

# Response Booklet

## 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](http://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:** Cyril Donnan\_\_\_\_\_

**Title:** Policy Director\_\_\_\_\_

**Organisation:** Ulster Unionist Party\_\_\_\_\_

**Address:** 'Cunningham House'  
429 Holywood Road

**Postcode:** Belfast  
BT4 2LN

---

### **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 college of further education**

**A company**

**A Government Department or Agency**

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

**An organisation representing employers**

**An organisation representing service providers**

**A professional association**

**A statutory body**

**A trade union/staff association**

**A university**

**A voluntary organisation**

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

**A Political Party**

**3.** If you are replying on behalf of your organisation, how many people does your organisation employ? **N/A**

**Between 1 and 10 employees**

**Between 11 and 49 employees**

**Between 50 and 249 employees**

**250 employees or more**

**4.** Please indicate which sector best describes you?

**Advice and /or information services**

**Charity/voluntary work**

**Communications**

**Construction and/or building design**

**Distribution/Transport**

**Education/ training**

**Electricity, gas and water supply**

**Financial and/or business services**

- Health and social work
- Legal services
- Leisure - Cinemas, theatres, museums
- Leisure – hotels, restaurants, pubs
- Public administration
- Religious organisation
- Wholesale and retail trade
- Other (*please tick box and specify*)

**Political Party**

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

**All aspects of equality**

**YES**

- Age
- Disability
- Gender
- Gender Reassignment
- Married Persons
- Political Opinion

**Racial Grounds**

**Religious Belief**

**Sexual Orientation**

**Other (*please specify in the box below*)**

## Introduction

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

Northern Ireland certainly has a greater quantity of 'law' on Equality issues when compared with many other countries but to declare that we are at the 'cutting edge' in the international arena is overstating the position. Particular circumstances created by the so-called religious make up of our community have led to the current legislative position. The perception that our legislation is 'superior' spurs additional legislative programme for the sake of being 'seen' to be ahead of other nations.

Generally, we do need to take account of the negative impacts of the current legislation particularly in the context of the burden on the business community. We welcome the comments in paragraph 4 of the Introduction regarding the need to avoid 'apparent neatness and clarity'. The aim of the Single Equality Bill should not be harmonisation per se. Legislation should only be changed if there is clear evidence for the need for such change.

### 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.

We favour an approach of prohibiting discrimination which we feel is more compatible with the traditions of English and Northern Irish law; defining what cannot be done rather than attempting to define what should be done. As regards a positive promotion of 'equality of opportunity' this is already provided for (Section 75) and is, in any case, open-ended.

Existing legislation provides a duty for 'due regard' towards 'equality of opportunity'. We think this is more appropriate than simple 'equality of outcome' though care needs to be taken to avoid Government social engineering of lifestyle choices.

## Purpose and Principles

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

The Ulster Unionist Party accepts that accommodation of national minorities must take place within all states. The Vienna Declaration (1953) stated that “the rights of persons belonging to national minorities” have to be protected “within the rule of law, respecting the territorial integrity and national sovereignty of states”. Specifically, Section III (Article 20) of the ‘Framework Convention for the Protection of National Minorities’ Council of Europe states that in exercising rights, persons belonging to national minorities “shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or other national minorities”. Indeed the related explanatory note states that national minorities are “required to respect the national constitution and other national legislation”. Consequently, it is essential that the Purpose and Principles of any Bill complies with International Agreements in every aspect.

The stated aim of demonstrating ‘no regression from existing law’ (paragraph 3) rather naively assumes that all the existing law has both been necessary and effective. Moreover, the suggestion that ‘equality is good for the community and the economy’ is rather too simplistic and in any case, does not distinguish between equality of outcome and equality of opportunity.

All legislation should be fit for purpose and supported by evidence of a real need. Whilst Northern Ireland clearly needs some equality legislation it is much less clear that a Single Equality Bill is the best vehicle for this. We would challenge the naïve view that more legislation is necessarily better or harmonisation per se an improvement.

Grounds

Political opinion (paragraph 10)

3.1 In relation to the potential loophole in the “political opinion” ground, do you consider we should:

Have no change to present legislation?

Amend the existing definition to exclude all political opinions that support the use of violence, whether or not these are connected with the affairs of Northern Ireland? **YES**

Amend the existing definition so that there is no exclusion and leave it up to the courts to determine whether a particular political opinion was protected?

3.2 Please explain the reasons for your preference:

**Account should be taken of the threat of global terrorism given the events of the last three years. Terrorism is terrorism irrespective of its source and it is not constrained by geographic boundaries so why should our law make such distinctions.**

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?

**NO**

3.4 If “Yes”, should such a ground:

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

Or

Grounds

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

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

**YES**

**NO**

**NO VIEW**

**3.6 If you answered 'Yes' to question 3.5 , what are the difficulties and have  
you any suggestions on how they could be overcome?**

## Grounds

3.7 Please explain the reasons for your answer:

**Why focus on this ground? In our view no compelling case has been made.**

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

Should be included:

**The Ulster Unionist Party is firmly of the view that none of the additional grounds should be included in the Bill.**

Should not be included:

## Grounds

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

Pregnancy/Maternity – these issues are adequately catered for in existing employment legislation.

Past Convictions – are already catered for in existing legislation. An overwhelming ‘duty of care’ for public safety far outweighs any arguments for further relaxation.

Victims – is a very sensitive area which should attract sympathetic consideration although that may at times be tempered depending on the definition of ‘victim’. The Ulster Unionist Party is sympathetic to the needs of ‘genuine’ victims and will support their cause. However, the appointment of a Victims Commissioner would largely address this issue. We do not condone any form of discrimination against victims but believe there are better methods of assisting them.

