EXPLANATORY MEMORANDUM TO

The Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012

SR 2012 No. 263

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Office of the First Minister and Deputy First Minister to accompany the Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012 (The Order) which is laid before the Northern Ireland Assembly.

1.2 The Regulations are made under section 2(2) of the European Communities Act 1972 and article 69(1)(b) of the Race Relations (Northern Ireland) Order 1997 and are subject to the draft affirmative resolution procedure (Art 69(3)).

2. Purpose

2. This Order amends the Race Relations (Northern Ireland) Order 1997, by addressing the issue of direct and indirect discrimination on the basis of nationality in the matter of pay for seafarers.

3. Background

3.1 The UK Government received reasoned opinion 2006/4129 on 27th January 2011. This said that as a consequence of Sections 8 and 9 of the Race Relations Act 1976 and Articles 10 and 11 of the Race Relations (Northern Ireland) Order 1997, which allowed for differential treatment in terms of employment, the UK has failed in its obligations under Article 45 of the Treaty on the Functioning of the EU (TFEU) and Article 7(1) of Regulation 1612/68.

3.2 The Race Relations (Northern Ireland) Order 1997, at Article 11, allowed for differential rates of pay to be paid to seafarers depending on the jurisdiction in which they were recruited. These are regarded as indirectly discriminatory where, although applicable irrespective of nationality, they affect essentially migrant workers or the great majority of migrant workers.

3.3 The European Court of Justice pronounced itself on the legal effect of such a clause: it confirmed that the non-discrimination as regards conditions of employment and pay has direct effect and that workers covered by such a clause in an agreement "*once legally employed within the territory of a Member State, have a right to equal treatment as regards conditions of employment of the same extent as that conferred in similar terms by Article 48(2) of the Treaty on Member States Nationals".*

4. Consultation

4. Consultation has taken place with the ECNI and other interested organisations. Extensive consultation has been undertaken in GB with all the main shipping bodies and the legislation reflects the outcomes of those discussions.

5. Regulatory Impact

5.1 The Department has carried out a full Regulatory Impact Assessment and found there will be additional costs for employers within the shipping industry as result of prohibiting differential pay with regard to seafarers from Northern Ireland, EEA and designated states. The UK estimate was around £57 million. This was based on a sample of 229 vessels and the average increase in annual wage costs per vessel was estimated at around £159,000[1]. As of 26th March 2012, there are 40 vessels registered on the Commercial Register to the ports here – that is Belfast, Coleraine, Derry/Londonderry and Newry. If we multiply that figure by the estimated average increase in annual wage costs (40 x £159k), the best estimate of the total wage costs to vessels here is £6,360,000.

5.2 The Regulatory Impact Assessment is attached to this Explanatory Memorandum.

6. Equality Impact

6.1 The new provisions have been screened for equality impact. There was found to be no requirement for a full EQIA.

6.2 The equality screening is attached to this Explanatory Memorandum.

7. Financial Implications

7. As the amendment to the Order is short and clarificatory, the financial impact per firm is expected to be minimal.

8. Section 24 of the Northern Ireland Act 1998

8. The Regulations are fully compatible with the Northern Ireland Act 1998.

9. EU Implications

9. A Transposition Note has been prepared and is laid along with the Amendment Regulations and this Explanatory Memorandum.

10. Parity or Replicatory Measure

10. The corresponding legislation in Great Britain is the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011.

11. Additional Information

11. Not applicable.

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1 Full details can be found at:
http://www.legislation.gov.uk/uksi/2011/1771/pdfs/uksifia_20111771_en.pdf

EQUALITY IMPACT SCREENING

The Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012

SR.000

SCREENING QUESTIONS

The policy or service needs to be assessed against the four questions set out in Equality Commission guidance, namely:

1. What is the likely impact on equality of opportunity for those affected by this policy, for each of the S75 categories?

The policy intent is to amend legislation here in respect of the current exception allowing for differential rates of pay for seafarers recruited abroad.

The likely impact in positive, primarily for the category of race, in that people will now be paid a competitive wage related to where the ship they work on operates, rather than on their place of recruitment.

2. Are there opportunities to better promote equality of opportunity for people within the S75 categories?

No.

3. To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?

There are no good relations impacts.

4. Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?

No.

Have consultations with relevant representatives, organisations or individuals within groups indicated that particular policies create problems that are specific to them?

The UK authorities, in response to the potential infraction proceedings, have consulted widely with shipping representatives across the UK.

The obvious problem raised by shipping representatives is the increased wage cost to them of the change in policy. This has the potential to result in job losses.

No specific consultation has taken place here, due to the severe time constraints for bringing this change into law.

Given that the screening questions suggest that there is no disproportionate impact on the Section 75 groups or on good relations it is not necessary to conduct a full equality impact assessment.

REGULATORY IMPACT ASSESSMENT

The Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012

SR 2012 No. 263

2 April 2012

1. Title of proposal

1.1 This Regulatory Impact Assessment considers the impact on business of the Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012.

2. Purpose and intended effect

The objective

2.1 This Order amends the Race Relations (Northern Ireland) Order 1997, by addressing the issue of direct and indirect discrimination on the basis of nationality in the matter of pay for seafarers.

