

# Impact Assessment of removing the provisions in the Equality Act 2010 on the obtaining information procedure

|   |   |  |  |
|---|---|--|--|
| <b>Title:</b><br>Review of section 138 of the Equality Act 2010 and the need for the obtaining information Question and Answer Forms<br><br><b>IA No:</b> GEO 1033<br><br><b>Lead department or agency:</b><br><br>Home Office (Government Equalities Office) | <b>Impact Assessment (IA)</b>               |  |  |
|   | <b>Date:</b> 16 August 2012                 |  |  |
|   | <b>Stage:</b> FINAL                         |  |  |
|   | <b>Source of intervention:</b> Domestic     |  |  |
|   | <b>Type of measure:</b> Primary legislation |  |  |
| <b>Contact for enquiries:</b> Jay Begum 020 7035 8115   |   |  |  |

## Summary: Intervention and Options

| Cost of Preferred (or more likely) Option |                            |  |   |
|---|----------------------------|--|---|
| Total Net Present Value                   | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Measure qualifies as One-Out? |
| £12.5m                                    | £7.4m                      | £0.8m  | Yes   OUT   |

### What is the problem under consideration? Why is government intervention necessary?

Section 138 of the Equality Act 2010 requires a Minister of the Crown to prescribe forms in order that a person who thinks that they may have been unlawfully discriminated against, harassed or victimised, can obtain information from the person (employer or service provider) they think has acted unlawfully against them ("obtaining information"). Whilst it is voluntary for an employer/service provider to respond, any answers provided or decisions not to respond to the questionnaires could be taken into account if a discrimination claim is subsequently commenced. Requests for information could be dealt with on a non-statutory basis and therefore these provisions are thought to have an unnecessary regulatory burden on business.

### What are the policy objectives and the intended effects?

The policy objective is to reduce any regulatory burden on employers that may be imposed as a result of the power to prescribe forms, which may be used by a person who thinks they have been treated unlawfully under the Equality Act 2010, to obtain information from the person they think is responsible for the unlawful treatment. The intended effects are to ensure that, in line with our assessment of the outcome of our recent consultation, business is not burdened with an open-ended statutory process requiring the provision of hard to access, old information and that opportunities for vexatious litigants to undertake unnecessary "fishing expeditions" are minimised. The Government therefore intends to repeal these provisions.

### What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 – **Do nothing.** Keep in force the mechanisms, under section 138 of the Equality Act 2010, for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised to obtain information from the person they think has acted unlawfully against them.

Option 2 – **Repeal the obtaining information provisions in the Equality Act 2010 and related secondary legislation (preferred)** which may be used by a person who thinks they have been treated unlawfully under the Equality Act 2010 to obtain information from the person they think is responsible for the unlawful treatment, either before or after commencing proceedings in a court or tribunal.

Option 2 is the preferred option as this will achieve the policy objective of reducing any related potentially unnecessary burdens on employers.

### Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A

|  |                     |                       |                       |                      |                           |
|--|---------------------|-----------------------|-----------------------|----------------------|---------------------------|
| Does implementation go beyond minimum EU requirements?   |                     |                       | N/A                   |                      |                           |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.                       | <b>Micro</b><br>Yes | <b>&lt; 20</b><br>Yes | <b>Small</b><br>Yes   | <b>Medium</b><br>Yes | <b>Large</b><br>Yes       |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) |                     |                       | <b>Traded:</b><br>N/A |                      | <b>Non-traded:</b><br>N/A |

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_ August 2012

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Repeal the obtaining information provisions in the Equality Act 2010 and the forms

## FULL ECONOMIC ASSESSMENT

| Price Base<br>Year 2011 | PV Base<br>Year 2012 | Time Period<br>Years 10 | Net Benefit (Present Value (PV)) (£m) |           |                     |
|-------------------------|----------------------|-------------------------|---------------------------------------|-----------|---------------------|
|                         |                      |                         | Low: N/A                              | High: N/A | Best Estimate: 12.5 |

| COSTS (£m)    | Total Transition<br>(Constant Price) Years | Average Annual<br>(excl. Transition) (Constant Price) | Total Cost<br>(Present Value) |
|---------------|--|---|-------------------------------|
| Low           | N/A  | N/A   | N/A                           |
| High          | N/A  | N/A   | N/A                           |
| Best Estimate | -4.8                                       | 0   | -4.8                          |

