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.

Introduction

The response booklet is available on the OFMDFM website at **www.ofmdfmni.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
Office of the First Minister and Deputy First Minister,
Room E3.18
FREEPOST NAT17679
Belfast
BT4 3BR

A self-addressed envelope is enclosed in the consultation pack for this purpose.

Introduction

Your details:

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Title: & (MRS.) ANNE KING (HON. SECRETARY)

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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) ☑

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 ☑

You or Your Organisation

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

3. If you are replying on behalf of your organisation, how many people does your organisation employ? NONE

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 ☐

You or Your Organisation

- 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) ☐

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

- All aspects of equality ☑
- Age ☐
- Disability ☐
- Gender ☐
- Gender Reassignment ☐

You or Your Organisation

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?

Women's Forum Northern Ireland welcomes the aim of the SEB to provide N. Ireland "with clear & concise anti-discrimination & equality law in one legal instrument". This should ensure a consistency of approach while affording an opportunity to harmonise & amend the current laws.

The aim to harmonise legislation & make it simpler will, we feel be welcomed by employers. The current situation is a real nightmare for them. Much greater clarity is needed.

We also welcome the inclusion of the new category of age in the EU Directives as we believe that age discrimination transcends all the other areas listed. Recognition is given to the difficulties in implementation & the work necessary on the implications of age, therefore there can be no quick operation

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.

Women's Forum believes the emphasis should be on the positive approach. Equality of opportunity, while valuable to provide, is not sufficient. There should be evidence of equality of outcome as well. However, we stress that any action to address existing inequality should include a positive approach, even if this appears to create a degree of unease in sections of the community.

Since the SEB will result in the kind of society we choose, it is essential that much groundwork is done to make the SEB a model for the rest of the U.K. & beyond. We need to get it right as we acknowledge that investment has already come to the Province because we're currently dealing with inequality issues.

It will be necessary to avoid too much enforcement or the whole process will be strangled by law. There must be a balance between education & enforcement if we are to avoid a fortune being spent on legal costs.

Purpose and Principles

2

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

We welcome the statement that "the SEB will not involve a reduction in the protection offered by current equality laws" & "will build on existing equality legislation in preventing discrimination & promoting equality of opportunity for the whole community".

We support the view that "employment litigation can have a devastating effect on a workplace & on relationships within a workplace beyond the issues that are in contention between the two parties". Consequently, we wish the new legislation to bring about a speedy & cost effective resolution of any dispute, in the interests of all.

2.2 Women's Forum is committed to a model of monitoring, review & report, as in the FETO model.

2.6 We welcome the idea of creative & inventive thinking about what common template is going to take equality law & policy through the next 30 years or so. However, it will be necessary to review the situation after perhaps 5 years, as we believe an analysis of the value of exceptions is essential after such a period.

Grounds

3

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:

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 ☐

Grounds

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

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:

We support family life & recognise the responsibility of those who have dependants or are carers.
We wish to support Option (b) as the best means of continuing a stable society. Co-habiting couples, if included, would mean a complete revision of the consequences in relation to pensions, survivors' & other benefit. This, in our view, would confirm the principles on which our society in Britain is based.

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

Should be included:

Marital or Family Status/Dependants.
Pregnancy & Maternity

Should not be included:

Past convictions
Gender Identity
Genetic Predisposition
Socio-economic status.
Language
Veterans

It would create confusion in legislation to have so many inclusions.

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?

We have a concern that, if included, past convictions could result in N. Ireland being the only place with that enhanced protection & consequently, it could become the favourite haunt of ex-convicts.
In view of the current review of the Rehabilitation of Offenders legislation, some additional monitoring & overview are required. With positions in place & more helpful laws, the whole aspect of child protection could be less complex.
There is a need for urgent consideration, including links to other legislation, current & in draft form.

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?

We suggest that a new position, e.g. Commissioner for Victims, be set up as a more appropriate way to protect the rights of victims & also to address the protection of rights in this area.

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 ☐

Grounds

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

The Republic of Ireland's legislation, in place since circa 1992, seems to operate successfully & without major difficulties / problems.

3

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?

Good parts should be kept together to ensure continuation.

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) ☐

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

To create cost-effective legislation & harmonise existing legislation.
Any variation on scope would have to be clearly justified. Experience in the Republic of Ireland has not thrown up any significant problems. Consequently, Women's Forum selects Option (b), considering that only in very exceptional circumstances should the scope not apply across all the recognised grounds.

