

ANALYSIS OF RESPONSES TO THE CONSULTATION ON *GETTING EQUAL*: PROPOSALS TO OUTLAW DISCRIMINATION ON THE GROUND OF SEXUAL ORIENTATION IN THE PROVISION OF GOODS, FACILITIES AND SERVICES IN NORTHERN IRELAND.

INTRODUCTION

The purpose of this paper is to provide an overall summary of the key issues raised by responses to the *Getting Equal* consultation document. It will provide a general sense of the comments received to each of the 21 questions posed in the document and the areas of common interest across the policy proposals. Where substantive issues have been raised the document will set out the Government's view on those issues.

The Office of the First Minister and deputy First Minister consulted on the policy proposal to outlaw discrimination on the ground of sexual orientation in the provision of goods, facilities, services, education, public functions and property. The consultation ran from 29 July 2006 to 25 September 2006. We posed 21 questions dealing with the various aspects of the policy proposals. The questions were the same as those asked in the GB consultation which closed on 5 June 2006.

SUMMARY

A total of 373 responses were received from organisations in the public, private, voluntary and community sectors and from private individuals. The majority came from private individuals and addressed three main areas: education, use of premises and religion. Of these individual responses received the majority only addressed questions 12 and 13.

Table 1: All responses received

SECTOR	NUMBER OF RESPONSES
Organisations	39
Individuals	334
TOTALS	373

MAIN ISSUES RAISED

- Use of premises: - There was widely expressed concern around the proposals on the use of premises, particularly religious premises, both from religious organisations and private individuals.

- Education: - There was some concern expressed about the application of the Regulations to the education sector, both from religious organisations and private individuals.
- Religious exemption: - A majority of respondents, mostly private individuals, expressed real concern about the application of the Regulations to religious organisations and this was linked to both education and the use of premises.

Question 1: Do you agree that the new sexual orientation Regulations should apply to goods, facilities and services?

There were 27 responses received to this question, comprising 22 organisations and 5 individuals, and only one organisation answered negatively. One other organisation answered positively but with the caveat that adequate protection would have to be provided to religious organisations.

However the broad message from the consultation, is that discrimination on the basis of a persons sexual orientation is not acceptable and that all people regardless of their sexual orientation should be provided the same access to goods, facilities and services.

Question 2: Should the concept of goods, facilities and services have the same scope as in other equality legislation, in particular Part III of the Race Relations Order 1997?

There were 24 responses received to this question, comprising 20 organisations and 4 individuals. There were 22 in favour of basing the new Regulations on Part III of the Race Relations Order 1997. One organisation, whilst generally in favour, felt the list of bodies to which goods, facilities and services potentially applied was unhelpful. They argued for consistency between pieces of legislation. They also felt a significant addition is needed to the concept of goods, facilities and services which would allow their scope to take into account the right to freedom of thought, conscience and religion.

One other organisation, while not directly answering the question, commented on the need for exemptions to include church property.

The message from the consultation responses was one of support for ensuring consistency in approach to protecting discrimination, and to ensuring the definitions appearing in Part III of the Race Relations Order 1997 were retained in the new sexual orientation Regulations.

Response to the specific concerns raised

The provisions of the Human Rights Act 1998 provide the protection for freedom of thought, conscience and religion, and there is no need to repeat that protection in these Regulations. The approach adopted by the Government is to ensure consistency between various pieces of legislation and the illustrative list of bodies to which goods, facilities and services applies mirrors that in other pieces of legislation, specifically the Race Relations Order 1997.

Question 3: Do you agree that we should provide an exemption from the prohibition on sexual orientation discrimination so that services to meet a specific and justified need can be provided separately to different groups on the basis of their sexual orientation? What specific activities would such an exemption need to apply to?

There were 23 responses received to this question, comprising 19 organisations and 4 individuals. All but 1 individual was in favour of an exemption. Whilst the responses were overwhelmingly in favour, most felt that were such an exemption to be applied, it should be done so narrowly and only where clear and accepted justification can be made. One charity was concerned that such an exemption could be used by private sector organisations as a loophole to discriminate.

