

**Response by**  
**The Rainbow Project**  
**To the consultation by**  
**The Office of the First and**  
**Deputy First Ministers**

**On**

**A Single Equality Bill for Northern Ireland**



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## Introduction

The Rainbow Project welcomes the opportunity to respond to the OFMDFM consultation paper 'A Single Equality Bill for Northern Ireland'.

The Rainbow Project is Northern Ireland's only health promotion organisation that addresses the specific needs of gay and bisexual men. It strives to improve the emotional, physical and mental health of gay and bisexual men living in, working in, or visiting Northern Ireland. As a volunteer led organisation, the Rainbow Project facilitates various activities, events and programmes which actively contribute to the organisation's overall health promotional aim, in that 'Health Promotion is the process of enabling people to increase control over, and to improve, their health needs.' (World Health Organisation, Ottawa Charter, 1986)

The Rainbow Project believes that the introduction of this legislation is a step forward by the government of Northern Ireland to a more inclusive society. In regards to sexual orientation, legislation has developed at a fast pace over the past few years. However discrimination is a fact of life for many Lesbians, Gays and bisexuals.

*"Discrimination can occur in many of Lesbian, gay and bisexual peoples' lives. Private institutions such as hospitals, nursing homes, pension and insurance providers could continue to ignore the relationship, whether registered or not. It would be unacceptable if despite civil partnership registration many same sex couples continued to face serious social disadvantage. Therefore the Commission recommends that this is addressed as it may lead to inconsistencies and possibly discrimination."*

*Response to the consultation by the Office of Law Reform proposals for Civil Registration of Same-sex Partners, Equality Commission for Northern Ireland, March 2004.*

Although this highlights issues with regard to people's personal relationships with each other in same-sex unions it also highlights some of the issues in relation to the types of discrimination gay and lesbian people can endure. Discussions have already begun across Europe and with the European Commission itself in regards to the development of legislation into other fields such as access to services.

In their Policy Paper, *After the Framework Directive: Combating Discrimination Outside Employment*, April 2002 p. 9, the European Region of the International Lesbian and Gay Association stated that the removal of the equality hierarchy was essential to the progression of anti-discrimination law across Europe.



One of the long-standing defects in EU anti-discrimination law has been the unequal level of protection against different forms of discrimination. It was hoped that the inclusive approach adopted in Article 13 EC would reduce the 'equality hierarchy' that previously existed, however, the initial legal interventions have only reinforced, not diminished, this phenomenon. Whilst the Framework Directive forbids discrimination in employment on grounds of religion or belief, age, disability and sexual orientation, a separate Directive was adopted in June 2000 dealing with discrimination on grounds of racial or ethnic origin. This has a much broader material scope, prohibiting discrimination in '*social protection, including social security and healthcare, social advantages, education, access to and supply of goods and services which are available to the public, including housing.*'

The Racial Equality Directive is a welcome precedent for EU intervention in discrimination outside the employment field. Nonetheless, its adoption without corresponding measures for other grounds of discrimination creates an unacceptable gap in the level of protection afforded to different forms of discrimination. The EU Charter clearly indicates that 'any' discrimination on 'any' ground should be prohibited. This principle is supported by other international human rights standards. In particular, Article 26 of the International Covenant on Civil and Political Rights requires all signatories to ensure that the law guarantees 'to persons equal and effective protection against discrimination on any ground'.

The Rainbow Project welcomes the commitment to non-regression from existing standards of protection and we would like the Single Equality Act to focus on the achievement of full and effective equality through the positive approach to the promotion of equality of opportunity as well as the harmonisation of existing legislation and the non-discrimination approach.

It would be amiss of us to discuss further protections under a Single Equality Act without mentioning the legislation already in place, for people of differing Sexual Orientation.

### **Section 75 of the Northern Ireland Act 1998**

The legislation was introduced in 1998 and was formed from the development of the Good Friday Agreement and the introduction of devolved government within the United Kingdom.

It states that under nine separate Equality Categories Government agencies have to have what they call 'due regard' for the need to promote equality of opportunity between people covering nine categories.

The categories are as follows...



- People of different religious belief, political opinion, racial group, age, marital status or **sexual orientation**
- Men and women generally
- People with a disability and people without
- People with dependents and people without
- Also all designated public authorities must also have regard to the desirability of promoting good relations between people of different religious belief, political opinion and racial group.

### **Criminal Justice (No.2) (Northern Ireland) Order 2004**

Homophobia is included within the Hate Crimes Bill (Criminal Justice [Northern Ireland] Order 2004) and will mean that people who commit homophobic crimes will receive a harsher sentence for crimes against gay people than similar crimes against other members of the public. The inclusion of homophobia is groundbreaking and means that in relation to hate crimes legislation Northern Ireland is leading the way for the UK.

