



NORTHERN IRELAND
**Legal Services
Commission**

DRAFT EQUALITY IMPACT ASSESSMENT

Financial Eligibility for Access to Civil Legal Aid

September 2007

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1. INTRODUCTION

This document presents the findings of a draft Equality Impact Assessment (EQIA) on the Northern Ireland Legal Services Commission's (NILSC) proposal to implement a new financial eligibility test for Civil Legal Aid in Northern Ireland. This draft EQIA should be read in conjunction with the consultation paper on the proposed changes which has also been circulated.

1.1 Background

The purpose of the EQIA is to determine whether there are likely to be any differential impacts arising from the policy between the following groups:

- 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 dependants and persons without.

In the event that a differential impact is identified, an EQIA also assesses whether that impact is adverse and considers mitigating measures or alternative policies to better achieve the promotion of equality of opportunity.

This draft EQIA includes the following stages as required by the Equality Commissions "*Practical Guidance on Equality Impact Assessment*":

- definition of policy aims and objectives;
- consideration of available data and research;
- assessment of impacts including details of the outcome of the assessment highlighting if an adverse impact has been identified; and
- details of any consideration given to mitigate any adverse impact of the policy on the promotion of equality of opportunity or to alternative policies which might better achieve the promotion of equality of opportunity.

1.2 Methodology

The methodology for this stage of the EQIA included:

- Review of relevant baseline data, in particular NI Census Statistics 2001, (NISRA):
- Review of a report carried out for NILSC on “*Financial Arrangements for Access to Civil Legal Aid: Review of Arrangements*” (Tony Dignan et al, 2006)¹ and the supporting data; and
- pre consultation meetings with a range of stakeholders including voluntary and community sector organisations.

1.3 Report Structure

The remainder of this document is set out as follows:

- Section 2** Background and Context;
- Section 3** Definition of Policy Aims and Objectives;
- Section 4** Pre – Consultation;
- Section 5** Consideration of Available Data and Research;
- Section 6** Assessment of Impacts;
- Section 7** Mitigation of Impacts; and
- Section 8** Formal Consultation.

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¹ Research Report is available on NILSC website.

2. BACKGROUND AND CONTEXT

This section seeks to briefly provide the context for this EQIA. It should be noted that the financial eligibility Policy Consultation Document, which this EQIA accompanies, contains fuller details on the proposed policy and context. The EQIA should be read in conjunction with the consultation document.

2.1 Mission and Aim

The mission of NILSC is to promote fair and equal access to justice and to help promote social inclusion in the provision of publicly funded legal services in Northern Ireland.

NILSC aims to provide high quality, customer focused services that target those in greatest need and demonstrate value for money. Underpinning the mission and aim are a set of six core values. These are:

- fairness and equity;
- integrity and honesty;
- responsiveness to customer needs;
- quality;
- valuing and developing staff; and
- openness and accountability.

2.2 Current Delivery of Legal Aid in Northern Ireland

Legal Aid in Northern Ireland is awarded for either civil or criminal proceedings. The judiciary retains responsibility for the award of criminal legal aid while the NILSC is responsible for the award of Civil Legal Aid.

Under the current arrangements, there are three main types of Civil Legal Aid. These are:

- **Legal Advice and Assistance (LAA):** This provides for a solicitor to give oral or written advice on any legal matter whether civil or criminal, albeit with some exceptions² and up to a prescribed financial limit³. The solicitor can undertake a wide range of tasks, including preparing applications for civil or criminal legal aid, writing letters, drafting documents, getting a legal opinion from a barrister or preparing a case where the applicant is appearing before a tribunal;
- **Assistance By Way Of Representation (ABWOR):** This is a variant of the LAA scheme and enables a solicitor to personally represent an assisted person in a limited range of situations. These include certain civil proceedings in the magistrates' courts such as Children (NI) Order family cases and the Mental Health Review Tribunal; and
- **Civil Legal Aid (CLA):** Under the Civil Legal Aid scheme, assistance can be granted for all advice and representation in civil court proceedings. There are some exclusions⁴ but most legal matters are covered by the scheme. The scheme does not, however, extend to most tribunals. A full civil aid certificate enables a solicitor to undertake all the work in a given case up to and including court proceedings.

2.3 Financial Eligibility for Legal Aid

Granting of each type of legal aid is subject to a test of financial eligibility of the disposable capital and income of applicants to determine if they lack adequate means to pay for their own legal costs, either in whole or in part. Applicants for ABWOR and Civil Legal Aid must also satisfy a merits test in order to be deemed eligible. The merits test is to ensure that it is reasonable for the Commission to grant legal aid in the particular circumstances of the case⁵.

² Such as advice on slander or queries about the law outside Northern Ireland.

³ Currently £88.

⁴ For example, libel and slander, admitted debts, claims relating to elections.

⁵ Under Statutory Exceptional Grant Power (SEGP), the Lord Chancellor also has power to grant legal aid in exceptional cases which could not otherwise receive funding under the legal aid scheme.

A key objective underpinning the provision of publicly funded legal services is to provide access to justice (in defined areas of law) to those who cannot afford their own legal costs. The NILSC commissioned a study to review the current arrangements for the assessment of financial eligibility for access to Civil Legal Aid, in order to ensure fair and equal access to justice, to introduce transparency and simplicity to the determination of financial eligibility and to test whether proposed arrangements effectively target social need.

