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Women. Men. Different. Equal.  
Equal Opportunities Commission

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30 November 2004

Dear Sir or Madam

### **Response to Consultation: "A Single Equality Bill for Northern Ireland"**

The Equal Opportunities Commission (EOC) welcomes the opportunity to respond to the OFMDFM Consultation "A Single Equality Bill for Northern Ireland". As a sex equality body whose remit is to promote equality of opportunity between women and men, this response focuses on those elements of the consultation paper which are of particular relevance to sex equality. We have also focused on those elements of the consultation which have wider relevance beyond the particular circumstances in Northern Ireland, which fall within our own particular experience and knowledge.

The EOC is very keen that the work on the Northern Ireland Single Equality Bill should progress as speedily as possible, and its implementation not delayed further. We take the view that it would not be appropriate to hold back the implementation of the Bill in Northern Ireland simply because of developments in Great Britain and in particular the pending establishment of an Equality and Human Rights Commission for Great Britain.

The EOC recognises that this is a general response to a detailed consultation paper. On some of these issues, the EOC has a great deal of knowledge and experience and has a very developed policy line, including supporting evidence. In other areas, the EOC has given very little or no consideration to the issues. This response hereafter takes the form of a general chapter by chapter response on relevant issues.

#### **Chapter 1: Introduction**

The Equal Opportunities Commission (EOC) welcomes the proposal to introduce a

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Single Equality Act in Northern Ireland and is of the view that it would be appropriate to progress this Bill notwithstanding the fact that there are no definite proposals to introduce a Single Equality Act in Great Britain.

## **Chapter 2: Purposes and Principles**

We strongly support the creation of a Single Equality Act based on a coherent set of principles, along the lines of those proposed in this consultation document.

## **Chapter 3: Grounds**

- With regard to the proposal to add marital/family status, in principle we support the inclusion of a ground extending protection for those with caring responsibilities for both children and adult dependents. We recognise however that complex issues arise with regard to this particular ground and that further consideration requires to be given to ascertain whether these difficulties can be resolved.
- The EOC takes the view that discrimination on the grounds of pregnancy and maternity leave should be included as a specific ground, to implement specifically the decisions of the European Court of Justice on these issues.
- With regard to the proposal to include gender identity, we would support the inclusion of that ground to the extent there is no protection not only for those who have undergone or intend to undergo gender reassignment surgery, but also those trans people who have been registered in their new sex under the equivalent of the Gender Recognition Act.
- With regard to the proposals relating to equal pay, the EOC takes the view that equal pay claims should not be restricted to claims between women and men but should be extended across the other grounds. The question whether the Equal Pay Act should be subsumed within the Single Equality Act is another issue, which the EOC has not yet considered in detail.

## **Chapter 4: Scope**

- The EOC is of the view that the scope of the Single Equality Act should be the same for all grounds unless there is overwhelming justification for limiting its scope.
- With regard to clarification of the meaning of employment, self-employment and occupation, the EOC supports protection for the widest possible group, giving protection to "workers" and volunteers.
- With regard to issues of social protection, in line with our stated principle of harmonisation upwards, we would expect to see the scope of any Single Equality Act to include those areas which are currently included within the scope of race relations legislation. The EOC has not yet given any specific consideration to how these concepts should be defined.
- Again in line with the harmonisation principle, the EOC would wish to see the scope of any Act in relation to education and disposal and management of small premises consistent across all grounds.

- With regard to coverage of public functions, the EOC has long argued that public functions should come within the scope of any Single Equality Act.
- In the past the EOC has supported the existence of single sex private clubs (provided they do not control access to employment opportunities etc), but that where membership is open to women and men it should be on equal terms. However we recognise that there is a strong argument that a Single Equality Act which provides protection across the strands should include private clubs and voluntary associations within its scope, subject to genuine occupational requirement or genuine service requirement exceptions.

## **Chapter 5: Definition of Discrimination**

- With regard to the proposals for the definition on direct discrimination, the EOC is of the view that the definition would be improved by removing the need for a comparator, and defining direct discrimination as occurring "when A has caused or would cause disadvantage to B on the basis of any of the protected grounds". The EOC has not yet given specific consideration to the question of the extension of the reasonable adjustment duty to other grounds.
- With regard to the definition of indirect discrimination the EOC has expressed concern in the past about the plethora of different definitions of indirect discrimination in different fields and therefore we strongly support a standardised definition. We take the view that the definition should comply with the definition set out in the European Directives. The standardised definition should therefore make it clear that any disadvantage must be justified by a legitimate aim and the means of achieving that aim should be appropriate and necessary.
- With regard to the definition of harassment we take the view that harassment should be defined separately and that the standard European definition should be used across the strands subject to the substitution of the word "or" for "and" in line with the principle of non-regression.
- With regard to the definition of victimisation, the EOC supports a common definition of victimisation. However the EOC has in the past expressed concern about the effectiveness of the current definition of victimisation. We have recommended in the past that the burden of proof should shift once the individual has presented facts to suggest they have been victimised and in addition an automatic penalty should be awarded where victimisation is proved.

