

10th December 2004

General Comments

Sinn Féin welcomes the opportunity to respond to the consultation on a Single Equality Bill (SEB). The SEB is a natural outworking of the Good Friday Agreement. Potentially, it could be one of the most significant pieces of equality legislation to be enacted in the north of Ireland. It is therefore crucial that this legislation lives up to the requirements of a society which is not only emerging from years of conflict but which also paves the way in producing the strongest equality protections possible to protect its citizens against discrimination in all its many aspects. It is therefore a concern of Sinn Féin and others wishing to see swift progress of the equality agenda that such an important consultation has been unduly protracted as a result of the imposition of Direct Rule.

An attitude is prevalent that the north of Ireland has a 'long and distinguished history' in the field of equality legislation, that we are at the 'cutting edge' of fair employment legislation, that we are 'innovative' in our practices. The reality is that every single piece of equality legislation was hard fought for, often in the face of indifference, intransigence and foot-dragging by the British government and its administration in the north of Ireland. We are not convinced that the same attitudes do not still prevail as similar problems of indifference and intransigence are still to be found.

Instead of engaging in self-congratulations there should be an acknowledgement of the inherent limitations and lack of political will within the system to advance the equality and anti-discrimination agenda. The key determinant of the success or otherwise of anti-discrimination legislation is whether it has been effective and made a tangible difference on the ground. It is Sinn Féin's view that it has not. We are still a long way off from achieving equality of opportunity and more importantly, equality of outcome.

One has only to look at the results of more than 30 years of various fair employment and equality legislation to see that the central problem still remains – the northern state was founded on, and maintained by, inequality and discrimination against its Irish nationalist population. That is the issue that this consultation has avoided and must address. Why? Because it's the law. To not address it comprehensively during the course of this consultation and thereafter will leave the Department open to direct political and religious discrimination.

All-Ireland Equality

It is also disappointing and in clear breach of the letter and spirit of the Good Friday Agreement to note the absence of an all-Ireland equality agenda in this consultation. Partition has created and sustained inequality on a political, social, economic and cultural level. Inequality and the attendant problems of discrimination and poverty throughout Ireland require urgent and immediate attention. As well as harmonisation up the SEB should also be driving an agenda of all-Ireland harmonisation. This makes sense in terms of economies of scale, duplication of resources and sharing of best practice on such a small island. In line with the provisions of the Good Friday Agreement, therefore, OFMDFM should be examining how the SEB should come

under the auspices of the All-Ireland Ministerial Council in joint partnership with the relevant minister in the south.

Burden on Business?

Problems of inequality and discrimination exist in the north of Ireland. They require radical solutions. Sinn Féin is concerned that undue weight is being given to a concern that any new legislative requirements placed on businesses and service providers will place an “unnecessary burden” on them. While such views may have some foundation we believe any concerns of this nature can be addressed in other ways. The danger as we see it is that such concerns will be given undue weight by those opposed to progressive equality practices and that this bogus perception will be used to limit and minimise the legislation. This is not acceptable.

Strong equality legislation should not be viewed as a burden, rather it makes good business sense to have a strong legal regulatory framework and to ensure that the best person really does get the job. Similar concerns were raised around the compulsory monitoring components of the 1989 Fair Employment legislation. These proved to be unfounded. A culture of monitoring has become embedded so it would not be too difficult to extend this into other areas. Regulation, whether financial, legal, environmental protection or health and safety law, is a normal part of doing business.

International Framework

The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognized by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all member states are signatories.

The EU Race Directive (2000) and the Employment Framework Directive (2000) lay down minimum requirements which gives member states the option of introducing or maintaining more favourable positions. The strongest protections possible should be enacted. Both Directives are clear that implementation, ‘shall, under *no* circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States’. Any reductions in the level of protection would therefore be contrary to the Directives and thus unlawful. It is Sinn Féin’s view and that of others we have consulted with who are representative of the NGO and equality constituencies, that the strongest protections possible should be enacted.

