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RESPONSE TO

CONSULTATION ON
SINGLE EQUALITY BILL

FROM

WEST BELFAST ECONOMIC FORUM

November 2004.

CONSULTATION ON PROPOSED SINGLE EQUALITY BILL

Historic and Legislative Context

The development of public policy in the north of Ireland has been substantially altered since the ratification of agreed government in 1998. The legal underpinning that came with Section 75 placed the promotion of equality of opportunity at the fore of policy and obliged all the key government authorities to encourage equality practices and fair employment.

West Belfast Economic Forum welcomes the opportunity to respond to the consultation document on the proposed Single Equality Legislation for the North of Ireland. We are however concerned at the extended timeframe for the implementation of this legislation. We would like to make the following key points as well as addressing substantive issues in more detail.

- Equality legislation to date has failed to make any real impact on the religious differentials in employment. Indeed the latest government statistics show that the catholic men remain twice as likely to be unemployed than Protestants and for Catholic women the ratio is 1.6, this has got worse over the years and has remained at this level over the last three years. Equality legislation will be judged by its ability to redress this institutionalised inequality.
- Any single equality legislation must extend and improve on all existing legislation. Failure to do so means the maintenance of the status quo in relation to existing inequalities in our society.
- Single equality legislation must have strong legislative sanctions against people and bodies who break the law, failure to adhere to the law or ignore the law. Legislation to date especially Section 75 of the NI act shows that lack of legal sanctions has led to frustration amongst the constituencies and public bodies testing how far they can go in continuing to ignore or break the law.
- Given the widely acknowledged failure of existing legislation to redress the structural discrimination of the past any proposed new Single Equality legislation should be seen as an opportunity to actively redress the imbalances and injustices of the past. What cannot be

allowed to happen is an attempt to dilute or hide religious and political discrimination as a set of 'complex issues' as has been attempted in the past.

The success of any programme for equality and any proposed single equality Bill must include the following:

- A statutory duty to actively promote equality of opportunity and deliver equality of outcomes.
- Clear comprehensive definitions of discrimination, direct and indirect, harassment, intimidation and affirmative action. Harassment is not currently defined within existing anti discrimination legislation and the Single Equality Bill should include a clear definition of what constitutes harassment. This definition should show that harassment is a form of direct discrimination.
- The development, at a statutory level, of base-line data which would make the authorities transparent in terms of overcoming differentials. Also the annual updating of the data with percentage improvements included. Representatives of the women's lobby suggested a league table style stratification procedure.
- All procurement of services for public authorities and contracts should be subject to the Duty. The same should be reflected in single equality legislation. Provision of goods, facilities and services should cover all categories. The above have been used as a means of discrimination against Catholic firms in the past and this should not be allowed to happen in the future.
- Sexism, sectarianism and racism should be targeted more effectively within public administration, from the procurement of services through to public appointments. This should be reflected in the single equality legislation in the same spirit as the Race Directive.
- Greater comprehensiveness in coverage to address all forms of discrimination and inequality such as discrimination against ex-political prisoners and the Irish language community.
- Good-practice needs to be driven from above and because of the sensitivities of the issues surrounding equality of opportunity, 'joined-up government' must be ensured by the Executive.
- Procedures need to be put in place for naming and shaming individuals, and public authorities that are breaching their legal

obligations. There were a number of examples of representatives of public authorities taking a 'see you in court' attitude to the enforcement of equality legislation. Many thought that censure by the Secretary of State was not sufficient enough a method for enforcing the Duty and that the courts should be utilized to process cases.

- There was agreement across the board that New Targeting Social Need must be built into the whole legislative process of equality of opportunity as a matter of urgency and resourced appropriately.
- Political representatives have not adequately clarified many of the concerns around equality of opportunity from within the voluntary and community sectors. The rights of equal access to services, contracts, appointments and employment within public administration - which are 'given' in the rest of the European Union - have been confused in the north of Ireland with issues related to the conflict. In this many politicians have failed their communities by circumventing the equality of opportunity as a means of developing socio-economic policies.
- Any single equality Bill should have a coherence to allow ease of application for those with responsibilities under the legislation but also allow for easy access to and understanding of the legislation by people who seek to use it whether they are individuals or groups. Much of our existing anti discrimination legislation is complicated and inaccessible to the layperson. Single equality legislation should be clear and concise with detailed codes of Practice. Only if the legislation can be understood and utilised will it be of any benefit to the people who need it the most.
- A culture of equality of opportunity needs to be ingrained within public administration and this has to be driven from above. There was also the impression that many civil servants were resistant to the equality agenda.
- There must be a harmonisation of equality and anti-discrimination legislation both north and south which seeks to make such legislation as comprehensive as possible.
- Lessons must be learned from the ineffectiveness and failures of existing anti discrimination legislation as well as shortcomings of the existing equality duty and EU Employment Directive.

