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12/11/2004 15:34

To: <Equality.bill@ofmdfmi.gov.uk>  
Subject: Single Equality Bill

Please find attached our response on the Single Equality Bill.

Kind regards.

Barbara Smith

PA to Chief Operating Officer

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NICCY SEA Response.dc

# 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](http://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: BG Mc Neany  
Title: Chief Officer  
Organisation: Northern Ireland Commissioner for Children and Young People (hereinafter NICCY)  
Address: Millennium House,  
17 – 25 Gt Victoria St.  
Belfast. BT2 7BN

**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)

**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*)

Children's and Young People's rights body.

**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?

NICCY has been set up with the principal aim of safeguarding and promoting the rights and best interests of Children and Young People in Northern Ireland. Equality and anti-discriminatory policy and legislation affect the lives of children and young people on a daily basis and in the context of Northern Ireland emerging from conflict is a fundamental issue in making their lives better. It is a key theme running through our priorities which are currently being consulted upon (ref SHOUT campaign at [www.nickey.org](http://www.nickey.org) )

NICCY welcomes the approach outlined in the consultation document and wholeheartedly supports the harmonisation of current complex and potentially confusing and conflicting equality and anti-discriminatory legislation.

NICCY is concerned to ensure that Government harmonises existing legislation "upwards" into a comprehensive Single Equality Act by ensuring greater protection both for individuals and society more generally i.e. through strengthening existing protection for individuals to a level which equates to or is better than that currently offered by equality legislation covering single grounds. It is most important is that the opportunity to strengthen legislative protection in the SEA is grasped.

Niccy would also suggest that the introduction of the SEA is an ideal opportunity for provisions to be incorporated in the SEA which strengthen and enhance the Equality Commission's role in monitoring equality outcomes and adjudicating on complaints in respect of S75 of the NI Act. It is insufficient in our view that existing provision can see a situation where a public body can circumvent its responsibilities without effective deterrent or penalty. We would therefore welcome an enhanced role for the ECNI in the provision of statutory guidance, monitoring equality outcomes and complaint handling.

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 promotion of equality of opportunity is fundamental to this approach and the SEA must ensure that existing law is amended and extended to ensure Northern Ireland continues to move away from a focus on countering discrimination to a positive approach which promotes equality of opportunity.

In formulating our response to this consultation we have taken an approach based upon the United Nations Convention on the Rights

of the Child (UNCRC) as a minimum standard of protection for Children and Young People in Northern Ireland. Article 2 of the UNCRC requires Children and Young People to live free from discrimination. However for the implementation of the UNCRC's as a whole requires a much more proactive and positive approach to the promotion of equality. It is NICCY's view that the balance between a prohibitive approach and one which promotes equality is fundamental to the success of a SEA.

## Purpose and Principles

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

NICCY welcomes the statement that the "Bill will build on existing equality legislation in preventing discrimination and promoting equality of opportunity for the whole community". This should build on the platform of the affirmative action model at the heart of FETO and strengthen the consultation model at the heart of S75.

We are particularly concerned to ensure that in ensuring compliance with international human rights treaties that Government accords due and proper weight to the UNCRC. The UK is a signatory to the convention and its tenets are of particular importance in Northern Ireland which seeks to achieve a "peaceful, inclusive, prosperous, stable and fair society".

The UK parliamentary Human Rights Committee has described the UNCRC as a **"set of child-centred considerations to be used by all departments of Government when evaluating legislation and policy-making"**

NICCY believes that interweaving the UNCRC into the SEA gives government a real opportunity to ensure full and proper recognition of the rights of children and young people and to achieve a proper balance in approaching children's rights in avoiding a hierarchy of inequality. To date we feel that there has been an imbalance and the promotion of the UNCRC in the SEA will go some way to redress this imbalance.

In the consultation document reference is made to the need to create the conditions for economic growth which NICCY would support. We would however wish to emphasise to Government that the gap which exists in Northern Ireland in respect of children and young people's stake in our economy, manifested by a significant problem with child poverty, is a fundamental and serious problem. One of the considerations which must therefore be taken account of in formulating a Single Equality Act is the issue of poverty and its differential impact on children and young people in Northern Ireland.

## 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:

NICCY believes there is no justification for the potential loophole to remain and would support the more positive statement the second amendment makes to achieve a “peaceful, inclusive, prosperous, stable and fair society”.