The Consultation

While we recognise that the SEB is a complex piece of legislation, we are of the view that the response format did little to simplify the issue and presented restricted options. Sinn Féin is aware that concerns have been raised within the children’s sector that there has been inadequate consultation with Children and Young People. We would urge the department to address those concerns as a matter of urgency and to take action to extend the consultation deadline in order to ensure that appropriate and meaningful consultation is further carried out.

It is not Sinn Féin's intention to respond using the booklet. For ease of reference we will use the framework of the chapters. We do not intend to reply to all the detail as it is our view that the organisations working within the equality constituencies have the necessary expertise and level of detail to be better placed to do that. We reiterate our broad support for those organisations working to advance and improve the equality agenda across all of the categories. We believe it is imperative that the SEB addresses their needs and provides a positive, proactive conception of equality which will result in equal access, fair participation and – most important of all – the achievement of equality of outcome.

Chapter 1 – Introduction

Sinn Féin welcomes the commitment that there will be no reduction in the level of protection already afforded under existing law. It is absolutely vital that this is the case. Existing legislation should be strengthened and harmonized up. Effective implementation must be a key part of the SEB. Therefore there is a need for clear targets and timetables. In order to reach these targets and timetables adequate funding and effective mechanisms are needed. A lack of resources or inappropriate implementation mechanisms would pose a risk of undermining the effectiveness of the Bill.

Independent, external review mechanisms must be built into the legislation. This will allow for full exploration of whether the legislation's objectives are being met and, if not, what additional or alternative strategies are required.

Chapter 2 – Purpose and Principles

Equality should be promoted as a positive, proactive concept, containing both a commitment to the prevention of discrimination and to the promotion of those who have suffered disadvantage as a result of institutional discrimination and disadvantage. It should recognize difference and recognize that discrimination and disadvantage can affect different groups in different ways. Thus a flexible approach is needed and positive action should be given as wide a scope as possible. Equality measures should be innovative in meeting the distinct needs of the different groups.

There is no 'one-size-fits-all' solution to social disadvantage and exclusion. Layers of discrimination position groups differently in relation to systems of discrimination. Thus a close assessment of all the groups is required. This involves monitoring, assessment and consultation with all relevant parties - as required by current statutory duty provisions - leading to tangible outcomes.

Fair participation leading to equality of outcome should be a key part of the SEB. The current focus on equality of opportunity has not resulted in substantial or lasting change because it fails to recognize the underlying structures which maintain inequality and prevent people from reaching the starting point from which accessing opportunity becomes possible. In contrast, equality of outcome has the potential for affecting real change as it deals with the wider processes of social exclusion and institutional discrimination.

A consistent and coherent framework will greatly assist the implementation and understanding of equality legislation. The Single Equality Bill should provide such a framework for change which is outcome focused. The results should clearly be seen

to be measurable gains for marginalised groups involving equal access and fair participation across society. Further, there needs to be lasting change within the institutional structures supporting inequality.

General principles within the SEB should include:

- Harmonisation upwards of existing anti-discrimination and equality coverage
- Fulfilment of mandates set out in the Good Friday Agreement
- All-Ireland harmonisation
- Conformity with EU law and international best practice
- The provisions of the SEB should be in line with existing S.75 equality duties
- Procedures should be simplified and streamlined
- The SEB should be a positive model for achieving equality of outcome
- Compatibility with the Bill of Rights.

There is a need for clear and simple language, supplemented with detailed, accessible Codes of Practice.

Chapter 3 – Grounds

As already stated, EU Directives set minimum standards which do not prevent member states from setting a higher standard for discrimination protection. The EU Directives, therefore, should in no way be used to limit harmonization and coverage. The Good Friday Agreement expresses the commitment to providing rights not covered by the European Convention, reflecting an approach of updating and supplementing existing rights. Given the commitment to implementing best practices and surpassing coverage provided by European law, the extension of equality protection across the Section 75 and other categories will move towards incorporating the commitments of the Good Friday Agreement into the Single Equality Bill.

