

56  
**RECEIVED**  
15 NOV 2004



# **A SINGLE EQUALITY BILL FOR NORTHERN IRELAND**

## **DISABILITY ACTION'S RESPONSE**

**NOVEMBER 2004**

Any enquiry concerning this document should be made to the  
Office of the Chief Executive  
Disability Action, 189 Airport Road West  
Belfast, BT3 9ED  
Tel: 028 90 297880  
Fax: 028 90 297881  
Textphone: 028 90 297882

## **INTRODUCTION**

- 1 Disability Action is a pioneering Northern Ireland charity, working with and for people with disabilities. We work with our members to provide information, training, transport, awareness programmes and representation for people regardless of their disability; whether that is a physical, mental, sensory, hidden or learning disability.
- 2 More than one in five (300,000) people in Northern Ireland has a disability and the incidence is higher here than in the rest of the United Kingdom. Over one quarter of all families here are affected.
- 3 As a campaigning body, we work to bring about positive change to the social, economic and cultural life of people with disabilities and consequently our entire community.
- 4 Our range of services is provided from a network of 5 local offices, with 100 staff and 250 volunteers.

## **GENERAL COMMENTARY**

- 5 Disability Action would advise that the format of the publication in relation to paper type, font size and colour and physical size of the discussion document limits its accessibility, particularly for those with sensory and physical disabilities.
- 6 Disability Action would also ask if a child friendly version and a version for people with learning disabilities were produced and promoted.
- 7 Disability Action has completed the response booklet but in certain sections we wish to make the additional comments outlined below.

## **SPECIFIC COMMENTARY**

- 8 Whilst welcoming the commentary on the Disability Discrimination Act, Disability Action reiterates its belief that all current anti-discrimination legislation including the Disability Discrimination Act should be harmonised to the greatest degree regardless of the perceived difficulties. (pages 23 and 24, paragraphs 6 – 8)

- 9 Disability Action welcomes the proposals to extend the definition of disability. (pages 23 and 24, paragraphs 6 – 8)
- 10 Disability Action deals with gender reassignment as part of any discussion on gender. (page 25, paragraphs 12 and 13)
- 11 We consequently advise that relevant trans issues including gender re-assignment and potentially general identity be included in an extended definition of gender.

## **CONSULTATION**

- 12 Following discussions with the Office of The First Minister and Deputy First Minister, Disability Action organised a number of seminars and one to one discussions with the disability sector to outline the key elements of the Single Equality Bill and to solicit views.
- 13 In general the introduction of the Single Equality Bill was welcomed however there were a number of specific points raised at these meetings. They were
  - Will the Single Equality Bill address the issue that within Government Departments, people with disabilities often face disadvantaged in seeking promotion.
  - Will the Department of Education include children with special educational needs within mainstream schools.
  - It is generally agreed that it is more expensive to live as person who has a disability. A question was raised whether the Single Equality Bill would address the need to have a comprehensive disability income policy.
  - There is a need to define further the role of courts and tribunals in equality cases. Exactly what will be the penalties and what is the estimated timescale for completion of cases.
  - If a case is taken to the Single Equality tribunal, particularly in relation to employment, will there be protection for the person making the claim.

- 14 Other general comments were made within the consultation meetings and Disability Action has incorporated these within our response.

# 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](http://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: Monica Wilson  
Title: Chief Executive  
Organisation: Disability Action  
Address: Portside Business Park  
189 Airport Road West  
Belfast  
Postcode: BT23 4QY

---

**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

Building design

Distribution/Transport

Education/ training

Electricity, gas and water supply

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*)

See attached Disability Action Profile

**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?

Disability Action welcomes the commitment in the Discussion Paper to maintain the current anti-discrimination protections. Disability Action would advise that equality law should, through this process be harmonised and extended to a larger number of grounds.

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.

Disability Action advises a shift of the duty from compliance (anti-discrimination) to a proactive duty to promote equality of opportunity.

The reasons for this answer are

- 1 The proactive duty is positive.
- 2 It creates an atmosphere which moves beyond compliance to enable those bound by the legislation to better develop a culture of equality.

## **Purpose and Principles**

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

### **Principle 1**

Disability Action agrees this is central to building a stable and peaceful society in Northern Ireland.

