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Response Booklet

Introduction

This booklet pulls together and further develops the questions contained in the main consultation document, which focus mainly on options for a single Equality Bill and you should refer to this document when considering your response.

This consultation builds on an initial consultation that was undertaken in 2001. The 2001 consultation was open-ended and sought opinions on the way forward and many who responded to it asked for further detail and more time to consider the issues. This consultation sets out a series of options on the key issues that need to be considered in the Bill.

For ease of reference, the booklet is arranged in sections, which reflect those in the consultation document.

You may wish to respond only to some or to all sections of the response booklet. Either way, your views are welcome.

The main sections of this booklet reflect the chapters in the main consultation document:

1. Introduction – the general approach
2. Purpose and Principles
3. Grounds – existing and possible new grounds
4. Scope – extent of protection
5. Definitions of discrimination – direct and indirect, victimisation and harassment
6. Exceptions – existing provisions and consideration for possible new grounds
7. Goods, facilities and services
8. Addressing under-representation in employment
9. Equality Commission for Northern Ireland – functions and powers
10. Tribunals and courts
11. Alternative Dispute Resolution

Completing the response booklet

Many of the questions included in this booklet simply require a tick in a box to indicate a preferred option. However, comments are also sought in order to determine why you have chosen a particular option or to seek your views on an issue raised.

The response booklet is available on the OFMDFM website at www.ofmdfmi.gov.uk/equality.

If you wish to provide a **written contribution for all or part of your response, it would be helpful if this could reflect the structure of the response booklet with cross- referencing to the section/s as appropriate.** This will greatly assist in the analysis of the information you provide.

Please take time to consider the issues raised in the consultation document. We look forward to receiving your response.

The consultation closes on 12 November 2004

Where to send your completed response booklet

Once you have completed the response booklet it should be returned to the FREEPOST address below:

**Single Equality Bill Team,
Room E3.18
Office of the First Minister and Deputy First Minister,
FREEPOST NAT17679
Belfast
BT4 3BR**

A self-addressed envelope is enclosed in the consultation pack for this purpose.

Your details:

Name: Gay Moon
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Organisation: JUSTICE
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Availability of Responses

Under the Code of Practice on Open Government, any response will be made available to the public on request.

YOU OR YOUR ORGANISATION

The questions in this first section will help us to have a better understanding of who has responded to the consultation.

1. In what capacity are you responding?

On behalf of your organisation (*please go to Q.2*)

As an individual (*please go to Q.5*)

2. Is your organisation?

(*please tick the box that applies to your organisation*)

A college of further education

A company

A Government Department or Agency
(*please give full details in the box at the end of this section*)

An organisation representing employers

An organisation representing service providers

A professional association

A statutory body

A trade union/staff association

A university

A voluntary organisation

Other (please give full details in the box at the end of this section)

JUSTICE is an independent all-party human rights and law reform organisation. It is the British section of the International Commission of Jurists. The Equality Project at JUSTICE supports the idea of a single Equality Act and seeks to ensure a common approach to all forms of discrimination. We have sought to ensure the full and appropriate implementation of the new Race and Employment Directives. In this we have argued for such implementation that will simplify the law and ensure that it mirrors the provisions in the existing fields of discrimination.

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

Between 1 and 10 employees

Between 11 and 49 employees

X

Between 50 and 249 employees

250 employees or more

4. Please indicate which sector best describes you?

Advice and /or information services

Charity/voluntary work

Communications

Construction and/or building design

Distribution/Transport

Education/ training

Electricity, gas and water supply

Financial and/or business services

- Health and social work
- Legal services
- Leisure - Cinemas, theatres, museums
- Leisure – hotels, restaurants, pubs
- Public administration
- Religious organisation
- Wholesale and retail trade
- Other *(please tick box and specify)*

5. Please indicate whether your prime interest is in respect of
(please tick all that apply)

- All aspects of equality
- Age
- Disability
- Gender
- Gender Reassignment
- Married Persons
- Political Opinion
- Racial Grounds

Religious Belief

Sexual Orientation

Other (*please specify in the box below*)

Introduction

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

JUSTICE welcomes the proposal to harmonise discrimination law and extend its full protection to the new categories such as sexual orientation and age. In particular, we welcome :

- The recognition that equality of opportunity is good both for the economy and the community,
- The recognition of the need for an appropriate balance between rights and responsibilities, and
- The recognition that there must be no regression from the existing protection.

We believe that comprehensive reform of equality law is urgently needed in order to simplify the existing complexity in the law and ensure that each branch of discrimination law receives equal protection. We believe that there is a need for a consistency of approach which is harmonised as far as possible across the different grounds. However, we do recognise that each ground has its own defining characteristics and therefore may need some differential provision e.g. the reasonable accommodation provisions in respect of disability. These, we consider, should be kept to a minimum and carefully scrutinised to ensure that they are justifiable.

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.

JUSTICE considers that the right balance needs to be struck between prohibiting discrimination and promoting equality of opportunity.

For many employers and providers of services, legal action whether by way of a case or by way of a formal investigation, or, in some cases, merely the threat of these, has been the key catalyst for a move from inertia to action.

While change *can* be achieved through promotion, education and persuasion, past experience indicates that rarely will such change be secured without some more forceful 'driver'. Promotion of good equality practice is important, but only succeeds as part of a broader approach. There are good reasons to conclude that policy and exhortation by themselves will not effect substantive change. We therefore believe that this role should not be underestimated, or under-provided for.

On the other hand, it is clear that promotion of equal opportunities can

achieve significant change and can be used to unpick institutionalised or endemic patterns of discrimination.

These two functions are complementary and neither should be ignored in considering the right framework for equality law.

Purpose and Principles

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

JUSTICE welcomes the principles set out in chapter 2. We consider that a preamble to the Single Equality Bill, or set of principles, to influence the interpretation of the clauses of the Bill is a vital element of the proposed new Bill.

Grounds

Political opinion (paragraph 10)

3.1 In relation to the potential loophole in the “political opinion” ground, do you consider we should:

Have no change to present legislation?