Political Opinion

The manner in which this consultation deals with the issue of a ‘political opinion that consists of or includes approval or acceptance of the use of violence for political ends’ is simplistic and unsatisfactory. In Ireland we are just coming out of decades, if not centuries, of conflict where political violence was used on both the British and the Irish sides. The Good Friday Agreement and the Irish peace process is an attempt to bring about a new way of resolving our differences that does not involve armed conflict. Instead of making fatuous statements and getting caught up in circular arguments that go nowhere this consultation would be better served if it dealt with the issue of equality on a realistic basis and accepted that inequality and injustice are often the reasons for political violence in the first place.

The experience has been that this exception has been used by employers as grounds for refusing to employ political ex-prisoners. This has been accepted by the Tribunal. This is providing a loophole for employers to discriminate against those with conflict-related convictions. **This exception should be removed from the legislation.**

Political Ex-Prisoners

Sinn Féin proposes the inclusion of a new ground to protect those from across our society who were convicted on political grounds. It is estimated that 15,000 people were imprisoned throughout Ireland for republican activity during the conflict. Political ex-prisoners are subject to routine pre-employment and other vetting. As a

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result they have difficulty getting employment, accessing finance including mortgage or insurance, applying for taxi and bus operator licences, cannot adopt children, are not eligible for compensation, face difficulties travelling overseas and are barred from some countries. There are high rates of long term unemployment amongst political ex-prisoners.

Their status as political prisoners has not been recognised and they are regarded as having a 'criminal' conviction. Despite commitments contained in the Good Friday Agreement neither government has brought forward any policy initiative to address particular problems that political ex-prisoners face nor has there been any review of legislation and administrative procedures. The political nature of the conflict has been recognised, this needs to be extended to political ex-prisoners through the SEB.

Socio-Economic Status

A key determinant of quality of life and ability to access services is that of socio-economic status. This is the one area where equality legislation, including TSN and NTSN, has singularly failed to make a difference. Poverty is a growing problem in the six counties and throughout Ireland, the gap between those least well off and the most privileged in society is growing, inequality on the basis of income is growing and is a key challenge to all of us. The inclusion of socio-economic status would go some way towards addressing this problem.

Irish Language

The full incorporation of the rights of Irish speakers as detailed in the Good Friday Agreement and the European Charter for Regional and Minority Languages has been met with institutional resistance. The Good Friday Agreement lays down a number of clear commitments in the field of language rights and particular emphasis is placed on the development of the Irish language in the building of a new society. The European Charter for Regional and Minority Languages has clear legal requirements to fulfil its duties and is quite precise as to how each language must be dealt with according to its own circumstances. In addition, the Council of Ministers' report on the implementation of the Framework Convention for the Protection of National Minorities specifically mentions the Irish language, commenting that there remains scope for further development.

It is, therefore, disappointing to note that this consultation makes no reference to the unique position of the Irish language in the north of Ireland. While it is recognised that all languages are entitled to equal respect, proportionality and the individual circumstances of a given language are the key factors in determining provision. Throughout Europe, it is recognised that indigenous languages are entitled to specific and more generous treatment, especially when they are in an endangered position. This is all the more important given the historical and current disadvantage and discrimination suffered by Irish language speakers. Irish has a key importance for the sense of identity and parity of esteem for the Catholic/nationalist/republican section of the population. The SEB must reflect the unique circumstances of the Irish language in the north of Ireland and include it as a protected category.

Marital or Family Status

Sinn Féin favours option (a) i.e. the inclusion of marital or family status to include all co-habiting couples, including both opposite and same-sex couples. The inclusion of

such a category should not cause any undue difficulty for pensions and other benefits. If such a category is included in one piece of legislation it is logical that this would and should flow accordingly into other legislation.

Equal Pay

Equal pay should be included across all grounds and the Equal Pay Act should be enacted in the SEB.

'Other Status'

'Other status' should be included in the list of covered categories to allow expansion and adaptation of the legislation. This would bring the SEB in line with Protocol 12 of Article 14 of the European Convention on Human Rights and the Human Rights Act of 1998. An 'other status' provision permits individuals from groups not listed to make their case to appropriate authorities in the future. The inclusion of such a category is compatible with the Good Friday Agreement which refers to a "commitment to the mutual respect, human rights and the religious liberty of everyone in the community."