- Effectiveness of any Single Equality Legislation will depend on the political will as well as adequate resources being made available to institutions who have responsibility for its monitoring and implementation as well as the representative groups of equality constituencies.
- Positive Action/ affirmative action must be allowed for all grounds covered by the legislation. Such action must be monitored and assessed regularly for its effectiveness in delivering equality of outcome.
- Equality legislation should correspond with the forthcoming Bill of Rights particularly in the areas of social and economic rights.
- The proposed legislation and the equality agenda should have a focus on equality as opposed to equity:

GROUNDS

We have already referred to the need for other groups of people to be protected under Single equality legislation. These groups included ex prisoners and the Irish language community. We would also urge that discrimination on the grounds of socio-economic status should be included. In its position paper on the 'Review of Discriminatory Grounds Covered by the Employment Equality Act 1998' published in May of this year the Equality Authority in Dublin is recommending inclusion of this category. The Equality Authority puts forward a list of indicators that could be used to define socio economic status. These include:

- *Family background such as intergenerational history of occupation.*
- *Geographical location such as living in areas of relatively high concentrations of socio economic disadvantage.*
- *Housing tenure or home ownership.*
- *Educational background*
- *Economic situation.'*

Research already shows that such discrimination exists in the north of Ireland and that the brunt of this discrimination is borne by the catholic community.

The Equality Authority states: *' Discrimination against an individual on the basis of their socio economic status can occur where such a person is treated less favourably in relation to:*

- *Job advertising methodology*
- *Person specifications*
- *Application screening processes.*
- *Interview set up process*
- *Acceptance within the workplace.*
- *Promotion.'*

It is no accident that these same areas have been identified as areas that have been used to discriminate against a person on the grounds of religion and/or political opinion in this state.

The Equality Authority also recommends that Trade Union membership be included for protection. The Authority recognises that *'Discrimination against an individual who is a member of a trade union (recognised or not recognised) can occur, where such an employee is treated less favourably arising from trade union membership in relation to:*

- *Training opportunities*
- *Work experience*
- *Conditions of employment*
- *Selection for redundancy.*
- *Promotion opportunities or'*
- *Refusal to employ someone.*

Discrimination may also arise in relation to trade union members who:

- *Are active in the employment in trade union activities*
- *Engage in industrial action, including secondary action*
- *Refuse to have their conditions of employment governed by 'personal contracts'*
- *Have a history of trade union activity.'*

Such protections for trade union members against discrimination and in relation to equality of opportunity under a Single Equality Bill will correspond to and strengthen this under the proposed Bill of Rights where trade union membership and activity should be a right. The right to form and organise

trade unions and to bargain collectively must be incorporated into any such bill.

Given that the equality duty and the proposed Bill of Rights are designed to take account of the specific situation in the north of Ireland, they must be seen to do exactly that and to recognise the fact that we are in the process of emerging from political conflict. Any equality legislation has to reflect this situation.

The barriers placed in front of ex prisoners seeking education, training and employment have been well documented as have the other areas of active discrimination that prevent this group of people from gaining full citizenship in any new dispensation.

Coiste na n-Iarchimi have catalogued the ways in which this impacts - in both jurisdictions in Ireland - including the following examples:

- The Department of the Environment in the North requires a 'decontamination' period of 3 years before ex-prisoners can obtain taxi licences.
- Most employers ask job applicants to indicate whether or not they have a criminal record. Either ex-prisoners answer - according to their conscience - in the negative and have to hide their conviction, or they answer - against their political opinion - that they have and face outright discrimination.
- Ex-prisoners are unable to adopt or foster children.
- Mortgage companies will refuse loans to purchase houses.
- Insurance companies will refuse insurance.
- Ex-prisoners cannot stand for election until after a 'decontamination' period of 5 years.
- Anyone with a criminal record is ineligible for employment in the civil service.
- Former POWs cannot be members of management committees of social clubs or associations that provide facilities to children and young people.