### Description and scale of key monetised costs by 'main affected groups'

There will be transitional costs to employers of familiarising themselves with the fact they no longer need to answer employees' questions under Section 138 of the Equality Act 2010:

Private and voluntary sector employers - £4.5million

Public sector employers - £0.3million

### Other key non-monetised costs by 'main affected groups'

According to our consultation responses, only anecdotal evidence is available to suggest that the Questions and Answers forms have been effective either in preventing claims proceeding to tribunal, or in improving the efficiency of how claims are handled once brought. Therefore removal of the procedure should not cause additional costs to business or others. Potential claimants will still be free to ask questions or otherwise seek information from an employer or service provider if they think they have been discriminated against, and will still be able to bring a case to a court or tribunal following these enquiries.

| BENEFITS (£m) | Total Transition<br>(Constant Price) Years | Average Annual<br>(excl. Transition) (Constant Price) | Total Benefit<br>(Present Value) |
|---------------|--|---|----------------------------------|
| Low           | N/A  | N/A   | N/A                              |
| High          | N/A  | N/A   | N/A                              |
| Best Estimate | 0  | 2.0   | 17.3                             |

### Description and scale of key monetised benefits by 'main affected groups'

There will be annually recurring benefits to employers and individuals from no longer using the statutory forms:

Private and voluntary sector employers: £1.4million; Public sector employers: £0.1million; Individuals: £0.5million

### Other key non-monetised benefits by 'main affected groups'

Removing the forms will address business concerns that "the Questions and Answers forms are often very long and technical, can ask for records that go back years, and may serve as a 'fishing' exercise by disgruntled employees"<sup>1</sup>.

|   |                          |     |
|---|--------------------------|-----|
| Key assumptions/sensitivities/risks   | <b>Discount rate (%)</b> | 3.5 |
| <ul style="list-style-type: none"> <li>Level of awareness and use of the current statutory forms is roughly equivalent to what it was before the forms were consolidated under the Equality Act 2010; 58% for smaller organisations and 76 % for larger organisations</li> <li>Transitional costs for employers and service providers will be small. They will only need to be aware that the forms are no longer statutory.</li> <li>The IA assumes that any non-statutory measures that replace these forms will impose a significantly reduced burden on employers, as alternative means of dealing with requests would be less burdensome (for example, by having more time to respond and not needing to use a strict format for responses). This is in line with responses to our consultation from employers.</li> </ul> |                          |     |

## BUSINESS ASSESSMENT (Option 2)

|  |                          |                             |
|--|--------------------------|-----------------------------|
| <b>Direct impact on business (Equivalent Annual) £m:</b> | <b>In scope of OIOO?</b> | <b>Measure qualifies as</b> |
| Costs: 0.5   | Yes                      | OUT                         |
| Benefits: 1.3  |                          |                             |
| Net: -0.8  |                          |                             |

<sup>1</sup> The Workforce Survey (British Chamber of Commerce) – Micro Business August 2011

## Direct Costs and Benefits to Business (One-in, One-out)

For the purposes of One-In-One-Out scoring, we calculate the direct costs and benefits to business and voluntary sector organisations as a result of this proposal in 2009 prices. The figures here are deflated using HM Treasury GDP deflator series.<sup>2</sup>

The best estimate of the Equivalent Annual Cost<sup>3</sup> to business and the voluntary sector of the preferred option are calculated as **-£0.8million** in 2009 prices, and this measure is therefore considered to be an OUT.