Multiple-discrimination

The only way to ensure equality for everyone is to take an integrated, harmonized approach to discrimination by offering an equivalent level of protection on all grounds. An important part of this harmonized approach will be the inclusion of legal provisions specifically aimed at multiple-discrimination and multiple disadvantage.

Chapter 4 – Scope

Sinn Féin believes that the purpose of SEB should be the extension of protection and harmonisation up. The scope of the legislation should be the same for all categories unless there are justifiable reasons. We would therefore favour option (b). In the south of Ireland the complementary scope of the Employment Equality Act 1998 (EEA) and the Equal Status Act 2000 (ESA) have not had any undue difficulties. In order to give the widest protection the term 'employment relationship' should be used. Sinn Féin favours option (c) with an exclusion for voluntary work.

Volunteering

Volunteering, its non-remuneration aspect and the voluntary nature of the relationship, should be recognised as a category distinct from a paid employee. Sinn Féin is aware of concerns which volunteering organisations have raised in relation to the inclusion of volunteers as a category. It is imperative that these concerns are listened to and taken on board in drafting up the SEB and that the department works closely with organisations on the ground in this matter. Volunteers should be protected from discrimination. However, rather than including volunteers within the employment category this would be better served by drawing up voluntary Codes of Practice on equality in volunteering along with a system of arbitration for volunteers who feel they have been treated unfairly or discriminated against.

- In order to give the widest social protection, including social security, healthcare and social advantages should be defined within the scope of the SEB. Sinn Féin favours option (b).
- All the education sectors should be brought under the scope of the SEB, option (a). Sinn Féin is aware of, and shares the concerns, at the development of a

separate disability discrimination regime in relation to education regarding the Special Educational Needs and Disability Order (SEND) proposals.

- Sinn Féin favours option (c) in relation to the disposal and management of small premises, i.e., remove the exception for all grounds but include a defence where there is objective justification for discrimination in relation to small premises.
- In relation to coverage of public functions the wording and the options are unclear. It is Sinn Féin's view that all public functions, including procurement should be covered. The wording of the SEB should be broad enough to include all functions, without ambiguity and without further confusion.
- Private clubs and voluntary associations should come within the scope of the SEB with exceptions based on genuine occupational requirements/genuine service requirements (GOR/GSR).

Chapter 5 – Definitions of Discrimination

EU law has set out workable and practical definitions which should be incorporated into the new legislation. There should be no requirement of a comparator or reference to comparable situations. This often makes discrimination harder to prove and works at cross-purposes with principles of equality by setting up the currently privileged group as the norm.

Direct Discrimination

The current definition for direct discrimination retains the need for a comparator and should not be incorporated into the SEB. Disadvantage should be used as the gauge for determining direct discrimination. This would be compatible with EU legislation. The definition should read:

- Direct discrimination shall be taken to occur when a person has suffered, will or would suffer disadvantage on the basis of their membership of a designated group.

Indirect Discrimination

The definition of indirect discrimination set out in the Race Directive (Art 2(2)(b)) serves as a useful model. The requirement of a comparator should be removed:

- Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a [covered characteristic] at a particular disadvantage unless that provision, criterion or practice is justified by a necessary aim and the means of achieving that aim are appropriate.

Defining indirect discrimination in this way has several strengths. First, it does not contain a statistical requirement as an element of proving indirect discrimination, which is a weakness in the definition as set out in the Burden of Proof Directive. The requirement of statistical proof has the effect of neutralizing an indirect discrimination claim, as statistics are rarely available and/or costly to gather. This is especially relevant in the north of Ireland context, where there is little statistical evidence yet available on many forms of discrimination. Second, the definition does not require the discrimination be overt, intentional or conscious. It sends a clear message that discrimination does not have to be direct or intentional to be highly damaging to society. The provisions on indirect discrimination should make clear that the term "practice" refers to inaction as well as action. A strong indirect discrimination test is a vital component of the SEB. While other aspects of the SEB should facilitate those organizations which wish to pursue proactive equality policies, the threat of indirect

discrimination actions provides strong encouragement to all organizations governed by the Act to conduct equality audits of their policies and practices.

