It therefore includes bonuses, access to overtime, holidays, sick pay, pensions and other additional benefits.

**Equal work** means *like work or work rated as equivalent or work of equal value*.

**Like work** is work which is the same or broadly similar.

**Work rated as equivalent** is work which has been rated as equivalent under an accredited job evaluation scheme which is non-discriminatory.

**Work of equal value** is work which is of broadly equal value or

worth in terms of the demands of the job when compared according to criteria such as skill, decision-making and physical effort.

### **Implementation**

In order to put our commitment to equal pay into practice we intend to:

- carry out an equal pay review as a starting point for identifying any inequalities.
- examine our existing pay practices not only for current staff but also for new employees including those in non-standard employment (on part-time, fixed-term, term-time only or weekly-paid contracts), and those who are absent on pregnancy or maternity leave, career-breaks, sick-leave or any other form of paid and unpaid leave.
- take into account the entire pay package - basic pay, bonuses, performance pay, starting pay, sick pay, overtime rates, allowances and benefits (including pensions) - as well as the impact of promotion schemes, grading and incremental progression.
- formulate a plan of appropriate remedial action, in partnership with trade union or other employee representatives, to implement any changes to existing practices.
- inform employees at each stage of the process how any new practices will work and how their own pay is determined.
- respond to any enquiries or grievances (according to our grievance procedure) arising as a result of our policy or practices.
- carry out periodic monitoring of the impact of our practices by undertaking pay audits and monitoring any complaints.
- provide training and guidance for managers and supervisory staff involved in decisions about pay and benefits.

We intend, through this action, to avoid unfair discrimination and eliminate any unjust or unlawful practices that impact on pay. We mean to reward fairly the skills, experience and potential of all staff, thereby increasing efficiency, productivity and competitiveness and enhancing the organisation's reputation and image.

**Responsibilities**

Responsibility for the implementation of this policy lies ultimately with the Chief Executive / Managing Director and the Board of Directors. The Human Resources Department (Salaries & Wages Section) is responsible for the day-to-day operation of the policy and undertaking the equal pay review. Section heads and those sitting on recruitment & selection and/or promotion panels also have a responsibility to ensure that starting salaries are set in a manner consistent with the policy.

**Enquiries and complaints**

We recognise that employees have the right to raise issues of concern or to complain about how they are treated in relation to pay, particularly if they feel that their treatment is unfair or discriminatory. Should anyone have an enquiry regarding their pay, they may raise the issue with the Salaries and Wages/ Human Resources Department. We have established an internal grievance procedure to deal with such complaints. These will be taken seriously and dealt with promptly, confidentially and impartially. A complainant may also submit questions using an Equal Pay Questionnaire

In addition to the company's internal procedures, employees have the right to pursue complaints of discrimination to an industrial tribunal. However, employees wishing to make a complaint to a tribunal will normally be required to raise the issue under the internal grievance procedure first. Employees who raise a complaint will be protected against victimisation. Any complaint of victimisation will be investigated and may, if upheld, result in disciplinary action which can include dismissal.

This policy has been discussed and agreed with the .....trade union/s and employee/staff representatives.

Signed: .....Managing Director / Chief Executive  
.....Human Resources Manager  
.....Employee / Trade Union Representative

Date:.....

## **Annex B**

### **Other legislation that may impact on pay (in alphabetical order)**

**The Disability Discrimination Act 1995** requires employers not to discriminate against disabled employees. Discrimination, which includes discrimination in relation to pay, means treating a person less favourably for a reason related to his disability or failing to make a reasonable adjustment to a physical feature of premises or to working arrangements, which place the disabled employee at a substantial disadvantage.

**Employment Equality (Age) Regulations (NI) 2006** require employers not to discriminate on grounds of age. The Equality Commission can provide advice on specific issues relating to age.

**Employment Equality (Sexual Orientation) Regulations (NI) 2003** require employers not to discriminate on grounds of sexual orientation. The Equality Commission can provide advice on specific issues relating to sexual orientation.

**The Employment Rights (NI) Order 1996** requires employers to issue a written statement of terms and conditions of employment.

**The Fair Employment and Treatment (NI) Order 1998, as amended** requires employers not to discriminate on grounds of religious belief or political opinion. The Equality Commission can provide advice on specific issues relating to religious belief or political opinion.

**The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations (NI) 2002** give fixed-term employees the right to the same pay and terms and conditions of employment as permanent employees on broadly similar work, unless their less favourable treatment can be objectively justified. An employee can make a comparison with employees of the same sex, but the range of comparators is more restrictive than under the Equal Pay Act, for example, a fixed-term employee cannot select a predecessor as a comparator, nor can she/he make a comparison with someone working for an associated employer. The Fixed-term Employees Regulations do not apply to agency workers or apprentices. The Regulations adopt a 'package approach', whereby an employer can justify the difference in treatment by

showing that the value of the fixed-term employee's package of terms and conditions is at least equal to that of the permanent employee. This approach is not permissible under the Equal Pay Act.