Socio-economic status – is not a viable ground because differences in status may require differential treatment. Furthermore, it would be prudent not to shackle any future government policy. Elected politicians and not judges should make socio-economic policy

Language – is another issue that is adequately addressed under the European Charter. Moreover, it is vitally important to distinguish between aspirational wish lists and what is actually necessary given genuine demand.

Gender Identity – is a complex matter that has already been legislated for. The Ulster Unionist Party believes that additional legislation cannot over rule or set aside how bio-chemistry determines sexual identity.

Genetic Predisposition – is another complex issue which requires to be kept under review in the light of technical change and if necessary dealt with in specific legislation.

3.10 Please state why you consider that other legislation and/or other mechanisms that currently exist offer inadequate protection for any new ground or grounds that you feel should be covered in the Bill?

**Equal Pay (paragraphs 34 to 36)**

3.11 Should we extend the existing provisions on equal pay (currently restricted to men and women) to another ground or grounds in the Bill?

**YES**

**Grounds**

3.12 If you answered 'Yes', please state which ground or grounds should be included and why you consider this is necessary?

**Should be extended to cover disability, race, religious beliefs and political affiliations. It may also be desirable to cover 'age' but this may be extremely problematical given pay scale differentials dictated primarily by 'service/experience'.**

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

**NO VIEW**

3.14 Have you any other comments on this Chapter?

**No.**

### Scope

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

Limited to the scope of the EU Directives and existing NI anti-discrimination legislation -Option (a)

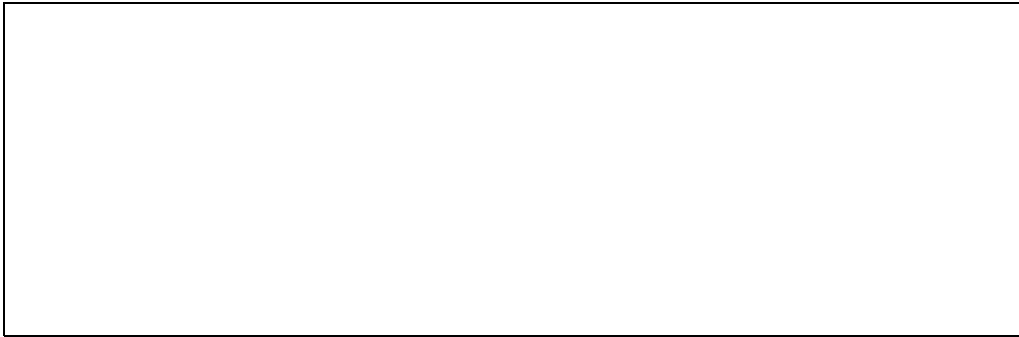
**YES**

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

Extended beyond employment for new grounds only in certain circumstances with a delay in implementation - Option (c)

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

**The scope of the Bill should be based on 'evidence' and 'need' rather than some spurious grounds attempt to achieve a symmetrical outcome.**



**Employment concepts – position reserved**

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

YES  NO  NO VIEW

4.4 If you answered “YES”, should “employment” be defined using the definition in current legislation, namely “employment under a contract of service or apprenticeship or a contract personally to do any work”? - Option (b)

YES  NO  NO VIEW

**Scope**

4.5 If you answered “Yes”, should the Bill define the concepts more broadly to include relationships, which do not technically constitute a contract to allow for the inclusion of some marginal workers and volunteers? - Option (c)

YES  NO  NO VIEW

4.6 If a broader definition is to be used should it exclude volunteers?

YES  NO  NO VIEW

4.7 Should the Bill **not** define the above concepts but leave it to the Tribunals to decide on a case-by-case basis? - Option (a)

YES  NO  NO VIEW

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

**The issue of 'volunteers' should be left to self-regulation with perhaps a best practice code. To impose a legislative regulatory framework on the 'voluntary' sector will undoubtedly impact negatively on volunteering in many areas. Volunteers need to be 'encouraged' and not bound by excessive regulations. Moreover, whilst it is vitally important to protect volunteers from discrimination it is unacceptable to incorporate them into the 'employment' category.**

### **Membership and Involvement in Organisations of Workers or Employers**

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

**YES**

**NO**

**NO VIEW**

### **Scope**

4.10 If "Yes", which grounds?

**Vocational Guidance and Vocational Training, including Practical Work Experience**

4.11 Should the Bill extend this provision to some or all of the new grounds?

YES

NO

NO VIEW

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

YES

NO

NO VIEW

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

**Scope**

**Social Protection, including Social Security and Healthcare and Social Advantages**

4.14 Do you consider that the Bill should:

Not define these concepts but leave it to the courts to decide on a case-by-case basis? (paragraph 27 option a)

YES

NO

NO VIEW

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

YES

NO

NO VIEW

4.15 Please explain the reasons for your answer:

### Education

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

### Scope

4.18 Please explain the reasons for your answer:

## Disposal and management of small premises

4.19 Do we:-

Retain the exception for all grounds except race? - Option (a)

YES  NO  NO VIEW

Remove the exception for all existing grounds except race? - Option (b)

YES  NO  NO VIEW

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

YES  NO  NO VIEW

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

## Scope

### Coverage of public functions

4.21 Should the coverage of public functions be extended to a similar extent as in the GB Race Relations (Amendment) Act 2000? - Option (a)

YES  NO  NO VIEW

Should the extension of coverage of public functions be limited to that already in place for Race, this would include procurement? - Option (b)

