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SINGLE EQUALITY BILL

1. NIPSA is the largest trade union in Northern Ireland representing over 43,000 staff across the public services including the NI Civil Service, NI Housing Executive, Education and Library Boards, Further Education, Health and Personal Social Services and District Councils as well as staff in the community and voluntary sectors.
2. NIPSA welcomes the opportunity to comment on the Consultation Paper, A Single Equality Bill for Northern Ireland.
3. In this response follows as closely as possible the format in the response booklet.

Introduction

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

NIPSA welcomes the statement that the Government aim is to harmonise anti discrimination law and that the new legislation should reflect the highest standards of protection across all of the equality grounds. We also welcome the commitment that the new legislation should not result in any diminution of existing provisions contained in the existing range of anti discrimination legislation.

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.

NIPSA takes the view that there should be an increased emphasis on the active promotion of equality of opportunity. However this should not be at the expense of strengthening anti discrimination legislation. We are concerned about the implication in paragraph 20 of the Consultation Document that a more regulatory approach

be at the expense of enforcement, at least in respect of where resources are concentrated.

One of the major concerns has been the difficult resource situation which has led to a situation where individuals wishing to pursue cases of discrimination are not provided with the proper levels of support by the existing Statutory Agency mainly because of prioritisation in the context of substantial under-resourcing.

Notwithstanding this there is a clear need for more strategic intervention on behalf of groups by the Statutory Agencies. A clear duty should be placed on all employers to take affirmative action would contribute to the achievement of the goal of equality of information.

Purpose and Principles

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

NIPSA is generally content with the thrust of this section of the Consultation Document in that it clearly takes cognisance of the context in which the Bill is being developed.

We are particularly pleased to see the emphasis on the broader context for equality legislation provided by the Belfast Agreement, EU legislation and the various International Treaties on Human Rights.

We support the purposes and principles laid down in this paragraph. We welcome the recognition that the tendency for hierarchies of inequalities to develop is unacceptable and that the purpose of the legislation should be to minimise any such hierarchies.

We also welcome the recognition that employment legislation can have a devastating impact on relations within the workplace, not least on the individual who is forced to pursue litigation in order to redress inequalities. In this respect NIPSA strongly supports appropriate measures to promote early resolution of claims of unlawful discrimination but it is essential that any such measures do not render it more difficult for individuals to pursue such claims.

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:

There is no simple answer to the question whether the potential loophole, which includes those whose political opinion condones the use of violence to promote political ends. On balance, we are inclined to the view that the existing approach should be maintained, as the practical application of current legislation on political grounds has not resulted in major problems on this matter.

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

We do however believe that the protection status should be extended to cover GFS.

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)**

We would favour Option (a) but this should be defined as covering same sex couples and to include married, single, cohabiting and those with or without dependents.

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?

This is an issue which would need to be considered in more detail. Pension bodies should be asked for their views on how to overcome possible difficulties.

Grounds

3.7 Please explain the reasons for your answer:

Responsibilities arising from different relationships especially where there are dependants, need to be recognised and catered for.

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

Should be included:

NIPSA takes the view that as many new grounds as is feasible should be included in the new Bill. In the first instance we support the inclusion of the categories listed in Section 75 of the NI (1998) Act should cover pregnancy and maternity as well as marital or family status/dependents. The more difficult questions surround the inclusion of other grounds, which we will comment on as follows.

- Past Convictions

It is our view that the Rehabilitation of Offenders legislation is inadequate to address the disadvantages experienced by people with past convictions. There are clearly areas where the nature of past convictions will permit "discrimination" in respect of certain types of employment e.g. child abuse, financial fraud. We are not convinced that the changes to the Rehabilitation of Offenders Order will be sufficient to prevent discrimination against people with past convictions especially if there is no requirement to declare certain convictions or where, for example, employers or providers of services are aware from other sources of the existence of past convictions. Any changes to this legislation will have to deal with this issue.

- Victims

The definition of victims is not a simple matter and inclusion in the Single Equality Bill may cause additional difficulties and problems.

- Socio Economic Status

There should be protection against discrimination on the basis of socio economic, geographical area, type of education establishment attended, or other such similar grounds, but we recognise the potential difficulties in incorporating this in the SEB.