Amend the existing definition to exclude all political opinions that support the use of violence, whether or not these are connected with the affairs of Northern Ireland?

Amend the existing definition so that there is no exclusion and leave it up to the courts to determine whether a particular political opinion was protected?

3.2 Please explain the reasons for your preference:

JUSTICE considers that there is clearly an anomaly here that needs to be clarified. The best way to deal with this is to make it clear that political opinions that support the use of violence will not benefit from protection from discrimination.

Possible new Grounds (paragraphs 19 to 32)

Marital or family status and dependants (paragraph 20)

3.3 Should a new ground of “marital or family status/dependants be included in the Bill?

YES

NO

NO VIEW

3.4 If “Yes”, should such a ground:

Reflect the definition as included in the Republic of Ireland’s Employment Equality Act? – Option (b)

Or

Be much broader to include cohabiting couples and all dependants – Option (a)

3.5 If you chose option (a), would including cohabiting couples within such a ground cause any difficulties for pensions or other benefits?

YES

NO

NO VIEW

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?

Pension and other benefits will need to be altered to include benefits for partners where these are not currently included.

3.7 Please explain the reasons for your answer:

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

Should be included:

Transgendered persons
Marital or family status (see above).

Should not be included:

Past convictions,
Victims,
Socio-economic status,
Language,
Genetic predisposition,
Any other status.

3.9 If you listed a ground or grounds, please explain why you consider this ground or grounds should or should not be included in the Bill?

JUSTICE considers that transgendered persons should have recognition as an identifiable disadvantaged group and should be protected by the

full range of discrimination provisions.

We agree with the Northern Ireland Equality Commission when it says

'a 'long list' approach is appropriate for a constitutional document and a shorter list where the entire edifice of an equality law regime, including indirect discrimination, affirmative action and the remit of the Commission, is applicable'.

However, we do not agree with the Northern Ireland Equality Commission when it suggests the inclusion of an 'any other status' ground. We consider that this would contribute to uncertainty in the law as well as the repeated application to Judges to extend the law. Such extensions of the law should be initiated by the legislature, not the Judiciary.

We consider that provisions in respect of past convictions should be dealt with by strengthening the provisions on rehabilitation of offenders. Similarly, we consider that both victims and socio-economic status constitute grounds that are too vague to be appropriate for the full protection of discrimination law, however, they may be appropriate for constitutional non-discrimination provisions.

- 3.10 Please state why you consider that other legislation and/or other mechanisms that currently exist offer inadequate protection for any new ground or grounds that you feel should be covered in the Bill?

The current provisions on transgendered people do not provide protection against indirect discrimination nor does it protect against discrimination in the fields of access to goods, facilities and services. We consider that this limitation in the law should be rectified.

Equal Pay (paragraphs 34 to 36)

- 3.11 Should we extend the existing provisions on equal pay (currently restricted to men and women) to another ground or grounds in the Bill?

YES

NO

NO VIEW

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

All the prohibited grounds.

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

YES

NO

NO VIEW

3.14 Have you any other comments on this Chapter?

Scope

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

Limited to the scope of the EU Directives and existing NI anti-discrimination legislation -Option (a)

Set at the same level for all grounds to be included in the Bill - Option (b)
X

Extended beyond employment for new grounds only in certain circumstances with a delay in implementation - Option (c)

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

JUSTICE considers that the current implementation of the directive falls short of the requirements of article 3 of the directives in that it makes no provision for 'occupation'. The Amendment Regulations 2003 encompass employment but self-employment is covered only where there is a contract for services and some voluntary work is excluded.

So, for example, in the case of *Mingeley v Pennock and Ivory t/a Amber Cars* [2004] IRLR 373, the Court of Appeal concluded that a taxi driver who had a contract with Amber Cars was not an 'employee'. He owned his own vehicle, Amber Cars made available to him a radio and a computer system, in return Mr Mingeley had to pay them £75 per week, to wear their uniform and conform to their pricing scheme, he could choose how many hours and when he worked. However, when he was subjected to race discrimination he found that he had no protection from discrimination under the Race Relations Act 1975 (as amended by the Race Relations Act 1976 (Amendment) Regulations 2003) because he was not an 'employee'. The Court of Appeal refused to infer that the Act could be interpreted in such a way as to be consistent with the Directive concluding that 'their inclusion could only now be achieved by legislation'.

Additionally, many volunteers are excluded from protection under the discrimination provisions, see *S E Sheffield Citizens Advice Bureau v Grayson* [2004] IRLR 353.

In our view, this is contrary to the provisions of article 3 of both the Directives, we consider that the regulations should be amended to take account of this. In this respect the implementation of the

Directives is defective.

We consider that volunteers whose voluntary work can be called an occupation should be covered by the discrimination laws. We would anticipate that this would cover voluntary work that had some continuity and degree of permanence. Occasional or transient work should not be included. So that taking an occasional home baked cake to a school fair would not be covered, but supplying a charity café with two cakes every week might come within the definition as would working one day a week in the charity shop.

Employment concepts

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

YES NO NO VIEW

4.4 If you answered “YES”, should “employment” be defined using the definition in current legislation, namely “employment under a contract of service or apprenticeship or a contract personally to do any work”? - Option (b)

YES NO NO VIEW

4.5 If you answered “Yes”, should the Bill define the concepts more broadly to include relationships, which do not technically constitute a contract to allow for the inclusion of some marginal workers and volunteers? - Option (c)

YES NO NO VIEW

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

YES NO NO VIEW

4.7 Should the Bill **not** define the above concepts but leave it to the Tribunals to decide on a case-by-case basis? - Option (a)

YES NO NO VIEW

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

Membership and Involvement in Organisations of Workers or Employers

4.9 Should the Bill extend these provisions to some or all of the other grounds?

YES NO NO VIEW

4.10 If "Yes", which grounds?

All the prohibited grounds, the scope of the Equality Act should be the same for all the designated grounds unless there a clear and strong justification for differential provisions.