### 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?

## Grounds

3.7 Please explain the reasons for your answer:

Marital status must be reflective of wider societal experience and be coherent with Article 18 of the UNCRC

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

Should be included:

Direct discrimination on grounds of pregnancy is also direct discrimination on grounds of sex and should be included.

Equal pay, as it operates in the Republic of Ireland with extensions to the grounds of gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller community should be included in the SEA

Should not be included:

## 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?

Whilst the ground of maternity is covered arising from case law in order to ensure consistency of approach and to avoid any confusion, a key aim of this legislation, maternity ought to be included. It is of particular relevance to those young women who suffer discrimination on the grounds of both age and gender/maternity because of their status as young mothers to be.

In respect of equal pay the provisions of legislation in the Republic of Ireland has been beneficial and we would support the extension of the legislation in this area particularly in respect of the ground of age where discrimination on the grounds of young age may be manifested in unjustifiably lower rates of pay for equal work. We would also need to ensure that this takes into account, perhaps by way of an exception, the need to recognise experience and skill in rates of pay to ensure that no financial disincentive is built in to the employment of younger workers.

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?

Equal pay is solely related in current legislation on the grounds of gender. In order to develop the legislative framework to support a "peaceful, inclusive, prosperous, stable and fair society".

Whilst existing case law supports the maternity period for the avoidance of doubt and coherence we believe maternity ought to be included in the SEA.

### 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?

Please see above.

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)

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

It would be inappropriate and unfair to continue with a system which promotes an unclear hierarchy of rights under the existing European legislation. Those in society who are unfortunate to become victims of discrimination are not easily categorised in a manner which segregates the discrimination suffered from the whole person. Whilst there may be more exemptions required in Option b it would harmonise the legislation and achieve the purpose and principles enshrined in the SEA process in a much more meaningful way.

Young people, as with their adult counterparts, suffer from multiple forms of discrimination and NICCY would strongly advocate for a clear and coherent harmonisation "upwards" as set out in the consultation document. This would be of significant importance to individuals and avoid significant costs associated with clarifying the law under the proposals as set out in Option a.

The example given in the consultation document in respect of GFS and age discrimination clearly and eloquently argues the case for clarification in the areas of exceptions quoted. Perhaps this is an opportune time to review these exceptions to achieve a more coherent and consistent approach to many of the difficulties encountered by Young People who are disengaged from a system that offers little logic in the various minimum ages set for independence from the adult world. We would encourage a widespread discussion on these inconsistent and frequently confusing minima.

## 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

A new definition of work is required to ensure that so called marginal workers many of whom are young people achieve protection under the SEA.

## 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?

## 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.

As per S75

## 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:

To ensure protection of those who receive these services
--

## 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:

Education is a clear and unambiguous right under the UNCRC and it would be inconsistent with the convention not to include education in the SEA. The right to live free from discrimination is also a key right under the convention and it would be NICCY's view that it must be included in the scope of the SEA. This will also go some way to counter the inadequacy of the differing disability discrimination regime as set out in SENDO and would be an advance to tackling discrimination at the outset of a young person's life where as the consultation document states "differences in education are often a contributory factor in later employment".

## 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.

## 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.

### 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?

S75 grounds

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.

Discrimination definition should be based upon the outcomes of the action and whilst the concept of comparison is important in this context it should not be relied upon as the arbiter of whether or not discrimination has taken place or on a focus on the disadvantage suffered.

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.

We consider Option c to be appropriate but careful consideration needs to be made of the use of the word cause in the definition to ensure that statutory interpretation of the word does not lead to a less favourable outcome. We might suggest .... “when b has suffered, is suffering or would suffer disadvantage through a on the basis of any of the protected grounds.....as a suggestion.

## 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?

All grounds. Disability should not be seen as first among equals in this context and should be extended to other grounds also.

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?

## 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?

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?

## 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

The use of a comparator is a matter which assists in deciding whether or not harassment has taken place but cannot be the sole arbiter in deciding such.

