

Equality Commission

FOR NORTHERN IRELAND

# **Submission to the Committee for the Executive Office Inquiry into Gaps in Equality Legislation**

Equality Commission for Northern Ireland

6 September 2024

# Contents

<b>1</b>	<b>EXECUTIVE SUMMARY</b> .....	<b>1</b>
	INCONSISTENCY BETWEEN EQUALITY PROTECTIONS IN NORTHERN IRELAND AND WITH INTERNATIONAL BEST PRACTICE. 1	
	IMMEDIATE AND LONGER-TERM PRIORITIES FOR REFORM .....	2
<b>2</b>	<b>CONTEXT</b> .....	<b>3</b>
<b>3</b>	<b>DIFFERENCE IN PROTECTIONS BETWEEN THE REGIONS OF THE UK AND BETWEEN NORTHERN IRELAND AND THE EUROPEAN UNION (INCLUDING IRELAND)</b> .....	<b>4</b>
	INCONSISTENCY BETWEEN EQUALITY PROTECTIONS IN NORTHERN IRELAND .....	4
	AGE (GOODS, FACILITIES AND SERVICES) .....	5
	RACE .....	5
	DISABILITY .....	5
	SEX, GENDER REASSIGNMENT AND PREGNANCY .....	6
	SEXUAL ORIENTATION .....	7
	RELIGIOUS AND PHILOSOPHICAL BELIEF, AND POLITICAL OPINION.....	7
	CROSS-CUTTING DIFFERENCES .....	8
<b>4</b>	<b>THE EFFECTS OF DIFFERENCES IN LEGISLATION</b> .....	<b>9</b>
	LESS PROTECTION AGAINST DISCRIMINATION, HARASSMENT AND VICTIMISATION .....	9
	DIFFICULT TO UNDERSTAND RIGHTS AND RESPONSIBILITIES .....	9
<b>5</b>	<b>THE NEED FOR LEGISLATIVE CHANGE</b> .....	<b>10</b>
	BENEFITS OF A SIMPLIFIED APPROACH .....	10
	REFLECT INTERNATIONAL HUMAN RIGHTS APPROACH AND BEST PRACTICE .....	10
	COMPLIANCE WITH ARTICLE 2 OF THE WINDSOR FRAMEWORK .....	11
<b>6</b>	<b>EQUALITY COMMISSION: PRIORITIES FOR CHANGE</b> .....	<b>12</b>
	FULL DELIVERY OF PRIORITISED AND REQUIRED REFORMS .....	12
	MODERNISE AND SIMPLIFY THE ANTI-DISCRIMINATION LAW FRAMEWORK .....	12
<b>7</b>	<b>CONCLUSION</b> .....	<b>13</b>

# 1 Executive Summary

1.1 **The Commission recommends that equality law should urgently be reformed to reflect international human rights standards, taking account of any best practice from Great Britain, Ireland and wider jurisdictions to meet the specific needs of Northern Ireland.**

1.2 There are clear and persistent weaknesses in equality law in Northern Ireland:

- Different equality laws provide differing levels of protection. These gaps result in a hierarchy of rights, with people having more protection from discrimination on some of their equality characteristics, but not on others.
- There are also increasing shortfalls over time relevant to international standards and in comparison to jurisdictions such as Great Britain, Ireland and elsewhere.

1.3 The current legal framework in Northern Ireland provides limited and inconsistent protections across different equality grounds and adds to complexity and cost. This lack of consistency, and the ongoing failure to simplify, harmonise and modernise our equality laws over time impacts negatively on individuals, employers, service providers, and those providing advice, including the Commission.

## ***Inconsistency between equality protections in Northern Ireland and with International Best Practice.***

1.4 The evolution of equality law over many decades has resulted in unnecessarily complex and inconsistent protections in Northern Ireland. The following are examples of some key shortfalls in anti-discrimination law which fall within the devolved competencies of the NI Executive:

- **Age-GFS:** In Northern Ireland there are no protections against age discrimination in accessing goods, facilities and services (GFS). There are GFS protections on all other equality grounds in NI, and in Great Britain and Ireland
- **Race:** There are a range of gaps and shortfalls, including fewer protections on the grounds of colour and nationality, resulting in a 'two-tier' level of protection. Positive action provisions are also more limited than in GB, Ireland and the EU.
- **Disability:** Protections are inconsistent and confusing, and unlike in Great Britain, there is no protection against indirect disability discrimination, and discrimination arising from disability in Northern Ireland. In GB many inconsistencies and shortfalls were addressed through the Equality Act 2010.
- **Sex, gender reassignment and pregnancy:** Unlike in Great Britain and Ireland, Gender pay-gap reporting was not introduced in Northern Ireland, and there is now an EU Pay Transparency Directive to be transposed. Wider protections also fall behind other jurisdictions, including GB and Ireland.
- **Sexual Orientation and Religion / Political Opinion:** These and other equality grounds would benefit from the addition of protections against third-party harassment, combined discrimination, and protections against discrimination by public bodies when carrying out public functions.

1.5 It is fundamentally unfair that different equality groups have different protections without justifiable reason. Over the same period, jurisdictions such as Great Britain and Ireland have taken steps to harmonise, unify and simplify their legislative equality framework.

### ***Immediate and longer-term Priorities for Reform***

1.6 Reform of the equality legislation should be taken forward as a priority. Aligned to our statutory remit to keep the workings of the anti-discrimination legislation under review, the Commission has over the past two decades made a number of specific recommendations for reform. Various international human rights bodies have also highlighted the need to reform Northern Ireland's equality laws, many taking account of or directly supporting the Commission's recommendations for change.

1.7 In the immediate term we urge the full delivery within this Assembly mandate of reforms recently commenced, or with imminent deadlines. This includes:

- Reform of race equality law
- Compliance with June 2026 deadlines for transposition into NI law of EU Directives on Equality Body Standards, and on Pay Transparency, and
- Delivery of comprehensive hate crime law

1.8 Action is also needed to modernise the equality law framework more generally. In this context the Commission recommends prompt action, commencing now, to:

- clarify, simplify, harmonise and strengthen legal protections against discrimination
- reflect best international practice and meet the needs of Northern Ireland
- give consideration to the benefits of single equality approach
- ensure compliance with Article 2 of the Windsor Framework

1.9 There is also a need to ensure fulfilment of Windsor Framework Article 2 obligations to 'keep pace' with relevant EU Directives, including the EU Pay Transparency Directive and the EU Standards for Equality Bodies Directive. There is also a need to consider Commission powers, and enforcement and remedies. More broadly, Section 75 of the Northern Ireland Act 1998 must also be effectively implemented.

1.10 In addition, there is a need to ensure leadership at all levels on equality issues; to ensure that stakeholder organisations and the Equality Commission are resourced so they can support individuals, organisations, and Government / Departments to shape and assist effective delivery; to ensure stakeholder involvement in design, delivery and review; to better target interventions and track impacts; and to ensure that key datasets contain comprehensive equality data to facilitate full equality analysis.

1.11 **We propose that the Committee recommend that the NI Executive prioritises and progresses work within this Assembly mandate to deliver reformed equality legislation in line with the Commission's recommendations, and to ensures compliance with obligations relating to Article 2 of the Windsor Framework.**

## 2 Context

- 2.1 The Equality Commission for Northern Ireland welcomes the opportunity to respond to the Committee for the Executive Office's Inquiry into Gaps in Equality Legislation.
- 2.2 Pursuant to the duties on the Commission under equality law to keep legislation under review, we have made a number of recommendations over time calling for improvements to our legislative equality framework. These include, for example, recommendations to introduce of age discrimination protections relating to the provision of goods, facilities and services<sup>1</sup>, for change to the race equality legislation<sup>2</sup>, the disability legislation<sup>3</sup>, the sex discrimination legislation<sup>4</sup>, the sexual orientation legislation<sup>5</sup>, for fair employment monitoring<sup>6</sup>, and for a single equality approach<sup>7</sup>.
- 2.3 We consider that there is an urgent need to progress these, and wider changes. While changes could be progressed on a ground-by-ground basis, we consider that there are a range of additional advantages to adopting a single equality law approach<sup>8</sup>.
- 2.4 The Assembly has in general not legislated to deliver equality law reform, with most developments over the last two decades coming via the UK Government / Parliament or where required by EU Directives. More recently, NI Assembly Private Members' Bills have delivered some change (for example with regards to FETO and the Teacher's Exception). Most recently, we have seen positive developments by the Executive / Departments aligned to some Commission priorities (for example on Race Law reform and Hate Crime), but even in these instances legislative change has not yet been delivered.
- 2.5 This paper seeks to provide a concise overview of key issues and recommendations for change, taking account of the Committee's Inquiry Terms of Reference and survey questions. It should not be considered exhaustive, but rather illustrative of a range of anti-discrimination and related issues which fall within the devolved competencies of the NI Executive, and on which the Commission has gathered information and made recommendations.
- 2.6 Mindful of the technical detail that is associated with legislative reform, this short paper is supported by an Annex which provides further detail, and also by links to a range of papers on the Commission's website which contain our full range for recommendations and supporting evidence.
- 2.7 While the Commission has a long-standing body of recommendations calling from improvement in our equality law framework, including with regards to key gaps<sup>9</sup>,

---

<sup>1</sup> ECNI (2012) [Strengthening Protection for all Ages: Ending Age Discrimination in the Provision of Goods and Services: Proposals for Reform](#)

<sup>2</sup> ECNI (2022) [Race Law Reform: Priorities and Recommendations](#)

<sup>3</sup> ECNI (2012) [Strengthening Protection for Disabled People: Proposals for Reform](#)

<sup>4</sup> ECNI (2016) [Gender Law Reform: Summary Report: Policy Priorities and Recommendations](#)

<sup>5</sup> ECNI (2013) [Promoting Sexual Orientation: Equality Priorities and Recommendations](#), p. 28-29.

<sup>6</sup> ECNI (2009) [Proposals for Legislative Reform](#), pp. 25-27.

<sup>7</sup> e.g. ECNI (2004) [Response to OFMDFM Consultation Paper: 'A Single Equality Bill For Northern Ireland'](#)

<sup>8</sup> ECNI (2009) [Proposals for Legislative Reform](#), pp. 25-27.

<sup>9</sup> See [www.equalityni.org/SingleEqualityAct](http://www.equalityni.org/SingleEqualityAct)

<sup>9</sup> ECNI (2014) [Gaps in equality law between Great Britain and Northern Ireland](#)

and in wider areas of related law<sup>10</sup>, it has not been possible in the window provided for the Inquiry survey to comprehensively compare with latest developments in other jurisdictions, nor to comprehensively update our consideration of shortfalls across all areas of NI equality legislation. Should the Executive or Assembly prioritise action to reform the equality law framework, additional detailed work would be required by Departments and key stakeholders, including the Commission.

### **3 Difference in protections between the regions of the UK and between Northern Ireland and the European Union (including Ireland)**

- 3.1 There are considerable gaps in the protections afforded to different equality groups by the different equality laws in Northern Ireland. There are also increasing shortfalls relevant to international standards and in comparison to jurisdictions such as Great Britain, Ireland and elsewhere.
- 3.2 People in Northern Ireland should benefit from protections which reflect international human rights standards, taking account of any lessons from Great Britain, Ireland and wider jurisdictions to meet the specific needs of Northern Ireland.

#### ***Inconsistency between equality protections in Northern Ireland***

- 3.3 Before looking to other jurisdictions, it is important to first acknowledge the inefficient patchwork of equality legislation that exists in Northern Ireland.
- 3.4 The development and evolution of equality law over a period spanning some 50 years has resulted in unnecessarily complex and inconsistent protections. This leads to gaps within Northern Ireland in the protections available to specific equality groups, resulting in an unjustifiable hierarchy of rights. It is fundamentally unfair that different equality groups have different protections without justifiable reason.
- 3.5 Over the same period, other jurisdictions have taken steps to harmonise, unify and simplify their legislative frameworks, including in Great Britain (the Equality Act 2010) and Ireland (the Equal Status Act 2000 and the Employment Equality Act 1998 (both as amended)).
- 3.6 We highlight below a range of ground-specific and cross-cutting differences in Northern Ireland's equality laws. The examples are illustrative, with additional supporting information contained in the attached annex, and on our website.

---

<sup>10</sup> ECNI (2020) [Hate Crime in Northern Ireland: Policy Recommendations and Supporting Rationales](#)

## ***Age (Goods, Facilities and Services)***

- 3.7 **In Northern Ireland there are no protections against age discrimination in accessing goods, services and facilities.** In Great Britain and Ireland, adults are protected from such discrimination. There are also protections across all other equality grounds in Northern Ireland.
- 3.8 This means that while people in Northern Ireland are protected against unlawful discrimination in accessing services because of their sex, disability, religion, race and sexual orientation, they are not protected when such discrimination occurs because of their age.
- 3.9 Individuals who are unjustifiably discriminated against because of their age, for example when accessing healthcare or financial services, have no protection under current anti-discrimination law in Northern Ireland. We consider that there is compelling evidence of age discrimination outside the workplace experienced by older people, as well as children and young people. Other jurisdictions, in particular, Australia, Canada and Belgium, have been able to effectively implement a best practice approach which safeguards and promotes the rights of all people, from childhood into and across adult life.
- 3.10 For further details on our recommendations, see section 4 of the Annex.

## ***Race***

- 3.11 There are a range of gaps and shortfalls with regards to race equality protection in Northern Ireland. Unlike Great Britain and Ireland, there are **fewer protections in Northern Ireland on the grounds of colour and nationality, than on race or ethnic or national origin.** As such, currently there is a 'two-tier' level of protection against discrimination and harassment within our race equality legislation. To meet best international standards, racial grounds should also explicitly include caste, and be non-exhaustive.
- 3.12 Provisions to allow positive action in relation to race are also less extensive than in Great Britain, Ireland, and what is allowable under EU law. This means it is harder for employers and service providers in Northern Ireland to take positive action to promote racial equality.
- 3.13 Furthermore, there is a need to improve equality data collection and implement ethnic equality monitoring to improve public service provision and to better enable evidence-based policy making.
- 3.14 For further details on our recommendations, see section 5 of the Annex.

## ***Disability***

- 3.15 **Protections against disability discrimination in Northern Ireland, are inconsistent and confusing,** including when compared to provisions in other jurisdictions, such as Great Britain, where many complexities and issues were addressed through the Equality Act 2010.
- 3.16 For instance, in Northern Ireland, although there are some protections for disabled people when accessing goods and services and for disabled pupils in schools, there is no protection against direct discrimination which cannot be justified in

these areas. Direct discrimination provisions are particularly important in tackling prejudicial and stereotypical assumptions about disabled people.

- 3.17 Unlike Great Britain, there is **no protection against indirect disability discrimination, and discrimination arising from disability in Northern Ireland**. Protections for people associated with, and perceived to have a disability are also less clear in Northern Ireland than Great Britain and Ireland.
- 3.18 In **Northern Ireland it is more difficult than in Great Britain to fall within the definition of disability** due to an approach which centres on a list of ‘capacities’. The Commission has however recommended that Northern Ireland should go beyond changes made in Great Britain, and instead reflect international human rights standards which centre on a ‘social model’<sup>11</sup> of disability.
- 3.19 For further details on our recommendations, see section 6 of the Annex.

### ***Sex, gender reassignment and pregnancy***

- 3.20 Unlike Great Britain and Ireland, **gender pay gap reporting provisions have never been enacted in Northern Ireland**. The recent EU Pay Transparency Directive which the Commission considers, due to Windsor Framework commitments, must be transposed in Northern Ireland by June 2026, contains provisions which would require and shape Gender Pay Gap Reporting in Northern Ireland. The EU Directive introduces a staged approach to gender pay gap reporting for organisations with over 100 workers, and where there are unjustified gaps of over 5%, requires joint pay assessments. The Directive would also add to our Equal Pay provisions. These include allowing hypothetical comparators, and providing protection for employees against pay secrecy clauses. As a minimum, Ireland will also have to transpose this new EU Directive, but in some areas Ireland already meets or exceeds EU requirements.
- 3.21 There are currently **no protections in Northern Ireland against discrimination and harassment by associations**, such as private membership clubs, on the grounds of sex, pregnancy and maternity or gender reassignment. Such protections exist in Great Britain and Ireland, and in relation to other equality grounds in Northern Ireland.
- 3.22 The **scope of protections from gender reassignment discrimination here is limited**, including when compared to neighbouring jurisdictions, with a lack of protection against indirect discrimination when accessing goods or services, such as shops. Unlike on other grounds, and in other jurisdictions, there are no protections against discrimination in education in schools on the grounds of gender reassignment. The definition of gender reassignment in Northern Ireland’s equality legislation still refers to a requirement to be under medical supervision. In Great Britain, this barrier to protection from discrimination was removed in 2010.
- 3.23 For further details on our recommendations, see section 7 of the Annex.

---

<sup>11</sup> The Social Model of disability understands barriers in society as disabling – under this view, society limits the participation of persons with impairments by creating obstacles. These may take many forms, including legal, attitudinal and physical barriers, as well as barriers to communication.

## ***Sexual Orientation***

- 3.24 Key legislative developments in recent years in relation to sexual orientation issues in Northern Ireland have primarily focused on issues beyond anti-discrimination legislation, such as equal marriage, blood donation and adoption, where progress has been secured. Many of the Commission's remaining longstanding recommendations relating to sexual orientation anti-discrimination legislation are also relevant to other equality grounds, and so are set out further below as cross-cutting issues.
- 3.25 For example, unlike in Ireland, there are **not provisions in anti-discrimination law for employer liability if employees are harassed by third-parties**, because of their sexual orientation. This makes it harder for LGB+ employees to take action if they are harassed by customers or clients, because of their sexual orientation.
- 3.26 Further, in Northern Ireland, there is **only limited protection against public bodies discriminating on grounds of sexual orientation when carrying out public functions**. This means there is a lack of protection against sexual orientation discrimination and harassment in relation to issues like arrests, detention and restraint by the police, the charging and prosecution of alleged offenders. This gap in protection was addressed in Great Britain over a decade ago through the Equality Act 2010.
- 3.27 The Commission's recommendations in this area are longstanding. Should the Executive or Assembly prioritise action to reform the equality law framework, additional detailed work should be undertaken to establish latest gaps and international standards in sexual orientation protections in anti-discrimination legislation.
- 3.28 For further details on our recommendations, see section 8 of the Annex.

## ***Religious and Philosophical Belief, and Political Opinion***

- 3.29 The Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO), as amended, addresses discrimination on grounds of religious or similar philosophical belief and/or political opinion. Political opinion is not a protected characteristic in Great Britain, Ireland or under EU Directives.
- 3.30 The Commission has made a range of cross-cutting recommendations which are of relevance to protections under FETO, for example, in relation to **combined discrimination, where discrimination intersects across more than one equality ground**. Further detail is available below with regards to cross-cutting issues.
- 3.31 We have also previously called for the removal of the 'teacher's exception', whereby protection against religious/ philosophical belief and political opinion discrimination did not apply to school teachers. This gap in protections was recently addressed through a Private Member's Bill. We have worked with officials to enable the necessary reforms to ensure FETO protections apply to teachers.
- 3.32 Should the Executive or Assembly prioritise action to reform the equality law framework, additional detailed work should be undertaken to establish the latest gaps and international standards on religious/ philosophical belief and political opinion anti-discrimination protections, with consideration given also to potential

cross-cutting recommendations below, mindful of the particular needs of Northern Ireland.

3.33 The Commission has a long-standing recommendation to extend the monitoring requirements under the fair employment legislation to cover the additional grounds of nationality and ethnic origin. This will mean that registered employers, in addition to monitoring the community background and sex of their employees and applicants, will be required to collect monitoring information as regards nationality and ethnic origin. The primary reason for the proposed change is to ensure the continuing usefulness of the fair employment monitoring Regulations. In particular, to help employers identify which employees and applicants are migrant workers and new residents, so as to enable employers make a more accurate and meaningful assessment of fair participation (as defined under FETO) in employment in their organisation.

3.34 For further details on our recommendations, see section 9 of the Annex.

### ***Cross-Cutting differences***

3.35 In a range of areas, there are differences between Northern Ireland, Great Britain and Ireland which significantly impact across the range of equality grounds. The following sets out some key examples:

3.36 **Northern Ireland's equality legislation does not address combined discrimination**, where a person is discriminated against because of different equality grounds intersecting. This does not meet best international standards, as recommended by numerous UN bodies. Great Britain may be about to take a limited step in this direction, with the Labour Party having indicated<sup>12</sup> that it intended to enact the Equality Act 2010's dual discrimination provisions. These have never been brought into force, but apply across the full range of equality grounds, where a person is discriminated against because of the combination of two equality grounds.

3.37 In Great Britain, there is comprehensive protection against discrimination by public bodies carrying out public functions, such as police stop-and-search, prison management, and discretionary welfare benefits. However, in Northern Ireland, there is **only limited protection against public function discrimination** in relation to race and sexual orientation, and no protection at all in relation to sex, gender reassignment and age. There are protections in relation to disability, and religious belief and political opinion.

3.38 Irish legislation imposes liability if employers fail to prevent harassment of their employees if reasonable steps to prevent third-parties, like customers, clients or patients, from harassing an employee. However, in Northern Ireland, there is only limited liability under the sex legislation, leading to **significant gaps in protection against third-party harassment**.

3.39 There are a **range of gaps in relation to the Commission's powers**, compared with equivalent bodies in other jurisdictions, such as the Equality and Human Rights Commission (EHRC) and the Irish Human Rights and Equality Commission (IHREC). For instance, our powers to issue Codes of Practice vary across the

---

<sup>12</sup> Labour Party (2024) [Change: Labour Party Manifesto](#), p. 88.

grounds, unlike EHRC, which has comprehensive powers. The recently passed EU Standards for Equality Bodies Directives include a range of provisions including in relation to equality bodies' independence, data collection, and resources for equality bodies. As set out further below, under Windsor Framework Article 2 there is a keeping pace duty in relation to these Directives.

- 3.40 It is essential that equality law in Northern Ireland reflects international human rights standards and meet the specific needs of Northern Ireland. Any comparisons with Great Britain, Ireland or wider jurisdictions should be to identify lessons that will inform proposals for Northern Ireland.

## **4 The effects of differences in legislation**

- 4.1 The limited and inconsistent protections across equality law in Northern Ireland add to complexity and cost, and impacts negatively on individuals, employers, service providers, and those providing advice, including the Commission.

### ***Less protection against discrimination, harassment and victimisation***

- 4.2 The effect is that people in Northern Ireland who experience discrimination, including those who are vulnerable or marginalised, have less protection against discrimination, harassment and victimisation across a number of equality grounds than their counterparts in Great Britain and Ireland.
- 4.3 For instance, evidence shows that people are facing age discrimination when trying to access healthcare and financial services, use public transport, and enter shops. However, at the moment, these individuals are unable bring anti-discrimination cases in Northern Ireland. As well as individuals being unable to challenge specific instances of discrimination, the lack of legislation is a lost opportunity to tackle structural issues of ageism.
- 4.4 Further, there is a lack of protection for combined discrimination, particularly where discrimination intersects on more than one ground. Statistics collected by the Equality Commission highlight that in many instances, individuals believe that they are discriminated against on more than one equality ground. For example, over a twelve-month period (1 April 2023 - 31 March 2024), 22% (354) of our enquiries /applications on disability (excluding SENDO) also related to another equality ground. In the absence of combined discrimination provision, access to appropriate redress may be limited. Combined discrimination provisions may better reflect the discrimination being faced.

### ***Difficult to understand rights and responsibilities***

- 4.5 Further, an additional impact of the gaps and inconsistencies across our various equality laws is that in Northern Ireland it is more difficult for people and organisations to identify and understand specific rights and responsibilities.
- 4.6 Individuals find it more difficult to know and understand their rights, or if they do or do not have protections. For employers and service providers, it can be complicated to understand what they are required to do. They also have to keep track of their responsibilities under differing legislative frameworks, as well as case-law emerging from separate pieces of legislation.

- 4.7 The effects of particular inconsistencies or gaps on individuals and organisations are sets out across the attached annex.

## 5 The need for legislative change

- 5.1 There is a clear need for legislative change. Reform of the equality legislation should be taken forward as a priority. Legislation should reflect best international standards, while meeting the particular needs of Northern Ireland.
- 5.2 Reform of the equality legislation should further advance equality of opportunity and prevent discrimination and clarify the law.

### *Benefits of a simplified approach*

- 5.3 Reform is needed across the full suite of equality laws. Additional benefits will accrue from adopting a simplified and harmonised approach, including via a single equality law framework. For example:
- individuals could more readily understand rights and protections if these were more consistent across the various protected aspects of their identity
  - employers and service providers could more easily understand and more effectively implement more harmonised obligations and responsibilities, with associated time and cost savings
  - those providing advice or support services would also benefit from the efficiencies of a simplified and harmonised set of protections, particularly in a single equality law
  - those tasked with keeping the legislation under review or updating the legislative framework would also benefit from the efficiencies of simplified and harmonised legislation.

### *Reflect International Human Rights Approach and Best Practice*

- 5.4 Various international human rights bodies have highlighted the need to reform Northern Ireland's equality law. For example:
- the European Commission on Racism and Intolerance (ECRI)<sup>13</sup> has called on Government to 'consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the Equality Commission for Northern Ireland'
  - UN Committee on the Elimination of Racial Discrimination (CERD)<sup>14</sup> has call for action to "Ensure the adoption of comprehensive anti-discrimination and equality legislation in all jurisdictions of the State party, particularly in Northern Ireland..."

---

<sup>13</sup> ECRI (2019) [Conclusions on the implementation of the recommendations in respect of the UK subject to interim follow up](#).

<sup>14</sup> CERD (2024) [Concluding observations on the combined twenty-fourth to twenty-sixth periodic reports of the United Kingdom of Great Britain and Northern Ireland](#), paras 13-14.

- the Committee on the Elimination of Discrimination against Women (CEDAW)<sup>15</sup> regretted “that the State party, invoking the principle of devolution, has not taken any measures to ensure that women in Northern Ireland have at least the same protections with regard to equality as do their counterparts in the other administrations of the State party...”

## ***Compliance with Article 2 of the Windsor Framework***

- 5.5 The UK Government made commitments to rights and equality in NI after the UK withdrawal from the EU in Article 2(1) of the Windsor Framework.
- 5.6 These include commitments to the non-diminution of certain rights and equalities, as well as the obligation to ‘keep pace’ with enhancements by the EU to the EU equality directives contained in Windsor Framework Annex 1. For further information, see Section 1 of the Annex.
- 5.7 As such, any future NI legislation, including legislation bringing changes to NI equality law, must also comply with the UK Government’s obligations relating to Article 2 of the Windsor Framework.
- 5.8 In particular, we would highlight our view that there is a need to comply with June 2026 deadlines for transposition into NI law of relevant EU Directives, in particular:
- the EU Pay Transparency Directive
  - the EU Standards for Equality Bodies Directives.
- 5.9 Further, before the end of the Brexit transition period (31 December 2020), EU law had facilitated the development of many laws on rights and equality, and facilitated a base level of consistency across the EU, including across the UK, Northern Ireland and Ireland. While the Windsor Framework requires that NI equality law keeps pace with EU changes to certain EU equality laws, there is now increased potential for equality and human rights protections to diverge across the UK, Northern Ireland and Ireland. The Commissions have previously urged the UK Government and NI Executive to ensure North-South equivalence of rights, by aligning with changes to EU equality and human rights law that enhances protections and reflects international human rights standards, even where not required to under the Windsor Framework.
- 5.10 The ECNI has also highlighted the value in the UK Government and the Executive Office centrally logging areas of regulatory divergence post Brexit relating to equality and human rights in NI and making this information public in an accessible and transparent way. This should include in the context of divergence of rights on the island of Ireland and divergence of rights between NI and Great Britain.
- 5.11 The Commission stresses that EU law should be considered as minimum requirements, and we would encourage government to adopt an approach when reviewing NI law to adopt an approach that goes beyond these minimum EU standards where this strengthens rights and aligns with international human rights standards.