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<sup>2</sup> Consistent with series last updated 25 October 2011

<sup>3</sup> Equivalent Annual calculations use formula:  $NPV / [1 - 1/r + 1 / (r \times (1+r)^9)]$  for 10 year time period, where r is the standard social time preference discount factor (3.5%)

# Evidence Base (for summary sheets)

## Introduction

The Equality Act 2010 requires a Minister of the Crown to prescribe forms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised to obtain information from the person (employer or service provider) they think has acted unlawfully against them. However, there is no direct requirement for complainants or respondents to use them. They may use the prescribed forms, a form to the like effect, or any other form of question or answer. It was considered helpful for individuals (both complainants and respondents) to have template forms available so that they have a framework within which they are able to ask and answer questions.

In June 2009, GEO commissioned research into the use of some of the forms that were prescribed under previous discrimination legislation, specifically, the equal pay questionnaire, the sex discrimination questionnaire and race relations questionnaire. The research conducted a total of 811 telephone interviews with respondents from UK businesses with one or more employees<sup>4</sup>.

As a result of findings from the GEO research, and views from stakeholders to the Discrimination Law Review consultation, draft forms under the Equality Act 2010 across all protected characteristics, intended to replace existing forms in relation to age, disability, race, religion or belief, sex, sexual orientation and equal pay, were published on 16 June 2010 for a four-week public consultation. A total of 21 responses were received from employers, employer and employee representative groups, trade unions, equality groups and an employee. Of these, 16 respondents completed the online consultation document for the prohibited conduct forms, and of these, 12 commented on the equality of terms (equal pay) forms. The remaining respondents provided general comments on both forms only. Respondents generally felt that the guidance and instructions were better than before, and the process itself appeared largely the same. For some it was difficult to estimate whether the new forms would be quicker to complete without the practical experience of completing them. The British Chambers of Commerce (BCC) called to abolish the forms.

Secondary legislation which came into force in October 2010<sup>5</sup> prescribed four Question and Answer forms for assisting persons to obtain information in disputes about prohibited conduct and equality of terms to replace the 20 forms that had been prescribed under previous discrimination legislation.

It was intended that this process would speed up and in some cases avoid litigation, by bringing forward the key issues at an early stage and enabling the parties to focus on them.

These forms are also admissible as evidence in any subsequent proceedings brought under the Equality Act 2010 in either a court or tribunal. The court or tribunal may draw inferences from a failure by the respondent to answer the questions posed within eight weeks or from evasive or equivocal answers. Therefore, whilst it is voluntary for a respondent to complete Answers forms, these possible consequences of not responding mean that they impose a regulatory burden on respondents. We are aware that as a result, employers are engaging legal advisors to assist with their completion.

## Responses to the consultation

The consultation revealed a lot of support for keeping these provisions (about 77% of those that responded, said they thought that this provision should be kept). However, the consultation did not reveal any empirical evidence to support these views. Those supporting the repeal of this provision (predominantly employers/service providers) believe that these questionnaires are burdensome because of their open-ended nature, which could require them to provide very old information that they no longer have immediate access to, and that it is time consuming and expensive (particularly because of the need to seek legal advice before completion).

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<sup>4</sup> GEO Administrative Burden Reduction Study, IFF Research prepared for Government Equalities Office, June 2009 (Not published but available on request)

<sup>5</sup> SI 2010/2194 The Equality Act 2010 (Obtaining Information) Order 2010

Employers' responses to our consultation confirmed that these provisions are burdensome. Business is of the view that there are alternative, less-burdensome ways of obtaining the same information that these provisions currently require them to provide.

## **Problem under consideration and rationale for intervention**

Data is not collected that would indicate how many tribunal or court cases have used these new forms, but the aforementioned research carried out in 2009 suggests that around 9,000 employers choose to use the form annually (as already noted, a court or tribunal is permitted by the legislation to draw inferences from a failure by the respondent to answer the questions posed within eight weeks). This has given an indication of the possible burden that these forms may impose on business. In line with the Government's commitment to reduce potentially unnecessary regulatory burdens on business, we have consulted and business is firmly of the view that these forms are a disproportionate burden and should therefore be removed.

## **Policy objective**

The policy objective is to reduce any potentially unnecessary regulatory burdens that the obtaining information provisions and forms may impose on business.