Vocational Guidance and Vocational Training, including Practical Work Experience

4.11 Should the Bill extend this provision to some or all of the new grounds?

YES NO NO VIEW

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

YES NO NO VIEW

4.13 Please explain the reasons for your answers and if you answered "Yes" to question 4.11 list the new grounds to be covered.

JUSTICE considers that the scope of the Equality Act should be the same for all the designated grounds unless there is a clear and strong justification for differential provisions.

Social Protection, including Social Security and Healthcare and Social Advantages

4.14 Do you consider that the Bill should:

Not define these concepts but leave it to the courts to decide on a case-by-case basis? (paragraph 27 option a)

YES

NO

NO VIEW

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

YES

NO

NO VIEW

4.15 Please explain the reasons for your answer:

JUSTICE considers that the scope of the Equality Act should be the same for all the designated grounds unless there is a clear and strong justification for differential provisions.

Education

4.16 Should we bring all sectors of education under the scope of the Bill with specific exceptions where appropriate e.g. single sex schools? - Option (a)

YES

NO

NO VIEW

4.17 Should we incorporate existing legislation, with its varying coverage of education, and include disability provisions, which are due to be made before the Bill becomes law? - Option (b)

YES

NO

NO VIEW

4.18 Please explain the reasons for your answer:

JUSTICE considers that all sectors of education should be brought under the provisions of the SEA subject to an objective justification test based on GOR/GSR provisions.

Disposal and management of small premises

4.19 Do we:-

Retain the exception for all grounds except race? - Option (a)

YES NO NO VIEW

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

YES NO NO VIEW

Remove the exception for all grounds but include a defence where there is an objective justification for discrimination in relation to small premises? – Option (c)

YES NO NO VIEW

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

JUSTICE considers that disposal and management of small premises should be brought under the provisions of the SEA subject to an objective justification test based on GOR/GSR provisions.

Coverage of public functions

4.21 Should the coverage of public functions be extended to a similar extent as in the GB Race Relations (Amendment) Act 2000? - Option (a)

YES NO NO VIEW

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

YES NO NO VIEW

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

JUSTICE believes that non discrimination principles should underpin all public authority functions as well as public procurement policies.

Private Clubs/Voluntary Associations

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

YES

NO

NO VIEW

4.24 Should the Bill include provisions similar to those of the race and disability grounds to cover some or all of the other grounds? - Option (b)

YES

NO

NO VIEW

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

JUSTICE considers that the SEA should apply to all such private clubs/voluntary associations subject to the GOR/GSR exceptions.

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

Definitions of Discrimination

Direct Discrimination

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

Maintain the existing definition as contained in the EU directives and contained in NI legislation. In the disability legislation the “reasonable adjustment” duty would remain. Option (a)

“ For a reason which relates to his or her age, disability, gender, gender re-assignment, political opinion, racial ground, religious belief, sexual orientation (and any other grounds added to the Bill) or in relation to married persons, A treats B less favourably than he treats, has treated or would treat another person in a comparable situation.” Option (b)

“ Direct discrimination shall be taken to occur when A has caused, causes, or would cause disadvantage to B on the basis of any of the protected grounds.” Option (c)

5.2 Please give your reasons for choosing one of the above definitions.

JUSTICE considers that as far as possible there should be one definition of direct discrimination in respect of each ground of discrimination. We consider that this definition should also encompass discrimination where a person is perceived to be a member of the target group or where the discriminatory act in question is as a direct result of that person's association with or support for a member of the target group. We understand that the definition 'on the basis of any of the protected grounds' will achieve this objective.

We agree with the Northern Ireland Equality Commission that it is not necessary for direct discrimination to be established strictly on a comparative basis. The key to direct discrimination is not a 'comparator' but whether the treatment in question is on the basis of one or more of the protected grounds. The difficulties raised by the need to establish a comparator are illustrated by the current need to establish a notional comparator when an actual comparator is not available. Instead, JUSTICE considers that a comparator should be seen as evidence of direct discrimination, rather than a key element in the establishment of direct discrimination.

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.

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

YES NO NO VIEW

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

5.6 For disability only, do you think that the current definition in the Disability legislation in relation to discrimination on the provision of GFS should remain?

YES NO NO VIEW

5.7 If you answered “No” can you suggest an alternative?

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

Indirect Discrimination

5.9 Do you think that a standardised definition of indirect discrimination should relate to all the grounds to be included in the Bill?

YES NO NO VIEW

5.10 If "Yes", which definition should be used?

The Framework/Race/Equal Treatment Directives definition

A separate definition

What should this definition be?

That 'indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular racial or ethnic or national origin, colour or nationality, a particular sex, a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage unless that provision criterion or practice is objectively justified by a necessary aim and the means of achieving that aim are appropriate and necessary.'

This definition would cover all the existing grounds, it would encompass the new EU approach of not requiring statistics in order to establish indirect discrimination by adopting the new phraseology of 'particular disadvantage' but uses the stronger test of justification requiring a 'necessary' aim – as discussed in the *Bilka-Kaufhaus* case. We regard the 'legitimate aim' test as providing too low a standard for the justification of indirect discrimination.

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

YES

NO

NO VIEW

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

We consider that cases of disability discrimination should be able to use both the concepts of indirect discrimination and the failure to make 'reasonable adjustments'.

Harassment

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

YES

NO

NO VIEW

5.14 Do you think a comparator is required?

YES

NO

NO VIEW

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

We believe that whilst the presence of a comparator can be useful evidentially it is not an essential component in order to establish harassment. The search for such a comparator, or the construction of a hypothetical comparator, can degenerate into an unnecessary ritual. The provisions in relation to harassment should require the establishment of a link between the protected ground and the behaviour in question.

5.16 Should "sexual harassment" be defined separately?

YES

NO

NO VIEW

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

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

Victimisation

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

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

As noted above we consider that a comparator is not a necessary element for the establishment of discrimination.

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

Exceptions

Compulsory Grounds (including age)

6.1 Which of the following options should be adopted in dealing with exceptions?

Remove all the existing exceptions in NI legislation and replace them with Genuine Occupational Requirements/ General Service Requirements (GOR/GSR) except where the exceptions are the responsibility of the Westminster parliament -

Option (a)?

