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Equality Unit

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Response Booklet

Introduction

This booklet pulls together and further develops the questions contained in the main consultation document, which focus mainly on options for a single Equality Bill and you should refer to this document when considering your response.

This consultation builds on an initial consultation that was undertaken in 2001. The 2001 consultation was open-ended and sought opinions on the way forward and many who responded to it asked for further detail and more time to consider the issues. This consultation sets out a series of options on the key issues that need to be considered in the Bill.

For ease of reference, the booklet is arranged in sections, which reflect those in the consultation document.

You may wish to respond only to some or to all sections of the response booklet. Either way, your views are welcome.

The main sections of this booklet reflect the chapters in the main consultation document:

1. Introduction – the general approach
2. Purpose and Principles
3. Grounds – existing and possible new grounds
4. Scope – extent of protection
5. Definitions of discrimination – direct and indirect, victimisation and harassment
6. Exceptions – existing provisions and consideration for possible new grounds
7. Goods, facilities and services
8. Addressing under-representation in employment
9. Equality Commission for Northern Ireland – functions and powers
10. Tribunals and courts
11. Alternative Dispute Resolution

Completing the response booklet

Many of the questions included in this booklet simply require a tick in a box to indicate a preferred option. However, comments are also sought in order to determine why you have chosen a particular option or to seek your views on an issue raised.

The response booklet is available on the OFMDFM website at www.ofmdfmi.gov.uk/equality.

If you wish to provide a **written contribution for all or part of your response, it would be helpful if this could reflect the structure of the response booklet with cross- referencing to the section/s as appropriate.** This will greatly assist in the analysis of the information you provide.

Please take time to consider the issues raised in the consultation document. We look forward to receiving your response.

The consultation closes on 12 November 2004

Where to send your completed response booklet

Once you have completed the response booklet it should be returned to the FREEPOST address below:

**Single Equality Bill Team,
Room E3.18
Office of the First Minister and Deputy First Minister,
FREEPOST NAT17679
Belfast
BT4 3BR**

A self-addressed envelope is enclosed in the consultation pack for this purpose.

Your details:

Name: Gerry Devlin
Title: Equality Officer
Organisation: Craigavon & District Trade Union Council
Address: 136 Pinebank, Craigavon, Co Armagh

Postcode: _____

Availability of Responses

Under the Code of Practice on Open Government, any response will be made available to the public on request.

YOU OR YOUR ORGANISATION

The questions in this first section will help us to have a better understanding of who has responded to the consultation.

1. In what capacity are you responding?

On behalf of your organisation (*please go to Q.2*)

As an individual (*please go to Q.5*)

2. Is your organisation?

(*please tick the box that applies to your organisation*)

A college of further education

A company

A Government Department or Agency
(*please give full details in the box at the end of this section*)

An organisation representing employers

An organisation representing service providers

A professional association

A statutory body

A trade union/staff association

A university

A voluntary organisation

Other (please give full details in the box at the end of this section)

3. If you are replying on behalf of your organisation, how many people does your organisation employ?

Between 1 and 10 employees

Between 11 and 49 employees

Between 50 and 249 employees

250 employees or more

4. Please indicate which sector best describes you?

Advice and /or information services

Charity/voluntary work

Communications

Construction and/or building design

Distribution/Transport

Education/ training

Electricity, gas and water supply

Financial and/or business services

Health and social work

- Legal services
- Leisure - Cinemas, theatres, museums
- Leisure – hotels, restaurants, pubs
- Public administration
- Religious organisation
- Wholesale and retail trade
- Other (*please tick box and specify*)

Trade Union Body

5. Please indicate whether your prime interest is in respect of
(please tick all that apply)

- All aspects of equality
- Age
- Disability
- Gender
- Gender Reassignment
- Married Persons
- Political Opinion

Racial Grounds

Religious Belief

Sexual Orientation

Other *(please specify in the box below)*

Introduction

1.1 Have you any comments on the overall approach set out in this Chapter?

Craigavon TUC welcomes the opportunity to comment on this paper in that we believe that the stated aim of harmonising anti-discrimination law is very much required. However, this harmonisation must not be to the detriment of existing provisions and there can be no regression from what is currently in place. We must in fact add to the existing legislative framework to provide further cover for employees and social society in general.

We therefore believe that cover currently provided under Section 75 must be the minimum provided and that the obligations set out for public authorities under Section 75 must be expanded to all employers and service providers regardless of size or nature of work carried out.

1.2 What balance do you consider needs to be struck in the Bill between the prohibiting discrimination and promoting equality of opportunity approaches? (paragraphs 15 to 21 refer). Please explain the reasons for your answer.

This paper must provide for protection for all while placing a legislative requirement on employers and service providers to promote equality of opportunity. The onus must be placed on the employer or service provider to justify any exceptions to the legislative requirements rather than on the employee or service user to show their treatment was unjustified.

As already stated, the minimum must be cover as set out under Section 75 of NI Act.

Purpose and Principles

2.1 Have you any comments on the Purpose and Principles set out in this chapter?

The minimum goal of this work must be the elimination of unlawful discrimination and the promotion of equality regardless of the terms covered under Section 75. It is also vital that any legislation must be clear, concise, consistent and easily understood to the general public. It must build on what is already in place and must not regress. It should draw on the best international models and persons seeking to use the legislation should be able to do so free from any potential detriment.

