



Labour Relations

A G E N C Y

Improving Employment Relations

Chairman & Chief Executive's Office

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1 November 2004

Single Equality Bill Team
Office of the First Minister and Deputy First Minister
Room E3,18
FREEPOST NAT 17679
Belfast
BT4 3BR

RECEIVED
05 NOV 2004
Equality Unit

Dear Sir/Madam

Re: Response to Single Equality Bill Consultation

Please find enclosed the Labour Relations Agency's response to the Single Equality Bill Consultation exercise which the Board considered on 21 October 2004.

If you have any queries regarding this response, please do not hesitate to contact me.

May I take this opportunity to thank you for forwarding to me a Microsoft Word version of the response booklet.

Yours faithfully

W PATTERSON
Chief Executive

LABOUR RELATIONS AGENCY

**RESPONSE TO SINGLE EQUALITY BILL
CONSULTATION**

NOVEMBER 2004

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: Bill Patterson
Title: Chief Executive
Organisation: Labour Relations Agency
Address: 2-8 Gordon Street
Belfast
Postcode: BT1 2LG

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) √

The Labour Relations Agency is an Non Departmental Public Body.

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
- 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*)

N/A

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*)

The Agency provides conciliation services for all employment jurisdictions including those dealing with unlawful discrimination in employment. The Agency provides a comprehensive advisory service on employment relations which includes dealing with matters directly and indirectly related to equality in employment e.g. recruitment and selection. The Agency provides advice on matters such as bullying and harassment in the workplace and on equal pay. At times the Agency works jointly with the Equality Commission NI.

Introduction

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

The Agency welcomes the commitment to the principle of 'non-regression' from the existing standards of protection and due process that apply within the Northern Ireland equality law system.

The Agency also welcomes this opportunity to amend and harmonise existing equality law with a view to aiding understanding and in allowing for ease of implementation.

The Agency is of the view that any legislative developments should in part rely on the highest international standards but also rely on the experience of equality matters gained in Northern Ireland from 1976.

All developments should be aimed at dealing with the Northern Ireland context.

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 Agency welcomes the more positive, pro-active approach taken to the promotion of equality of opportunity.

Purpose and Principles

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

The Agency welcomes the inclusion of dispute resolution as a key principle in dealing with redress. The Agency suggests that Principles 5 and 8 should be redrafted to maximise the significance of ADR and the Agency's role in resolving disputes as close to source as possible and thereby easing the number of cases lodged with the Tribunals.

The Agency also welcomes the setting of equality within a good relations context. This allows for the wider political, social and economic issues to inform the equality agenda.

The Agency supports;

- the business and quality of working life cases for equality;
- the mainstreaming of equality into employer policies and practices;
- a consistent (subject to the particular needs of each jurisdiction) approach across all grounds;
- a partnership model for developing the equality agenda to include monitoring, consultation and affirmative action;
- harmonisation to the best international standards;
- the principle of the 'equality of the inequalities';
- an appropriate review period for the SEA;
- the documents emphasis on promoting equal opportunity and treatment and preventing discrimination:

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:

The Agency has no comment to Q 3.1 and Q 3.2.

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

Grounds

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?

The Agency has no comment on Qs 3.3 to 3.6.

Grounds

3.7 Please explain the reasons for your answer:

The Agency has no comment.

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

Should be included:

The Agency has no comment.

Should not be included:

The Agency has no comment.

Grounds

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?

The above ground should be included as a matter of harmonisation under a single piece of legislation.

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 Agency is of the view that the model standards applying to other grounds for discrimination should be applied to the membership or non-membership of a trade union.

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

Grounds

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

The Agency has no comment on Qs 3.11 and 3.12.

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?

The Agency has no comment on Q 3.13.
The Agency has no further comment.

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)

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

The Agency has no comment on Qs 4.1 and 4.2.

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

Scope

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

The Agency would make the general comment that a concept should be defined.

Care will also be needed in determining application to 'employees' or 'workers' as defined in current legislation.

The Agency is of the view that employment concepts should be inclusive rather than exclusive in nature.

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 ✓

Scope

4.10 If "Yes", which grounds?

No comment.

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.

The Agency has no comment on Qs 4.11 to 4.13.

Scope

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:

<p>The Agency has no comment on Qs 4.14 and 4.15.</p>

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

Scope

4.18 Please explain the reasons for your answer:

The Agency has no comment on Qs 4.16 to 4.18.