---

<sup>15</sup> CEDAW (2019) [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), paras 15-16.

## 6 Equality Commission: Priorities for Change

6.1 Aligned to our statutory remit to keep the workings of the anti-discrimination legislation under review, the Commission has over the past two decades made a number of specific recommendations for reform. There is a need for reform in the immediate and also the medium /longer term.

### *Full Delivery of prioritised and required reforms*

6.2 In the immediate term we wish to see the delivery, within the current mandate, of reforms recently commenced, or with imminent deadlines for implementation. This includes:

- **Reform of race equality law.**  
The Executive Office has indicated<sup>16</sup> the reformed legislation will be introduced in 2025/26. It is vital that this is achieved;
- **Compliance with June 2026 deadlines for transposition into NI law of relevant EU Directives.**  
We consider, aligned to Windsor Framework Article 2 'keeping pace' commitments, that there is requirement to transpose the EU Pay Transparency Directive and the EU Standards for Equality Bodies Directives into NI law; and
- **Delivery of comprehensive hate crime law.**  
Although not anti-discrimination legislation, this is key legislation to provide further protection to equality groups.

6.3 There is limited remaining time in this mandate, and less than two years to transpose relevant Directives. Urgent work is therefore needed now to achieve these reforms, including consultations where relevant.

### *Modernise and Simplify the Anti-Discrimination Law Framework*

6.4 Beginning now, there is also a longer-term need for prioritised action to address identified issues within the equality framework. This will benefit individuals, families, organisations and communities, across the equality characteristics.

6.5 Decision-makers should commit and schedule action to reform the full suite of anti-discrimination legislation, including to:

- clarify, simplify, harmonise and strengthen legal protections
- reflect best international practice and meet needs of Northern Ireland
- give consideration to the benefits of single equality approach
- ensure compliance with Article 2 of the Windsor Framework

6.6 There is also need to address the specific and cross-cutting issues summarised above and further described in the attached annex and our wider supporting policy papers.

---

<sup>16</sup> NI Assembly (2024) [AQW 13854/22-27](#)

- 6.7 In addition, there is a need to ensure leadership at all levels on equality issues; to ensure that stakeholder organisations and the Equality Commission are resourced so they can support individuals, organisations, and Government / Departments to shape and assist effective delivery; to ensure stakeholder involvement in design, delivery and review; to better target interventions and track impacts; and to ensure that key datasets contain comprehensive equality data to facilitate full equality analysis.
- 6.8 There is also a need to consider Commission powers, and enforcement and remedies. More broadly, Section 75 of the Northern Ireland Act 1998 must be effectively implemented.
- 6.9 Reform is also needed in wider areas of law which impact on equality groups, including a Northern Irish Bill of Rights, and areas such as hate crime, violence, employment rights etc.

## **7 Conclusion**

- 7.1 There are clear and long-standing weaknesses in equality law in Northern Ireland, with a hierarchy of rights, with people having more protection from discrimination on some of their equality characteristics, but not on others, and increasing shortfalls relevant to international standards.
- 7.2 These weaknesses impact negatively on individuals, employers, service providers, and those providing advice, including the Commission.
- 7.3 The Commission recommends that equality law in Northern Ireland should urgently be reformed to reflect international human rights standards, taking account of any best practice from Great Britain, Ireland and wider jurisdictions to meet the specific needs of Northern Ireland.
- 7.4 Within the current mandate, we wish to see delivery of reforms recently commenced, or with imminent deadlines for implementation. This includes reform of race equality law, compliance with June 2026 deadlines for transposition of EU Directives on Equality Body Standards, and on Pay Transparency, and delivery of comprehensive hate crime law
- 7.5 Starting now, there is also a need in the longer term to modernise equality law more broadly, to clarify, simplify and improve legal protections.
- 7.6 Reform must ensure compliance with Article 2 of the Windsor Framework, and consideration should also be given to the merits of adopting a single equality law framework.
- 7.7 We propose that the Committee recommend that the NI Executive prioritises, schedules and progresses work to deliver reformed equality legislation in line with the Commission's recommendations, and ensuring compliance with obligations on the UK Government relating to Article 2 of the Windsor Framework.

Equality Commission

FOR NORTHERN IRELAND

# **ANNEX: Submission to the Committee for the Executive Office Inquiry into Gaps in Equality Legislation**

Equality Commission for Northern Ireland

6 September 2024

<b>1</b>	<b>INTRODUCTION .....</b>	<b>1</b>
	NORTHERN IRELAND LEFT BEHIND .....	2
	PREVIOUS CALLS FOR REFORM .....	4
	EU LAW: ARTICLE 2 OF THE WINDSOR FRAMEWORK.....	5
<b>2</b>	<b>OVERARCHING RECOMMENDATIONS FOR EQUALITY LAW REFORM.....</b>	<b>10</b>
	CLARIFY, SIMPLIFY, HARMONISE AND STRENGTHEN LEGAL PROTECTIONS.....	10
	REFLECT BEST INTERNATIONAL PRACTICE AND MEET NEEDS OF NORTHERN IRELAND.....	11
	GIVE CONSIDERATION TO THE BENEFITS TO SINGLE EQUALITY APPROACH.....	13
	PROGRESS LEGISLATION TO ENSURE COMPLIANCE WITH WF ARTICLE 2 DYNAMIC ALIGNMENT REQUIREMENTS .....	14
<b>3</b>	<b>CROSS-CUTTING REFORMS.....</b>	<b>19</b>
	COMBINED DISCRIMINATION .....	19
	PUBLIC BODIES CARRYING OUT THEIR PUBLIC FUNCTIONS .....	25
	THIRD-PARTY HARASSMENT .....	29
	VOLUNTEERS .....	33
	HARMONISING PROTECTIONS .....	34
<b>4</b>	<b>AGE .....</b>	<b>35</b>
<b>5</b>	<b>RACE .....</b>	<b>39</b>
	HARMONISE AND EXPAND THE SCOPE OF RACIAL GROUNDS .....	39
	EXPAND THE SCOPE OF POSITIVE ACTION .....	46
	EXCEPTIONS .....	50
	ETHNIC EQUALITY MONITORING.....	54
<b>6</b>	<b>DISABILITY.....</b>	<b>56</b>
	HARMONISATION AND SIMPLIFICATION.....	57
	INDIRECT DISABILITY DISCRIMINATION AND DISCRIMINATION ARISING FROM DISABILITY.....	59
	CHANGES TO THE DEFINITION OF DISABILITY .....	62
	ASSOCIATION AND PERCEPTION .....	64
	PROHIBIT PRE-EMPLOYMENT ENQUIRIES .....	66
	SCOPE OF REASONABLE ADJUSTMENTS.....	67
<b>7</b>	<b>SEX, GENDER REASSIGNMENT AND PREGNANCY.....</b>	<b>70</b>
	DISCRIMINATION OR HARASSMENT BY PRIVATE CLUBS/ ASSOCIATIONS.....	71
	GENDER REASSIGNMENT.....	72
	EQUAL PAY.....	75
	GENDER PAY GAP REPORTING.....	80
<b>8</b>	<b>SEXUAL ORIENTATION.....</b>	<b>81</b>
<b>9</b>	<b>RELIGIOUS AND PHILOSOPHICAL BELIEF AND POLITICAL OPINION .....</b>	<b>82</b>
	EXTENDING WORKFORCE MONITORING REQUIREMENTS .....	84
<b>10</b>	<b>POWERS OF THE COMMISSION, ENFORCEMENT AND REMEDIES .....</b>	<b>85</b>
	COMMISSION POWERS .....	85
	ENFORCEMENT AND REMEDIES .....	95
<b>11</b>	<b>OTHER AREAS OF LAW REFORM.....</b>	<b>100</b>
	A BILL OF RIGHTS FOR NI .....	100
	HATE CRIME.....	101
	EU LAW (VOLUNTARY ALIGNMENT).....	102
<b>12</b>	<b>CONCLUSION .....</b>	<b>110</b>
<b>13</b>	<b>ANNEX B: ROLE AND REMIT OF THE EQUALITY COMMISSION FOR NORTHERN IRELAND .....</b>	<b>112</b>

# 1 Introduction

- 1.1 The Equality Commission for Northern Ireland welcomes the opportunity to respond to the Committee for the Executive Office's Inquiry into Gaps in Equality Legislation.
- 1.2 This annex seeks to provide additional detail in support of the points made in our Inquiry submission. It should be read in conjunction with that submission. It provides additional details on gaps in Northern Ireland equality law, including overarching calls, and specific recommendations for reform to anti-discrimination legislation in Northern Ireland. It also provides information on wider areas of law reform of relevance to equality groups.
- 1.3 Pursuant to the duties on the Commission under equality law to keep legislation under review, we have made a range of recommendations over time calling for improvements to our legislative equality framework. This Annex should not be considered exhaustive, but rather illustrative of key issues which fall within the devolved competencies of the NI Executive, and on which the Commission has gathered information and made recommendations.
- 1.4 Mindful of the technical detail that is associated with legislative reform, this Annex is further supported by links to a range of papers on the Commission's website which contain our full range for recommendations and supporting evidence.
- 1.5 Should the Executive or Assembly prioritise action to reform the equality law framework, additional detailed work would be required by Departments and key stakeholders, including the Commission.
- 1.6 As outlined in our main submission to the Inquiry, reform of the equality legislation should be taken forward as a priority. Various international human rights bodies have highlighted the need to reform Northern Ireland's equality laws, many taking account of, and supporting the Commission's recommendations for change.

- 1.7 In the immediate term we urge the full delivery of reforms recently commenced, or with imminent deadlines for implementation. This includes:
- Reform of race equality law
  - Compliance with June 2026 deadlines for transposition into NI law of EU Directives on Equality Body Standards, and on Pay Transparency, and
  - Delivery of comprehensive hate crime law
- 1.8 Beginning now, there is also a fundamental need to modernise equality law more generally. In this context the Commission recommends prompt action to:
- clarify, simplify, harmonise and strengthen legal protections against discrimination
  - reflect best international practice and meet the needs of Northern Ireland
  - give consideration to the benefits of single equality approach
  - ensure compliance with Article 2 of the Windsor Framework
- 1.9 We provide further information on these recommendations below.

### ***Northern Ireland left behind***

- 1.10 In a 2021 report for the Commission focusing on racial equality<sup>1</sup>, Professor Brice Dickson found that:

*‘People living in Northern Ireland continue to be less well protected against racial discrimination than people living in England, Wales, Scotland or the Republic of Ireland....Northern Ireland’s law also lags behind that of other prominent common law jurisdictions, such as Australia, Canada and the USA. As well it is increasingly out*

---

<sup>1</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), pp. 12-13.

*of line with the requirements of international human rights law’.*

- 1.11 Similarly, equality law across the protected characteristics now lags behind best international practice.
- 1.12 This was not always the case – in previous decades, Northern Ireland led the way in some areas of equality legislation, such as in relation to fair employment legislation. However, we have now fallen behind other jurisdictions.
- 1.13 The Commission considers that the people of Northern Ireland should enjoy equality legislation which reflects international human rights standards, taking account of any best practice from Great Britain, Ireland and wider jurisdictions to meet the specific needs of Northern Ireland.
- 1.14 Weaknesses in equality legislation in Northern Ireland have had a significant impact on the Equality Commission for Northern Ireland, and on wider society here.
- 1.15 There is currently a patchwork of different protections, which are confusing for individuals and communities who need to understand their rights, and businesses and service providers who want to understand and meet their responsibilities. Clear law is of benefit to everyone.
- 1.16 There are also significant gaps in our legislation, which mean people are protected on some grounds, but not others. For instance, there is no protection against age discrimination when accessing services, and there is a lack of recognition of how different grounds can interact with each other to lead to discrimination on a combination of characteristics.
- 1.17 Various international human rights bodies have highlighted the need to reform Northern Ireland’s equality law, including the European Commission on Racism and Intolerance (ECRI) (2019)<sup>2</sup>, UN Committee on the Elimination of Racial

---

<sup>2</sup> ECRI (2019) [Conclusions on the implementation of the recommendations in respect of the UK subject to interim follow up](#). ECRI has called on Government to ‘consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the Equality Commission for Northern Ireland’

Discrimination (CERD)<sup>3</sup> and the Committee on the Elimination of Discrimination against Women (CEDAW)<sup>4</sup>.

- 1.18 Legislative change is required to strengthen equality protections in Northern Ireland. However, we would encourage the Executive and Northern Ireland Assembly not to be limited to matching any other particular jurisdiction, and instead meet best international standards, while considering the particular needs of Northern Ireland.
- 1.19 There is a need for full and routine stakeholder involvement and co-design in the development of legislation. Government and Public Authorities must fully and routinely involve key stakeholders in the design, delivery and review of law, public policy and service delivery, so as to benefit from their expertise and experience.

### ***Previous calls for reform***

- 1.20 The Equality Commission has consistently called for reform of equality legislation in Northern Ireland. Pursuant to our duty under equality legislation to keep this legislation under review, we have made a number of recommendations over time for improvement to equality law.
- 1.21 These include, for example, recommendations to introduce of age discrimination protections relating to the provision of goods, facilities and services<sup>5</sup>, for change to the race equality legislation<sup>6</sup>, the disability legislation<sup>7</sup>, the sex discrimination legislation<sup>8</sup>, the sexual orientation legislation<sup>9</sup>, for fair employment monitoring<sup>10</sup>, and for a single equality approach<sup>11</sup>.
- 1.22 The OFMDFM (now The Executive Office (TEO)) issued a consultation on a Single Equality Bill for Northern Ireland in

---

<sup>3</sup> CERD (2024) [Concluding observations on the combined twenty-fourth to twenty-sixth periodic reports of the United Kingdom of Great Britain and Northern Ireland](#), para 14

<sup>4</sup> CEDAW Committee (2019) [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), paras 15-16.

<sup>5</sup> ECNI (2012) [Strengthening Protection for all Ages: Ending Age Discrimination in the Provision of Goods and Services: Proposals for Reform](#)

<sup>6</sup> ECNI (2022) [Race Law Reform: Priorities and Recommendations](#)

<sup>7</sup> ECNI (2012) [Strengthening Protection for Disabled People: Proposals for Reform](#)

<sup>8</sup> ECNI (2016) [Gender Law Reform: Summary Report: Policy Priorities and Recommendations](#)

<sup>9</sup> ECNI (2013) [Promoting Sexual Orientation: Equality Priorities and Recommendations](#), p. 28-29.

<sup>10</sup> ECNI (2009) [Proposals for Legislative Reform](#), pp. 25-27.

<sup>11</sup> e.g. ECNI (2004) [Response to OFMDFM Consultation Paper: 'A Single Equality Bill For Northern Ireland'](#)

2004, to which the Commission responded in detail<sup>12</sup>. However, this did not progress further, and no Bill was brought forward.

- 1.23 The 2006 St Andrew's Agreement made it clear that the Government accepted the need for a Single Equality Bill and committed to working "*rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date*"<sup>13</sup>. Despite that commitment, there has been no further progress in relation to a Single Equality Bill by the Executive.
- 1.24 The adoption of a single equality law approach in Great Britain, through the introduction of the Equality Act 2010 in October 2010, has further exacerbated and highlighted the significant gaps and shortfalls that exist in Northern Ireland. These differences affect all grounds of discrimination, across a wide range of areas<sup>14</sup>.
- 1.25 In Northern Ireland, there have been amendments over time to individual pieces of equality law, for example to the race<sup>15</sup> and sex discrimination legislation<sup>16</sup> to give effect to EU Directives. There has also been an amendment to remove the previous exception for teachers under the Fair Employment and Treatment Order 1998. However, any such changes have not delivered comprehensive single equality law.

### ***EU Law: Article 2 of the Windsor Framework***

- 1.26 The UK Government made commitments to rights and equality in NI after the UK withdrawal from the EU in Article 2(1) of the Windsor Framework,<sup>17</sup> formerly known as the Protocol on Ireland/Northern Ireland of the UK-EU Withdrawal Agreement.<sup>18</sup> These include commitments to the non-diminution of certain

---

<sup>12</sup> ECNI (2004) [Response to OFMDFM Consultation Paper: 'A Single Equality Bill For Northern Ireland](#).

<sup>13</sup> [St Andrews Agreement](#), (2006) Annex B (Human Rights, Equality, Victims and Other Issues)

<sup>14</sup> For example, there is no protection under the sex equality legislation in Northern Ireland against discrimination by public bodies when exercising their public functions. This gap in protection was rectified in Great Britain prior to the Equality Act 2010.

<sup>15</sup> [Race Relations Order \(Amendment\) Regulations \(Northern Ireland\) 2003](#).

<sup>16</sup> [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016](#)

<sup>17</sup> Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework.

<sup>18</sup> Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 24 January 2020.

rights and equalities, as well as the obligation to ‘keep pace’ with enhancements by the EU to the EU equality directives contained in Windsor Framework Annex 1.

- 1.27 ECNI, along with the Northern Ireland Human Rights Commission (“NIHRC”), as the ‘dedicated mechanism’, has a mandate to monitor, advise, report on, promote, and enforce the UK Government’s commitment under Windsor Framework Article 2.<sup>19</sup> The Commissions exercise part of this mandate in partnership with the Irish Human Rights and Equality Commission<sup>20</sup> in relation to those aspects of oversight of, and reporting on, rights and equalities issues falling within the scope of Article 2 which have an island of Ireland dimension.<sup>21</sup>

### Non-diminution obligations

- 1.28 To fall within scope of Windsor Framework Article 2, the human right or equality protection being relied on must be covered by the ‘Rights, Safeguards and Equality of Opportunity’ chapter of the Belfast (Good Friday) Agreement 1998 and have been underpinned by EU law including EU treaties, directives and regulations, in place on or before 31 December 2020.<sup>22</sup> This non-diminution commitment includes in relation to the six EU equality directives contained in Windsor Framework Annex 1.
- 1.29 Critically, the NI Assembly or NI Executive cannot introduce legislation that would breach Windsor Framework Article 2. This means that any legislation cannot diminish certain rights safeguards and equality of opportunity protections set out in the relevant chapter of the Belfast (Good Friday) Agreement as a result of the UK leaving the EU.

---

<sup>19</sup> Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 24 January 2020.

<sup>20</sup> Equality Commission for Northern Ireland, Irish Human Rights and Equality Commission and Northern Ireland Human Rights Commission, Ireland/Northern Ireland Protocol of the European Union (EU) Withdrawal Agreement, Article 2: island of Ireland dimension [Memorandum of Understanding](#), March 2021. Further information on the work of the three Commissions can be found in [Equality and Human Rights on the Island of Ireland after Brexit: Annual joint report of IHREC, ECNI and NIHRC on the implementation of Article 2 of the Windsor Framework](#), October 2022 - September 2023.

<sup>21</sup> Article 2(2) and Article 14(c), Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement; NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’, (NIO, 2020), at 5.

<sup>22</sup> For further information on the scope of WF Article 2, see ECNI, NIHRC [Working Paper: The scope of Article 2 \(1\) of the Protocol](#), 2022

- 1.30 Therefore, in its consideration of potential measures to address gaps in equality law, we ask the Committee to note that any such legislation must comply with Windsor Framework Article 2.

### Dynamic alignment obligations

- 1.31 There are six ‘Annex 1 directives’<sup>23</sup> in Windsor Framework Article 2 which are specific EU directives covering a range of protected equality grounds: race, gender, religion and belief, disability, age and sexual orientation.
- 1.32 As mentioned above, further to obligations in the Withdrawal Agreement, the UK Government must ensure that NI equality law dynamically aligns, or ‘keeps pace’, with any changes made to the EU equality law contained in Annex 1 of the Windsor Framework on or after 1 January 2021.<sup>24</sup> This includes complying with relevant current and future CJEU case law where it relates to Annex 1 directives.<sup>25</sup>
- 1.33 Further, the Commission advises that, in accordance with Article 2 and 13 of the Windsor Framework, the NI Office and the Executive Office continue to monitor and comply with any proposed changes by the EU to the six Annex 1 equality directives, including relevant case law of the CJEU. The Commission has highlighted relevant CJEU case law in a number of sections below where it is relevant to gaps in equality law.
- 1.34 The Commission also advises that the EU Charter of Fundamental Rights continues to have relevance in the context of Windsor Framework Article 2 commitments, as confirmed by

---

<sup>23</sup> [23 Directive 2000/43/EC](#), ‘Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000.  
[Directive 2000/78/EC](#), ‘Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000.  
[Directive 2004/113/EC](#), ‘Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services’, 13 December 2004.  
[Directive 2006/54/EC](#), ‘Directive of European Parliament and of the Council on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)’, 5 July 2006.  
[Directive 2010/41/EU](#), ‘Directive of the European Parliament and of the Council on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010.

[Directive 79/7/EEC](#), ‘Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978

<sup>24</sup> Article 13 (3), Windsor Framework to the [UK-EU Withdrawal Agreement 2020](#).

<sup>25</sup> Article 13(3), Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement.

the recent court decisions in *Angesom*,<sup>26</sup> *Dillon*,<sup>27</sup> and *NIHRC and JR 295 (Illegal Migration Act)*<sup>28</sup> respectively.

- 1.35 The Commission has identified a number of EU Directives which it considers amend or replace the Annex 1 directives, and which fall within the UK Government's keeping pace duty: namely, the EU Pay Transparency Directive, and the EU Directives on standards for equality bodies.
- 1.36 We propose that the Committee recommends that the Executive and relevant NI Departments progress relevant legislation to ensure that NI law keeps pace with the EU Pay Transparency Directive and the EU Directives on Standards for Equality Bodies, and that the necessary changes to equality law are implemented by June 2026. These Directives are further discussed below.

### Divergence of rights on the island of Ireland

- 1.37 The ECNI, along with the NIHRC, recognise that long term North-South equivalence of protection for equality and human rights is important. For example, it can help facilitate the enjoyment of certain rights on a cross-border basis, in keeping with the North-South rights dimension of the Belfast (Good Friday) Agreement. It would assist, for example, in the smooth functioning of North-South co-operation across a range of policy areas from all-island healthcare to North-South justice co-operation, many of which have a strong equality and rights dimension.
- 1.38 As noted above, whilst the Windsor Framework requires that NI equality law keeps pace with any EU changes to the Annex 1 equality directives which enhance protections, there is the potential for equality and human rights on the island of Ireland to diverge in areas not covered by this keeping pace requirement.

---

<sup>26</sup> In the *Angesom* case, the High Court confirmed that the EU Charter on Fundamental Rights falls within the ambit of Article 2(1) of the Windsor Framework and remains enforceable in NI. *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, para 93.

<sup>27</sup> In the *Dillon* case, the court held that the rights of victims of crime, recognised in the 1998 Agreement are within the competence of EU law and are underpinned by EU law in the form of the Victims' Directive and the EU Charter of Fundamental Rights. *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, paras 554 and 582.

<sup>28</sup> In the *IMA* case, the High Court held that provisions in Section 54 forbidding interim remedies to delay the removal of a person from the UK led to a diminution of article 39 of the Procedures Directive and article 47 CFR. *In re NIHRC and JR 295 (Illegal Migration Act 2023)*

- 1.39 The Commissions have previously urged the UK Government and NI Executive to ensure North-South equivalence of rights, by aligning with changes to EU equality and human rights law that enhance protections and reflect international human rights standards, even where not required to under the Windsor Framework.
- 1.40 The ECNI has also highlighted the value in the UK Government and the Executive Office centrally logging areas of regulatory divergence post Brexit relating to equality and human rights in NI and making this information public in an accessible and transparent way. This should include in the context of divergence of rights on the island of Ireland and divergence of rights between NI and Great Britain.
- 1.41 The Commission stresses that EU law should be considered as minimum requirements, and we would encourage government to adopt an approach when implementing EU law into NI law that goes beyond these minimum standards where this strengthens rights and aligns with international human rights standards.
- 1.42 In 2023, independent research<sup>29</sup> published jointly by the ECNI, NIHRC and Irish Human Rights and Equality Commission, and the three Commissions' subsequent policy recommendations<sup>30</sup>, found that there are already a number of developments in areas of EU law which have the potential to result in divergence of rights on the island of Ireland. These include, for example, the EU Work-life Balance Directive, and the European Accessibility Act. Such EU laws will need to be implemented in law in Ireland, but NI law will not be required to align with them pursuant to the Windsor Framework. Though not considered part of equality law, these Directives have the potential to benefit equality groups, as outlined in section 11.

---

<sup>29</sup> Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, '[European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland](#)' (ECNI, NIHRC, IHREC, 2022).

<sup>30</sup> Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, '[Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland](#)' (ECNI, NIHRC and IHREC, 2023)

## 2 Overarching recommendations for equality law reform

2.1 Alongside urgent reforms to be progressed in this mandate, there is a longer-term need for prioritised action to address identified issues with the equality framework. This will benefit individuals, families, organisations and communities, across the equality characteristics.

2.2 Decision-makers should commit and schedule action to reform the full suite of anti-discrimination legislation, aligned with these overarching recommendations to:

- clarify, simplify, harmonise and strengthen legal protections;
- reflect best international practice and meet needs of Northern Ireland;
- give consideration to the benefits of single equality approach; and
- progress legislation to ensure compliance with Article 2 of the Windsor Framework

### ***Clarify, simplify, harmonise and strengthen legal protections***

2.3 Action is needed to clarify, simplify, harmonise and strengthen equality law across all grounds, to further advance equality of opportunity and prevent discrimination. Protections should be applied widely, and law reform should occur to close inconsistencies or loop-holes which mean some categories of people unjustifiably do not benefit from protection. For instance, there is no protection against sex discrimination and limited protection against racial discrimination in relation to the functions of public bodies, such as police stop-and-search.

2.4 It is fundamentally unfair that different equality groups have different protections without justifiable reason. Such differing protections contribute to a 'hierarchy of rights'. In general, we welcome taking steps to ensure gaps in legislation are addressed, if in doing so, there is better protection against discrimination, harassment and victimisation.

- 2.5 Furthermore, law reform should serve to make equality law as clear and easily understandable as possible. For example, the disability legislation contains various inconsistencies, such as protection against direct discrimination only applying to some parts of the legislation and different requirements for reasonable adjustments throughout the law.
- 2.1 Harmonisation and simplification of equality law would provide a number of benefits to a range of users. For example:
- individuals could more readily understand rights and protections if these were more consistent across the various protected aspects of their identity;
  - employers and service providers could more easily understand and more effectively implement more harmonised obligations and responsibilities, with associated time and cost savings;
  - those providing advice or support services would also benefit from the efficiencies of a simplified and harmonised set of protections, particularly in a single equality law;
  - those tasked with keeping the legislation under review or updating the legislative framework would also benefit from the efficiencies of simplified and harmonised legislation.

### ***Reflect best international practice and meet needs of Northern Ireland***

- 2.2 While lessons can be learnt from neighbouring jurisdictions, meeting the specific needs of Northern Ireland and best international practice should lead equality law development, rather than simply copying the Equality Act 2010 or legislation from any other jurisdiction.
- 2.3 We emphasise that in several areas, such as combined discrimination, equality legislation in the UK and Ireland does not meet best international standards, and is not in compliance with recommendations made by UN treaty monitoring bodies<sup>31</sup>.

---

<sup>31</sup> ECNI (2022) [The need for a NI Single Equality Act](#), pp. 6-7.

- 2.4 Various international human rights bodies have highlighted the need to reform Northern Ireland’s equality law. For example, the UN Committee on the Elimination of Racial Discrimination (CERD)<sup>32</sup> has called for action to “*Ensure the adoption of comprehensive anti-discrimination and equality legislation in all jurisdictions of the State party, particularly in Northern Ireland...*”
- 2.5 Likewise, the Committee on the Elimination of Discrimination against Women (CEDAW)<sup>33</sup> regretted “*that the State party, invoking the principle of devolution, has not taken any measures to ensure that women in Northern Ireland have at least the same protections with regard to equality as do their counterparts in the other administrations of the State party...*”,
- 2.6 There are significant gaps between equality law in Great Britain, Ireland and Northern Ireland. These differences affect all grounds of discrimination across a wide range of areas, such as employment, education, the provision of goods and services and housing. As a minimum, such shortfalls should be addressed in Northern Ireland.
- 2.7 The range of gaps in equality law between the jurisdictions have the effect that vulnerable and marginalised individuals in Northern Ireland, who experience discrimination, have less protection against discrimination, harassment and victimisation across a number of equality grounds than their counterparts in Great Britain and Ireland.
- 2.8 Further, employers and service providers who operate across Northern Ireland, Great Britain and/ or Ireland have to grapple with the increased inconsistencies and differences in equality law between the jurisdictions. They also have to keep track of their responsibilities under differing legislative frameworks, as well as case-law emerging from separate legislative provisions.
- 2.9 Law reform in Northern Ireland should consider improvements delivered by the legislation in Great Britain and Ireland, taking account of lessons from implementation.

