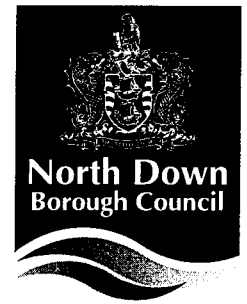


RECEIVED
15 NOV 2004



Your Ref:

Our Ref:

10th November, 2004

Single Equality Bill Team,
OFM/DFM,
Room 3.18,
FREEPOST NAT17679,
Belfast,
BT4 3BR.

Dear Sirs,

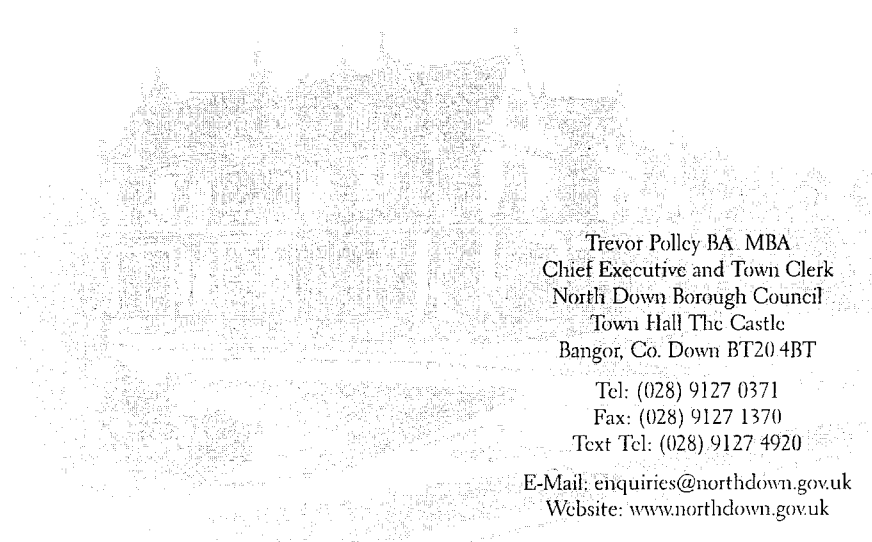
A SINGLE EQUALITY BILL FOR NORTHERN IRELAND

Please find attached North Down Borough Council's response to "A Single Equality Bill for Northern Ireland" document.

Yours faithfully,

John Thompson
Head of Policy

JT/LC



Trevor Polley BA MBA
Chief Executive and Town Clerk
North Down Borough Council
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Bangor, Co. Down BT20 4BT

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NORTH DOWN BOROUGH COUNCIL

Response Booklet

North Down Borough Council (the Council) welcomes the opportunity to respond to the OFMDFM Consultation Paper, 'A Single Equality Bill for Northern Ireland' and thereby to bring forward the debate on the future structure and content of a Single Equality Bill (SEB) for Northern Ireland. The accompanying booklet contains the response of the Council to the substantive points raised in this, the second round of consultation.

Introduction

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

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

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

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

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

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

Completing the response booklet

Many of the questions included in this booklet simply require a tick in a box to indicate a preferred option. However, comments are also sought in order to

determine why you have chosen a particular option or to seek your views on an issue raised.

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

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

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

The consultation closes on 12 November 2004

Where to send your completed response booklet

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

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

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

Your details:

Name: John Thompson

Title: Head of Policy

Organisation: North Down Borough Council

Address: Town Hall, The Castle
Bangor Co. Down

Postcode: BT20 4 BT

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*) **YES**

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

2. Is your organisation?

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

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

An organisation representing service providers **YES**

A statutory body **YES**

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

Borough Council

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 **YES**

4. Please indicate which sector best describes you?

Advice and /or information services

Public administration **YES**

Other (*please tick box and specify*) **YES**

Local Government

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

All aspects of equality

YES

Introduction

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

The chapter makes a number of assumptions in relation to a number of issues of anti-discrimination legislation that may require closer scrutiny in the context of a SEB. For example, most public authorities aim to ensure that through the provision of GFS they provide fair and equitable treatment and yet there is no discussion of where equity features alongside terms such as equality and equality of opportunity.