The new legislation should reflect and sit well with other legislation, such as the Bill of rights and while complimenting it, should not contradict it.

Consideration should also be given to the means by which cases under the legislation will be taken forward as we see the current tribunal process as expensive, time-consuming and overly legalistic.

Grounds

Political opinion (paragraph 10)

3.1 In relation to the potential loophole in the “political opinion” ground, do you consider we should:

Have no change to present legislation?

Amend the existing definition to exclude all political opinions that support the use of violence, whether or not these are connected with the affairs of Northern Ireland?

Amend the existing definition so that there is no exclusion and leave it up to the courts to determine whether a particular political opinion was protected?

3.2 Please explain the reasons for your preference:

As political opinion is currently covered by FETO, we see any changes as unnecessary as provision exists for cases under political opinion to be taken forward and covered adequately under existing FETO provisions.

Possible new Grounds (paragraphs 19 to 32)

Marital or family status and dependants (paragraph 20)

3.3 Should a new ground of “marital or family status/dependants be included in the Bill?

YES

NO

NO VIEW

3.4 If “Yes”, should such a ground:

Reflect the definition as included in the Republic of Ireland’s Employment Equality Act? – Option (b)

Or

Be much broader to include cohabiting couples and all dependants – Option (a)

3.5 If you chose option (a), would including cohabiting couples within such a ground cause any difficulties for pensions or other benefits?

YES

NO

NO VIEW

3.6 If you answered ‘Yes’ to question 3.5 , what are the difficulties and have you any suggestions on how they could be overcome?

We believe that current provisions covering married couples could cover co-habiting couples without undue difficulties.

Grounds

3.7 Please explain the reasons for your answer:

3.8 Which specific new ground or grounds do you consider should or should not be included in the Bill?

Should be included:

All aspects of Section 75.
Gender Re-Assignment
Gender Identity
Pregnancy and Maternity
Genetic Predisposition

Should not be included:

Other Status
Victims
Language
Socio-Economic Grounds
Past Convictions

Grounds

3.9 If you listed a ground or grounds, please explain why you consider this ground or grounds should or should not be included in the Bill?

For Inclusion

All aspects of Section 75 – This should be the minimum cover provided

Gender Re-Assignment

Cover currently provided to areas of employment and training should be extended to all areas covered by the legislation.

Gender Identity

We believe that if the Gender Recognition Bill becomes law, the relationship with the SEB must be clear and easily understood.

Pregnancy and Maternity

Although a wide range of existing legislation covers this area, we feel that it should be covered in the SEB to reflect its importance.

Genetic Predisposition

Given the close connection between this and disability, we feel that its inclusion, either separately or under disability, is essential.

Not for Inclusion

Other Status

Any specifics that need inclusion following the introduction of this legislation can be considered on its own merits and we feel that this section only adds confusion to what is covered and what is not.

Victims

While excepting the difficulties for this group, we do not see the SEB as the means to address their obvious concerns.

Language

While accepting that language barriers add the social exclusion and racism, we are undecided if the SEB is the best vehicle for addressing this.

Socio-Economic Grounds

While accepting that the links between poverty and inequality are well established, the causes and effects of disadvantage are not always to be resolved in legislation and therefore feel that this particular issue may not fit well within the terms of the SEB.

Past Convictions

We again do not feel that the SEB, with its core elements covering a variety of equality issues, is best suited for addressing the obvious disadvantages experienced by this group.

3.10 Please state why you consider that other legislation and/or other mechanisms that currently exist offer inadequate protection for any new ground or grounds that you feel should be covered in the Bill?

We believe that the essential element of the SEB should be that similar cover will be provided across all aspects of the areas covered and that one area of discrimination should not be treated more robustly than another. Whereas we would seek the inclusion of areas to be covered, this does not necessarily mean that they are considered inadequate. We believe that the SEB must be comprehensive and provide equality of treatment while protecting those most vulnerable.

Equal Pay (paragraphs 34 to 36)

3.11 Should we extend the existing provisions on equal pay (currently restricted to men and women) to another ground or grounds in the Bill?

YES

NO

NO VIEW

Grounds

3.12 If you answered 'Yes', please state which ground or grounds should be included and why you consider this is necessary?

Given that pay discrimination is not restricted to just gender, and seeking comprehensive legislation covering all areas, equal pay must be extended. Also given that the Equal Pay Act has been largely ignored by Government and employers since 1970, there is a need to refine and re-enforce this issue in the minds of Government, employers and the public in general.

3.13 Should we repeal the Equal Pay Act (NI) 1970 and re-enact the provisions in this Bill?

YES

NO

NO VIEW

3.14 Have you any other comments on this Chapter? NO

Scope

4.1 Which option should be used in determining the scope of the Bill?

Limited to the scope of the EU Directives and existing NI anti-discrimination legislation -Option (a)

Set at the same level for all grounds to be included in the Bill - Option (b)
X

Extended beyond employment for new grounds only in certain circumstances with a delay in implementation - Option (c)

4.2 Please explain the reasons and outline any possible implications (advantages and disadvantages) for your choice

The scope of the SEB must be broadly defined and provide the same cover across all of the equality grounds that it will cover. We can not urge equality of treatment when the legislation itself makes a difference.