YES  NO  NO VIEW

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

### Private Clubs/Voluntary Associations

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

**YES**

**NO**

**NO VIEW**

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

**YES**

**NO**

**NO VIEW**

### Scope

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

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

## Definitions of Discrimination

### Direct Discrimination

5.1 Which of the following options should be used in defining direct discrimination?

Maintain the existing definition as contained in the EU directives and contained in NI legislation. In the disability legislation the “reasonable adjustment” duty would remain. Option **YES**

“ For a reason which relates to his or her age, disability, gender, gender re-assignment, political opinion, racial ground, religious belief, sexual orientation (and any other grounds added to the Bill) or in relation to married persons, A treats B less favourably than he treats, has treated or would treat another person in a comparable situation.” Option (b)

“ Direct discrimination shall be taken to occur when A has caused, causes, or would cause disadvantage to B on the basis of any of the protected grounds.” Option (c)

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

**The existing legislation is intrusive so any extension should only be considered if there are compelling reasons for doing so. We believe the existing legislation in this context adequately addresses the issue.**

5.3 If none of the above are considered suitable do you have an alternative suggestion? Please give reasons why you think this should be adopted for the Bill.

**Definitions of Discrimination – Position reserved**

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

**YES**

**NO**

**NO VIEW**

5.5 If you answered “Yes” please state which grounds and why?

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

**YES**

**NO**

**NO VIEW**

5.7 If you answered “No” can you suggest an alternative?

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

## Definitions of Discrimination

Indirect Discrimination

5.9 Do you think that a standardised definition of indirect discrimination should relate to all the grounds to be included in the Bill?

YES

NO

NO VIEW

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

The Framework/Race/Equal Treatment Directives definition

A separate definition

What should this definition be?

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

YES

NO

NO VIEW

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

## Definitions of Discrimination

### Harassment

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

**YES**

**NO**

**NO VIEW**

5.14 Do you think a comparator is required?

**YES**

**NO**

**NO VIEW**

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

**Not specifically for this issue.**

5.16 Should “sexual harassment” be defined separately?

**YES**

**NO**

**NO VIEW**

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

**The definition outlined in the EU Framework, Race and Equal Treatment Directives on harassment generally is fine.**

## Definitions of Discrimination

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

### Victimisation

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

**YES**

**NO**

**NO VIEW**

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

**YES**

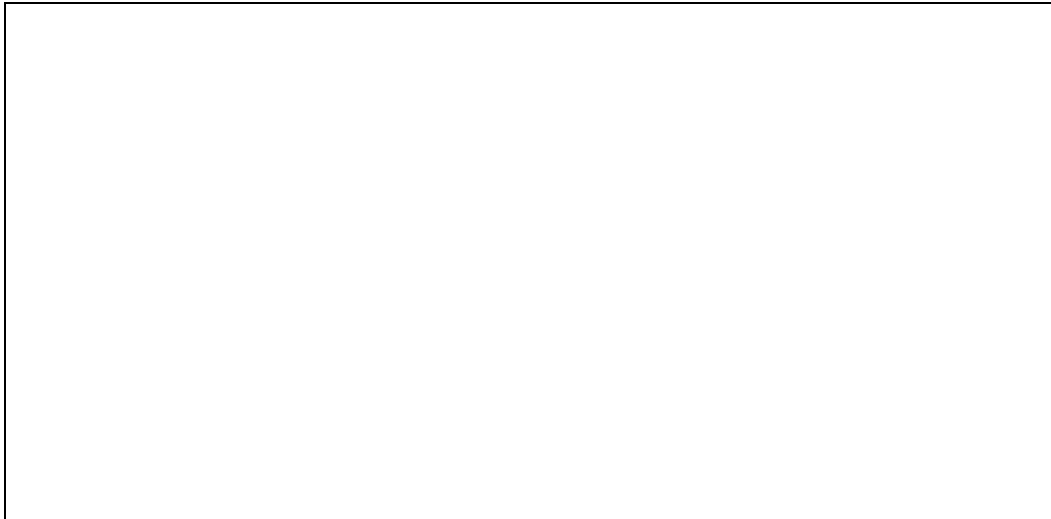
**NO**

**NO VIEW**

5.21 If so what definition should be used and what proof would be required to establish that victimisation had occurred?

## **Definitions of Discrimination**

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

A large, empty rectangular box with a thin black border, intended for providing comments or answers to the question above.

## Exceptions

### Compulsory Grounds (including age)

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

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

Option (a)?

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

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

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

**We recommend that the exception for teachers under FETO be removed and the merit principle applied to employment in all schools.**

**We also strongly believe the iniquitous 50/50 recruitment exception for police officers must be removed. This is of major importance as it is disparaging to young protestants and potentially dilutes the quality of recruits to PSNI.**

## Exceptions

### Possible New Grounds

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

Rely solely on GOR and GSR exceptions - Option (d)?

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

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

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

## Exceptions

6.5 If you choose Option (f) please list the exceptions that should be covered?

## General

6.6 If you consider that some or all of the exceptions should be listed, how should these be dealt with i.e. through inclusion in primary legislation, subordinate legislation or codes of practice? Please explain your preference, highlighting any advantages and disadvantages?

Exceptions

6.7 Do you have any other comments on exceptions?

## Goods, Facilities and Services (GFS)

### Definition

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

Leave GFS undefined as at present, but giving guidance by way of examples with the courts left to define in specific cases – Option (a)

**Yes**

Provide a comprehensive definition of GFS – Option (b)

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

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

**Attempting to define GFS would be extraordinarily difficult and would ultimately leave the Courts with no discretion. We believe it is important to give the Courts as much leeway as possible in determining discrimination in this area.**

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?