Another organisation expressed the view that if the definition mirrored that of the Race Relations Order 1997 some lesbian, gay and bisexual (LGB) groups may be considered social activities and may not fall within the definition. They said the definition should be framed in such a way as to ensure that it is not linked to the goods, facilities and services provisions, as in the Equality Act 2006.

One trade union outlined a non-exhaustive list of where they felt such services were justified including social care, health, homophobic bullying, telephone help lines and drop-in centres. They also commented that exemptions should apply to both private and public sectors.

Question 4: Do you agree that premises should be covered by the sexual orientation Regulations?

There were 38 responses received to this question with 22 in favour of the proposal and 16 opposed. Of the 16 opposed, 15 were from individuals and were all similar to each other and to the response received from 1 Religious organisation.

Opinion on the inclusion of premises was statistically fairly equally divided, although the 16 responses opposing the inclusion of premises were not answering the question in the generality of which it was intended. Rather they were all requesting exemptions for church (and other religious organisations) premises, to prevent their use, hire or disposal from coming under the Regulations. They expressed the view that they would not want to rent office space to 'gay groups' and several referred to potential litigation against churches that refused their premises to civil partnership ceremonies. They also referred to the fact that churches can refuse to sell property to off-licences and casinos, but these Regulations would force them to sell to 'gay groups'.

In all 22 responses were in favour. All accepted that discrimination on sexual orientation ground in the selling or letting of property was unacceptable.

Response to the specific concerns raised

These Regulations do not amend the Civil Partnership Act 2004, so the exemption within that legislation for churches from conducting civil partnerships remains in place.

In any private unadvertised sale any person/group who wholly owns the property can refuse to sell that property to any other person/group. With reference to the specific examples raised of off-licences and casinos, neither of these businesses nor the proprietors of these businesses are protected against discrimination in law, unlike all sexual orientations. It is not the use the premises are to be put to which is at issue, rather whether one group can discriminate against another on the basis of sexual orientation. It is the Government's contention that they should not be permitted to do so, unless one of the exemptions applies to them.

Question 5: Do you agree that an exemption should be provided for selling or letting of private dwellings as described in this consultation paper?

There were 62 responses to this question, with all but 5 agreeing that an exemption was appropriate. In this case both the religious sector and the LGB sector were in agreement. However, of the 41 responses received from individuals all of them argued that while an exemption for small dwellings was appropriate, it should be extended to cover owners of bed and breakfasts who operate that business out of their family home.

This position was also argued by 2 religious organisations. One individual argued that these Regulations would elevate the homosexual act above that of the heterosexual one, by retaining the right for bed and breakfast owners to refuse rooms to unmarried heterosexuals, but not to homosexuals. All also argued that there was no difference between a landlord/lodger relationship which will be exempted and a bed and breakfast owner/guest arrangement which will not.

They argue further that this exemption, if not extended to bed and breakfast owners, interferes with the religious and moral conscience of the owners. Several referred to the fact that Bed and Breakfasts were usually also private homes and people should have the right to decide what takes place in their home.

5 responses said there should be no exemption at all, including 4 organisations and 1 individual. One charity said the proposal was outdated; there was no justification for refusing to share a bathroom or kitchen with someone of a different sexual orientation any more than someone of a different race.

Response to the specific concerns raised

Of those who argue no exemption should apply at all, the Government is not convinced of this at present and cites the support across all sectors for its retention.

In terms of the points brought forward in relation to bed and breakfast establishments, we have listened closely to the concerns raised but have concluded that where businesses are open to the public on a commercial basis, then they have to accept the public as it is constituted.

However, if a bed and breakfast had a policy of refusing to rooms to all unmarried heterosexual couples, these Regulations would not compel them to offer rooms to unmarried homosexual couples. The discrimination in those circumstances is not one of sexual orientation, but rather one of marital status.

Question 6: Do you agree that private members clubs should be included in the sexual orientation Regulations?