An explicit aim of any new financial eligibility test is that it must not reduce fair and equal access to justice to those that most need it. The review is not intended to be a cost-cutting exercise and the effects of any change must be cost neutral.

2.4 Issues with Current System

There are a number of issues with the current system of assessing financial eligibility for Civil Legal Aid which the review has considered. These include:

- many of the costs taken into account are based on actual not fixed amounts;
- disposable income is assessed on a one year computation period;
- the regulations provide for the use of discretion in the assessment of disposable income – possibly increasing complexity, and making decision-making inconsistent and less transparent; and
- changes from 2003 to the tax and benefits system such as Working Tax Credits, Child Tax Credits, changes in the calculation of the applicable and the capital limits amount for Income Support and income based Jobseekers Allowance and Pension Credit have reduced the coherence between passport benefits and assessment of financial eligibility for Civil Legal Aid.

2.5 Proposed Option

A number of options were assessed to determine the impact of a new financial eligibility test. The proposed option is a variant of the England and Wales means test, with the specification of allowances adapted to meet the specific circumstances pertaining in Northern Ireland.

The key components of the proposed new financial eligibility test for Civil Legal Aid are outlined in the Policy Consultation Document and include:

- **Gross Income Cap:** a gross income screening cap will be used as an eligibility screening device in the new Civil Legal Aid test;
- **Standard Deductions and Disregards:** the calculation of income in the new test will incorporate standard disregards applied in the England and Wales test. Rates will be included as a housing cost and a deduction will be made for persons in employment based on data for median Northern Ireland travel-to-work costs;
- **Housing Equity:** the new test will use housing equity as a factor in the means assessment population. The research proposed that the housing equity figure should be set at £200,000; and
- **Capital Limits:** the upper capital limit for Civil Legal Aid will be raised to £8,000.
- **Personal Injury:** the main Civil Legal Aid test and the personal injury variant will be harmonised.

3. POLICY AIMS AND OBJECTIVES

The purpose of this section is to summarise the policy aims, objectives and purposes of the proposed new financial eligibility test for Civil Legal Aid in line with the format detailed in the Equality Commission's guidance.

3.1 Aim

The development of a new financial eligibility test for Civil Legal Aid aims to ensure fair, efficient and equal access to justice for those in need. The new test aims to reduce complexity, increase transparency within the decision making process and to be cost neutral in its application. Table 3.1 overleaf provides greater detail on the aims and objectives.

3.2 Summary of Policy

Table 3.1

Summary of Aims and Objectives – Civil Legal Aid Financial Eligibility Test

<p>What is the policy?</p> <p>The policy is the development of a new Financial Eligibility Test for Civil Legal Aid in Northern Ireland.</p>	
<p>What are the aims, objectives and purposes of the policy?</p> <p>The development of a new financial eligibility test for Civil Legal Aid aims to ensure fair, efficient and equal access to justice for those in need. The new test aims to reduce complexity, increase transparency within the decision making process and to be cost neutral in its application.</p> <p>The new test aims to reduce the complexity of the current means test, target those least likely to meet their own legal costs, take account of changes to the tax and benefits system and improve the balance between simplicity and fairness in the determination of financial eligibility for Civil Legal Aid.</p>	<p>How do these outcomes meet or hinder other policies, values or objectives of the public authority or of Government?</p> <p>These outcomes are consistent with the mission of NILSC to promote fair and equal access to justice in Northern Ireland and the aim of NILSC to promote high quality, customer focused services that target those in greatest need and demonstrate value for money.</p> <p>The policy is consistent with the concept of best value as it aims to ensure that public funds are spent effectively and that consistent decisions are reached against transparent criteria as well as New Targeting Social Need as it aims to ensure resources are targeted towards those in greatest need.</p>
<p>Who implements the policy?</p> <p>The NILSC implements the policy. There are also a number of connected stakeholders, detailed below.</p>	<p>What factors/forces could contribute/ detract from the outcomes?</p> <p>Any factor which prevents those in need from accessing Civil Legal Aid, for example, knowledge of the assistance available. However, by reducing complexity and increasing transparency, the policy aims to promote access to Civil Legal Aid. It is recognised that the availability of information on the new test to the public will be important in ensuring that the aims of the policy are achieved.</p>
<p>What outcomes do we want to achieve with the policy? For whom?</p> <p>Desired policy outcomes include increased transparency and reduced complexity in assessing financial eligibility for Civil Legal Aid. The policy also aims to have a positive effect on targeting social need and social inclusion through ensuring fair and equal access to justice, ensuring that resources are directed towards those most in need.</p>	<p>Are there any associated policies?</p> <p>It is intended that the new test will operate alongside other new measures designed to improve legal services, targeting resources to those in most need, and to ensure that civil legal services represent value for money. Such measures are being taken forward separately and include a revised Funding Code for Civil Legal Services, standardised fees for the provision of publicly funded legal services and a registration scheme for legal professionals.</p>
<p>Who are the main stakeholders in relation to this policy?</p> <p>The main stakeholders of the policy are the Northern Ireland public, in particular those eligible for Civil Legal Assistance including socially and financially disadvantaged individuals and groups and those at risk of such disadvantage. Other stakeholders include organisations providing advice and assistance and umbrella organisations in the voluntary and community sectors and the legal professions.</p>	<p>Are there any groups that might be expected to benefit from the intended outcomes but do not?</p> <p>Analysis of available data suggests that there are not, and the policy was designed to ensure that all target groups benefit.</p>

4. PRE – CONSULTATION

A pre-consultation exercise was carried out with a number of voluntary and community sector organisations in June and July 2007 to inform this draft EQIA. This section details the pre-consultation findings.