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

One definition across all grounds should be required

## Definitions of Discrimination

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

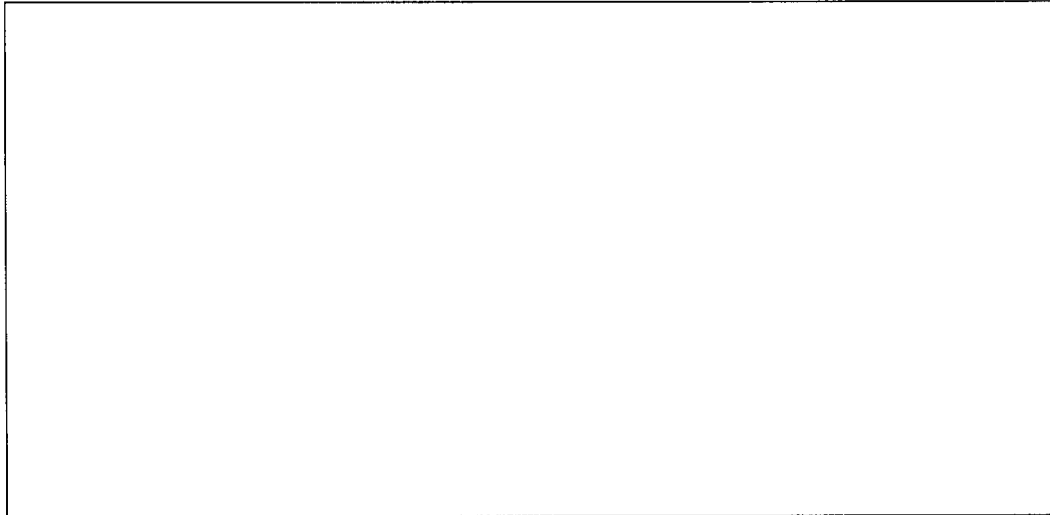
5.20 Do you think that the definition of victimisation should be amended so that, for example, a comparator is not required?

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?

## Definitions of Discrimination

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

A large, empty rectangular box with a thin black border, intended for the respondent to provide 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?

The opportunity to test if the GORs and GSRs are relevant should be undertaken in the SEA exercise to ensure that there are genuine reasons for them.