## **Description of policy options**

Option 1 – **Do nothing.** Keep in force the mechanisms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised, to obtain information from the person they think has acted unlawfully against them.

Option 2 – **Repeal the obtaining information provisions in the Equality Act 2010 and the related secondary legislation (preferred)** which may be used by a person who thinks they have been treated unlawfully under the Equality Act 2010 to obtain information from the person they think is responsible for potential discriminatory act against them, either before or after commencing proceedings in a court or tribunal.

Leaving the provisions in force could impose unnecessary potential burdens on businesses. Removing these provisions will reduce unnecessary burdens on business.

No other options have been considered because there are no viable alternative formal non-legislative mechanisms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised, to obtain information from the person they think has acted unlawfully against them. The consultation that we undertook did not reveal any non-legislative alternatives but this remains something that the Government continues to explore as part of its wider de-regulation agenda to support business growth.

### **Micro business and start-up exemption**

It is intended to repeal the provisions for all enterprises, including micros and start-ups. For all employers to benefit from the removal of this provision, all enterprises will be covered by this proposal.

## **Costs and Benefits**

*Note: Throughout this impact assessment all prices have been inflated to 2012 prices using HM Treasury GDP Deflator Series unless stated otherwise*

### **Option 1**

In this impact assessment, the costs and benefits of doing nothing are those which would be incurred were the provisions and the forms to remain in force, and are the baseline against which the impact of other options is assessed.

The impacts here have been assessed using IFF research commissioned by GEO; *GEO Administrative Burden Reduction Study, June 2009*.<sup>6</sup> This research provides evidence on private sector employers' awareness of the statutory forms, whether they have used them in the last three years, how long they typically take to complete, and whether or not they sought legal advice before completing. It was a representative survey of 811 employers. This research refers to the forms that were in existence before the Equality Act, but there is no reason to suggest that their subsequent consolidation would have any significant effect on the statistics detailed by the IFF research.

### ***How often are the forms used?***

It is possible that claimants could use the Questions forms in all of the 77,000 discrimination and equal pay employment claims accepted by HM Courts and Tribunals Service each year, and employers complete Answers forms for these also.<sup>7</sup> It is also possible that employees could complete Questions forms and claims are not subsequently brought. The IFF research suggested that 2% of all employers had used the forms in the last 3 years, or 0.7% annually. This research only focused on private sector employers. However, there are approximately 87,000 employers in the voluntary sector, who we assume would be as likely as those in the private sector to use them. When considering only large employers (with 250 employees or more), 6.5% had used the forms in the last three years, or just over 2% annually. This figure is used to estimate how often public sector employers, which are typically large, may use the forms. Overall, it is estimated that about 9,200 employers might use the forms at least once each year.

### ***Cost of Completing Questions and Answers Forms***

*Link to current version of forms and guidance on Home Office website:*

<http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/complaints-Equality-Act/>

### Questions

To complete the Questions forms it is expected that an individual would need to first read the associated guidance. On average, this should take no longer than an hour. Completing a form would on average take an individual no longer than three hours to provide the details of their complaint. The guidance advises individuals that they may wish to seek legal advice before completing a form. There is no evidence to suggest how often an individual might do this, but here we estimate that 25% of individuals would consult a legal professional, at a cost of no more than an hour. The median hourly earnings for all employees and legal professionals, including non-wage labour costs, are £13.74 and £27.97 respectively.<sup>8</sup> Therefore, the average cost to the individual of completing a Questions form is **£61.96**.

### Answers

To complete an Answers form it is expected that the equivalent of a corporate manager would need to read and assimilate a Questions form they had received from the employee, taking on average an hour. Like the employee, they would also have to read the associated guidance, taking on average an hour, and this advises that employers may also wish to consult a legal professional before answering the complaint. Employers are more likely than individuals to seek advice from a legal professional, either within their organisation or outside, before answering. The IFF research suggested that on average employers would take up to 6 hours responding to a complaint, implying after allowing for reading guidance and the Questions forms that answering the complaint should take no more than four hours on average. The IFF research suggests that 50% consult a legal professional, at a cost of no more than an hour. The median hourly earnings for corporate managers, including non-wage labour costs, are £24.38.<sup>9</sup> Therefore, the average cost to an employer of completing an Answers form is **£160.28**.