- Language

It is highly likely that language is covered by the Race Relations Order and possibly the Fair Employment Treatment Order. In the NI environment it is often an indicator of racial or ethnic background or political opinion (in the Northern Ireland context). In this regard specific consideration would need to be given to the position of Ulster Scots, which for the purposes of legislation should be deemed a “language”.

- Scope

It is the view of NIPSA that the scope of the new legislation should be the same for all grounds. There is an opportunity to reduce this hierarchy of rights referred to on a number of occasions in the consultative document.

We would support option (b) detailed at page 41 of the Consultative document although we remained convinced about the statement that such an approach would “create considerable difficulties in some areas and it is likely that a large number of specific exceptions would need to be included to cater for these differences”. The scope should allow for a comprehensive approach as possible working backwards from that objective if necessary to deal with situations where variations are absolutely necessary. Exemptions should be minimised.

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?

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 (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?**

Private sector employers' policy on pay are already subject to Section 75 of the Northern Ireland Act 1998. There is no fundamental reason why equal pay provisions cannot be extended to other categories including race and religious belief.

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?**

There is a need to refresh the Equal Pay Legislation and include a clear statutory duty on employers to undertake equality pay audits in consultation with trade unions.

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 case for option (b) has effectively been made in paragraphs 8-12 of the consultative document.

Employment concepts

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

YES **NO** **NO VIEW**

We are of the view that the definition should be constructed as broadly as possible and therefore could be very much inclined onwards the use of the concept “employment relationship”.

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**

We would support an approach similar to option (c) page 46 of the Consultative Document.

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

An attempt should be made to construct a definition in the broadest possible terms to reduce the need for Tribunals will not have to make decisions except possibly in unusual circumstances.

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

Membership and Involvement in Organisations of Workers or Employers

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

YES NO NO VIEW

There is no reason why these provisions should not be extended to all grounds.

Scope

4.10 If “Yes”, which grounds?

See 4.9 above.

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.

We believe all the grounds eventually listed in the legislation should be covered but we recognise that there may be legitimate exceptions as an example of which is given at paragraph 26 of the Consultative Document.

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

It would be preferable if the legislation could define these concepts rather than leaving it to the courts to determine the meaning of the concepts. We would be broadly content with the definitions set out at para 27.

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:

The court may well be involved in some respect where litigation occurs but it is essential that clear definitions are available and contained in the legislation in order to reduce the vagaries of judicial decisions.

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:**

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**

We are inclined to the view that option (c) remove the exception for all grounds but include a defence where there is objective justification for discrimination in relation to small premises.

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 assumption should be that people cannot discriminate on any grounds in respect of the disposal and management of small premises and that this approach will reinforce an anti discrimination ethos in society generally.

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**

NIPSA would support option (a) i.e. the coverage of public functions should be extended to a similar extent as in the GB Race Relations (amendment) Act 2000.

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

We would support the removal of any doubt as to whether public procurement is covered by anti discrimination law. In addition as stated in the public consultation document such an approach could “meet the previous Northern Ireland Executives agreement in response to the recommendations of the public procurement review”

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?**

All other grounds could legitimately be covered although religion might be problematic where private clubs/voluntary associations are "religious" based.

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.

NIPSA would reiterate concerns previously expressed that there can be overemphasis on the need to provide comparator in order to establish discrimination. We would, on balance be inclined to support the option (c) definition as this deals with outcomes and this is likely to be a more effective tool for tackling discrimination on all grounds.

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.

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?

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

We support the broadest definition possible.

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**

A non requirement in respect of a comparator would allow a common sense judgement to be made by tribunals in situations where the facts point to behaviour of an unacceptable nature having taken place.

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**

?

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?

A Tribunal should be able to adopt a common sense approach to determining whether the treatment received by someone amounts to victimisation without having to identify a comparator.

Definitions of Discrimination

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

Exceptions

Compulsory Grounds (including age)

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

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

- Option (a)



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



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



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

NIPSA supports the removal of all exceptions to be replaced with a GOR/GSR. With the fall back a mixed approach as contained in option (c).