## 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?

## Exceptions

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

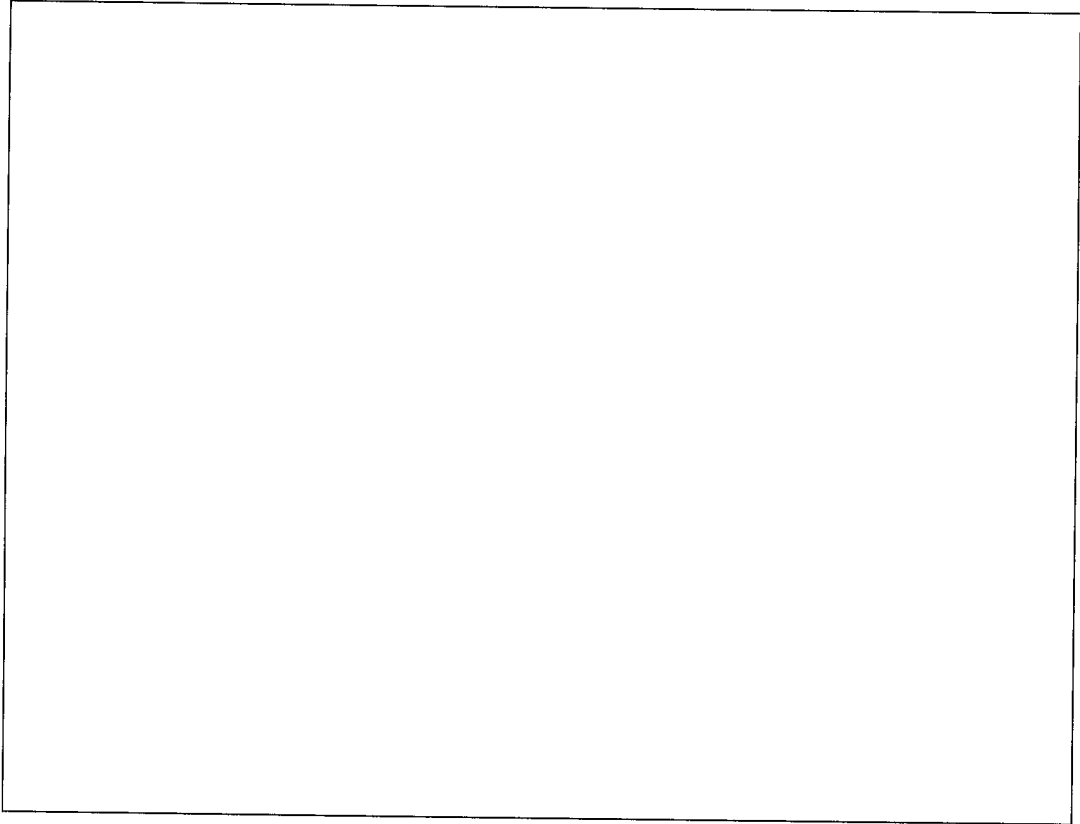
## General

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?

Niccy believes that the best and most relevant methodology would be to deal with exceptions in codes of practice. These are most relevant and uphold the principles set out in this consultation most closely.

## 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?

The provision of any service or facility of any nature which is available generally or to a section of the public.

As per the Equal Status Act in the ROI

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?

Generally no.

## 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?

Difficulties in definition but this should include a service which is contracted out on behalf of a public body.

### 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?

Both

### 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?

Yes, where these are genuine SRs

## **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

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)

