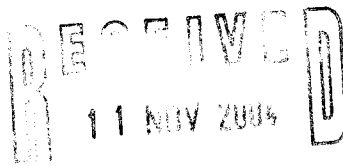




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8 November 2004

Single Equality Bill Team
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Room E3.18
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BELFAST
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Dear Sirs

A SINGLE EQUALITY BILL FOR NORTHERN IRELAND

Please find enclosed the Association's response to the Single Equality Bill.

Yours faithfully

Peter Bloch
Director

Enc

RESPONSE TO THE SINGLE EQUALITY BILL

TO: Single Equality Bill Team
Office of the First Minister and Deputy First Minister
Room E3.18
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A SINGLE EQUALITY BILL FOR NORTHERN IRELAND

EEF Northern Ireland acknowledges the overall aim of a Single Equality Bill to harmonise anti-discrimination legislation as far as practicable and to consider extending to new categories including age and sexual orientation. EEF Northern Ireland is an employer's association representing some 160 companies within Northern Ireland employing in excess of 30,000 people, predominantly in manufacturing industry.

The Fair Employment & Treatment Order deals with problems particular to Northern Ireland and evidence of the Association's commitment to dealing with these matters can be seen by the Joint Declaration of Protection brought out in advance of the original legislation. The Association has worked with its Member Companies to ensure equality of opportunity and to provide guidance and assist with compliance.

However it must be recognised that this is a unique type of discrimination in Northern Ireland. Whereas in general terms harmonisation of definitions and an attempt to provide a common framework may well assist in dealing with other forms of discrimination, the more rigorous approaches contained with regard to Fair Employment legislation should not be widened in the view of the Association.

Furthermore the legislation which is EU, GB and NI based means that in giving advice to Member Companies cognisance can be taken of UK wide Case Law as this is largely applicable in Northern Ireland with the exception of the Fair Employment legislation. This adds certainty in as far as possible and avoids creating excessive or greater burdens on business. Harmonisation therefore as a consolidation of pre-existing equality legislation is sensible but it should not include a greater burden for industry.

Set out below are the detailed provisions upon which the Association wishes to make response.

3. Grounds

Political opinion (paragraph 10)

- 3.1 It is logical to amend the definition to exclude all political opinions and support the use of violence whether or not these are connected with the affairs of Northern Ireland.

Possible new Grounds (paragraphs 19 to 32)

Marital or family status and dependants (paragraph 20)

- 3.3 The Association believes that the new ground of "marital or family status/dependants" should not be included in the new Bill as there is adequate protection elsewhere. There is already a sufficient burden on employers, especially those employing few in

number, with compliance and the cost of same. Any extension of provisions must take account of costs both in terms of time and resources to avoid creating a culture of employing as few people as possible.

4. Scope

- 4.1 Scope should be limited to the scope of the EU Directives and existing Northern Ireland anti-discrimination legislation in Option (a) as set out. Both Options (b) and (c) create the need for specific exemptions which should be settled in advance and the delay in Option (c) should be better defined than the proposal as set out.

Employment Concepts

- 4.3 It is the view of the Association that the Employment Bill should not define "employment", "self employment" and "occupation" as it is inevitable that Tribunals and the appellate Courts will in any case have cause to consider any statutory definitions. Already within Employment Law there are so many definitions of employee worker and of the employment relationship that it is not envisaged that any definition would provide greater certainty.

5. Definitions of Discrimination

Direct Discrimination

- 5.1 The view of the Association is strongly that the existing definition as contained in the EU Directives and Northern Ireland legislation should be maintained. Furthermore in disability legislation the "reasonable adjustment" duty would remain and in the view of the Association that is an entirely sensible option. The Association does not believe that the extension of the "reasonable adjustment" duty to other grounds has merit in the light of existing Case Law.

Indirect Discrimination

- 5.9 The Association believes that a standardised definition of indirect discrimination to relate to all the grounds to be included in the Bill would provide greater certainty for employers. The definition however needs careful consideration as between condition or requirement and practice. The Framework / Race / Equal Treatment Directives definition is one which employers are aware of and is supported.
- 5.11 The Association believes that the current approach to indirect discrimination regarding disability should be maintained.

Harassment

- 5.13 The existing definition of harassment should be used for all grounds.
- 5.14 The Association strongly believes that a comparator is required as hypothetical comparators can lead to arguments so complex that they are beyond many of the parties to employment disputes. The excessive complexity of Employment Law will benefit from simple definitions.

5.16 There should not be a separate definition of "sexual harassment".

Victimisation

5.19 The Association believes that the common definition of victimisation in current legislation applicable to all the grounds of discrimination should be maintained as it is certain and easily comprehended. The Association can see no reason to extend same.

6. Exceptions

Compulsory Grounds (including age)

6.1 The Association believes that retention of some or all of the exceptions for the option of an additional GSR exception Option (b) would appear to allow the flexibility required in this area and provide clarity for employers. Age discrimination will obviously require most careful consideration with regard to upper limits, retirement ages, pension issues and other such matters.