How the SEB sets out its measures for indirect discrimination is of the utmost importance as this provision will function as a primary means of confronting institutional discrimination in the north of Ireland. There is no justification for excluding disability from full protection from indirect discrimination and there should not be a separate approach to disability. There will be a clear need to articulate fully and ensure within the Codes of Practice the duty to make reasonable adjustments in regards to disability, but this should not work to exclude people with disabilities from indirect discrimination protection.

Victimization

The definitions of victimization currently in force in anti-discrimination legislation are inadequate because they limit victimization to those who have brought forward discrimination cases. They are also flawed in using the comparative approach. The number of allegations relating to victimization has increased, thus proper protection against victimization is crucial.

Victimization should be recognized as a widely reaching form of discrimination. Victimization protections should be extended far beyond their current limited scope and should receive as thorough treatment as other forms of discrimination. The Race Directive's definition of victimization is Sinn Féin's preferred option as it calls for Member States to "introduce measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment."

Harassment

The SEB should spell out prohibited behaviour, while allowing for positive measures and prevention. The provisions must make clear that both public bodies and employers have a positive duty to be proactive in taking all reasonable and relevant steps to prevent harassment. This is particularly important within the context of an Equality Bill, because of the severe exclusion, loss of dignity and intimidation experienced by the subjects of harassment. There should be no requirement of a comparator.

A definition of harassment based on the Framework Directive's definition already exists:

- Harassment shall be deemed a form of discrimination when unwanted conduct related to [any ground covered by the SEB] takes place with the purpose or effect of violating the physical integrity or dignity of a person, or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Incitement of Discrimination

Both EU Directives (Art. 2(4)) require that an instruction to discriminate be considered discrimination. The law should reflect this. Provision should also be made for the application of sanctions to those who promote or incite discrimination.

Burden of Proof

Both EU Framework Directives require a shifting of the burden of proof onto the respondent and away from the applicant in discrimination cases. This should be reflected in the SEB in terms of direct discrimination, indirect discrimination, victimization, and harassment and should be harmonized across all grounds.

Chapter 6 – Exceptions

Any exceptions must meet European Directives and they must be specific, proportionate and justified and should be subject to careful scrutiny. Because exceptions can become out-dated a review mechanism needs to be built into the legislation. Sinn Féin believes that exceptions in anti-discrimination law should be narrowly drawn and that their purpose should be to reflect the differences, needs and disadvantages of different grounds. They are not a licence to discriminate. We would favour the retention of a short list, in line with EU Framework Directives, supplemented by a GOR/GSR.

All current exemptions should be re-examined. The two EU Directives set down the maximum scope of exemptions, but do not require that all available exemptions be incorporated into national legislation.

A clear distinction should be made between the exemptions allowing discrimination and measures fostering positive actions. Actions aimed at remedying disadvantage should be framed as equality measures rather than permitted forms of discrimination or positive discrimination. It does not advance the aim of equality to refer to positive measures in the negative language of exemptions. This set of provisions should be expanded on in the Codes of Practice accompanying the Single Equality Bill.

Employment Exemptions: Genuine Occupational Requirements

The exemptions should be narrowed and an approach used which would be a general defence for discrimination clarified in the Codes of Practice in order to provide guidance in determining where a difference in treatment is justifiable. The EU Framework Directive's general employment exemption (Act. 4(1)), incorporating the following Occupational Exemption Clause is a model to use:

- a given characteristic constitutes a genuine and determining occupational requirement, provided that the objective is necessary and legitimate, and the requirement is proportionate.

This definition would ensure that each particular instance of discrimination must be justified.

In relation to the issue of teachers, education exemptions should be subject to the same justification as set out above - the exemptions should be necessary, legitimate and proportionate. For example, under this standard, discrimination on the grounds of religion or belief may meet these criteria for the hiring of religious education teachers and teachers for other ethos-driven subjects, but broad religious discrimination for all educational hiring would fall short of meeting these requirements.

