

99

Our ref:

Your ref:

When telephoning  
please ask for:

**RECEIVED**  
10 DEC 2004  
*Equality Unit*

**UNISON**  
*Northern Ireland*

Unit 4  
Fortwilliam  
Business Park  
Dargan Road  
BELFAST  
BT3 9JZ

Tel: 028 9077 0813  
Fax: 028 9077 9772  
Text phone:  
028 9077 0803

*Regional Secretary*  
Patricia McKeown

30 November 2004

Ivan Millen  
Single Equality Bill Team  
Office of the First Minister and Deputy First Minister  
Room E.3.18  
FREEPOST NAT 17679  
Belfast  
BT4 3BR

Dear Mr Millen,

**SINGLE EQUALITY BILL**

Please find enclosed UNISON's response to the consultation on the Single Equality Bill.

Yours sincerely

Thomas Mahaffy  
Policy Organiser

**Submission from**



**Northern Ireland**

**Submission**

**on**

**SINGLE EQUALITY BILL**

**November 2004**

## 1.0 INTRODUCTION

---

UNISON is the leading trade union in Northern Ireland and the largest trade union in the UK with over 1.3 million members.

In our continuing campaign for implementation of the Good Friday Agreement, we have identified the Single Equality Bill (SEB) as a real practical way to create structural change in our society to ensure that peace becomes a reality and there is real change in the lives of the people who need it.

Many of current issues relevant during the initial consultation on the Single Equality Bill remain outstanding. As a result the main body of this submission (sections 2.0 – 11.0) mirrors that made by UNISON in November 2001 and the more detailed submission made by ICTU in December 2004.

However, there are a number of additional issues we would raise at this stage.

### ■ Consultation process

We have major concerns that the current process may have breached the Guidelines on effective consultation. As a result the views of many Section 75 groups may not have been effectively considered.

### ■ Diminution of the overall aim of the Bill

We are further disturbed that there has been a diminution of the overall aim of the Bill from that agreed by the First and Deputy First Minister at the original consultation stage.

The current the summary and main document states that the aim of the Bill is to:

*“harmonise anti-discrimination law, as far as practicable, and extending it to new categories, including age and sexual orientation”.*

This only partially reflects the original ministerial intention that:

*'The Single Equality Bill ... is designed to build on existing equality legislation in preventing discrimination and promoting equality of opportunity for all in our society. The Bill will enable us to harmonise our anti-discrimination laws as far as practicable and to consider the extension of protection to new categories. It will also enable us to implement new European Directives on equality and to consider important developments in Great Britain, as well as in the Republic'.*

Whilst the current document refers to harmonisation, it omits the reference to "promoting equality of opportunity for all in our society" that was part of the 2001 document. It is essential that this ambiguity is removed and that the original objectives for the Bill are restored.

## **2.0 KEY ISSUES**

---

### **■ Equality, human rights and international best practice**

It is essential, that the SEB conforms to a number of essential criteria.

- Existing anti-discrimination legislation and procedures must be harmonized and simplified through new fair employment measures and protective provisions. This is essential given the failure of current legislation to address disadvantage and inequality in our society. This has been previously recommended by SACHR and the EOC(NI).
- The SEB must provide a model for implementing the equality framework necessitated by the passage of EU directives.
- The SEB must further develop and mainstream the equality and human rights commitments set out in the Amsterdam Treaty, the Good Friday Agreement and the NI Act 1998. Whilst the NI Act 1998 specifically dealt with the promotion of equality of opportunity by public bodies, the Single Equality Bill should further facilitate equality measures in both the public *and* private sector.

- Northern Ireland is distinctive from Great Britain politically, socially, economically and culturally as a result of conflict and its unenviable status as one of the most disadvantaged regions in the UK. The SEB can address the specific concerns and inequalities faced individuals and groups in NI particularly affected by some of the highest levels of unemployment and long term unemployment, among the lowest average gross weekly earnings and some of the greatest differentials in income and health status.

For the provisions of the SEB to make real change, therefore, it is thus essential that they are in line with, (i) the equality and human rights provisions of the Good Friday Agreement; (ii) the government's existing equality duties under Section 75 of the Northern Ireland Act, as well as (iii) EU law and international best practice

#### ■ **Level of protection**

An Equality Bill that lowers the level of protection existing currently within Northern Ireland would be unlawful given the minimum requirements laid down by EU Directives. It is essential that the level of protection introduced by an Equality Bill results in a more favorable position for affected groups and individuals.

#### ■ **A proactive approach to equality**

The SEB must not only combine existing anti-discrimination legislation but seek reform the institutional structures that support inequality in order to advance the principle of 'equality of outcomes'. A practical framework to address disadvantage and ensure equal access, fair participation, and equality of outcome must be set in place,

#### ■ **Implementation**

To be implemented effectively, in relation to each of the protected constituencies, the SEB must have adequate funding and effective

instruments that enable clear targets and timetables to be met. Independent, external review mechanisms are essential in this context.

