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Equality ADD

A Single Equality Bill for Northern Ireland

**A RESPONSE BY THE IRISH NATIONAL
TEACHERS' ORGANISATION**

September 2004

INTO RESPONSE

Synopsis

The Irish National Teachers' Organisation (INTO) welcomes the opportunity to respond to the consultation on the Single Equality Bill. We do so on behalf of over 6,500 teachers based in all sectors of the Northern Ireland education system. We hope that this response will help and assist in shaping the future of equality legislation in Northern Ireland.

In drafting this response INTO has stressed the need to achieve the harmonisation of the existing legislation upwards based on the FETO legislation. INTO would feel that that FETO should be the minimum standard by which all equality legislation is measured. It would remain unacceptable to INTO to allow the provisions of the Single Equality Bill to drop below what is set out in the FETO model.

INTO also believe that the legislation should set out the duties of employers and those charged with promoting equality and diversity to raise awareness and undertake campaigns and produce guidance and Codes of Practice to highlight the issue of potential discrimination in the area of work and the provision of Goods, Facilities and Services. We also believe that Section 55 monitoring and evaluation in the FETO legislation should be extended to the grounds set out in the Single Equality Bill.

INTO hope that our response will assist in the shaping of future legislation and would welcome the opportunity to discuss our response in the future.

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.

Name Mr Tony Carlin
Title: Trade Union Official
Organisation: Irish National Teachers' Organisation
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 Belfast
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1. In what capacity are you responding?

On behalf of your organisation – INTO

2. Your organisation

A trade union

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

INTO employees 7 employees in Northern Ireland. We however represent 6,500 teachers in all areas of the education sector in Northern Ireland.

4. Please indicate which sector best describes you?

Education/training

5. Please indicate whether your prime interest is in respect of

All aspects of equality

INTRODUCTION

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

INTO believes that the development of a Single Equality bill will enable harmonization of existing legislation. The Organisation would wish to ensure that in the preparation of this legislation the rights of individuals are protected and strengthened and that there is a proactive approach to the promotion of equality, particularly within the field of employment.

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.

The Organisation believes that the legislation should require organisations to promote and monitor equality over all the nine areas in an integrated process. This integration should be modelled on the Section 55 approach used in the Fair Employment legislation. Recourse to anti-discrimination is a difficult step and Applicants should be able to rely on a lack of action on behalf of respondents to monitor, evaluate and / or take proactive steps to address the inequalities under the specified areas. In addition, INTO believes that applicants should also be able to refer Section 75 complaints to an industrial tribunal.

2 Purpose and Principles

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

INTO would concur with the need for a clear and accessible framework of anti-discrimination and equality law for Northern Ireland. We also believe that the legislation must build and reinforce the existing anti-discrimination, equality and human right legislation.

The need to promote harmonious relations within Northern Ireland is essential. INTO believe that this can be achieved partly through legislation, but also through the development of community support programmes based on statistical or empirical data arrived at from Section 75 evaluations or other monitoring data.

In order to enable the law to be clear, concise and workable, it is essential that individuals who wish to pursue equality matters are clearly advised on such matters. The reliance on legal representation in many cases leads to a blurring of the issues and regrettably puts many individuals who have been discriminated against in a frightening power situation. INTO would concur with the need to the legislation to make life easier and t enable a resolution of matters speedily. The Organisation has suggested the development of a service based on a Rights Commissioner, as exists in the republic of Ireland to assist in resolving workplace disputes, thus lessennngthe demands on Industrial Tribunals.

INTO accepts that there must a balance struck between the competing demands of equality, human dignity, liberty and other social interests. However, the legislation is first and foremost and equality matter and as such should reinforce the equality rights and the anti-discrimination legislation.

INTO accepts that the cases coming to tribunals are becoming more complex. We accept that there is a need to develop a process to investigate and determine these matters. However, the rise in complex cases is in part due to the lack of training and awareness raising in the entire field of equality. It is only when the wrong has been committed and the Applicant finally seeks advice that they become aware of the potential discrimination they have suffered. It will therefore be important to ensure that the balance of the legislation does not require tribunals to balance more weight to one area than another when deciding on complex cases.

3 Grounds

3.1 Political opinion (paragraph 10)

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:

The definition of political opinion should be amended so that there is no exclusion. INTO would prefer that in the interests of justice that the courts should determine whether or not a particular political opinion is protected. We believe that in the current political environment in Northern Ireland, an automatic exclusion could lead to the creation of a climate of further political difference or prejudice to one or more parties.

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

3.4 If “Yes”, should such a ground:

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?

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?

Difficulties may arise in establishing the nature of a relationship or in defining caring responsibility.

3.7 Please explain the reasons for your answer:

The reason for our answer is because of the changing nature of family relationships. INTO would also seek protection for teachers because of the “*in loco parentis*” reference in the proposals to ensure that teachers do not find themselves the victims of inequality issues while discharging their professional duties.