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)



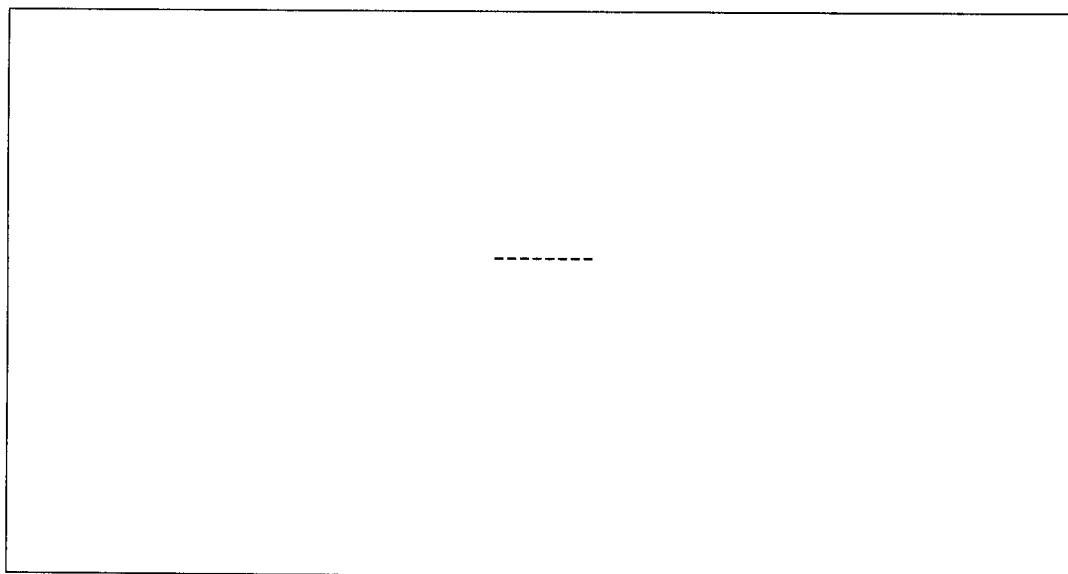
List all the exceptions to be covered – Option (e)



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

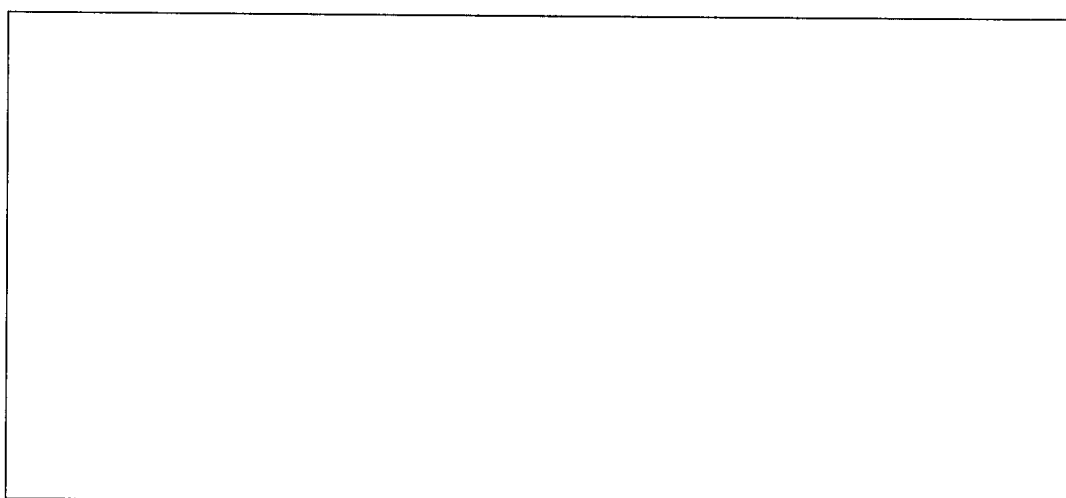


6.4 If you choose Option (e) please give examples of the exceptions that should be covered?



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?

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?

NIPSA believes that as broad and as comprehensive as possible definition of Goods, Facilities and Services should be included in this legislation with same provision.

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?

At this point we are unsure that this will be the case and this point requires further expert scrutiny.

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?

It is essential to promote equality of opportunity in the sphere of private transactions and that the boundaries of the legislation should be extended. How difficulties could be overcome might form part of the rest of the subsequent consultative process.