4.1 Introduction

The pre-consultation sought to identify sources of data which could inform the EQIA, assess views on the proposed priority areas and to discuss any areas of potential differential impact on Section 75 groups. The following organisations participated in the pre-consultation of this EQIA:

- Advice NI;
- Children’s Law Centre;
- Disability Action;
- Gingerbread;
- Housing Rights Service;
- MENCAP;
- Northern Ireland Council for Ethnic Minorities (NICEM);
- Northern Ireland Council for Voluntary Action (NICVA);
- Northern Ireland Law Centre; and
- Women’s Aid.

NILSC also has a Civil Legal Services Stakeholder group, membership of which includes the Law Society and Bar Council, which has been kept informed of proposed changes to the financial eligibility test. It should also be noted that a number of other organisations were invited to participate in the pre-consultation including those representing older people and gay, lesbian and bisexual people but the invitation was not taken up. The remainder of this section summarises the findings of the pre-consultation and highlights issues raised.

4.2 Pre – Consultation Findings

This section summarises the key findings of the pre-consultation. Findings have been anonymised so they cannot be attributed to any individual or organisation:

4.2.1 Simplification and Clarity

- Simplification of the financial assessment test was universally welcomed although it was felt that the need for clear and unambiguous criteria needed to be balanced with sufficient flexibility to take account of individual cases of hardship but also rules need to be clear and unambiguous; and
- A number of consultees felt that they had seen specific cases where legal aid applicants had been found not to be financially eligible but had limited means to fund their own actions and indicated that they would like to see any new test increase overall levels of eligibility.

4.2.2 Means Testing and Passporting

- A number of consultees felt that Working Tax Credit and Child Tax Credit should be included as passport benefits;
- One consultee suggested that receipt of Disability Living Allowance should automatically entitle the applicant to legal aid. Others disagreed with this suggestion;
- It was suggested that more people overall should be eligible for legal aid and that people in work can have levels of need that are just as great or greater than those on benefits;
- The inclusion of rates and travel to work costs as an expense was welcomed by a majority of consultees but it was suggested that this doesn't go far enough in addressing issues of eligibility for those in work;
- In the case of non-molestation orders it was suggested that there should be a lower financial threshold as the impact on people's lives is more serious than other types of proceeding.
- It was suggested that capital limits for legal aid eligibility should be raised in line with those for income support and claimants of Jobseekers allowance to ensure that saving is not discouraged;
- It was suggested that there should be flexibility to respond to changes in circumstances in the middle of proceedings; and

- It was suggested that personal loan and hire purchase agreements should be considered in assessing disposable income.

4.2.3 Housing Equity

- Consultees expressed particular concern about the way in which any housing equity limit would be applied. In particular it was noted that the recent housing boom means that £200,000 of equity is a figure which would affect many home owners;
- Consultees suggested that the “*aura of wealth*” rather than “*means of financing distinction*” was unhelpful and did not see a clear practical distinction;
- It was felt that any housing equity limit would particularly affect older people where property was purchased years ago and equity has amassed over time;
- Clarification was sought on how any equity limit would take account of the situation of couples and married people, people with dependants and people with disabilities (where property has been adapted to take accounts of the disabled persons needs);
- Consultees suggested that applicants should still be able to access legal aid where housing equity exceeds prescribed limits but that costs could be recouped when the asset was disposed of to mitigate the effect of any impact(s);
- Clarification was also requested on how housing equity limits will be applied where the asset is the subject of the legal proceedings;
- Consultees also requested information on how limits would be reviewed and whether these would be linked to average property costs; and
- While the reports states that housing equity is not intended to be a source of finance, concern was expressed that the proposal would encourage irresponsible borrowing and risk repossession and homelessness.

4.3 Summary of Pre-Consultation Issues

This section summarises the main issues raised through the pre-consultation:

- Simplification is welcomed providing there is flexibility to respond to individual cases and needs;
- There is particular concern about the application of equity limits, how these will be reviewed and how the application of these will take account of the needs of different groups for example older people, married and co-habiting couples, people with dependants; and people with disabilities;
- Case studies and greater detail on the position of individuals under the old and new system would be welcomed to allow consultees to assess the impact on specific groups and individuals;
- There is concern over the application of housing equity limits and impact on Section 75 groups in light of recent increases in house prices; and
- It was suggested that the type of case should be important in considering financial eligibility. For example cases involving non-molestation orders should have a lower threshold and consideration should be given to divorce and public law cases.

5. AVAILABLE DATA AND RESEARCH

This section considers the available data and research available to assess the likely impact of the new financial eligibility test for Civil Legal Aid on Section 75 groups.

5.1 Introduction

This section analyses the data from the sources detailed above to assess the likely impact of the new proposed financial eligibility test for Civil Legal Aid financial on people from the nine categories.

For ease of reference this section presents the relevant data in numbered sections as follows:

5.3 General Data

5.4 Data by Equality Grouping

5.4.1 Religion

5.4.2 Political Opinion

5.4.3 Racial Group

5.4.4 Age

5.4.5 Marital Status

5.4.6 Sexual Orientation

5.4.7 Gender

5.4.8 Dependants and those without dependants

5.4.9 People with a disability and those without

5.2 Information Sources

A range of data was collected for the purposes of the draft EQIA. Detailed modelling of the impact of the proposed test on Section 75 groups was conducted as part of Tony Dignan’s research. The table below details the main data sources which were used to inform the modelling and have therefore been referenced in this assessment.