There were 20 responses to this question with all but one individual in support. No significant questions were raised, although one voluntary organisation commented that the Regulations should be extended to political parties. Generally, there was overwhelming support for the principle that people should not be prevented from using private members clubs because of their sexual orientation.

Question 7: What is your view on our proposal that both private members clubs and associations should be permitted to include having a particular sexual orientation as a membership criterion, but only where this criterion is explicitly connected to the purpose for which the club has been established?

There were 21 responses to this question with 18 in support, 2 against and 1 undecided. Of the responses received most indicated the need to link to the intrinsic nature of the club and the purpose for which it was established. One religious organisation, while agreeing with the premise felt there was a risk it was only aimed at LGB groups, and that it should apply to all.

Response to the specific concerns raised

The proposal will apply to all groups not just LGB groups (although we acknowledge that LGB groups are more likely to avail of the proposal). However, where the criterion is applied it must be explicitly linked to the purpose for which the club was established.

Question 8: Do you agree that the new sexual orientation Regulations should apply to public functions as well as to goods, facilities and services? Do you think that any specific additional exceptions might be needed from a prohibition on sexual orientation discrimination in the exercise of public functions?

There were 25 responses to this question, consisting of 21 organisations and 4 individuals with 23 in favour and 2 opposed. Most respondents did not wish to see any additional specific exceptions to those already listed in the consultation document. One charity did not want to see any at all, but accepted those outlined for the time being in the interest of consistency with other existing anti-discrimination legislation. One political party felt that both Parliament and the Assembly should be subject to the Regulations. One voluntary organisation was concerned that they would have to monitor the sexual orientation of volunteers.

Question 9: Do you agree that schools should be covered by the sexual orientation Regulations?

There were 62 responses to the question of whether the sexual orientation Regulations should apply to schools. Of these 39 were opposed, including 33 individuals who wrote in an identical fashion. All were opposed to the 'promotion' of homosexuality in schools and the placing of homosexuality on an equal footing with heterosexuality. They were very concerned about the impact on the curriculum.

Of those 23 who responded positively almost half were disappointed at the Government's decision not to include harassment. They felt that this omission would lead to a failure to tackle homophobic bullying in schools and were surprised at the anomaly between these Regulations and other anti-discrimination legislation including the Race Relations Order 1997 and the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003. Two respondents argued that failure to include harassment would leave the Government in breach of the Human Rights Act 1998.

Response to the specific concerns raised

All of the individual and organisational responses to the schools issue, that talked about what was taught in schools wrongly assumed that the Regulations cover curriculum. These Regulations are not concerned with the curriculum or how that curriculum is delivered, rather with ensuring equivalence of access to the provision of education and the services and facilities associated with it.

The Government listened carefully to the representations made by respondents on the inclusion of harassment in the Regulations. As a result the Government amended the proposals to include harassment provisions.

Question 10: Are there any circumstances in which you feel schools, or a part of the schools sector should be exempted from the Regulations?

There were 86 responses to this question, consisting of 71 individuals and 15 organisations. Of those 69 argued that either schools or the school curriculum should be exempted. There were 33 identical responses and identical to the answer given to question 9. A further 8 were the same as at least one other response. Two religious organisations sought exemptions for the school curriculum.

Of the 18 in favour of no exemptions 2 groups felt the curriculum and teaching should be specifically included. One trade union felt that it would be unacceptable for a school to defer the primacy of legislation in preference of its ethos. One religious organisation felt the ethos of a school should be protected.

Response to the specific concerns raised

Again, as in question 9, the vast majority of those arguing for exemptions for the school curriculum were arguing for something unnecessary as the Regulations do not apply to the curriculum. This point was noted by 2 respondents in favour of no exemptions who wanted the curriculum and teaching to be specifically included. The Government believes that these Regulations are not an appropriate vehicle to decide what is included in and how the curriculum is taught. That is a matter for the Department of Education.

Question 11: Are there any areas of activity for schools for which you consider special provision needs to be made?