### **The Employment Equality (Sexual Orientation) Regulations (NI) 2003**

These Regulations came into effect in Northern Ireland and the rest of the UK and Europe at the beginning of December 2003, 2<sup>nd</sup> of December 2003 in Northern Ireland. It means that all European Union member countries and including at the time 'Accession countries' (Joined the EU on 1<sup>st</sup> May 2004) had to implement it.

The new legislation outlaws discrimination in employment and training for people of differing sexual orientation. It essentially means that people if they are sacked, harassed or mistreated etc... in employment or training as a direct result of their actual or perceived sexual orientation they will have legal redress to challenge the employer/individual in a court of law.

### **Civil Partnership**

It sets a legal framework for same-sex couples to register their partnership, with a statutory registration procedure and, if required, an appropriate dissolution process.

Some of the key features are:-

- **Rights and responsibilities**

Rights include:-

- recognition under intestacy rules;
- recognition for immigration and nationality purposes;
- equal treatment in respect of life assurance.



Responsibilities include:-

- duty to provide maintenance for a civil partner;
- duty to provide maintenance to children;
- joint treatment for state benefits.

Although these legal changes are groundbreaking in themselves, The Rainbow Project knows that they are not enough in themselves to end discrimination therefore we firmly believe in the development of an all-inclusive new piece of equality legislation providing rights to lesbian, gay and bisexual people previously denied them, such as goods, facilities and services.

*“Discrimination is not simply unfairness. To be discriminated against means to be treated less favorably than others. Sexual Orientation discrimination is discrimination against people because they either have or are perceived to have a particular sexual orientation.” ... or perceived sexual orientation.*

*Sexual Orientation Discrimination Law in Northern Ireland – A short Guide, Equality Commission for Northern Ireland, February 2004*

The Rainbow Project believes that the Single Equality Bill once implemented would begin to bring to an end relentless discrimination by others on Lesbian, Gay and Bisexual people in Northern Ireland.



The Rainbow Project recommends the inclusion of the Section 75 grounds we also support the change to 'marital and family status' to cover people who are married, single, cohabiting and with dependants, including both opposite and same-sex couples.

### **Sexual Orientation**

The Rainbow Project is aware that the ensuing debate around the extension of rights under a Single Equality Bill for people of differing Sexual Orientation will include discussions around the extension of rights to cover access to goods, facilities and services.

In relation to other countries, as stated earlier, Goods, Facilities and Services do extend to cover sexual orientation. Currently in Northern Ireland however they do not.

The Republic of Ireland does have provisions in its legislation in the area of Goods, Facilities and Services for people of differing sexual orientation.

*"The Equal Status Act, 2000 moves the concept of the prohibition against discrimination beyond the workplace and into the public arena where people buy goods, use services, obtain accommodation and participate in educational establishments.*

*The Act also prohibits harassment and sexual harassment in these areas.*

*Lesbian, gay and bisexual people can now avail of the protections where they apply to discrimination based on sexual orientation. Under the Act, 'services' include a broad range of services and facilities that are relevant to lesbian and gay men such as:*

- a. Banking, insurance, credit and financing*
- b. Entertainment and recreation*
- c. Cultural activities*
- d. Transport and travel*
- e. Service or facility provided by a club (which is available to the public or a section of the public)*
- f. Profession trade or service*



*This list is not exhaustive and the legislation also covers services provided by the State such as health boards, local authorities and others. There are numerous detailed exemptions.”*

## Implementing Equality for Lesbians Gays and Bisexuals

*“Exclusion can also arise from insurance companies being reluctant to provide mortgage protection policies to gay men because of the perceived HIV risk.”*  
Poverty Lesbians and Gay men GLEN and NEXUS 1995, Dublin.

Agencies designated for the purposes of Section 75 of the Northern Ireland Act 1998 already have a duty in regards to the provision of services. This covers all categories of section 75 including Sexual orientation. We therefore believe that the extension of rights to cover goods, facilities and services may not be such a jump, legislatively, as it already, to some extent, exists.

The Rainbow Project welcomes therefore the inclusion of sexual orientation as a category within the Single Equality Bill and firmly believe that its inclusion should include the extension of protections under this ground.

We certainly believe that ‘Marital or family status/dependants’ should be written, if included, to automatically include people who have entered into a Civil Partnership or who have dependents.

Although we are sure that the legislation would be interpreted to include discrimination towards ‘groups’ (*i.e. The Rainbow Project as a group could be discriminated against*) we do feel that this needs to be specifically mentioned within any future legislation especially a Single Equality Bill.

The Rainbow Project believes that in order to move away from a ‘list’ approach to developing legislation. We feel that some groups may be left off the list and therefore not covered by the legislation. We therefore feel that ‘other status’ should be included as a category to extend protections to people not already covered or thought off.