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.

The Agency has no comment on Qs 4.19 and 4.20.

Scope

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.

The Agency has no comment on Qs 4.21 and 4.22.

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

Scope

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

The Agency has no comment on Qs 4.23 to 4.25.

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

The Agency has no comment.

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.

The Agency has no comment on this section Qs 5.1 to 5.22.

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.

No comment.

Definitions of Discrimination

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?

No comment.

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?

No comment.

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

No comment.

Definitions of 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?

No comment.

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?

No comment.

Definitions of Discrimination

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

No comment.

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

No comment.

Definitions of Discrimination

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

No comment.

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?

No comment.

Definitions of Discrimination

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

No comment.

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?

The Agency has no comment on Qs 6.1 to 6.7.

Exceptions

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)?

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

No comment.

Exceptions

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

No comment.

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?

No comment.

Exceptions

6.7 Do you have any other comments on exceptions?

No comment.

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?

The Agency has no comment on Qs 7.1 to 7.11.

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?

No comment.

Goods, Facilities and Services

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?

No comment.

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'

Goods, Facilities and Services

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

No comment.

Option (b)

Specific exemptions

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

No comment.

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

No comment.

Goods, Facilities and Services

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

No comment.

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

No comment.

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)

No comment.

Goods, Facilities and Services

Confidentiality Considerations

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

No comment.

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?

No comment.

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?

The Agency has no comment on Qs 8.1 to 8.22.

Addressing Under-Representation in Employment

8.7 Please explain the reasons for your answers

No comment.

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?

No comment.

Addressing Under-Representation in Employment

8.9 Can you suggest ways to overcome any perceived difficulties?

No comment.

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

No comment.

Addressing Under-Representation in Employment

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

No comment.

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

No comment.

Addressing Under-Representation in Employment

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?

No comment.

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?

No comment.

Addressing Under-Representation in Employment

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?

No comment.

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?

No comment.

Addressing Under-Representation in Employment

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

No comment.

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?

The Agency has no comment on Qs 9.1 to 9.52.

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?

No Comment.

Equality Commission Powers and Functions

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

No Comment.

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

YES

NO

NO VIEW

Equality Commission Powers and Functions

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

Equality Commission Powers and Functions

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

No Comment.

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

No Comment,

Equality Commission Powers and Functions

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?

No Comment.

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

Equality Commission Powers and Functions

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

Equality Commission Powers and Functions

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

No Comment.

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

Equality Commission Powers and Functions

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

Equality Commission – Powers and Functions

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

Equality Commission Powers and Functions

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

Equality Commission Powers and Functions

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

Equality Commission Powers and Functions

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?

No Comment.

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

No Comment.

Equality Commission Powers and Functions

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

No Comment.

(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

Equality Commission Powers and Functions

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

No Comment.

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.

Tribunals and Courts

10.2 Please explain why you have chosen a particular option

The Agency refers to Principle 8 Page 20 of the discussion document in support of the views expressed below.

The Agency would not wish to see a Fair Employment Division established. It is important that Tribunal Chairs and Tribunal members have the opportunity of dealing with all workplace jurisdictions including joined cases. To have a Fair Employment Division will probably mean that this division would hear fair employment cases and those cases joined to a fair employment case. This is a contradiction of the equality amongst inequalities principle.

The establishment of an Employment Tribunal will maintain the most meaningful context for the resolution and determination of workplace equality cases.

The establishment of an employment tribunal will also allow for the appointment to Tribunals of personnel who are not only expert in equality matters but also have an appreciation of industrial relations, human resource management and organisational issues.

On the basis of this a body of knowledge and expertise can be built up that informs employment policies and practice most effectively. An Employment Tribunal also offers the best option for communication with the social partners and industry leaders and for liaison with the Agency in managing caseloads.

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

None.

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

Tribunals and 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

The Agency is of the view that the establishment of an EAT should be subject to separate and further public consultation.

Tribunals and Courts

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

None

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?

The Agency is of the view that separate and further public consultation is required with respect to representative claims.

Tribunals and Courts

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?

The Agency has no comment.

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?

The Agency is of the view that separate and further public consultation is required with respect to class/group actions.

Tribunals and Courts

Tribunals and Courts

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?

The Agency has no comment.

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?

The Agency is of the view that separate and further public consultation is required with respect to class/group actions.