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

Should be included

Married persons – for Goods and Services

Socio –economic status – for Goods and services

INTO does not have any views on any categories which **should not** be included.

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

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

Equal pay should apply to pay between differing religious beliefs, with and without a disability and on the basis of race or perceived ethnic origin.

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

Not if the repeal was to lessen the ability to differing genders to pursue claims.

3.14 Have you any other comments on this Chapter?

The issue of equal pay needs to be the subject of awareness raising, monitoring and evaluation. There should also be a provision to permit affirmative action to address the issue of unequal pay in an Organisation.

4 Scope

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

INTO would agree with option (b) to include the grounds to be included in the Bill.

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

INTO believe that to achieve a society that is founded on the principles of equality of opportunity, and then any equality legislation should reflect the spirit and letter of this concept. There is very little point in promoting equality and then advising individuals that they cannot pursue the matter when they believe they have been discriminated against.

Employment concepts

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

Yes

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

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

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

No

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)

No

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

Establishment of a contractual agreement may need to be established by either evidence or witness statements acceptable to the courts.

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

4.10 If 'Yes', which grounds?

To reflect current anti-discriminatory legislation and the implications of the Disability Discrimination legislation in relation to reasonable adjustments.

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

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

Yes

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.

INTO believes that there should be no barriers to vocational training. At this time we feel that the grounds as set out in the Bill should provide the focus for vocational training.

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)

No

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

Yes

4.15 Please explain the reasons for your answer:

The definition of social disadvantage should have some framework. It may require the use of some economic or other indices. The definition should not be so complex so as to prevent those considering complaining to be prevented from doing so.

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

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)

No

4.18 Please explain the reasons for your answer:

INTO believe that the all sectors of education should be brought under the SEB. We however reserve the right on the issue of the teacher exemption in respect of the Fair Employment provisions of the Bill. We are also concerned that a determination to implement the SENDO arrangements in NI without examining the education and related health issues, including the issue of shared funding will be necessary before these arrangements can be fully implemented.

Disposal and management of small premises

4.19 Do we:- Retain the exception for all grounds except race? - Option (a)

No

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

No

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

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

INTO believe that there should be no differing treatment in respect of any of the grounds covered by the SEB. We believe that tribunals and courts should be able to consider an argument of justification in such matters.

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

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

No

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

Similar reasoning as set out in 4.20

Private Clubs/Voluntary Associations

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

No

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

5 Definitions of Discrimination

Direct Discrimination

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

“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.

The less prescriptive definition allows for applicants to complain of discrimination. To broaden the definition or retain the existing definitions will lead to complications. It is accepted by INTO that any complaint brought under the new definition will have to be proven in keeping with the burden of proof regulations.

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.

See 5.2

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

Yes

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

Reasonable adjustment may be applicable on the grounds of pregnancy / maternity / caring / domestic arrangements. In the area of religion reasonable adjustment may be applicable to individuals in relation to access to the practices or customs of their religious belief.

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

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

No

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

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

INTO believes that the issues of gender, religion and political opinion should be included. In addition the issue of compulsory oaths for membership should be addressed in the legislation.

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

INTO believes that membership of many private clubs or voluntary associations can be used to promote inequality in the employment field, by assuring members of such organisations that they will be favoured in preference to non members. This is also important in the area of compulsory oaths which either preclude differing religions, political opinions or gender depending on the nature and type of the oath.

5.10 If “Yes”, which definition should be used?

The Equal treatment Directive definition

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

No

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

No

Harassment

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

Yes

5.14 Do you think a comparator is required?

No

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

It is not always possible for the individual suffering the harassment to recognise or identify an individual who is being treated in the same manner. Therefore to require a comparator to produce a comparator may actually prevent the issue of the harassment being investigated. The option does always exist of comparators arising in the course of evidence.

5.16 Should “sexual harassment” be defined separately?

No

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

Harassment on what ever grounds should be investigated on the basis of the agreed definition. While sexual harassment has been the most prominent act, harassment in other areas does exist and should be dealt with on an equal standing.

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

No

Victimisation

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

Yes

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

Yes

The proof would be the detrimental treatment of the effect of the detrimental treatment on the individual or individuals. This would be required as part of the burden of proof.

6 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)

Please explain the reasons for your choice. If you chose Option (b)

Please list the exceptions that should be retained and explain why?

The option favoured by INTO reflects the current policy of the Organisation. This policy of INTO is to continue to support the exception of teachers from the Fair Employment legislation.

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)

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?

The view of INTO is that the teacher exception should remain. This is the policy of the Organisations. We therefore feel that exceptions should be listed in primary legislation and within codes of practice issues by the relevant statutory bodies.

7 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, 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)

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?