Employment concepts

4.3 Should the Bill define “employment”, “self employment” and “occupation”?

YES NO NO VIEW **X**

4.4 If you answered “YES”, should “employment” be defined using the definition in current legislation, namely “employment under a contract of service or apprenticeship or a contract personally to do any work”? - Option (b)

YES NO NO VIEW

Scope

4.5 If you answered “Yes”, should the Bill define the concepts more broadly to include relationships, which do not technically constitute a contract to allow for the inclusion of some marginal workers and volunteers? - Option (c)

YES

NO

NO VIEW

4.6 If a broader definition is to be used should it exclude volunteers?

YES

NO

NO VIEW

4.7 Should the Bill **not** define the above concepts but leave it to the Tribunals to decide on a case-by-case basis? - Option (a)

YES

NO

NO VIEW

4.8 We would welcome your views on any other way of dealing with these employment concepts

Membership and Involvement in Organisations of Workers or Employers

4.9 Should the Bill extend these provisions to some or all of the other grounds?

YES

NO

NO VIEW

Scope

4.10 If “Yes”, which grounds?

Again, equality should facilitate that all grounds are covered and, given that these organisations have a substantial influence on the lives of those they represent, and sometimes the wider community, obligations should also be placed on promoting equality and addressing under-representation in the grounds covered by the SEB.

Vocational Guidance and Vocational Training, including Practical Work Experience

4.11 Should the Bill extend this provision to some or all of the new grounds?

YES NO NO VIEW

4.12 Are you content that the associated exceptions are carried through to the Bill?

YES NO NO VIEW

4.13 Please explain the reasons for your answers and if you answered "Yes" to question 4.11 list the new grounds to be covered.

As these areas are linked to employment and employment opportunities, they also must be covered.

Scope

Social Protection, including Social Security and Healthcare and Social Advantages

4.14 Do you consider that the Bill should:

Not define these concepts but leave it to the courts to decide on a case-by-case basis? (paragraph 27 option a)

YES NO NO VIEW

Define the concepts along the lines set out in paragraph 27 option (b)?

YES NO NO VIEW

4.15 Please explain the reasons for your answer:

We feel that a comprehensive SEB must define these areas but acknowledge that exceptions, while limited, will exist.

Education

4.16 Should we bring all sectors of education under the scope of the Bill with specific exceptions where appropriate e.g. single sex schools? - Option (a)

YES NO NO VIEW

4.17 Should we incorporate existing legislation, with its varying coverage of education, and include disability provisions, which are due to be made before the Bill becomes law? - Option (b)

YES NO NO VIEW

Scope

4.18 Please explain the reasons for your answer:

Education is linked to employment and employment opportunities as well as society in general. We believe that all sectors of education must be covered.

Disposal and management of small premises

4.19 Do we:-

Retain the exception for all grounds except race? - Option (a)

YES NO NO VIEW

Remove the exception for all existing grounds except race? - Option (b)

YES NO NO VIEW

Remove the exception for all grounds but include a defence where there is an objective justification for discrimination in relation to small premises? – Option (c)

YES NO NO VIEW

4.20 Please explain the reasons for your answer. We would also welcome your views on any other way of dealing with this issue.

Scope

Coverage of public functions

4.21 Should the coverage of public functions be extended to a similar extent as in the GB Race Relations (Amendment) Act 2000? - Option (a)

YES NO NO VIEW

Should the extension of coverage of public functions be limited to that already in place for Race, this would include procurement? - Option (b)

YES NO NO VIEW

4.22 Please explain the reasons for your answer. We would also welcome your views on any other way of dealing with this issue.

Private Clubs/Voluntary Associations

4.23 Should the Bill continue to restrict coverage to the race ground only? - Option (a)

YES NO NO VIEW

4.24 Should the Bill include provisions similar to those of the race and disability grounds to cover some or all of the other grounds? - Option (b)

YES NO NO VIEW

Scope

4.25 If so, which grounds and what exceptions do you consider would be needed?

4.26 Please explain the reasons for your answer. We would also welcome your views on any other way of dealing with this issue.

Definitions of Discrimination

Direct Discrimination

5.1 Which of the following options should be used in defining direct discrimination?

Maintain the existing definition as contained in the EU directives and contained in NI legislation. In the disability legislation the “reasonable adjustment” duty would remain. Option (a)

“ For a reason which relates to his or her age, disability, gender, gender re-assignment, political opinion, racial ground, religious belief, sexual orientation (and any other grounds added to the Bill) or in relation to married persons, A treats B less favourably than he treats, has treated or would treat another person in a comparable situation.” Option (b)

“ Direct discrimination shall be taken to occur when A has caused, causes, or would cause disadvantage to B on the basis of any of the protected grounds.” Option (c)

5.2 Please give your reasons for choosing one of the above definitions.

We believe that this option is broad enough to cover all aspects of discrimination as well as cover the perception of the action as far as the individual is concerned.

5.3 If none of the above are considered suitable do you have an alternative suggestion? Please give reasons why you think this should be adopted for the Bill.

Definitions of Discrimination

5.4 Do you consider that the “reasonable adjustment” duty should be extended to other grounds?

YES NO NO VIEW

5.5 If you answered “Yes” please state which grounds and why?

Again, equality of treatment must be across all grounds.

5.6 For disability only, do you think that the current definition in the Disability legislation in relation to discrimination on the provision of GFS should remain?