The precise nature or character of each aspect of difference/identity should be explained more clearly, and in particular the ways in which each aspect of identity differ. For example, are data associated with a particular dimension categorical (e.g. gender) or ordinal (e.g. age), are they temporary or permanent characteristics, are they prescribed or ascribed, and to what extent is the person able to make choices as to the assignation of identity.

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 Council feels that the SEB should work to the principle that by encouraging a proactive stance on the promotion of equality of opportunity then the need for recourse to the legislation will be diminished. Hence both approaches must operate together, and should draw heavily on the practical experience gained through Section 75.

Purpose and Principles

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

The Council feels that there is a need to return to a consideration of terminology in view of the experience of Section 75 and in particular the statutory duty to promote equality of opportunity. In particular the term 'equality' must not be used as shorthand for equality of opportunity as this is misleading. 'Equality of opportunity' cannot always be relied on as a core principle with regard to the fair, efficient and effective delivery of goods, facilities and services (GFS) in particular. Within the context of employment the meaning of 'equality of opportunity' is well founded but there is a need for further consideration of what this means in the context of GFS. For example, where a public authority is deliberately targeting its work to meet the particular needs and characteristics of a population (e.g. specific community needs), then there may be occasions where GFSs may be deliberately targeted towards certain individuals or groups. In practical terms a public authority would aspire to promote equity or fairness in terms of its provision of GFS. However, the Council remains to be convinced that this is synonymous with the expression 'equality of opportunity', and would welcome further clarity of this matter.

Based on the above, it is naïve 'To acknowledge that equality is good for the community and good for the economy.' (p.19), where equality of treatment, opportunity or even outcome may in reality be inequitable or unfair given the fundamental differences in need and circumstances across a population. The Council would suggest that there must be further consideration of the use of terminology to avoid such confusion.

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?

NO

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?

NO

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?

NO

3.2 Please explain the reasons for your preference:

None of the above – the term ‘violence’ is too vague and would have to be clearly defined in relation to criminality. Perhaps a more limited exclusion could extend to political activity or opinion that is deemed to promote proscribed or unlawful behaviour.

Possible new Grounds (paragraphs 19 to 32)

Marital or family status and dependants (paragraph 20)

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

YES

3.4 If “Yes”, should such a ground:

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

NO

Or

Grounds

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

YES

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

YES

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?

Other legislation will need to be amended to come in line with this definition

Grounds

3.7 Please explain the reasons for your answer:

There are problems in relation to pensions and matrimonial rights that must be resolved irrespective of this new legislation. The problem lies with the existing statutes and should be reviewed as an integral part of the SEB.

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

Should be included:

All nine Section 75 categories

Should not be included:

No others than those stated above as these have the potential to dilute the power and scope of the legislation. Additional categories have the potential to create a vast range of different aspects of identity.

Grounds

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

The SEB must be compatible with Section 75. The SEB and S75 should be able to work in harmony to promote equality of opportunity.

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?

Section 75 only applies to public authorities and the complaints mechanism is weak. If the SEB is introduced then the 'good relations' duty must be revisited. It is surely inequitable and unfair to focus special attention on only 3 categories.

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

Grounds

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

YES

3.14 Have you any other comments on this Chapter?

The legislation must adopt a more sophisticated position with regard to what makes each of these categories different. The characteristics of each aspect of identity must be outlined to make the Bill workable.

The good relations duty to the 3 named categories in S75 must be reviewed in light of the introduction of a SEB.

See 3.10 above.

Scope

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

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

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

This option will be in keeping with the integrated approach to dealing with unfair discrimination. Any exemptions should be kept to a minimum, and attempts by lobby groups to demand special status for certain categories should be resisted to prevent weakening the principles of equity within and between the dimensions.

