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Equality Unit

## 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:**

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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.

**\*nb. This booklet has been completed up to Q8.6. Beyond that we do not wish to respond. Please note that the response to Q4.8 requires ratification at the Council meeting on 13/12/04**

## 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

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?**

- 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*)

**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
- 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?

GIVEN IMMENENCE OF EU DIRECTIVES, APPROPRIATE THAT SEB EXTENDS TO AGE & SEXUAL ORIENTATION IN ALL ASPECTS

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.

FAVOUR THE MORE PROACTIVE APPROACH IE. PROMOTION OF EQUALITY OF OPPORTUNITY (AS HAS BEEN THE CASE WITH FETO). THE MORE PROACTIVE APPROACH CREATES A DISSONANCE EFFECT IN SOCIETY, WHICH ULTIMATELY BRINGS ABOUT CHANGE MORE QUICKLY.

## Purpose and Principles

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

### Principle 1

Reference to Belfast Agreement may create some resistance, and could 'date' the SEB. We suggest that the final sentence is the key, ie. "The Bill will build on existing equality legislation in preventing discrimination and promoting equality of opportunity for the whole Community"

### Principle 5

Unsure why early resolution is confined to the field of employment - surely this principle should extend to all grounds

### Principle 8

Suggest that the wording of this is very confusing, especially to young people . Could it be simplified without changing the meaning?

## 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:

This is a more complex issue than indicated in your narrative. The Youth Council co-ordinates an Equity and Diversity Project within the Youth Service, and can see merit in Option 2 in terms of challenging the increase in racism (although this is covered by Race Discrimination Law) There is some danger in Option 2, that a broad brush approach to proscribing the articulation of political opinions may favour the cultural/political hegemony. Therefore we feel this should only be addressed on a case by case basis within the courts.

### 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

3.4 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:

Statistics of young parents (under 25 years) show that they tend to cohabit rather than get married. It is anomalous that the Civil Partnership Bill affords same-sex couples with greater rights (ie. would favour option A for Q 3.4).

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

Should be included:

Genetic Predisposition

Is there any way in which this issue could be included within the revised definition of disability?

Should not be included:

Should not include grounds which relate only to employment (for reasons discussed in paragraph 21).

**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?

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

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?

Anomaly to restrict this protection simply to gender grounds.

Suggest follow example of Republic of Ireland.

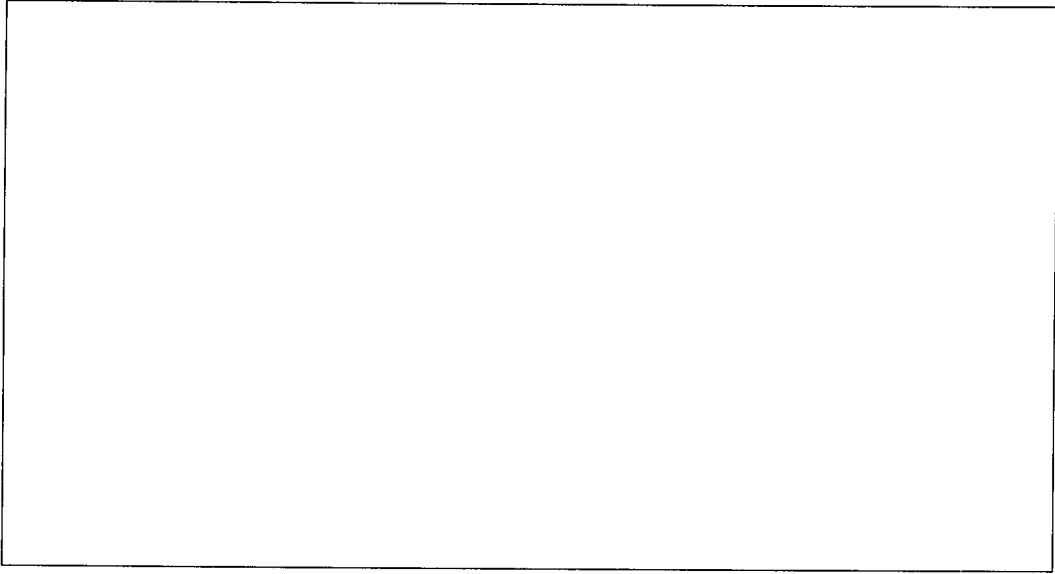
3.13 Should we repeal the Equal Pay Act (NI) 1970 and re-enact the provisions in this Bill?