Table 5.1
Summary Review of Available Information Sources

Source	Data
NILSC	NILSC administrative data on awards for Civil Legal Aid was combined with the findings from the Northern Ireland Legal Needs Survey and the Family Resources Survey (FRS) to calculate estimated take-up rates for different problem types amongst the modelled eligible population.
FRS	The FRS continuous household survey gathers information about the living conditions and resources of households, focusing mainly on income, receipt of social security benefits, housing costs, care/child care costs and savings/assets.
Legal Needs Survey	The Northern Ireland Legal Needs Survey was carried out in spring 2005 to inform the Commission about the need for legal services in Northern Ireland.
Northern Ireland Legal Aid Model (NILAM)	The NILAM was constructed in order to establish the baseline situation with respect to eligibility for legal aid amongst the Northern Ireland population; examine the implications of various scenarios for simplifying the present means assessment tests and appraise the options for the way forward.
NISRA	NI Census Data (2001)

5.3 General Data

The Civil Legal Aid scheme accounts for 60 per cent of total expenditure, followed by ABWOR (22 per cent) and LAA (eighteen per cent). The breakdown of bills and expenditure across the three schemes is detailed in Table 5.2 below.

Table 5.2
NI Legal Aid Expenditure Annual Average Bills 01/02 - 04/05

	Civil Legal Aid	ABWOR	LAA	All
Number of Bills	4,577	8,384	39,764	52,725
% of total	8.7	15.9	75.4	100.0
Average Amount (£)	2,754	559	95	400
Total Spend (£m)	12.605	4.688	3.776	21.069
% of all	59.8	22.3	17.9	100.0

Source: NILSC

Civil Legal Aid accounts for nine per cent of the number and 60 per cent of the value of total legal aid bills. In terms of problem type:

- family-related cases account for 63 per cent of the total across all Legal levels in the period from 2002-03 to 2004-05; and
- personal injury/negligence is the second main focus of support; just under fourteen per cent across all levels.

On the basis of the modelling carried out, 44 per cent of adults in Northern Ireland are eligible for Civil Legal Aid, at the following levels of eligibility:

- receipt of a passport benefit - fifteen per cent;
- full eligibility with no contribution – eight per cent; and

- partial eligibility, with a contribution payable towards legal costs – 21 per cent.

5.4 Data by Equality Grouping

This Section considers the available data by equality grouping to inform an assessment of impact on the nine equality categories.

5.4.1 Religion

According to the 2001 Northern Ireland Census, 44 per cent of the Northern Ireland population are from a Catholic community background and 53 per cent from a Protestant (and other Christian) community background. Less than 0.5 per cent of the population described their community background as “*other*” and three per cent as “*none*”.

The table below details current levels of eligibility for Civil Legal Aid by religion.

Table 5.3

Civil Legal Aid: Adult Eligibility by Religion

	Passport	Full	Partial	Ineligible
Protestant	12	7	21	60
Catholic	20	9	21	50
Other/none/DK/refused	12	9	19	61
All	15	8	21	56

Source: NILAM

The table above shows that 50 per cent of adult Catholics are eligible for legal aid, compared to 40 per cent of Protestants. The difference is almost entirely due to the higher receipt of passport benefits amongst Catholics (twenty per cent) than for Protestants (twelve per cent). There is a small difference in full eligibility but partial eligibility rates are identical for the two main communities.

Table 5.4

Proposed Option – Modelled Eligibility by Religion

	Passport	Full	Partial	Ineligible
Protestant	12	8	22	59
Catholic	20	10	21	49
Other/none/DK/refused	12	9	21	58

Source: NILAM

The table above illustrates that on the basis of analysis carried out, no significant changes in eligibility patterns by religious groups are expected to arise from the introduction of the new financial eligibility test. The small changes that are projected involve increases of no more than two percentage points.

5.4.2 Political Opinion

The picture with respect to national identity and Civil Legal Aid eligibility reflects the overlap between national identity and religion in the Northern Ireland context, detailed in the table overleaf.

Table 5.5

Civil Legal Aid: Adult Eligibility by National Identity

	Passport	Full	Partial	Ineligible
British	13	7	22	59
Irish	21	10	19	49
Ulster/N. Ireland	12	8	20	60
Other UK country	14	10	16	60
Other	4	11	18	67
All	15	8	21	56

Source: NILAM

The table above shows that 50 per cent of adults describing themselves as Irish are eligible for legal aid, compared to 40 per cent of those describing themselves as Northern Irish and 42 per cent of those describing themselves as British. The difference is largely due to the higher receipt of passport benefits amongst those describing themselves as Irish.

Table 5.6

Proposed Option – Modelled Eligibility by National Identity

	Passport	Full	Partial	Ineligible
British	13	8	22	57
Irish	21	10	21	48
Ulster/N. Ireland	12	8	22	58
Other UK country	14	13	14	59
Other	4	12	16	68

Source: NILAM

On the basis of the analysis carried out using the NILAM, there would be no significant anticipated change in eligibility patterns by national identity from the introduction of the proposed new financial eligibility test.