### **Principle 2**

The SEA must be underpinned by international human rights standards and by a Bill of Rights for Northern Ireland, reference to which should be specifically made in future discussion documents. Such standards should be the basis for building the SEA to ensure it becomes the model that other countries emulate.

### **Principle 3**

Agreed

### **Principle 4**

Agreed

### **Principle 5**

Agreed subject to the recognition that the means of redress must be clear, easily understood and effective and support the litigant in relation to accessible formats and languages.

### **Principle 6**

Agreed. The business case for equality and diversity has been well made and should be subject to greater government promotion.

### **Principle 7**

The premis that “every person is free to do as he or she wishes .....” is a false one. Although the freedom might technically exist, some groups have been so marginalised that they are unwillingly and, in many cases, unable to exercise those rights. The SEA must not continue the hierarchy of inequality which currently exists so ways of outreach must be identified and included in the law or supporting regulations.

### **Principle 8**

Disability Action advises that harmonisation should be pushed to the limits and that any differentials must be clearly and explicitly justified.

## 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:

Protection should not be offered in relation to belief in the use of violent means to achieve an end.

### 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

## Grounds

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

\*Nothing that legislation could not deal with.

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?

## Grounds

3.7 Please explain the reasons for your answer:

Carers face the potential for significant discrimination, particularly in relation to the perception of their situation and Disability Action believes they should be protected.

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

Should be included:

- 1 All Section 75 grounds should be included with the exception of the persons with and without disabilities and persons with and without dependants.
- 2 Marital and family status
- 3 Past convictions
- 4 Genetic predispositions
- 5 Other status

Should not be included:

"Persons without disabilities, Persons without dependants, victims, socio-economic status.

## 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?

Carers face the potential for significant discrimination, particularly in relation to the perception of their situation and Disability Action believes they should be protected.

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?

## 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?

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)

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

It is helpful for the employer or provider of GFS to deal with all grounds and scope in the same way.

## Employment concepts

4.3 Should the Bill define "employment", "self employment" and "occupation"?

YES

NO

NO VIEW

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

Volunteers are not employees. The SEA should not compromise or confuse their position and therefore should clearly define the difference.

## 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?

### 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.

## 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:

## 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:

## 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?

All grounds on a GOR/GSR basis.

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.

This would give the greatest flexibility and enable the broadest range of individuals to pursue a claim of direct discrimination. We would of course require the concept of reasonable adjustment to be retained in relation to disability.

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?

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?

The justification principle should be removed.

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

No

## 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?

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?

Indirect discrimination should cover all grounds including disability.

## 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

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

## Definitions of Discrimination

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

### 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

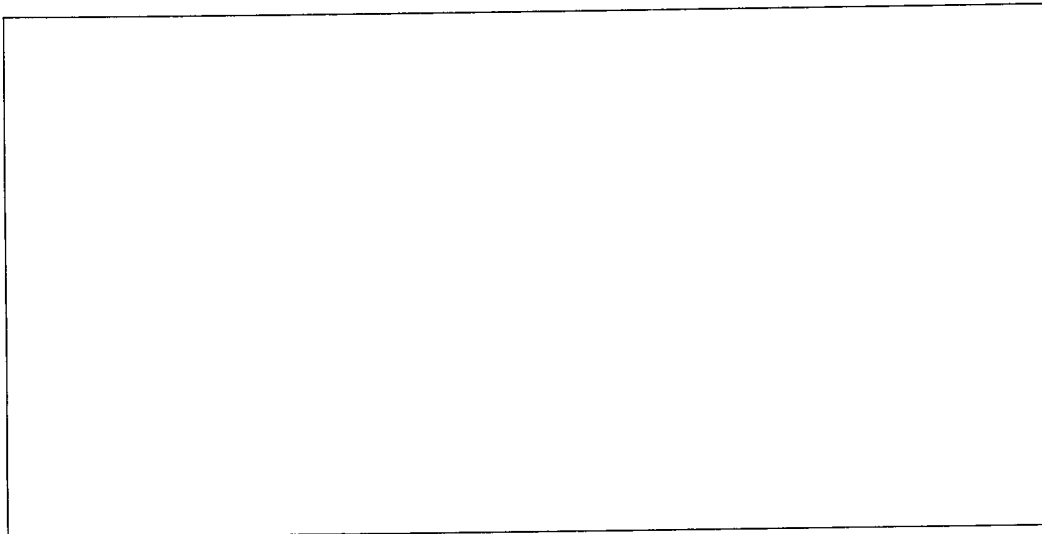
NO

NO VIEW

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

## Definitions of Discrimination

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

A large, empty rectangular box with a thin black border, intended for the respondent to provide 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?