No

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

Not Sure

Balancing Obligations

7.7 Which approach should the Bill take to possible exceptions?

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

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

INTO would favour the defence only to apply in indirect discrimination.

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

The nature of GFS will need to be defined. The act of provision will also need to be defined and tested, as to whether it is the intention to provide or the act of providing. The aim of the SEB should be to offer some basis of uniformity in relation to the specified areas and the overall provision of GFS without detriment, based on the areas set out in the Bill.

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)

It may be necessary to clarify the age at which discrimination on the grounds of GFS can be pursued, e.g. in the case of young adults etc.

Confidentiality Considerations

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

The issue of access to private medical procedures may require sensitive handling. Financial issues will also lead to sensitivities within this area as well.

8 Addressing Under-Representation in Employment

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

Yes

8.2 If "Yes", should this include gender?

Yes

8.3 If "Yes", should it include race?

Yes

8.4 If "Yes", should it include disability?

Yes

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

Yes

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

Age

8.7 Please explain the reasons for your answers

There is a need to ensure that where groups or minorities are under-represented within the workforce that suitable mechanisms are available to address the under-representation. To limit the under-represented categories would be to effectively to place barriers and may in itself lead to claims of unequal or discriminatory treatment.

The approach to be taken (paragraph 22)

INTO would support a process of integrated monitoring to identify imbalances in workforces. The use of awareness advertising could also assist in this area. These should be addressed proactively using the services of the statutory agencies. In addition, the use of programmes such as Opportunity Now may serve as models for bringing about change in the workforce. The setting of targets by the statutory agencies could also assist in addressing under-representation. Employees or prospective employees could also rely on discrimination legislation. The extension of the legislation to allow class actions may also serve in addressing such under-representation.

8.8 Do you have any views on these issues?

Overcoming difficulties could be managed by involving bodies such as trade unions and statutory agencies in any target setting or planning process.

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

Voluntary approaches do work. However these should be based on agreed goals and timescales to ensure that the targets are realistic and can be met. An approach similar to the Section 55 monitoring returns may prove useful in this respect.

Extension of Affirmative/Positive Action Exceptions (paragraph 23)

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

Yes

8.12 If you answer “Yes” or “No” please explain the reasons for your answer
Harmonisation should enable similar monitoring and evaluation and target setting for organisations to occur.

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

Yes

8.14 If you answer “Yes” or “No” please explain the reasons for your answer
The affirmative action / positive action serves as a useful and tested basis for allowing under-representation to be addressed on a statutory basis.

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

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

Using a statutory section55 type monitoring based on a 3 to 5 year cycle would assist in this matter. The grounds should be extended to

- Gender
- Race
- Disability
- Pay

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

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

The approach should apply to all employers with 10 or more employees and should apply to all the 9 existing Section 75 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?

Government grants should ensure that they are advertised, and offered in a non discriminatory manner, furthermore their impact should not detrimentally impact on the target audience. This would be crucial in respect of Public Private Partnerships.

Equality Commission for Northern Ireland - Functions and Powers

General Powers and Duties (paragraphs 4-5)

9.1 Should the general duties apply across all grounds?

Yes

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

No

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

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

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

Yes

9.8 Please explain the reasons for your answer

INTO believe that this would be necessary to achieve an overall harmonisation of the relevant Codes of Practice. In addition such harmonisation will assist tribunals and courts in reaching recommendations especially where more than one are of discriminatory practice is claimed.

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

Yes

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?

No

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

Yes

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

Yes

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

No

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

Yes

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

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

Possibly on the grounds of equal pay, gender, disability or political opinion or perceived religious affiliation.

Investigations (paragraphs 13-19)

FETO approach

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

No

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

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

The other pieces of anti-discrimination legislation have a much wider approach to the issue of discriminatory practice. It would be the view of INTO that the provisions of the SEB should not be differing across the designated categories. This would assist the

tribunals and courts in reaching determinations in complex cases involving one or more areas of potential discrimination.

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

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

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

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

Yes

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

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

Yes

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

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

Yes

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

Investigations should be time bound. In addition, the parties involved in the investigation should be facilitated with regular updates in relation to the progress of the investigation. In relation to 9.23 and 9.24 the report of the investigation and its recommendations should be made available to the parties to the investigation.

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

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

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

9.33 Should these provisions be extended to all grounds?
Yes

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

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

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

9.36 Should these provisions be extended to all grounds?

Yes

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

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

9.39 Should these provisions be extended to all grounds?

Yes

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.

No

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.

No

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

Yes

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

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

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

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?

No

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

No

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

Yes

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.

Yes

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

No

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

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

Yes

(b) Realign on the basis of the FETO model

No

9.46.1 What are the implications for these options?

The use of a more flexible approach may be seen as an open timescale with no defined limits. Organisations may therefore assume that they can comply if and when they feel the time is right. The more prescriptive FETO approach may lead to compliance on, "the best we can do in the time" basis. Therefore it may be useful to adopt a flexible approach but clearly agreeing time limits with the Organisation and advising of the consequences of failing to stick to these time limits.