5.4.3 Racial Group

According to the 2001 Census, less than one per cent of the Northern Ireland population is from a black or minority ethnic community. Due to recent migration and undercounting, it is accepted that this is not an accurate reflection of the Northern Ireland population. “*Changing Ireland*” a recent publication for NCCRI and the Equality Commission suggests that there are around 45,000 people from minority ethnic communities now living in Northern Ireland, (around 2.5 per cent of the population).

Table 5.5 above shows that one in three adults (33 per cent) describing their National identity as “*other*” is eligible for legal aid, compared to 40 per cent of those describing themselves as Northern Irish and 42 per cent of those describing themselves as British. The difference is largely due to the much lower receipt of passport benefits amongst those describing their national identity as “*other*” compared with all groups.

Table 5.6 illustrates that there would be no significant change in eligibility patterns by racial group arising from the introduction of the proposed new financial eligibility test, although it is noted that there are lower levels of eligibility generally for those describing their national identity as “*other*”.

5.4.4 Age

On Census day 2001, 27 per cent of the Northern Ireland population was under the age of eighteen, eighteen per cent over the age of 60 and 56 per cent between the ages of eighteen and sixty.

Table 5.7
Legal Aid Awards: Profile by Age (Percentage)

Age	Civil Legal Aid (Excluding Personal Injury & Criminal)	Personal Injury	Population
0-15	11	14	23
16-19	3	8	6
20-29	16	24	13
30-44	46	29	22
45-59	19	16	18
60+	5	9	18
Total	100	100	100

Source: NILSC

Table 5.7 shows that 46 per cent of Civil Legal Aid awards (excluding personal injury and criminal) were made to those between the age of 30 and 44. Eleven per cent was to those under the age of fifteen. Despite those over 60 making up eighteen per cent of the population, they accounted for just five per cent of awards.

Table 5.8
Civil Legal Aid Eligibility: Profile by Age

	Passport	Full	Partial	Ineligible
16-19	15	41	35	8
20-29	12	13	23	53
30-44	13	5	13	69
45-59	15	5	13	66
60+	19	5	34	42
All	15	8	21	56

Source: NILAM

Eligibility for legal aid varies sharply by age group. Eligibility is higher amongst younger adults and those in the pensioner age-groups and lowest amongst those aged thirty-forty.

Table 5.9
Proposed Option - Eligibility by Age

	Passport	Full	Partial	Ineligible
16-19	15	41	38	6
20-29	12	13	24	50
30-44	13	5	12	70
45-59	15	6	14	65
60+	19	6	37	38

Source: NILAM

On the basis of the modelling carried out, eligibility rates would increase slightly across all age groups (with the exception of those aged 30-44 where 30 per cent would be eligible compared with 31 per cent at present). This suggests that there would be no impacts arising from the proposed changes on people of different ages.

Research carried out by the University of Ulster found that the average house price in Northern Ireland in August 2007 was £240,408 compared with £131,529 in September 2005, an increase of more than 83 per cent. It is recognised that older people may be disproportionately impacted by a housing equity disregard of £200,000 but further investigation is required to establish the precise nature and level of any impact.

5.4.5 Marital Status

Of the 1,402,449 people aged sixteen and above living in Northern Ireland on Census Day, 39 per cent were single, 47 per cent married, four per cent separated, four per cent divorced and seven per cent widowed.

Table 5.10
Civil Legal Aid Eligibility by Marital Status

	Passport	Full	Partial	Ineligible
Single, never married	18	16	26	40
Married and living with husband/wife	9	5	15	71
Married and separated	36	7	21	36
Divorced	33	4	24	39
Widowed	27	5	46	21
All	15	8	21	56

Source: NILAM

Eligibility is relatively high amongst those who are married and separated and divorcees, particularly full eligibility whether via passporting or means assessment.

Table 5.11

Proposed Option - Eligibility by Marital Status

	Passport	Full	Partial	Ineligible
Single, never married	18	17	28	37
Married and living with husband/wife	9	5	15	71
Married and separated	36	8	22	35
Divorced	33	5	23	39
Widowed	27	8	48	17

Source: NILAM

The proposed test will not differentially impact on people of different marital status, based on the analysis carried out. The proposed option was selected, in part, because it would not impact differentially on people of different marital status.

5.4.6 Sexual Orientation

In 2001, the Northern Ireland Life and Times Survey included a question which asked respondents whether they were gay or lesbian, heterosexual, or bisexual. One per cent of people identified themselves as gay or lesbian; 95 per cent identified themselves as heterosexual or straight; and around four per cent refused to answer the question. Percentages did not differ significantly between male and female respondents. The Northern Ireland Census 2001 recorded 578 people (0.05 per cent of the population) over the age of sixteen living in same sex couples.

A Disability Action report “*Who Lives in a Place Like This*” suggests that a more accurate reflection of the gay, lesbian and bisexual population could be gained by using the Kinsey statistic that one in ten people are gay or lesbian and suggests that this figure has held true for other research. Applying this to Northern Ireland would suggest that in the region of 168,527 people in Northern Ireland are gay, lesbian or bisexual.

There is no data available on how legal needs vary by sexual orientation. Views would be particularly welcomed from consultees on how gay, lesbian and bisexual people could be affected by the proposed policy.

5.4.7 Gender

According to the Northern Ireland Census, 51 per cent of the population is female and 49 per cent male.