Retain some or all of the exceptions with the option of an additional GSR exception – Option (b)?

Limit exceptions to those specifically referred to in the EU Framework Directive and include a GSR exception to cover other areas – Option (c)?

6.2 Please explain the reasons for your choice. If you choose Option (b) please list the exceptions that should be retained and explain why?

JUSTICE considers that in general all exceptions should be covered by a genuine occupational requirement/general service requirement (GOR/GSR), however, we recognise that there are certain specific exceptions relating to specific grounds that will need to be retained. Consequently, we would suggest that the list of exceptions set out in the Appendix to chapter 6 should be carefully scrutinised in order to ensure that each and every one is still justified, necessary and appropriate.

In order to give guidance to employers, employees, service providers and the general public we believe that a Code of Practice giving possible examples would be useful.

Possible New Grounds

6.3 Which of the following options should be adopted in dealing with exceptions?

Rely solely on GOR and GSR exceptions - Option (d)?

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

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

X

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

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

Please see the answer to question 6.2.

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?

Such specific exceptions as were considered necessary and justifiable should be listed in primary legislation. A Code of Practice could be used to give examples of limited range of unlisted exceptions.

6.7 Do you have any other comments on exceptions?

Goods, Facilities and Services (GFS)

Definition

7.1 In considering the need for a definition for GFS, which option should be used?

Leave GFS undefined as at present, but giving guidance by way of examples with the courts left to define in specific cases – Option (a)

Provide a comprehensive definition of GFS – Option (b)

Leave GFS undefined, but give guidance by way of examples. Could state that there was a presumption that an activity constituted the provision of GFS unless otherwise demonstrated – Option (c)

7.2 Please explain the reasons for your choice. If you choose Option (b) can you suggest a definition?

JUSTICE considers that a wide general provision is desirable backed up by examples in a Code of Practice that makes it clear that all public services such as policing, housing, social services, tax collection and immigration are intended to be covered. In particular we are attracted by the idea of a presumption that an activity does constitute the provision of goods, facilities and services unless it can be demonstrated that it is not.

7.3 In considering option (b), do you feel that this could represent a reduction in the level of protection already afforded under the race Relations Order?

Public Functions

7.4 Do you think that the Bill should continue to specify that it is only unlawful to discriminate in the provision of GFS if the provision is to the public or a section of the public?

YES

NO

NO VIEW

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

YES

NO

NO VIEW

7.6 If you answered "Yes" or "No" please explain why and in the case of the former outline what difficulties you foresee and how these might be overcome?

We consider that the extension of provision to transactions between two private persons may be too wide, difficult to enforce and lacking in certainty. However, we think that in the light of the proliferation of the contracting out of public services the new Act should make it clear that public services that have been contracted out to private contractors should be fully covered.

Balancing Obligations

7.7 Which approach should the Bill take to possible exceptions?

Option (a)

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

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

The defence should apply to both direct and indirect discrimination.

Option (b)

Specific exemptions

If these should be listed what sort of exceptions would be appropriate?

Should there be different exceptions for different strands, such as age, disability, gender and sexual orientation?

Option (c)

A combination of Options (a) and (b), which would provide scope for recognising/providing a genuine service requirement whilst also including a list of specific exceptions

Please explain why you have chosen this option

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

Protection Provided by GFS Policy

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

Confidentiality Considerations

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

Cases involving issues of sexual harassment or misconduct, sexual orientation or gender re-assignment often require a degree of confidentiality if trial by publicity is to be avoided. The Courts and tribunals need to be sensitive to this and prepared to make the necessary orders should the need arise. We also believe that such issues need to be taken seriously in order to achieve compliance with articles 6 and 8 of the European Convention on Human Rights (see *XXX v YYY & anor* [2004] IRLR 471).

Implementation

7.11 Considerations and options include:

In the event that GFS protection is introduced for existing grounds where this is currently not covered (married persons, gender re-assignment and

sexual orientation), such protection is introduced on the enactment of the Bill

In the event that GFS protection for sexual orientation is to be introduced in the Bill, such provisions should be introduced on enactment of the Bill

In the event that GFS protection for age is to be introduced in the Bill, such provisions should be introduced on enactment of the Bill

In the event that GFS protection for age is to be introduced in the Bill confirm plans to introduce this protection but defer implementation to reflect the necessity to adjust service policy and procedures

Have you any views on these options?

JUSTICE considers that GFS protection should be introduced for all the existing grounds where it is currently not covered i.e. married persons, gender re-assignment and sexual orientation. This protection should mirror the protection currently available for sex and race.

We also believe that this should be extended to the ground of age as early as possible thereafter. However, we accept that the implications of this will need to be more carefully considered so that policies pursuing legitimate policy aims are not inappropriately treated.

Addressing Under-Representation in Employment

Grounds (paragraph 20)

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

YES NO NO VIEW

8.2 If "Yes", should this include gender?

YES NO NO VIEW

8.3 If "Yes", should it include race?

YES NO NO VIEW

8.4 If "Yes", should it include disability?

YES NO NO VIEW

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

YES NO NO VIEW

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

JUSTICE suggests that the current FETO model could be adopted, in a suitably modified form, across all the grounds. Clearly, these will need some adjustment across the different grounds; in particular in the case of sexual orientation the same monitoring procedures would not be appropriate. The aim should be to produce a scheme that ensured an equality of outcome in respect of all the different grounds.

8.7 Please explain the reasons for your answers

The approach to be taken (paragraph 22)

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

8.8 Do you have any views on these issues?

JUSTICE considers that a clear set of legislative requirements backed up by a clear set of legislative requirements combined with an adequate legal enforcement mechanism is essential.

Voluntary measures have repeatedly been shown to be ineffective. A very good example of the limitations in this respect can be found in the developments in relation to age equality. In 1999 the Government published a voluntary Code of Practice for Age Diversity in Employment which aimed to encourage employers to remove unnecessary age limitations, this has had very limited effect. Research published by the Employers Forum on Age indicated that this was having little effect on the way employers were running their businesses (see *Report on a survey of senior decision makers in small and medium enterprises*, Employers Forum on Age, 1999 and *Employing Older Workers*, IRS/EFA, IRS Management Review, issue 21, April 2001). Even the Government's own research has shown that although knowledge of the Code is widespread only one in four employers have adopted the guidelines (see *Age Diversity: Summary of Research Findings*, Select Committee Report on Ageism, March 2001).