**The National Minimum Wage Act 1998 and the National Minimum Wage Regulations 1999** set minimum hourly wage for all workers aged 18 and over. There is a separate lower rate for workers under the age of 18.

**The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (NI) 2000, as amended** give part-time male and female workers a right not to be treated less favourably than full-time workers unless any difference in treatment can be objectively justified. The regulations apply to all aspects of pay and conditions of employment (contractual and non-contractual) and will usually require that the part-time worker should be paid and receive other benefits on a pro-rata basis. The part-timer can make comparison with a full-timer of the same sex, but otherwise, the range of comparators is more restricted than under the Equal Pay Act. Although the regulations apply to both employees and workers, a part-time worker has to name a full-time worker (not a full-time employee) as a comparator. Likewise, a part-time employee has to name a full-time employee (not a full-time worker) as comparator. In either case, the comparator has to be doing the same or broadly similar work, so there is no scope for an 'equal value' claim under the regulations. There is also no scope for a part-timer to name a comparator working for a different employer (even an associated employer) and there are restrictions on naming a comparator based at a different site even if they are working for the same employer. Where a full-time worker or employee becomes part-time the appropriate comparison is with their own previous full-time terms and conditions.

**The Pensions (NI) Order 1995** provides for equal treatment in occupational pension schemes. It does so by incorporating an equal treatment rule into every occupational pension scheme.

**The Race Relations (NI) Order 1997, as amended** requires employers not to discriminate on grounds of race or ethnicity. The Equality Commission can provide advice on specific issues relating to race or ethnicity.

**The Trade Union and Labour Relations (NI) Order 1995** and the Labour Relations Agency codes of practice on the disclosure of information and on disciplinary practice set out the regulations on the sharing of information for the purposes of collective bargaining between the employer and recognised trade unions.

**The Transfer of Undertakings (Protection of Employment) Regulations 2006** protect the rights of workers in the event of a relevant transfer of an undertaking to a new employer. Where the Regulations apply, contracts of employment and employment relationships automatically transfer to the new employer at the date of transfer. The Regulations prohibit changes in contract terms connected with a relevant transfer. Occupational pension rights earned up to the time of the transfer are protected.

**The Work and Families (NI) Order 2006** provides the framework for pay and leave entitlements for working parents of newborn and newly-adopted children.

**The Working Time Regulations (NI) 1998, as amended** set a maximum limit on how many hours people can work and provides a statutory entitlement to paid annual leave.

## **Annex C**

### **Useful websites**

#### **[www.equalityni.org](http://www.equalityni.org)**

The site of the Equality Commission for Northern Ireland which contains its publications.

#### **[www.acas.org.uk](http://www.acas.org.uk)**

The Acas site contains basic guidance on pay systems and texts of leaflets which can be printed. Some publications can be ordered on-line.

#### **[www.cipd.co.uk](http://www.cipd.co.uk)**

The site of the Chartered Institute of Personnel and Development.

#### **[www.delni.gov.uk](http://www.delni.gov.uk)**

The site of the Department for Employment and Learning, the Department with responsibility for employment rights law.

#### **[www.dti.gov.uk](http://www.dti.gov.uk)**

The DTI site contains publications, fact sheets on employment rights and employment legislation.

#### **[www.eordirect.com](http://www.eordirect.com)**

The site of Equal Opportunities Review, which has an extensive database of articles on equal pay. Users can search the cases database for tribunal and court decisions.

#### **[www.equalityhumanrights.com](http://www.equalityhumanrights.com)**

The site of the Equality and Human Rights Commission.

#### **[www.incomesdata.co.uk](http://www.incomesdata.co.uk)**

The site of Incomes Data Services, the independent organisation providing information on pay, pensions and employment.

#### **[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)**

The site of the Office of the Information Commission.

#### **[www.irsemploymentreview.com](http://www.irsemploymentreview.com)**

The site of Industrial Relations Services, the independent organisation providing information on pay, pensions and employment.

**[www.lra.org.uk](http://www.lra.org.uk)**

The site of the Labour Relations Agency.

**[www.ofmdfmi.gov.uk](http://www.ofmdfmi.gov.uk)**

The site of the Office of the First Minister and the Deputy First Minister. Its anti-discrimination branch has responsibility for providing and updating legislation which tackles unfair discrimination on the basis of a person's gender.

**[www.opportunitynow.org.uk](http://www.opportunitynow.org.uk)**

The site of Opportunity Now giving up to date information on the Equal Pay Forum.