Table 5.12
Civil Legal Aid Eligibility by Gender

	Passport	Full	Partial	Ineligible
Men	13	8	20	59
Women	17	8	22	53
All adults	15	18	21	56

Source: NILAM

The eligibility of women (47 per cent in Civil Legal Aid) is higher than that of men (41 per cent). This reflects both family type and age composition effects.

Table 5.13
Civil Legal Aid Awards by Gender

Gender	Civil Legal Aid Excluding PI and Criminal	PI
Male	42	59
Female	58	41

Source: NILSC

While women were awarded 58 per cent of Civil Legal Aid Awards excluding personal injury and criminal, men comprised a large majority of those who were granted assistance for personal injury/negligence, (59 per cent).

Table 5.14

Proposed Model - Eligibility by Gender

	Passport	Full	Partial	Ineligible
Men	13	8	21	58
Women	17	9	23	52

Source: NILAM

The patterns of eligibility under the proposed model compared with patterns of eligibility suggests that there will be no differentials in gender patterns under the proposed arrangements for financial eligibility.

5.4.8 Dependants

Thirty six per cent of all households had dependant children (NI Census 2001). The table below illustrates the eligibility for Civil Legal Aid by family type.

Table 5.15

Civil Legal Aid Eligibility by Family Type

Family type	Passport	Full	Partial	Ineligible
Pensioner couple	13	5	28	55
Pensioner single	28	6	48	18
Couple with children	8	5	13	75
Couple without children	10	3	9	78
Single with children	52	8	17	22
Single without children	17	18	27	38
All adults	15	18	21	56

Source: NILAM and Legal Needs Survey

Eligibility levels are highest for single pensioners and lone parents. Eligibility also tends to be slightly higher for couples with dependent children than those without.

Across all schemes, lone parents have much higher eligibility levels than couples, due to lower income levels and higher receipt of a passport benefit.

Table 5.16

Proposed Model - Eligibility by Family Type

Family type	Passport	Full	Partial	Ineligible
Pensioner couple	13	5	31	51
Pensioner single	28	8	49	15
Couple with children	8	5	11	76
Couple without children	10	4	9	78
Single with children	52	8	19	21
Single without children	17	19	30	34

Source: NILAM

The modelling conducted suggests that the proposed model will not impact differentially on different family types, in particular between those with and without children.

5.4.9 Disability

According to the 2001 Census twenty per cent of the Northern Ireland population has a “*limiting long-term illness*”.

Table 5.17

Civil Legal Aid: Eligibility by Disability

	Passport	Full	Partial	Ineligible
Without Disability	10	8	18	64
With Disability	31	7	29	33
All Adults	15	8	21	56

Source: NILAM

Two in three persons with a Disability Discrimination Act disability are eligible for Civil Legal Aid compared to 36 per cent of those without a disability. The higher eligibility amongst those with a disability partly reflects an age effect, as the incidence of DDA disability increases sharply with age, from five per cent for sixteen-nineteen year olds to 27 per cent for those aged 60+. In addition, the employment rate amongst working-age persons with a disability (30 per cent) is less than half the rate for those without a disability (76 per cent).

It should be noted that the Legal Needs Survey found that there are significantly higher incidences of justiciable problems amongst those of working age with a disability (55 per cent) compared to those of working age without a disability (38 per cent).

Table 5.18

Proposed Model: Eligibility by Disability

	Passport	Full	Partial	Ineligible
Without Disability	10	9	19	62
With Disability	31	8	30	31

Source: NILAM

Proposed changes will impact similarly on people with a disability and people without in terms of the percentage effect on eligibility. In the case of both, there would be a slight reduction in full eligibility, slight increase in partial eligibility and overall reduction in ineligibility.

5.10 Availability of Monitoring Information

This section considers the extent to which the EQIA has been informed by information for each equality group from a range of sources and assesses any gaps in data. Table 5.19 below assesses the data which has been used to assess the impact in respect of each equality grouping.

Table 5.19
Data Availability by Section 75 Group

Category	Census or Other Baseline	Award Data	Eligibility (NILAM)	Impact (NILAM)
Religion	✓		✓	✓
Political Opinion	✓		✓	✓
Racial Group	✓		✓	✓
Age	✓	✓	✓	✓
Marital Status	✓		✓	✓
Sexual Orientation	✓			
Gender	✓	✓	✓	✓
Dependants	✓		✓	✓
Disability	✓		✓	✓

Source: NILSC

The quality of data, information and research that has been available to inform this EQIA has been excellent in all areas with the exception of people of different sexual orientation. Views on how the proposals will impact people of different sexual orientation would be particularly welcomed through the consultation.

Consultation Question: Are there any additional data sources which should be used to inform this assessment?

6. ASSESSMENT OF IMPACTS

This section details the NILSC assessment of the likely impact of the proposed new financial eligibility test, based on analysis of the data and information sources detailed in section five of this report.

The available data has been assessed to consider whether the policy may result in a differential and/or adverse impact on any of the Section 75 groups. Differential impact suggests that a group may be affected differently by the policy, while adverse impact is an indication that the effect is less favourable and potentially unlawful.

Consultation Question: Do you agree with the assessment of impacts detailed overleaf? Views are particularly welcome on the possible impact(s) of a housing equity disregard of £200,000 on older people and other equality groups.