---

<sup>32</sup> CERD (2024) [Concluding observations on the combined twenty-fourth to twenty-sixth periodic reports of the United Kingdom of Great Britain and Northern Ireland](#), paras 13-14.

<sup>33</sup> CEDAW (2019) [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), paras 15-16.

- 2.10 However, there are some current provisions in Northern Ireland’s law that do not apply in Great Britain and Ireland, including some aspects of the Fair Employment and Treatment (Northern Ireland) Order 1998.
- 2.11 We have also recommended a number of changes to legislation in Northern Ireland which go beyond the level of protection currently set out in equality legislation in Great Britain, such as in relation to combined discrimination and third-party harassment.

***Give consideration to the benefits to single equality approach***

- 2.12 Single equality legislation is the most effective means of strengthening, harmonising and maintaining protections against discrimination in Northern Ireland.
- 2.13 The Equal Rights Trust has highlighted that, internationally, comprehensive anti-discrimination legislation usually takes the form of a single law<sup>34</sup>.
- 2.14 Unlike Great Britain’s Equality Act 2010, Ireland’s Employment Equality Act 1998 and the Equal Status Act 2000 (as amended), Northern Ireland does not have comprehensive anti-discrimination legislation covering the range of equality grounds<sup>35</sup>.
- 2.15 ECRI<sup>36</sup> has recommended the introduction of single equality legislation in Northern Ireland, taking account of the Commission’s recommendations.
- 2.16 We note that TEO’s recent report<sup>37</sup> on their consultation on racial equality law considered that the range of organisations choosing to raise the issue of single equality showed there is support for a single equality bill. It proposed an action that

---

<sup>34</sup> Equal Rights Trust (2022) [Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation](#) p. xi.

<sup>35</sup> We note Ireland’s legislation divides employment and non-employment anti-discrimination legislation.

<sup>36</sup> ECRI (2019) [Conclusions on the implementation of the recommendations in respect of the UK subject to interim follow up](#). ECRI has called on Government to ‘consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the Equality Commission for Northern Ireland’

<sup>37</sup> TEO (2024) [Review of the Current Race Relations \(NI\) Order 1997: Consultation Response Report](#), pp. 75-76.

*‘Consideration should be given by the Executive to a Single Equality Bill and the impact of such an approach’.*

- 2.17 As above harmonisation of legislation has numerous benefits for individuals from across all equality categories, as well as employers, service providers, advisory services, and those interacting with equality legislation more generally. This could be best achieved through single equality legislation.
- 2.18 Single equality legislation would also enable comprehensive review of the legislation, and any subsequent amendments across the equality grounds.
- 2.19 In the absence of single equality legislation, urgent reform is needed to ground-based protections.

***Progress legislation to ensure compliance with WF Article 2 dynamic alignment requirements***

- 2.20 As set out above, we consider that changes to equality law must be implemented by the Executive and relevant NI Departments by June 2026, further to the UK Government’s dynamic alignment obligations relating to Windsor Framework Article 2.
- 2.21 Specifically, we consider that changes are required in order to ensure that NI law keeps pace with the EU Pay Transparency Directive and the EU Directives on Standards for Equality Bodies. Further details on these Directives are set out below.
- 2.22 We recommend that work is progressed as a matter of urgency to introduce these changes by June 2026, and that consultations on proposed legislation are taken forward by the relevant Executive Departments in the coming months.
- 2.23 We would therefore propose that the Committee recommends that the Executive and relevant NI Departments progress relevant legislation so as to ensure that NI law keeps pace with the EU Pay Transparency Directive and the EU Directives on Standards for Equality Bodies, and that the necessary changes to equality law are implemented by June 2026.
- 2.24 In addition, we stress that the requirements of these Directives should be considered minimum requirements. We encourage government to adopt an approach when implementing the

Directive that goes beyond these minimum standards where this reflects best practice, including international human rights best practice, and where it seeks to strengthen rights in this area, and we would ask the Committee to make that clear in any recommendations it may make on this matter.

- 2.25 We would also ask the Committee to note that a recent public awareness survey commissioned by ECNI (June 2024) found that just under two thirds of respondents (64%) said it was important to them that NI keeps pace with all EU law changes which strengthen equality and human rights, post Brexit.<sup>38</sup>

### Pay Transparency Directive

- 2.26 The EU Pay Transparency Directive ('PTD'), Directive 2023/970, to strengthen the application of the principle of equal pay for equal work or work of equal value, between men and women through pay transparency and enforcement mechanisms, of 10 May 2023 came into force on 6 June 2023. The provisions of the PTD must be transposed by Member States by 7 June 2026.
- 2.27 The ECNI, alongside the NI Human Rights Commission, has advised<sup>39</sup> that, apart from a small number of provisions of the PTD that are no longer relevant now that the UK has left the EU, all other provisions of the PTD amend and/or replace provisions in the Recast Directive<sup>40</sup> contained in Windsor Framework Annex 1. This includes changes to substantive rights, procedural rights and rights relating to access to remedies in this area.
- 2.28 We therefore consider that the UK Government, further to its dynamic alignment obligations arising out of Windsor Framework Article 13 (3)<sup>41</sup>, must transpose these provisions of the PTD into NI law by 7 June 2026.
- 2.29 We consider that changes are required to equality law here in order to comply with the PTD. We will set out in due course our

---

<sup>38</sup> ECNI commissioned LucidTalk undertake the survey via their online opinion panel between 26 and 29 April 2024. The Poll will be published on the ECNI website.

<sup>39</sup> Equality Commission for NI and NI Human Rights Commission, '[ECNI and NIHRC Briefing Paper: The EU Pay Transparency Directive: The UK Government's dynamic alignment obligations relating to Windsor Framework Article 2](#)' (ECNI and NIHRC, 2024).

<sup>40</sup> [Directive 2006/54/EC](#), 'Directive of European Parliament and of the Council on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

<sup>41</sup> Relating to WF Article 2(1).

views on the specific changes needed to equality law here in order to ensure that the PTD is effectively transposed in NI law.

- 2.30 Implementing this Directive in NI law would lead to greater accountability and transparency by certain employers on gender pay gaps within their organisations. For example, the PTD introduces new obligations on certain employers in terms of pay reporting and joint pay assessments linked to ensuring compliance with the principle of equal pay.<sup>42</sup> It also introduces enhanced enforcement measures to improve access to justice and enforcement of rights, for example, the right of ‘equality bodies’ to engage in court or administrative procedures in support of workers regarding equal pay discrimination,<sup>43</sup> and strengthened rights relating to compensation.<sup>44</sup>
- 2.31 In addition, as referred to above, we stress that the requirements of the PTD should be considered minimum requirements. We encourage government to adopt an approach when implementing the Directive that goes beyond these minimum standards where this reflects best practice, including international human rights best practice, and where it seeks to strengthen rights in this area.<sup>45</sup>
- 2.32 The Commission is currently engaging with the European Commission, the UK Government and relevant NI Departments, including the Department for Communities, regarding its recommendations.
- 2.33 For further detail on the Commissions’ analysis of the Pay Transparency Directive and the UK Government’s dynamic alignment obligations relating to Windsor Framework Article 2 ,

---

<sup>42</sup> Article 9 and 10, Directive 2023/970/EU, ‘EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms’ 10 May 2023. This includes that, employers with at least 100 workers must provide and report on the pay gap between female and male workers to a monitoring body, all workers and their representatives and remedy any gender pay differences that are not justified by objective and gender-neutral factors.

<sup>43</sup> Article 15, Directive 2023/970/EU, ‘EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms’, 10 May 2023.

<sup>44</sup> Article 16, Directive 2023/970/EU, ‘EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms’ 10 May 2023.

<sup>45</sup> For example, the ECNI has called for the power to bring discrimination cases in its own name (own motion powers) which is not envisaged under the Directive. See ECNI response to TEO consultation on review of the Race Relations (NI) Order 1997, June 2023.

please see briefing paper: [ECNI and NIHRC Briefing Paper: The EU Pay Transparency Directive \(March 2024\)](#).

2.34 We ask the Committee to note that the recent Department for the Economy consultation on the Good Jobs Employment Rights Bill does not include a proposal to address gaps in equality law relating to pay transparency, including gender pay reporting. We also ask the Committee to note that there is support for this legislative change amongst equality and human rights stakeholders. For example, the Women’s Manifesto, issued by the Women’s Policy Group NI, recommended the transposition of the PTD into domestic law as soon as possible, calling it a ‘a crucial step for eliminating gender-based discrimination in the workplace and tackling the gender pay gap’.<sup>46</sup>

### Standards for Equality Bodies Directives

2.35 In May 2024, two **EU Directives on standards for equality bodies** came into force.<sup>47</sup> In particular, the Directives are as follows:

- **EU Directive (2024/1500) on standards for equality bodies** in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54<sup>48</sup> and 2010/41<sup>49</sup>;
- **EU Directive ( 2024/1499) on standards for equality bodies** in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the

---

<sup>46</sup> Women’s Policy Group NI, ‘Women’s Manifesto: General Election 2024’, Page 11.

<sup>47</sup> EU Directives on Standards for Equality Bodies: ([Directive \(EU\) 2024/1500](#) and [Directive \(EU\) 2024/1499](#))

<sup>48</sup> (‘Gender Employment Directive’),

<sup>49</sup> EU Gender Equality Directive in the field of self-employment, 2010/41 (Gender Self-employment Directive) .

access to and supply of goods and services, amending Directives 2000/43/EC<sup>50</sup> and 2004/113/EC<sup>51</sup>.

- 2.36 The provisions of both Directives must be transposed by Member States by **7 June 2026**.
- 2.37 These Directives aim to strengthen equality bodies by setting minimum standards on how they operate in all grounds of discrimination and areas covered by EU equality law. Critically, they apply to the grounds of discrimination and areas covered in the Windsor Framework Annex1 Directives.
- 2.38 They create a strengthened framework for EU equality bodies to promote equal treatment and equal opportunities and combat discrimination on all grounds and in the fields set out by the EU equality directives. They strengthen the role and independence of equality bodies by setting out standards that address their mandate, tasks, independence, structure, powers, accessibility and resources to engage in the prevention of discrimination, promote equal treatment and awareness raising activities and effectively assist victims of discrimination to access justice.
- 2.39 We consider that these Directives amend or replace the provisions of a number of the EU equality directives in Annex 1 of the Windsor Framework and engage the ‘keeping pace’ obligation under Windsor Framework Article 2. We therefore consider that the UK Government, further to its dynamic alignment obligations arising out of Windsor Framework Article 13 (3), must transpose relevant provisions of the Directives into NI law by 7 June 2026.
- 2.40 We consider that the Directives, if transposed, will require changes to existing NI equality law. If the changes are introduced, they would be of great value, not only to the ECNI in carrying out its role and remit as the designated equality body for NI in the areas covered by the Directives, but, in turn, to individuals in NI seeking redress against discrimination in these areas.
- 2.41 Further, the transposition of the Directives into NI law will reduce opportunities for any divergence of rights on the island

---

<sup>50</sup> Directive 2000/43/EC lays down a framework for combating discrimination based on racial or ethnic origin. (EU Racial Equality Directive).

<sup>51</sup> Directive 2004/113/EC lays down a framework for combating discrimination based on sex in access to and supply of goods and services. (EU Gender Goods and Services Directive)

of Ireland in this area. Ireland, as an EU Member State, will be required to implement these Directives by June 2026.

- 2.42 The previous UK Government in 2023 indicated that it considered that the proposed EU directives, as drafted at that time, fell within the scope of Windsor Framework Article 2, which the Commissions have welcomed<sup>52</sup>. Whilst, to date, there has been no further update from either the previous or current UK Government in relation to its position on this matter, the Commissions understand that active consideration is currently being given to this matter by a number of NI Departments.
- 2.43 The Commission will shortly be setting out its detailed views on this matter and will share that with the Committee in the near future.

### **3 Cross-cutting reforms**

- 3.1 This section outlines the key issues which the Commission considers need to be addressed across the equality grounds.
- 3.2 As above, these would be best addressed through single equality legislation, but in its ongoing absence, urgent reform is needed to the legislation for each ground, to harmonise protections upwards.

#### ***Combined discrimination***

- 3.99 We recommend the introduction of protection against combined discrimination so that there is legal protection for individuals who experience direct or indirect discrimination, victimisation or harassment because of a combination of equality grounds,

#### **Key Issue: Combined discrimination**

Northern Ireland's equality legislation does not address combined discrimination, and does not meet best international standards, as recommended by UN bodies.

- 3.100 Courts and tribunals should be able to take into account the effect of the combination of discrimination on different grounds.

---

<sup>52</sup> Letter from the Minister of State for NI, Steve Baker MP, to the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2023

- 3.101 This change will remove unjustifiable legal barriers that individuals face when trying to prove discrimination on more than one equality ground.
- 3.102 Individuals experiencing intersectional discrimination face a number of difficulties in seeking legal redress; this is primarily due to the fact that current legal processes solely focus on one prohibited factor at a time and are unable to adequately address in tandem discrimination complaints on more than one ground.
- 3.103 For example, complainants subjected to combined discrimination may face difficulties in identifying an actual or hypothetical comparator with the same characteristics, as required when proving direct discrimination.
- 3.104 This change to the law, would, for example, allow an older Asian woman, who is not appointed to a job, to seek redress in circumstances where she believes that she has been subjected to discrimination due to a combination of her age, race and sex. In these circumstances, she would be able to allege that a younger Asian woman or an older Asian man was/would have been appointed to the job.
- 3.105 Although case law<sup>53</sup> in Great Britain suggests judicial interpretation might allow for multiple discrimination cases to be heard, the introduction of express and specific legislative provisions prohibiting intersectional and multiple discrimination would provide clarity and certainty for individuals that this legislative gap had been addressed.
- 3.106 The Fundamental Rights Agency's Handbook on European Non-Discrimination Law<sup>54</sup> suggests that 'multiple discrimination' should be used to describe discrimination that takes place on the basis of several grounds operating separately, while 'intersectional discrimination' describes a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable and produce specific types of discrimination.

---

<sup>53</sup> See for example, tribunal decision in *Miriam O'Reilly v BBC*, January 2011, Employment Tribunal Case no.2200423/10; *Hewage v Grampian Health Board* [2012] UKSC 37, [2012] IRLR 870, available at <https://www.bailii.org/uk/cases/UKSC/2012/37.html>.

<sup>54</sup> FRA (2019) [Handbook on European non-discrimination law](#), p 59.

- 3.107 However, finding agreed definitions has proven difficult<sup>55</sup> and therefore the phrase ‘combined discrimination’ may be helpful<sup>56</sup>. This reflects the Canadian approach, which prohibits discrimination on one or more grounds, and the effect of a combination of grounds<sup>57</sup>. Professor Dickson argues<sup>58</sup> that this wording ‘leaves open the possibility that in particular circumstances the combination may amount to more than the sum of its distinct parts, without requiring that additional element to be proved in every case’.
- 3.108 Our recommendation also reflects the need for stronger legal protection in light of the clear evidence that individuals experience discrimination because of a combination of equality grounds.
- 3.109 For example, a NICEM research report on the experiences of ethnic minority women in Northern Ireland<sup>59</sup> has highlighted the particular barriers that minority ethnic women face. It is of note that 10% of respondents who believed that they had been discriminated against in the workplace, considered that it was due to a combination of being an ethnic minority and a woman. Further, 12.3% of respondents who believed that they had been discriminated against when seeking a job, felt that it was due to a combination of being both a woman and an ethnic minority or migrant.
- 3.110 Further, an EU report (2017) on immigrants and ethnic minorities’ experiences found that 16% of respondents had faced discrimination on more than one ground in the last five years<sup>60</sup>.
- 3.111 In addition, statistics collected by the Equality Commission also highlight that in many instances, individuals believe that they are discriminated against on more than one equality ground. For example, over a twelve-month period (1 April 2023 - 31

---

<sup>55</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), pp. 28-29.

<sup>56</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), pp. 28-29.

<sup>57</sup> Section 3(1) of the [Canadian Human Rights Act 1985](#) states ‘For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds’

<sup>58</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 29.

<sup>59</sup> NICEM (2013) [Experiences of Ethnic Minority women in Northern Ireland.](#)

<sup>60</sup> FRA (2017) [Second European Union Minorities and Discrimination Survey: Main results](#), p. 23.

March 2024, our enquiries/ applications included 354 relating to disability and another ground<sup>61</sup>. In the same period, over half of enquiries/ applications relating to age included another ground<sup>62</sup>.

- 3.112 These concerns have been recognised by the NI Executive; the 2015-2025 Racial Equality Strategy<sup>63</sup> recognises that some individuals, particularly minority ethnic women, are vulnerable to discrimination on the basis of more than one characteristic. The Strategy commits to exploring ‘how we might provide protection against forms of multiple discrimination’.
- 3.113 Our recommendation is also in line with the recommendations of international human rights monitoring bodies, and the approach embraced by other jurisdictions.
- 3.114 In particular, the need for intersectional discrimination provisions to be included in equality legislation has been highlighted by international human rights monitoring bodies, including CERD<sup>64</sup>, CEDAW<sup>65</sup>, and the UN Committee of Rights of Persons with Disabilities<sup>66</sup> (CRPD).
- 3.115 The extension of protection against multiple and/ or combined discrimination on more than two grounds has already been embraced by other jurisdictions, including nine EU Member States<sup>67</sup>, Canada<sup>68</sup> and South Africa<sup>69</sup>.
- 3.116 The Equality Act 2010 originally contained a dual discrimination provision, designed to enable people to bring claims where they have experienced less favourable treatment because of a combination of two protected characteristics. The provisions for dual discrimination in the Equality Act 2010 were limited to claims of direct discrimination only and to a combination of only

---

<sup>61</sup> This represented 22% of the overall number of enquiries/applications on disability (excluding SENDO).

<sup>62</sup> 131 hybrid applications/ enquiries, which represented 56% of the overall number of enquiries/applications on age

<sup>63</sup> OFMDFM (2015) [Racial Equality Strategy 2015 – 2025](#), paras 3.22-3.25

<sup>64</sup> CERD (2024) [Concluding observations on the combined twenty-fourth to twenty-sixth periodic reports of the United Kingdom of Great Britain and Northern Ireland](#), para 14.

<sup>65</sup> CEDAW (2019) [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), CEDAW/C/GBR/CO/8, para 16(d).

<sup>66</sup> CRPD (2017) [Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#), CRPD/C/GBR/CO/1, paras 14-15.

<sup>67</sup> Fundamental Rights Agency (2017) [Fundamental Rights Report](#), p. 69; Austria, Bulgaria, Croatia, Germany, Greece, Italy, Romania, Slovenia and Sweden.

<sup>68</sup> Section 3(1) of the [Canadian Human Rights Act 1985](#).

<sup>69</sup> Section 9 (3) of the [Constitution of the Republic of South Africa, 1996, Chapter 2: Bill of Rights](#).

two relevant protected characteristics. The provisions did not extend to indirect discrimination or harassment, and the Commission raised concerns over the approach taken in the Equality Act 2010<sup>70 71</sup>.

- 3.117 Despite being broadly welcomed, these provisions on dual discrimination did not come in force and in April 2011<sup>72</sup> the UK Government stated that although it had taken action to reduce the disproportionate cost of the regulations for business, there was still more to be done and that it would not bring forward the dual discrimination provisions.
- 3.118 The Labour Party, prior to the recent UK General Election, indicated that it intended to enact the dual discrimination provisions in Great Britain<sup>73</sup>.
- 3.119 To ensure consistency and harmonisation, legislation should protect against combined direct and indirect discrimination, as well as harassment and victimisation<sup>74</sup>.

### Relevant EU Directives

- 3.120 We note that recent EU Directives, including the Pay Transparency Directive<sup>75</sup>, and the EU Standards for Equality Bodies Directives<sup>76</sup>, refer to intersectional discrimination.
- 3.121 For example, Article 3 of the EU Pay Transparency Directive includes a new definition, that clarifies that discrimination includes “intersectional discrimination”, which it defines as discrimination based on a combination of sex and a number of other equality ground/s protected under EU equality Directives.<sup>77</sup>

---

<sup>70</sup> ECNI (2007) [Response to the DLR Consultation on a single equality Bill](#).

<sup>71</sup> ECNI (2009) [Response to the Government Equalities Office consultation on multiple discrimination](#), p. 3.

<sup>72</sup> Government Equalities Office (2013) [Equality Act Guidance](#).

<sup>73</sup> Labour Party (2024) [Change: Labour Party Manifesto](#), p. 88.

<sup>74</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#).

<sup>75</sup> Articles 3 and 23 of the EU Pay Transparency Directive

<sup>76</sup> Article 5 of the EU Directives on Standards for Equality Bodies: ([Directive \(EU\) 2024/1500](#) and [Directive \(EU\) 2024/1499](#))

<sup>77</sup> PTD, Article 3 (Definitions): Discrimination includes “intersectional discrimination, which is discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or 2000/78/EC”. The Directives listed are the Race Directive and the Framework Directive which covers discrimination in employment and occupation on grounds of age, sexual orientation, disability, and religion or belief.

- 3.122 Further, the recitals to the PTD highlight that this clarification will result in “*removing any doubt that may exist in this regard under the existing legal framework and enabling national courts, equality bodies and other competent authorities to take due account of any situation of disadvantage arising from intersectional discrimination, in particular for substantive and procedural purposes*”.<sup>78</sup>
- 3.123 If this change was introduced, it would make clear that ECNI when assisting victims of discrimination, and courts and tribunals when considering cases of discrimination in the area of equal pay, could take account of a situation where an individual has experienced intersectional discrimination.
- 3.124 As outlined above, the Commission considers that the UK Government, further to its dynamic alignment obligations arising out of WF Article 13 (3), must transpose this provision of the PTD into NI law by 7 June 2026.<sup>79</sup>
- 3.125 Both EU Directives on standards for equality bodies, which came into force in 2024, state that in carrying out activities to prevent discrimination and promote equality treatment under the relevant equality directives, equality bodies can take into consideration specific situations of disadvantage resulting from intersectional discrimination.<sup>80</sup>
- 3.126 As set out above, the directives aim to strengthen equality bodies by setting minimum standards on how they operate in all grounds of discrimination and areas covered by EU equality rules.
- 3.127 The first EU directive on standards for equality bodies, Directive (EU) 2024/1500, defines intersectional discrimination as discrimination based on a combination of sex and any other ground or grounds of discrimination protected under the Equal Treatment in Social Security Directive,<sup>81</sup> Racial Equality

---

<sup>78</sup> Article 5 (2). See also PTD Recital 25.

<sup>79</sup> Equality Commission for NI and NI Human Rights Commission, ‘[Briefing Paper: The EU Pay Transparency Directive: The UK Governments dynamic alignment obligations relating to Windsor Framework Article 2](#)’ (ECNI and NIHRC, 2024).

<sup>80</sup> Directive (EU) 2024/1500, Recital 15; Directive (EU) 2024/1499, Recital 16.

<sup>81</sup> [Directive 79/7/EEC](#), ‘EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978.

Directive,<sup>82</sup> Framework Directive,<sup>83</sup> or Gender Goods and Services Directive.<sup>84</sup>

- 3.128 The second EU directive on standards for equality bodies, Directive (EU) 2024/1499, defines intersectional discrimination as that based on a combination of grounds protected under the above-mentioned directives, but does not include the necessity for sex to be one of the combined grounds.
- 3.129 As set out above, we consider that these Directives amend or replace the provisions of a number of the EU equality directives in Annex 1 of the Windsor Framework and engage the ‘keeping pace’ obligation under Windsor Framework Article 2.
- 3.130 The timing of the transposition of the Directives into NI law should align with the transposition deadline for Member States in relation to these Directives (19 June 2026).

### ***Public bodies carrying out their public functions***

- 3.131 We have recommend increased protection from discrimination and harassment by public bodies carrying out public functions, except in some narrowly defined limited areas where they can be objectively justified<sup>85</sup>.

#### **Key Issue: Public functions**

Unlike in Great Britain, in Northern Ireland, there is only limited protection against public bodies carrying out public functions, such as aspects of policing like stop-and-search, and no protection at all on some grounds, such as sex.

- 3.132 Unlike in Great Britain, the sex and age equality legislation in Northern Ireland does not prohibit discrimination by public authorities on the grounds of age, sex or gender reassignment in the exercise of their public functions.

---

<sup>82</sup> [Directive 2000/43/EC](#), ‘Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000

<sup>83</sup> [Directive 2000/78/EC](#), ‘Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000

<sup>84</sup> [Directive 2004/113/EC](#), ‘Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and services’, 13 December 2004

<sup>85</sup> The exceptions in Section 21C of the [Disability Discrimination Act 1995](#) may be useful to consider. These include some limited exceptions relating to judicial acts and the making, confirming or approving of legislation.

- 3.133 The race and sexual orientation legislation only provides protection in relation to public functions in four areas social security, health care, social protection or social advantage. In relation to race, currently protection only exists on the grounds of race, ethnic or national origins and not on the grounds of colour or nationality (for further details, see Section 6 below).
- 3.134 There is stronger protection against disability discrimination in this area, and protection under the Northern Ireland Act 1998 in relation to religious belief and political opinion (but not philosophical belief).
- 3.135 This is a significant gap in Northern Ireland, as it means that individuals cannot bring a complaint if they are discriminated against or harassed on grounds, for example, of their sex or race by public bodies, such as the police or immigration services, or prison authorities, when exercising their public functions, or by private bodies acting on behalf of a public authority.
- 3.136 This provision, if introduced across the scope of equality legislation, would cover, for example, the exercise of public functions as regards: access to a discretionary welfare benefit; an application for a licence<sup>86</sup>; or the management of a prison or other places of detention by a private company.
- 3.137 There is no justifiable reason why there should be weaker protection against unlawful discrimination on some grounds in the exercise of public functions than that which exists under other equality grounds.
- 3.138 'Public functions' cover a wide range of functions including arrests, detention and restraint by the police, the charging and prosecution of alleged offenders, the regulatory and law enforcement functions of bodies such as HM Revenue and Customs, the formulating or carrying out of public policy (such as devising policies and priorities in health, education or transport), planning control, licensing and investigation of complaints<sup>87</sup>.

---

<sup>86</sup> For example, a licence to run a nightclub.

<sup>87</sup> See for examples EHRC (2011) [EHRC Code of Practice on Services, Public functions and associations](#), para 11.16.

- 3.139 In terms of what constitutes a public function, it is important to note that public functions are not only carried out by public bodies but may also be carried out by private or voluntary organisations, for example, a private company managing a prison or a voluntary organisation taking on responsibilities for child protection.
- 3.140 Many activities carried out by public bodies will amount to the provision of goods, facilities and services to the public, for example, the provision of library or leisure services.
- 3.141 In those circumstances, the provisions under the equality legislation relating to the provision of goods, facilities and services<sup>88</sup> will apply.
- 3.142 In general, the public functions provisions apply in relation to a function of a public nature exercised by a public authority or on behalf of a public authority, and where the function is not covered by the other provisions in the equality legislation, for example, the provisions relating to accessing goods and services, premises, work or education.
- 3.143 Cases brought before the courts in Great Britain revealed gaps in protection under the equality legislation as well as highlighting that it was not always clear whether an act of a public body was a service to the public or constituted carrying out a public function.
- 3.144 For example, police duties involving the provision of assistance to, or protection of, members of the public were deemed to be providing services to the public, whereas police duties relating to controlling those responsible for crime were considered not to be covered by the provisions relating to goods and services under the race equality legislation<sup>89</sup>. Further, the application of immigration controls was considered not to be covered by the provisions in the race equality legislation relating to the provision of goods and services<sup>90</sup>.