There were 55 responses received to this question, comprising 30 individuals and 25 organisations, with 38 arguing for some special provision and 17 saying none was

required. There were 33 responses arguing for some special provision were the same as the responses given for question 10 and all sought a curriculum exemption.

Five responses mentioned certain areas where special provision might be needed and these included, monitoring reporting of bullying, schools having to prove that they took all steps to be inclusive and non-discriminatory, residential accommodation, schools trips and sports.

Question 12: Do you consider an exemption should be provided from the Regulations for some of the activities of religious organisations?

Question 13: Do you agree that these exemptions should be restricted to activities that are primarily doctrinal? If there are any other activities that you consider should be covered, what are these and why do you consider that they need to be exempted?

Most respondents submitted a response that covered both question 12 and question 13. There were 287 responses to question 12 and 286 responses to question 13. In both questions 35 responses were identical and 44 were signatures to a petition. Of the all the responses received there were 6 main issues:

1. Conference centres
2. Care homes
3. Christian businesses
4. Membership of religious organisations
5. Disposal and use of religious premises
6. Bible and theological colleges

Some 47 of those who responded simply said that exemptions should apply and an additional 34 said they should apply to all activities of religious organisations.

Of the 287 responses received to question 12, 269 were against limiting the exemption to primarily doctrinal activities. Fifteen felt that there should be no exemptions at all and 2 felt that there may be some justification for extension to some other activities.

Where respondents felt that limited exemptions around doctrinal activities should apply they expressed concern that if such an exemption was too widely drafted it would be used to discriminate in areas that were never intended.

Response to the specific concerns raised

The Government accepts that a great many people, as evidenced by the response rate, have genuine concerns around these Regulations as they apply to certain areas. There does appear, however, from the analysis of the consultation responses to be some misunderstanding about what the Government intends the Regulations to achieve.

Many respondents spoke of being forced to accept practices that they were opposed to, or to accept membership in their organisation of people who did not agree with them. The Government would contend that exemption as applied to religious organisations does provide the protection they seek in these areas of concern.

In relation to conference centres and biblical colleges a great many responded in similar terms voicing concern that where they could legitimately refuse a heterosexual unmarried couple a room together, these Regulations would force them to accept a homosexual couple sharing a room. This contention is simply not valid. Only where organisations or venues had previously accepted, or continued to accept, unmarried heterosexual couples sharing a room together, could homosexual couples use the Regulations to enforce equality of treatment. Where there is a consistent policy of no unmarried people, whatever their sexual orientation, sharing a room then these Regulations will not impact on that policy.

Premises and their use or hire was an important issue for some respondents both to question 4 as well as questions 12 and 13. Again the Government accepts that there are concerns here, but believe that the exemptions applied in the Regulations will deal with the issue. If premises are only being used by groups who follow the same doctrine as the religious organisation who owns the premises in question and not by any one else, the Regulations cannot be used to insist on access for all. The subscription to the doctrine in question is a key point. Only where premises are open to a section of the public or the public as a whole, irrespective of subscription to a particular doctrine, could the Regulations be used to enforce equality of access. The Government firmly believes that no organisation has a right to decide which section of the public is acceptable or not, on any of the protected grounds.

The issue of care homes has been raised by a significant number of people. The Government has listened carefully to the concerns expressed around this issue and believes that the exemptions provided to religious organisations provide the protections that they were seeking.

In respect of 'Christian businesses' again the Government accepts that some people hold very forthright views and do not want to provide a service to some people because of their sexual orientation. Having considered this issue the Government cannot define in law what constitutes a 'Christian business'. The Government is firmly of the view that any person or organisation that opens a business to the public for the purpose of providing goods, facilities or services has to be prepared to accept the public as a whole no matter how that public is constituted. It would not be acceptable for a hotel owner to turn away a person on the basis of their skin colour or if they were disabled, any more so than because of their sexual orientation.

Some respondents argued that people should be able to refuse to drive a car for a couple attending their civil partnership ceremony, or for a photographer to refuse to take pictures of such a ceremony. These Regulations do not prohibit people from turning down business from any source, but they do protect all people from having their sexual orientation used as the reason for turning the business down.