8.9 Can you suggest ways to overcome any perceived difficulties?

The scheme will need to be clear and easily comprehensible in order to be fully effective.

Any scheme may need adaptation in order not to overburden small employers.

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

JUSTICE considers that voluntary approaches tend to be ineffective -- see answer to 8.8 above.

Extension of Affirmative/Positive Action Exceptions (paragraph 23)

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

YES

NO

NO VIEW

8.12 If you answer "Yes" or "No" please explain the reasons for your answer

Positive action exceptions may be necessary for different grounds at different times, the law needs to be sufficiently flexible to permit this.

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

YES

NO

NO VIEW

8.14 If you answer "Yes" or "No" please explain the reasons for your answer

We agree with the NI Equality Commission when they say:
'employers (and service providers and others) should be able to introduce, on a voluntary basis, positive measures to include previously disadvantaged groups in employment and the receipt of services without the danger of an indirect or direct discrimination action being taken against them...there may well be a role for the Commission in approving such schemes.'

We believe that such schemes should be time limited and subject to review in order to ensure that they are meeting the required objectives and that they are still needed.

Fair Employment approach (paragraphs 24-25)

8.15 If under-representation in the context of other grounds should be addressed in the Bill, should some or all of the existing FETO approach be applied to other potentially under-represented grounds?

YES

NO

NO VIEW

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

A suitably adjusted version of the current FETO model could be adopted, in a modified form, across all the grounds. Clearly, these will need some adjustment across the different grounds; in particular in the case of sexual orientation the same monitoring procedures would not be appropriate. The aim should be to produce a scheme that ensured an equality of outcome in respect of all the different grounds.

Alternative Regulatory Approaches (paragraph 26)

8.17 If the existing FETO approach should not be adopted in whole or in part for other grounds, should a different approach be adopted to addressing under representation in employment?

YES

NO

NO VIEW

8. 18 If "Yes", which grounds and what approaches might be adopted?

Section 75 approach (paragraph 27)

8.19 Is a model, which places a duty on private sector employers to promote equality of opportunity, a desirable model from which to devise an appropriate regulatory approach to addressing under- representation in employment?

YES

NO

NO VIEW

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

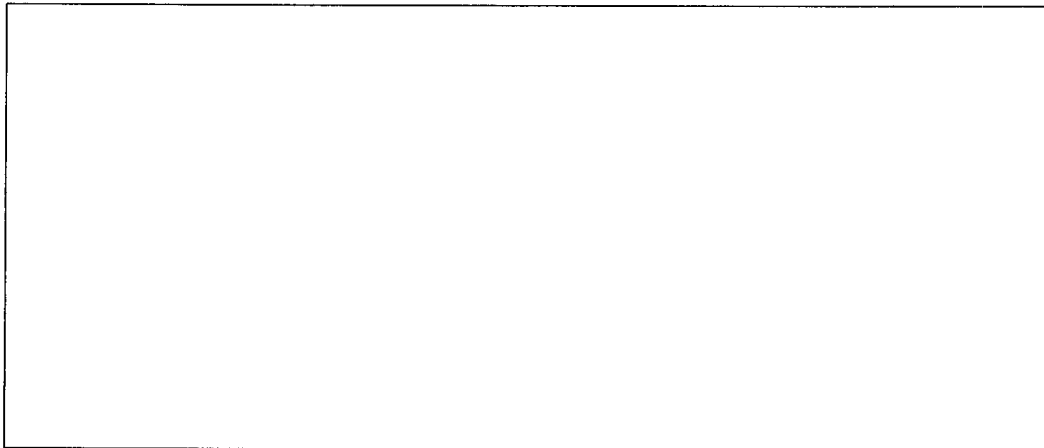
It should apply to all grounds.

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?

Linking effective discrimination provisions to the awarding of government contracts and grants is an extremely effective way of achieving change at all levels in the workforce. We believe that full advantage should be taken of such provisions.

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



Equality Commission for Northern Ireland – Powers and Functions

General Powers and Duties (paragraphs 4-5)

9.1 Should the general duties apply across all grounds?

YES

NO

NO VIEW

9.2 If “No”, which grounds or ground should they not apply to and why?

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

YES

NO

NO VIEW

9.4 If “Yes”, please state which of the specific duties should be provided for in which grounds and comment on why this approach is needed for the additional grounds you have mentioned?

The duties of the ECNI should be the same across all grounds. However, in practice, in the operation of a dynamic Commission we would expect the emphasis placed on each ground to vary from time to time.

Codes of Practice (paragraphs 6-8)

9.5 Should the extent of the subject matter, which can be legally covered by ECNI codes of practice be made consistent with the scope of each ground in the Bill?

YES

NO

NO VIEW

9.6 At present, under the disability legislation, the Commission can prepare a code of practice dealing with matters specified by OFMDFM. Should this be extended to fair employment, race, sex and other grounds to be included in the Bill?

YES

NO

NO VIEW

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

YES

NO

NO VIEW

9.8 Please explain the reasons for your answers

JUSTICE considers that Codes of Practice play a vital role in explaining the law and its implications both to those who have to apply it and those who are subject to it. We recommend the use of Codes of Practice, with examples of both good and bad practice, across all the areas covered by the Equality Commission.

We do not consider that it is appropriate for the OFMDFM to specify which matters are, or are not, to be covered as this would limit the independence of the Commission.

Or do you consider that the subject matter in the codes of practice should remain as at present?

YES

NO

NO VIEW

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

YES

NO

NO VIEW

**Powers to Support Complainants and Other Organisations
(Paragraphs 10-12)**

9.10 Should the existing differing provisions in the current legislation in the areas highlighted in paragraph 11 remain as they are?