The consultation did not reveal any new figures that we would invalidate our initial estimations.

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<sup>6</sup> GEO Administrative Burden Reduction Study, IFF Research prepared for Government Equalities Office, June 2009 (Not published but available on request)

<sup>7</sup> Annual Tribunal Statistics (GB), 2008/09-2010/11: Average per annum for last three years

<sup>8</sup> ASHE 2011 Codes All & 241, incl. 21% uplift for non-wage labour costs – Note: uplift derived from European Labour Costs Survey (2007)

<sup>9</sup> ASHE 2011 Codes 11, incl. 21% uplift for non-wage labour costs

Table 1 – Breakdown of annual costs under option 1

|                            | Population Estimates (GB) | Percent using forms annually | Number of times forms used annually | Cost Per Use | Estimated Annual Cost |
|----------------------------|---------------------------|------------------------------|-------------------------------------|--------------|-----------------------|
| Private Sector employers   | 1,145,155                 | 0.7%                         | 8,000                               |              | £1.28million          |
| Public Sector employers    | 26,678                    | 2.2%                         | 600                                 |              | £0.10million          |
| Voluntary Sector employers | 87,000                    | 0.7%                         | 600                                 | £160.28      | £0.10million          |
| Individuals                | -                         | -                            | 9,200                               | £61.96       | £0.54million          |
| <b>Total</b>               |                           |                              |                                     |              | <b>£2.0million</b>    |

Source: IFF Research, ASHE 2011, BIS SME statistics 2011, HMT Whole of Government Accounts, DFE, England and Wales Charity Commission, National Survey of Charities and Social Enterprise 2008, Office of the Scottish Charity Regulator

### **Non-monetised costs**

Businesses have expressed concern that the “Questions and Answers forms are often very long and technical, can ask for records that go back years, and may serve as a ‘fishing’ exercise by disgruntled employees”<sup>10</sup>.

### **Impact and effectiveness of forms**

The forms were originally intended to help employees and employers set out the issues surrounding a complaint, and encourage a dialogue and resolution without a formal claim being made to a tribunal. However, we have no evidence to suggest that the forms have been used effectively in this manner. In fact there is anecdotal evidence that employees have used the Questions forms to test whether or not a complaint is valid and gauge the reaction of employers as an aid to presenting their claim as effectively as possible. The suggestion is therefore that employers have to complete Answers forms on vexatious and unmeritorious claims which a tribunal would probably not have accepted, but were questioned on the off-chance that the answers provide the individual with sufficient grounds to bring a viable claim.

A survey carried out by the British Chambers of Commerce<sup>11</sup> reflects the concerns that business have about the Questions and Answers forms. In that report the BCC called for micro businesses to be exempt from this provision, on the basis that these questionnaires are often very long and technical, can ask for records that go back years, and may serve as a ‘fishing’ exercise by disgruntled employees. It also notes that whilst the use of the forms is not compulsory, tribunals can take into account an employer’s failure to complete the form (indeed, the legislation specifically permits this to be done), and as a result, employers are engaging legal advisors to assist with their completion.

A claimant lodges a claim by sending the Employment Tribunal a completed ET1 claim form, setting out the reasons for complaining to the Tribunal. The Tribunal will review these and will make an initial decision as to whether the claim is something over which it has jurisdiction and which has some merit. The respondent will use an ET3 form to defend the claim. It was intended that the information on the Questions and Answers forms could be used by the tribunal, and potentially speed up the processing of claims.

Information obtained through the Questions and Answers forms is intended to help an individual understand why he or she was treated in a particular way and whether they have a legal basis for making or continuing a discrimination claim in a court or tribunal, and to encourage them to focus on the

<sup>10</sup> The Workforce Survey (British Chamber of Commerce) – Micro Business August 2011

<sup>11</sup> The Workforce Survey (British Chamber of Commerce) – Micro Business August 2011

essential issues before or after commencing a claim. The questions and the answers are admissible as evidence in a case brought under the Equality Act 2010 and the court or tribunal may draw inferences from a failure by the respondent to answer the questions posed within eight weeks or from evasive or equivocal answers. There is however no evidence that the original objectives of the forms have been achieved.