YES

NO

NO VIEW

3.14 Have you any other comments on this Chapter?



## 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

This would ensure clarity and avoid the perceived "Hierarchy of Rights" In terms of (young) age the SEB needs to make general exemptions, ie. 'in grounds of Child Protection, Health & Safety, best interests of the child, competency and legally-based age restrictions.

## 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

We would suggest that where voluntary work is a *compulsory* element of *vocational training*, it should be covered by contract and defined as employment. However all other types of voluntary work should not be defined as employment. In particular there is a fear that the essential nature of the relationship between organisation and volunteer would be jeopardised if contractual obligations were imposed. There is also a real danger that the increasing amount of compliance legislation is both deterring volunteers and creating significant administrative difficulties for volunteer organisations. We suggest that protection of volunteers would be more appropriately addressed through a code of practice. In this latter respect, the Youth Council endorses the position taken by the Volunteer Development Agency.

### 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.

See answer to 4.8.

Compulsory work experience in voluntary, private or public sectors.

**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:

For reasons outlined at paragraph 29 - believe that Option A presents the stronger Option in removing discrimination in the critical area of education.

## 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.

For reasons outlined in Paragraph 3.2

### 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 (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.

Current definition is clear. However we feel it is crucial that definitions are accompanied by practical scenarios, to ensure public understanding of them (especially young people's understanding). Without this understanding, public access to the SEB is limited (for example young people's lack of understanding of the UN Convention on Rights of the Child is a source of disempowerment).

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

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?

All grounds to indicate that the SEB is proactively anti-discriminatory.

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

May not always be appropriate/possible to prove

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

Creates an unnecessary hierarchy within definitions

## 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

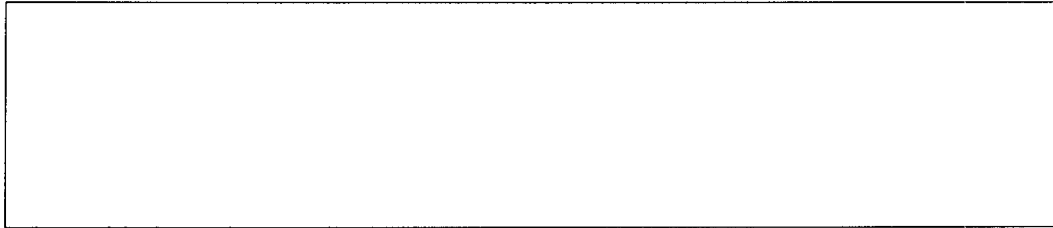
5.20 Do you think that the definition of victimisation should be amended so that, for example, a comparator is not required?

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?

This section is fundamental to the SEB, and yet is very complex for some people to understand, especially young people. As outlined in response to Q. 5.2, we suggest there in an accompanying illustrative guide to the SEB, with real and hypothetical scenarios.

Without this, public access to the SEB will be limited.

## 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?

As noted in paragraph 13, "Listing" is a method which may apply at one point in time, but does not take account of the future needs, moreover, there is a tendency for long-established exceptions to be accepted without scrutiny. E.g. we would question whether some of the current exceptions are congruent with the recent review of community relations ("A Shared Future" Consultation).

## 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?

Exceptions relating to age may need to be broad rather than specific, ie

as suggested in our response to Q 4.2 (page 19 of this booklet)

## **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?

The exceptions are very complex and each has a particular rationale. We have some concern that, given the breadth of the SEB consultation, there has not been time/space to fully examine all exceptions in detail required.

In this context, it is important that all exceptions are kept under regular review by ECNI and that there is opportunity for the public to challenge them.

## 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?

Follow example in Republic of Ireland

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

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?

If extended to private individual transactions, this may lead to spurious cases.

### 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'

### 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

Given the differential nature of grounds, may be hard to provide a satisfaction and consistent list of exceptions. However it is not satisfactory to simply apply GSR. Therefore believe a combined approach is the best option. Reference to young people (age) may need to be broad (as suggested in response to Q 4.2).

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

May be more confusing for the public - need for accessible guidance

### **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)

Those covered within compulsory grounds (to include age and sexual orientation). Also important that genetic predisposition is covered (possibly by including this within definition of disability).

### **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?

Strongly favour option 6 - whilst acknowledging that age is a complex area, we feel that complexity and cost are not sufficient arguments for deferral. In many ways a delay would demean the equal importance of the age issue.

**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?

AGE

**\* END OF RESPONSE - REMAINDER OF BOOKLET LEFT BLANK  
Addressing Under-Representation in Employment**

8.7 Please explain the reasons for your answers