---

<sup>88</sup> Article 21 of the [RRO 1997](#).

<sup>89</sup> See the race discrimination case of *Farah v Commissioner of Police of the Metropolis*, the Court of Appeal in England, [1997] 2 WLR 824.

<sup>90</sup> See decision of the majority of the House of Lords of landmark case of *R v Entry Clearance Officer, Bombay Ex parte Amin*, [1983] 2 AC 818. It was considered that these provisions did not apply to acts done on behalf of the Crown which were of an entirely different kind of act than could be done by a private person.

- 3.145 We are of the view that there is currently the potential for some public functions, such as certain policing and law enforcement functions, including search and arrest functions, to fall outside the existing scope of equality legislation in Northern Ireland.
- 3.146 We consider that the extension of the equality legislation to all public functions, unless specifically falling within an exception, will ensure clarity both for those with rights under the legislation and those public bodies with responsibilities under the law.
- 3.147 The potential for legal uncertainty in this area was recognised by OFMDFM in its consultation on a Single Equality Bill for Northern Ireland in 2004. In particular, it indicated that “if the Race Directive approach is taken, there will nevertheless be room for dispute and technical distinctions on the question of whether a function falls within the definition of social security, social protection, social advantage or healthcare”<sup>91</sup>.
- 3.148 In particular, a number of steps have been taken in Great Britain as regards the race equality legislation in this area in order to strengthen, harmonise and clarify the legislation, address gaps in protection and ensure legal uncertainty.
- 3.149 For example, in Great Britain the race equality legislation was strengthened and clarified in 2000, following the outcome of the Macpherson report into the police investigation of the murder of Stephen Lawrence<sup>92</sup>. These changes to the law meant that, for the first time, the police and many other public bodies could not discriminate on racial grounds when carrying out their public functions.
- 3.150 In addition, the legislation was harmonised and strengthened in this area following the enactment of the Equality Act 2010 in Great Britain. In particular, public bodies were prohibited from discriminating when carrying out public functions across all equality grounds and as regards all functions, except in some limited areas.
- 3.151 However, Professor Dickson has raised concerns that some of the exemptions in the Equality Act 2010 may be unjustifiably

---

<sup>91</sup> OFMDFM (2004) [A Single Equality Bill for Northern Ireland: Discussion Paper](#).

<sup>92</sup> Changes were introduced via the Race Relations (Amendment) Act 2000 following the [Macpherson report](#) into the murder of Stephen Lawrence.

broad<sup>93</sup>. He has pointed to exemptions relating to commencing or continuing criminal prosecutions, insurance and other financial services provided by an employer and provision of a content service on television, radio or online broadcasting.

3.152 The limitation to four areas does not exist under the disability legislation in Northern Ireland. In particular, public authorities are prohibited from discriminating on the grounds of disability when carrying out public functions across all their functions, except in some clearly defined limited areas<sup>94</sup>.

3.153 The Commission has highlighted<sup>95</sup> that any such exemptions in equality law in Northern Ireland should be carefully considered to ensure they are narrowly defined and objectively justified.

### ***Third-party harassment***

3.154 The Commission has recommended expanded protections relating to third-party harassment across the equality grounds. Currently, there is only limited protection in relation to third-party harassment in the Sex Discrimination (Northern Ireland) Order 1976 ('SDO').

#### **Key Issue: Third-Party Harassment**

Unlike Ireland, there are not provisions relating to third-party harassment in employment across the equality grounds in Northern Ireland, with only limited liability under the sex equality legislation.

3.155 We have recommended that employers are liable if they fail to take reasonably practicable steps to prevent the harassment of an employee by a third party.

3.156 We recommend that employers are liable in circumstances that they ought to have been reasonably aware of the risk of third party harassment, as this should encourage employers to take steps to reduce harassment from the start of a person's employment. If this is not introduced, employers should be

---

<sup>93</sup>Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 41.

<sup>94</sup> There are, for example, some limited exceptions relating to judicial acts, decisions to institute criminal proceedings and the making, confirming or approving of legislation. There are also some public authorities that are excluded, such as the Security Service and Houses of Parliament.

<sup>95</sup> ECNI (2023) [Race Law Reform: Priorities and Recommendations](#), para 3.73.

liable when their employee has been subjected to third party harassment on one previous occasion.

- 3.157 Employers should also be liable if, after such harassment has occurred, the employee is treated differently because they rejected or accepted the harassment.
- 3.158 Our recommendation reflects the need for stronger duties on employers to take action in light of the clear evidence that employees are being subjected to harassment by customers/clients.
- 3.159 Research by the Equality and Human Rights Commission in Great Britain found that around a quarter of those reporting sexual harassment said that the perpetrators were third parties such as customers or clients<sup>96</sup>. 2020 Government Equalities Office research reported that 29% of those in employment have experienced some form of sexual harassment in their workplace or work-related environment, and 14% of those were harassed by a person who was not an employee<sup>97</sup>.
- 3.160 The Fawcett Society has highlighted<sup>98</sup> that ‘Young women, women in insecure work, male-dominated environments and customer-facing roles are more at risk of sexual harassment because of the power they lack in the workplace’.
- 3.161 Further, a UK-wide TUC survey<sup>99</sup> found that 65% of all ethnic minority survey participants had experienced racial harassment at work in the last five years. Of those who have experienced such harassment, 6% of Black, Asian and Mixed heritage and 23.5% of non-British White workers identified customers, clients and service users as being the main perpetrator(s). It reported participants were faced with a ‘Customer is always right’ attitude when reporting third-party racism to employers.
- 3.162 Whilst we supported the introduction in the sex equality legislation of a clear duty on employers to take reasonably practicable steps to prevent employees being subjected to third party harassment, we do not agree that the employee should

---

<sup>96</sup> EHRC (2018) [Turning the tables Ending sexual harassment at work](#) p. 4.

<sup>97</sup> GEO (2020) [Sexual Harassment Survey](#), pp. 67, 76.

<sup>98</sup> Fawcett Society (2020) [Tackling sexual harassment in the workplace](#), p.8.

<sup>99</sup> Ashe, S. et al (2019) [Racism Ruins Lives: An analysis of the 2016-2017 Trade Union Congress Racism at Work Survey](#), pp. 27-30.

have to wait until the third incident of harassment before an employer is required to take action.

- 3.163 We support the views of the Joint Committee on Human Rights that the threshold requirement, which provides that employer liability only applies where the employer knows that the same employee has been harassed on two prior occasions, “could be seen as permitting employers excessive leeway before they are required to respond to third party harassment”<sup>100</sup>.
- 3.164 In order to encourage the employer to take steps to reduce the risk of the third-party harassment from the start of a person’s employment, this requirement should be replaced across the equality characteristics with a provision that an employer will be liable when they ought to have been reasonably aware of the risk of third party harassment, and, if not, be reduced to one previous incident<sup>101</sup>.
- 3.165 The UK Government has repealed this provision in Great Britain. It states that very few cases of third party harassment have been taken to an employment tribunal since the protection was introduced in April 2008 under the sex equality legislation. It contends further there are other means of redress available to employees subjected to third party harassment, such as the ability to bring proceedings against his/her employer for breach of contract, or against the harasser under the Protection from Harassment Act 1997. The UK Government has indicated that the policy objective behind repealing this provision is to reduce any regulatory burden on employers that the third party harassment provisions may impose.
- 3.166 It will be noted that the UN Committee on CERD expressed concern<sup>102</sup> about the UK Government’s Red Tape challenge<sup>103</sup>. The Committee indicated that it threatened “to dilute or reverse the State Party’s achievements in the fight against racial discrimination and inequality”. It recommended that the UK Government implemented all of the provisions of the Equality

---

<sup>100</sup> Joint Committee on Human Rights (2009) [Legislative Scrutiny: Equality Bill](#)

<sup>101</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), pp. 71-75.

<sup>102</sup> CERD (2011) [Concluding Observations of the Committee on the Elimination of Racial Discrimination on UK \(2011\)](#) CERD/C/GBR/CO/18-20.

<sup>103</sup> Home Office (2012) [Equalities red tape challenge and reform of the Equality and Human Rights Commission: outcome](#). The Red Tape Challenge included scrutiny of measures envisaged under the Equality Act 2010 designed to prune those legislative provisions deemed as “unnecessary or disproportionate burdens on business

Act and ensure there is no regression from the current levels of protection<sup>104</sup>.

- 3.167 As set out above, we believe that there is evidence of third party harassment of employees. In addition, while the Protection from Harassment Act 1997 enables an employee to bring a claim of harassment against a customer of their employer, the employer is not liable for the harassment under this Act.
- 3.168 Without a change in the law employees are at risk of having no redress against harassment by third parties. The decision of the Employment Appeal Tribunal in *Bessong v Pennine Care NHS Trust*<sup>105</sup> illustrates the problem. A black mental health nurse was assaulted and racially abused by a patient. The Hospital Trust recorded the assault but not the racist abuse, which the claimant alleged was typical of the Trust's approach. However, his claims against the Trust for harassment and direct discrimination were unsuccessful. He won only on the grounds of indirect discrimination: the employment tribunal found that the failure to create a culture in which all racist incidents were formally reported contributed to an environment in which racial abuse from patients was more likely to occur. An appeal to the Employment Appeal Tribunal on the harassment claim failed.
- 3.169 It should also be noted that the equality legislation in the Republic of Ireland<sup>106</sup> imposes liability on employers for failing to prevent harassment of their employees if reasonable steps to prevent it have not been taken, whether or not there have been any other instances of harassment.
- 3.170 Any post-harassment discriminatory treatment of employees by employers should also be explicitly prohibited, as is the case in the Republic of Ireland<sup>107</sup>.
- 3.171 We note that, in GB, the Worker Protection (Amendment of Equality Act 2010) Act 2023 did introduce an employer duty to

---

<sup>104</sup> CERD (2011) [Concluding Observations of the Committee on the Elimination of Racial Discrimination on UK \(2011\)](#) CERD/C/GBR/CO/18-20.

<sup>105</sup> UKEAT/0247/18/JOJ (18 October 2019, Choudhury J), [2020] ICR 849.

<sup>106</sup> Section 14A of the [Employment Equality Act](#), 1998.

<sup>107</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 74-75.

take reasonable steps to prevent sexual harassment of their employees in the course of their employment.

## **Volunteers**

- 3.172 Persons who work as volunteers should be legally protected against discrimination, harassment and victimisation by the person or organisation that engages them to the same extent as employees are protected from their employer. Stakeholder engagement should inform how occasional, very short-term volunteers can best be protected.

### **Key Issue: Protection for Volunteers**

Currently, there is no clear legal protection against discrimination for volunteers. If introduced, this protection would go further than Great Britain and Ireland.

- 3.173 The inclusion of protections for volunteers will need to be accompanied by appropriate resourcing and guidance to ensure organisations, of all sizes, that use volunteers have support to adhere to any resultant obligations.
- 3.174 A phased approach may be appropriate, where more formal voluntary roles are initially recognised in legislation, with further consideration, informed by significant stakeholder involvement, given to more informal arrangements.
- 3.175 Currently, those who do unpaid voluntary work for an organisation are not usually covered by anti-discrimination law anywhere in the United Kingdom or Ireland<sup>108</sup>.
- 3.176 The Commission has previously set out its view that it 'wishes to see a situation in which citizens can take part in substantial, established voluntary work with the legitimate expectation that they will be protected from discrimination'<sup>109</sup>.
- 3.177 Further, we have worked with Volunteer Now, producing a guide on Promoting Equality and Diversity in the Workplace<sup>110</sup>. The document recognises a moral responsibility for

---

<sup>108</sup> Unless they have responded to an offer from the organisation which is providing volunteering 'services' to members of the public.

<sup>109</sup> ECNI (2004) [Response to OFMDFM Consultation Paper 'A Single Equality Bill for Northern Ireland](#), para 4.6.2.

<sup>110</sup> ECNI and Volunteer Now (2019) [Promoting Equality and Diversity in Volunteering: A Guide for Volunteer Involving Organisations](#), p. 7.

organisations to protect volunteers from discrimination, even without current legal protections. This moral responsibility should be enforced by statute, where possible.

- 3.178 Concerns have been raised that such protections could expose small, volunteer-led organisations to a disproportionate level of liability<sup>111</sup>. The UK Government<sup>112</sup>, in relation to sexual harassment, was cautious about protecting volunteers, due to worries that such organisations could face difficulties that outweigh the service they provide. This is particularly the case regarding one-off events or occasional volunteers.
- 3.179 However, Professor Dickson argues that this reasoning is hard to substantiate, highlighting that many volunteers perform tasks similar or identical to those performed by employees with whom they work alongside and it is unfair that the latter are protected against discrimination but the former are not<sup>113</sup>.
- 3.180 This recommendation would provide greater protections than the Equality Act in Great Britain or Ireland, where people who do unpaid voluntary work for an organisation are not usually covered by anti-discrimination law<sup>114</sup>.

### ***Harmonising protections***

- 3.181 Across the equality grounds, there remains loopholes and inconsistencies which should be closed. It is important such gaps are addressed to ensure all are able to benefit from protections.
- 3.182 Although certainly not an exhaustive list, we have highlighted the need to:
- Define direct discrimination as ‘because of’ grounds
  - Defining harassment as ‘relating to’ grounds

---

<sup>111</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#) pp. 103.

<sup>112</sup> UK Government (2021) [Consultation on sexual harassment in the workplace: government response](#), para 4.3.

<sup>113</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#) p. 103.

<sup>114</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#) p. 103.

- Removing the requirement for a comparator in relation to victimisation
- Increase protection for agency and contract workers
- Clarify protections against victimisation for office-holders, and for pupils in schools
- Expand protection for law enforcement officers
- Ensure protection for Councillors against discrimination, harassment and victimisation by local councils
- Enhance protection regarding providers of employment services
- Further limit exemptions to equality law - public order, national security and public safety
- Clarify provisions for genuine occupational requirements
- Clarify law regarding competitive activities
- Ensure greater protection in relation to admission to educational establishments
- Clarify protection in provision of education
- Extend protection from qualification bodies
- Introduce additional preventions against influencing others to discriminate
- Extend protection after relationships (members of clubs / associations) have come to an end
- Clarify explicitly that direct pregnancy discrimination is direct sex discrimination

## **4 Age**

- 4.1 The Employment Equality (Age) Regulations (Northern Ireland) 2006 make discrimination on grounds of age unlawful in employment and occupation; further and higher education; and vocational training<sup>115</sup>.

---

<sup>115</sup> ECNI (2016) [Age Discrimination Law in Northern Ireland: A Short Guide](#)

- 4.2 Comprehensive legislation should be introduced to give protection to people of all ages, including children and young people, against unjustifiable direct and indirect discrimination, as well as harassment and victimisation.
- 4.3 The legislation should permit lawful positive action, and should include exceptions which are narrowly construed and objectively justified.
- 4.4 For further information on our recommendation relating to age equality legislation, see [ECNI - Age Law Reform - Addressing Inequality, Equality Commission NI \(equalityni.org\)](#)

**Key Issue: Age Goods, Facilities and Services**

Unlike international best practice, in Northern Ireland, there is currently no protection against age discrimination in harassment and victimisation in the provision of goods, facilities and services.

- 4.5 The Commission has a long-standing position calling for equality law to be strengthened to prohibit age discrimination outside the workplace and identified the introduction of legislation to prohibit age discrimination in goods, facilities and services as a priority area for action<sup>116</sup>.
- 4.6 We had welcomed the commitment by the Executive in its *Programme for Government 2011-15*<sup>117</sup> to extend age discrimination legislation to the provision of goods, facilities and services. We have also recommended that this legislation gives protection to people of *all* ages. However, despite a consultation<sup>118</sup> (2015) on legislation to introduce age discrimination legislation to cover the provision of goods, facilities and services to cover ages 16 and over, the legislation has not yet been introduced.

---

<sup>116</sup> ECNI (Feb 2009) [Proposals for legislative reform](#)

<sup>117</sup> NI Executive [PfG 2011-2015](#)

<sup>118</sup> OFMDFM (Jul 2015) [Consultation on Proposals to extend Age Discrimination Legislation \(Age Goods, Facilities and Services\)](#)

4.7 We have set out in detail our proposals for reform of the age discrimination legislation outside the workplace<sup>119 120 121</sup>. In summary, we recommend that the legislation:

- provides protection against unlawful age discrimination to people of all ages, including children and young people;
- covers the provision of goods, facilities and services, including health and social care; financial services; the exercise of public functions by public bodies; private clubs and associations; charities; accommodation;
- gives protection against unjustifiable direct and indirect discrimination, as well as harassment and victimisation on grounds of age, and should permit the taking of lawful positive action. We recommend that direct age discrimination can only be justified where a social policy objective is being pursued and the measures adopted to achieve that social policy are proportionate;
- includes a range of exceptions which are narrowly construed and objectively justified. For example, we support the inclusion of an exception for charities; a statutory authority exception; a limited exception for premises; and an exception for service providers to meet specific justifiable needs. We do not support the inclusion of specific exceptions for providers of health and social care or financial services; a blanket exception that permits concessionary services for all ages; and exceptions for age related holidays, residential park homes and immigration;

4.8 We consider there is a robust case for strengthening the age equality legislation. In particular, the introduction of this legislation would:

- help address key inequalities, including prejudicial ageist attitudes experienced by older people and children and young people due to their age when accessing services;

---

<sup>119</sup> ECNI (2012) [Proposals for reform: Strengthening Protection for all ages'](#): Full Report

<sup>120</sup> ECNI and NICCY (2013) [Recommendations for reform: strengthening protection for children and young people'](#), Full Report

<sup>121</sup> ECNI (August 2015) [Age GFS Briefing Paper](#)

- ensure that legislation in Northern Ireland reflects best international practice;
- ensure parity with protection against unlawful discrimination when accessing goods and services which exists in the other equality grounds
- include provisions for lawful positive action

- 4.9 Our recommendations for reform are informed by robust and compelling evidence of age discrimination experienced by children and young people and older people. This includes independent research commissioned by the Commission in 2008 which found “*numerous examples of direct and indirect age discrimination across the scope of financial services in Northern Ireland*”<sup>122</sup>. A further report ‘Strengthening protection for all ages against discrimination outside the workplace’<sup>123</sup> (2014) also highlighted examples of potential age discrimination experienced by older people when accessing health and social care, financial services and other services, such as retail.
- 4.10 Our recommendations have also been informed by expert legal briefings on the legal implications of including children and young people within the previously proposed age non-employment legislation<sup>124 125</sup>.
- 4.11 We have also highlighted<sup>126</sup> the opportunity for the NI Executive to adopt a best practice approach that is designed to safeguard and promote children’s rights; in line with the approach that has already been adopted in other countries; in particular, Australia, Canada and Belgium.

---

<sup>122</sup> B Fitzpatrick, I Kingston, commissioned by ECNI (2008) [Older People’s Access to Financial Services](#)

<sup>123</sup> ICR commissioned by ECNI (March 2014) [Strengthening protection for all ages against age discrimination outside the workplace](#)

<sup>124</sup> R Allen and D Masters, April 2014 jointly commissioned by ECNI/NICCY (April 2013) [Expert Briefing: strengthening protection for children and young people’](#) and [Executive Summary](#)

<sup>125</sup> Dee Masters, commissioned by ECNI (August 2015) [Proposals for Reform of Age Discrimination in the Provision of Goods, Facilities and Services](#)

<sup>126</sup> ECNI (2013) [Strengthening Protection for Children and Young People when accessing goods, facilities and services: Recommendations for Reform](#), p. 44.

## 5 Race

- 5.1 The Race Relations (Northern Ireland) Order 1997 (as amended) ('RRO') outlaws discrimination on racial grounds<sup>127</sup>.
- 5.2 Racial grounds means colour, race, nationality or ethnic or national origins. The Irish Traveller community is specifically identified in the RRO as a racial group which is protected against unlawful racial discrimination.
- 5.3 The law covers racial discrimination in the following key areas:
- employment;
  - education;
  - the provision of goods, facilities or services;
  - the disposal or management of premises.
- 5.4 The RRO also provides that segregation on racial grounds constitutes discrimination. The Executive Office has indicated the reformed legislation will be introduced in 2025/26. It is vital that this is achieved.
- 5.5 We welcome the work that The Executive Office has undertaken to progress reformed racial equality legislation.
- 5.6 For further information on our recommendations relating to racial equality law reform, see [www.equalityni.org/RaceLawReform](http://www.equalityni.org/RaceLawReform)

### ***Harmonise and expand the scope of racial grounds***

#### **Key Issue: The scope of racial grounds**

In Northern Ireland, unlike Great Britain and Ireland, there is less protections on the grounds of colour and nationality, than on race or ethnic or national origin. To meet best international standards, racial grounds should also explicitly include descent and caste, and be non-exhaustive.

#### **Increase protection on grounds of colour and nationality**

- 5.7 We recommend increased protection from discrimination and harassment on the grounds of colour and nationality across the scope of the race equality legislation, including consideration of

<sup>127</sup> ECNI (2011) [Racial Discrimination Law in Northern Ireland: A Short Guide](#)

the removal or modification of exceptions that apply only on grounds of colour and/ or nationality, unless there are justifiable reasons for doing so, or statutory exception to protection.

- 5.1 Protections should be harmonised upwards to the highest standards. As noted above, any reductions in rights protections in relation to race or ethnic or national origins may be a breach of Article 2 of the Windsor Framework<sup>128</sup>.
- 5.2 This change will help to clarify, strengthen, harmonise and simplify the legislation.
- 5.3 Currently there are ‘two tier’ levels of protection against discrimination and harassment within the race equality legislation. In particular, there is less protection against discrimination and harassment on the grounds of colour and nationality than on the other racial grounds protected under the legislation; namely race, ethnic or national origins.
- 5.4 This ‘two tier’ level of protection came about following the introduction in Northern Ireland of legislation to implement the EU Race Directive<sup>129</sup> in 2003<sup>130</sup>. As the Race Directive only applied to the grounds of race, ethnic and national origin, the Regulations introduced in Northern Ireland at that time, in order to give effect to the Race Directive, did not go as far as to also amend provisions in the Race Relations (NI) Order 1997 as regards the grounds of colour and nationality.
- 5.5 The main impacts of this ‘two tier’ level of protection are summarised below:
  - The statutory definition of harassment which applies to the grounds of race, ethnic or national origins, in a wide range of areas (including employment and the provision of goods and services), does not extend to the grounds of colour and nationality. As a result, it is more difficult for individuals to bring complaints if they

---

<sup>128</sup> In February 2023, the UK and European Commission published a joint Political Declaration announcing a political agreement on the Protocol. The parties agreed that the amended Protocol should be renamed the Windsor Framework. See [Political Declaration](#) by the European Commission and the Government of the United Kingdom of 27 February 2023

<sup>129</sup> Race Directive, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

<sup>130</sup> Namely, the [Race Relations Order \(Amendment\) Regulations \(NI\) 2003](#)

are subjected to offensive or degrading comments on the grounds of their colour or nationality.

- Whilst the race legislation prohibits public bodies from discriminating on the grounds of race, ethnic or national origins when exercising some of their public functions<sup>131</sup>, this prohibition does not extend to the grounds of colour and nationality
- Although the race legislation prohibits discrimination against office holders, such as chairpersons or board members of non-departmental public bodies, this prohibition does not exist on the grounds of colour and nationality.
- A more restrictive definition of indirect discrimination applies to the grounds of colour and nationality than on the other racial grounds. This means it is more difficult for claimants alleging unlawful discrimination on the grounds of colour and nationality to successfully prove their case. Effective protection against indirect discrimination is particularly important in challenging systemic or institutional racism; where policies and practices of an employer, service provider or public authority may, without justification, have a particular adverse impact on individuals from minority ethnic communities.
- There are also differences in relation to the exceptions under the race equality legislation, depending on the racial ground in question. Exceptions that do not apply for the grounds of race, ethnic or national origins, do apply for discrimination based on colour or nationality. Such exemptions which apply only to colour or nationality should be considered for removal or modification, unless there is a justifiable reason to retain them. For example, exceptions relating to partnerships of fewer than six people<sup>132</sup>, premises<sup>133</sup> and employment for the purposes of a private household apply to the grounds of colour and nationality and not the grounds of race, ethnic or

---

<sup>131</sup> See recommendation below on public functions - Increased protection for individuals against racial discrimination and harassment by public bodies when carrying out their public functions

<sup>132</sup> Article 12 of the [RRO 1997](#).

<sup>133</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), pp.66-68.

national origins. Exemptions relating to discriminatory acts done under statutory authority regarding colour and nationality should be considered for modification<sup>134</sup>

<sup>135</sup>

- There are differences in relation to the reversal of the burden of proof regarding discrimination, which applies to provisions relating to discrimination based on race or ethnic or national origins, but does not apply to the same provisions in relation to colour and nationality.

- 5.6 These anomalies have led to difficulties and confusion for those seeking to understand their responsibilities and to exercise their rights under the legislation, as well as resulting in reduced protection on the grounds of colour and nationality.
- 5.7 Further, removing the two-tier level of protection is in line with changes already implemented in other parts of the United Kingdom, as well as the recommendations of international human rights monitoring bodies. In particular, changes to address this gap in protection have been implemented in Great Britain under the Equality Act 2010. The Republic of Ireland's legislation<sup>136</sup> likewise defines the 'ground of race' as 'race, colour, nationality or ethnic or national origins'.
- 5.8 It is of note that, in the case of *Abbey National PLC v Chagger*, the Employment Appeal Tribunal in Great Britain was of the view that the Race Directive was intended to apply to discrimination on the ground of colour, as such discrimination is in practice necessarily an aspect or manifestation of discrimination based on racial or ethnic origins.
- 5.9 Although this is a welcome clarification as regards protection on the ground of colour, there is still a need to amend the race equality legislation in order to ensure equal levels of protection against discrimination and harassment across all racial grounds. Following *Abbey National PLC v Chagger*, the

---

<sup>134</sup> See also our recommendation on Narrowing of employment exception on foreign nationals in public service

<sup>135</sup>Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), pp. 48-52. We also note that Professor Dickson recommends that paragraphs (c) and (d) of article 40(2) of the RRO should either be deleted or made conditional upon there being statutory support for the ministerial or departmental actions concerned, which would go further than the Equality Act 2010, but may increase symmetry with other Northern Irish equality laws. He also recommends that 'colour' be inserted into article 40(1A).

<sup>136</sup> [Equal Status Act](#), 2000 3(2)(h).

legislation in Great Britain was changed to clarify the law in this area.

- 5.10 Further, our recommendation is in line with the recommendation of the UN Committee on the Elimination of Racial Discrimination. In particular, in 2003, it recommended<sup>137</sup> that the UK Government extend the amending Regulations that implemented the Race Directive to cover discrimination on the grounds of colour and nationality. It was concerned that a failure to do so would result in inconsistencies in discrimination laws and differential levels of protection and create difficulties for the general public as well as law enforcement agencies.
- 5.11 Finally, this legislative gap and the need for action to address this, has already been recognised by TEO, and its predecessor, OFMDFM. In particular, in its consultation on single equality legislation in 2004, OFMDFM indicated that it ‘intended to rectify this gap’ in the race equality legislation. Likewise, the Racial Equality Strategy 2015-25, commits the Executive to review the law’s protection against colour and nationality discrimination<sup>138</sup>.

Define ‘racial grounds’ non-exhaustively, and specifically include caste and descent

- 5.12 The definitions of ‘race’ and ‘racial ground’ should be expanded to specifically include caste and descent, and be non-exhaustive.
- 5.13 This should be clear in statute and reflect best international practice, in accordance with human rights standards.
- 5.14 Currently, NI equality law defines racial grounds as ‘colour, race, nationality or ethnic or national origins’<sup>139</sup>. However, the legislation in Great Britain defines race as *including* colour; nationality; ethnic or national origins<sup>140</sup>.
- 5.15 Research<sup>141</sup> commissioned by the Equality and Human Rights Commission (EHRC) states that ‘[c]aste is a form of identity that is used as a basis for social differentiation and usually

---

<sup>137</sup> CERD (2003) [UN Committee on the Elimination of Racial Discrimination: Concluding Observations, United Kingdom of Great Britain and Northern Ireland](#), CERD/C/63/CO/11, 15.