YES

NO

NO VIEW

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

9.15 Should the provision in the race legislation, which allows the Commission to provide financial or other assistance to organisations, which appear to the Commission to be concerned with the promotion of equality of opportunity and good relations, be extended to other grounds (paragraph 12)?

YES

NO

NO VIEW

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

This power has been used in GB to set up both Race Equality Councils and Complainant Aid organisations which have played an important part in both promoting race equality to their locality and in providing advice and assistance to people experiencing discrimination. We consider that they provide a useful model for the other grounds of discrimination.

We would particularly like to draw attention to the problems arising from the paucity of provision for legal aid in discrimination cases, the need for advice and assistance for claimants is real and pressing. The model provided by the Complainant Aid organisations in GB could be a way of meeting this need.

Investigations (paragraphs 13-19)

FETO approach

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

YES

NO

NO VIEW

9.18 If you answer 'Yes', please state your reasons for such an extension

JUSTICE considers that a 'no fault' approach to an investigation is more likely to gain the co-operation of the organisation in question and therefore to achieve progress in promoting equality and preventing discriminatory practice and procedures.

9.19 Should the limitations which confine FETO investigations to employment or training be removed by the Bill and brought into line with the broader remit enjoyed by the Commission under the disability, sex and race legislation – by using the same provisions in FETO as the other legislation?

YES

NO

NO VIEW

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

All investigations should enjoy the same remit.

Investigations into religious belief composition

9.21 Should the Commission be legally required to conduct an investigation when instructed to do so by the Department in FETO?

YES

NO

NO VIEW

The conduct of investigations

9.22 Should the detailed provisions in the disability, sex and race legislation concerning, in particular the terms of reference of investigations, be applied by the Bill to the FETO issues?

YES

NO

NO VIEW

Or are the religious composition issues sufficiently different to justify separate provisions in relation to the conduct of investigations?

YES

NO

NO VIEW

Investigations in private

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

Stopping or suspending investigations

9.25 Should the provision in the disability legislation, which requires the Commission to stop or to suspend the conduct of an investigation be retained?

YES

NO

NO VIEW

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

YES

NO

NO VIEW

Written reasons for refusing oral representations

9.27 Should the disability provision, which requires the Commission to give reasons in writing for refusing to receive oral representations from a person it objects to be retained?

YES

NO

NO VIEW

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

YES

NO

NO VIEW

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

Powers to Obtain Information and Penalties (paragraphs 20-22)

9.30 Should the Bill adopt the more general approach as set out in FETO concerning the obtaining of information except that relating to employers' duties?

YES NO NO VIEW

Or should the Bill follow the more precise route of the disability legislation and to a lesser extent the race and sex legislation?

YES NO NO VIEW

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

YES NO NO VIEW

Or should the penalty be limited to a fine as provided for in the disability legislation?

YES NO NO VIEW

Recommendations and Reports on Formal Investigations (paragraphs 23-24)

Extend to include FETO

9.32 Should the sex, race and disability provisions concerning the exclusion of "private affairs etc" from the report on formal investigations be extended in the Bill so that the corresponding FETO areas are covered?

YES NO NO VIEW

9.33 Should these provisions be extended to all grounds?

YES NO NO VIEW

Non- discrimination Notices

9.34 Should the disability provision, which makes clear that the Commission's power to issue a non-discrimination notice before a report is published or prepared, is not affected by the disability provisions on reports, be extended to all grounds?

YES

NO

NO VIEW

Procedures for publication

9.35 Should the sex, race and disability provisions concerning procedures for publication of a report be extended to cover the corresponding fair employment areas with appropriate protection relating to individuals, etc?

YES

NO

NO VIEW

9.36 Should these provisions be extended to all grounds?

YES

NO

NO VIEW

9.37 If investigations on a "no fault" basis are adopted in the Bill should the Commission be given discretion on whether to publish reports as they have currently under FETO?

YES

NO

NO VIEW

Inspection of Reports

9.38 Unlike race and sex, disability and fair employment do not contain any provisions concerning arrangements for reports to be available for inspection. Should the position be harmonised so that the disability and fair employment contain similar provisions?

YES

NO

NO VIEW

9.39 Should these provisions be extended to all grounds?

YES

NO

NO VIEW

Restrictions on Disclosure of Information (paragraphs 25-28)

Written consent

9.40 Would a "consent" only provision be sufficient for all grounds? The FETO provision requiring written consent would therefore not be retained.

YES

NO

NO VIEW

Or should the FETO written consent remain, in considering the sensitivity of the information, in that the religion of an individual can be determined? A "consent" only provision would be put in place for all other grounds.

YES

NO

NO VIEW

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

YES

NO

NO VIEW

Summary Statements

9.41 Should the Bill include an exception for FETO cases so that information can be supplied to others in the form of a summary statement, which does not identify the informant or any other person to whom the information relates?

YES

NO

NO VIEW

Scope of Restriction Provisions

9.42 Should the scope of the restriction provisions currently in place for race and sex, which connect the information to a formal investigation only, be extended in the Bill for all grounds to mirror the fair employment and disability provisions?

YES

NO

NO VIEW

Exceptions for Third Parties

9.43 FETO uniquely provides exceptions for the disclosure of information to a range of third parties such as employers, employment agencies,

vocational organisations etc. Should the Bill extend such exceptions to all the other grounds where there is a sensitivity issue?

YES

NO

NO VIEW

Or should the Bill maintain the FETO third party disclosures because of its unique regime but should not extend to all the other grounds unless those grounds have a monitoring regime, similar to that for community background in FETO, extended to them?

YES

NO

NO VIEW

FETO Defence Provision

9.44 Which of the following options should be used in the Bill in dealing with the FETO defence provision? This provision chiefly relates to monitoring.

Retain the defence provision for FETO related matters only

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

Information supplied to the Department

9.45 Which of the following options should be used in the Bill in dealing with the FETO requirement to supply the Department with information?

Extend to all grounds.