Employment concepts

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

NO

Scope

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

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

Whatever definitions are offered undoubtedly they will still be open to interpretation by the courts. As employment practices continue to change it is not appropriate to be too prescriptive.

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

Scope

4.10 If "Yes", which grounds?

All nine categories of Section 75.

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?

All grounds

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

YES

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

All - for consistency, fairness and equity

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)

NO

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

YES

4.15 Please explain the reasons for your answer:

There is a need to limit the scope particularly initially to protect from a myriad of test cases.

Education

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

YES

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

NO

Scope

4.18 Please explain the reasons for your answer:

It is difficult to see how a and b are mutually exclusive. It appears to Council that the second half of b falls within a.

Disposal and management of small premises

4.19 Do we:-

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

YES

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

From a pragmatic perspective this would be necessary.

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

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

The limitation 'relating to NI' in reality is rarely significant – an extension to include all public functions would remove some ambiguity.

Private Clubs/Voluntary Associations

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

NO

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

YES

Scope

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

All grounds should be covered, and again exemptions should be sought only in highly exceptional circumstances.

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

The current position is confusing and is neither justifiable nor fair.

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)

YES

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

The current definition works, so it would seem pointless in changing it.

Definitions of Discrimination

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

NO

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

YES

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

The current definition is well known and should not be amended.

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

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

The Framework/Race/Equal Treatment Directives definition

YES

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

NO

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

It would be helpful to have 'proportionate' along with 'appropriate' and 'necessary'.

Definitions of Discrimination

Harassment

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

YES

5.14 Do you think a comparator is required?

NO

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

Harassment can also, exceptionally, occur by way of indirect discrimination or victimisation – for example where all members of staff are expected to abide by certain working practices (e.g. Sunday shifts) irrespective of religious belief. The status of harassment in the SEB should be limited as one example of discrimination that may occur, whether it is direct, indirect or victimisation.

5.16 Should "sexual harassment" be defined separately?

NO

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

No one category should be given special status or priority.

Definitions of Discrimination

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

Some clarification should be included to illustrate examples of harassment that falls outside the scope of the legislation, i.e. where someone is subjected to unwanted attention but it is not based on one or more aspect of identity.

Victimisation

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

YES

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

NO

Definitions of Discrimination

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

No.

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)? **YES**

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?

This would appear to be the most straightforward option. It would place the onus on those occupations where exceptions occur to provide a justification for their continued adoption. This approach would remove a number of current exceptions that do not appear to be sustainable.

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)?

YES

General

Exceptions

6.7 Do you have any other comments on exceptions?

Currently the situation is confusing and often inconsistent. In those occasions where an exception can be justified the onus should be on the employer/profession to provide the GOR/GSR. Perhaps there is a need to establish a separate judicial procedure to deal with such cases.

Goods, Facilities and Services (GFS)

Definition

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

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

YES

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

This would place the onus on service providers to consider potential discrimination in the range of ways GFS are made available.

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

No

Goods, Facilities and Services

Public Functions

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

YES

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?

The difficulties would only be on a par with those associated with determining harassment, the civil law test would still apply (on the balance of probabilities it is more likely that discrimination occurred). To make an arbitrary distinction between public and private appears not to be in the spirit of the emerging legislation and would be unfair.

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'

YES

Goods, Facilities and Services

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

Both – the distinction can be often unclear in GFS cases.

Option (b)

Goods, Facilities and Services

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

The burden will fall on the courts to determine 'general justification', but as so many public authorities have already scrutinised their policies through S75 then this burden could be over-exaggerated. To ensure this would work in practice there needs to be careful thought as to 'equality of opportunity' in relation to GFS.

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

Goods, Facilities and Services

Confidentiality Considerations

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

Yes, reporting restrictions should be included in all sensitive cases.