'We anticipate that, as we begin to encourage people to challenge discrimination rather than put up with it, employers will increasingly rely on personal histories to discriminate against political ex-prisoners, arguing that a conviction for conflict-related offences justifies discrimination'. (Coiste:

submission to the Human Rights Commission consultation on the Bill of Rights)

It is vital that Equality legislation contains specific protection from discrimination for those with political convictions imposed by a court of law. This would provide a stronger basis for former political prisoners to challenge their exclusion from mainstream society. *'Ultimately, a process to expunge the 'criminal' records of those convicted in Diplock courts and for related offences in other jurisdictions would be the cleanest way of dealing with this issue. In the meantime, a strong anti-discrimination provision in the Bill of Rights would be an important step forward in ensuring the building of an inclusive society built on equality and respect.'* (Coiste: Submission to the Human Rights Commission Consultation n the Bill of Rights)

We welcome the proposal in the consultation document to include marital and family status in the legislation.

West Belfast Economic Forum also supports the extension of the equal pay legislation across all the grounds of the Single Equality legislation and the absorption of the Equal Pay Act into such legislation.

SCOPE

The scope of the legislation should be as broad as possible covering both EU directives and current legislation as well as covering areas such as employment, self employment and occupation including employment under contract and more informal employment which does not include a formal contract, goods facilities and services. This should also be extended to volunteers. We support the proposed use of as wide a definition of employment as possible.

The scope of the legislation should offer the same protection to all grounds.

DEFINITIONS

Definitions in single equality legislation should be clear and unambiguous and should be easily enforceable.

In relation to harassment there should be no comparator.

Definitions of direct and indirect discrimination should cover all categories.

EXCEPTIONS

All existing exceptions in legislation should be reviewed and wide consultation should be carried out on this aspect of the legislation alone. The example of the EU Directives should be examined given that there is very little scope for exceptions in these. There is a perception that exceptions have been used in the past to protect possible offenders and to provide loopholes for employers not wishing to abide by the principle of equality and non-discrimination. There should also be an examination of the Occupational Exemption clause in the EU Framework Directive which states: *'a given characteristic constitutes a genuine and determining occupational requirement, provided that the objective is necessary and legitimate and the requirement is proportionate.'*

The exception on the grounds of political opinion involving approval or the acceptance of the use of violence for political ends should be removed immediately given that we are supposed to be in a conflict resolution process and this exception does nothing to promote that.

GOODS, FACILITIES AND SERVICES

This should be included under the scope of the legislation with a wide interpretation as access to goods, facilities and services have been discriminators in the past and are vital for future tackling of inequality and poverty.

ADDRESSING UNDER REPRESENTATION IN EMPLOYMENT

WBEF believe that the 'redress of under representation' measure in the Fair Employment Treatment Order be extended to all the grounds protected under Single Equality legislation.

ENFORCEMENTS, SANCTIONS AND MONITORING.

What has yet to be seen is the effectiveness of enforcement, monitoring and test cases that should arise in relation to the implementation of Section 75. In this *its* commitment to equality is crucial for the success of the legislation. Although cumbersome the whole process is a crystallisation of the preceding legislation and lobbying and is an agreed procedure.

It has been clear from NISRA's audit of datasets that there are serious gaps in monitoring of equality not only in relation to religion and gender but also across all of the Section 75 categories as well as others. This needs to be addressed if there is to be an accountable mechanism for scrutinising the implementation of equality legislation and its outcomes.

Monitoring should not be simply limited to monitoring workforces and equal access to employment; it should also include provision of goods, facilities and services, access to and participation in education and training etc.

For monitoring to be done in any meaningful way equality legislation must have clear targets and timetables. The Equality duty fails to do this and this is one of its major shortcomings. Any single equality legislation must include clear targets and timetables for the achievement of equality of outcome. It is not simply enough to report to the Equality Commission and/or EU on a five yearly basis without sanctions being brought against departments/bodies/employers who fail to show that they are actively promoting equality of opportunity. Monitoring must be expanded to allow for collation of data both qualitative and quantitative across the whole range of Equality categories. This will facilitate the different experiences of inequality and discrimination to be delineated and brought out into the open in a scientific manner.