## **Goods, Facilities and Services**

### **Confidentiality Considerations**

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

### **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?

## 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

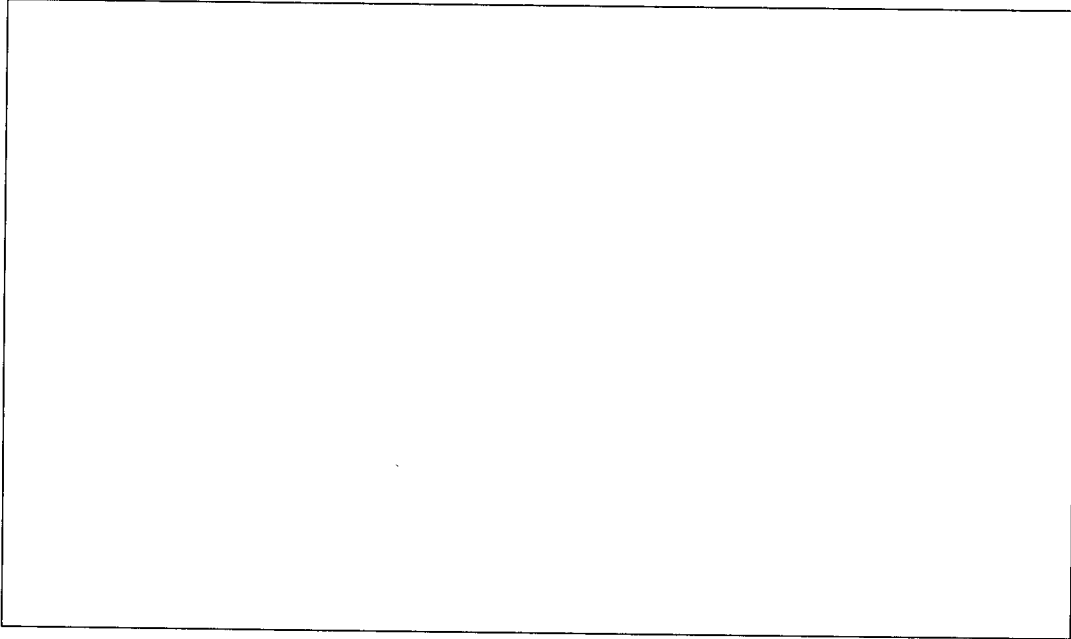
NO

NO VIEW

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

## Addressing Under-Representation in Employment

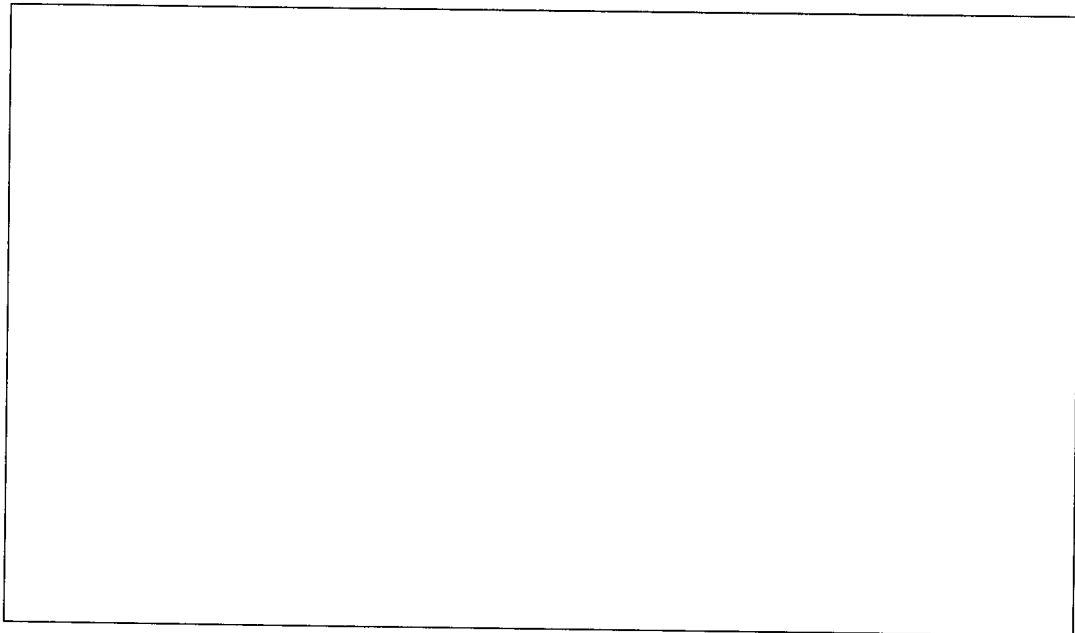
8.7 Please explain the reasons for your answers



### **The approach to be taken (paragraph 22)**

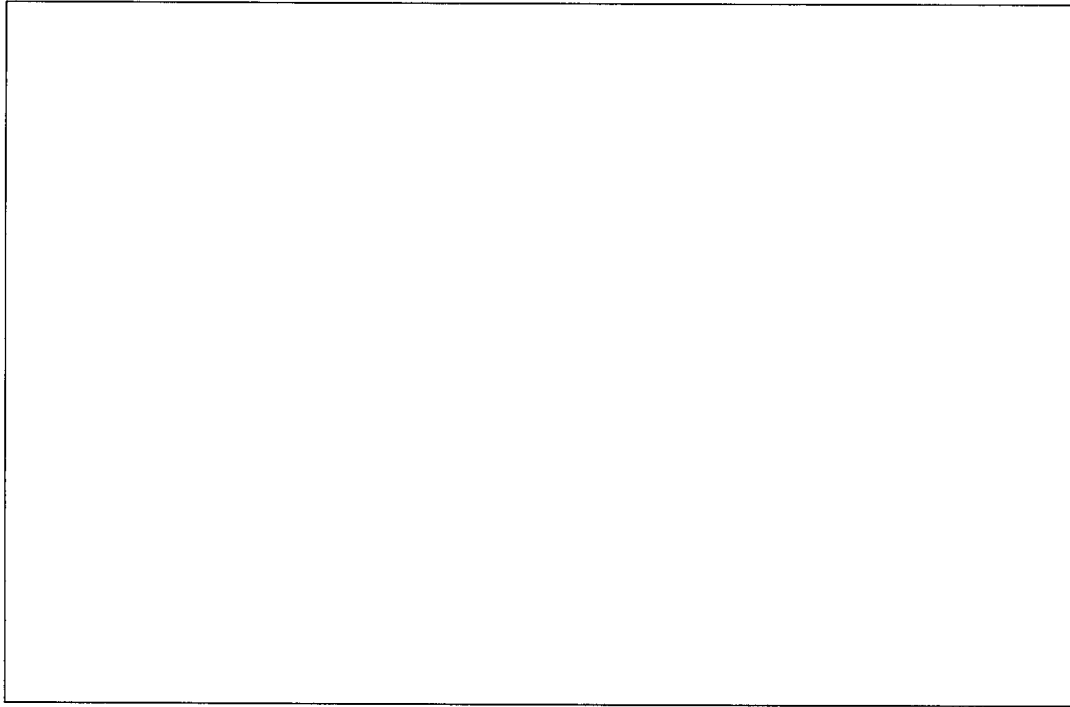
This paragraph raises a number of issues around the balance between the legislative and non-legislative approaches.