<sup>138</sup> OFMDFM (2015) [Racial Equality Strategy 2015-2025](#), para 5.13

<sup>139</sup> Article 5 of the [RRO 1997](#).

<sup>140</sup> Section 9(1) of the [Equality Act 2010](#).

<sup>141</sup> Dhanda, M. et al (2014) [Caste in Britain: Socio-legal Review](#), EHRC Research Report 91, p. iii.

involves inequality. It is generally accepted that caste is acquired by birth and sustained by endogamy, in which marriage is restricted to individuals of the same caste. Caste has considerable fluidity and also a global reach’.

- 5.16 In *Mandla v Dowell Lee*, Lord Fraser set out a wide range of shared characteristics which may suggest a distinct community and ethnic group<sup>142</sup>. More recently, the case of *Chandhok v Tirkey* suggested that many of the facts relevant in considering caste might be capable of constituting ‘ethnic origin’ in Great Britain<sup>143</sup>. Therefore, claims based on descent or caste might already fall within the protected characteristic of ‘ethnic origin’<sup>144</sup>. However, it would be helpful for this to be confirmed in statute.
- 5.17 The Equality Act 2010, as amended<sup>145</sup> allows for ‘caste’ to be a protected characteristic in England, Wales and Scotland. However, following consultation, the UK Government<sup>146</sup> announced it believed the best way to provide protection against caste-based discrimination was to rely on emerging case law, citing *Tirkey v Chandhok*, as well as raising concerns around low case numbers and difficulty defining caste.
- 5.18 This decision was controversial<sup>147</sup>, and it was criticised by the EHRC who stated “The government has missed a crucial opportunity to improve legal clarity...[t]his is inconsistent with the UK’s international obligations to provide for separate and distinct protection for caste in our legislation”<sup>148</sup>.

---

<sup>142</sup> *Mandla v Dowell Lee* [1983] 2 AC 548, 562, also available at <https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/1982/7.html>. Lord Fraser argued it was essential for ethnic groups to have a long shared history and own cultural tradition. Other relevant characteristics may include common geographical origin or descent from small number of common ancestors; common language; common literature; common religion; and being a minority, oppressed or dominant group.

<sup>143</sup> *Chandhok v Tirkey* [2015] ICR 527, also available at [https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKCAT/2014/0190\\_14\\_1912.html](https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKCAT/2014/0190_14_1912.html).

<sup>144</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 24.

<sup>145</sup> Section 9 (5)(a) of the [Equality Act 2010](#).

<sup>146</sup> Government Equalities Office (2018) [Caste in Great Britain and equality law: a public consultation Government consultation response](#), p. 14.

<sup>147</sup> Law Commission (2021) [Hate Crime Laws: Final Report](#), paras 4.56-4.66.

<sup>148</sup> EHRC (2018) [Caste consultation: our response to the government statement](#).

- 5.19 Further, in its Concluding Observations on the UK in both CERD has repeatedly<sup>149 150 151</sup> recommended that the UK act to ensure that caste-based discrimination is explicitly prohibited.
- 5.20 Likewise, in 2016 the Advisory Committee on the Framework Convention for the Protection of National Minorities called upon the UK to amend its statutes so as to include caste as a ground of discrimination under the definition of race<sup>152</sup>.
- 5.21 Confirming that the equality legislation in Northern Ireland protects against discrimination related to caste in statute will simplify the process of dealing with relevant cases by reducing costs and providing certainty<sup>153</sup>.
- 5.22 The legislation should recognise discrimination based on descent, in line with Article 1 of the UN Convention on the Elimination of All Forms of Racial Discrimination<sup>154</sup>. CERD has indicated that they understand that discrimination based on ‘descent’ includes ‘discrimination against members of communities based on forms of social stratification such as caste’<sup>155</sup>.
- 5.23 Professor Dickson argues<sup>156</sup> that broadening the definition of racial discrimination will help ensure such discrimination is not disguised as descent or caste discrimination in an attempt to avoid liability.
- 5.24 The definition of racial grounds should be phrased in a non-exhaustive way<sup>157</sup>. Professor Dickson<sup>158</sup> recommends that other aspects of race (such as physical features, hairstyle,

---

<sup>149</sup> CERD (2011) [Concluding Observations of the Committee on the Elimination of Racial Discrimination on UK \(2011\)](#) CERD/C/GBR/CO/18-20, para 30.

<sup>150</sup> CERD (2016) [Concluding Observations of the Committee on the Elimination of Racial Discrimination on UK \(2016\)](#) CERD/C/GBR/CO/21-23, para 8(a).

<sup>151</sup> CERD (2024) [Concluding observations on the combined twenty-fourth to twenty-sixth periodic reports of the United Kingdom of Great Britain and Northern Ireland](#), para 14 (b).

<sup>152</sup> Advisory Committee of the Framework Convention (2016) [Fourth Opinion on the United Kingdom](#), para 32.

<sup>153</sup> Dhanda, M. et al (2014) [Caste in Britain: Socio-legal Review](#), EHRC Research Report 91, p. 26.

<sup>154</sup> UN (1965) [International Convention on the Elimination of All Forms of Racial Discrimination](#), Art. 1.

<sup>155</sup> CERD (2002) [General Recommendation 29](#).

<sup>156</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 23

<sup>157</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), pp. 23-26.

<sup>158</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 23.

cultural practices, food choices or language usage) be considered as part of the definition in particular instances even though those aspects are not explicitly mentioned in the legislation. Recent case law suggests language can be treated as an indicator of race<sup>159</sup>, but a statutory change would aid clarity in the law.

### ***Expand the scope of positive action***

#### **Key Issue: Positive Action**

In Northern Ireland, positive action provisions in relation to race are less extensive than in Great Britain, Ireland, and what is allowable under EU law.

- 5.25 We have recommended that the race equality legislation is amended to expand the scope of voluntary positive action that employers, service providers and public bodies can lawfully take in order to promote racial equality, and remove unnecessary barriers relating to collecting statistical information before taking such action.
- 5.26 Positive action should be permitted where an employer, service provider or public body reasonably thinks that a racial group suffer a related disadvantage, or have different needs, or have a disproportionately low rate of participation in an activity. Any action should be a proportionate means of achieving the aim of enabling other persons who share the racial characteristic to minimise the disadvantage, meet their needs or participate in the activity<sup>160</sup>.
- 5.27 Currently, employers, service providers, and public bodies carrying out public functions in Northern Ireland are allowed, but not required, to take a limited range of special measures, known as ‘positive action’ measures, aimed at alleviating disadvantage experienced minority ethnic groups or individuals.

---

<sup>159</sup> An example of ‘language’ being treated as an indicator of race is the recent decision by a court in England that prohibiting the use of Irish words on a gravestone amounted to racial discrimination. *In the matter of an Application for a Faculty for a memorial in the Churchyard of St Giles, Exhall, Diocese of Coventry* [2021] EACC 1, a decision of the Arches Court of Canterbury, 18 June 2021, also available at <https://lawandreligionuk.com/wp-content/uploads/2021/06/Re-St.-Giles-Exhall-2021-EACC-1-with-reasons.pdf>

<sup>160</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 55.

- 5.28 For employers, this limited action primarily relates to encouraging job applications and providing specific training where individuals from minority ethnic groups are under-represented in the workforce. Service providers are also permitted to take action to meet the special needs of particular racial groups in the areas of education, training or welfare or any ancillary benefits.
- 5.29 This change will mean that employers, service providers and others can take a wider range of voluntary positive action to promote racial equality than currently permitted. It will result in the removal of unnecessary barriers to their taking positive action, and extend what is permissible positive action to the extent allowed by EU law.
- 5.30 Current provisions allowing positive action under the race equality legislation in Northern Ireland are more limited<sup>161</sup> than what is permissible under EU law<sup>162</sup>.
- 5.31 Further, the positive action proposed has to be in relation to ‘particular work’; which does not always accord with employers’ training programmes that are aimed at improving certain skills and competencies rather than a particular type of work.
- 5.32 Section 33 of the Republic of Ireland’s Employment Equality Act 1998, as amended by the Equality Act 2004, allows measures taken which promote integration in the working environment. We note that Professor Dickson<sup>163</sup> has recommended that promoting integration in the workplace be included as a permitted ground for positive action in an employment context. He suggests that, although there has not been any case law, that measures could be taken, provided they were proportionate, to allow employees from a minority ethnic group the right to take leave on days which are important to them because of their ethnic background.

---

<sup>161</sup> ECNI (2014) [Strengthening Protection Against Racial Discrimination](#), paras 3.125.

<sup>162</sup> Positive action is a central element of EU anti-discrimination law and policy, with EU Equality Directives providing broad permissive provisions to enhance equality of opportunity (see Equinet, [Positive Action Measures: The Experience of Equality Bodies](#), 2014). Article 5 of the EU Race Directive states, “With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.”

<sup>163</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), pp. 53-57.

- 5.33 Our recommendation is also similar to changes already implemented in Great Britain. There is currently a greater scope for employers and service providers in Great Britain to take positive action to promote equality than those in Northern Ireland. Professor Dickson has recommended that the change is largely modelled on Section 158 of the Equality Act 2010<sup>164</sup>.
- 5.34 In addition, the Equality Act 2010 brought consistency in terms of what positive action could be taken across all equality grounds and extended what was permissible action for employers and others to take, to the extent allowed by EU law.
- 5.35 International human rights standards allow for positive action that is necessary, proportionate and time limited. These standards were reflected in the Equality Act 2010 which permitted employers, service providers and others to take any proportionate action if it is aimed at; overcoming or minimising a disadvantage; meeting the needs of a particular group; or so as enable or encourage members of a particular group to participate in an activity where their participation is proportionally low.
- 5.36 For example, across all equality grounds, employers in Great Britain can take a range of measures; such as targeting training at a specific group, work shadowing, or encouraging applications from an underrepresented group. In addition, across all equality grounds, service providers and others can take positive action measures; such as providing additional or bespoke services, separate facilities, accelerated access to services, targeting resources or induction or training opportunities to benefit a particular disadvantaged group.
- 5.37 With regards to wider barriers, some employers in Northern Ireland may experience difficulties in taking positive action due to the limitations imposed by legislation. For example, before taking positive action, employers must have gathered and assessed statistical information relating to a previous 12 month period which shows the degree to which a particular racial group is undertaking work of a particular nature in Northern Ireland or in an area within Northern Ireland.

---

<sup>164</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 55.

- 5.38 In Great Britain, there is no requirement on employers to assess statistical data relating to under-representation of a racial group across a 12 month period<sup>165</sup>; nor is positive action limited to ‘particular work’. This contrasts with the requirements placed on employers in Northern Ireland, as highlighted above, under the race equality legislation.
- 5.39 Further, our recommendation is also compatible with the principles underpinning the statutory duties under Section 75, which are aimed at encouraging public bodies to pay due regard to the need to promote equality of opportunity for people of different racial groups.

### Tie-break provisions

- 5.40 In making the above recommendations, the Commission is not calling for the ‘tie-break’ provisions included in the Equality Act 2010 to be introduced in Northern Ireland.
- 5.41 Since 2011 in Great Britain<sup>166</sup> an employer can take a protected characteristic into consideration when deciding who to recruit or promote, where people having the protected characteristic are at a disadvantage or under represented; often referred to as a ‘tie-break’ situation. However, this can only be done with candidates who are equally qualified<sup>167</sup>, and is considered to be little used in practice<sup>168</sup>. Recent case law has suggested it may be difficult for employers to implement and there is a need for sufficient justification for the discriminatory effect of the positive action, although such case law is limited<sup>169</sup>.
- 5.42 Given these complexities, we propose that further consideration and guidance would be needed before introducing such measures.

---

<sup>165</sup> Although they must ‘reasonably think’ that persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or participation in an activity by persons who share a protected characteristic is disproportionately low. [Sec 159 of Equality Act 2010](#).

<sup>166</sup> Section 159 of the [Equality Act 2010](#).

<sup>167</sup> EHRC (2014) [Supplement to the Employment Statutory Code of Practice](#), p. 8.

<sup>168</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), pp. 60-61.

<sup>169</sup> See *Furlong v Chief Constable of Cheshire*, available at <https://www.gov.uk/employment-tribunal-decisions/mr-m-furlong-v-the-chief-constable-of-cheshire-police-2405577-2018>. The Employment Tribunal ruled that the police’s resort to section 159 was disproportionate because, amongst other things, they had not first conducted a full analysis of the impact of positive action measures already in place and had set an artificially low threshold for applicants to the service.

## Exceptions

### Key Issue: Exceptions to race discrimination

A range of exceptions in racial equality law have left gaps in protection.

### Remove the immigration exception which permits discrimination on the grounds of ethnic or national origins in carrying out immigration functions

- 5.43 The current exception allowing discrimination on the grounds of ethnic or national origins in the carrying out of immigration functions should be removed.
- 5.44 We encourage action to secure progress via Westminster, as it is not devolved to the Northern Ireland Assembly.
- 5.45 This change will result in the removal of an unjustified exception<sup>170</sup> which permits immigration practices that can have a discriminatory and disproportionate impact on minority groups.
- 5.46 Current legislation allows discrimination in the carrying out of immigration functions on the grounds of a person's ethnic or national origins. In practice, therefore, immigration officials can carry out their functions by openly discriminating against people on the basis of their general appearance where it might indicate a person's ethnic or national origin<sup>171</sup>.
- 5.47 We recognise that immigration is a reserved matter and remains the responsibility of the Westminster Parliament. However, it is also clear that immigration policies and practices can significantly impact on minority ethnic communities in Northern Ireland.
- 5.48 For example, research commissioned by the Northern Ireland Human Rights Commission (NIHRC) *Our Hidden Borders: The UK Border Agency's Powers of Detention* (2009) raised specific concerns 'particularly around what appeared to be the practice of racial profiling', by the UK Border Agency and recommended that the practice of singling out particular nationalities and

<sup>170</sup> See Article 20C of [RRO 1997](#).

<sup>171</sup> Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 84.

people visibly from a minority ethnic background should cease immediately<sup>172</sup>.

- 5.49 Further, our recommendation is in line with the recommendations of international human rights monitoring bodies; in particular, the *Advisory Committee on the Framework Convention for the Protection of National Minorities*<sup>173</sup> and the *Committee on the Elimination of Racial Discrimination*<sup>174</sup>.
- 5.50 The CERD Committee has expressed “deep concern” that the Equality Act 2010 permitted public officials to discriminate on grounds of nationality, ethnic and national origin, provided it is authorised by a Minister<sup>175</sup>.
- 5.51 It expressed its concern at reports that a ministerial authorisation had come into force on 10 February 2011 which permitted the UK Border Agency to discriminate among nationalities in granting visas and when carrying out checks at airports and ports and points of entry of the State Party.
- 5.52 The CERD Committee recommended that the UK remove the exception based on ethnic and national origin in the exercise of immigration functions, as well as the discretionary powers granted to the UK Border Agency to discriminate at border posts among those entering the territory of the UK.
- 5.53 Further, the Joint Committee on Human Rights in Great Britain has made it clear that it did not consider that the UK Government had established a case for retaining the ethnicity and nationality immigration exception in its current form<sup>176</sup>.
- 5.54 It recognised that discrimination on the basis of nationality is an “unavoidable feature of immigration control”. However, it stated that “the case law of the European Court of Human Rights, the

---

<sup>172</sup> NIHR (2009) [Our Hidden Borders: The UK Border Agency's Powers of Detention](#).

<sup>173</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities (2011) [Third Opinion on the United Kingdom. The Committee was of the view that racial profiling and “stop and search” measures, including during controls at ports, airports and on the border with Ireland, “have a disproportionate and discriminatory impact on persons belonging to minority ethnic communities.”](#)

<sup>174</sup> [Concluding observations of the Committee on the Elimination of Racial Discrimination: United Kingdom, \(2003\)](#).

<sup>175</sup> It will be noted that the Equality Act 2010 contains an exception allowing public authorities to discriminate in the exercise of their public functions on the grounds of a person's ethnic or national origins or nationality, in relation to the exercise of immigration functions.

[Concluding Observations of the Committee on the Elimination of Racial Discrimination on UK \(2011\)](#)

<sup>176</sup> [Joint Committee on Human Rights, Legislative Scrutiny: Equality Bill](#), 26<sup>th</sup> Report of Session 2008-09, 2009

House of Lords and other courts have established that pressing justification must be shown for the use of distinctions based on race, ethnicity or associated concepts such as national origin”.

- 5.55 It highlighted that the provisions of CERD also required States to take steps to avoid the use of race-based distinctions. In summary, it was of the view that given the range of immigration powers available and the ability of the government to authorise the use of distinctions based on nationality, it considered that there was insufficient justification for including an exception that permits discrimination based on ethnicity and national origins in the Equality Act 2010.
- 5.56 Equality and human rights stakeholders have raised concerns with the Commission in relation to an increased risk of racial profiling due to the requirements of the proposed Electronic Travel Authorisation (ETA) requirement within the UK Government’s Nationality and Borders Act<sup>177</sup>. Similar concerns have also been raised with the Commission about racial profiling in relation to revised Common Travel Area (CTA) Guidance issued by the Home Office<sup>178</sup>. The Commission has previously noted that the ETA requirement means people resident in Ireland who are non-Irish or non-British citizens and regularly travel into NI, fall within the scope of this requirement. The Commission is concerned about the impact of this living on people in border communities, including frontier workers who are not British/Irish citizens and persons with existing UK immigration status.

### Narrow the employment exception on foreign nationals in public service

- 5.57 We recommend that the restriction on persons of a particular birth, nationality, descent or residence being employed in the

---

<sup>177</sup> Under the Nationality and Borders Act, people resident in Ireland who are non-Irish or non-British citizens will be required to apply for a US-style visa waiver known as an Electronic Travel Authorisation (ETA) before entering the UK, including when crossing the land Border into NI. The requirement will also apply to citizens of the European Economic Area (EEA) living here, which includes people from Norway, Liechtenstein and Iceland. Non-British or non-Irish citizens from other countries, outside the EU/EEA, which previously did not require a visa to enter the UK, will now need an ETA. Clause 71 of the Bill introduced ETA requirements into the UK immigration system. This provides for a pre-entry clearance system, which requires anyone who does not need a visa, entry clearance or other specified immigration status to obtain authorisation before travelling to the UK. This includes on journeys within the CTA, including between Ireland-Northern Ireland.

<sup>178</sup> UK Home Office, [Common Travel Area Guidance](#), 11 October 2021

service of the Crown or certain public bodies should be modified or removed.

- 5.58 This change will narrow the exception that permits particular public bodies to restrict certain posts in the civil, diplomatic, armed or security and intelligence services to people of a particular birth, nationality, descent or residence. This exception particularly impacts on the employment of non-UK nationals who are not Commonwealth or Irish nationals, or who are EEA nationals that do not have, or who are not eligible for, status under the EU Settlement Scheme (EUSS). Non-UK nationals who arrived in the UK prior to the end of the Brexit transition period on 31 December 2020 and who have retained their EU rights are not impacted<sup>179</sup>.
- 5.59 Following the UK's exit from the EU, the UK Government has published updates to the Civil Service Nationality Rules<sup>180</sup> and amended the definition of 'a relevant European' in the Aliens Employment Act 1955<sup>181</sup>. These changes have impacted the ability of EU/EEA citizens who arrive in the UK, following the end of the transition period (31 December 2020), to work in civil service posts. Prior to these changes fewer restrictions applied to EU nationals, with 'relevant Europeans', including all EEA and Swiss nationals, eligible to work in non-reserved Civil Service posts in line with free movement rules.
- 5.60 In general, we consider that all derogations from the general principle of equality of treatment should be applied narrowly and clearly shown to be a proportionate means of achieving a legitimate aim.
- 5.61 We support the views of the Joint Committee on Human Rights which made it clear in 2009 when scrutinising the Equality Bill that it considered that the re-enactment of existing restrictions on the employment of non-UK nationals in the public services represents a "missed opportunity to review these restrictions, to

---

<sup>179</sup> Listed exceptions covering those here prior to Brexit are set out in [the Immigration and Social Security Coordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020](#)

<sup>180</sup> UK Government (January 2021) [Changes to the Civil Service Nationality Rules from the 1st January 2021 Guidance & Departmental Actions](#)

<sup>181</sup> Amendments were made by the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020.

remove those that are no longer justified and to minimise the scope of those that remain”<sup>182</sup>.

### ***Ethnic equality monitoring***

- 5.62 We recommend that any revised racial equality legislation includes provision for effective ethnic equality monitoring to assist and improve the design and delivery of law, policy and public services.

#### **Key Issue: Ethnic equality monitoring**

There is a need to improve equality data monitoring across all areas of public policy and service provision, to enable evidence-based policy making

- 5.63 The Commission continues to call for all the key measures of government to not only be measured in aggregate, but also disaggregated across all equality grounds, including racial equality grounds.
- 5.64 The Commission recommends that Government and Department ensure appropriate equality monitoring and related evaluation are in place across all areas of public policy and service provision.
- 5.65 The development of any specific proposals for equality monitoring (on race or any other grounds) will need to consider the areas to be covered; how any proposals interact with and support requirements on Public Authorities under Section 75 of the Northern Ireland Act; any relevant requirements under the EU Directives on Standards for Equality Bodies<sup>183</sup>; and consider issues such proportionality and effectiveness.
- 5.66 Such considerations should be informed by detailed consultation with key stakeholders, including ethnic minority communities, and learning from the public sector. Any consideration should involve direct engagement with the Commission, giving due regard to lessons / evidence from our experience of implementation to date.

---

<sup>182</sup> [Joint Committee on Human Rights, \*Legislative Scrutiny: Equality Bill\*](#), 26<sup>th</sup> Report of Session 2008-09, 2009,

<sup>183</sup> Article 16 of the EU Directives on Standards for Equality Bodies (Directive (EU) 2024/ 1500 and Directive (EU) 2024/ 1499)

- 5.67 We further recommend that the Executive should adopt a systemic approach to produce disaggregated equality data which not only meets the specific needs of Northern Ireland but where possible is comparable with common international frameworks.
- 5.68 The Equality Commission has long identified the need for robust equality data, including in relation to race, in Northern Ireland, both to enable good evidence-based policy making and to assist with effective compliance with the equality and good relations duties established by the Northern Ireland Act 1998.
- 5.69 The Commission's recommendations for statutory monitoring have to date centred on the effective delivery of public services. For a number of years, the Commission has supported<sup>184</sup> employers who wish to *voluntarily* develop an 'Employment Equality Plan' and monitor diversity in their specific workforce.
- 5.70 The Section 75 statutory duties require public authorities pay the appropriate level of regard when revising and developing policies. In order to assess the equality impacts and monitor any adverse impacts of policies, public authorities need information to ensure that decisions and equality assessments are evidence based and appropriate. The type and volume of such information should be relevant, appropriate and proportionate to the policy under consideration.
- 5.71 The Commission has consistently recommended that public authorities collect disaggregated equality information / equality disaggregated data to inform public policy making and service delivery, so that equality considerations are at the heart of public policy making and are informed by the specific needs of those experiencing inequalities. We have also highlighted both the lack of equality data generally, and the lack of data disaggregated by equality ground, that is available to policymakers in Northern Ireland, including recently in the context of the COVID-19 pandemic.
- 5.72 Government has been aware of the importance ethnic equality monitoring for a considerable time. The Racial Equality Strategy 2005-2010 noted<sup>185</sup> that '*To have a racial equality*

---

<sup>184</sup> For example, see ['ECNI \(2009\) A Unified Guide To Promoting Equal Opportunities In Employment'](#) including Annex 10 / p99

<sup>185</sup> OFMdFM (2005) [A Racial Equality Strategy for Northern Ireland 2005-2010](#), para 4.21.

*policy without ethnic monitoring has been likened to aiming for good financial management without keeping financial records’.*

- 5.73 Likewise, the current 2015-2025 Strategy highlight how important gathering data on ethnicity is, the latter noting that progress will not be made in tackling racial inequalities unless gaps our filled in our existing knowledge base<sup>186</sup>.
- 5.74 Any provisions will also need effective support and guidance, including clarity on roles and responsibilities. Consideration will be needed to how these roles will be fulfilled, with associated resources to deliver and oversee.

## **6 Disability**

- 6.1 The Disability Discrimination Act 1995 (‘DDA’)<sup>187</sup> prohibits discrimination against disabled people in employment and when accessing goods and services, including public transport. It also gives protection to disabled people against discrimination when accessing private clubs (such as golf clubs), buying or renting premises, and when subject to the functions of public bodies, such as the police.
- 6.2 The Special Educational Needs and Disability (Northern Ireland) Order 2005 (‘SEND0’) makes it unlawful for schools to treat disabled pupils and prospective pupils less favourably than other pupils in all aspects of school life. It also provides protection against discrimination for disabled students and prospective students in further and higher education. In addition, it makes it unlawful for general qualifications bodies (such as CCEA) to discriminate against disabled pupils when awarding certain qualifications, including GCSEs, GCEs, etc.
- 6.3 For further information on the Commission’s recommendations relating to disability law reform, see [ECNI - Disability Law Reform - Addressing Inequality, Equality Commission NI \(equalityni.org\)](#)

---

<sup>186</sup> OFMdfM (2015) [Racial Equality Strategy 2015-2023](#), para 7.1

<sup>187</sup> ECNI (2011) [Disability discrimination law in Northern Ireland : A short guide](#)

## ***Harmonisation and simplification***

- 6.4 The Equality Commission recommends that provisions within the disability legislation are harmonised and simplified, where possible, in order to address the wide-ranging inconsistencies and complexities which exist within the legislation.

### **Key Issue: Harmonised disability protections**

There are varying protections against disability discrimination in Northern Ireland, which are inconsistent and confusing.

- 6.5 Such inconsistencies have meant that the level of protection against discrimination and harassment for disabled people is not uniform across the scope of the disability legislation.
- 6.6 In general, by harmonising and simplifying the disability equality legislation, it will make it easier for disabled people to understand what their rights are, and in what circumstances they can challenge less favourable treatment or a failure to make reasonable adjustments.
- 6.7 Addressing the inconsistencies and complexities within the current legislation will also help employers and service providers to understand what their responsibilities are in relation to disabled people.
- 6.8 For example, there is weaker protection for disabled pupils in schools discrimination and harassment, compared to the protection in relation to disabled students in institutions of further and higher education.
- 6.9 There is also weaker protection against discrimination and harassment for disabled people when accessing goods and services, (including public transport) or buying or renting property, than when in employment, or in further and higher education.
- 6.10 In particular, the Equality Commission recommends that the following provisions within the disability legislation are harmonised and simplified across the scope of the legislation:-

### **Direct discrimination**

- 6.11 We recommend that direct discrimination, which can not be justified, is prohibited across the scope of the disability legislation.

6.12 Currently, there is no protection against direct discrimination for disabled people when accessing goods and services or for disabled pupils in schools. Direct discrimination provisions are particularly important in tackling prejudicial and stereotypical assumptions about disabled people and have been successfully relied on by disabled claimants in the employment field.

### Protection against harassment

6.13 The Commission recommends that there is a free standing right for disabled people against harassment related to their disability when accessing goods and services (including public transport), by private clubs, by public bodies when exercising their public functions, or by schools when providing education for disabled pupils.

6.14 Unlike Great Britain and Ireland<sup>188</sup>, there is no free standing protection for disabled people against harassment related to their disability outside employment and the provision of further and higher education.

6.15 This reform would also align with protection which exists under Northern Ireland equality law on other equality grounds<sup>189</sup>.

### Remove the justification defence for a failure to make a reasonable adjustment

6.16 The justification defence for failing to make reasonable adjustments should be removed across the scope of the legislation.

