

Mr Ivan Millen
Single Equality Bill Team
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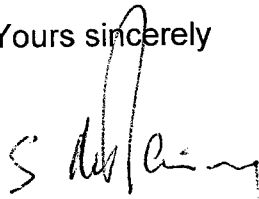
Dear Mr Millen

A Single Equality Bill for Northern Ireland

This is the response of the five Education and Library Boards and the Staff Commission for Education and Library Boards to the consultation document on the Single Equality Bill for Northern Ireland. We have edited the response booklet to retain its structure whilst omitting questions to which we have made no response.

We hope our response will be of assistance and look forward to hearing the outcome of the consultation process.

Yours sincerely



Arthur Rainey
Chairperson
Association of Chief Administrative Officers

Enc.

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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*)

2. Is your organisation?

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

A statutory body

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

Between 1 and 10 employees

(Staff Commission for Education and Library Boards)

250 employees or more

(The Five Education and Library Boards)

4. Please indicate which sector best describes you?

Education/ training

5. Please indicate whether your prime interest is in respect of

(*please tick all that apply*)

All aspects of equality

Preamble

The five Education and Library Boards and the Staff Commission welcome the proposal to harmonise current and proposed anti-discrimination and equality legislation into a Single Equality Bill.

They also recognise the challenge this presents to those who will draft the legislation to remove present anomalies whilst ensuring that existing provisions and protections are not eroded.

It is their view that present levels of protection from discrimination allied to the level of promotional duties provide a sufficient challenge for harmonisation.

Further extension of the scope or grounds beyond that envisaged by the EU Employment Framework will only serve to further complicate an already complex challenge.

Introduction

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

This chapter sets out very clearly and comprehensively the present situation and the key issues which need to be considered. It also clearly identifies areas not covered in present legislation

1.2 What balance do you consider needs to be struck in the Bill between the prohibiting discrimination and promoting equality of opportunity approaches? (paragraphs 15 to 21 refer). Please explain the reasons for your answer.

The Boards consider that a good balance already exists between protection of the individual from discrimination on a range of grounds and the broader commitment to promote equality of opportunity both within public bodies and in the wider society.

Provision of equal opportunity goes beyond the capacity of the law: it requires awareness raising and education aimed at changing attitudes and removing barriers to participation.

Given the backdrop of anti-discrimination legislation and the proactive approach required of public authorities under Section 75 of the Northern Ireland Act 1998, there is a strong argument for further legislative integration to achieve a greater and more consistent mainstreaming of equality.

Provision of a clear and accessible framework of anti-discrimination and equality law for Northern Ireland can only serve to strengthen present protections and promotion of an equality ethos in general society.

Purpose and Principles

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

The Boards and Staff Commission are supportive of the purpose of the legislation and the principles upon which it is based.

A clear and accessible framework of anti-discrimination and equality law can only benefit those affected by discrimination and those seeking to promote equality of opportunity.

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?

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:

It is the view of the Boards that the grounds currently protected under existing legislation and those due for protection as a result of the EU Employment Framework directive are sufficient in range and coverage at the present time.

Possible new Grounds (paragraphs 19 to 32)

Marital or family status and dependants (paragraph 20)

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

YES NO NO VIEW

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

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 NO NO VIEW

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

YES NO NO VIEW

3.14 Have you any other comments on this Chapter?

The Boards use an equality proofed job evaluation scheme to address such issues and find that it operates without major problems.

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)



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

The present level and scope of equality legislation and that proposed under the EU Employment Directive sufficiently addresses the major areas of discrimination and equality.

Employment concepts

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

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

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

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

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

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

4.18 Please explain the reasons for your answer:

See 3.2

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

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.

Section 76 of the Northern Ireland Act 1998 already covers public functions as do amendments to Northern Ireland Race legislation.

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

Definitions of Discrimination

Direct Discrimination

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

Maintain the existing definition as contained in the EU directives and contained in NI legislation. In the disability legislation the "reasonable adjustment" duty would remain. Option (a)

" 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.

See 3.2

Definitions of Discrimination

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

YES

NO

NO VIEW

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

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

No.

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

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?

None.

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

A Comparator is required and used as a matter of proof.

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

Most policies and procedures aimed at combating harassment in the workplace are based around a single definition.

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

No

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

Definitions of Discrimination

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

No.

Exceptions

Compulsory Grounds (including age)

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

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?

See 3.2

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)?



The five Education and Library Boards and the Staff Commission apply exceptions under relevant legislation.
The Boards also participated in the recent investigation by the Equality Commission for Northern Ireland of the Teachers' Exception under the Fair Employment and Treatment (NI) Order 1998 and are awaiting developments in this area.

Exceptions

6.7 Do you have any other comments on exceptions?

No.

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)

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?

Consistent with position in 3.2

Goods, Facilities and Services

Public Functions

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

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

This option would create a necessary level of certainty in the definition whilst allowing flexibility for the future.

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

No.

Protection Provided by GFS Policy

7.9 Are there any determining factors that need to be considered in clarifying who should be protected? (paragraphs 35-38)

No View.

Goods, Facilities and Services

Confidentiality Considerations

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

Not aware of any.

Implementation

7.11 Considerations and options include:

- c) 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?

Option (c) appears to be the most realistic approach.

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

The Boards/Staff Commission wish to qualify this answer by stating that Article 55 Reviews and Section 75 Equality Impact Assessment of policies already provide for proactive identification of under-representation and the development of appropriate responses and measures.

8.7 Please explain the reasons for your answers

See 8.1

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?

No.

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

Yes.

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

This would be compatible with public service practice.

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

This would provide greater flexibility to local situations.

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

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

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?

The Boards believe that the Section 75 approach to the promotion of equality of opportunity balances and complements current and proposed anti-discrimination legislation and would benefit policy development in the private sector particularly in terms of societal impact.

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?

To the extent to which they can deliver definite and measurable outcomes.

Addressing Under-Representation in Employment

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

None.

Equality Commission for Northern Ireland – Powers and Functions

General Powers and Duties (paragraphs 4-5)

9.1 Should the general duties apply across all grounds?

YES NO NO VIEW

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

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

There should be consistency in approach providing a Single Equality Bill and a Single Code of Practice.

9.9 Should the “Admissible in evidence” provisions be retained in the Bill and extended to all other grounds?

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

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

9.19 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

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

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

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

None.

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

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

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

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)

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?

(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

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

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.

10.2 Please explain why you have chosen a particular option

It is the view of the Boards and the Staff Commission that the present system operates fairly well but is under-resourced causing problems such as backlogs in the process.

Tribunals and Courts

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.

10.5 Please explain why you have chosen a particular option

Tribunals already have the power to review cases though this is not referred to in the documents. There is therefore no need for another tier of appeal unless there is strong evidence that tribunals are getting their decisions wrong.

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

10.10 Should the Bill allow for class/group actions?

YES

NO

NO VIEW

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

Tribunals and Courts

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?

The right exists in the context of 'unfair dismissal' but is not appropriate for other areas.

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

10.21 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

10.23 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.

There is at present sufficient powers in place to make proportionate damages in discrimination cases.

10.25 Should exemplary damages be available as a remedy?

YES

NO

NO VIEW

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

The OFMDFM should bear in mind that under new tribunal rules of procedure there is likely to be more use of 'cost orders' against unreasonable applicants and employers.

The main problem with the present system is that it cannot deal with the present level of complaints. The system needs to be running more effectively and be better resourced before further changes are introduced.

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.

It is considered that such a development would help to minimise costs and delays in reaching resolutions and is consistent with the approach taken by Human Resources Branches/Sections of the Boards.

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.

See 11.2

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