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 ☐

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

Volunteers.
The whole aspect of "volunteers" needs greater clarification. Under the two possible approaches there could be an adverse impact in the change of working relationships. It is essential for "volunteers" to know what their rôles & responsibilities are. Volunteers are as much an integral part of any organisation as employees & expect to be treated with the same respect. If this is not the case, could it not be viewed as discrimination? There is, therefore, a fine tension between the obligations of the organisation & the rights of the volunteers. Employers must have a clear code of Practice to protect them & the volunteers. Alternatively, provision could be made in either primary or secondary legislation.

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:

Clarification. There will be different needs from different constituencies. The emphasis should be on positive, not negative legislation, hence a balance of some kind is required.

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 ☐

Scope

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:

Currently all sectors of education do not conform to any one pattern of organisation, governance or funding.
We have a certain concern at the development of a separate disability discrimination regime in relation to education. (Draft Special Educational Needs & Disability Order. June 2004).

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.

There is the need for change in the existing provision.

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.

Already in proposition under the previous N. Ireland Executive's proposals.

Scope

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 ☑

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 (a) ☐

5

"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.

Simplicity. Women's Forum wishes to see a definition which states that direct discrimination occurs when a disadvantage is based upon a prohibited factor. (Equality Legislative Reform: Implementation of European Union Directives). It must also deal with a combination of prohibited factors.

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.

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 ☐

Definitions of Discrimination

5.7 If you answered "No" can you suggest an alternative?

5

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

Harassment

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

YES ☑ NO ☐ NO VIEW ☐

Definitions of Discrimination

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

Required for use as a matter of proof rather than necessity.

5

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

As per paragraph 23 page 62 of "A Single Equality Bill for N. Ireland" — a discussion paper. June 2004.

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?

5

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 chose Option (b) please list the exceptions that should be retained and explain why?

There is a need for clarity, particularly for specific exceptions, together with a thorough review of existing exemptions.
Some exceptions will undoubtedly be necessary. An exhaustive list cannot be supplied until we see the actual wording of the GOR/GSR.
There is a need for balance but the emphasis, in our view, should be on positive action so that the burden on the business community should not be too great.

6

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 chose Option (e) please give examples of the exceptions that should be covered?

Exceptions

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

6

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?

Exemption is not sustainable in relation to the recruitment of teachers in secondary schools. If it is retained in relation to the recruitment of teachers in primary schools, this should only be an interim measure until its eventual removal. Women's Forum recognises, however, that a "primary school exception" could also be an example of a GOR.

There is a need for a Code of Practice on what is to be included within the GOR/GSR & what is not. This is unclear at present.

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) ☐

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 chose Option (b) can you suggest a definition?

GSR exceptions should be listed in the SRB. In addition, it would be necessary to demonstrate that there is a need for exceptions, e.g. free eye tests for children; free bus passes for over 65s, since these objectives could be achieved by providing the same service to all age groups.
Current legislation would need to be reviewed as part of the process. Each government department would have to consider discrimination legislation as imported upon. Authoritative guidance or a Code of Practice on the scope of GFS is needed.

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?

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 ☐

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?

The Northern Ireland Act provides for the application of this principle to direct discrimination on grounds of religious belief & political opinion. The statutory equality duty already requires equality impact assessment in relation to the performance of public functions.

Goods, Facilities and Services (GFS)

Balancing Obligations

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' ☐

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?

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

Goods, Facilities and Services (GFS)

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

The greatest protection should lie in this area where young people experience the most discrimination re. age.

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)

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?

There should be monitoring of the conduct of reports/reviews, as required in the FETO, applying to all specified grounds. Employers are already familiar with the operation of the FETO model, which includes the aim of promoting equality of opportunity across all aspects of employment.

8

Addressing Under-Representation in Employment

8.7 Please explain the reasons for your answers

An elaborate system would mean huge costs. The FETO model could be adapted to alleviate the adverse impact of employment policies if an element based on the statutory equality duty was introduced.

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?

There should be incentives to encourage voluntary participation e.g. of a financial nature. The gathering of statistics/data for monitoring purposes necessitates the establishment & maintenance of a workforce profile by the employer & could not be carried out by a voluntary approach only.

There is the need for strong legislative support & back-up. Also a need for public awareness & understanding of such legislation, which has implications for training since perceptions as to the purpose(s) of monitoring are all important.