Goods, Facilities and Services Exemptions

Again, differences should be made between the exemptions allowing discrimination and measures fostering positive actions. Express provisions should be made allowing

for positive action to remedy disadvantage in relation to the provision of goods, facilities and services.

Exemptions allowing discrimination in this area should be very narrow. Any exemption should provide for the same burden of proving a genuine and legitimate objective, and that the characteristic in question is a relevant consideration. A general provision, accompanied by examples in the SEB's Codes of Practice, could facilitate addressing the complicated issue of exemptions for discrimination in private clubs, associations, and voluntary bodies. Under the general provision, exemptions would only survive where the grounds of discrimination are relevant to the organization or body's purpose.

- National security should be removed as an exception across all grounds. It has proven to be used as a catch-all and unjustified exception and it is out-dated.
- The nationality requirement for civil service jobs should be removed.

Chapter 7 – Goods, Facilities and Services

It is Sinn Féin's view that a comprehensive definition of GFS should cover all public functions, including procurement. The wording of the Act should be broad enough to include all functions without ambiguity and without confusion, no questions about whether something is a social function or not. As with employment matters, there should be a short list of justifiable and legitimate exceptions supplemented by a GSR.

Chapter 8 – Addressing Under-Representation in Employment

The use of positive action, fair participation and equal access are key to addressing under-representation. Positive action must be at the centre of any equality framework. It affords a means of examining existing practices and addressing the institutional discrimination and disadvantage within the north of Ireland. Positive action must go beyond head-counting and the status quo language of under-representation to emphasise mechanisms for attaining and ensuring fair participation and equality of outcome.

This would be compatible with EU Directives under their positive action clauses (Art. 5 and 7) and would help to bring about positive permanent institutional change throughout society by "adopting specific measures to prevent or compensate for disadvantage linked to any of the grounds." European law allows for a vast range of positive action options, they are minimum guidelines effectively allowing member states to enact more protection than set out in EU provisions. The EU Directives, the Good Friday Agreement, and international human rights instruments and best practices all recognize the importance of positive action.

Experience has shown that there is a tendency to shy away from the contentious issue of religious/political discrimination in this state and the extension of FETO should not be used as an opportunity to take the focus off this key issue. FETO should be extended across all the categories. Smaller workplaces of less than ten employees represent the majority of firms in the north and they are often the most segregated. Sinn Féin recommends that they are monitored in order to get an accurate picture, at this stage, and their position should then be examined on the basis of the information. Monitoring must be compulsory as experience has shown that voluntary compliance does not work. Affirmative action is a necessary part of addressing under-

representation in the workplace and is concerned with positively uplifting previously under-represented groups.

Contract Compliance

Government and public bodies exercise considerable economic power which should be used to secure fair participation in employment when awarding public contracts and grants. Contracts should go to contractors who are furthering equality and this should be reflected within the SEB. Access to contracts and grants where public money is involved should be linked to the promotion of affirmative action and fair participation measures by employers, and should facilitate the recruitment of the long-term unemployed. Targets should be set within contracts for a proportion of the recruitment to be from within the long-term unemployed, based on increasing the proportion of such people who obtain work with the employer who wins the contract. This can be done while still adhering to EU public procurement directives.

Chapter 9 – Equality Commission Functions and Powers

There should be a strong, independent, representative Equality Commission (EC) with adequate powers, resources and – crucially – the will to use them. Sinn Féin is not convinced that the EC has done this to date. The EC has not taken a proactive role and has adopted a minimalist approach. What is needed is an EC that is prepared to test the law and to challenge discrimination whether in the workforce, in wider society, in governance and in policy. Enforcement should be the primary duty for the EC yet the emphasis is increasingly moving towards conciliation. This is the wrong approach. The EC is not an arbitration service, it is meant to be a watchdog and a champion for equality. The SEB should be used as an opportunity to strengthen the powers of the Commission. Crucially, it should have the power to take cases in its own name.