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?

S75 is already addressing these issues in public authorities – it would appear to be a logical step to extend it to private companies of a certain size to ensure this problem will not arise

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

8.2 If “Yes”, should this include gender?

YES

8.3 If “Yes”, should it include race?

YES

8.4 If “Yes”, should it include disability?

YES

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

YES

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

The SEB should have the potential to extend to any protected identity. Section 75 is already addressing this issue for public authorities and the extension of this practice to the SEB would appear to be the next logical step.

Addressing Under-Representation in Employment

8.7 Please explain the reasons for your answers

The essence of a SEB must be parity of esteem between each aspect of identity. Unless each identity is treated equitably it could be perceived as unfair and potentially divisive.

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?

All public authorities are already in the process of extending monitoring in response to S75 obligations. This requirement should be extended to include medium and large private companies. The sensitive dimensions appear to be sexual orientation and political opinion. Consultation with representatives in these categories is essential to determine how or if this information can be gathered. The frequency of monitoring requires detailed examination and guidance as many aspects of identity change over time. A reasonable approach must be adopted that reflects the time and cost of this data gathering. Perhaps the responsibility in employment should be with employees to provide an annual return on their circumstances.

If monitoring for GFS the purpose of collecting such data would need to be clearly explained to the public. Necessary resources would need to be provided to reflect the increase in administration.

Existing affirmative action measures appear to work well and should be extended to all nine categories, but standardised. Targeted training should be carried out in consultation with the ECNI and other relevant bodies where evidence of imbalance is found.

Addressing Under-Representation in Employment

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

Voluntary approaches seem to be effective but a formal complaints mechanism should be put in place.

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

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

See above

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

YES

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

Where this would harmonise actions across all categories but not impinge on the principle of merit.

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

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

The scope for affirmative action is already limited and it would seem appropriate to apply these principles to other dimensions.

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

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

The principles of S75 should be brought across to the SEB and applied to all employers in both the public and private sectors.

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?

Yes, through a condition of contract which is already covered by S75

Addressing Under-Representation in Employment

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

Existing provisions has developed through the various pieces of anti-discrimination legislation. The introduction of a SEB would provide an opportunity to harmonise, allowing welcoming statements, various outreach measures and training where there is a considerable imbalance, such as in management.
In circumstances where the redundancy provisions have been used they tend to cause considerable difficulties – and it would be appropriate that the SEB consider these problems.

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

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

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

The duties should be common to all categories so far as reasonable and practicable. The existing differences between each piece of legislation in terms of additional duties are often historical anomalies that should be harmonised.
Disability presents particular exceptional issues but in general terms there is no strong argument for continuing with separate practices with regard to each category.

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

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

included in the Bill?

YES

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

YES

9.8 Please explain the reasons for your answers

These are proposed to enable the process to be simplified.
--

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

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

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

NO

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

YES

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

YES

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

YES

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

YES

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

YES

Equality Commission Powers and Functions

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

All grounds for the purposes of consistency and fairness.

Investigations (paragraphs 13-19)

FETO approach

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

YES

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

For the purposes of consistency and fairness.

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

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

For the purposes of consistency and fairness.

Investigations into religious belief composition

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

YES

The conduct of investigations

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

YES

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?

NO VIEW

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

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

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

YES

Written reasons for refusing oral representations

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

YES

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

YES

Equality Commission Powers and Functions

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

The level of detail required of consultees is too detailed. Issues of this nature should be addressed in other ways to enable a more detailed examination of a more general nature with significant concerns.

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?

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?

NO VIEW

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

YES

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

9.33 Should these provisions be extended to all grounds?

YES

Non- discrimination Notices

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

YES

Procedures for publication

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

YES

9.36 Should these provisions be extended to all grounds?

YES

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

YES

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

9.39 Should these provisions be extended to all grounds?

YES

Restrictions on Disclosure of Information (paragraphs 25-28)

Written consent

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

NO

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

NO

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

YES

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?