8. Addressing Under-Representation in Employment

Grounds (paragraph 20)

The Association strongly feels that under-representation in employment should be limited to the issue of Fair Employment within Northern Ireland. As regards the other categories, the Association believes that numerically the difficulties that would present would be almost impossible to decipher and not aided by an over simplistic approach. There are distinct issues in the Fair Employment & Treatment Order approach which are not applicable in the view of the Association to the other grounds suggested. In particular the monitoring of other areas in the view of the Association would provide statistically difficult issues as the numbers would be in some cases almost so small as to be insignificant and in others not capable of interpretation.

9. Equality Commission for Northern Ireland - Functions and Powers

General Powers and Duties (paragraphs 4-5)

9.1 The general duties should not apply across all grounds as this would involve monitoring which would increase the burden for employers and, in the view of the Association, would provide information which, as stated elsewhere in this response, would not assist in any analysis of matters within Northern Ireland.

9.3 The additional duties in place for race, fair employment, sex and disability legislation should not be provided for across some or all of the grounds as again this will simply increase the burden on employers.

Codes of Practice (paragraphs 6-8)

9.5 to

- 9.8 The Association strongly advocates the use of good Codes of Practice upon which there has been sufficient consultation in advance. The extension of the areas to fair employment, race, sex and other grounds for the provision of Codes of Practice again seems eminently sensible. However it would appear that Codes of Practice should take account of all the areas of discrimination contained within legislation to enable the best possible consistent and clear guidance to be available to those seeking same.
- 9.9 The "Admissible in evidence" provisions should be retained in the Bill and extended to other grounds.

Investigations (paragraphs 13-19)

The Association believes that the existing provisions as regards investigations are appropriate. There should be a common approach outside of Fair Employment between investigations in Northern Ireland and elsewhere within the United Kingdom. The Association believes that otherwise companies situated in Northern Ireland and elsewhere within the United Kingdom might conceivably face different issues with compliance aside from the separate Fair Employment legislation within Northern Ireland.

The Association does not believe there is any justification to give the extensive Fair Employment & Treatment Order powers to the Commission to investigate employers in such a way that would differ from powers elsewhere within the United Kingdom. There are particular issues within Northern Ireland relating to Fair Employment matters that do not exist elsewhere.

10. Tribunals and Courts

Remit of Tribunals and Courts to hear complaints

The Association strongly supports Option (b) to establish a single Employment Tribunal, albeit with the possibility of a Fair Employment division whose remit includes the existing responsibilities of the Fair Employment Tribunal and the Industrial Tribunal. County Courts would continue to hear goods, facilities and services complaints. The Association can see no reason to have two separate Tribunals and indeed this often presents problems regarding consolidation in the manner in which matters are heard. The Association can see no logical reason to continue with the previous system.

Appeals

The Association has long believed that the establishment of an Employment Appeal Tribunal would provide parity with Great Britain and allow cheaper and quicker appeals. Whereas at present there is a more restrictive approach by way of appeal via Case Stated, there is an enormous cost disincentive regarding same. There is at present no appeal available on findings of fact, whereas the Tribunals determining cases of discrimination have an unlimited jurisdiction. This is obviously a matter of grave concern to employers. Similarly, although it is not the purpose of this response, with the increase in the Industrial Tribunal jurisdiction to £55,000, again there should be some proper appeal outside of the Case Stated procedure.

Other issues in relation to Tribunals and Courts

Representative actions and class or group actions are not matters that the Association believes are appropriate for the Tribunals. There is always the option for a Tribunal to select lead cases in conjunction with the parties and to try and adjudicate on issues common to those cases.

Legal Aid

The Association believes that there should not be Legal Aid available for participants in the Tribunal process. This would be contrary to the principle behind Tribunals wherein parties can be represented by employers organisations, Trade Unions, represent themselves or have access to Lawyers. All parties bear their costs. To provide Legal Aid provides a cost advantage and raises the issue of costs more generally. The Association believes it would militate unfairly against employers.

Re-instatement or Re-engagement

At Paragraph 10.17 it is mooted that additional remedies of re-instatement or re-engagement should be involved in discrimination cases. The Association believes this is inappropriate because the parties to an employment relationship should not be forced into continuing same, nor penalised for refusal to do so, as often the hearing of a discrimination case may create antagonism between the parties. It is inappropriate and indeed recognised in Employment Law that these matters may be ordered but not enforced. Non-compliance is dealt with by financial penalties. As under discrimination legislation there is already unlimited financial jurisdiction and the Association could not see the need to consider these further remedies.

10.23 The Association for the reasons set out believes that as there is no limit in discrimination cases that the remedies are appropriate, and in addition aggravated damages are already available and the concept of punishment by way of exemplary damages is inappropriate for the employment field.

11. Alternative Dispute Resolution (ADR)

Any alternatives which are simple and appropriate are supported by the Association, especially if they offer a quicker approach to parties who so desire to try and settle their grievances elsewhere. The Labour Relations Agency provides a useful service and the Association believes this should be developed. However the Association strongly believes that alternative Dispute Resolution must be subject to the consent of both parties.

Conclusion

The Association trusts that the comments as set out above are constructive and helpful. Obviously with the advent of age legislation on a UK basis the Association believes that it is prudent and sensible to ensure that there is a harmonisation across the United Kingdom in this area and all other areas where applicable. It is presumed that the introduction of a Single Equality Bill will have cognisance of this and not put employers in Northern Ireland in a different position of those within the rest of the United Kingdom, with the exception of the Fair Employment legislation which is distinct to the Province.