

## **Prisoners' Earnings Act EIA**

### **1. Equality duties**

1.1. Under the Equality Act 2010, when exercising its functions, the Ministry, as a public authority, must have due regard to the need to:

- eliminate discrimination, harassment, victimisation and other conduct prohibited by or under the Equality Act;
- advance equality of opportunity between those who share a relevant protected characteristic and those who do not; and
- foster good relations between those who share a relevant protected characteristic and those who do not.

1.2. The obligation to eliminate discrimination falls to be considered in respect of the nine protected characteristics – namely age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The other obligations fall to be considered in respect of the eight 'relevant protected characteristics' (as above, minus marriage and civil partnership).

1.3. MoJ has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and to take proportionate steps to mitigate negative impacts and promote positive impacts. MoJ records how the obligation has been fulfilled by completing an Equality Impact Assessment (EIA).

### **2. Introduction**

2.1. The Government outlined its intention to implement the Prisoners' Earnings Act 1996 ('the 1996 Act') at paragraph 58 of December 2010's Green Paper 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders' (Cm. 7972).

2.2. Implementing the 1996 Act is part of the Government's drive to make prisoners pay their debt to society and to victims of crime in particular. The

1996 Act allows for deductions to be taken from, or levies imposed on prisoners working outside the prison for external employers, and for the money deducted or levied to be provided to Victim Support, who provide services to victims of crime across England and Wales.

2.3. The 1996 Act applies to prisoners doing work they are not required to do in accordance with the Prison Rules and for which they earn an enhanced rate of pay. In practice the application of the Act will be to those in open conditions working outside of the prison for external employers. This is a small group of prisoners, currently up to 500 in number, with 'enhanced wages' (that is, more than they would earn for work which they are required to do and primarily in category D prisons). It would potentially, though currently does not, also capture those working in closed prisons that volunteer for non-core prison work and receive enhanced pay.

2.4. Clause 103 of the Legal Aid, Sentencing and Punishment of Offenders Bill will give the Secretary of State a more flexible power, with the ability to include more prisoners in the scheme of deductions and levies. A further EIA will be written in order to cover the changes that will come with the implementation of clause 103.

2.5. Deductions or levies will be taken or imposed, after tax, National Insurance and other court-ordered payments, from earnings over £20 per week, subject to a 40% maximum rate and no upper limit on the earnings from which deductions or levies are taken. The deductions or levies will be provided to Victim Support.

### **3. Methodology and evidence sources**

3.1. The Green Paper "Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders" was published in December 2010. A Screening Equality Impact Assessment was published alongside the Green Paper. This provided an initial analysis of the potential equality impacts of the proposed implementation of the Prisoners' Earnings Act 1996 alongside other proposed reforms in the Green Paper on the protected characteristics, the promotion of equality of opportunity and the elimination of unlawful discrimination.

- 3.2. This equality impact assessment does not repeat the analysis from the screening assessment. Instead, it provides a more detailed analysis of the category D population, compared to the rest of the prison population so that the direct impact of the proposed change can be estimated.
- 3.3. The data on the prison population includes details of prisoners' gender, age, ethnicity, nationality, physical disability and religion. Information is not held centrally on gender reassignment, sexual orientation, pregnancy and maternity or marriage and civil partnership.
- 3.4. During the consultation period, following publication of the Green Paper, a series of discussions were held with a wide range of stakeholders including two that were specifically focused on equality issues. A Women's Workshop was held to address women's policy issues raised by the Green Paper. Over 60 delegates attended and included representation from Criminal Justice System professionals, academics and volunteers. An Equalities Engagement event was also held to improve our understanding of the likely equality impacts of all the Green Paper proposals and, where necessary, how they could be modified or mitigated. This event was attended by over 50 delegates representing all of the protected groups. In addition to the 1,200 responses received from the written consultation, an equality questionnaire seeking views on possible impacts of all the Green Paper proposals and any additional evidence that might be available was sent to 240 stakeholders. Seven responses were received and these, along with the 1,200 responses to the consultation, were reviewed.

#### **4. Analysis**

- 4.1. Respondents to 'Breaking the Cycle' were almost universally in favour of the implementation of the 1996 Act. Where concerns were raised, they did not tend to focus on equalities issues.
- 4.2. Nevertheless, during the initial screening process for 'Breaking the Cycle' it was acknowledged that there was a potential for disproportionate impacts as a result of the implementation of the 1996 Act when compared to the general population.

- 4.3. We now have March 2011 data for both the total prison population and category D prison population. This means we can conduct a more detailed analysis of any potential disproportionate impacts on category D prisoners in comparison to the total prison population. Please see Annex A for details.
- 4.4. A limited number of prisoners also work out of category C prisons. This means we cannot rule out disproportionate impacts on those who work out of category C prisons. However, the majority of the prisoners who work out of prison are from category D prisons and therefore data from category D prisons is used as a proxy for all those working out of prison.
- 4.5. *Race*. There is only a marginally higher proportion of Asian or Asian British prisoners in category D prisons compared to the proportion of Asian or Asian British prisoners in the total prison population. We do not expect a disproportionate impact in relation to race.
- 4.6. *Sex*. Quantitatively, there are no expected differences in proportions of prisoners of a particular sex when comparing the total prison estate to category D prisons. However, qualitatively, concern was raised during the consultation about women prisoners who were primary carers being adversely affected by the proposed reduction in their income. We do not however hold data that links the wages and the sex of those prisoners working out of prison. Therefore, we cannot rule out a potential for disproportionate impact in relation to sex.
- 4.7. *Age*. The category D population is marginally older than that of the prison population as a whole. However, the proportion of prisoners of retirement age in category D prisons is the same as the total prison population; therefore we would not expect any disproportionate impact in relation to age.
- 4.8. *Disability*. Disability data is not sufficiently reliable to use, due to the high proportion of prisoners having no recorded disability status. Therefore it is not possible to rule out disproportionate impacts with respect to disability. It may be the case that disabled prisoners incur greater costs getting to and from their place of work. Therefore the policy may act as a disincentive for those prisoners whose transport costs are high.