Goods, Facilities and Services

**Public Functions – Position reserved**

7.4 Do you think that the Bill should continue to specify that it is only unlawful to discriminate in the provision of GFS if the provision is to the public or a section of the public?

YES

NO

NO VIEW

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

YES

NO

NO VIEW

7.6 If you answered “Yes” or “No” please explain why and in the case of the former outline what difficulties you foresee and how these might be overcome?

**Should these matters be included at all? Have there been specific problems identified? What is the objective other than creating a legislative quagmire?**

**The difficulty with an all-embracing approach is the number of legitimate exceptions that would be required. If a large number of exceptions are required it may be rather pointless. Many groups rent Church, School or other Halls in local communities but in providing this service trustees tend to be rather selective as to which group they rent to.**

## Balancing Obligations – Position Reserved

7.7 Which approach should the Bill take to possible exceptions?

Option (a)

A general justification defence, to be referred to as a 'genuine service requirement'

Goods, Facilities and Services

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

Option (b)

**Specific exemptions**

If these should be listed what sort of exceptions would be appropriate?

Should there be different exceptions for different strands, such as age, disability, gender and sexual orientation?

Goods, Facilities and Services

Option (c)

A combination of Options (a) and (b), which would provide scope for recognising/providing a genuine service requirement whilst also including a list of specific exceptions

**Please explain why you have chosen this option**

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

## **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)

## **Goods, Facilities and Services**

### **Confidentiality Considerations**

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

## **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?

#### Addressing Under-Representation in Employment

##### Grounds (paragraph 20)

8.1 Do you consider that the Bill should address under-representation in employment with regard to other grounds?

YES

**NO**

**NO VIEW**

8.2 If “Yes”, should this include gender?

YES

**NO**

**NO VIEW**

8.3 If “Yes”, should it include race?

YES

**NO**

**NO VIEW**

8.4 If “Yes”, should it include disability?

YES

**NO**

**NO VIEW**

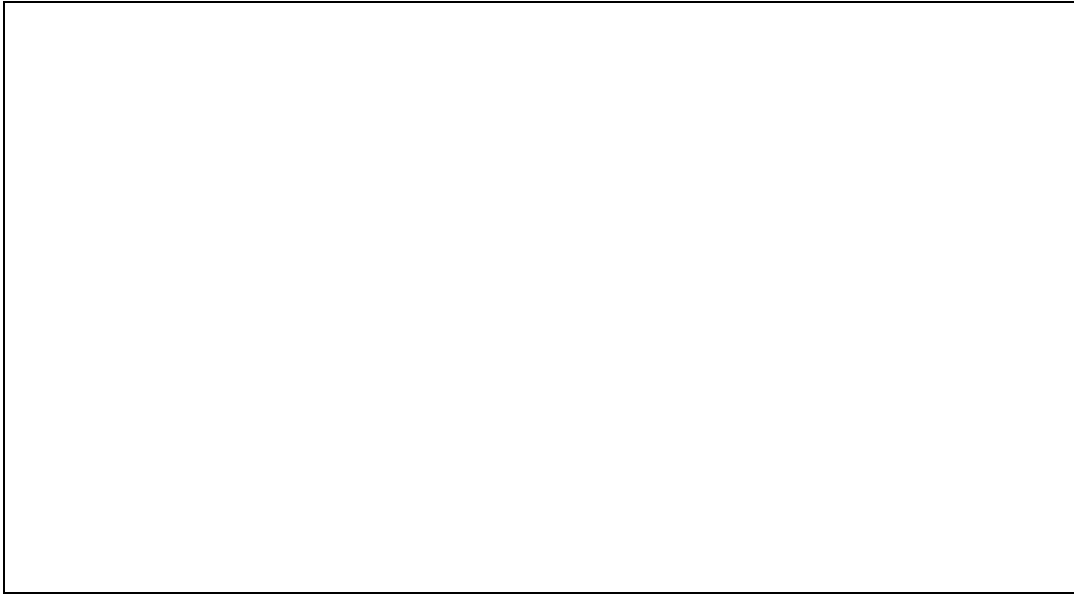
8.5 If “Yes”, should it extend to other grounds as well?

YES

**NO**

**NO VIEW**

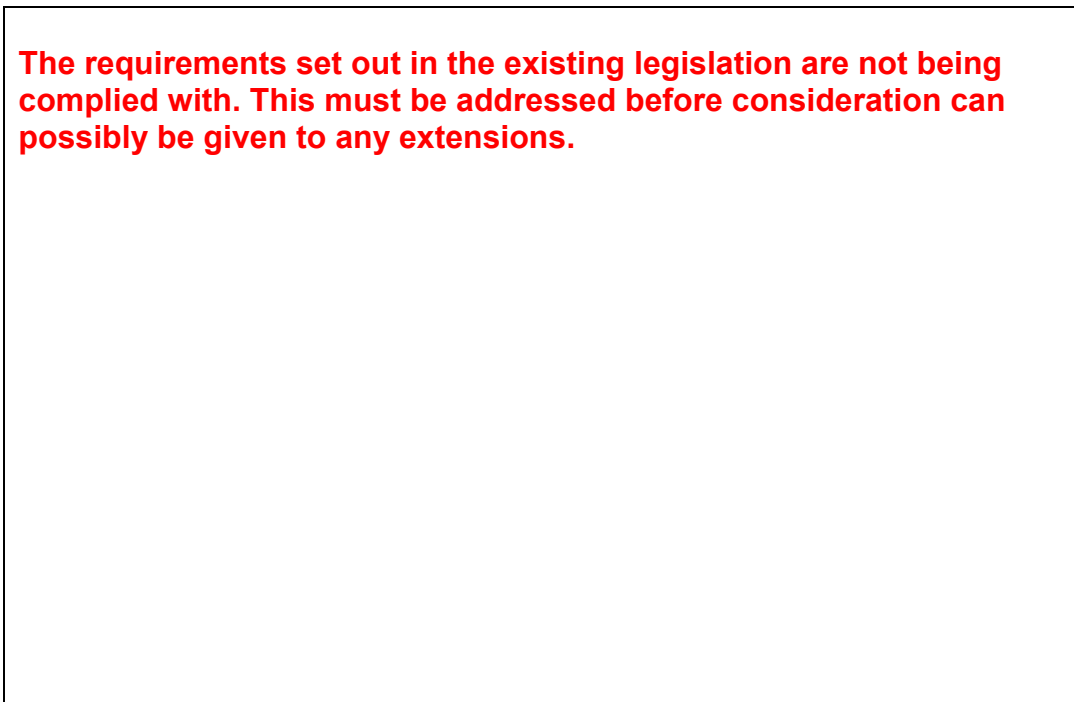
8.6 If “Yes”, to which grounds and to what extent in relation to each ground should the approach be extended?