NO

Scope of Restriction Provisions

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

YES

Exceptions for Third Parties

9.43 FETO uniquely provides exceptions for the disclosure of information to a range of third parties such as employers, employment agencies, vocational organisations etc. Should the Bill extend such exceptions to all the other grounds where there is a sensitivity issue?

YES

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.

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

YES

Information supplied to the Department

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

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

YES

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 in considering the disability and FETO models:

YES

9.46.1 What are the implications for these options?

Flexibility is important to accommodate differing circumstances under all nine categories.

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

Both would work, although the more flexible approach is preferable.

Equality Commission Powers and Functions

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

No. It should allow for greater capability to respond.

Persistent Discrimination (paragraphs 40-41)

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

YES

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

Discriminatory Advertisements

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

YES

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

YES

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

NO

Preliminary action in Employment cases (paragraphs 47-48)

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

NO

Conciliation (paragraph 49)

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

YES

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

The general principle of these changes should be towards greater harmonisation, except where there are very strong arguments to the contrary. Many of the inconsistencies are not related to special characteristics of identity but are reflections on a disparate legislative history. The SEB should not be overly sensitive to historical issues, but should seek out best practice, where it can be found.

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 (d) **YES**

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

Of the options presented this one offers the greatest possibility of consistency, economy and effectiveness. The principles derived from employment can be read across to GFS. The current system evolved over time and should be progressed away from as it is unwieldy, costly and ineffective in distributing justice fairly.

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?

Equality tribunals sound logical to deal with all discrimination matters relating to employment and GFS. They need to operate in conjunction with alternative means of resolution that are non-adversarial.

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)

YES

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

Tribunals and Courts

10.5 Please explain why you have chosen a particular option

The current appeals process appears to be well positioned to review tribunal decisions fairly.

Tribunals and Courts

Other issues in relation to Tribunals and Courts

10.7 Should the Bill allow for a representative claim?

NO

Tribunals and Courts

10.10 Should the Bill allow for class/group actions?

YES

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

There must be some identified procedure for bringing together individual actions at the group level. Although arrangements are not clear at this time, it may be appropriate to consider international examples.

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?

Named 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?

NO

Tribunals and Courts

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

Legal aid should be available.

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

YES

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?

The remedy should be conditional on the agreement of all parties.

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

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

YES

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

It would appear to be anomalous given that there is no need to show intent in any discrimination action.

Tribunals and Courts

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

YES

10.25 Should exemplary damages be available as a remedy?

YES

10.26 If so why?

For the purposes of an example.

Alternative Dispute Resolution (ADR)

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

YES

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

The tribunal system is currently falling into disrepute, with the excessive costs prohibiting the fair execution of justice. Any system that avoids the hurt and delays associated with the present system would be welcome.

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

YES

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

The LRA is well placed to develop a scheme that could provide a remedy for all categories of difference, whether all parties are in agreement.

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?

NO

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

It is important that the system is streamlined and that the 'one stop shop' philosophy also applies to these informal remedies, hence the enhanced role for the LRA.

Other Comments

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

While the Council has been prepared to spend the necessary time and resources in preparing this response, mindful of the significance of this proposed legislation, we would like to express serious reservations about the way in which this consultation exercise has been managed.

The Council is already aware of a considerable number of potential consultees who will not be responding to the document given its excessive length and the number of issues that comment has been invited on. The demands made of each consultee are excessive and likely to discourage responses from other than the most committed. Hence the consultation process is likely to be significantly biased.

With the benefit of hindsight it may have been prudent for OFM/DFM to reflect more deeply on its own guidance documents on public consultation prior to the launch of this exercise. Furthermore it may also be of benefit to OFM/DFM to consider alternative means of carrying out future consultations to capture a wider range of opinion and include those who felt unable to respond to the current document.