Exceptions should be few and far between. Use of GOR/GSR will limit exceptions and ensure a greater clarity and fairness of approach.

## 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)?



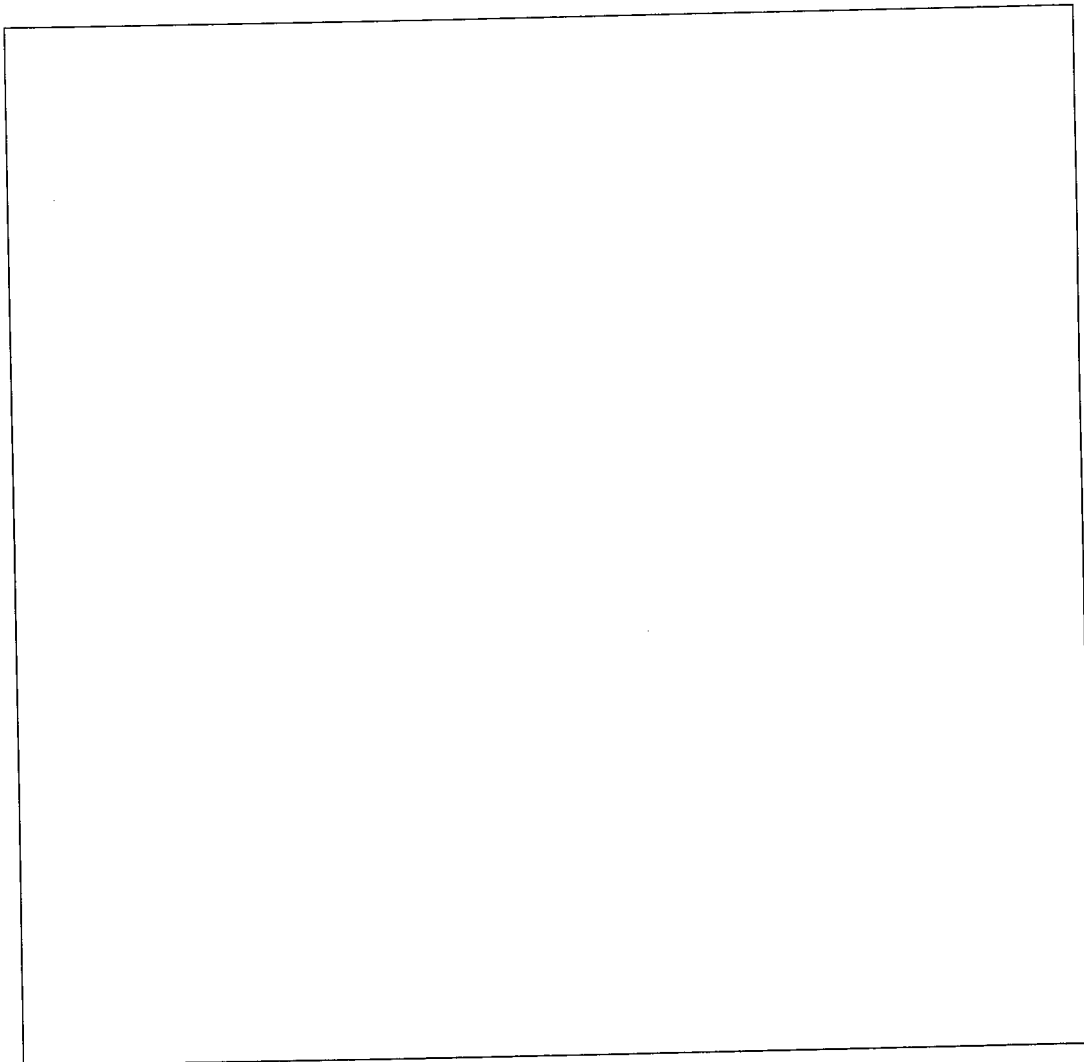
List all the exceptions to be covered – Option (e)?