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

Enforcement (paragraphs 29-39)

Non-discrimination Notices Action Plans

Time Limits

Appeals against non-discrimination notices

Investigations as to compliance with non-discrimination notices

Register of non-discrimination notices

Agreements in lieu of enforcement action

Binding undertakings

Enforcement of undertakings

FETO Directions/appeal mechanisms

9.46 Which of the following options (a-c) should be used in the Bill in dealing with the above arrangements covering specific enforcement areas?

(a) Realign on the basis of the more flexible disability model

(b) Realign on the basis of the FETO model

In considering the disability and FETO models:

9.46.1 What are the implications for these options?

JUSTICE considers that the disability model is the most effective model reflecting the fact that it was drafted after having taken account of the limitations in the arrangements for race and sex. However, although we agree that once a finding of unlawful conduct by the respondent has been made an action plan should be put in place, we consider that the ECNI is well placed to draft such an action plan as they will already have an intimate knowledge of the problematic practices and procedures. The respondents could then be consulted on the plan. We believe that this is likely to be a shorter and more efficient procedure as delays can occur when respondents are asked to produce their own action plans.

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

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

(c) Remain as at present

Persistent Discrimination (paragraphs 40-41)

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

YES

NO

NO VIEW

Enforcement in relation to discriminatory advertisements, pressure to discriminate and instructions to discriminate (paragraphs 42-46)

Discriminatory Advertisements

9.48 Are you content for the current legislative position to be carried forward into the Bill whereby discriminatory advertisements are made explicitly unlawful?

YES

NO

NO VIEW

Instructions and Pressure to Discriminate

9.49 Which of the following options should be used in the Bill in dealing with this issue?

Extend the FETO model, whereby instructions to discriminate and pressure to discriminate result in both the persuader and perpetrator liable to the unlawful act, to other grounds

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

Preliminary action in Employment cases (paragraphs 47-48)

9.50 The provisions providing for preliminary action for race and sex are not replicated for disability. Do you consider that they are necessary?

YES

NO

NO VIEW

Conciliation (paragraph 49)

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

YES

NO

NO VIEW

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

Tribunals and Courts

Remit of Tribunals and Courts to hear complaints

10.1 Which of the options outlined in paragraph 56 should be used in dealing with employment and GFS complaints?

Option (a)

Retain the present system. The Fair Employment Tribunal continues to deal with cases of employment discrimination on the grounds of religious belief and or political opinion. The Industrial Tribunal continues to deal with all other types of employment discrimination on current and any new grounds to be covered in the Bill. The Industrial Tribunal continues to have responsibility for other employment disputes. County Courts continue to hear GFS complaints.

Option (b)

Establish an employment tribunal (possibly with a fair employment division) whose remit includes the existing responsibilities of the Fair Employment Tribunal and Industrial Tribunal. County Courts would continue to hear GFS complaints.

Option (c)

Establish a new system of employment equality tribunals dealing with discrimination matters in employment only, separate from Industrial Tribunal, which would retain responsibility for all other employment disputes. County Courts would continue to hear GFS complaints.

Option (d)

Establish a new system of equality tribunals dealing with all discrimination matters relating to employment and GFS. The Industrial Tribunal would retain responsibility for all other employment cases.

10.2 Please explain why you have chosen a particular option

<p>It is clear that the discrimination provisions in relation to access to goods, facilities and services are far less frequently litigated. This gives rise to concern that County Courts are not as accessible for those who may have been subjected to discrimination as Industrial Tribunals. Clearly any new Equality Tribunal would need to have power to refer a case to the County Court when, because of the legal issues raised, such a referral is the most appropriate way to deal with the case.</p>

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

Appeals

10.4 The options for an appeals structure will be dependant upon the options chosen for the initial hearing. Which of the options outlined in paragraph 57 should be used in dealing with appeals?

Option (a)

Continue with the current arrangements in that the Court of Appeal hears appeals from both tribunals and county courts.

Option (b)

Establish a separate employment appeal tribunal to hear appeals against employment decisions. GFS appeals would continue to be heard by the Court of Appeal.

Option (c)

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

Option (d)

Make provision for County Courts to hear appeals from employment tribunals with GFS appeals continuing to be heard by the Court of Appeal.

Option (e)

Make provision for County Courts to hear appeals from equality tribunals on both employment and GFS cases

10.5 Please explain why you have chosen a particular option

JUSTICE considers that appeals on both employment matters and on

access to goods, facilities and services should be heard by the same body.

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

Other issues in relation to Tribunals and Courts

10.7 Should the Bill allow for a representative claim?

YES

NO

NO VIEW

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

Articles 7(2) of the Race Directive and article 9.2 of the Framework Employment Directive provide:

Member States shall ensure that associations, organisations or other legal entities which have ... a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf of or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive

In order to comply with this we consider that the ECNI should be able to bring cases 'on behalf of a complainant'. This could be used to reduce the pressures on an individual complainant. This standing should be extended to trade unions as well as suitably qualified interest groups.

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?

In order to comply with the directive it is only necessary to include

named individuals with their consent. We see no reason why unnamed individuals should not also be included again with their consent.

10.10 Should the Bill allow for class/group actions?

YES

NO

NO VIEW

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

10.12 If "Yes", how do you see class/group actions working in practice and should such a provision be for named and/or unnamed individuals?

10.13 Are there any alternatives or additional provisions in relation to these areas that should be considered in the Bill?

YES

NO

NO VIEW

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

10.15 What organisations do you think should be allowed to engage either in support of, or on behalf of, a complainant?

The ECNI, trade unions and suitably qualified interest groups.

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

JUSTICE considers that legal aid should be available at least for representation in difficult discrimination cases; however, we are concerned that this should not give rise to any further orders for costs against applicants as this would have the effect of deterring potential complainants from seeking a remedy.

Research has shown a direct link between the results obtained in discrimination cases and the type of legal assistance available to claimants. For example, in the field of disability discrimination law in GB, the assistance of a legally qualified representative was found to make a significant difference to an applicant's chance of success: an applicant who was represented by a friend or relative had a 11.8% chance of success; an applicant who representing him/herself had a 13.7% chance of success, compared to those represented by a barrister (28.9%) or a Law Centre representative (27.3%)¹.