YES NO NO VIEW

5.7 If you answered “No” can you suggest an alternative?

We do not see why a common broad definition should not apply to employment and GFS.

5.8 Do you have any other comments on the definition of direct discrimination?

Definitions of Discrimination

Indirect Discrimination

5.9 Do you think that a standardised definition of indirect discrimination should relate to all the grounds to be included in the Bill?

YES NO NO VIEW

5.10 If "Yes", which definition should be used?

The Framework/Race/Equal Treatment Directives definition

A separate definition

What should this definition be?

There should be a broad definition of indirect discrimination that can cover and equally apply across all of the equality grounds and also into other legislation not covered by SEB.

5.11 Should the current disability approach to indirect discrimination be maintained?

YES NO NO VIEW

5.12 Do you have any other comments on the definition of indirect discrimination?

Disability definition should be covered by broad general terms set out above.

Definitions of Discrimination

Harassment

5.13 Should the existing definition of harassment be used in all grounds?

YES NO NO VIEW

5.14 Do you think a comparator is required?

YES NO NO VIEW

5.15 If you answer "Yes" or "No" please explain the reasons for your choice

We believe that the definition should be broad and cover all grounds. Also, while comparisons will be introduced by way of evidence in cases, we do not feel they should be a requirement.

5.16 Should "sexual harassment" be defined separately?

YES

NO

NO VIEW

5.17 If you answer "Yes" or "No" please explain the reasons for your choice

As above, a broad definition should cover all grounds.

Definitions of Discrimination

5.18 Do you have any other comments on the definition of harassment?

No

Victimisation

5.19 Do you think the common definition of victimisation in current legislation and applicable to all the grounds of discrimination should be retained?

YES

NO

NO VIEW

5.20 Do you think that the definition of victimisation should be amended so that, for example, a comparator is not required?

YES

NO

NO VIEW

5.21 If so what definition should be used and what proof would be required to establish that victimisation had occurred?

The treatment and impact on a person must factor in this case rather than the need for comparators.

Definitions of Discrimination

5.22 Do you have any other comments on the definition of victimisation?

Exceptions

Compulsory Grounds (including age)

6.1 Which of the following options should be adopted in dealing with exceptions?

Remove all the existing exceptions in NI legislation and replace them with Genuine Occupational Requirements/ General Service Requirements (GOR/GSR) except where the exceptions are the responsibility of the Westminster parliament -

Option (a)?

Retain some or all of the exceptions with the option of an additional GSR exception – Option (b)?

Limit exceptions to those specifically referred to in the EU Framework Directive and include a GSR exception to cover other areas – Option (c)?

6.2 Please explain the reasons for your choice. If you choose Option (b) please list the exceptions that should be retained and explain why?

The principle of limiting exceptions as far as possible must be a cornerstone to the SEB. Option A allows for this to be the case as long as GOR/GSR onus is on the employer/service provider with regards justification of their decision/action.

Exceptions

Possible New Grounds

6.3 Which of the following options should be adopted in dealing with exceptions?

Rely solely on GOR and GSR exceptions - Option (d)?

List all the exceptions to be covered – Option (e)?

Include a limited number of specific exceptions and GOR and GSR exceptions – Option (f)?

6.4 If you choose Option (e) please give examples of the exceptions that should be covered?

Exceptions

6.5 If you choose Option (f) please list the exceptions that should be covered?

General

6.6 If you consider that some or all of the exceptions should be listed, how should these be dealt with i.e. through inclusion in primary legislation, subordinate legislation or codes of practice? Please explain your preference, highlighting any advantages and disadvantages?

Exceptions

6.7 Do you have any other comments on exceptions?

Any exceptions must be define under GOR/GSR as this way the

exceptions are limited to specific circumstances. We do not feel that specific cases can be made for example for teachers as circumstances differ in schools and across disciplines. Only when the onus is the employers/service providers will we have equality with only limited exceptions.

Goods, Facilities and Services (GFS)

Definition

7.1 In considering the need for a definition for GFS, which option should be used?

Leave GFS undefined as at present, but giving guidance by way of examples with the courts left to define in specific cases – Option (a)

Provide a comprehensive definition of GFS – Option (b)

Leave GFS undefined, but give guidance by way of examples. Could state that there was a presumption that an activity constituted the provision of GFS unless otherwise demonstrated – Option (c)

7.2 Please explain the reasons for your choice. If you choose Option (b) can you suggest a definition?

Given that society and business is constantly changing and therefore the services provided are constantly changing to meet demands, we feel that by defining the terms of what is a GFS, the impact of SEB will be weakened.

7.3 In considering option (b), do you feel that this could represent a reduction in the level of protection already afforded under the race Relations Order?

Goods, Facilities and Services

Public Functions

7.4 Do you think that the Bill should continue to specify that it is only unlawful to discriminate in the provision of GFS if the provision is to the public or a section of the public?

YES

NO

NO VIEW

7.5 Should discrimination over the provision of GFS be unlawful even when the transaction is between two private persons?

YES

NO

NO VIEW

7.6 If you answered "Yes" or "No" please explain why and in the case of the former outline what difficulties you foresee and how these might be overcome?

Balancing Obligations

7.7 Which approach should the Bill take to possible exceptions?

Option (a)

A general justification defence, to be referred to as a 'genuine service requirement'

Goods, Facilities and Services

Should the defence apply to both direct and indirect discrimination or just to indirect discrimination?