### ***Benefits to Individuals of using the Forms***

As described above, individuals continue to use the forms. They must therefore get some benefit from being able to do so. It is not possible to monetise this benefit as there is no evidence as to why some individuals specifically use this format to set out their complaints against employers and service providers. The statutory forms provide a relatively formal method for presenting a complaint. It is possible that this is why some individuals favour it. It is also possible that individuals favour this method because they are aware of the regulatory requirement on employers to provide answers, and other methods are less likely to offer this. It would still be open to individuals to approach their employer or service provider for information, or to set out a complaint, simply the procedural mechanisms and template for obtaining such information would be removed. The consultation did not reveal any other benefits that we are not already aware of and which would further support retaining these forms.

### **Summary of costs and benefits**

The Questions and Answers forms cost **£2million** per annum, including, **£1.4million** to private and voluntary sector employers

### **Option 2**

#### **Costs**

##### ***Transitional costs***

Employers and service providers will need to familiarise themselves with the fact that Questions and Answers forms will no longer be prescribed by the Act, or considered at the Tribunal, and therefore that any regulatory requirement on them has been removed.

There are approximately 1.1 million small and medium enterprises (SMEs) with employees in Great Britain.<sup>12</sup> A general manager or equivalent will be responsible for informing themselves about the change in legislation. This should be a minimal burden, and should take no longer than 15 minutes. The median gross hourly wage for a general manager, including non-wage labour costs is £24.38.<sup>13</sup>

According to the England and Wales Charity Commission, there are approximately 162,000 main registered charities, and according to the Office of the Scottish Charity Regulator there are approximately 23,000 registered charities in Scotland. Using the National Survey of Charities and Social Enterprises we estimate that 47%<sup>14</sup> of charities have employees. We feel that this is the best estimate of the size of the voluntary sector in scope as social enterprises will likely be included within the figures for small and medium sized enterprises. A general manager or equivalent will be responsible for informing themselves about the change in legislation, and similar to small firms, we estimate that this process will take 15 minutes.

There are approximately 6,200 enterprises with 250+ employees (large enterprises), and 27,000<sup>15</sup> public sector employers in Great Britain. A dedicated personnel manager will be responsible for informing themselves about the change in legislation. We estimate that large enterprises will spend one hour, and public sector organisations will spend half an hour, familiarising with this change and reflecting it in work

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<sup>12</sup> Business Population Estimates 2011, BIS

<sup>13</sup> ASHE 2011 Code 1; incl. 21% uplift for non-wage labour costs

<sup>14</sup> Those with employees; National Survey of Charities and Social Enterprises 2008

<sup>15</sup> Estimated from HMT *Whole of Government Accounts, 2011*, GB only + number of public funded schools & higher education institutions 2009/2010

practices. The average gross hourly wage for a personnel manager, including non-wage labour costs, is £28.25.<sup>16</sup>

The IFF research shows that 58% of private sector enterprises are aware of at least one of the forms. This is the best available evidence on the extent of existing compliance with the regulation. This also suggests the fraction of employers who would now need to know the forms are no longer statutory. We assume that 58% of voluntary sector employers would likewise need to be aware of this, without any specific evidence for this type of organisation.

The IFF research suggested that 76% of larger employers were more likely to be aware of at least one of the forms. As for smaller organisations, this is our best estimate of the extent of existing compliance with the regulations, and the fraction that need to know that the forms are no longer statutory.