8.8 Do you have any views on these issues?

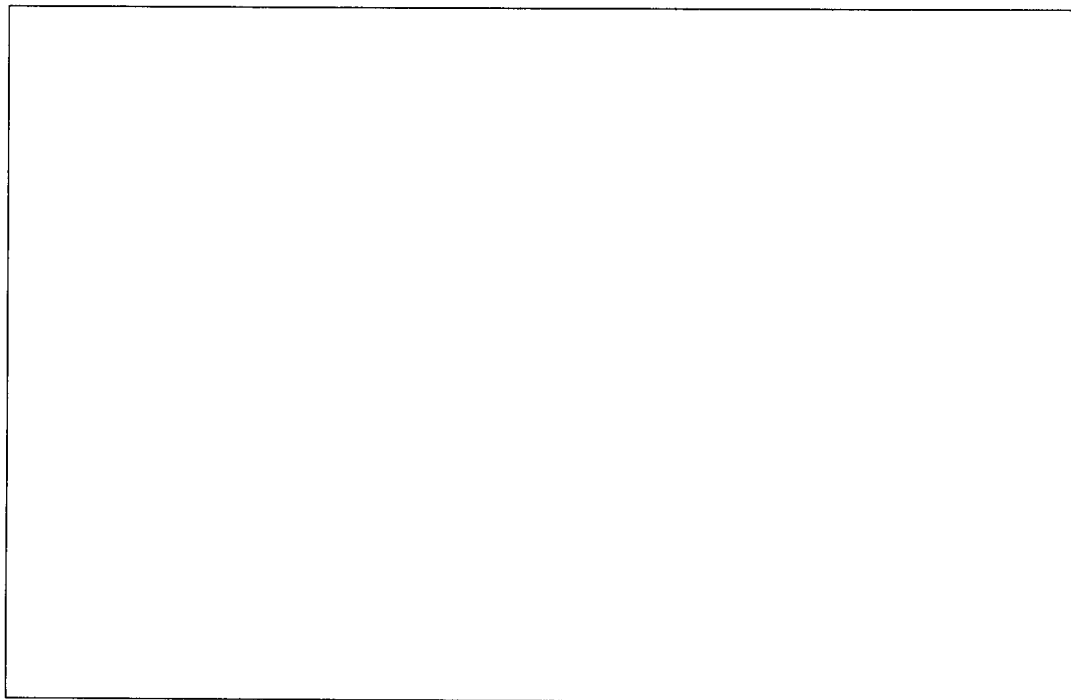


## **Addressing Under-Representation in Employment**

8.9 Can you suggest ways to overcome any perceived difficulties?



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



## 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

If we do not monitor and take action change will not come about.

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

See above

## 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?

Gender, Race, Disability.

Article 55 is widely known and works to bring about change in employment and beyond to the wider society.

### 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?

## 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?

### 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?

This should be an integral part of the approach so as to maximise the potential for change.

## **Addressing Under-Representation in Employment**

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

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## 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?

Adoption of the monitoring and review processes as outlined above in the FETO model e.g. Art 55.

## 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

In order to harmonise the existing provisions into one comprehensive process.

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

### 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

Aside from the obvious and tangible benefits of a harmonised system the concept of no fault allows for greater scope for change and positive equality outcomes.

## 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?

### ***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?

Major changes arose in the past through the selective use of such investigations in the area of Fair Employment. These advances were achieved through the combination of a no fault approach and hearing conducted in private. The extension of these advances to other grounds would allow for a significant change in NI society in these grounds as witnessed in FETO.

### 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?

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

## 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?

(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

## 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

**Coherence with a harmonised SEA would require significant change to the implementation methodology as it currently exists.**

## Tribunals and Courts

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.

## Tribunals and Courts

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

**Cost and coherence with proposed initial hearing process.**

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

## Tribunals and Courts

### 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?

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?

## Tribunals and Courts

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?

## Tribunals and Courts

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?

## Tribunals and Courts

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

Legal aid should be extended beyond its current narrow focus to include applicants in the Tribunal system.

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?

**Tribunals and Courts**

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.

## Tribunals and Courts

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.