This facility should be in place while acknowledging that the onus is on the provider to justify the decision.

Option (b)

Specific exemptions

If these should be listed what sort of exceptions would be appropriate?

Should there be different exceptions for different strands, such as age, disability, gender and sexual orientation?

Goods, Facilities and Services

Option (c)

A combination of Options (a) and (b), which would provide scope for recognising/providing a genuine service requirement whilst also including a list of specific exceptions

Please explain why you have chosen this option

7.8 Are you aware of any possible implications with your chosen option?

Protection Provided by GFS Policy

7.9 Are there any determining factors that need to be considered in clarifying who should be protected? (paragraphs 35-38)

Protection should be provided in all areas under SEB.

Goods, Facilities and Services

Confidentiality Considerations

7.10 Are there any considerations around confidentiality and sensitivities in relation to GFS complaints?

Implementation

7.11 Considerations and options include:

In the event that GFS protection is introduced for existing grounds where this is currently not covered (married persons, gender re-assignment and sexual orientation), such protection is introduced on the enactment of the Bill

In the event that GFS protection for sexual orientation is to be introduced in the Bill, such provisions should be introduced on enactment of the Bill

In the event that GFS protection for age is to be introduced in the Bill, such provisions should be introduced on enactment of the Bill

In the event that GFS protection for age is to be introduced in the Bill confirm plans to introduce this protection but defer implementation to reflect the necessity to adjust service policy and procedures

Have you any views on these options?

Given the time delays already to this, implementation must be as soon as possible and there should be no delayed or staggered introduction.

Addressing Under-Representation in Employment

Grounds (paragraph 20)

8.1 Do you consider that the Bill should address under-representation in employment with regard to other grounds?

YES NO NO VIEW

8.2 If "Yes", should this include gender?

YES NO NO VIEW

8.3 If "Yes", should it include race?

YES NO NO VIEW

8.4 If "Yes", should it include disability?

YES

NO

NO VIEW

8.5 If "Yes", should it extend to other grounds as well?

YES

NO

NO VIEW

8.6 If "Yes", to which grounds and to what extent in relation to each ground should the approach be extended?

All grounds covered under SEB should be covered.

Addressing Under-Representation in Employment

8.7 Please explain the reasons for your answers

The common principle of equality as already stated.

The approach to be taken (paragraph 22)

This paragraph raises a number of issues around the balance between the legislative and non-legislative approaches.

8.8 Do you have any views on these issues?

Addressing Under-Representation in Employment

8.9 Can you suggest ways to overcome any perceived difficulties?

We believe that the extension to the FETO model to cover all aspects of the Grounds would provide the means to monitor under-representation. There should also be requirements on employers to address under-representation positively and take actions such as training,

implementation/changes to employment equality policies, etc to actively address the under-representation.

8.10 Do you consider that the existing voluntary approaches in place to tackling under representation in employment should remain unchanged?

No – as above

Addressing Under-Representation in Employment

Extension of Affirmative/Positive Action Exceptions (paragraph 23)

8.11 Should the affirmative/positive action exceptions applicable to the different grounds be harmonised?

YES

NO

NO VIEW

8.12 If you answer “Yes” or “No” please explain the reasons for your answer

Positive action must be a tool to affect change quickly regarding under-representation.

8.13 Should the affirmative/positive action exceptions be expanded to permit a wider range of voluntary affirmative action measures?

YES

NO

NO VIEW

8.14 If you answer “Yes” or “No” please explain the reasons for your answer

There are no mechanisms to monitor or address voluntary actions and this tool should be covered by SEB or associated Code of Practice.

Addressing Under-Representation in Employment

Fair Employment approach (paragraphs 24-25)

8.15 If under-representation in the context of other grounds should be addressed in the Bill, should some or all of the existing FETO approach be applied to other potentially under-represented grounds?

YES

NO

NO VIEW

8.16 If "Yes", please state which other grounds and what parts of the FETO approach?

All grounds covered by SEB.

Alternative Regulatory Approaches (paragraph 26)

8.17 If the existing FETO approach should not be adopted in whole or in part for other grounds, should a different approach be adopted to addressing under representation in employment?

YES

NO

NO VIEW

8.18 If "Yes", which grounds and what approaches might be adopted?

Addressing Under-Representation in Employment

Section 75 approach (paragraph 27)

8.19 Is a model, which places a duty on private sector employers to promote equality of opportunity, a desirable model from which to devise an

appropriate regulatory approach to addressing under- representation in employment?

YES

NO

NO VIEW

8.20 If “Yes”, should such an approach apply to all employers and grounds?

Yes – this should be the FETO model

Government Contracts and Grants

8.21 To what extent should government contracts and grants be linked to the carrying out of policies by the contractor that address under-representation in employment?

All grounds should cover all public and private sector functions.

Addressing Under-Representation in Employment

8.22 Have you any other comments on the issues raised in this chapter?

Equality Commission for Northern Ireland – Powers and Functions

General Powers and Duties (paragraphs 4-5)

9.1 Should the general duties apply across all grounds?

YES NO NO VIEW

9.2 If “No”, which grounds or ground should they not apply to and why?

9.3 Should the additional duties in place for race, fair employment, sex and disability legislation be provided for across some or all of the grounds?