### ■ **Clear and simple language**

We believe that rights are only real when they are owned and accessible to those who need them most. It is essential therefore, that the whole decision-making process is fully open, accountable and accessible. And that the Single Equality Bill corresponds with the forthcoming Bill of Rights. The SEB must use clear and simple language, and have detailed, accessible Codes of Practice to make it accessible to applicants, and all others using it.

### **3.0 SCOPE, APPLICATION AND COVERAGE**

---

To ensure simplicity, consistency and equality of coverage the provisions required by EU Directives should be extended and harmonised across **all** the nine categories designated under Section 75 of the Northern Ireland Act. The Single Equality Bill should also apply to all public authority functions and operations in Northern Ireland.

Although the EU Directives do not explicitly relate to the extension of equality provisions to some of the section 75 categories they set minimum standards and do not limit further protection across categories of particular importance in the Northern Ireland context. Coverage should be extended in a non-exhaustive way to ensure that future protection can be extended to individuals and groups not specifically mentioned. The rationale for the extension of rights, and legal provisions, not provided by the European Convention was fundamental to the Good Friday Agreement.

In addition to those areas prescribed by the Framework Directive and Race Directive it is essential that protection is extended to discrimination in the provision of goods, facilities and services. This is fundamental to creating real change and has been recognised in seminal reports in the 1980s and 1990s by SACHR and the EOC(NI).

## 4.0 EXEMPTIONS

---

UNISON would urge OFMDFM to consult with each of the Section 75 constituencies on relevant exemptions

Generally, in relation to exemptions in employment and exemptions in the provision of goods, facilities and services we would recommend that any exemption must be legitimate, proportionate and directly relevant to the service provided. For example in relation to 'Genuine Occupational Qualifications' many current discrimination exemptions appear stereotypical and contrary to European equality law. Rather than an unwieldy list of exemptions we would recommend an exemption clause, the definition of which ensures that each particular instance of discrimination must be justified.

## 5.0 DEFINITIONS

---

In relation to definitions, EU law sets out minimum standard which must be build upon in the SEB. Measures must "level up", not "level down" protection.

### ■ **Comparator**

The requirement of a comparator (as per current NI legislation) or reference to comparable situations in this section should be removed as this often makes both direct and indirect discrimination harder to prove due to the setting of the currently privileged group as the norm.

### ■ **Direct Discrimination**

The concept of 'disadvantage' as a practical method of defining discrimination is supported by the Human Rights Commission's Bill of Rights Equality Working Group, Equal Treatment Directive and the European Court of Justice.

### ■ **Indirect Discrimination**

The EU Race Directive definition of indirect discrimination (without any requirement of a comparator, however) is a useful model to tackle institutional discrimination in Northern Ireland. It does not require statistical proof of discrimination which is rarely available)

and does not require the discrimination be overt, intentional or conscious. It is essential that disabled people should not be excluded from indirect discrimination protection.

### ■ **Burden of Proof**

It is essential that the SEB shifts the burden of proof onto the respondent in discrimination cases as this is required by both EU Directives.

### ■ **Victimization**

In addition to current categories victimization protections should be extended to include former employees, current employees and third parties adversely affected, including those giving evidence. The SEB should “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.” (Race Relations Directive).

### ■ **Harassment**

Harassment is not defined within current Northern Ireland anti-discrimination but is clearly a form of direct discrimination and according to the Human’s Right’s Commission’s Bill of Rights Equality Working Group should encompass physical integrity concerns including sexual and emotional abuse and neglect, as well as physical forms of abuse. Positive measures and prevention are paramount. It is essential that public bodies and employers have a positive duty to be proactive in taking all reasonable and relevant steps to prevent harassment.

### ■ **Advertising**

The SEB should make it unlawful to publish an advertisement that could reasonably be taken to indicate an intention to discriminate against any section 75 category.

## ■ Incitement of Discrimination

Any instruction, incitement or pressure to discriminate must be considered discrimination and sanctionable. This is required by EU Directives.

## 6.0 MONITORING

---

### ■ Scope and coverage

Monitoring must not be limited to employers but to other areas like the provision of goods, facilities and services. Inequality within Northern Ireland is more than an equal access to employment issue. Monitoring, through rigorous Codes of Practice, must take place with regard to each section 75 category to ensure the different experiences and needs of each constituency are recognised. We recommend that the duty to monitor has a statutory basis to ensure that all public sector organisations, private bodies performing a public function, and other private sector organizations comply. SACHR recommended a number of actions to ensure effective monitoring. UNISON would commend them for inclusion in the new Bill.