The Commission needs to secure the confidence of all sectors in its ability to monitor and to challenge inequality and discrimination. This is achievable but it means the Commission being willing to take on the controversial cases. Five years after being established the complaints mechanism for S.75 is only now being put in place. Currently, processes within the Commission are protracted and bureaucratic and act as a deterrent for people, already vulnerable, to take further action. The message that the EC is sending out is that casework and litigation is not a priority. A major problem is the EC's relationship with government, especially OFMDFM, its parent company and source of funding. An alternative framework, which protects the independence of the EC, is needed.

Chapter 10 – Tribunals and Courts

In the interests of harmonisation there should be a single Equality Tribunal to hear both employment related cases and those related to GFS. Many types of discrimination cases raise common themes and share similar sensitivities.

Remedies

Both EU Directives allow for a broad set of remedies, while the European Court has concluded that remedies for anti-discrimination must have a real deterrent effect. Remedies should not only provide redress for the immediate claim, but also include provisions for effective deterrence and prevention of discriminatory practices in the future. The SEB should provide for a broad range of remedies ranging from financial

compensation to injunctions and mandatory reviews of equality policies. Tribunal decisions should be treated as binding precedent. This would allow other employers to benefit from tribunal decisions while facilitating the adjudication of similar anti-discrimination claims. The expansion of remedy provisions will bring the powers of the tribunals, courts and equality bodies under the Single Equality Bill in line with European standards.

Sinn Féin believes that provision should be made within the SEB for NGO's to play a more enhanced and central role in the area of equality. This would be in keeping with EU Directives and should include the provision of legal standing for all relevant organizations to bring litigation both on behalf of complainants and in their own name. There should be provision for class/group action within the SEB.

NGOs that represent disadvantaged constituencies can often find themselves the objects of discriminatory practices, and should enjoy the same protection extended by the legislation towards individuals. By expressly providing protection for legal persons and allowing NGOs to bring litigation in their own names, the SEB will provide for an important mechanism in fighting institutionalized discrimination. It will also extend adequate legal recourse to a key sector within the equality framework.

The EU Directives also include provisions for promoting social dialogue or consultation with NGOs. This should extend to a clearly articulated role in the formulation of monitoring and equality promotion strategies. These should be incorporated into the SEB as should the provision of adequate resources for NGO participation in the equality framework in line with EU Directives.

Assistance with Legal Costs

The arbitrary withdrawal of legal assistance by the Equality Commission in September 2002 has meant that the legal avenue of redress to discrimination has been closed down to many people. In this matter, the Equality Commission and the law has failed to protect the most vulnerable members of our society. There is no point in individuals having a theoretical right to legal redress if they are unable to afford it. Accompanying the right to a judicial remedy must be provisions for assistance with legal costs. Cutting back on the assistance to cases effectively gives the green light to discriminate.

There are currently no legal aid provisions for cases brought before the Fair Employment Tribunal or the Industrial Tribunal. The EOC identified the unavailability of legal aid for proceedings in front of the tribunal as a probable denial of legal process as required by European equality law. SACHR concluded that it was completely unrealistic to expect parties to appear without legal representation given the increasing complexity of discrimination law. The enactment of the SEB provides an opportunity to redress this problem. Free legal aid should be made available for proceedings brought under the SEB.

Time Limit

The time limit for filing a complaint should be extended to six months and harmonized across all the grounds.

Codes of Practice

Codes of Practice accompanying the Single Equality Bill will be indispensable in articulating the details and practical applications of the legislation. The Codes of Practice should be set out using lists of examples and understandable language. It is crucial that these Codes of Practice be a matter for consultation within the covered constituencies and social partners.

Chapter 11 – Alternative Dispute Resolution (ADR)

The right to legal remedy is at the heart of ensuring that the rights contained in equality legislation are delivered in practice. Thus while ADRs should be made available they should, under no circumstances, mean relinquishing the right to pursue litigation. Mechanisms focused on increasing the efficiency and cost effectiveness of procedures cannot be allowed to eclipse a person's right to fair and impartial adjudication of their claims. The Office of the Director of Equality Investigations in the south of Ireland should be the model used in the SEB. This is an example of harmonizing good practice on the island of Ireland and would be fully in keeping with the Good Friday Agreement.