The whole area of enforcement has been one of the weakest areas of the equality duty. This weakness must be redressed in single equality legislation. There must be a clear system of enforcement mechanisms such as self-regulation, submission of action plans to the Equality Commission etc. The Equality Commission should have the powers to make specific recommendations for employers, public bodies and others who have responsibilities under the legislation to implement to achieve equality and these should be subject to periodic review and evaluation. Failure to comply with these should carry strong penalties and sanctions. The whole area of contract compliance has been a controversial one in terms of anti discrimination legislation but one that has proven to be ineffective because of a reluctance to employ such sanctions. Given the huge amounts of public finance and resources spent on procurement in this state, contract compliance should be linked to the achievement of equality. The SACHR report proposed that the scope for contract compliance be broadened out and linked to the promotion of affirmative action measures such as the recruitment of the long-term unemployed. SACHR specifically recommended that within public contracts targets should be set for the recruitment of people who are long term unemployed and especially those residing near where the contract was to take place, the catchment areas associated with the occupations involved and restraints on likely labour flows.

In a recent report the NI Affairs Committee recommend that the whole area of contract compliance be developed: *' We note that the government and public bodies award public contracts on behalf of the communities that they serve. It is not, therefore, in our view, unreasonable that these communities might expect that public contracts should, all other things being equal, go to contractors who further such a basic policy aim as fair employment.'*

AFFIRMATIVE/POSITIVE ACTION

Positive/affirmative action has to be at the heart of any single equality legislation. Such action must go further than the current balancing act and maintenance of the status quo and ensure radical changes in the participation of groups traditionally discriminated against in this society.

While the practice of Section 75 has as yet to be seen, in theory, it does offer some scope for departing from the limited impact of the previous legislation and formulating an affirmative drive for equality of opportunity. Single Equality legislation should provide an opportunity to develop this much further. Indeed, the need for action was hammered home by British Minister Paul Murphy during the Westminster debate on the NI Act when he stated that: *'Affirmative action in appropriate circumstances is an important method of combating inequality'* and that *'Section 75 no way calls into question the ability of the public authorities to take affirmative action in appropriate cases to correct disadvantage'*. From this premise the responsibility lies with the public authorities and the Equality Commission itself.

While the Fair Employment Treatment Order and the EU Directives allow for affirmative action we are concerned about how far the commitment from OFMDFM to including strong affirmative action measures will be reflected in single equality legislation given the stated position of one of the junior Ministers with responsibility for equality who is on record as saying:

'Unemployment differentials should not be used as a measuring mechanism in relation to fair employment. It is inappropriate therefore to set 'targets' for the reduction of differentials in unemployment.

Affirmative action, though legal, may create a situation where individual Protestants may have a diminished right to a job compared with individual Catholics.^d

And:

'There is in existence today an employment market that is operating fairly, perhaps even more than fairly, towards the catholic community. Unemployment differences have, during the review period, apparently nothing to do with unfair discrimination. This does not imply that individual cases of such discrimination no longer exist - they do. However this does not require the enhancement of all existing monitoring measures, which penalise the 'law keeper'.

It is only through clear affirmative action clauses in a single equality legislation that we will be able to see under representation of groups of

¹ Ibid

people such as women, Catholics, people with disabilities being actively addressed.

CONCLUSION

The importance of equality of opportunity in this society, for effective modern government, for public policy and for economic development, cannot be understated - particularly if public administration is to progress in a manner which is beneficial to the whole of the society. This needs to be driven from above (the Executive, Dublin, London and Brussels) with full and meaningful consultation from below (the community and voluntary sectors) and needs to be budgeted for and financed accordingly. Segregation and discrimination in public administration as well as the private sector aggravates divisions within the society at large, and consequently restricts the development of community relations. Public authorities, as with the private sector, need to be convinced that their efficiency and the demands on public revenue will be more effectively serviced if they adapt a culture and practice of equality of opportunity. Ultimately, equality means a greater pool of qualified people, greater potential for capacity working, better human resources, and an increasingly democratic utilization of public funds as well as improved quality of life for all of our citizens.