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?

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?

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

On balance Option (c) would be preferable in that it leaves less discretion to Tribunals and specifying certain exemptions would provide clearer guidance to those providing GFS. In addition we feel that it is likely that there will be different exemptions for the different groups e.g. age, gender etc.

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

No comments.

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?

In relation to the example given at paragraph 40 of the discussion paper we feel that a confidentiality provision would be reasonable.

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?

NIPSA's view is that in the event of the introduction of protection for groups not currently covered by legislation the date of the enactment of the Bill is preferred but some discussion may be required over the deferring of implementation if strong initial arguments are advanced in response to this consultation.

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

Addressing under-representation in employment would send a strong signal about the promotion of equality of opportunity and would go beyond strict prevention of discrimination. This is in line with our previous comments in respect of promoting equality of opportunity.

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?

We would accept that a balance between legislative and non legislative approaches is required but it would be important to ensure the right balance based on an assessment of the differential impact between the two approaches. In short if legislative provisions are expected to achieve better results then the balance should be in favour of this approach.

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?

We generally favour a more legislative approach especially in areas where the voluntary approach has not achieved reasonable progress. This could be linked to the powers of the Equality Commission to intervene in certain employment areas, using a specific legislative provision.

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**

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**

The opportunities should exist for employers to take a more active approach to the promotion of equality of opportunity and creating more freedom for employers to do this would be of benefit.

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?**

The FETO approach should be extended to gender, race and disability. Unless there is an overriding case against there seems to be a case for the core obligations required under the FETO approach.

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?

The assumption must be that it should apply to all employers but there are likely to be issues around the practicalities of including sexual orientation but the views of this constituency should be carefully considered.

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?

We are strongly of the view that linking these two issues would contribute to the active addressing of under-representation by employers.

Addressing Under-Representation in Employment

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

Equality Commission for Northern Ireland – Powers and Functions

General Powers and Duties (paragraphs 4-5)

9.1 **Should the general duties apply across all grounds?**

YES NO NO VIEW

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

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

YES NO NO VIEW

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

The promotion of good relations could be extended to other groups such as religion, disability and sexual orientation.

Affirmative action could be extended also to these groups.

Such an approach could make an important contribution to creating a more constructive context for promoting equality of opportunity and tackling discrimination.

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

Unless there are compelling reasons not to extend the provisions then the assumption should be to extend these provisions to all Codes of Practice.

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**

The provision in the Race Legislation could be extended to disability groups as well as groups within the sexual orientation constituency as the provision may be useful in these specific areas.

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

This approach could empower the ECNI to encourage change in areas where it does not currently have such power.

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?**

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

The creation of an Equality Employment Tribunal dealing with discrimination in employment would provide a clearly defined focus for equality cases. The introduction of the processes applying in the Republic of Ireland to its equality tribunals should be seriously considered.

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.

Tribunals and Courts

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

NIPSA supports the introduction of an Employment Appeal Tribunal in Northern Ireland on similar lines to the parties in the rest of the UK

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?**

There should be a provision which does not require named individuals to feature.

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?

See 10.9.

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?**

This would require further consideration but a degree of flexibility would be required. The following might be helpful, Trade Unions, ECNI, Disability Rights Groups, Ethnic Minority Representative Groups, Age Concern, Sexual Orientation Representative Groups.

Tribunals and Courts

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

We would have concerns about an automatic right to legal aid for initial proceedings as this will reinforce the formal legalistic approach which has developed in respect of the conduct of Tribunals. More resources should be made available to the ECNI to “sponsor” and support cases.

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

YES NO NO VIEW

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

Reinstatement should be available particularly in larger organisations where suitable deployment options are available. In addition discrimination cases not involving dismissal can be “damaging” to relationships but employment must be retained.

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.

This would be an incentive for employers/organisations to take serious corrective action and will generate greater awareness of requirements which can give rise to indirect discrimination.

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

NO VIEW

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.

Early resolution in discrimination disputes can prevent further embitterment, disillusionment and deterioration in relationships especially at work.

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.

Difficulties listed at 11.2 above can also arise in respect of non religious/political opinion cases as well.

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?**

This needs further exploration, but again we recommend the approach adopted in the Republic of Ireland may provide a useful model.

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