6.1 Summary of Impacts

The proposed new financial eligibility test was designed to ensure a minimum of disruption and to promote equality of opportunity for Section 75 groups. It is recognised that older people may be disproportionately impacted by a housing equity disregard of £200,000 and views on the precise nature and level of any impact are welcomed. Other differential impacts arising from the policy are not anticipated as the extensive modelling, analysis and appraisal carried out as part of the research aimed to ensure that the new model would not impact differentially on Section 75 groups. Table 6.1 overleaf summarises the anticipated impacts arising from the implementation of the policy.

Table 6.1

Assessment of Impacts

Category	Impact(s)	Commentary
Religion	None Identified	The proposed changes are expected to impact similarly on people of different religions.
Political Opinion	None Identified	The proposed changes are expected to impact similarly on people of different religions.
Racial Group	None Identified	The proposed changes are not expected to impact differentially on people of different racial group.
People of Different Ages	Potential adverse impact of housing equity disregard on older people. requiring further consideration.	The proposed changes may impact adversely on older people as they typically have proportionately more housing equity and would therefore be more likely to be affected by the housing equity disregard.
People of Different Marital Status	None Identified	The proposed changes are expected to impact similarly on people of different marital status.
People of Different Sexual Orientation	None Identified	Data is not available to assess the impact on people of different sexual orientation although it is not anticipated that there will be any differential impacts arising from the new financial eligibility arrangements.
Men and Women	None Identified	The proposed changes are expected to impact similarly on men and women.
People with Dependants	None Identified	The proposed changes are expected to impact similarly on people with dependants and those without.
Persons with a Disability	None Identified	The proposed changes are expected to impact similarly on people with a disability and those without.
Targeting Social Need	Positive	The proposed test has been designed to effectively target social need and promote access to Civil Legal Aid by those most in need.

7. MITIGATION OF IMPACTS

This section details consideration of measures by the NILSC to further promote equality of opportunity in respect of the proposed new financial eligibility test.

7.1 Impacts Identified

On the basis of the analysis contained within section six, the NILSC has found that there are no differential impacts arising from the implementation of the policy on eight of the Section 75 groups.

It is recommended that some further analysis is carried out in respect of proposed housing equity provisions and their impact on older people to take account of the recent significant rises in house prices.

The NILSC also accept that, as this assessment is being carried out on a proposed policy, it is important to monitor and assess the actual impact of the policy after implementation to ensure that no unintended differential impacts arise between different Section 75 groups.

This section therefore details arrangements that NILSC has put or will be putting in place to ensure that it effectively meets the requirements to promote equality of opportunity under Section 75 of the Northern Ireland Act.

7.2 Monitoring

The NILSC recognises the importance of monitoring in ensuring that the proposed new financial eligibility test effectively promotes equality of opportunity. NILSC are currently considering the best way to monitor the impact of the new test and is committed to carrying out a review of its impact on Section 75 groups within two years of its implementation.

Consultation Question: What are your views on the monitoring that NILSC should carry out in respect of the financial eligibility criteria?

7.3 Housing Equity

It is noted that the proposed housing equity disregard is based on 2005 prices and that there have been significant increases since then (eighty three per cent according to University of Ulster data). If the proposed disregard remains at £200,000 consideration will be given to the potential impact on equality groups, and older people in particular.

7.4 Other Equality Group Specific Issues

The pre-consultation raised a number of issues in respect of promoting equality for certain groups and NILSC are committed to considering these in more detail. These include:

- There is particular concern about the application of equity limits, how these will be reviewed and how the application of these will take account of the needs of different groups for example older people, married and co-habiting couples, people with dependants; and people with disabilities;
- Case studies and greater detail on the position of individuals under the old and new system would be welcomed to allow consultees to assess the impact on specific groups and individuals; and
- The type of case should be important in considering financial eligibility. For example cases involving Non-Molestation Orders should have a lower threshold and consideration should be given to divorce and public law cases.

Consultation Question: What are your views on NILSC's proposals for mitigating the identified impacts and further promoting equality of opportunity?

8. FORMAL CONSULTATION

This section details NILSC's arrangements for formal consultation on this draft EQIA.

8.1 Consultation Arrangements

This document has been developed to provide a platform for consultation with interested parties in line with the requirements under Section 75 of the Northern Ireland Act. This section details NILSC's proposals for consultation on this draft EQIA

A list of those NILSC will be inviting to participate in the consultation on this draft EQIA is included at Annex One. An advert will also be placed in the Belfast Telegraph inviting individuals and organisations to participate in the consultation. This document will also be available from NILSC's website at www.nilsc.org.

NILSC is committed to meaningful consultation and would welcome the opportunity to facilitate participation in this process. Different formats of this document are available on request including summaries, Braille, audiocassette, minority languages, and electronic versions.

In drafting this document, NILSC has been conscious of the need to ensure that appropriate qualitative and quantitative information is provided to consultees to ensure consultation is meaningful and informed. However, we are also aware of the need to ensure that information is relevant and the consultation paper is concise and focused and have attempted to balance these competing requirements. Should any further information or data be required, NILSC will be happy to make this available to consultees on request.

8.2 Consultation Responses and Timescale

The EQIA consultation period will run in tandem with the policy consultation on financial eligibility for fourteen weeks from Monday 5th November 2007 to Friday 8th February 2008. All consultation responses and enquiries should be directed to:

The Commission Secretary

Northern Ireland Legal Services Commission

2nd Floor, Waterfront Plaza

Laganbank Road

Mays Meadow

Belfast

BT1 3BN

Email: Accesstojustice@nilsc.org.uk

Telephone: 028 9040 8888

Fax: 028 9040 8990

While all views and comments will be considered, NILSC particularly would welcome feedback on the following areas:

- whether the list of those to be consulted is comprehensive;
- whether there are any additional data sources which should be used to inform this assessment (section six);
- whether or not consultees agree with the assessment of impact of the proposed policy on Section 75 groups. Views are particularly welcome on the possible impact(s) of a housing equity disregard of £200,000 on older people and other equality groups. (Section six);
- views on NILSC's proposals for further promoting equality of opportunity (section seven); and
- views on NILSC's proposals for publishing the results of the completed EQIA (section eight).