Many of those who take a case to the IT will have to represent themselves, while the employer will almost invariably have legal representation. The Legal Action Group has found that unrepresented applicants are more likely to bring cases that the tribunal judges to be 'misconceived'. This is not surprising, given the increasing complexity of employment law.

The greater complexity of anti-discrimination legislation strengthens the argument for public funding for victims of discrimination in order to protect their right to a fair hearing under article 6 of the European Convention on Human Rights². And it is not just the legislation which is becoming more complex but the way that cases are heard: it is not uncommon to rely on expert evidence to prove or disprove a fact (in *Virdi v Metropolitan Police*, 2001, very costly computer experts were

¹ *Monitoring the Disability Discrimination Act 1995 (Phase 2), Final report*, Incomes Data Services, Sarah Leverton, 2001.

² Article 6 of the European Convention on Human Rights and article 47 of the EU Charter of Fundamental Rights both provide for a right of access to a court and for an effective remedy; a right also included in article 7(1) of the Race Directive. The European Court of Human Rights has repeatedly held that article 6 ECHR may impose a requirement for an individual to be legally represented where the issues before the court or tribunal are particularly difficult, either as a matter of fact or law (*P, C and S v United Kingdom* (2002) 35 EHRR31 at p.1075, para 89).

used), or to show evidence of personal injury in support of the claim for damages.

While some form of legal aid is needed for discrimination cases, it should not be linked to the risk of liability for costs, as this would jeopardise the accessibility of the tribunal system. The income limits for those who would be eligible for legal aid are relatively low, and there will be many low-paid people who would not benefit from these provisions – hence the importance for the achievement of justice of ensuring that costs are not routinely awarded in tribunal cases

10.17 Do you think that the additional remedy of re-instatement or re-engagement should be available in cases involving discrimination?

YES

NO

NO VIEW

10.18 If "Yes" or "No", please explain the reasons for your answer. If "Yes", do you think that such a remedy should be conditional on the agreement of the complainant?

In order to provide an effective remedy as required by the Directives we consider that the full range of remedies should be available to a complainant, this should include re-instatement or re-engagement. Such orders are only appropriate if the complainant agrees.

10.19 Do you think that remedies available to the Industrial Tribunal in cases of employment discrimination should be harmonised with those available to the Fair Employment Tribunal under Article 39 of FETO?

YES

NO

NO VIEW

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

10.21 Do you think that the Fair Employment Tribunal and Industrial Tribunal should have scope to award compensation for unintentional indirect discrimination in all grounds (where the concept of indirect discrimination applies)?

YES

NO

NO VIEW

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

Article 15 of the Race Directive requires that sanctions for breach of national laws adopted pursuant to the Directive must be 'effective, proportionate and dissuasive.' We do not believe that sanctions can be 'effective, proportionate and dissuasive' if the remedy of compensation for unintentional indirect discrimination is not available.

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

YES

NO

NO VIEW

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

Article 15 of the Race Directive requires that sanctions for breach of national laws adopted pursuant to the Directive must be 'effective, proportionate and dissuasive.' We do not consider that the remedies which are currently available for unlawful racial discrimination are sufficiently 'effective, proportionate and dissuasive.'

The current sanctions are not effective or dissuasive. We suggest that employment tribunals should be able to make recommendations in relation to the future conduct of a respondent in order to prevent further acts of discrimination. In particular, tribunals should have the power to make recommendations to revise or modify procedures which the tribunal has found to be intrinsically discriminatory or to provide protection from victimisation for the complainant whether he or she remains in employment.

Another option is for tribunals to be given an additional power to order remedies to correct the wrong that has been perpetrated. For example, if the complainant is the best candidate, but because of discrimination did not get the job, then the tribunal should order if appropriate that the candidate be given the next available appropriate job.

In addition, financial sanctions should be strengthened to remove the exclusion of compensation for unintentional indirect race discrimination.

10.25 Should exemplary damages be available as a remedy?

YES

NO

NO VIEW

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

Exemplary damages are only awarded when the compensation

otherwise available is inadequate to punish the wrongdoer. Such cases are rare, but the right to award such damages, where appropriate, is useful.

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

Alternative Dispute Resolution (ADR)

11.1 Do you consider that the development of ADR for discrimination disputes in Northern Ireland is a useful and necessary development?

YES

NO

NO VIEW

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

JUSTICE considers that ideally a full range of remedies should be available to any complainant, including ADR. We believe that ADR is particularly useful where there is a continuing relationship between the parties. However, we are conscious of the importance of the maintenance of an equality of arms between parties and we believe that this should also borne in mind in the adoption of any new procedures.

11.3 If "Yes", should the arbitration arrangements to be put in place by the Labour Relations Agency for religious belief and political opinion complaints be extended to cover the other grounds to be included in the Bill?

YES

NO

NO VIEW

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

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

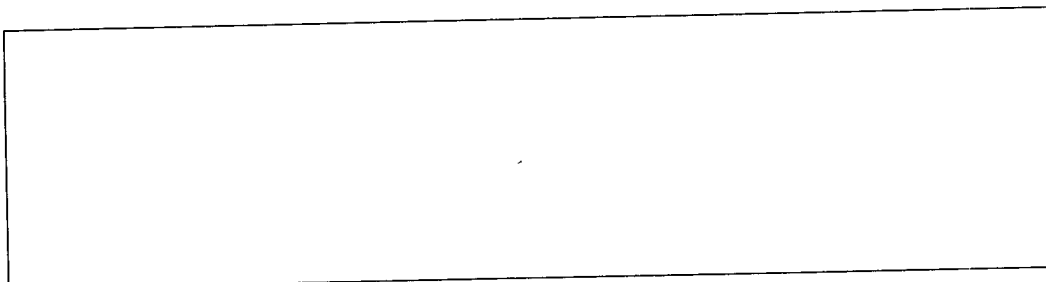
YES

NO

NO VIEW

11.6 If "Yes", what option should be used, how would you see it operating and which organisation would be responsible for its development and taking the initiative forward?

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



Other Comments

Please use the following section to record any other comments you have on the issues and options raised in the consultation document