YES NO NO VIEW

9.4 If “Yes”, please state which of the specific duties should be provided for in which grounds and comment on why this approach is needed for the additional grounds you have mentioned?

All grounds must be covered with the same duties to ensure equality of treatment

Equality Commission Powers and Functions

Codes of Practice (paragraphs 6-8)

9.5 Should the extent of the subject matter, which can be legally covered by ECNI codes of practice be made consistent with the scope of each ground in the Bill?

YES NO NO VIEW

9.6 At present, under the disability legislation, the Commission can prepare a code of practice dealing with matters specified by OFMDFM. Should this be extended to fair employment, race, sex and other grounds to be included in the Bill?

YES NO NO VIEW

9.7 Should the additional provisions in the race and sex codes of practice be included in all the codes of practice?

YES NO NO VIEW

9.8 Please explain the reasons for your answers

There must be a powerful, effective and fully resourced monitoring and enforcement body to implement and monitor the SEB. The Commission should have the necessary powers to ensure equality of treatment across all areas of the SEB and other legislation.

Or do you consider that the subject matter in the codes of practice should remain as at present?

YES NO NO VIEW

Equality Commission Powers and Functions

9.9 Should the “Admissible in evidence” provisions be retained in the Bill and extended to all other grounds?

YES NO NO VIEW

Powers to Support Complainants and Other Organisations (Paragraphs 10-12)

9.10 Should the existing differing provisions in the current legislation in the areas highlighted in paragraph 11 remain as they are?

YES NO NO VIEW

9.11 Should time limits apply to all the grounds in the Bill as they apply currently in the race legislation?

YES NO NO VIEW

9.12 Should the Commission be able to provide advice on prospective proceedings across all grounds?

YES NO NO VIEW

9.13 Should the Commission be able to authorise any employee to exercise its functions in relation to providing assistance?

YES NO NO VIEW

9.14 Should the recovery of expense provisions by the Commission be extended to fair employment and sexual orientation legislation related matters?

YES NO NO VIEW

9.15 Should the provision in the race legislation, which allows the Commission to provide financial or other assistance to organisations, which appear to the Commission to be concerned with the promotion of equality of opportunity and good relations, be extended to other grounds (paragraph 12)?

YES NO NO VIEW

Equality Commission Powers and Functions

9.16 If you answer 'Yes', please state which grounds and explain your reasons for such an extension

Investigations (paragraphs 13-19)

FETO approach

9.17 Should the Fair Employment legislation "no fault" concept be extended to all grounds?

YES NO NO VIEW

9.18 If you answer 'Yes', please state your reasons for such an extension

Equality Commission Powers and Functions

9.19 Should the limitations which confine FETO investigations to employment or training be removed by the Bill and brought into line with the broader remit enjoyed by the Commission under the disability, sex and race legislation – by using the same provisions in FETO as the other legislation?

YES

NO

NO VIEW

9.20 If “Yes”, why should this be done and what are the benefits?

Again, equality of treatment is essential across all grounds.

Investigations into religious belief composition

9.21 Should the Commission be legally required to conduct an investigation when instructed to do so by the Department in FETO?

YES

NO

NO VIEW

The conduct of investigations

9.22 Should the detailed provisions in the disability, sex and race legislation concerning, in particular the terms of reference of investigations, be applied by the Bill to the FETO issues?

YES

NO

NO VIEW

Or are the religious composition issues sufficiently different to justify separate provisions in relation to the conduct of investigations?

YES

NO

NO VIEW

Equality Commission Powers and Functions

Investigations in private

9.23 Should the FETO provision, which requires investigations to be conducted in private be retained in the Bill?

YES

NO

NO VIEW

9.24 Should the private investigation procedure be extended to all of the other grounds?

YES

NO

NO VIEW

Stopping or suspending investigations

9.25 Should the provision in the disability legislation, which requires the Commission to stop or to suspend the conduct of an investigation be retained?

YES

NO

NO VIEW

9.26 Should the provision be extended to all of the other grounds?

YES

NO

NO VIEW

Written reasons for refusing oral representations

9.27 Should the disability provision, which requires the Commission to give reasons in writing for refusing to receive oral representations from a person it objects to be retained?

YES

NO

NO VIEW

9.28 If "Yes", should the provision be extended to all of the other grounds?

YES

NO

NO VIEW

Equality Commission Powers and Functions

9.29 Do you have any other comments to make on Investigations?

Powers to Obtain Information and Penalties (paragraphs 20-22)

9.30 Should the Bill adopt the more general approach as set out in FETO concerning the obtaining of information except that relating to employers' duties?

YES NO NO VIEW

Or should the Bill follow the more precise route of the disability legislation and to a lesser extent the race and sex legislation?

YES NO NO VIEW

9.31 Should the option of a prison sentence for failure to comply remain available to the court under the Bill?

YES NO NO VIEW

Or should the penalty be limited to a fine as provided for in the disability legislation?

YES NO NO VIEW

Equality Commission Powers and Functions

Recommendations and Reports on Formal Investigations (paragraphs 23-24)

Extend to include FETO

9.32 Should the sex, race and disability provisions concerning the exclusion of "private affairs etc" from the report on formal investigations be extended in the Bill so that the corresponding FETO areas are covered?