Addressing Under-Representation in Employment

8.7 Please explain the reasons for your answers

**The requirements set out in the existing legislation are not being complied with. This must be addressed before consideration can possibly be given to any extensions.**



**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?

**Whilst we have some concerns with the implementation of the existing legislation, we do nonetheless understand the need for some of the concepts. However in this context, we broadly favour the retention of a non-legislative approach, as Northern Ireland does not need a 'sledgehammer to crack a nut', unless discrimination is evidenced. What we do need is a legislative framework that is both proportionate and measured.**

Addressing Under-Representation in Employment

**8.9 Can you suggest ways to overcome any perceived difficulties?**

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

**Whilst we have some concerns with the implementation of the existing legislation, we do nonetheless understand the need for some of the concepts. However in this context, we broadly favour the retention of the existing voluntary approaches, as Northern Ireland does not need a 'sledgehammer to crack a nut', unless discrimination is evidenced. What we do need is a legislative framework that is both proportionate and measured.**

Addressing Under-Representation in Employment

**Extension of Affirmative/Positive Action Exceptions (paragraph 23)**

8.11 Should the affirmative/positive action exceptions applicable to the different grounds be harmonised?

YES

NO

NO VIEW

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

**There is insufficient information supplied to enable us to understand fully or answer the question.**

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

YES

**NO**

NO VIEW

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

Addressing Under-Representation in Employment

**Fair Employment approach (paragraphs 24-25)**

8.15 If under-representation in the context of other grounds should be addressed in the Bill, should some or all of the existing FETO approach be applied to other potentially under- represented grounds?

YES

NO

NO VIEW

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

**Alternative Regulatory Approaches (paragraph 26)**

8.17 If the existing FETO approach should not be adopted in whole or in part for other grounds, should a different approach be adopted to addressing under representation in employment?

YES

**NO**

NO VIEW

8. 18 If “Yes”, which grounds and what approaches might be adopted?

Addressing Under-Representation in Employment

**Section 75 approach (paragraph 27)**

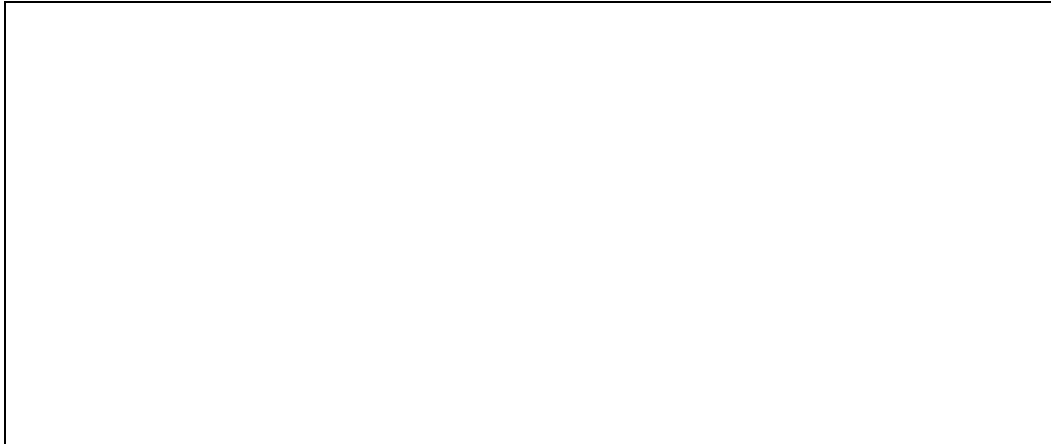
8.19 Is a model, which places a duty on private sector employers to promote equality of opportunity, a desirable model from which to devise an appropriate regulatory approach to addressing under- representation in employment?

YES

**NO**

NO VIEW

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



### **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?

**This is a very sensitive area which requires considerable caution otherwise the measures being considered will be nothing other than draconian. We agree to the positive promotion of affirmative action as outlined in FETO but clearly in our view disproportionate measures often skew the very outcomes being sought.**

Addressing Under-Representation in Employment

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

**Generally, there is a lot of misunderstanding of the concept of 'equality of opportunity', 'outcome' and 'under representation'. It is quite possible to ensure equality of opportunity and still have under representation. The suggested approach is conceptually inaccurate.**

**General Powers and Duties (paragraphs 4-5)**

9.1 Should the general duties apply across all grounds?

YES

**NO**

NO VIEW

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

**The duties outlined in the existing legislation are not being fully discharged. Consequently, any extension of the existing duties requires extremely careful consideration.**

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

YES

**NO**

NO VIEW

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

Equality Commission Powers and Functions

**Codes of Practice (paragraphs 6-8)**

9.5 Should the extent of the subject matter, which can be legally covered by ECNI codes of practice be made consistent with the scope of each ground in the Bill?