## 7.0 POSITIVE ACTION

---

### ■ Protection for positive action measures

In light of the Hepple report UNISON recommends the strengthening of positive action measures for all covered categories to provide open-ended protection and specific advantage for persons from a designated group in order to prevent or compensate for disadvantage in the covered areas.

### ■ Statutory Duty to Promote Equality and enforcement

The SEB should include a statutory duty to promote equality which would be triggered if under-representation is proven. If clear disadvantage is reported, voluntary compliance should be encouraged to address particular equality concerns. However, further specific enforcement measures and stronger sanctions, such as those recommended by Hepple, are necessary to back up a positive statutory duty

## **8.0 CONTRACT COMPLIANCE**

---

It is essential that the Single Equality Bill implement recommendations from SACHR, the EOC and the NI Affairs Committee in relation to contract compliance. These measures should apply to all section 75 categories and should include:

- that the present limited provisions in relation to contract compliance should be developed into a more effective mechanism for helping to deliver fair employment policy objectives;
- that the sanctions provisions of the 1989 Fair Employment Act relating to Government contracts and grants should be amended linking access to contracts and grants to the promotion of affirmative action and fair participation measures by employers;
- that targets should be set for the recruitment of the long-term unemployed within contracts over £10,000;
- that a gender analysis of the total existing workforce, including those to be subject to market testing, should take place considering the differential impact of competitive tendering on women found by the EOC in relation to pay, hours of work, terms and conditions of employment, benefits and pension arrangements.

We agree with the NI Affairs Committee that such contracts should go to contractors who are furthering equality. The SEB should reflect this fact.

## **9.0 'BURDEN' ON EMPLOYERS**

---

SACHR indicated the major benefits of implementing fair employment legislation in terms of industrial relations, improved perceptions and good recruitment and selection practices, with only 6.3% of employers indicating that competitiveness is adversely affected.

## **10.0 STRUCTURES**

---

## ■ Single Commission

In 2001 we argued that the new Single Equality Commission should include intermediate directorates devoted specifically to the new categories covered by the SEB prior to eventual merger.

We would reiterate that necessary funding is vital. The powers of the Commission must include a statutory role in keeping equality legislation under review in addition to monitoring, assessing, and reporting on equality issues. It is also essential that the Commission has significant powers in relation to receiving and investigating complaints, providing advice and assistance on anti-discrimination and equality issues, preparing and revising the SEB's Codes of Practice, involvement in any relevant proceeding, and in pursuing litigation on behalf of the equality body or in support of individuals. The Commission should also have the power to enforce compliance, including compliance with positive duties by private actors or public authorities.

## ■ An Equality Tribunal

A harmonised system of anti-discrimination or equality tribunals is essential along the lines of the Industrial Tribunal. Discrimination cases related to goods, facilities and services should also be heard within the new tribunal structure. To ensure effective adjudication of proceedings under the legislation, any tribunal or court hearing anti-discrimination proceedings should have a duty to take into account the Codes of Practice accompanying the legislation. Tribunals (such as an equality investigations body) must supplement legislation by having a preliminary complaint, conciliation and investigation structures. Discrimination complaints could be resolved by well developed mediation and conciliation procedures

## 11. THE ROLE OF NGO'S

---

The Single Equality Bill must have provisions recognising the vital role to be played by NGO's the effective implementation of the SEB. This role is specifically recognised by the Race and Framework Directives. For example:

- NGOs should have adequate resources, and a legal standing for the purposes of bringing litigation both on behalf of complainants and in their own name.

- As a mechanism to fighting institutionalised discrimination, the provisions of the SEB should apply both to individuals and legal persons/organizations.

## **11.0 INVESTIGATION, REMEDIES AND ENFORCEMENT**

---

The Single Equality Bill should overtly provide those with discrimination claims with:

- the guarantee of access to a judicial remedy whilst avoiding a mandatory arbitration system;
- provisions for assistance with legal costs (as recommended by SACHR, FEC, EOC and CRE);
- alternative investigation mechanisms in addition to the formal system already in place.

The harmonisation of time limits for discrimination claims is essential across all of the covered grounds.

The Codes of Practice accompanying the Single Equality Bill should be set out using lists of examples and understandable language.

There must be adequate enforcement and sanctioning mechanisms available to the equality body and investigation body.

There must be a complete reassessment of the remedies available under current anti-discrimination and equality legislation from retrospective remedies, such as financial compensation, to prospective remedies, such as injunctions and mandatory reviews of equality policies.

**For further information contact:**

**Thomas Mahaffy, Research & Policy Organiser**  
**UNISON, Unit 4, Fortwilliam Business Park,**  
**Dargan Rd, Belfast, BT3 9JZ.**  
Tel – 028 90770813  
Fax – 028 90779772  
Email – [t.mahaffy@unison.co.uk](mailto:t.mahaffy@unison.co.uk)