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

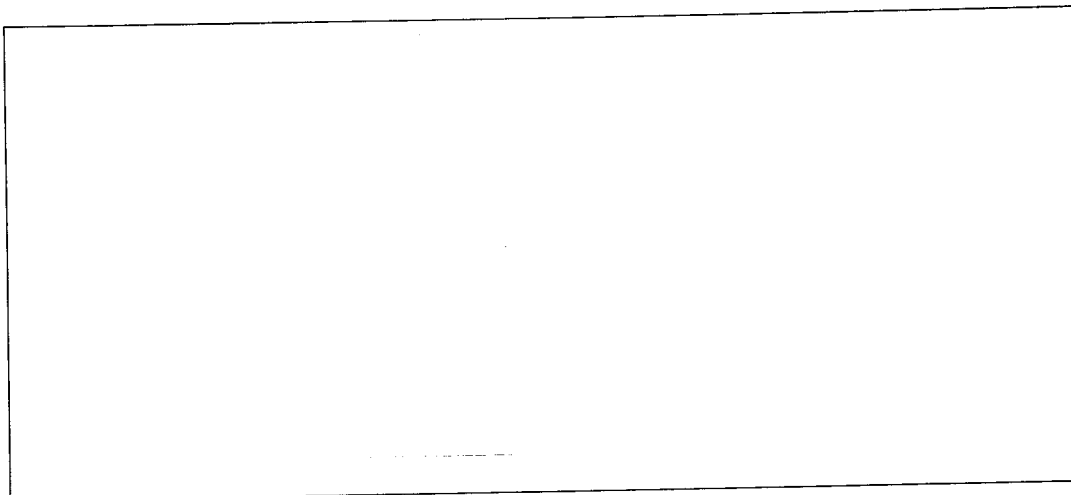


6.4 If you choose Option (e) please give examples of the exceptions that should be covered?



**Exceptions**

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

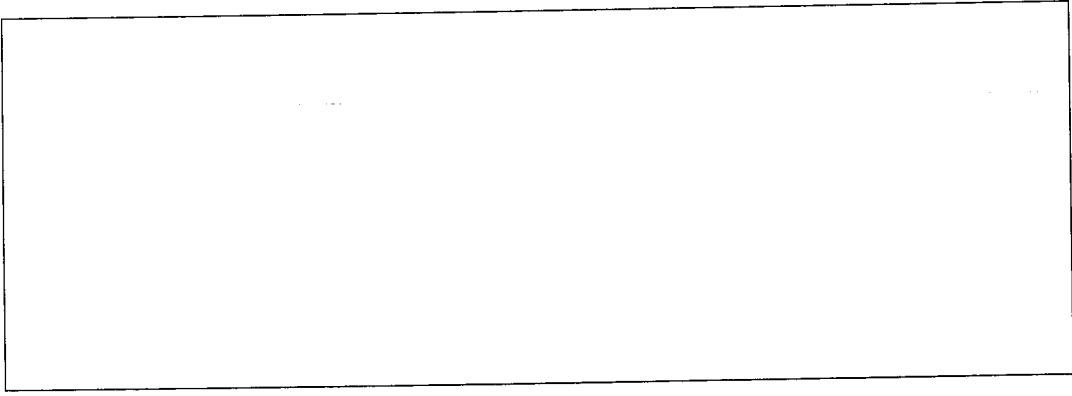


**General**

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?



## 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?

Enables the broadest interpretation of GFS and give scope for a clear and strong Code of Practice.

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?