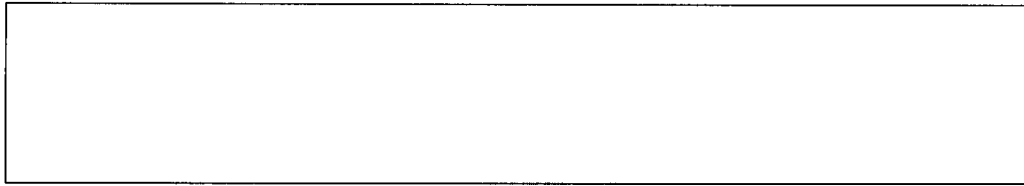
10.25 Should exemplary damages be available as a remedy?

YES

NO

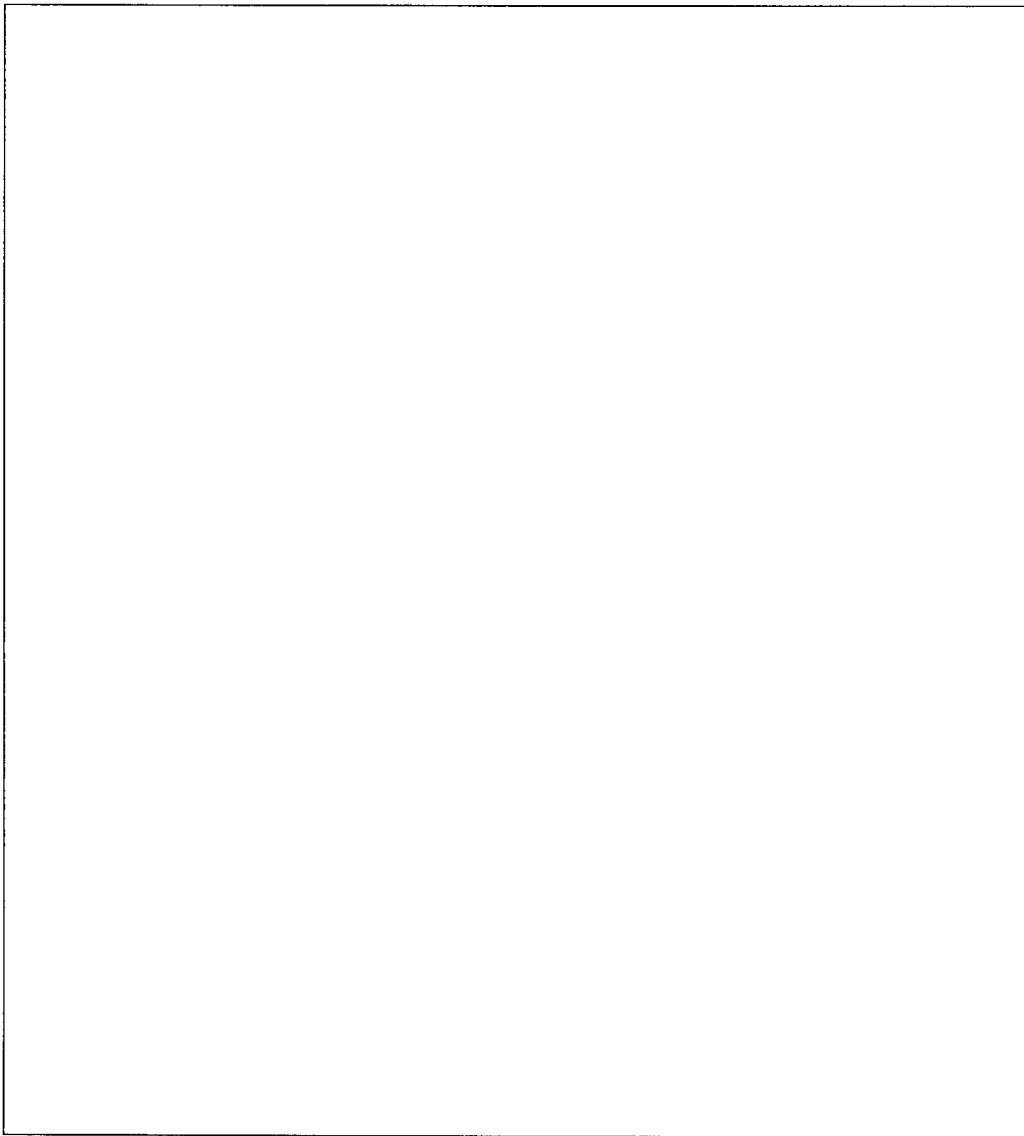
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10.26 If so why? If not, what changes would you recommend?