Table 2 – Transitional costs to employers and service providers of option 2

|                  | Number of Organisations | % of Organisations Affected | Hours | Cost per Hour | Transitional Cost  |
|------------------|-------------------------|-----------------------------|-------|---------------|--------------------|
| SMEs             | 1,138,970               | 58%                         | 0.25  | £24.38        | £4.0million        |
| Large Firms      | 6,185                   | 76%                         | 1     | £28.25        | £0.1million        |
| Public Sector    | 26,678                  | 76%                         | 0.5   | £28.25        | £0.3million        |
| Voluntary Sector | 185,000                 | 27%                         | 0.25  | £24.38        | £0.3million        |
| <b>Total</b>     |                         |                             |       |               | <b>£4.8million</b> |

Source: ASHE 2011, BIS SME statistics 2011, HMT Whole of Government Accounts, DFE, England and Wales Charity Commission, National Survey of Charities and Social Enterprise 2008, Office of the Scottish Charity Regulator

### **Other costs**

As described under option 1, there is no evidence on the impact of the Questions and Answers forms have been effective either in preventing claims proceeding to tribunal, or in improving the efficiency of how claims are handled once brought. The consultation has not unearthed any further costs that we were not already aware of...

As described under option 1, there may have been benefits to individuals from having the option to use the forms to present their complaint to an employer or service provider. However, we are not able to monetise these as costs of removing the measures, and it is impossible to estimate their extent given individuals will still approach their employer with a view to obtaining information or raising a complaint. For example, individuals will still be able to use the current Employment Tribunal Claim forms (ET1 forms) to set out the issues in their complaint when considering and making a claim.

### **Benefits**

#### **Annually recurring benefits**

Despite the costs to individuals of not being able to fill in the forms, there will also be benefits to individuals and employers from no longer completing Questions and Answers forms equivalent to the costs discussed under option 1. Employees may choose to use the ET1 forms now, which they would have had to complete anyway, to set out their complaint but there will be no requirement for the employer to respond unless the claim is accepted by a tribunal.

<sup>16</sup> ASHE 2011 Code 1135; incl. 21% uplift for non-wage labour costs

## Non-monetised benefits

Removing the obtaining information provisions and the forms will address business concerns that the Questions and Answers forms are often very long and technical, can ask for records that go back years, and may serve as a 'fishing' exercise by disgruntled employees.

## Summary

The overall impact is a net present value of **£12.8million** over 10 years, with benefits to private and voluntary sector employers of **£7.5million**.

Table 3 – Summary of costs and benefits of option 2 by key affected groups (£000s)

|  | Annually recurring benefits | Transitional Costs | Net Present Value   |
|--|-----------------------------|--------------------|---------------------|
| Private and Voluntary Sector Employers | £1.5million                 | £4.5million        | £7.4million         |
| Exchequer and Public Sector Employers  | £0.1million                 | £0.3million        | 0.5million          |
| Individuals                            | £0.5million                 | -                  | £4.6million         |
| <b>Total</b>                           | <b>£2.0million</b>          | <b>£4.8million</b> | <b>£12.5million</b> |

Note: Figures may not sum due to rounding

Source: See tables 1 and 2

## Risks and assumptions of preferred option

- Level of awareness and use of the current statutory forms will be approximately equivalent to what it was before the previous forms were consolidated in 2009-10. The IFF research used here refers to the forms before they were consolidated. However, consolidation should not have altered the length of time an employer or service provider would take to complete an Answers form, their awareness of the forms, nor how often they will be faced with a Questions form.
- Transitional costs will be relatively small. Employers and service providers who are currently aware of the forms will need to know that they are no longer statutory in nature. A small familiarisation cost has been calculated here to account for this.

## Direct costs and benefits to business (One-in, One-out)

For the purposes of One-In-One-Out scoring, we calculate the direct costs and benefits to business and voluntary sector organisations as a result of this proposal in 2009 prices. The figures here are deflated using HM Treasury GDP deflator series.<sup>17</sup>

The best estimate of the Equivalent Annual Cost<sup>18</sup> to business and the voluntary sector of the preferred option are calculated as **-£0.8million** in 2009 prices, and this measure is therefore considered to be an OUT.