### 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?

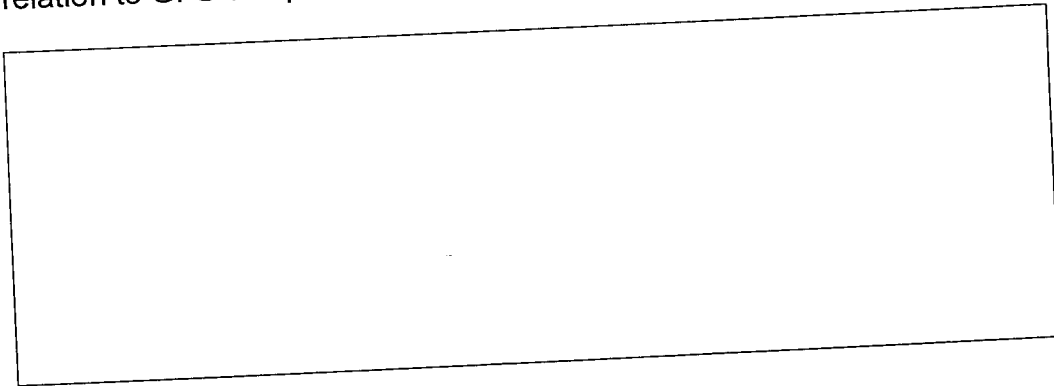
### Protection Provided by GFS Policy

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

## 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:

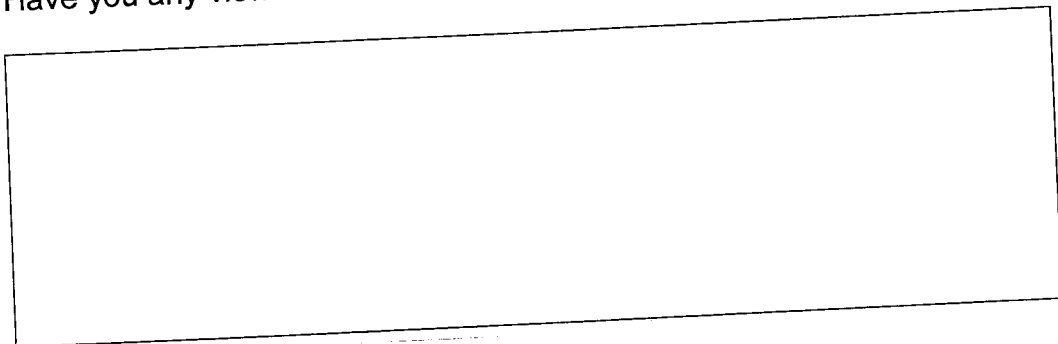
In the event that GFS protection is introduced for existing grounds where this is currently not covered (married persons, gender re-assignment and sexual orientation), such protection is introduced on the enactment of the Bill

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?



## 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?

## Addressing Under-Representation in Employment

8.7 Please explain the reasons for your answers



**The approach to be taken (paragraph 22)**

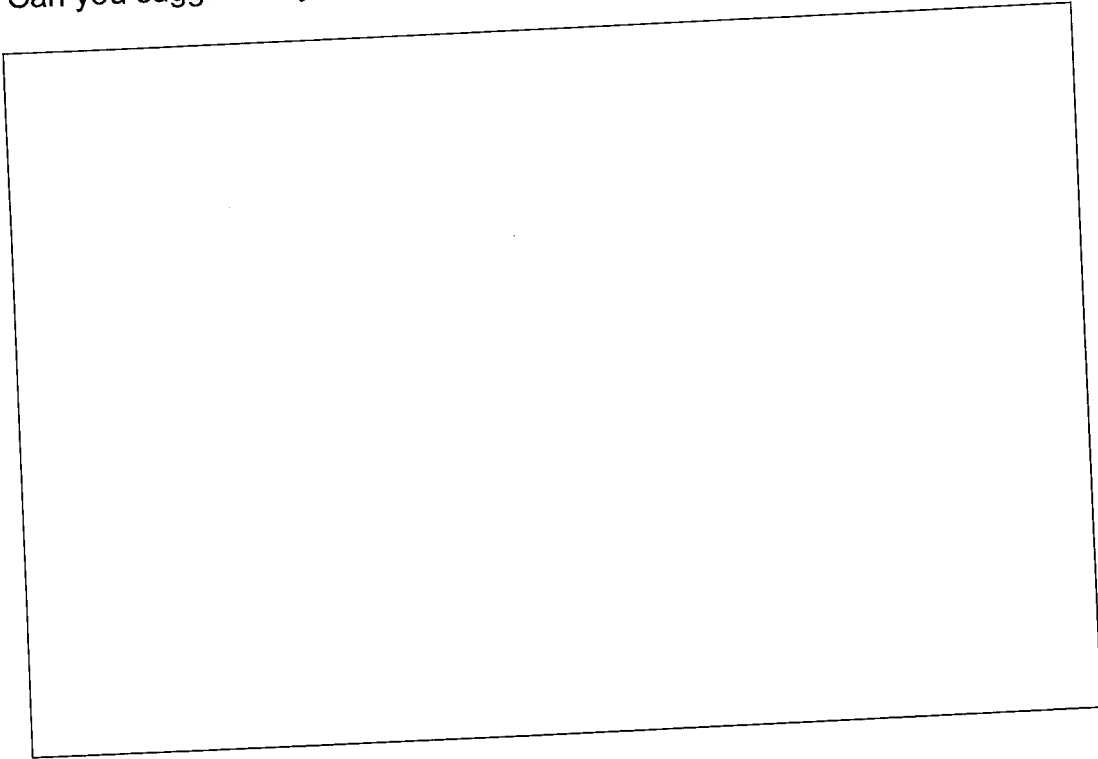
This paragraph raises a number of issues around the balance between the legislative and non-legislative approaches.