Tribunals and Courts

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?

The Agency has no comment.

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?

N/A

Tribunals and Courts

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

There should be no change to the current position and if any restrictions are to be considered they should be limited.

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

The Agency has no comment.

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

Tribunals and Courts

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?

We assume that the question relates to the first year of employment where there is no right to unfair dismissal provisions and where discrimination cases that are joined to unfair dismissal cases.

The remedy should be conditional on the agreement of the complainant.

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.

The Agency has no comment on Qs 10.19 to 10.27.

Tribunals and Courts

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.

No Comment.

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.

No Comment.

Tribunals and Courts

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?

No Comment.

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

No Comment.

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.

The Agency refers to Principle 5 Page 18 of the discussion document in support of the following comments. The Agency promotes the resolution of disputes as close to source as possible. ADR facilitates this principle and in addition provides a non-adversarial process for determining complaints. ADR is less costly, quicker and can more effectively seek to restore good relations between the parties. ADR is particularly suited to discrimination cases as the claimant is normally still employed whilst proceedings are underway. ADR also can accommodate the promotion of good employment practice through recommendations to this effect. It is the view of the Agency that a statutory duty be placed on statutory bodies and agencies to participate fully in the conciliation process.

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

It should be noted that arbitration is only one means of ADR. The Agency assumes that question 11.4 refers to the statutory provision of an alternative means of adjudication where the complainant waives the right to go to Tribunal. In this case the Agency is of the view that such statutory provision should be extended to all relevant employment jurisdictions. This will allow for conciliation, mediation and arbitration to be available for all employment disputes and complaints thus providing a comprehensive system of ADR that will be more easily understood by complaints and respondents. This will also benefit NI in the long term in having a comprehensive system of ADR in place. This is considered by the Agency to be very sound public policy and should be extended beyond the employment field. It is the view of the Agency that conciliation and mediation should remain the most effective means of resolving cases with arbitration amounting to a relatively small number of cases.

Alternative Dispute Resolution

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?

It is the view of the Agency that all relevant employment discrimination jurisdictions should be have the statutory provision of arbitration as an alternative to the Tribunals i.e. on the same basis as unfair dismissal, religion and politics and flexible working as at present. This is vital to providing a comprehensive ADR system within Northern Ireland.

There needs to be much more pro-active promotion of ADR as an effective and appropriate means of resolving disputes. There is international recognition that ADR processes are very successful in dealing with rights based disputes particularly in sensitive circumstances such as harassment and where the complainant remains in employment whilst pursuing a case. Northern Ireland lags behind countries Australia and New Zealand in the promotion and use of ADR.

Conciliation, mediation and arbitration can provide flexible options for the resolution of complaints. It is the view of the Agency that an ADR culture should be promoted in NI as a matter of public policy

This applies to any area of dispute and includes the teaching of ADR as part of life skills at primary and secondary levels of education.

The Agency would wish to see ADR become an issue for mainstreaming throughout society.

Other Comments

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

- 1 The principle should apply throughout the document that if one cannot define a concept clearly then one cannot protect it.
- 2 The Agency would be in favour of maintaining a clear distinction between the institution that enforces equality law and supports certain cases and the institution that seeks to resolve cases through ADR. One institution should not be judge and jury.
- 3 The ADR chapter sets out the processes of ADR in 'descending order' (arbitration to conciliation) perhaps giving the impression that arbitration is the first consideration when in practice it should be conciliation. However the Agency welcomes the OFMDFM suggestion that a seminar is held with invited stakeholders to give more detailed consideration to the Tribunal and Courts and ADR Chapters.
- 4 The ADR chapter does not indicate which option applies to which area for example it would seem inappropriate for the Ombudsman to deal with employment related equality cases. Early neutral evaluation might be more applicable to goods and services issues etc: This should be addressed at the seminar.
- 5 The terminology around ADR can be confusing. Early neutral evaluation would seem to be a form of mediation i.e. it results in a non-binding recommendation. The overall system of ADR needs to be carefully considered in terms of consistency and coherence.
- 6 In this regard the Agency would welcome informal feedback from OFMDFM on their deliberations on ADR and possibly consult the Agency in terms of taking the detail of the ADR proposals forward.
- 7 The Agency strongly holds the view that ADR should be promoted as a matter of public policy to be adopted by all public bodies and throughout the public domain.