6.17 Currently, the disability equality legislation only prohibits employers from justifying a failure to make a reasonable adjustment. Service providers, schools or private clubs, for example, are allowed to justify a failure to make a reasonable adjustment for a disabled person.

6.18 This unnecessary; if it is reasonable for a service provider to make an adjustment, then it should not be permissible to justify a failure to make that adjustment. Removing the justification defence will not make the adjustment duty more onerous for

---

<sup>188</sup> Section 11 of the [Equal Status Act 2000](#).

<sup>189</sup> For example, there is a free standing right giving protection against harassment under the race equality legislation across both employment and non-employment areas (on the grounds of race, ethnic origin and national origin only)

service providers and others, as they will still only be required to make an adjustment where it is 'reasonable'.

### Single threshold for making reasonable adjustments

- 6.19 Under the disability equality legislation, employers and educational providers have a duty to consider making a reasonable adjustment, where a disabled person would be placed at a 'substantial disadvantage', compared with other non-disabled people, if no adjustment were made. Different provisions apply under the non-employment provisions of the disability equality legislation. Currently, service providers and others must consider making a reasonable adjustment whenever a failure to do so would make it 'impossible or unreasonably difficult' for a disabled person to use the service.
- 6.20 The Equality Commission recommends a single threshold for making reasonable adjustments, so that employers, service providers, public bodies and others with responsibilities under the disability equality legislation, are placed under a duty to make a reasonable adjustment where a disabled person would be placed at a substantial disadvantage, compared with non-disabled people, if no adjustment were made.
- 6.21 The above changes to the reasonable adjustment duty will ensure greater protection for disabled people in Northern Ireland. Although there will be an increased requirement on service providers and others to make reasonable adjustments, service providers will only be required to make adjustments that are 'reasonable'.
- 6.22 These recommended changes reflect legislative changes which have already been implemented in Great Britain under the Equality Act 2010.

### ***Indirect disability discrimination and discrimination arising from disability***

- 6.23 The Commission has recommended the introduction of protections against indirect disability discrimination, and discrimination arising from disability.

**Key Issue: Indirect discrimination and discrimination arising from disability**

Unlike in other jurisdictions, such as GB, there is no protection against indirect disability discrimination, and discrimination arising from disability in Northern Ireland.

- 6.24 Currently it is unlawful for employers, service and educational providers and others to treat, without justification, a disabled person less favourably for a reason which relates to the disabled person's disability (disability-related discrimination). In order for a disabled person to establish that they have been subjected to disability-related discrimination, his or her treatment must be compared with that of an appropriate comparator; such as a non-disabled person or a person with other disabilities. However, the House of Lords in its decision in June 2008 in the case of *Mayor and Burgesses of the London Borough of Lewisham v Malcolm (Malcolm)*<sup>190</sup>, took a restrictive approach to the establishing of a comparator and, as a result, significantly restricted the scope of disabled people to claim disability-related discrimination.
- 6.25 The Equality Commission is of the view that it is essential that steps are urgently taken to address the level of protection for disabled people from discrimination under the disability legislation, which has been severely weakened as a result of House of Lords' decision in *Malcolm*.
- 6.26 As the result of the *Malcolm* decision, it is harder for individuals to pursue elements of their disability discrimination cases relating to disability-related discrimination in the Courts. This has severely restricted their access to justice. There have also been a number of cases in Great Britain which have highlighted the difficulties facing disabled people claiming discrimination following the *Malcolm* decision<sup>191</sup>.
- 6.27 In addition, the Joint Committee on Human Rights<sup>192</sup> has raised concerns as regards the compatibility of the disability equality legislation with the UK Government's obligations under the UNCRPD, in light of the *Malcolm* decision.

---

<sup>190</sup> *Mayor and Burgesses of the London Borough of Lewisham v Malcolm* [2008] UKHL 43

<sup>191</sup> Casserley, C (2012) [The impact of 'Malcolm v London Borough of Lewisham' and Northern Ireland equality legislation](#)

<sup>192</sup> Joint Committee on Human Rights (2009) [The UN Convention on the Rights of Persons with Disabilities](#), first report of session 2008/09, p.35

- 6.28 Further, the Commission recommends that the NI Executive, and relevant NI Departments, ensure that the Framework Equality Directive and domestic law which gives effect to this Directive, is interpreted in line with the decision of the CJEU in the *Szpital Kliniczny* case (2021) relating to disability discrimination. This Directive is contained within Windsor Framework Annex 1, which means NI law must keep pace with any amendments to it including any relevant case law of the CJEU.<sup>193</sup>
- 6.29 In order to address the impact of the *Malcolm* decision, we recommend that disability-related discrimination is replaced by provisions prohibiting indirect discrimination and discrimination arising from disability.
- 6.30 The UN Committee on the Rights of People with Disabilities recommended in their 2017 Concluding Observations<sup>194</sup> that disability rights law ‘protect persons with disabilities in Northern Ireland from direct and indirect disability-based discrimination and discrimination through association’, in line with the Commission’s recommendations.
- 6.31 The introduction of provisions prohibiting indirect discrimination will mean that employers or service providers, cannot, without justification, apply provisions, criterion or practices that, although they are applied equally to everyone, place disabled people at a disadvantage.
- 6.32 Prohibiting this form of discrimination will help address systemic discrimination and dismantle institutional barriers which impact on groups of disabled people; harmonise and streamline the disability legislation in line with protection which exists on other equality grounds.

---

<sup>193</sup> The CJEU ruled that the implementation and interpretation of disability discrimination pursuant to Article 1 of the Framework Equality Directive does not render the concept of disability dependent on the absence of disability as the key comparator, i.e. the definition of ‘disability discrimination’ should include discrimination between persons with disabilities. Such a change to the law, if implemented, has the potential to help address, in part, the implications of the CJEU *Szpital Kliniczny* ruling. For more see: Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, ‘[Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland](#)’ (ECNI, NIHRC and IHREC, 2023), at 21.

<sup>194</sup> UNCRPD (2017) [Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#), CRPD/C/GBR/CO/1, para 17.

- 6.33 The introduction of provisions prohibiting discrimination arising from disability will mean that employers, service providers and others cannot, without justification, treat a disabled person less favourably because of something arising in consequence of his or her disability. This change will remove the requirement for a disabled person to compare his or her treatment with that of someone else; namely, show that s/he has been treated less favourably than someone without a disability or with a different disability. Discrimination arising from disability will not occur if the employer or service provider can show that treatment was justified, or that they did not know, or could not reasonably be expected to know, that the person was disabled.
- 6.34 These changes, which address the impact of the Malcolm decision, have already been implemented in Great Britain under the Equality Act 2010.
- 6.35 Although there is reference to indirect discrimination in Irish equality legislation, we note that concerns have been raised about its differing definitions, and relevant tests in Irish law<sup>195</sup>. The Irish legislation does not refer to discrimination arising from disability.

### ***Changes to the definition of disability***

#### **Key Issue: Definition of disability**

The current definition of disability in Northern Ireland does not meet best international standards, focusing on a list of capacities, unlike Great Britain

- 6.36 The current definition of disability within the DDA 1995 defines a disabled person as ‘a person with a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day-to-day activities’.
- 6.37 The DDA 1995 also states that an impairment is to be taken to affect the ability of a person to carry out normal day-to-day activities only if it affects that person in respect of one or more of the following:

---

<sup>195</sup> IHREC (2023) [Submission on the Review of the Equality Acts](#), pp. 24-26.

- mobility;
- manual dexterity;
- physical co-ordination;
- incontinence;
- ability to lift, carry or otherwise move every day objects;
- speech, hearing or eyesight;
- memory or ability to concentrate, learn or understand;
- perception of the risk of physical danger;
- taking part in normal social interaction; or
- forming social relationships

6.38 The above list is referred to as a ‘list of capacities’.

6.39 The Commission recommends the removal of the list of capacities in total from the definition of ‘disability’ within the DDA 1995. The changes will make it easier for disabled people to fall within the definition of disability. This is also in line with changes to the definition which have been implemented in Great Britain.

6.40 However, we have also highlighted that equality law in Northern Ireland should go further than Great Britain, and have recommended a fundamental review of the definition of disability, in order to address a number of other deficiencies within the definition.

6.41 In particular, we recommended changes to the definition in order to reflect the ‘social model’ of disability. This is especially relevant in light of the fact that the UN Convention on the Rights of People with Disabilities (UNCRPD), which has been ratified by the UK Government, contains a non-exhaustive definition of disability which is based on the ‘social model’ of disability.

## ***Association and perception***

- 6.42 The Commission recommends that there is express protection for people, such as carers, friends or family members, who are subjected to direct discrimination or harassment because of their association with a disabled person, or for individuals because they are wrongly perceived to be disabled.

### **Key Issue: Association with and perception of disability**

Protections for people associated with, and perceived to have a disability are less clear in Northern Ireland than Great Britain and Ireland.

- 6.43 This protection should apply across the scope of the disability legislation. This means, for example, that individuals when in employment or accessing goods, facilities, services and premises, have the right not to be directly discriminated against or harassed because of their association with a disabled person (including a disabled child).
- 6.44 It also means that employees, customers, pupils and students, who are not disabled, but are subjected to direct discrimination or harassment because they are wrongly perceived to be disabled, will have protection under the disability legislation.
- 6.45 This extended protection would not apply to failure to make reasonable adjustments.
- 6.46 The European Court of Justice (ECJ) in the case of *Coleman v Attridge Law* has ruled that treating an employee less favourably because of her caring responsibilities for a disabled child was unlawful and prohibited under the European Framework Directive.
- 6.47 In the *Coleman* case, Mrs Coleman alleged that she had been treated less favourably by her employer because she had a disabled child. She alleged that she had been forced to resign from her job after being harassed by her employer and having being refused flexible working which other employees were granted. Mrs Coleman therefore alleged that her less favourable treatment was not because she was disabled, but because of her son's disability.
- 6.48 It will be noted that the Employment Appeals Tribunal in Great Britain in October 2009, has ruled that, as a result of the ECJ

decision in that case, a new provision had to be read into the employment provisions of the disability legislation prohibiting less favourable treatment (direct discrimination and harassment) of a person by reason of the disability of another person.

- 6.49 The Commission has successfully supported a case in which a mother was denied the opportunity to work as a result of her daughter's disability, which was found to be unlawful associative discrimination<sup>196</sup>.
- 6.50 Most other equality legislation in Northern Ireland<sup>197</sup>, and the Equality Act 2010<sup>198</sup>, is written in such a way as to allow claims of associative or perceptive direct discrimination, although these terms are not in statute.
- 6.51 The Irish legislation explicitly refers to association, and discrimination if a characteristic is 'is imputed to the person concerned' (i.e. wrongly perceived)<sup>199</sup>.
- 6.52 In summary, this change would ensure that Northern Ireland law complies with the ECJ decision in the case of Coleman. In addition, it will ensure greater protection for carers of disabled people, and others (such as family and friends) associated with disabled people from direct discrimination and harassment in non-employment areas. It will also give greater protection against discrimination for people who are not disabled but are wrongly perceived to be disabled.
- 6.53 We note that case law in Great Britain<sup>200</sup> suggests that '*In a case of perception discrimination what is perceived must, as a simple matter of logic, have all the features of the protected characteristic as defined in the statute*'. Amending the definition of disability discrimination as above would further assist in ensuring protections against perceived disability discrimination.

---

<sup>196</sup> [McKeith v Ardoyne Association](#) [2016] NICA 47

<sup>197</sup> For example, Art 3 of the [RRO 1997](#) refers to discrimination if 'on racial grounds on racial grounds he treats that other less favourably than he treats or would treat other persons'.

<sup>198</sup> Section 13 (1) of the Equality Act 2010 – 'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others'.

<sup>199</sup> Section 3 (1) of the [Equal Status Act 2000 \(Revised\)](#), and Section 6 (1) of the [Employment Equality Act 1998 \(Revised\)](#)

<sup>200</sup> [Chief Constable of Norfolk v Coffey](#) [2019] EWCA Civ 1061

## ***Prohibit pre-employment enquiries***

- 6.54 The Equality Commission recommends that employers are prohibited from asking questions about a job applicant's health or disability prior to making a job offer (on a conditional or unconditional basis); except in certain specified circumstances.

### **Key Issue: Pre-Employment Enquiries**

Employers in Northern Ireland can ask questions about a job applicant's health or disability prior to making a job offer, unlike in GB.

- 6.55 The inclusion of health or disability questions in a job application form or a medical questionnaire can deter disabled people from applying for the job in question. Prohibiting such questions (except in permitted circumstances) is also designed to reduce discrimination by some employers against disabled applicants, who reject the disabled person's application once they become aware of the person's disability.
- 6.56 Employers can still, for example, ask health related questions in order to establish whether the person requires reasonable adjustments during the recruitment process; or whether or not the applicant is able to undertake a function that is intrinsic to the job (with reasonable adjustments in place, as required); or in order to monitor diversity in the workplace.
- 6.57 It is of note that over a 12 month period (1 April 2023 - 31 March 2024), the Equality Commission received 52 enquiries from individuals who believed that they were not appointed to a post or shortlisted for a job due to their disability<sup>201</sup>.
- 6.58 These changes will ensure greater protection for disabled applicants against unlawful discrimination when seeking employment and are in line with changes which have been implemented in Great Britain.

---

<sup>201</sup> This excludes enquiries relating to reasonable adjustments.

## ***Scope of reasonable adjustments***

### **Key Issue: The scope of reasonable adjustments in schools and tenancies**

There is no duty on schools in Northern Ireland to provide auxiliary aids and services for disabled pupils, where reasonable, nor for landlords to make reasonable adjustments to common areas.

### **Duty on schools to provide auxiliary aids and services**

- 6.59 We recommend reform to SENDO, in order to place an additional duty on schools to provide auxiliary aids and services for disabled pupils, where reasonable; in circumstances where a failure to do would put the disabled pupil at a substantial disadvantage compared to non-disabled pupils.
- 6.60 Although schools are currently under a duty to make reasonable adjustments for disabled pupils in order to avoid putting disabled pupils at a substantial disadvantage, this duty does not extend to the provision of auxiliary aids and services. This approach was adopted on the basis that auxiliary aids and services would be available under the Special Educational Needs (SEN) framework.
- 6.61 The Equality Commission also recommends that the current residual duty on the Education Authority under SENDO 2005 in relation to the making of reasonable adjustments for disabled pupils or prospective pupils, is amended so that it includes a requirement to provide auxiliary aids and services.
- 6.62 The recommended changes are in line with legislative changes included in the Equality Act 2010.
- 6.63 In Ireland<sup>202</sup>, discrimination by an educational establishment includes a failure by the service provider to do all that is reasonable to accommodate the needs of an individual with a disability. However, there are limits to this obligation, and it is not required where it would give rise to a cost, other than a nominal cost, to the provider of the service in question.
- 6.64 It is important to note that not all disabled children who are identified as 'disabled' under the DDA 1995, are considered to

---

<sup>202</sup> For further information, see <https://www.ihrec.ie/your-rights/education/disability/> (accessed 01/07/24).

have special educational needs. In such circumstances, the disabled child without an identified special educational need, has no right to auxiliary aids or services under SENDO 2005; even if they experience substantial disadvantage at school for a reason related to their disability.

- 6.65 In addition, as the duty to make reasonable adjustments is an anticipatory duty, it means that schools will have to anticipate those auxiliary aids and services which it would be reasonable to expect may be needed by disabled pupils who may be admitted to the school in the future.
- 6.66 However, schools will only be required to provide an auxiliary aid or service where it is reasonable to do so. If the adjustment is not 'reasonable', then a school will not be under a duty to provide it. In addition, the duty only arises in circumstances where a failure to provide the auxiliary aid or service would mean that the disabled pupil was put at a 'substantial disadvantage' compared to non-disabled pupils. In addition, the duty will not require schools to remove or alter physical features.
- 6.67 We note that the extension of this duty to schools was recommended in December 2009 by the Lamb Inquiry into special educational needs and parental confidence in Great Britain<sup>203</sup>.
- 6.68 The Inquiry concluded that 'removing the schools' exemption from the provision of auxiliary aids and services would better reflect schools' front line role in anticipating and making adjustments for disabled children and will fill gaps in meeting the practical needs of disabled children.'
- 6.69 The introduction of this additional duty on schools is recommended for a number of reasons. The changes, for example, will benefit disabled pupils who do not have special educational needs but still require reasonable adjustments (in the form of auxiliary aids or services). This, for example, could include extra equipment or support (such as an adapted computer keyboard) for disabled pupils or prospective pupils.
- 6.70 It will also encourage schools to be proactive and to anticipate reasonable adjustments, in terms of the provision of auxiliary

---

<sup>203</sup> Lamb, B (2009) [Lamb Inquiry: Special Educational Needs and Parental Confidence](#), p. 95.

aids and services, that may be required for future disabled pupils who may be admitted to the school.

- 6.71 In addition, the proposed extension of the reasonable adjustment duty to auxiliary aids and services will ensure that disabled children in schools are afforded the same rights as disabled students in further and higher education; where the reasonable adjustment duty on institutions of further and higher education does extend to auxiliary aids and services.

### Greater protection for disabled tenants

- 6.72 The Equality Commission recommends that disabled tenants who live in rented residential accommodation are given additional protection in relation to the making of reasonable adjustments by landlords to common parts (such as an entrance hall in a block of flats).
- 6.73 Currently under the disability legislation, landlords and managers of rented residential premises must not treat a disabled tenant less favourably than a non-disabled person.
- 6.74 They must also make reasonable adjustments (though not physical alterations) to the disabled person's home. In addition, they cannot unreasonably refuse permission for disability-related alterations to the disabled person's home to be carried out.
- 6.75 Landlords are not required to make disability-related alterations to the physical features of the common parts of let residential premises, such as stairs and hallways; even if they are reasonable to make and paid for by a disabled tenant.
- 6.76 The recommended changes will mean that landlords will be required to follow a specific process if a disabled tenant requests an adjustment to a physical feature in a common part of residential premises; in circumstances where the physical feature puts the disabled tenant at a substantial disadvantage. This includes a consultation process with others affected by the change which must be carried out within a reasonable period of the request being made.
- 6.77 If the landlord decides it is reasonable to make such an adjustment to avoid the disadvantage to the disabled person, a written agreement must be entered into between them setting

out their rights and responsibilities. A landlord may require the tenant to pay for the cost of making the alteration. However, if costs are incurred by a landlord, in making a reasonable adjustment, a landlord can not victimise a disabled tenant because costs have been incurred.

6.78 The recommended changes are in line with legislative changes included in the Equality Act 2010. In Ireland<sup>204</sup>, landlords must provide special treatment or facilities in circumstances where, without these, it would be impossible or unduly difficult for the disabled person to avail of the accommodation. However, they are not obliged to provide special facilities or treatment when this costs more than what is called a 'nominal cost'.

## **7 Sex, gender reassignment and pregnancy**

7.1 The Sex Discrimination (NI) Order 1976 (as amended) ('SDO') makes it unlawful to discriminate against an individual on grounds of his or her sex in the following key areas<sup>205</sup>:

- employment;
- training and related matters;
- education;
- provision of goods, facilities or services; and
- the disposal and management of premises.

7.2 The SDO includes protection from discrimination for married people and registered civil partners in employment and training; and for women in relation to pregnancy and maternity in both employment and the provision of goods, facilities and services.

7.3 The Gender Reassignment Regulations (Northern Ireland) 1999 amended the SDO to make it unlawful to discriminate on grounds of gender reassignment in employment and training. Regulations introduced in 2008 extended protection from discrimination on grounds of gender reassignment to the provision of goods, facilities and services and the disposal and management of premises.

---

<sup>204</sup> For further information, see [www.ihrec.ie/your-rights/housing/disability/](http://www.ihrec.ie/your-rights/housing/disability/) (accessed 01/07/24)

<sup>205</sup> ECNI (2011) [Sex discrimination and equal pay law in Northern Ireland - a short guide](#)

- 7.4 A separate piece of legislation, the Equal Pay Act (Northern Ireland) 1970 (as amended), makes discrimination on grounds of sex unlawful in the area of pay.
- 7.5 For further information on our recommendations relating to sex/gender law reform, see [www.equalityni.org/GenderLawReform](http://www.equalityni.org/GenderLawReform)

### ***Discrimination or harassment by private clubs/associations***

- 7.6 We recommend that discrimination and harassment by associations on the grounds of sex, pregnancy and maternity and gender reassignment be prohibited.

#### **Key Issue: Private Clubs/ Associations**

There are no protections in NI against discrimination and harassment by associations on the grounds of sex, pregnancy and maternity and gender reassignment, unlike neighbouring jurisdictions, and protections on other grounds.

- 7.7 It should be unlawful for associations to discriminate against or harass both existing and potential members and associates, as well as existing or potential guests.
- 7.8 We recommend the inclusion of an exception that permits associations to restrict their membership in certain circumstances to people of a certain sex; for example, where the main purpose of the association is to bring together people of a specific sex.
- 7.9 Associations can include, for example, private clubs, such as golf /sports clubs; young people's associations such as the Scouts, the Guides; as well as political parties<sup>206</sup>; and organisations established to promote the interests of its members.
- 7.10 Such protections exist under other areas of equality law in Northern Ireland, and sex equality legislation should be harmonised.

---

<sup>206</sup> Private clubs/associations are defined in other equality legislation as associations that have at least 25 members and admission to membership is regulated by the association's rules and involves a process of selection.

- 7.11 In Great Britain there are protections against discrimination and harassment by associations on the grounds of sex, pregnancy and maternity and gender reassignment. Likewise, the Irish legislation has relevant provisions on membership clubs<sup>207</sup>.

## ***Gender Reassignment***

### **Key issue: Gender reassignment protections**

Unlike in neighbouring jurisdictions, the definition of gender reassignment in Northern Ireland law, and associated protection from discrimination, refers to being under medical supervision, unlike neighbouring jurisdictions. The scope of protections here is therefore more limited compared to neighbouring jurisdictions.

### **Definition of gender reassignment**

- 7.12 Currently under the sex equality legislation in Northern Ireland, a person is protected from discrimination if they “intend to undergo gender reassignment, are undergoing gender reassignment, or has at some stage in the past undergone gender reassignment.
- 7.13 However, in Northern Ireland, ‘Gender reassignment’ is defined as “a process *which is undertaken under medical supervision* for the purpose of reassigning a person’s sex by changing physiological or other characteristics of sex, and includes any part of such a process”. By way of comparison, in Great Britain there is no requirement to be under medical supervision for the anti-discrimination protections to apply.
- 7.14 A transgender person may face discrimination or harassment, motivated by prejudice which is unrelated to any medical process they have undergone or intend to undergo.
- 7.15 Accordingly, we recommend the removal of the requirement that a person undergoing gender reassignment must be under medical supervision. This change will widen the definition of ‘gender reassignment’ and therefore widen the scope of the legislation in Northern Ireland.

---

<sup>207</sup> Sections 8-10 of the [Equal Status Act 2000](#).

- 7.16 The change will remove a hurdle for transgender people who have been discriminated against, making it easier for them to fall within the definition of gender reassignment.
- 7.17 It is also in line with changes to the definition implemented in Great Britain in 2010. The Explanatory Notes of the Equality Act 2010<sup>208</sup> points to the example of *‘A person who was born physically female decides to spend the rest of her life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully ‘passes’ as a man without the need for any medical intervention’*. He would be protected in Great Britain against discrimination because he has the characteristic of gender reassignment, but may not be protected in Northern Ireland’.
- 7.18 In Ireland<sup>209</sup>, following European Court of Human Rights and EU case law, a transgender person who experiences discrimination arising from their gender reassignment, or transition, is also protected under the gender ground. There is not a reference to medical supervision in statute, and case law suggests their Workplace Relations Commission does not necessarily examine whether the transgender person has surgically transitioned or formally changed gender.

### Harmonise gender reassignment protections

- 7.19 We recommend changes to equality law in Northern Ireland that strengthen protection for against gender reassignment discrimination by public authorities and in schools, and against indirect discrimination in non-employment areas.
- 7.20 As set out further above, and unlike Great Britain, in Northern Ireland there is currently no protection against gender reassignment discrimination by public bodies when exercising their public functions and by private clubs/associations.
- 7.21 We have also called for the expansion of protections in schools against gender reassignment discrimination; including as regards admission policies, the provision of education and access to facilities and services, or school exclusion policies, similar to protections in Great Britain and Ireland. Protection

---

<sup>208</sup> [Explanatory Notes](#) to Section 7 of the Equality Act 2010.

<sup>209</sup> IHREC (2023) [Submission on the Review of the Equality Acts](#), pp. 57-.58

against discrimination should also be extended to cover qualifications bodies<sup>210</sup>.

- 7.22 In line with protection under equality law in Great Britain, we have also recommended the extension of protection against indirect discrimination on the grounds of gender reassignment to areas outside employment and vocational training<sup>211</sup>; including in the provision of goods, facilities, services and premises, in education<sup>212</sup>, in the exercise of public functions, and by private clubs.
- 7.23 Although there is reference to indirect discrimination in Irish equality legislation, we note that concerns have been raised about its differing definitions, and relevant tests in Irish law<sup>213</sup>.
- 7.24 Any exceptions to these expanded protections should be narrowly focused and objectively justified. Beyond any such exceptions, legislation should protect against direct and indirect discrimination on the grounds of gender reassignment.
- 7.25 In addition, we consider that providing protection against indirect gender reassignment discrimination will ensure compliance with the EU Gender Goods and Services Directive<sup>214</sup>.

Give consideration to prohibiting discrimination on the wider ground of 'gender identity', rather than the narrower ground of 'gender reassignment'.

---

<sup>210</sup> A qualifications body is defined in other equality legislation in Northern Ireland 'as an authority or body which can confer, renew or extend a professional or trade qualification'. Qualifications bodies include the General Medical Council, the Nursing and Midwifery Council, and the Driver and Vehicle Testing Agency

<sup>211</sup> Legislation recently introduced provides protection against indirect discrimination for transgender people in the areas of employment and vocational training only and not across all areas. [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016](#) See ECNI (2016) [response](#) to OFMDFM consultation on changes to the Sex Discrimination Order.

<sup>212</sup> It will be noted that the definition of harassment in the Equality Act 2010 does not apply to the protected characteristic of gender reassignment in education. However, where unwanted conduct related to any of these protected characteristics results in a pupil suffering disadvantage that would constitute direct discrimination. See EHRC

<sup>213</sup> IHREC (2023) [Submission on the Review of the Equality Acts](#), pp. 24-26.

<sup>214</sup> See ECNI [Response](#) to OFMDFM consultation on implementing Gender Goods and Services Directive, 2007

- 7.26 We recommend that consideration is given to prohibiting discrimination on the wider ground of ‘gender identity’ rather than the narrower ground of ‘gender reassignment’.
- 7.27 Whilst protection against discrimination on the grounds of ‘gender identity’<sup>215</sup> is not covered by the equality legislation in Great Britain, ‘gender identity’ is a term that is used by both the United Nations and Council of Europe in their recommendations for Member States<sup>216</sup>.
- 7.28 We note that the Women and Equalities Committee in its Inquiry (2016) into Transgender Equality Inquiry <sup>217</sup> recommended that the Equality Act 2010 in Great Britain should be amended to include protection on the grounds of “gender identity”.
- 7.29 The Committee was of the view that the use of the terms “gender reassignment” and “transsexual” in this legislation was ‘outdated and misleading’; and ‘may not cover wider members of the trans community’. It considered that this change would *“improve the law by bringing the language in the Act up to date<sup>218</sup>, making it compliant with Council of Europe Resolution 2048; and make it significantly clearer that protection is afforded to anyone who might experience discrimination because of their gender identity”<sup>219</sup>.*

### **Equal Pay**

- 7.30 We have made several recommendations relating to equal pay. Equal pay provisions will also be impacted by the EU Pay Transparency Directive 2023/970, the majority of which the Commission considers must be transposed in NI by June 2026.

#### **Key Issue: Equal Pay**

<sup>215</sup> ‘Gender identity’ is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. See Preamble to [Yogyakarta Principles](#) (2016).