Under the FETO approach the aspects of monitoring & periodic review place a great administrative & bureaucratic burden on employers.

Addressing Under-Representation in Employment

8.9 Can you suggest ways to overcome any perceived difficulties?

There must be a complete culture change & a process of tackling systemic discrimination.

8

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

No particular view.

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

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?

8

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?

Addressing Under-Representation in Employment

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

The effective operation of the statutory equality duty & of the non-discrimination in performance of public functions principle will, in our view, go some way towards dealing with questions re. procurement.

This current consultation provides an opportunity to ensure that an effective regime in relation to public procurement is put in place.

8

Equality Commission for Northern Ireland - Functions and Powers

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?

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?

The crime law in N. Ireland now embraces disability & sexual orientation as well as religion, politics & race. There is already much evidence that good relations on grounds other than race are vital for consideration in the promotion of equality.

9

Equality Commission for Northern Ireland - Functions and Powers

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 answer

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

YES ☐ NO ☐ NO VIEW ☐

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 ☐

Equality Commission for Northern Ireland - Functions and Powers

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 ☐

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

Equality of treatment.

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 for Northern Ireland - Functions and Powers

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?

To enable genuinely constructive outcomes in relation to the promotion of equality of opportunity.

9

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 ☑

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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?

☐

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

9

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 for Northern Ireland - Functions and Powers

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 ☑

Equality Commission for Northern Ireland - Functions and Powers

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 ☐

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)

9

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 ☐

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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 ☐

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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. ☐

9

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

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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?

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

9

(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 ☑

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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 ☑

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

If the EC were to develop powers of mediation there could be a conflict of interest & also an overlap with the current role of the LRA. The advisory role could, however, be developed.
There could be a difficult period ahead while all of these were being consolidated.
Women's Forum would support the establishment of a separate commissioner/ombudsman, with specific powers to investigate.

9

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

10.2 Please explain why you have chosen a particular option

It would seem to be the best option, based on experience to date. The fewer bureaucratic bodies, the simpler the system for those who need to make use of it

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.

Tribunals and 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.

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

10.5 Please explain why you have chosen a particular option

The simpler the system, the better for all concerned -

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

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?

By those defining laws who take into account the role of trade unions & professional associations. Currently those in vulnerable positions do not wish to or could afford to go to litigation.

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?

For either named &/or unnamed individuals, with the case brought by the EC, trade unions & professional associations

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?

In legal terminology by those shaping the reforms.

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?

We believe it could be for either named &/or unnamed individuals, depending on the actual wishes of the claimant. However, the case should be channelled through the EC, trade union or professional association.
Sanctions must be effective, immediate, proportionate & punitive in terms of publicity.

10

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?

Definition of exemplary compensation in some cases. Also the consideration of re-instatement of dismissed employees — which in turn would necessitate changes to practices & policies. Hence much work needs to be done in conjunction with the EC if these are to be developed in the future.

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

Trade unions, professional associations & the EC, which alone can bring cases to court. The trade unions & professional associations must work in tandem with the EC on this but only the EC should have the integrity of bringing cases in its own name & that of the union, etc.

Tribunals and Courts

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

Legal aid should be available for applicants in the tribunal system. It should be means-tested.

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?

Financial compensation per se is totally inadequate as the person could remain without employment. Re-instatement, while perhaps difficult re personal & working relationships, would seem to be natural justice in this instant.

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

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

In some individual cases. Also justice in the form of re-instatement for dismissed employees & the requirement to change practices & policies & to undergo equality audits.

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

Women's Forum does not feel competent enough to make serious recommendations re. Tribunals & boards. However, we would wish the chairperson to be always legal & qualified & recognised in the field of law & employment legislation. This is essential if the process is to have credibility & acceptability with the whole community.

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.

The use of ADR may prevent cases from becoming too complicated, provide an informal setting for resolution & produce a more speedy conclusion.
Greater use of conciliation & mediation could produce lasting outcomes, hopefully.
ADR could result in changes in practice, including working relationships with the EC.

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.

A more informal system of resolution may be more acceptable than any formal involving a judicial process.

Alternative Dispute Resolution (ADR)

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?

See paragraph 11.2 above.

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

Women's Forum believes that the Equality Commission should be given the powers to bring cases on behalf of named individuals, to remove some of the pressures on people who bring a case in their own name.

Trade unions may also need to be given similar powers for the same reason as expressed above & also to bring cases in their own name relating to systemic discrimination.