4.9. *Religion or belief.* The category D population has only marginally higher proportion of Anglican and Roman Catholic prisoners than in the rest of the prison population. We do not expect a disproportionate impact in relation to religion.

4.10 Gender reassignment, sexual orientation, marriage and civil partnership impacts and pregnancy and maternity data are either not available or not available for the prison population by category of prison. Therefore, it is not possible to rule out disproportionate impacts with respect to these protected characteristics. Representative organisations and individuals did not raise any additional concerns during the consultation.

## **5. Impacts in relation to victims of crime**

5.1 The Ministry of Justice has an established funding relationship with Victim Support who currently provide needs assessment and practical and emotional support to victims referred by the police. The revenues to Victim Support from the Act will be in addition to the current funding.

5.2 The Ministry of Justice sign a grant-in-aid with Victim Support that requires they comply with all relevant legislation. This is currently being amended for signing in 2011.

5.3 The analysis presented here assumes that the policy will provide Victim Support with increased resource to help provide support to victims of crime. This will have a greater impact on those groups that are currently at greatest risk of experiencing any personal or household crime. However, it is not possible to rule out disproportionate impact by crime type for different equality groups.

5.4 The data is sourced from the Home Office, *Crime in England and Wales 2009/2010*, July 2010, Table 2.05.

5.5 *Race.* The available evidence suggests that people of mixed race are at greater risk of being a victim of crime and so they are more likely to benefit from increased resource for Victim Support.

5.6 *Disability*. The available evidence suggests that those who are not disabled are at greater risk of being a victim of crime and so they are more likely to benefit from increased resource for Victim Support.

5.7 *Sex*. The available evidence suggests that as men are at greater risk of being a victim of crime they are more likely to benefit from increased resource for Victim Support.

5.8 *Age*. The available evidence suggests that as younger people are at greater risk of being a victim of crime they are more likely to benefit from increased resource for Victim Support.

5.9 *Marriage*. The available evidence suggests that as single, cohabiting and separated people are at greater risk of being a victim of crime they are more likely to benefit from increased resource for Victim Support.

5.10 There is no available evidence on the risks of being a victim of crime according to civil partnership, pregnancy and maternity, gender reassignment, sexual orientation or religion or belief so we are unable to rule out any disproportionate impact according to these characteristics.

## **6. Mitigation**

6.1. As the data demonstrating the difference between the category D and total prison population demonstrates, the disproportionate impact of the proposed changes is only expected to be marginal. Where equality risks have been raised we are content that our approach to implementing the Act provides sufficient mitigation.

6.2. Due to the lack of disability data, we cannot rule out a disproportionate impact with respect to disability. In exceptional cases, prisons will need to consider providing help with travel to work for a disabled prisoner who incurs greater expense in getting to work than other prisoners doing the same job, as a result of their disability. We are satisfied that they have the legal powers to do this.

6.3. Potential gender impacts were raised during consultation. The policy has a non deductible threshold of £20 per week. This compares favourably with the rates paid to the majority of women prisoners for work inside prison. Although we do not have data linking gender and pay for work inside prison, a 2007 National Offender Management Service survey showed an average weekly rate of pay of £9.60.

## **7. Monitoring**

7.1. We will continue to monitor the implementation on deductions using the NOMS performance hub to ensure that no disproportionate costs accrue to protected groups, and will consider how best to mitigate these should they arise.

## Annex A – Evidence

In order to assess whether the Prisoners' Earnings Act could have potential for disproportionate impacts with regard to equality, we compared the characteristics of the individuals that may be affected by the Prisoners' Earnings Act in category D prisons with the characteristics of the general prison population of England and Wales, using March 2011 data.

### Characteristics of the population of the prison population of England and Wales and of the category D prison population of England and Wales

Table 1: Category D prisoners in England and Wales by ethnicity, as of March 2011

<b>Ethnicity</b>	<b>Percentage in category D</b>	<b>Percentage in whole prison population</b>
White	74%	74%
Mixed	3%	4%
Asian or Asian		
British	9%	7%
Black or Black		
British	13%	13%
Chinese or other	0%	1%
Not stated	0%	0%
Unrecorded	1%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Table 2: Category D prisoners in England and Wales by gender, as of March 2011

<b>Gender</b>	<b>Percentage in category D</b>	<b>Percentage in whole prison population</b>
Males	95%	95%
Females	5%	5%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Table 3: Category D prisoners in England and Wales by age, as of March 2011

<b>Age group</b>	<b>Percentage in category D</b>	<b>Percentage in whole prison population</b>
18 - 20	4%	9%
21 - 24	13%	17%
25 - 29	18%	19%
30 - 39	27%	27%
40 - 49	22%	18%
50 - 59	12%	7%
60 and over	4%	4%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Table 4: Category D prisoners in England and Wales by religion, as of March 2011

<b>Religion</b>	<b>Percentage in category D</b>	<b>Percentage in whole prison population</b>
Anglican	29%	25%
Free Church	1%	1%
Roman Catholic	18%	17%
Other Christian	5%	7%
Buddhist	2%	2%
Hindu	1%	1%
Jewish	0%	0%
Muslim	12%	12%
Sikh	1%	1%
Other religious	1%	1%
Non-recognised	1%	0%
Missing	1%	2%
No religion	28%	31%
<b>Total</b>	<b>100%</b>	<b>100%</b>