8.8 Do you have any views on these issues?

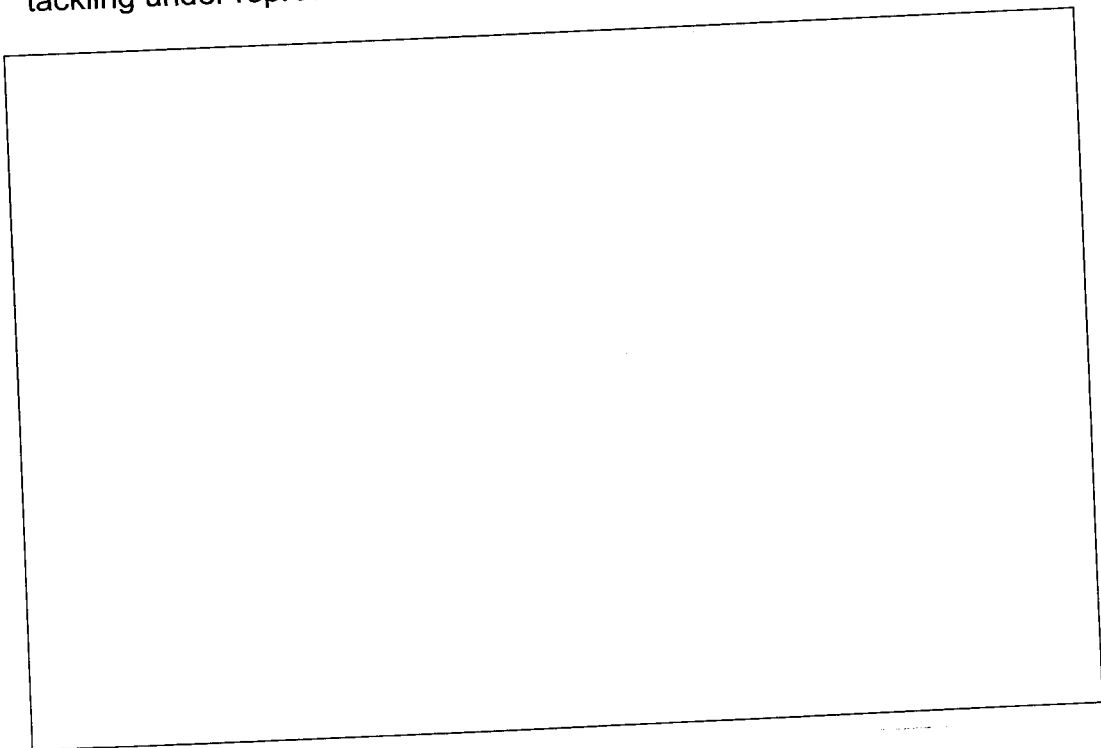


## Addressing Under-Representation in Employment

8.9 Can you suggest ways to overcome any perceived difficulties?



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



## 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

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

## 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?

### 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?

### 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?

Full contract compliance should be put in place.

## **Addressing Under-Representation in Employment**

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

A large, empty rectangular box with a thin black border, intended for the respondent to provide their comments on the issues raised in the 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?

## 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

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?

### *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

Expertise can develop alongside case law and can be retained.

## 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?

No.

## 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

Expertise is built up and retained.

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

No.

**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?

ECNI, Trade Unions and other representative/advocacy organisations.

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?

Named and 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?

ECNI, Trade Unions, Representative/Advocacy Organisation, Special Interest Groups.