YES

NO

NO VIEW

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

9.8 Please explain the reasons for your answers

**We view these questions as 'process' driven. Consequently, we remain to be convinced that a demonstrable outcome has been achieved.**

**Or do you consider that the subject matter in the codes of practice should remain as at present?**

YES

NO

NO VIEW

## Equality Commission Powers and Functions

9.9 Should the “Admissible in evidence” provisions be retained in the Bill and extended to all other grounds? **An example of a poorly framed question. This in effect amounts to two questions.**

YES

NO

NO VIEW

## Powers to Support Complainants and Other Organisations

(Paragraphs 10-12)

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

**YES**

NO

NO VIEW

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

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

YES

**NO**

NO VIEW

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

YES

**NO**

NO VIEW

9.15 Should the provision in the race legislation, which allows the Commission to provide financial or other assistance to organisations, which appear to

the Commission to be concerned with the promotion of equality of opportunity and good relations, be extended to other grounds (paragraph 12)?

YES

NO

NO VIEW

### **Equality Commission Powers and Functions**

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

### **Investigations (paragraphs 13-19)**

#### ***FETO approach***

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

YES

NO

NO VIEW

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

## Equality Commission Powers and Functions

9.19 Should the limitations which confine FETO investigations to employment or training be removed by the Bill and brought into line with the broader remit enjoyed by the Commission under the disability, sex and race legislation – by using the same provisions in FETO as the other legislation?

YES

NO

NO VIEW

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

## Investigations into religious belief composition

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

YES

NO

NO VIEW

## The conduct of investigations

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

YES

NO

NO VIEW

Or are the religious composition issues sufficiently different to justify separate provisions in relation to the conduct of investigations?

YES  NO  NO VIEW

## Equality Commission Powers and Functions

### Investigations in private

9.23 Should the FETO provision, which requires investigations to be conducted in private be retained in the Bill?

YES  NO  NO VIEW

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

YES  NO  NO VIEW

### *Stopping or suspending investigations*

9.25 Should the provision in the disability legislation, which requires the Commission to stop or to suspend the conduct of an investigation be retained?

YES  NO  NO VIEW

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

YES  NO  NO VIEW

### *Written reasons for refusing oral representations*

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

YES  NO  NO VIEW

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

YES  NO  NO VIEW

Equality Commission Powers and Functions

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

**Powers to Obtain Information and Penalties (paragraphs 20-22)**

9.30 Should the Bill adopt the more general approach as set out in FETO concerning the obtaining of information except that relating to employers' duties?

YES  NO  NO VIEW

**Or** should the Bill follow the more precise route of the disability legislation and to a lesser extent the race and sex legislation?

YES  NO  NO VIEW

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

YES  NO  NO VIEW

**Or** should the penalty be limited to a fine as provided for in the disability legislation?

YES

NO

NO VIEW

## ***Equality Commission Powers and Functions***

### **Recommendations and Reports on Formal Investigations**

(paragraphs 23-24)

#### **Extend to include FETO**

9.32 Should the sex, race and disability provisions concerning the exclusion of “private affairs etc” from the report on formal investigations be extended in the Bill so that the corresponding FETO areas are covered?

YES

NO

NO VIEW

*9.33 Should these provisions be extended to all grounds?*

YES

NO

NO VIEW

#### **Non- discrimination Notices**

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

YES

NO

NO VIEW

#### ***Procedures for publication***

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

YES

NO

NO VIEW

*9.36 Should these provisions be extended to all grounds?*

YES

NO

NO VIEW

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

YES

NO

NO VIEW

## **Equality Commission – Powers and Functions**

### ***Inspection of Reports***

9.38 Unlike race and sex, disability and fair employment do not contain any provisions concerning arrangements for reports to be available for inspection. Should the position be harmonised so that the disability and fair employment contain similar provisions?

YES

NO

NO VIEW

*9.39 Should these provisions be extended to all grounds?*

YES

NO

NO VIEW

### **Restrictions on Disclosure of Information (paragraphs 25-28)**

#### ***Written consent***

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

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

YES

NO

NO VIEW

## **Equality Commission Powers and Functions**

### ***Summary Statements***

9.41 Should the Bill include an exception for FETO cases so that information can be supplied to others in the form of a summary statement, which does not identify the informant or any other person to whom the information relates?

YES  NO  NO VIEW

### ***Scope of Restriction Provisions***

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

YES  NO  NO VIEW

### ***Exceptions for Third Parties***

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

YES  NO  NO VIEW

Or should the Bill maintain the FETO third party disclosures because of its unique regime but should not extend to all the other grounds unless those grounds have a monitoring regime, similar to that for community background in FETO, extended to them?

YES  NO  NO VIEW

## **Equality Commission Powers and Functions**

### ***FETO Defence Provision***

9.44 Which of the following options should be used in the Bill in dealing with the FETO defence provision? This provision chiefly relates to monitoring.

Retain the defence provision for FETO related matters only

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

*Information supplied to the Department*

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

Extend to all grounds.