<sup>17</sup> Consistent with series last updated 25 October 2011

<sup>18</sup> Equivalent Annual calculations use formula:  $NPV / [1 - 1 / (r \times (1+r)^9)]$  for 10 year time period, where r is the standard social time preference discount factor (3.5%)

## **Wider Impacts**

### **Equality Impact**

A policy equality statement is set out in Annex 1.

### **Justice Impact**

We consider that the preferred option to repeal the obtaining information provisions in the Equality Act 2010 and the related secondary legislation will have minimal impact on the justice system as there will be no need for specific judicial training. Nor do we envisage any new employment tribunal or court procedures, rights of appeal, further changes to primary and/or secondary legislation, or an increased demand for prison places.

GEO has carried out a justice impact test.

## **Monitoring and review**

As the preferred option is to remove the Questions and Answers forms legislative provisions, there will not be a dedicated review of this action. GEO is committed to reviewing the Equality Act 2010 as a whole, for a Post Implementation Review in 2015. Part of this review will aim to establish if individuals are protected by the Act, and whether organisations feel that the Act has help simplify legislation and it is more consistent.

## **Summary and implementation**

Our preferred option is to repeal the obtaining information provisions in the Equality Act 2010 and related secondary legislation which may be used by a person who thinks they have been treated unlawfully under the Equality Act 2010 to obtain information from the person they think is responsible for the unlawful treatment, either before or after commencing proceedings in a court or tribunal. This is the preferred option as there is no evidence to suggest that the Questions and Answers forms have been effective either in preventing claims proceeding to tribunal, or in improving the efficiency of how claims are handled once brought. We consider that by removing these provisions we will reduce any unnecessary burdens on business, and remove any unnecessary concerns that business may have about being compelled to complete these questionnaires.

## Policy equality statement

### Review of the obtaining information provisions in the Equality Act 2010 and related secondary legislation

#### Introduction

We have considered the impact of the provisions in the Equality Act 2010 relating to requirement to prescribe forms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised to obtain information from the person they think has acted unlawfully against them because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The aim of this consideration is to ensure that the implications for equality for all the protected characteristics have been properly assessed during the development of the policy, taking account of views expressed, and to provide assurance that changes needed to mitigate any potential adverse impacts have been identified. This document considers the impacts on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation in line with the integrating policy of the Equality Act 2010.

We want the law to provide appropriate enforcement mechanisms for the harmful discrimination people experience. There are no figures available to indicate how many tribunal or court cases have used the new obtaining information forms but research suggests that around 9000 employers use the form annually. This has given an indication of the possible burden that these Questions and Answer forms may impose on business. The consultation that was undertaken only revealed anecdotal evidence to support the continued use of these questionnaires.

#### The Provision

Previous discrimination legislation prescribed the equal pay questionnaire, the sex discrimination questionnaire and race relations questionnaire. The Equality Act 2010 and its related secondary legislation has prescribed four Question and Answer forms for assisting persons to obtain information in disputes about prohibited conduct and equality of terms to replace the 20 forms that had been prescribed under previous discrimination legislation.

#### OPTION 1 – do nothing

##### General impact

Retaining the mechanisms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised, to obtain information from the person they think has acted unlawfully against them, applies in relation to all protected characteristics.

Information obtained through this process is intended to help an individual understand why he or she was treated in a particular way and whether they have a legal basis for making or continuing a claim in a court or tribunal and to encourage them to focus on the essential issues before or after commencing a claim. In practice, this may lead to people deciding not to bring a claim or agreeing to settle once they focus on those points. The information obtained can also be used to present a claim in a court or tribunal in the most effective way.

This applies in the same respect to claims relating to any protected characteristic.

## **OPTION 2 – Repeal the obtaining information provisions in the Equality Act 2010 and the forms**

### General impact

Removing the obtaining information provisions and the forms would mean that individuals will need to find other means by which to obtain information in disputes about prohibited conduct and equality of terms. This would apply in the same respect in relation to any of the protected characteristics.

This option does not impact on an individual's access to justice because information can be obtained from employers/service providers by simply asking them for the information. Failing this, when the Tribunals/courts feel that there is a case to answer, both parties will be required, as part of the claim process, to disclose information pertaining to their cases.