## Tribunals and Courts

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

The legal aid system should be extended to this area.

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

A large, empty rectangular box with a thin black border, intended for recording comments on the issues raised in the chapter. The box is oriented vertically and occupies most of the page's width and height.

## 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

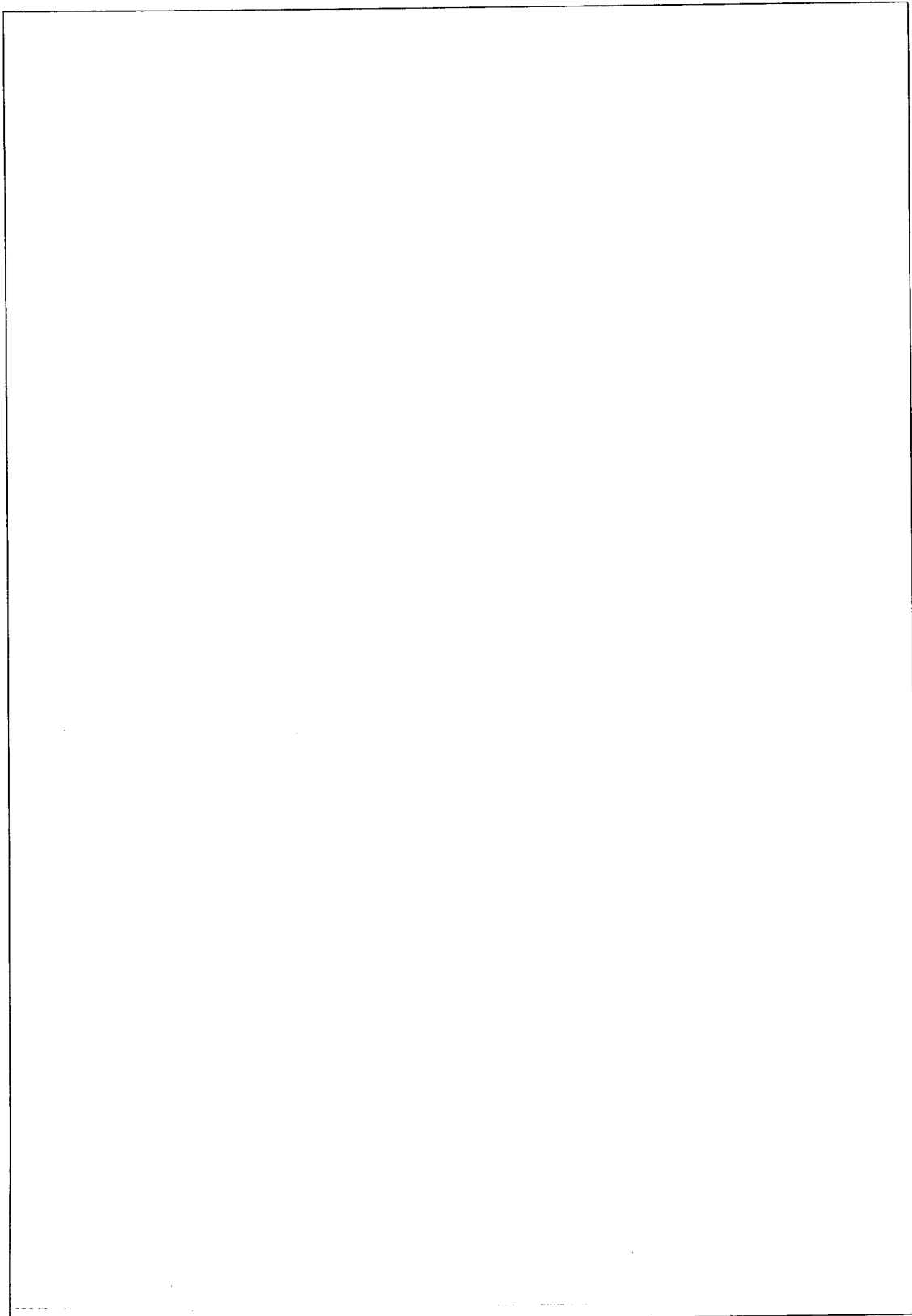
NO VIEW

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

A large, empty rectangular box with a thin black border, intended for recording comments. It occupies the majority of the page's vertical space below the introductory text.