## **Chapter 6: Exceptions**

In principle, any exceptions to the principle of non-discrimination should be limited and narrowly construed. However the EOC has not yet given specific thought to the question of how exceptions should be dealt with across the strands.

## **Chapter 7: Goods, Facilities and Services**

- With regard to the definition of goods, facilities and services, the EOC takes the view that the best approach is the presumption that a particular activity would fall within the scope of the definition of goods, facilities and services, unless there were sound arguments against that presumption. In particular, public functions would properly fall within the scope of the definition of goods, facilities and services.
- With regard the scope of protection, and when any extension should be introduced, we would favour full coverage for all strands when the Bill is introduced.

## **Chapter 8: Addressing under-representation in employment**

In general the EOC supports positive action measures to address under-representation in employment. However as the FETO model is peculiar to Northern Ireland, we cannot comment on the most appropriate model.

## **Chapter 9: Equality Commission: Powers and Functions**

- The EOC has argued, in relation to the proposals for a Commission for Equality and Human Rights (CEHR) in Great Britain, for the harmonisation to the best standards of the duties and powers across all areas of responsibilities and we would recommend this in relation to the Equality Commission for Northern Ireland. In relation to the CEHR, we have argued for additional duties to include a duty to report publicly periodically on the scale and causes of inequality and a duty to advise government on the effectiveness of systems for access to justice on equality.
- In relation to codes of practice, we would support consistency to the highest standards across the grounds in line with our general principle. We also support the view that codes of practice should continue to be admissible in evidence in equality cases. We have also argued, in relation to the CEHR proposals, for a power to issue joint codes of practice with other enforcement agencies.
- With regard to investigations, although we have argued for the procedures laid down in the Sex Discrimination Act to be improved, we have no experience of the FETO model and therefore are not in a position to comment on the preferred model.
- With regard to actions for persistent discrimination we take the view that this is a very important power for the Equality Commission, particularly in respect of the deterrent effect that such a power can have. We take the view, in line with our general principle of standardisation, that the power should be harmonised across the strands. We also support standardised enforcement provisions in relation to adverts and pressure/instructions to discriminate and agree these provisions should be enforced by individuals against both the persuader and perpetrator across the grounds.

- In contrast to the proposal made in the consultation document that preliminary action in employment cases is an unnecessary power, the EOC would argue for the retention of this power. Although this power has been little used it is important for its deterrent effect and to the extent to which it allows for a strategic approach to law enforcement.
- With regard to conciliation, in relation to the CEHR, we have argued that the EOC should have the power to operate a conciliation service, but not be under any obligation to do so.

## **Chapter 10 : Tribunals and Courts**

- While the court hierarchy in Northern Ireland is different from Great Britain, we have in the past argued strongly for the creation of equality tribunals dealing with all discrimination issues., and would support that for Northern Ireland.
- With regard to the other issues considered in the consultation document, we have in the past supported proposals that would allow for representative actions, although we recognise the complexities involved in introducing a power in relation to group or class actions and believe that the tribunals, in Britain at least, have been able to deal with multiple claims through a test case approach.
- We have also supported the introduction of legal aid for employment and equality tribunals.

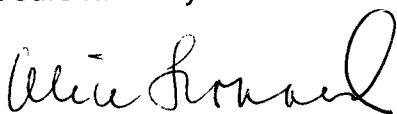
## **Chapter 11: Alternative Dispute Resolution**

The EOC in principle supports alternative dispute resolution but recognises that further detailed consideration must be given to the various alternatives.

### **Further Detail of Consultation Responses**

As stated, the EOC recognises that this is a general response to a detailed consultation paper. On some of these issues, the EOC has a great deal of knowledge and experience and has a very developed policy line, including supporting evidence. In other areas, the EOC has given very little or no consideration to the issues. Should you require any further detailed information about any of the issues raised here where we have given careful thought, then please do not hesitate to contact my colleague Muriel Robison, Principal Legal Officer on 0141 245 1809 who will be pleased to assist.

Yours faithfully



**Alice Leonard**  
**Head of Strategic Law Enforcement**