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

Each has its merits and these are set out in 9.46.1

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

The FETO approach being more prescriptive may lead to some regression. The key to success with either of these models is to consult and agree with the parties concerned on how to develop any investigation and / or enforcement.

(c) Remain as at present

No

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

Yes

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

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

Yes

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

No

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

Conciliation (paragraph 49)

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

Yes

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

It is the view of INTO the SEB should contain provisions relating to bullying in the workplace and the protection of the dignity of employees at their place of work.

10 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.

No

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.

No

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.

No

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.

Yes

10.2 Please explain why you have chosen a particular option

The present system needs to be reviewed. To establish a system where discrimination matters are dealt with in one jurisdiction and employment matters in another would be wieldy and cumbersome. Many discrimination cases will include issues such as dismissal or redundancy and to require these to be dealt with separately, in the opinion of INTO, would not work as efficiently as the option set out in 10.1 (b).

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.

No

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.

No

Option (c)

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

Yes

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.

No

10.5 Please explain why you have chosen a particular option

This would allow more efficient administration of the appeals process. The appeal would of necessity require the establishment of a panel who were not previous engaged in reaching the original determination.

Other issues in relation to Tribunals and Courts

10.7 Should the Bill allow for a representative claim?

Yes

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

The SEB should allow a representative claim where 5 or more individuals assert that they have been the subject of a discriminatory act brought on their behalf by one of the bodies permitted to do so in the SEB. This would require the designation of bodies such as trade unions as being able to bring representative claims. . The case would be listed as a class action under the first applicant in alphabetical order.

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?
See 10.8

10.10 Should the Bill allow for class/group actions?
Yes

10.11 If "Yes", how do you think such a provision should be defined?
Similar to the provisions set out in 10.8. Class actions would allow for the efficient discharge of issues such as pensions, public sector claims and equal pay or value cases.

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?
See 10.8

10.13 Are there any alternatives or additional provisions in relation to these areas that should be considered in the Bill?
The issue of serial bullying should be admitted as a class action where appropriate.

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

10.15 What organisations do you think should be allowed to engage either in support of, or on behalf of, a complainant?
Trade union officials
Voluntary organisations such as Citizens Advice staff

10.16 Have you any views on the issue of legal aid?
Given the original nature of industrial tribunals, the issue of legal aid pushes the employment tribunals into amore and more legalistic process with barristers and solicitors. This results in the unrepresented applicant feeling daunted and overwhelmed by the entire process. Therefore legal aid may not actually assist in the dispensation of justice. It may however be possible when an Applicant indicates that they are unrepresented for the tribunal to offer advice to such an applicant on how they may be able to get assistance or legal aid.

10.17 Do you think that the additional remedy of re-instatement or reengagement should be available in cases involving discrimination?
No

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

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

To allow for harmonisation of the legislation and allow the more efficient functioning of the industrial tribunal system.

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

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

This would ensure that respondents would be required to act following a finding of indirect discrimination.

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

No

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

The issue of awards for hurt to feelings needs to be reviewed and is within the gift of the panel rather than based on the evidence and hurt felt by the applicant. Clearer guidance should be made in this respect. The issue of loss of earnings needs to be quantified before case begins, rather than at the end of a process.

10.25 Should exemplary damages be available as a remedy?

Yes

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

In similar levels to those that can be awarded in respect of injury or hurt to feelings.

11 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

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

The use of ADR or mediation or conciliation techniques can greatly assist in the early stages of a complaint in resolving personal differences. Such complaints left unresolved can regrettably find their way to tribunals forming the basis of claims of discrimination.

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

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

The use of the LRA would assist in the development management and training the requisite staff in the ADR process. The LRA current also has experience and expertise in the area of employment law and unfair dismissals and this would benefit the ADR process.

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

Mediation may assist where the issue was one of bullying.

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?

Using trained mediation advisors from the LRA or recognised mediation bodies.

12 Other Comments

INTO welcomes the opportunity to respond to the Single Equality Bill. We believe that is an important piece of legislation.

INTO also hope that the bill will allow for:

- The harmonisation of existing anti-discrimination legislation and the systems used to determine discrimination cases;
- The development of an awareness campaign around the entire issue of equality and discrimination;
- Further progress to eliminate equal pay;
- A review of the Section 75 to make it more proactive rather than paper based;
- A process to address workplace bullying and the dignity of employees at work; and
- A consistent equality monitoring process which can move the equality agenda ahead at a pace consistent with the development of Northern Ireland society.

INTO hope that our comments will be able to be included and recognised in the final draft of the SEB when it approved by Parliament.