The Government has decided to apply an exemption to the Regulations for religious organisations, based on that contained in Part II of the Equality Act 2006. We believe that this provides the best solution to ensuring continuity with existing legislation.

Question 14: Do you agree that an exception should be provided for charities that provide services specifically to people because of/according to their sexual orientation?

There were 24 responses to this question, comprising 20 organisations and 4 individuals. There were 23 responses in favour and 1 individual was opposed. There were no areas of contention and a general acceptance of the need to ensure consistency with other anti-discrimination legislation.

Question 15: Do you agree that the sexual orientation Regulations should include direct and indirect discrimination as well as victimisation? Are there any particular considerations or situations that should be taken into account in how such provisions are drafted?

There were 24 responses to this question, comprising 20 organisations and 4 individuals. All were in favour. Nine respondents raised the issue of harassment and suggested that it should be included. They drew attention to the fact this showed up a serious inconsistency with existing law. They all felt the reasons given as to why harassment was not included were spurious, as there was already a definition within the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003. They also drew attention to the fact that bullying and harassment were major areas of concern and that to exclude harassment seriously devalued the worth of the Regulations.

Response to the specific concerns raised

As mentioned in the response to question 9, the Government has accepted the need to include harassment in these Regulations and the proposals have been amended accordingly.

Question 16: Do you agree that discriminatory practice should be included in the scope of the sexual orientation Regulations?

There were 24 responses received to this question, comprising 20 organisations and 4 individuals. No concerns were raised.

Question 17: Do you agree that discriminatory advertising should be included in the scope of the sexual orientation Regulations?

There were 23 responses received to this question, comprising 19 organisations and 4 individuals. All were in favour. One respondent was concerned that similar provisions were not included in the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003. Another was concerned that same sex dating agencies advertisements might be affected.

Response to the specific concerns raised

The Government feels that the Single Equality Bill offers the best opportunity to ensure consistency where appropriate between all the anti-discrimination legislation.

Question 18: Do you agree that instructions to discriminate should be covered by the sexual orientation Regulations?

There were 23 responses received to this question, comprising 19 organisations and 4 individuals. All were in favour, although several respondents drew attention to the anomaly created in respect of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003. They said that this should be dealt with.

Response to specific concerns raised

The Government feels that the Single Equality Bill offers the best opportunity to ensure consistency where appropriate between all the anti-discrimination legislation.

Question 19: Do you agree that the validity of contracts should be covered by the sexual orientation Regulations?

There were 21 responses received to this question, comprising 17 organisations and 4 individuals. All were in favour and no issues were raised.

Question 20: Do you agree that the enforcement provisions for the sexual orientation Regulations should match those for other anti-discrimination legislation?

There were 21 responses received to this question, comprising 17 organisations and 4 individuals, with all in favour. However a couple of points were raised, such as the view that the anonymity of applicants should be protected and that actions should be allowed without a named individual.

Response to the specific concerns raised

The Government has noted the views expressed, but does not feel that these Regulations are the correct vehicle to consider those views. The Government feels that the Single Equality Bill offers the best opportunity to ensure consistency where appropriate between all the anti-discrimination legislation.

Question 21: Do you have any comments on the proposals for how the sexual orientation Regulations will be enforced and supported by the Equality Commission for Northern Ireland?

There were 17 responses received to this question, comprising 16 organisations and 1 individual. A number of respondents commented on the need to ensure the Equality Commission was adequately resourced to carry out its functions. Most were content that enforcement was the same as for other legislation. One respondent felt that their powers should be increased to match those of the Commission for Equality and Human Rights in GB and a further respondent wanted guidance provided.

Response to the specific concerns raised

The Government accepts the need to ensure that the Equality Commission is adequately resourced to carry out its work. In terms of the powers available to it, the Government believes that for these Regulations the ECNI powers should be consistent with what is available across other anti-discrimination legislation. The Equality Commission will be able to provide guidance as will the Office of the First and deputy First Minister. Any differences will be addressed as part of the single equality bill.