8.3 Consultation Feedback

NILSC is grateful for the participation of individuals/organisations in this consultation and recognise the time and energy that goes into responding. We recognise that consultation is a two way process and that feedback on how views expressed during the consultation are used and affect the policy is an important element of the process.

The final EQIA will contain a summary of consultation responses received and a response to each by NILSC. Should you not wish your consultation response to be published or wish it to be published anonymously, please note this on your response.

Once the EQIA is finalised, NILSC will write to all those who participated in the consultation and those detailed at Annex One to advise of the EQIA's publication on the NILSC website and to offer a copy of the final EQIA in a format of their choice.

Consultation Question: What are your views on NILSC's proposals for publishing the results of the completed EQIA?

8.4 Policy Decision

In making decisions in respect of the financial eligibility criteria, NILSC will take into account the findings of this EQIA and the results of the policy consultation.

Where adverse impacts or potential adverse impacts are found to exist, consideration will be given to mitigation of such impacts and details of mitigation will be included in the final recommendations presented during decision making. In the event that such alternatives are not accepted full reasons and justification will be given.

8.5 Publication of Results of EQIA

NILSC will make available publicly the outcome of this equality impact assessment and of any monitoring of adverse impact of policies on the promotion of equality of opportunity. This material will be accessible on NILSC's website <http://www.nilsc.org.uk>. It will also be available in printed and summary form, Braille, PDF, audio cassette and minority languages on request from the NILSC.

ANNEX ONE

Advice NI
Age Concern
Age Sector Reference Group
Agnew Address Higgins
Agriculture and Rural Development Committee
Alan M Brown
Alexander Forbes
Alliance Party NI
Antrim and Ballymena Solicitor Association
Association of Personal Injury Lawyers
Association of Director's of Social Services
Bangor and Newtownards Solicitor Association
Belfast Solicitor's Association
Central Services Agency
Children and Young People's Unit
Children's Law Centre
Children's Order Advisory Committee
Citizens Advice Bureau
Coalisland and Dungannon Solicitor Association
Coalition on Sexual Orientation
Coleraine and Ballymoney Solicitor Association
Committee for the Office of First Minister and Deputy First Minister – NI Assembly
Cookstown Solicitor Association
Council of HM CC Judges in NI
Democratic Unionist Party
Department of Agriculture and Rural Development
Department of Education
Department of Employment and Learning
Department of Enterprise, Trade and Investment
Department of Finance and Personnel
Department of Health, Social Services and Public Safety
Department of Social Development
Department of Social Development (Voluntary and Community Unit)
Derry Solicitor Association
Directorate of Legal Services - Central Services Agency
Disability Action
Down & District Solicitor Association
Education Committee – NI Assembly
Employment and Learning Committee – NI Assembly
Enterprise, Trade and Investment Committee – NI Assembly
Equality Commission Northern Ireland
Fermanagh Solicitor Association
Finance and Personnel Committee – NI Assembly
Forum of Insurance Lawyers
General Council of the Bar of Northern Ireland
Gingerbread NI
Government Legal Service for Northern Ireland (GLSNI)
Green Party
Health, Social Services and Public Safety Committee
Help the Aged

His Honour Judge David Smyth
Housing Rights Service
James H Rodgers & Co
Judge Burgess
Judge Keegan
Justice Weir
Law Centre NI
Law Commission (formerly Office of Law Reform)
Law Society NI
Law Society's Access to Justice Committee
Legal Aid Assessment Office
Legal Services Commission England and Wales
Limavady Solicitor Association
Lisburn Solicitor Association
Lord Mayor's Office
MacElhatton & Co
Magherafelt Solicitor Association
Marsh Insurance
Master Wells
MENCAP
Newry and Banbridge Solicitor Association
Newtownabbey Solicitor Association
NI Anti-poverty Network (NIAPN)
NI Council for Ethnic Minorities (NICEM)
NI Court Service (NICtS)
NI Human Rights Commission (NIHRC)
NI Prison Service
NI Resident Magistrates Association
NI Commissioner for Children and Young People (NICCY)
NI Council for Voluntary Action (NICVA)
NI Guardian Ad Litem Agency (NIGALA)
Northern Ireland Office
Office for First Minister and Deputy First Minister
Omagh Solicitor Association
O'Reilly Stewart
Parents Advice Centre
Portadown Solicitor Association
Public Prosecution Service
Rev Harold Good (Advice Services Alliance)
Scottish Legal Aid Board (SLAB)
Social Democratic and Labour Party
Secretary of Civil Justice Committee, C/O Lord Chief Justice
Office
Sinn Fein
Sir Brian Kerr
Social Development Committee – NI Assembly
Social Security Agency
Social Services Inspectorate (SSI)
Strabane Solicitor Association
The Honourable Mr Justice Higgins
Tony Dignan (Research and Evaluation)
Ulster Unionist Party
Women's Aid NI