### **Other Status**

We agree that its inclusion would provide flexibility to develop the law to protect emerging groups who are not covered by the other grounds, either through ministerial order or judicial interpretation in the same way as sexual orientation was previously covered through the ‘other status’ ground in Article 14 of the ECHR.

## **Equal Pay**

The Republic of Ireland's equal pay claims are not restricted to men and women and can be taken on grounds of gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller community. It has been in place since 1992 and seems to be operating well and therefore it would make sense to extend the existing provisions of the Equal Pay Act to other grounds within the SEB.



The Rainbow Project believes that the scope of the SEB should be harmonised across all the recognized grounds and that any exceptions should be justified, as in age-related exceptions like the age of consent.

Volunteers are essential to the ethos and continued survival of the community and voluntary sector and to The Rainbow Project. There has been considerable debate around the issue of extending protection to volunteers. Volunteers are not employees and there is concern that including volunteers in legislation relating to employment will blur the lines between volunteers and employees and that this will change the nature of the relationship between volunteers and their organization and may discourage organizations from involving volunteers. However it is widely agreed that volunteers must be protected from discrimination and it could be argued that protection from discrimination and employment law are two separate issues.

We have concerns about the suggestion of extending protection only to volunteers who have signed agreements. Volunteer agreements are good practice; like all aspects of volunteering they are not mandatory and as such they would prove to be an inconsistent and an arbitrary way of deciding which volunteers are protected. In any case we do not believe that the way forward is to include some volunteers in the scope of the legislation and not others. The Rainbow Project recommends that more work is needed to find a way to protect volunteers from discrimination and promote equality in volunteering which reflects and safeguards the unique nature of volunteering.

The Rainbow Project welcomes the options for Scope as detailed in the consultation document. The best and most advantageous way forward for discriminated grounds, we believe, is to have all categories included at the same time. The non-inclusion of categories at the same time would definitely create a hierarchy of discrimination, something which the Single Equality Bill is supposed to be dealing with. The Rainbow Project believes that this would leave particularly 'Age' and 'Sexual Orientation' in a vulnerable situation thereby having a severe negative impact upon both these categories in particular.

We believe that if option 'C' were to be the option taken forward, separate legislation which may be required could be introduced 'now' therefore allowing for no delay in the implementation of the SEB, particularly for the 'newer' grounds. As mentioned earlier we also believe that if option 'C' were the chosen option that the extension of GFS provision to the public sector first already exists through Section



75 of the Northern Ireland Act 1998 therefore no delay to implementation would be necessary.

## Exceptions

The Rainbow Project believes that the 'essential test' should be maintained. We also believe that there is a need for a tight definition so that the list of exceptions doesn't become absurd but so tight that it excludes diversity, with the aim that minority groups should find it easier to claim than majority groups.

LGBT groups may find it necessary to use the General Service Requirement, in that they may wish to provide services to a particular group of people. It was agreed that this requirement should also have the essential test.

**We also believe that all educational institutions should be included and that they should not have a lower test.**



## Goods Facilities and Services

In recognition of the fact that the Human Rights Act binds all public and private bodies exercising public functions, that the Section 75 duty requires the equality impact assessment of the performance of public functions and that the GB Race Relations Act makes it unlawful for a public body to discriminate on the grounds of race in respect of any of its functions. The Rainbow Project recommends the universal application of the principle of non-discrimination in the performance of public functions by public and private bodies, especially since so many public functions are contracted out to the private sector.

As stated above, we support the introduction of exceptions called GSR to permit discrimination on given grounds if a genuine requirement of the service, combined with examples of specific exceptions. Examples could be the provision of single sex schools and derogations to cover special treatment to compensate for disadvantage experienced by a particular group.

*“Discrimination in goods and services concerns a diverse range of issues such as access to bars, restaurants, hotels, leisure facilities, banking, insurance schemes, etc. For example, a survey of LGBT persons in Romania found that 10.6% had experienced discrimination in commercial establishments; a similar survey in Poland found that 20% of respondents had experienced such discrimination. In the Polish survey, bars, restaurants and hotels were identified as the most common sites of discrimination. The fear of such discrimination is also reflected in the Polish respondents – 71% conceal their sexual orientation in such places in order to avoid discrimination.”*

Policy Paper, *After the Framework Directive: Combating Discrimination Outside Employment*, April 2002 p. 18

The Rainbow Project welcomes the proposed inclusion of the new grounds within the Single Equality Bill. As in the Republic of Ireland cases of discrimination and refusal of access to goods, facilities and services has been extended through the Equal Status Act in 2000. The cases to date in the Republic have focused on issues in relation to licensed premises, insurance, social welfare, State Department and bodies, transport, banking and financial organisations amongst others. There were also two cases in regards to the provision of services in education. Although the above sectors were in relation to the Equality Authorities casework activity they also had taken calls in relation to the ground of sexual orientation in relation to the Equal Status Act. The total



numbers of calls received were 2,143. It would be right then to state that people within the Republic of Ireland are accessing the legislation therefore there is a clear need to support cases in relation to access to goods, facilities and services.