<sup>216</sup> See, for example, Committee of Ministers [Recommendation](#) (2010) to Member States on combating discrimination on grounds of sexual orientation or gender identity issues.

<sup>217</sup> See House of Commons, Women and Equalities Committee (2016) [Transgender Equality Inquiry](#).

<sup>218</sup> Ibid para 107.

<sup>219</sup> The UK Government [responded](#) to the Inquiry in 2016 but did not accept the Committee’s recommendation.

Northern Ireland's equal pay provisions do not align with best international practice, and need reform to meet the requirements of the EU Pay Transparency Directive.

- 7.31 As set out above, the EU Pay Transparency Directive ('PTD'), Directive 2023/970, to strengthen the application of the principle of equal pay for equal work or work of equal value, between men and women through pay transparency and enforcement mechanisms, of 10 May 2023 came into force on 6 June 2023. The provisions of the PTD must be transposed by Member States by 7 June 2026.
- 7.32 Implementing this Directive in NI law would lead to greater accountability and transparency by certain employers on gender pay gaps within their organisations. For example, the PTD introduces new obligations on certain employers in terms of pay reporting and joint pay assessments linked to ensuring compliance with the principle of equal pay.<sup>220</sup> It also introduces enhanced enforcement measures to improve access to justice and enforcement of rights, for example, the right of 'equality bodies' to engage in court or administrative procedures in support of workers regarding equal pay discrimination,<sup>221</sup> and strengthened rights relating to compensation.<sup>222</sup>
- 7.33 The ECNI, and the NI Human Rights Commission, have advised<sup>223</sup> that, apart from a small number of provisions of the PTD that are no longer relevant now that the UK has left the EU, all other provisions of the PTD amend and/or replace provisions in the Recast Directive contained in Windsor Framework Annex 1. This includes as regards changes to substantive rights, procedural rights and rights relating to access to remedies, in this area.

---

<sup>220</sup> Article 9 and 10, Directive 2023/970/EU, 'EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms' 10 May 2023. This includes that, employers with at least 100 workers must provide and report on the pay gap between female and male workers to a monitoring body, all workers and their representatives and remedy any gender pay differences that are not justified by objective and gender-neutral factors.

<sup>221</sup> Article 15, Directive 2023/970/EU, 'EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms', 10 May 2023.

<sup>222</sup> Article 16, Directive 2023/970/EU, 'EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms' 10 May 2023.

<sup>223</sup> Equality Commission for NI and NI Human Rights Commission, '[ECNI and NIHRC Briefing Paper: The EU Pay Transparency Directive: The UK Government's dynamic alignment obligations relating to Windsor Framework Article 2](#)' (ECNI and NIHRC, 2024).

- 7.34 We therefore consider that the UK Government, further to its dynamic alignment obligations arising out of WF Article 13 (3)<sup>224</sup>, must transpose these provisions of the PTD into NI law by 7 June 2026.
- 7.35 In addition, we stress that the requirements of the PTD should be considered minimum requirements. We encourage government to adopt an approach when implementing the Directive that goes beyond these minimum standards where this reflects best practice, including international human rights best practice, and where it seeks to strengthen rights in this area.<sup>225</sup>
- 7.36 The Commission is currently engaging with the European Commission, UK Government and the NI Executive regarding these recommendations.
- 7.37 For further detail on the two Commissions' analysis of the Pay Transparency Directive and the UK Government's dynamic alignment obligations relating to Windsor Framework Article 2 , please see briefing paper: [ECNI and NIHRC Briefing Paper: The EU Pay Transparency Directive \(March 2024\)](#).
- 7.38 As set out above, it will also be noted that there is support for this legislative change amongst equality and human rights stakeholders. For example, the Women's Manifesto, by the Women's Policy Group NI, contains a recommendation relating to the transposition of the PTD into domestic law as soon as possible, calling it a 'a crucial step for eliminating gender-based discrimination in the workplace and tackling the gender pay gap'.

**Permit hypothetical comparators in equal pay cases and strengthen direct sex discrimination provisions**

- 7.39 We recommend that the equal pay legislation is amended to permit the use of hypothetical comparators in all equal pay claims. Currently a women cannot bring an equal pay claim for equal pay where there is no actual comparator doing equal work.

---

<sup>224</sup> Relating to WF Article 2(1).

<sup>225</sup> For example, the ECNI has called for the power to bring discrimination cases in its own name (own motion powers) which is not envisaged under the Directive. See ECNI response to TEO consultation on review of the Race Relations (NI) Order 1997, June 2023.

- 7.40 This would go beyond the current position in Great Britain and Ireland. However, the latter will have to comply with the EU Pay Transparency Directive before the transposition deadline.
- 7.41 We note that Article 19 of the EU Pay Transparency Directive provides that ‘Where no real comparator can be established, any other evidence may be used to prove alleged pay discrimination, including statistics or a comparison of how a worker would be treated in a comparable situation’.
- 7.42 As outlined in the PTD, ‘this would lift an important obstacle for potential victims of gender-based pay discrimination, especially in highly gender-segregated employment markets where a requirement of finding a comparator of the opposite sex makes it almost impossible to bring an equal pay claim.’<sup>226</sup>
- 7.43 Alongside the introduction of equal pay legislation that permits hypothetical comparators in all equal pay claims, we recommend, in line with protection under equality law in Great Britain, that the provisions relating to direct sex discrimination in the workplace are strengthened. In particular, we recommend that the sex equality legislation is amended to permit a sex discrimination claim to be brought based on a hypothetical comparator, where there is evidence of direct sex discrimination in relation to contractual pay.
- 7.44 This change would permit a woman to bring a claim of sex discrimination in such circumstances if she can show evidence of direct sex discrimination by her employer.
- 7.45 For example, it would cover the situation where an employer tells an employee that she would be paid more if she were a man. If there are no men doing equal work in the workplace then she can not bring an equal pay complaint. However, if these proposed changes were introduced, she could claim direct sex discrimination as the less favourable treatment she has received is clearly based on her sex.

### Introduce mandatory equal pay audits

- 7.46 We recommend<sup>227</sup>. that the inclusion of a requirement on employers to carry out mandatory pay audits or to regularly

---

<sup>226</sup> Pay Transparency Directive ([2023/970/EU](#)), Recital 28.

<sup>227</sup> See ECNI (2013) [ECNI CEDAW Shadow Report 2013](#) and ECNI (2009) [ECNI response to Discrimination Law Review](#)

conduct a review of their policies and practices adopted for the purpose of maintaining or promoting equality of opportunity. We consider that these provisions will encourage a more proactive approach by employers to addressing equal pay.

- 7.47 We have made it clear in our *Equal Pay Code* that equal pay reviews are the most appropriate method of ensuring that a pay system delivers equal pay free from sex bias<sup>228</sup>.

### New protection for employees against pay secrecy clauses

- 7.48 Such clauses are aimed at prohibiting employers from preventing or restricting their employees from having discussions about their pay, where such discussions are aimed at establishing whether or not there is pay discrimination.
- 7.49 We have recommended that the sex equality legislation in Northern Ireland is strengthened to prohibit employers from preventing or restricting their employees from having discussions about their pay with colleagues (or former colleagues) or trade union representatives; in circumstances where such discussions are aimed at establishing whether or not there is pay discrimination.
- 7.50 Although Ireland does not currently have similar provisions in place, we note that Article 7 of the EU Pay Transparency Directive provides that '*Workers shall not be prevented from disclosing their pay for the purpose of the enforcement of the principle of equal pay. In particular, Member States shall put in place measures to prohibit contractual terms that restrict workers from disclosing information about their pay*'. The Directive also sets out a series of other measures relating to pay transparency for employees and applicants.
- 7.51 This change will ensure greater transparency within the workforce about pay. It aims to prevent 'pay secrecy clauses' or 'gagging clauses' which are terms of employment that seek to prevent or restrict workers from discussing or disclosing their pay. Further, restricting the use of these clauses will promote openness and dialogue about pay and bring an end to opaque pay structures.

---

<sup>228</sup> ECNI [Code of Practice on Equal Pay](#) 2010

7.52 It would, for example, mean that a male employee who discloses his pay' to a female colleague who believes that she is being paid less due to her sex, would be protected from victimisation by his employer as a result of disclosing his pay.

7.53 In addition, the UN CEDAW Committee in 2013<sup>229</sup> expressed concern that the legislative framework in Northern Ireland did not provide protection against pay secrecy clauses and recommended action to address this gap in protection.

### ***Gender Pay Gap Reporting***

7.54 We have recommended the introduction of gender pay gap reporting (GPGR). The EU Pay Transparency Directive, which the Commission considers must be transposed into NI law by June 2026, further to the UK Government's obligations under the Windsor Framework, includes provisions relating to Gender Pay Gap Reporting.

#### **Key Issue: Gender Pay Gap Reporting**

Unlike other jurisdictions, such as Great Britain and Ireland, gender pay gap reporting provisions have not been enacted in Northern Ireland. The Pay Transparency Directive, which must be transposed by June 2026, contains provisions relating to gender pay gap reporting.

7.55 We have highlighted previously that we consider that gender pay gap reporting will increase pay transparency within organisations and make organisations more accountable for addressing gender pay inequalities in the workplace. We welcome the introduction of gender pay gap reporting by employers as a transparent means of identifying where gender pay gaps may exist, and as an important component of identifying the wider structural and/or employer specific actions that may be required to address these gaps.

7.56 We have also highlighted the need for a gender pay strategy and action plan for Northern Ireland to address structural factors both within society and within the workplace. Such a Strategy and action plan is required under Section 19 of the Employment Act (Northern Ireland) 2016.

---

<sup>229</sup> CEDAW Committee (2013) [Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#), paras 18-19.

- 7.57 The Employment Act (Northern Ireland) 2016 set out a requirement to publish, within 18 months of the Act receiving Royal Assent, a strategy including an action plan, on eliminating differences in the pay of male and female employees and provided for the making of GPGR Regulations, with the first Regulations to be made by 30 June 2017. However, these provisions have never come into force.
- 7.58 We note that CEDAW recommended<sup>230</sup> in 2019 that the provisions regarding mandatory pay gap reporting were brought into effect in Northern Ireland.
- 7.59 In Great Britain, the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 introduced annual GPGR duties for employers with 250 employees, for most employers. In Ireland, the Irish Gender Pay Gap Information Act 2021 adopts a phased approach, and organisations with more than 50 employees will have to report gender pay gaps annually by 2025.
- 7.60 As above, the Commission considers that the EU Pay Transparency Directive must be transposed into NI law by June 2026, further to the UK Government's obligations under the Windsor Framework. The Directive<sup>231</sup> requires that, by 2027, organisations with 250 workers must report on their gender pay gap annually, with employers with 150-249 workers reporting triennially from 2027, and employers with 100-149 workers reporting triennially from 2031.
- 7.61 We note that Article 10 of the Pay Transparency Directive requires that employers who are subject to pay gap reporting requirements, if reporting an unjustified gender pay gap of at least 5% in any category of workers must conduct a joint pay assessment.

## **8 Sexual orientation**

- 8.1 The Employment Equality (Sexual Orientation) Regulations (NI) 2003 came into force on 2 December 2003<sup>232</sup>. These Regulations make it unlawful for employers and others to

---

<sup>230</sup> CEDAW Committee (2019) [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), para 44.

<sup>231</sup> Article 9 of the Pay Transparency Directive.

<sup>232</sup> ECNI (2011) [Sexual Orientation Discrimination Law in Northern Ireland : A Short Guide](#)

discriminate on grounds of sexual orientation in the areas of employment and vocational training, including further and higher education.

8.2 The Equality Act (Sexual Orientation) Regulations (NI) 2006 came into force on 1 January 2007. These Regulations make it unlawful to discriminate on grounds of sexual orientation in the provision of:

- goods, facilities or services;
- premises;
- education;
- and public functions.

8.3 Key legislative developments in recent years in relation to sexual orientation issues in Northern Ireland have primarily focused on issues beyond anti-discrimination legislation, such as equal marriage, blood donation and adoption, where rights have been secured.

8.4 The Commission has made a range of cross-cutting recommendations<sup>233</sup> which are of relevance to sexual orientation anti-discrimination legislation, including in relation to combined discrimination, third-party harassment and public bodies carrying out public functions. Further detail is available above. We have also recommended the expansion of the range of lawful positive action measures that employers, service providers and others can take.

8.5 The Commission's recommendations in this area are longstanding. Should the Executive or Assembly prioritise action to reform the equality law framework, additional detailed work should be undertaken to establish latest gaps and international standards in sexual orientation protections in anti-discrimination legislation.

## **9 Religious and philosophical belief and political opinion**

9.1 The Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO), as amended, addresses discrimination on

---

<sup>233</sup> ECNI (2013) [Promoting Sexual Orientation: Equality Priorities and Recommendations](#), p. 28-29.

grounds of religious or similar philosophical belief and/or political opinion unlawful, in relation to employment; goods, facilities, services and premises; and further and higher education<sup>234</sup>.

- 9.2 It may be that individuals believe that they are treated less favourably than others because they are Catholic or Protestant or because they are perceived to hold either of these religious beliefs; or because they are perceived to be nationalist or unionist; or indeed individuals may be discriminated against because they do not hold any of these beliefs or opinions.
- 9.3 Religious belief includes those of other religions, eg, Judaism, Islam and Eastern Orthodox Christianity, as well as other faiths and philosophies such as Hinduism, Buddhism and philosophical theism, to name a few. Philosophical belief covers other beliefs about weighty and substantial aspects of human life and behaviour. They must attain certain levels of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society, be not incompatible with human dignity and be not in conflict with the fundamental rights of others. Examples might include humanism, pacifism, spiritualism.
- 9.4 Political opinion is not limited solely to Northern Ireland constitutional politics and may include political opinions relating to the conduct or government of the state, or matters of policy, eg, conservative. Approval or acceptance of the use of violence for political purposes in Northern Ireland is excluded<sup>235</sup>.
- 9.5 The Commission has made a range of cross-cutting recommendations which are of relevance to FETO, for example, in relation to combined discrimination. Further detail is available above in the section 'Cross-cutting reforms'.
- 9.6 We have also previously called for the removal of the 'teacher's exception', whereby protection against religious/ philosophical belief and political opinion discrimination did not apply to school teachers. This gap in protections was recently addressed through a Private Member's Bill. We have worked with officials

---

<sup>234</sup> ECNI (2016) [Religious or similar Philosophical Belief and Political Opinion discrimination law in Northern Ireland: A short guide](#)

<sup>235</sup> ECNI (2010) [Religious or similar Philosophical Belief and Political Opinion discrimination law in Northern Ireland: a short guide](#)

to enable the necessary reforms to ensure FETO protections apply to teachers.

- 9.7 Should the Executive or Assembly prioritise action to reform the equality law framework, additional detailed work should be undertaken to establish the latest gaps and international standards on religious/ philosophical belief and political opinion anti-discrimination protections, with consideration given also to potential cross-cutting recommendations, mindful of the particular needs of Northern Ireland.

### ***Extending workforce monitoring requirements***

#### **Key Issue: Workforce monitoring**

Changes to the labour market, including increases in migrant labour and new residents, has implications for the continuing usefulness of the Fair Employment Monitoring Regulations as currently specified.

- 9.8 We recommend an extension of the monitoring requirements under the fair employment legislation to cover the additional grounds of nationality and ethnic origin. This will mean that registered employers, in addition to monitoring the community background and sex of their employees and applicants, will be required to collect monitoring information as regards nationality and ethnic origin.
- 9.9 The fair employment monitoring and affirmative action provisions are based on the premise that the majority of people in Northern Ireland are of local origin, with a community background which may be determined as either members of the Protestant or Roman Catholic communities in Northern Ireland.
- 9.10 However, there has been a significant increase of migrant labour and new residents in Northern Ireland over the last 20 years<sup>236</sup>. This has made it more difficult for employers in terms of making comparisons with local labour availability information, and therefore reaching conclusions regarding fair participation (by community background) in employment. This change in

---

<sup>236</sup> NISRA (2023) [2022 Mid-year Population Estimates for Northern Ireland](#)

circumstance necessitates a consideration of the applicability of the current fair employment monitoring provisions.

- 9.11 The primary reason for the recommended change is to ensure the continuing usefulness of the fair employment monitoring Regulations as relevant to their intended purpose. In particular, it will help employers identify which employees and applicants are migrant workers and new residents, and enable employers make a more accurate and meaningful assessment of fair participation by community background in employment in their organisation.

## **10 Powers of the Commission, enforcement and remedies**

### ***Commission Powers***

- 10.1 Any consideration regarding amendments to Commission powers should involve direct engagement with the Commission, and take account of lessons / evidence-base from our experience of implementation.

#### **Key Issue: Commission Powers**

There are a range of gaps in relation to the Commission's powers, including in relation to the EU Directive on Standards for Equality Bodies, and compared with equivalent bodies in other jurisdictions

- 10.2 Aligned to our general approach, any change should deliver upward harmonisation to reflect best international standards, taking account of powers currently available across the full range of equality legislation in Northern Ireland, as well as lessons from Great Britain, Ireland and wider jurisdictions. The relevant equality bodies in neighbouring jurisdictions are the Equality and Human Rights Commission (EHRC) in GB, and the Irish Human Rights and Equality Commission (IHREC).
- 10.3 It is essential that the Equality Commission is resourced so that it can effectively fulfil our duties and support individuals, organisations, and Government / Departments.

- 10.4 As previously noted, the Commission considers that the EU directives on standards for equality bodies, amend or replace the provisions of a number of the EU equality directives in Annex 1 of the Windsor Framework and engage the ‘keeping pace’ obligation under Article 2.
- 10.5 The standards in the directives include ensuring that equality bodies are provided with the human, technical and financial resources necessary to perform their mandates under the relevant EU equality directives in Windsor Framework Annex 1.<sup>237</sup> It is therefore important that NI equality law is amended to keep pace with any changes to these Annex 1 equality directives, including on standards relating to resources.

### Ensure the effectiveness of Section 75

- 10.6 Section 75 requires public authorities to have due regard for the need to promote equality of opportunity between nine equality groups<sup>238</sup>. The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive action to promote equality of opportunity and encourages public authorities to take action to address inequality among the groups listed above.
- 10.7 Public authorities must also have regard for the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. The Commission emphasises that the good relations duty embraces and extends beyond the religious / political dimension of ‘community relations’. Consideration of the needs and interests of all minority ethnic groups is also important in this context. Public authorities must recognise the inter-dependence of equality and good relations<sup>239</sup>.
- 10.8 While power to amend Section 75 of the Northern Ireland Act has not been devolved to the Northern Ireland Assembly, the Committee may be interested to know that the Commission continues to call for action to ensure the effective implementation of Section 75 of the Northern Ireland Act 1998.

---

<sup>237</sup> See Article 4 of both EU Directives on Standards for Equality Bodies: ([Directive \(EU\) 2024/1500](#) and [Directive \(EU\) 2024/1499](#))

<sup>238</sup> Persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without.

<sup>239</sup> For further information, see [www.equalityni.org/S75duties](http://www.equalityni.org/S75duties)

Such action can be taken forward locally by NI Departments and wider Public Authorities.

- 10.9 In 2018, the Commission identified<sup>240</sup> a range of issues with regard to public authorities' implementation of the Section 75 duties, including in relation to leadership; ownership; understanding; transparency and data development.
- 10.10 We made a range of recommendations<sup>241</sup> to public authorities to improve their practices, and committed to undertake a range of actions, including to engage with politicians, senior leaders in public authorities and decision makers to remind them of their roles and responsibilities, and to convey and communicate the importance of leadership.
- 10.11 The Commission has powers (under paragraph 10 and 11 of Schedule 9 of the Northern Ireland Act) to investigate complaints that public authorities have failed to comply with their equality schemes from people who are directly affected by such failure, and we can also initiate such investigations<sup>242</sup>.
- 10.12 We identified issues in relation to the Commission's powers and duties in Schedule 9 of the Northern Ireland Act 1998<sup>243</sup>. There are specific requirements on the Commission in relation to complaints. The range and nature of complaints to the Commission has consistently reflected particular issues on policies and practices that are of concern to the complainant, which are not always clearly associated with what Equality Scheme arrangements provide for.
- 10.13 Furthermore, investigations are adversarial, given the statutory requirement that they are considered in relation to a belief of non-compliance by a public authority with an equality scheme. They have mostly been driven by particular circumstances. They have provided some learning for public authority practices, but can be limited in the ripple effect of the findings, particularly when arising from a paragraph 10 complaint.

---

<sup>240</sup> ECNI (2018) [Section 75 Statutory Equality and Good Relations Duties: Acting on the evidence of public authority practices](#), paras 8.7-8.23.

<sup>241</sup> ECNI (2018) [Section 75 Statutory Equality and Good Relations Duties: Acting on the evidence of public authority practices](#), paras 9.10-9.12.

<sup>242</sup> For further information, see [www.equalityni.org/Investigations](http://www.equalityni.org/Investigations)

<sup>243</sup> ECNI (2018) [Section 75 Statutory Equality and Good Relations Duties: Acting on the evidence of public authority practices](#), paras 8.24-8.25.

## Increase powers to issue Codes of Practice in a wider range of areas

- 10.14 In particular, we recommend that our powers to issue Codes of Practice are extended to cover all areas, including goods, facilities and services, the exercise of public functions and education (at all levels), for race, sexual orientation and sex.
- 10.15 These changes will enhance our powers to issue additional Codes of Practice in a wider range of areas. At present the Commission has powers to issue Codes of Practice across all equality grounds in relation to employment, and for non-employment issues under FETO, and age and disability legislation. However, there are gaps in relation to non-employment areas under the race, sexual orientation and sex legislation.
- 10.16 As above, there is not currently legislation in Northern Ireland to provide protections against age discrimination in non-employment areas. If such legislation is introduced, we have called for the Commission to have powers to issue Codes of Practice<sup>244</sup>.
- 10.17 For example, under the race equality legislation, we currently only have the power to issue Codes of Practice in the fields of employment and housing. We therefore do not have the power to issue Race Codes of Practice in relation to the provision of goods, facilities and services, the exercise of public functions or education, either as regards schools or institutions of further and higher education.
- 10.18 Codes of Practice have an important status. Courts and tribunals must take into account any part of a Code of Practice that appears to them to be relevant to any question arising in those proceedings.
- 10.19 For example, the provisions of the *Fair Employment Code*<sup>245</sup> have been referred to extensively by the Fair Employment Tribunal in its decisions. It is of note that the Tribunal has referred to the Fair Employment Code as 'fundamental to the

---

<sup>244</sup> ECNI (2015) [Response To OFMDFM Consultation On Proposals To Extend Age Discrimination Legislation To Goods, Facilities And Services](#), para 23.3

<sup>245</sup> ECNI (2007) [Fair Employment Code of Practice](#)

provision of equality of opportunity’ and stated that ‘it cannot safely be ignored by any employer’.<sup>246</sup>

- 10.20 Further, we have issued a wide range of Codes of Practice on other equality grounds which have proved beneficial in helping employers, service providers, etc., to understand their obligations under the equality legislation and encouraging the adoption of good practice measures.
- 10.21 Our ability to issue Codes of Practice is therefore an essential tool in helping us to embed our work to promote equality of opportunity and ensure the elimination of discriminatory practices.
- 10.22 Our recommendation is in line with our powers under other equality grounds; for example, under the disability legislation, we have the power to issue Codes of Practices in a wide range of areas, including goods, facilities and services, the exercise of public functions and education.
- 10.23 Our recommendation also aligns with powers that have been granted to the EHRC in Great Britain. It, for example, has the power to issue Codes of Practice across all equality grounds, in relation to both employment and non-employment areas.

### Strengthen formal investigation powers

- 10.24 We recommend that our powers that exist under the fair employment legislation in relation to formal investigations are replicated across all equality grounds, for both employment and goods, facilities and services related investigations. Our current investigatory powers under FETO are confined to the employment field. Likewise, we do not have the power to conduct formal investigations (either general or ‘named person’) on the grounds of age (employment areas), religious belief/political opinion (non-employment areas), and sexual orientation (employment areas).
- 10.25 In particular, we recommend, in line with provisions under the fair employment legislation, that our power to conduct a formal ‘named person’ investigation, does not have to require a “belief” that an unlawful act may have occurred. These powers should

---

<sup>246</sup> O’Gara v Limavady Borough Council 31 July 1992 FET.

apply across employment; and goods, facilities and services issues.

- 10.26 However, unlike FETO, if, in the course of an investigation which was not initiated by a belief that an unlawful act may have occurred, the Commission does form such a belief, the Commission should be empowered to give notice to the appropriate person(s) of the holding of an investigation on this issue, and to make findings of unlawful discrimination.
- 10.27 These changes will enhance our ability to undertake formal investigations by removing unnecessary procedural barriers.
- 10.28 We require effective legal tools in order to support our work and to enable us to work strategically and to take enforcement action when required on equality grounds.
- 10.29 Our ability to conduct formal investigations into the practices of employers, service providers, etc., is an important tool in enabling us to tackle deep-rooted and systematic discrimination.
- 10.30 For example, under the race equality legislation, we have the power to conduct two main types of formal investigation. Firstly, there is the power to conduct general investigations into issues within our mandate. These do not result in findings of unlawful discrimination or the issuing of non-discrimination notices. We have, for example, undertaken a general formal investigation under the race equality legislation into the role of employment agencies in the recruitment and employment of migrant workers<sup>247</sup>.
- 10.31 We also have the power to conduct ‘named person’ investigations under the race equality legislation, where we reasonably suspect that named persons have committed acts of unlawful discrimination. In these investigations, we may make findings of unlawful discrimination.
- 10.32 We have encountered difficulties in using our investigation powers. Under the race, sex, sexual orientation and disability legislation, a formal investigation into a particular employer or provider must be based upon a “belief” that an act of

---

<sup>247</sup> ECNI (2014) [Role of the recruitment sector in the employment of migrant workers, A formal investigation](#).

discrimination has occurred. Sufficient evidence must therefore be gathered to provide the basis for a reasonable belief that discrimination has occurred before we can initiate an investigation.

- 10.33 Under the fair employment legislation, we have the power to conduct investigations in the employment field. In particular, we have the power to conduct such investigations “for the purpose of assisting it in considering what, if any, actions for promoting equality of opportunity ought to be taken” by a person/s under investigation<sup>248</sup>.
- 10.34 In contrast to our power to conduct ‘named person investigations’ under the race equality legislation, a formal investigation under the fair employment legislation into a named employer, does not need to be based upon a “belief” that an act of discrimination has occurred.
- 10.35 Prior to commencing a formal investigation under the fair employment legislation, we are not required to have evidence that an act of discrimination has been committed. The lower threshold under this legislation has enabled us to initiate an investigation in order to assist us in considering what, if any, action ought to be done to promote equality of opportunity.
- 10.36 The focus of the investigation is on the promotion of equality of opportunity, rather than looking for discriminatory practices or policies, with related powers to seek undertakings<sup>249</sup>. Formal investigations under the fair employment legislation are therefore less confrontational than investigations on the other equality grounds where there is a requirement to have a “belief” that an act of discrimination has occurred.
- 10.37 However, if the Commission holds a belief that unlawful discrimination has occurred, or forms such a belief in the course of a named person investigation, it should be able to make findings of unlawful discrimination. This could reflect the current system which allows that if, during the course of a general investigation, the Commission forms a belief that unlawful discrimination has occurred, it can initiate a named person investigation, notifying the person of such. This will

---

<sup>248</sup> Article 11 (1) of [FETO](#)

<sup>249</sup> Article 12 of FETO.

allow investigations under equality law to continue to tackle discrimination, as well as further equality of opportunity.