YES NO NO VIEW

9.33 Should these provisions be extended to all grounds?

YES NO NO VIEW

Non- discrimination Notices

9.34 Should the disability provision, which makes clear that the Commission’s power to issue a non-discrimination notice before a report is published or prepared, is not affected by the disability provisions on reports, be extended to all grounds?

YES NO NO VIEW

Procedures for publication

9.35 Should the sex, race and disability provisions concerning procedures for publication of a report be extended to cover the corresponding fair employment areas with appropriate protection relating to individuals, etc?

YES NO NO VIEW

9.36 Should these provisions be extended to all grounds?

YES NO NO VIEW

9.37 If investigations on a “no fault” basis are adopted in the Bill should the Commission be given discretion on whether to publish reports as they have currently under FETO?

YES NO NO VIEW

Equality Commission – Powers and Functions

Inspection of Reports

9.38 Unlike race and sex, disability and fair employment do not contain any provisions concerning arrangements for reports to be available for inspection. Should the position be harmonised so that the disability and fair employment contain similar provisions?

YES NO NO VIEW

9.39 Should these provisions be extended to all grounds?

YES NO NO VIEW

Restrictions on Disclosure of Information (paragraphs 25-28)

Written consent

9.40 Would a “consent” only provision be sufficient for all grounds? The FETO provision requiring written consent would therefore not be retained.

YES NO NO VIEW

Or should the FETO written consent remain, in considering the sensitivity of the information, in that the religion of an individual can be determined? A “consent” only provision would be put in place for all other grounds.

YES NO NO VIEW

Or should the written consent provision be provided for all grounds?

YES NO NO VIEW

Equality Commission Powers and Functions

Summary Statements

9.41 Should the Bill include an exception for FETO cases so that information can be supplied to others in the form of a summary statement, which does not identify the informant or any other person to whom the information relates?

YES NO NO VIEW

Scope of Restriction Provisions

9.42 Should the scope of the restriction provisions currently in place for race and sex, which connect the information to a formal investigation only, be extended in the Bill for all grounds to mirror the fair employment and disability provisions?

YES NO NO VIEW

Exceptions for Third Parties

9.43 FETO uniquely provides exceptions for the disclosure of information to a range of third parties such as employers, employment agencies, vocational organisations etc. Should the Bill extend such exceptions to all the other grounds where there is a sensitivity issue?

YES NO NO VIEW

Or should the Bill maintain the FETO third party disclosures because of its unique regime but should not extend to all the other grounds unless those grounds have a monitoring regime, similar to that for community background in FETO, extended to them?

YES NO NO VIEW

Equality Commission Powers and Functions

FETO Defence Provision

9.44 Which of the following options should be used in the Bill in dealing with the FETO defence provision? This provision chiefly relates to monitoring.

Retain the defence provision for FETO related matters only

Extend the provision to any other grounds which, as a result of SEB policy, it is decided to extend monitoring

Information supplied to the Department

9.45 Which of the following options should be used in the Bill in dealing with the FETO requirement to supply the Department with information?

Extend to all grounds.

Extend to those grounds where, as a result of SEB policy, monitoring is extended.

Enforcement (paragraphs 29-39)

Non-discrimination Notices

Action Plans

Time Limits

Appeals against non-discrimination notices

Investigations as to compliance with non-discrimination notices

Register of non- discrimination notices

Agreements in lieu of enforcement action

Binding undertakings

Enforcement of undertakings

FETO Directions/appeal mechanisms

Equality Commission Powers and Functions

9.46 Which of the following options (a-c) should be used in the Bill in dealing with the above arrangements covering specific enforcement areas?

(a) Realign on the basis of the more flexible disability model

(b) Realign on the basis of the FETO model

In considering the disability and FETO models:

9.46.1 What are the implications for these options?

9.46.2 Would either or both of these models work, if not, why not?

Equality Commission Powers and Functions

9.46.3 Would either of these options be likely to lead to regression in any of these areas, if so, why?

(c) Remain as at present

Persistent Discrimination (paragraphs 40-41)

9.47 Should the provisions in relation to persistent discrimination be harmonised?

YES

NO

NO VIEW

Enforcement in relation to discriminatory advertisements, pressure to discriminate and instructions to discriminate (paragraphs 42-46)

Discriminatory Advertisements

9.48 Are you content for the current legislative position to be carried forward into the Bill whereby discriminatory advertisements are made explicitly unlawful?

YES

NO

NO VIEW

Equality Commission Powers and Functions

Instructions and Pressure to Discriminate

9.49 Which of the following options should be used in the Bill in dealing with this issue?

Extend the FETO model, whereby instructions to discriminate and pressure to discriminate result in both the persuader and perpetrator liable to the unlawful act, to other grounds

Harmonise the sex, race and disability provisions and leave FETO provisions as they are at present

Preliminary action in Employment cases (paragraphs 47-48)

9.50 The provisions providing for preliminary action for race and sex are not replicated for disability. Do you consider that they are necessary?

YES

NO

NO VIEW

Conciliation (paragraph 49)

9.51 Should the Bill make conciliation services for GFS complaints available for all grounds?

YES

NO

NO VIEW

9.52 Please use the following section to record any other comments you have on the issues raised in this chapter

Tribunals and Courts

Remit of Tribunals and Courts to hear complaints

10.1 Which of the options outlined in paragraph 56 should be used in dealing with employment and GFS complaints?

Option (a)

Retain the present system. The Fair Employment Tribunal continues to deal with cases of employment discrimination on the grounds of religious belief and or political opinion. The Industrial Tribunal continues to deal with all other types of employment discrimination on current and any new grounds to be covered in the Bill. The Industrial Tribunal continues to have responsibility for other employment disputes. County Courts continue to hear GFS complaints.