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

**Enforcement (paragraphs 29-39)**

*Non-discrimination Notices*

*Action Plans*

*Time Limits*

*Appeals against non-discrimination notices*

*Investigations as to compliance with non-discrimination notices*

*Register of non-discrimination notices*

*Agreements in lieu of enforcement action*

*Binding undertakings*

*Enforcement of undertakings*

*FETO Directions/appeal mechanisms*

**Equality Commission Powers and Functions**

9.46 Which of the following options (a-c) should be used in the Bill in dealing with the above arrangements covering specific enforcement areas?

(a) Realign on the basis of the more flexible disability model

**(b) Realign on the basis of the FETO model**

**In considering the disability and FETO models:**

9.46.1 What are the implications for these options?

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

### **Equality Commission Powers and Functions**

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

(c) Remain as at present

Persistent Discrimination (paragraphs 40-41)

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

YES

NO

NO VIEW

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

**Discriminatory Advertisements**

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

YES

NO

NO VIEW

**Equality Commission Powers and Functions**

**Instructions and Pressure to Discriminate**

9.49 Which of the following options should be used in the Bill in dealing with this issue?

Extend the FETO model, whereby instructions to discriminate and pressure to discriminate result in both the persuader and perpetrator liable to the unlawful act, to other grounds

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

**Preliminary action in Employment cases (paragraphs 47-48)**

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

YES  NO  NO VIEW

**Conciliation (paragraph 49)**

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

YES  NO  NO VIEW

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

**Tribunals and Courts**

***Remit of Tribunals and Courts to hear complaints***

10.1 Which of the options outlined in paragraph 56 should be used in dealing with employment and GFS complaints?

Option (a)

Retain the present system. The Fair Employment Tribunal continues to deal with cases of employment discrimination on the grounds of religious belief and or political opinion. The Industrial Tribunal continues to deal with all other types of employment discrimination on current and any new grounds to be covered in the Bill. The Industrial Tribunal continues to have responsibility for other employment disputes. County Courts continue to hear GFS complaints.

**Option (b)**

Establish an employment tribunal (possibly with a fair employment division) whose remit includes the existing responsibilities of the Fair Employment Tribunal and Industrial Tribunal. County Courts would continue to hear GFS complaints.

**Option (c)**

Establish a new system of employment equality tribunals dealing with discrimination matters in employment only, separate from Industrial Tribunal, which would retain responsibility for all other employment disputes. County Courts would continue to hear GFS complaints.

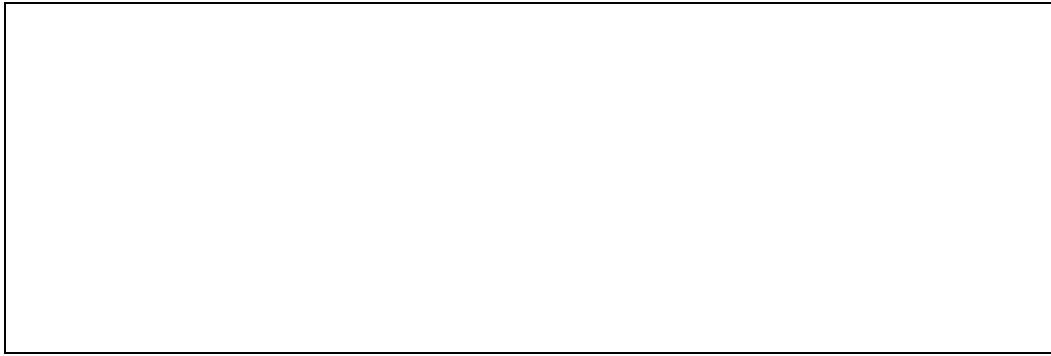
**Option (d)**

Establish a new system of equality tribunals dealing with all discrimination matters relating to employment and GFS. The Industrial Tribunal would retain responsibility for all other employment cases.

10.2 Please explain why you have chosen a particular option

## **Tribunals and Courts**

10.3 Is there an alternative option that you feel is worthy of consideration? If so, please explain how you see this option working?



## Appeals

10.4 The options for an appeals structure will be dependant upon the options chosen for the initial hearing. Which of the options outlined in paragraph 57 should be used in dealing with appeals?

Option (a)

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

Option (b)

Establish a separate employment appeal tribunal to hear appeals against employment decisions. GFS appeals would continue to be heard by the Court of Appeal.

Option (c)

Establish a separate equality appeals tribunal to hear appeals against tribunal decisions on both employment and GFS.

## Tribunals and Courts

Option (d)

Make provision for County Courts to hear appeals from employment tribunals with GFS appeals continuing to be heard by the Court of Appeal.

Option (e)

Make provision for County Courts to hear appeals from equality tribunals on both employment and GFS cases

10.5 Please explain why you have chosen a particular option

10.6 Is there an alternative option that you feel is worthy of consideration? If so, please explain how you see this option working?

### **Tribunals and Courts**

#### **Other issues in relation to Tribunals and Courts**

10.7 Should the Bill allow for a representative claim?

**YES**

**NO**

**NO VIEW**

10.8 If “Yes”, how do you think such a provision should be defined?

10.9 If “Yes”, how do you see representative claims working in practice and should such a provision be for named and/or unnamed individuals?

### **Tribunals and Courts**

10.10 Should the Bill allow for class/group actions?

**YES**

**NO**

**NO VIEW**

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

10.12 If “Yes”, how do you see class/group actions working in practice and should such a provision be for named and/or unnamed individuals?

### **Tribunals and Courts**

10.13 Are there any alternatives or additional provisions in relation to these areas that should be considered in the Bill?

**YES**

**NO**

**NO VIEW**

10.14 If “Yes”, what should these be, how should they be defined and how do you see them working?

A large, empty rectangular box with a thin black border, intended for a written response.