*Annual Report 2003, the Equality Authority, Dublin, 2003*

The Rainbow Project would like to see wider publication of RRO Article 43 which allows for provision of financial and other assistance to organisations which are concerned with the promotion of equality of opportunity and good relations between persons of different racial groups. According to the document, there is little evidence that this provision has been much used since 1997 and The Rainbow Project recommends extension of this assistance to other grounds as well as more publicity about its existence. In line with the recommendation to extend the FETO model to other grounds, it makes sense to extend the Commission's powers to undertake investigations to other grounds and GFS. This implies the need for increased resources (and even more if the Commission is given powers to represent claimants in an Equality Tribunal).

Most people will agree that the SEB will only be useful if it is enforceable, if there is money to take cases and if representative claims are allowed. At the moment, it can take up to three or four years for the fair employment tribunal to hear a discrimination case on the grounds of religious belief and political opinion; other grounds such as gender and race are the responsibility of industrial tribunals and GFS cases are rare because they are heard in the county courts and costs can be prohibitive. Considering the complexity of equality law, The Rainbow Project would recommend a single Equality Tribunal— this would mean that one tribunal would cover all grounds and fields; equality expertise would be located in one body and costs would be reduced.

It might be useful to consider the Irish system where an independent investigations office receives complaints, undertakes mediation, conciliation and investigation and makes binding legal decisions. The litigation process in the tribunal only takes place if either party is not satisfied.

We would also recommend that organisations such as the Equality Commission, trade unions, the Labour Relations Agency and voluntary sector bodies such as NICEM, Disability Action the Children's Law Centre etc. should be able to represent claimants.

The document points out that legal aid is outside the remit of an SEB because it is a reserved matter, but The Rainbow Project would argue that access to legal aid is necessary to ensure full and effective equality. For the same reason, the



legislation should allow for class or group actions and the award of large damages, with the requirement to change policies and practices carry out training for staff etc and to encourage a culture of equality. It might also be useful to discuss related issues such as the need to provide equality training for lawyers and judges in order to help deliver justice.

## Conclusion

Given the complexity of the task and bearing in mind the aim to create a strong and inclusive instrument to promote equality, we would argue that the SEB must be written in clear, understandable language. The Green Paper often tries to explain difficult concepts but it is weak on providing examples and scenarios to help decision-making. It would perhaps be useful to have the paper take a range of hypothetical case studies through the different stages from discrimination to potential remedy to help illustrate the key issues for debate. We would recommend the approach taken by The Equality Commission for Northern Ireland in producing their guide to the Sexual Orientation Regulations 2003.

As it stands, the SEB's emphasis seems to be on harmonizing anti-discrimination law and extending it to new categories. The chapter on under-representation in employment suggests that positive action mostly applies in this area. The Rainbow Project would argue that the legislation should take this opportunity to adopt a more proactive and progressive approach to equality. It is for this reason that we support the option of combining the FETO and Section 75 approaches across all the grounds in the SEB.

We endorse the NIHRC's position about including Section 75 categories in the SEB and we believe this raises another related issue about transferred and reserved matters. It is not made clear in the document whether the duties on public authorities should be limited to transferred matters. The Rainbow Project would argue that the SEB should state that duties on public bodies will extend to Westminster and to any jurisdiction which affects the lives of people in Northern Ireland, whether national or non-national.

The Rainbow Project is also aware that there are discussions in England, Scotland and Wales around the setting up of a body to be known as the 'Single Equality and Human Rights Body'. Although we would welcome the development of such a body, leading to greater protection for individuals within Great Britain, we are also led to believe that the 'SEB' in GB will be backed up by new legislation in a Single Equality Act. The Rainbow Project would welcome this *ideal* however we would be wary of the future development of legislation covering the whole of the United Kingdom in *one* Single Equality Act. We believe that this could possibly diminish protections for individuals not already covered by legislation in the rest of the UK such as some of the categories contained within Section 75 of the Northern Ireland Act 1998 such as people with Caring Status.

The Rainbow Project welcomes the development of the Single Equality Bill for Northern Ireland. We believe that the move by OFMDFM to extend the rights of



people under various categories and to 'level-up' the equalities legislation here is an excellent opportunity to develop Northern Ireland into a society which is based upon equality of opportunity and equal treatment in all spheres of life.

We would like to take this opportunity to thank the Office of the First and Deputy First Ministers for giving us in The Rainbow Project the opportunity to respond to such an important document.



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