Option (b)

Establish an employment tribunal (possibly with a fair employment division) whose remit includes the existing responsibilities of the Fair Employment Tribunal and Industrial Tribunal. County Courts would continue to hear GFS complaints.

Option (c)

Establish a new system of employment equality tribunals dealing with discrimination matters in employment only, separate from Industrial Tribunal, which would retain responsibility for all other employment disputes. County Courts would continue to hear GFS complaints.

Option (d)

Establish a new system of equality tribunals dealing with all discrimination matters relating to employment and GFS. The Industrial Tribunal would retain responsibility for all other employment cases.

10.2 Please explain why you have chosen a particular option

Tribunals and Courts

10.3 Is there an alternative option that you feel is worthy of consideration? If so, please explain how you see this option working?

Appeals

10.4 The options for an appeals structure will be dependant upon the options chosen for the initial hearing. Which of the options outlined in paragraph 57 should be used in dealing with appeals?

Option (a)

Continue with the current arrangements in that the Court of Appeal hears appeals from both tribunals and county courts.

Option (b)

Establish a separate employment appeal tribunal to hear appeals against employment decisions. GFS appeals would continue to be heard by the Court of Appeal.

Option (c)

Establish a separate equality appeals tribunal to hear appeals against tribunal decisions on both employment and GFS.

Tribunals and Courts

Option (d)

Make provision for County Courts to hear appeals from employment tribunals with GFS appeals continuing to be heard by the Court of Appeal.

Option (e)

Make provision for County Courts to hear appeals from equality tribunals on both employment and GFS cases

10.5 Please explain why you have chosen a particular option

10.6 Is there an alternative option that you feel is worthy of consideration? If so, please explain how you see this option working?

Tribunals and Courts

Other issues in relation to Tribunals and Courts

10.7 Should the Bill allow for a representative claim?

YES

NO

NO VIEW

10.8 If "Yes", how do you think such a provision should be defined?

10.9 If "Yes", how do you see representative claims working in practice and should such a provision be for named and/or unnamed individuals?

Tribunals and Courts

10.10 Should the Bill allow for class/group actions?

YES

NO

NO VIEW

10.11 If "Yes", how do you think such a provision should be defined?

10.12 If "Yes", how do you see class/group actions working in practice and should such a provision be for named and/or unnamed individuals?

Tribunals and Courts

10.13 Are there any alternatives or additional provisions in relation to these areas that should be considered in the Bill?

YES

NO

NO VIEW

10.14 If "Yes", what should these be, how should they be defined and how do you see them working?

10.15 What organisations do you think should be allowed to engage either in support of, or on behalf of, a complainant?

Tribunals and Courts

10.16 Have you any views on the issue of legal aid?

10.17 Do you think that the additional remedy of re-instatement or re-engagement should be available in cases involving discrimination?

YES

NO

NO VIEW

10.18 If "Yes" or "No", please explain the reasons for your answer. If "Yes", do you think that such a remedy should be conditional on the agreement of the complainant?

Tribunals and Courts

10.19 Do you think that remedies available to the Industrial Tribunal in cases of employment discrimination should be harmonised with those available to the Fair Employment Tribunal under Article 39 of FETO?

YES

NO

NO VIEW

10.20 If "Yes" or "No", please explain the reasons for your answer.

10.21 Do you think that the Fair Employment Tribunal and Industrial Tribunal should have scope to award compensation for unintentional indirect discrimination in all grounds (where the concept of indirect discrimination applies)?

YES

NO

NO VIEW

10.22 If "Yes" or "No", please explain the reasons for your answer.

Tribunals and Courts

10.23 Do you consider that the current remedies, including damages, are adequate?

YES

NO

NO VIEW

10.24 If "Yes" or "No", please explain the reasons for your answer.

10.25 Should exemplary damages be available as a remedy?

YES

NO

NO VIEW

10.26 If so why? If not, what changes would you recommend?

Tribunals and Courts

10.27 Please use the following section to record any other comments you have on the issues raised in this chapter

Alternative Dispute Resolution (ADR)

11.1 Do you consider that the development of ADR for discrimination disputes in Northern Ireland is a useful and necessary development?

YES

NO

NO VIEW

11.2 If "Yes" or "No", please explain the reasons for your answer.

11.3 If "Yes", should the arbitration arrangements to be put in place by the Labour Relations Agency for religious belief and political opinion complaints be extended to cover the other grounds to be included in the Bill?

YES

NO

NO VIEW

11.4 If "Yes" or "No", please explain the reasons for your answer.

Alternative Dispute Resolution

11.5 Should any of the other ADR options currently not in use be used in seeking a resolution to a discrimination complaint?

YES

NO

NO VIEW

11.6 If "Yes", what option should be used, how would you see it operating and which organisation would be responsible for its development and taking the initiative forward?

11.7 Please use the following section to record any other comments you have on the issues raised in this chapter

Other Comments

Please use the following section to record any other comments you have on the issues and options raised in the consultation document