10.15 What organisations do you think should be allowed to engage either in support of, or on behalf of, a complainant?

A large, empty rectangular box with a thin black border, intended for a written response.

### **Tribunals and Courts**

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

A large, empty rectangular box with a thin black border, intended for a written response.

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

**YES**

**NO**

**NO VIEW**

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

### **Tribunals and Courts**

10.19 Do you think that remedies available to the Industrial Tribunal in cases of employment discrimination should be harmonised with those available to the Fair Employment Tribunal under Article 39 of FETO?

**YES**

**NO**

**NO VIEW**

10.20 If “Yes” or “No”, please explain the reasons for your answer.

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

**YES**

**NO**

**NO VIEW**

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

### **Tribunals and Courts**

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

**YES**

**NO**

**NO VIEW**

10.24 If “Yes” or “No”, please explain the reasons for your answer.

10.25 Should exemplary damages be available as a remedy?

YES

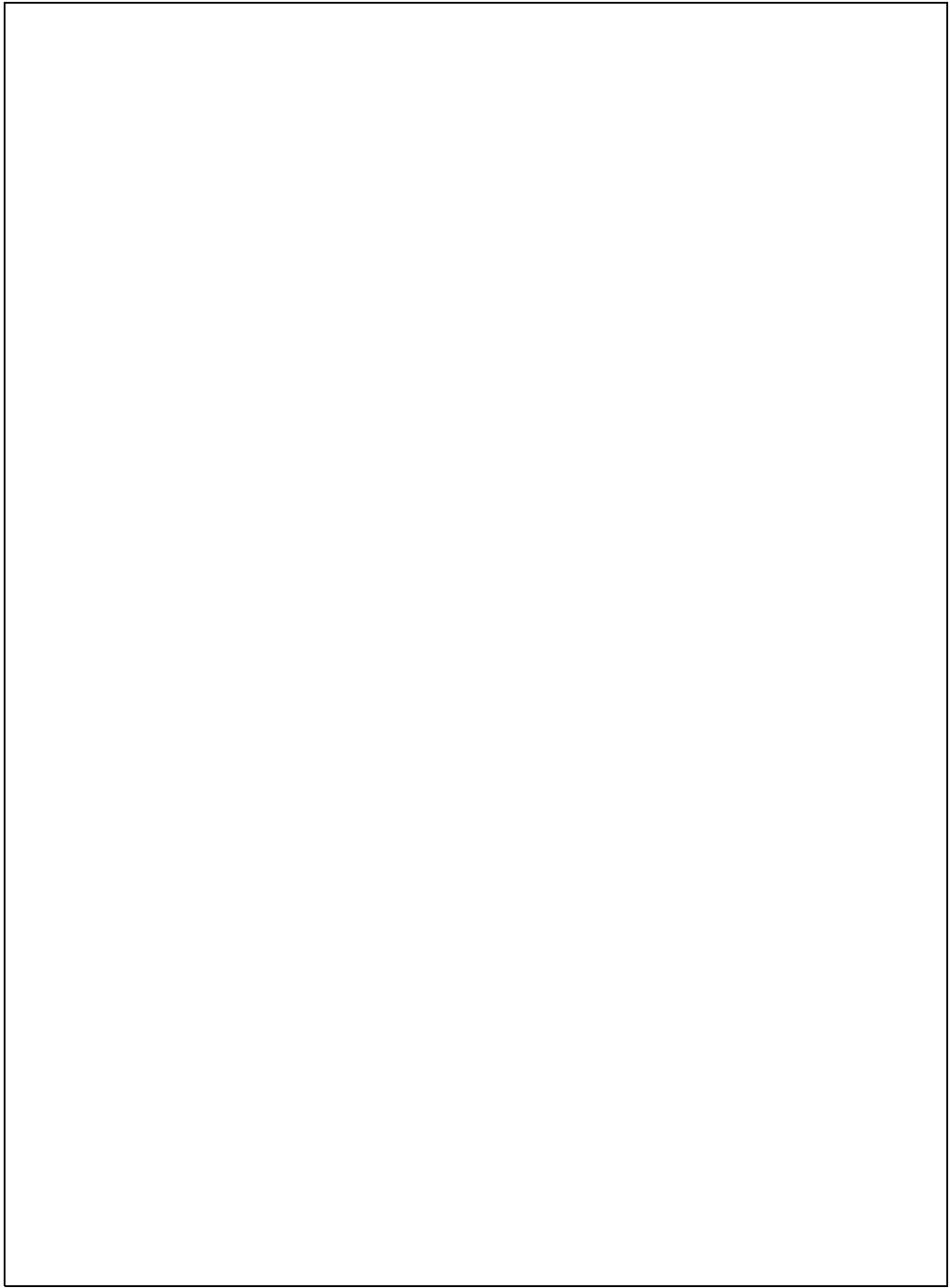
NO

NO VIEW

10.26 If so why? If not, what changes would you recommend?

### **Tribunals and Courts**

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



## Alternative Dispute Resolution (ADR)

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

YES

NO

NO VIEW

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

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

YES

NO

NO VIEW

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

## Alternative Dispute Resolution

11.5 Should any of the other ADR options currently not in use be used in seeking a resolution to a discrimination complaint?

YES

NO

NO VIEW

11.6 If “Yes”, what option should be used, how would you see it operating and which organisation would be responsible for its development and taking the initiative forward?

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

**Other Comments**

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

A large, empty rectangular box with a thin black border, intended for recording comments on the issues and options raised in the consultation document.