## **Tribunals and Courts**

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.

Many cases are being brought to the Tribunal before appropriate alternatives are explored which could change behaviour at much less cost and with much more speed.

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.

See above

## 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

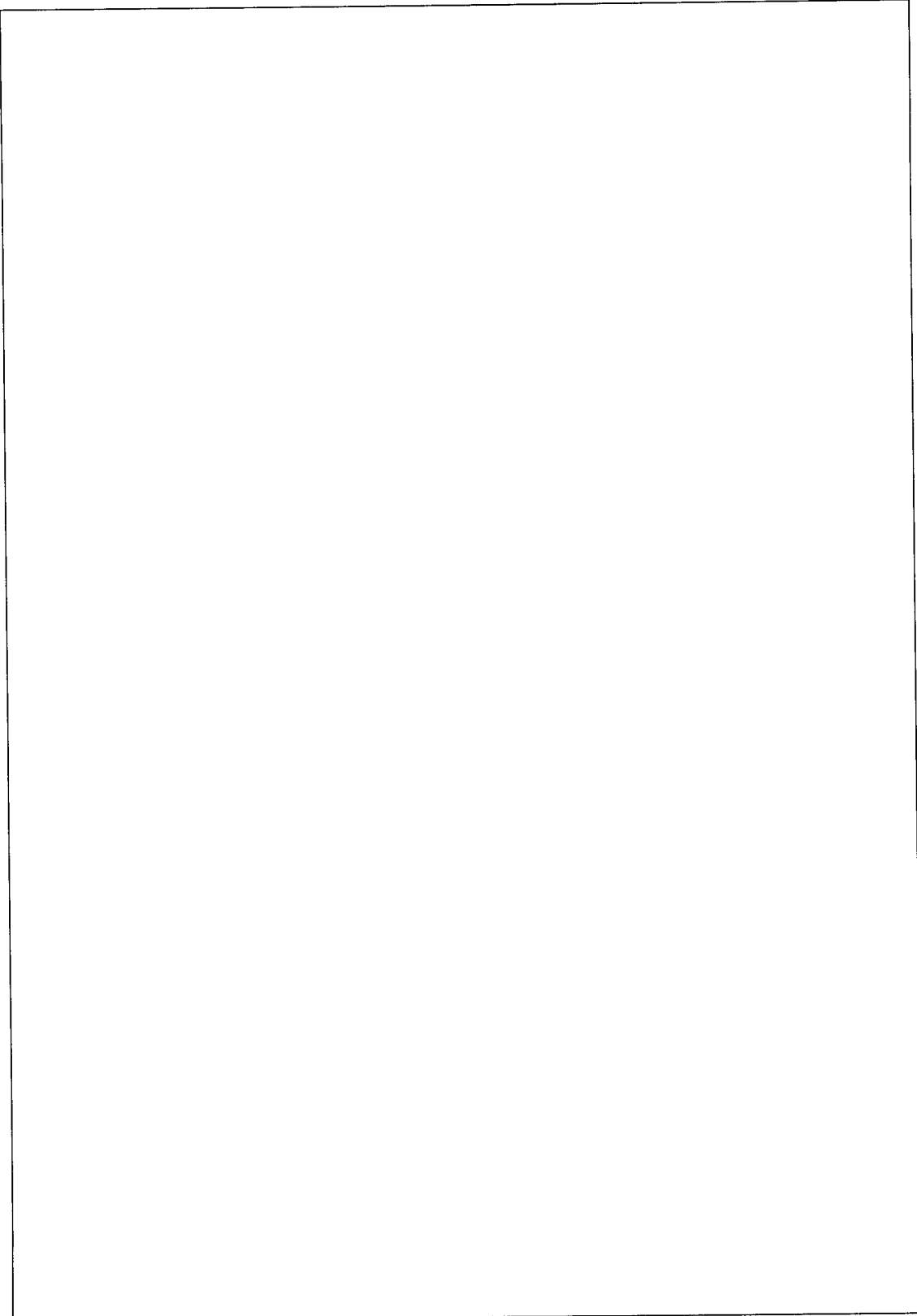
NO VIEW

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?

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

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