The background

2.2 The UK Government received reasoned opinion 2006/4129 on 27th January 2011. This said that as a consequence of Sections 8 and 9 of the Race Relations Act 1976 and Articles 10 and 11 of the Race Relations (Northern Ireland) Order 1997, which allowed for differential treatment in terms of employment, the UK has failed in its obligations under Article 45 of the Treaty on the Functioning of the EU (TFEU) and Article 7(1) of Regulation 1612/68.

2.3 The Race Relations (Northern Ireland) Order 1997, at Article 11, allowed for differential rates of pay to be paid to seafarers depending on the jurisdiction in which they were recruited. These are regarded as indirectly discriminatory where, although applicable irrespective of nationality, they affect essentially migrant workers or the great majority of migrant workers.

2.4 The European Court of Justice pronounced itself on the legal effect of such a clause: it confirmed that non-discrimination as regards conditions of employment and pay has direct effect and that workers covered by such a clause in an agreement "*once legally employed within the territory of a Member State, have a right to equal treatment as regards conditions of employment of the same extent as that conferred in similar terms by Article 48(2) of the Treaty on Member States Nationals".*

Risk Assessment

2.5 It was always the intention that legislation complied with the obligations under the Directive and indeed common provisions were in place across the UK. It has been decided to put this matter beyond doubt by making this

clarificatory Order, which introduce amending legislation reflecting current amended provisions elsewhere in the UK.

3. Options

Do nothing (option 1)

3.1 If we do nothing, the European Commission will almost certainly refer the matter eventually to the European Court of Justice (ECJ) which will almost certainly rule against us. This will result in time and money being expended on legal action that could have been averted by taking necessary, timely remedial action. Should the ECJ rule against us, which is more than likely, our good record of transposing EU legislation will be blemished, while substantial fines (to be met by the Northern Ireland Executive) could be incurred.

Introduce and implement remedial regulations (option 2)

3.2 In order to address the European Commission's specific concern about the differential rates of pay to be paid to seafarers depending on the jurisdiction in which they were recruited, it has been decided to bring forward amending legislation to remove any doubt about when it is permissible to pay seafarers different rates of pay.

3.3 The changes being brought forward here mirror the recent changes to the Equality Act 2010 that have been applied in GB.

4. Benefits

4.1 OFMDFM believes that the second option is necessary. It will provide clarity to the existing law and ensure compliance with our obligation in relation to implementing European Community Directives.

4.2 A clearer understanding of the law will enable employers to take the necessary action that will prevent them from falling foul of the law. This in turn will result in averting potential legal costs being incurred and further reduce the burdens on courts and industrial tribunals.

Other Impact Assessments

4.3 There are no other anticipated impacts.

5. Costs

5.1 There are no significant anticipated costs to any industry outside the shipping industry. Other industries will not need to familiarise themselves with the rates of pay being paid to seafarers.

Wage Costs

5.2 There will be additional costs for employers within the shipping industry as result of prohibiting differential pay with regard to seafarers from Northern Ireland, EEA and designated states. The UK estimate was around £57 million. This was based on a sample of 229 vessels and the average increase

in annual wage costs per vessel was estimated at around £159,000[1]. As of 26th March 2012, there are 40 vessels registered on the Commercial Register to the ports here – that is Belfast, Coleraine, Derry/Londonderry and Newry. If we multiply that figure by the estimated average increase in annual wage costs (40 x £159k), the best estimate of the total wage costs to vessels here is £6,360,000.

6. Small Business Impact Test

6.1 The proposed amendments to the Race Relations (Northern Ireland) Order 1997 should have no significant cost impact on small businesses.

7. Enforcement, sanctions

7.1 There may be implications for the Equality Commission for Northern Ireland (ECNI), and for the Industrial Tribunals and other courts, as a result of the changes to law regarding pay. The provisions in these amending Regulations will be enforced by courts and by ECNI.

8. Monitoring and Review

The Equality Commission have a duty to keep under review the workings of the Race Relations (Northern Ireland) Order 1997.

9. Consultation

The Department for Transport undertook substantial consultation with the UK shipping industry. Consultation has taken place with ECNI and the legislation reflects the outcome of all those discussions.

10. Summary

10.1 It is estimated that the cost to the shipping industry here will be c. £6,360,000. We do not anticipate any familiarisation costs for other businesses.

11. Declaration

11.1 We have read the Regulatory Impact Assessment and we are satisfied that the benefits justify the costs.

RT HON PETER D ROBINSON MLA
First Minister

MARTIN MCGUINNESS MP MLA
deputy First Minister

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1 Full details can be found at:
http://www.legislation.gov.uk/uksi/2011/1771/pdfs/uksifia_20111771_en.pdf

Date: 2 April 2012

The Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012, implementing Council Directive SR 2012 No. 263

TRANSPOSITION NOTE

Objective: Amendment of The Race Relations (Northern Ireland) Order 1997, by addressing the issue of direct and indirect discrimination on the basis of nationality in the matter of pay for seafarers.

Responsibility:

This table has been prepared by the Office of the First Minister and Deputy First Minister. It sets out the objectives of article 7(1) of Directive 1612/68 and how they are to be implemented here. The First Minister and deputy First Minister are responsible for implementation.

Article of Directive	
Article 7(1) of Regulation 1612/68, which states: *Article 7* *1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment;*	The Order provides that it is not unlawful to differentiate in relation to pay where a person applied for work as a seafarer outside Northern Ireland or was recruited as a seafarer outside Northern Ireland and is not a British citizen or a national of another EEA State or designated state *(*Article 5*).*

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2 April 2012