### Strengthen and harmonise the Commission's grant-making powers

- 10.38 The Commission's grant making powers in relation to race should be retained, and expanded to other grounds.
- 10.39 Equality legislation should not require that the provision of assistance requires the prior approval of TEO. It is sufficient to follow the normal financial control protocols applying between non-departmental public bodies and their sponsor department.
- 10.40 The current racial equality legislation<sup>250</sup> states the Commission 'may give financial or other assistance to any organisation appearing to the Commission to be concerned with the promotion of equality of opportunity, and good relations, between persons of different racial groups'.
- 10.41 Both EHRC<sup>251</sup> and IHREC<sup>252</sup> have the power to make grants to other organisations.
- 10.42 Further, at present under the RRO, TEO approval, with consent from the Department of Finance, is needed to give grants under the race legislation. However, EHRC is not required under the Equality Act 2006 to obtain prior departmental approval, and such approval should not be necessary for ECNI.
- 10.43 Any grants made by the Commission should consider other relevant funds, such as the Minority Ethnic Development Fund<sup>253</sup>, and avoid duplication.
- 10.44 Although we note that the power to give grants does not exist across all areas of other equality law, our general recommendation is for upwards harmonisation.
- 10.45 We note that the EU Directives<sup>254</sup> on standards for equality bodies require that 'equality bodies shall be able to manage their own financial and other resources and adopt their own decisions

---

<sup>250</sup> Article 43 of the [RRO 1997](#).

<sup>251</sup> Section 17 of the [Equality Act 2006](#)

<sup>252</sup> Section 10 (2)(l) of the [Irish Human Rights And Equality Commission Act 2014](#)

<sup>253</sup> TEO (2022) [Racial Equality](#)

<sup>254</sup> Article 3 of both EU Directives on Standards for Equality Bodies: ([Directive \(EU\) 2024/1500](#) and [Directive \(EU\) 2024/1499](#))

with regard to their internal structure, accountability, staffing and organisational matters’.

**Empower the Commission and other representative bodies to bring a claim on behalf of named individuals and in its own name**

- 10.46 The Commission recommends that it and other representative bodies, such as trade unions and other suitably qualified interest groups, should be empowered to bring a claim on behalf of named individuals.
- 10.47 The Commission should also have a general standing to bring cases of strategic importance without, in appropriate circumstances, having to name complainants.
- 10.48 The Equality Commission currently does not have the power to bring legal proceedings in its own name on behalf of individuals who have experienced unlawful discrimination or harassment.
- 10.49 However, the Commission, both jointly with and separately from NIHRC, has powers to bring a legal action in its own name (own motion power) in relation to breach (or potential future breach) of Article 2 Windsor Framework or intervene in other legal action that engages Article 2 Windsor Framework. The Commissions can also assist persons in legal proceedings in respect of a breach (or potential future breach) of Article 2 Windsor Framework<sup>255</sup>.
- 10.50 The Commission has a longstanding recommendation<sup>256</sup> that it should have standing to bring cases on behalf of named individuals and that this standing should also be granted to trade unions and other suitably qualified organisations. A crucial element in the debate upon effective enforcement concerns the extent to which the system of judicial process should move beyond one predicated upon an individual bringing his or her own case<sup>257</sup>. Although the Commission has assisted many highly significant cases, with ramifications well beyond the facts of the particular case, there are still many examples of discrimination and inequality which are never

---

<sup>255</sup> Sections 78C - 78D of the [Northern Ireland Act 1998](#)

<sup>256</sup> ECNI (2004) [Response to OFMDFM Consultation Paper, ‘A Single Equality Bill For Northern Ireland](#) paras 10.6-10.9.

<sup>257</sup> ECNI (2004) [Response to OFMDFM Consultation Paper, ‘A Single Equality Bill For Northern Ireland](#), para 10.7.

addressed because individuals, frequently in highly vulnerable positions, do not wish to, or cannot afford, to litigate.

- 10.51 In highly strategic cases, the issue at stake is whether the policies and practices of an employer or service provider exhibit evidence of institutionalised or systemic discrimination. In such cases, the Commission is of the view that standing should be available even in the absence of a named ‘victim’.
- 10.52 The European Parliament, during the passage of the Revised Equal Treatment Directive, proposed an amendment to allow for genuinely autonomous standing for organisations, as follows, “[associations, organisations and other legal entities] may, where national law permits, bring a collective action, in any judicial and/or administrative procedure, on their own initiative and aside from the particular circumstances of an individual case, in order to determine whether or not the principle of equal treatment ... is applied”. A similar provision to allow the Commission and other suitably qualified organisations to bring cases in its own name will help tackle some of the most entrenched aspects of discrimination and inequality<sup>258</sup>.
- 10.53 We have previously supported the call by Equinet for the inclusion of provisions to allow equality bodies to take cases in their own name<sup>259</sup>. In particular, Equinet has recommended as follows:
- “EU legislation should require that all equality bodies have robust litigation powers (including for strategic litigation) with legal standing before the courts (in individual and collective complaints and ex officio) and/or authoritative decision-making powers with legally binding decisions and the capacity to issue effective, proportionate and dissuasive sanctions.”<sup>260</sup>*
- 10.54 We note that Article 10 of the two Directives on standards for equality bodies states that equality bodies should have the right to act in court proceedings should include at least of:

---

<sup>258</sup> ECNI (2004) [Response to OFMDFM Consultation Paper, ‘A Single Equality Bill For Northern Ireland](#) paras 10.10-10.11.

<sup>259</sup> ECNI (2022) Equality Commission for Northern Ireland’s response to the European Commission’s public consultation on Binding standards for Equality Bodies, para 2.25.

<sup>260</sup> Equinet (2016) [Developing Standards for Equality Bodies: An Equinet Working Paper](#), p. 7.

- the right to initiate court proceedings on behalf of one or several victims;
- the right to participate in court proceedings in support of one or several victims; or
- the right to initiate court proceedings in its own name, in order to defend the public interest.

10.55 Provisions in Northern Ireland should allow us to initiate court proceeding in our own name, alongside our powers to provide support to individuals.

### ***Enforcement and remedies***

#### **Key Issue: Enforcement and Remedies**

There are several key gaps and inconsistencies in relation to enforcement and remedies, including within NI equality law.

#### Clarify the right to take cases relating to instructions to discriminate

10.56 Persons' ability to take cases if they have suffered detriment from someone instructing or pressurising them to discriminate against a third person should be clear in statute.

10.57 This approach has already been codified in the NI age employment regulations<sup>261</sup>, and other equality legislation should also be harmonised upwards to ensure clarity in protections and remedies.

10.58 For example, in relation to the racial equality legislation, proceedings in respect of a contravention of Article 30 or 31 of the RRO 1997, relating to instructions and pressure to commit unlawful acts can only be brought by the Commission<sup>262</sup>.

10.59 Nevertheless, as case law makes clear in relation to race, proceedings can also be brought by those who have been instructed to commit unlawful acts under direct discrimination provisions, such as where a person is dismissed for refusing to carry-out a discriminatory instruction issues by their

---

<sup>262</sup> Article 60 of the [RRO](#) 1997.

employer<sup>263</sup>, under the employment provisions of the legislation.

10.60 The Equality Act 2010<sup>264</sup> explicitly allows proceedings to be brought by a party who suffers detriment in relation to instructing, causing or inducing contraventions, as well as the EHRC, across the equality grounds. This party may be a person who is instructed, caused or induced to commit a contravening act, or the third-person who is discriminated against.

10.61 This reform may assist in clarifying compliance with relevant EU Directives. For example, the EU Race Equality Directive<sup>265</sup> states that ‘An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination’.

### Increase powers for tribunals

10.62 We recommend that equality legislation is strengthened by providing increased powers for tribunals to make recommendations that benefit the whole workforce and not simply the person bringing the discrimination complaint (‘the complainant’).

10.63 There should be effective, proportionate and dissuasive sanctions in the case of non-compliance with a tribunal recommendation. FETO may offer a potential model.

10.64 Our recommendation would widen the powers of tribunals to make recommendations that benefit the whole workforce.

10.65 For example, recommendations by tribunals, for the purpose of obviating or reducing the adverse effect on a person other than the complainant of any unlawful discrimination, could include the following:-

- that the respondent ensures that its practices and procedures comply with the relevant equality legislation and accompanying Code of Practice. If the facts of the case reveal the need for an employer to amend a particular policy or practice (for example, its

---

<sup>263</sup> Showboat Entertainment Centre Ltd v Owens [1984] IRLR 7

<sup>264</sup> Section 111(5) of the [Equality Act 2010](#).

<sup>265</sup> Article 2 (4) of the [Race Equality Directive \(Race\)](#): Directive 2000/43/EC of 29 June 2000.

recruitment policy or procedures) then this could be specifically referred to in the recommendation;

- that the respondent undertakes equality training in relation to the equality area in question (for example, racial or sex equality training), or more specifically on particular policies (for example, recruitment, selection and promotion procedures or terms and conditions of employment).

10.66 Our recommendation is in line with powers already available to the Fair Employment Tribunal under the fair employment legislation. For example, pursuant to its powers under the fair employment legislation, in the fair employment cases of *Grimes -v- Unipork Limited*<sup>266</sup> and *McGrath -v- Viper International Limited*,<sup>267</sup> the Fair Employment Tribunal made a recommendation that the employer display on a works notice board, a statement to the effect that the complainant (a former employee) had been unlawfully discriminated against on the grounds of religious belief.

10.67 We also recommend that the equality legislation is amended to ensure, in the case of non-compliance with a tribunal recommendation, that there are sanctions which are effective, proportionate and dissuasive, such as those available under FETO<sup>268</sup>.

10.68 Our recommended changes also reflect the original approach adopted in Great Britain under the Equality Act 2010; which contained provisions granting tribunals wider powers to make recommendations (although did not provide for enforcement, unlike FETO<sup>269</sup>). The UK Government repealed these provisions through the 2015 Deregulation Act<sup>270</sup>, suggesting they are an ‘unnecessary burden on business’<sup>271</sup>. However, the removal of these provisions was controversial and a House of Lords Select Committee recommended in 2016 that they be

---

<sup>266</sup> 22.05.1992 FET

<sup>267</sup> 30.10.1991 FET

<sup>268</sup> Article 39(8) of [FETO 1997](#).

<sup>269</sup> Article 39(8) of [FETO 1997](#).

<sup>270</sup> Section 2 of the [Deregulation Act 2015](#).

<sup>271</sup> GEO (2012) [Equality Act 2010: A Consultation](#), paras 3.1-3.4.

reinstated<sup>272</sup>, pointing to the ability of tribunals to have a longer-term impact on the extent of discrimination in society.

### Tribunals and equal pay audit.

- 10.69 In line with provisions in Great Britain<sup>273</sup>, we recommend tribunals are required to order a respondent who has been found by the tribunal to have committed an equal pay breach to carry out an equal audit.
- 10.70 This would mean that employers found by a tribunal to have committed an equal pay breach must undertake a systematic evaluation of their pay and the award systems to ensure that further breaches do not occur or that existing breaches do not continue<sup>274</sup>.
- 10.71 We recommend that a tribunal would not be required to order that an employer carries out an audit in exceptional circumstances; for example, where an employer has recently completed an audit or in circumstances where it is clear without an audit whether any action is required to avoid equal pay breaches occurring or continuing.

### Compensation in SENDIST

- 10.72 Consideration should be given to whether successful claims of unlawful disability discrimination in education should be eligible for compensation in the Special Educational Needs and Disability Tribunal (SENDIST).
- 10.73 Similarly, consideration should be given to whether cases of unlawful direct discrimination, harassment, and failure to provide reasonable adjustments should be eligible for compensation, as well as indirect discrimination and discrimination arising from disability if protections are widened as we recommend above.
- 10.74 Unlike disability discrimination in services, discrimination experienced on other grounds in schools, or discrimination

---

<sup>272</sup> Select Committee on the Equality Act 2010 and Disability (2016) [The Equality Act 2010: The Impact on Disabled People](#), HL Paper 117, paras 411-416. This relates to disability discrimination, but the arguments raised are also applicable to racial discrimination.

<sup>273</sup> Under the Equality Act 2010 (Equal Pay Audits) [Regulations](#) 2014

<sup>274</sup> The audit must identify any differences in pay (including non-contractual pay) between men and women doing equal work in the same employment, provide reasons for any differences and set out an action plan for eliminating those differences, where they cannot be explained or justified otherwise than by reference to gender.

experienced by adults with disabilities, young people experiencing discrimination or harassment in schools have no recourse to financial compensation through the SENDIST.

10.75 The SENDIST considers parents' appeals<sup>275</sup> against the decisions of the Education Authority about children's special educational needs, and deals with claims of disability discrimination in relation to children at school.

10.76 The IMNI Jurisdictional report<sup>276</sup> on implementation of the UNCRPD in Northern Ireland (2017) (p.8) stated:

*“In Northern Ireland, discrimination cases in the provision of school education which do not involve disability are dealt with in the County Court; which is empowered to award all remedies available in the High Court, including damages for any loss and compensation for injury to feelings. However, disability cases go to the Special Educational Needs Tribunal (SENDIST), which is not empowered to make compensation for discrimination or harassment. This means that there can be situations where one child could be harassed because of race and one because of disability and the first child can seek compensation<sup>277</sup>, whilst the second child cannot”<sup>278</sup>.*

10.77 Children and adults who experience unlawful disability discrimination outside of school can be awarded compensation through the Industrial Tribunal and County Court as appropriate.

---

<sup>275</sup> An appeal to SENDIST can be made: If a parent or the school have asked the Education Authority to assess formally a child's special educational needs and it has decided not to, or if it carries out the assessment but then decides not to make a statement on a child; If the Education Authority does make a statement, or amends an existing statement, a parent can appeal against the educational contents of the statement. A parent can also appeal if the Education Authority decides that their child should no longer have a statement, or decides not to amend a statement after carrying out a re-assessment of the child's needs. In certain circumstances a parent can also appeal if the Education Authority decides not to re-assess the child, or turns down your request to have the child placed in a different school. For further details, see: <https://www.justice-ni.gov.uk/articles/special-educational-needs-and-disability-tribunal-0>

<sup>276</sup> For further details, see: IMNI (2017) [United Nations Convention on the Rights of Persons with Disabilities Jurisdictional 'Parallel' Report on Implementation in Northern Ireland Working Paper](#) (August 2017)

<sup>277</sup> See Articles 18-20 and 54 of the [Race Relations \(Northern Ireland Order\) 1997](#)

<sup>278</sup> See Article 22 (4) of the [Special Educational Needs and Disability Order 2005](#)

- 10.78 The Workplace Relations Commission in the Republic of Ireland has awarded compensation in cases of disability discrimination in schools, for example a case in which a school was found to have discriminated against a young person with Down's Syndrome by excluding them from the classroom<sup>279</sup>.

## 11 Other areas of law reform.

- 11.1 We would also highlight that there is a range of other law reform which would benefit equality groups.

### ***A Bill of Rights for NI***

- 11.2 The Commission recommends that the NI Office implements the UK Government commitment to legislate for a Bill of Rights for NI, as set out in the Belfast (Good Friday) Agreement. The Commission's long-standing position is in support of the adoption of a strong and inclusive NI Bill of Rights, reflecting the particular circumstances of Northern Ireland, and including a principle of equality<sup>280</sup>.
- 11.3 We continue to recommend that the UK Government and NI Executive ensure that there are additional measures within a Bill of Rights to strengthen NI equality laws, address gaps in equality legislation and protect equality and human rights in a post-Brexit context.
- 11.4 A Bill of Rights for NI remains an unfulfilled commitment of the Belfast (Good Friday) Agreement. Following commitments made in the New Decade, New Approach agreement, the NI Assembly Ad Hoc Committee on a Bill of Rights was established. In 2021, the Commission provided a written submission<sup>281</sup> and joint oral evidence to the Committee, building upon previous advice. In 2022, the Committee concluded its work and published a report summarising the findings of the extensive stakeholder consultation activities it undertook between 2020-2021.<sup>282</sup>

---

<sup>279</sup> For further details, see: [ADJ-00021398 - Workplace Relations Commission](#)

<sup>280</sup> ECNI (2022) [Human Rights Framework: Equality Considerations](#), pp. 14-18.

<sup>281</sup> Equality Commission for Northern Ireland, '[Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#)' (2021).

<sup>282</sup> Northern Ireland Assembly, '[156/17-22 Report of the Ad Hoc Committee on a Bill of Rights](#)' (2022).

- 11.5 The Committee found that majority of stakeholders and witnesses supported the creation of a Bill of Rights for NI and in June 2021, in light of the evidence, the Committee agreed with this position in principle. However, in the absence of a panel of experts and a lack of political consensus in the final report, the Committee was unable to make key decisions about the content of a Bill of Rights.
- 11.6 In June 2023, the UN Convention on the Rights of the Child (UN CRC) Committee recommended that the UK Government “enact a Bill of Rights for NI”.<sup>283</sup> In March 2024, the UN Human Rights Committee recommended that the UK Government “Increase its efforts to expedite the process of the adoption of the Bill of Rights for Northern Ireland and ensure that it incorporates all of the rights enshrined in the Covenant.”<sup>284</sup>
- 11.7 To date, there has been no further progress on creating a Bill of Rights for NI since the Ad Hoc Committee on a Bill of Rights published its report.
- 11.8 Therefore we **propose** the Committee to recommend that the NI Office implements the UK Government commitment to legislate for a Bill of Rights for NI and that there are additional measures within a Bill of Rights to strengthen NI equality laws, address gaps in equality legislation and protect equality and human rights in a post-Brexit context.

### ***Hate crime***

- 11.9 The Commission has called for the urgent reform of hate crime legislation, which is currently based on an enhanced sentencing model. We have called for a statutory aggravation model, with expanded protections to cover gender, gender identity, intersex and age, and refer to sectarian hate crime<sup>285</sup>. We have called for legislative gaps to be addressed in relation to Public Order legislation, and for the consolidated of hate crime provisions into a single piece of legislation.

---

<sup>283</sup> UN CRC Committee, ‘[Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland](#)’ (June 2023), 8(D).

<sup>284</sup> UN Human Rights Committee, ‘[Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#)’ (May 2023).

<sup>285</sup> Section 2 of the Criminal Justice (No. 2) (Northern Ireland) Order 2004 already refers to racial, religious and sexual orientation groups, and disability.

- 11.10 We note that in England and Wales, there is a mixed approach of statutory aggravations and enhanced sentencing,<sup>286</sup>, whilst Scotland has recently adopted a statutory aggravation approach<sup>287</sup>. There is no provision for hate crime legislation in Irish legislation, although we note there is currently a Bill being considered by the Oireachtas<sup>288</sup>. GB<sup>289</sup> and Ireland<sup>290</sup> have provisions relating to stirring up hatred.
- 11.11 Therefore, we **propose** the Committee to recommend that DoJ reform hate crime legislation to expand and strengthen protections, aligned with the Commission’s recommendations.
- 11.12 For further information on the Commission’s recommendations relating to hate crime, see [www.equalityni.org/HateCrime](http://www.equalityni.org/HateCrime)

### ***EU Law (voluntary alignment)***

- 11.13 As set out above, the ECNI, along with the NIHRC, recognise that long term North-South equivalence of protection for equality and human rights is important.
- 11.14 The Commissions have previously urged the UK Government and NI Executive to ensure North-South equivalence of rights, by aligning with changes to EU equality and human rights law, even where not required to under the Windsor Framework, that enhance protections and reflect international human rights standards.
- 11.15 In 2023, independent research<sup>291</sup> published jointly by the ECNI, NIHRC and Irish Human Rights and Equality Commission and the three Commissions’ subsequent policy recommendations<sup>292</sup>, found that there are already a number of

---

<sup>286</sup> Law Commission (2021) [Hate Crime](#) (accessed 01/07/24).

<sup>287</sup> Section 1 of the Hate Crime and Public Order (Scotland) Act 2021

<sup>288</sup> Oireachtas (2022) [Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#) (accessed 01/07/24).

<sup>289</sup> [Public Order Act 1986](#).

<sup>290</sup> [Prohibition of Incitement to Hatred Act 1989](#)

<sup>291</sup> Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, ‘[European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland](#)’ (ECNI, NIHRC, IHREC, 2022).

<sup>292</sup> Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, ‘[Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland](#)’ (ECNI, NIHRC and IHREC, 2023)

developments in areas of EU law which have the potential to result in divergence of rights on the island of Ireland.

11.16 We have set out below examples of the EU law developments which will need to be implemented in law in Ireland, but which NI law will not be required to align with pursuant to the Windsor Framework. Though not considered part of equality law, these Directives have the potential to benefit equality groups, such as women, disabled people, and older people.

11.17 For example, if introduced into NI law, this EU law will:

- help protect women and girls from violence, including domestic violence;
- make products and services, including in transport and education, more accessible for disabled people and older people;
- help working parents to achieve a better work life balance through improved rights to parental leave;
- help increase women's representation on boards of listed companies.

11.18 We would therefore **propose** that the Committee recommends that the NI Executive and relevant NI Departments progress relevant legislation so as to ensure that NI law keeps pace with the EU Directives relating to violence against women and girls; the EU Accessibility Act; worklife balance; and gender balance on boards, where this EU law strengthens protections and aligns with international human rights standards and best practice.

11.19 The Commission stresses that EU law should be considered minimum requirements, and we would encourage government to adopt an approach when implementing EU law into NI law that goes beyond these minimum standards where this strengthens rights and aligns with international human rights standards. We would **propose** the Committee to make that clear in any recommendations it may make on this matter.

- 11.20 We would also **propose** that the Committee recommends that UK Government and the Executive Office centrally logs areas of regulatory divergence post Brexit relating to equality and human rights in NI and makes this information public in an accessible and transparent way. This should include in the context of divergence of rights on the island of Ireland and divergence of rights between NI and Great Britain.

### Violence against women and girls

- 11.21 The Commission recommends that, in addition to any changes required by the keeping pace obligation under the Windsor Framework, the Executive Office ensure NI law aligns, on a voluntary basis, with any enhancement to equality and human rights pursuant to the EU Directive on combatting violence against women and domestic violence (2024)<sup>293</sup>, where these enhancements align with international human rights standards and best practice.
- 11.22 The Commission is currently considering to what extent, if any, the Directive amends or replaces the EU Gender Equality (Employment) Directive<sup>294</sup> in Windsor Framework Annex 1 and, therefore, to what extent, if any, it may be subject to the 'keeping pace' requirements.
- 11.23 As recognised in the Directive, equality between women and men and non-discrimination are core values in EU law and violence against women and domestic violence endanger those very values and rights, undermining women and girls' rights to equality in all areas of life and hindering their equal societal and professional participation.<sup>295</sup>
- 11.24 The Directive must be transposed by Member States by June 2027. It includes a number of measures that must be put in place by Member States that are aimed at tackling sexual

---

<sup>293</sup> Directive [\(EU\) 2024/1385](#) of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence (europa.eu).

<sup>294</sup> Directive 2006/54/EC 'EU Parliament and Council Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)', 5 July 2006.

<sup>295</sup> Ibid, Recital 2.

harassment in the workplace<sup>296</sup>, including providing counselling services in certain situations.

### EU Accessibility Act

- 11.25 The Commission continues to recommend that the NI Executive, and relevant NI departments, including the Department for Communities, Department for the Economy and the Executive Office ensure that NI law aligns, on a voluntary basis, with the **EU Accessibility Act** where this enhances protections for people with disabilities and older people and aligns with international human rights standards and best practice.
- 11.26 The 2019 European Accessibility Act (EAA) is an EU Directive that aims to “improve the functioning of the internal market for accessible products and services, by removing barriers created by divergent rules in Member States”.<sup>297</sup> It will benefit people with disabilities and older people including through more accessible products and services, at more competitive prices and fewer barriers to accessing transport and education. The Act has been adopted in Ireland<sup>298</sup>, creating a potential divergence of rights between Ireland and NI for people with disabilities and older people.

### Work-life balance

- 11.27 The Commission continues to recommend that the NI Executive and relevant NI departments, including the Department for the Economy, voluntarily ensure that NI law aligns with those provisions of the **EU Work-Life Balance Directive** that enhance equality and human rights protections

---

<sup>296</sup> **Preventive measures:** ‘Member States shall take adequate and appropriate measures to address sexual harassment at work, where it constitutes a criminal offence under national law, in relevant national policies’, Article 34(9).

**Specialist support for victims of sexual harassment at work:** ‘In cases of sexual harassment at work that constitute a criminal offence under national law, Member States shall ensure that counselling services are available for victims and employers. Those services shall include information on ways to adequately address such cases of sexual harassment, including on available remedies to remove the offender from the workplace’, Article 28.

**Training and information for professionals:** ‘Persons with supervisory functions in the workplace, in both the public and private sectors, shall receive training on how to recognise, prevent and address sexual harassment at work, where it constitutes a criminal offence under national law. Those persons and employers shall receive information about the effects of violence against women and domestic violence on work and the risk of third-party violence’, Article 36(6).

<sup>297</sup> European accessibility act - Employment, Social Affairs & Inclusion - European Commission ([european.eu](https://european-council.europa.eu/media/en/press-summaries/doc.asp?id=13182))

<sup>298</sup> [European Union \(Accessibility Requirements of Products and Services\) Regulations 2023 \(SI 636/2023\)](https://eur-lex.europa.eu/eli/reg/2019/884/oj).

and align with international human rights standards and best practice.

- 11.28 The Work-Life Balance Directive (2019) is aimed at parents and carers<sup>299</sup> and seeks to improve access to family leave and flexible work arrangements, encourage a more equal sharing of parental leave between men and women, and address women's underrepresentation in the labour market.
- 11.29 The Work-Life Balance Directive repeals and replaces the EU Parental Leave Directive,<sup>300</sup> which the Commissions<sup>301</sup> and the UK Government<sup>302</sup> have identified as falling within the scope of Windsor Framework Article 2.
- 11.30 The failure by the NI Assembly to implement those provisions of the Work-Life Balance Directive<sup>303</sup> which do not already exist in domestic legislation would result in NI continuing to mirror the more limited obligations of the Parental Leave Directive,<sup>304</sup> even though it has been replaced by the Work-Life Balance Directive.
- 11.31 In April 2023, Ireland adopted the Work Life Balance and Miscellaneous Provisions Act 2023 to give effect to the Work Life Balance Directive. The Irish Act seeks to enhance protection measures to support employees to achieve a better balance between their family lives and work lives, such as providing leave for medical care,<sup>305</sup> leave for domestic

---

<sup>299</sup> Directive 2019/1158/EU 'EU Parliament and Council Directive on work-life balance for parents and carers', 20 June 2019.

<sup>300</sup> Directive 2010/18/EU, 'Council Directive implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC', 8 March 2010.

<sup>301</sup> NI Human Rights Commission and Equality Commission for NI, 'Working Paper: The Scope of Article 2(1) of the Ireland/ Northern Ireland Protocol' (NIHRC and ECNI, 2022).

<sup>302</sup> NI Office, 'UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland' (NIO, 2020).

<sup>303</sup> Directive 2019/1158/EU 'EU Parliament and Council Directive on work-life balance for parents and carers', 20 June 2019.

<sup>304</sup> Directive 2010/18/EU, 'Council Directive implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC', 8 March 2010.

<sup>305</sup> Section 6, Work Life Balance and Miscellaneous Provisions Act 2023.

violence;<sup>306</sup> the right to request flexible working for caring purposes;<sup>307</sup> and a right to request remote working.<sup>308</sup>

- 11.32 It is the view of the Commission that implementing provisions of the Work-Life Balance Directive, such as those on non-transferable parental leave, would avoid a potential divergence of rights on the island of Ireland<sup>309</sup> and could positively contribute to addressing some of the key barriers to the full and equal participation of women in employment by encouraging an equal sharing of parental leave.<sup>310</sup>

### Women on boards

- 11.33 The Commission recommends that the NI Executive ensure that NI law voluntarily aligns with the **EU Gender Balance on Boards Directive (2022)** where this strengthens protections and aligns with international human rights standards and best practice.
- 11.34 This Directive is aimed at increasing the representation of women on boards. It requires EU Member States to ensure that listed companies have at least 40% of non-executive director roles or 33% of all director positions filled by the underrepresented sex by June 2026.<sup>311</sup> Member States must transpose the Directive by December 2024. If such provisions are not reflected in NI law this will lead to a divergence of rights on the island of Ireland. The Commission has previously noted the under-representation of women on boards in Northern Ireland and has highlighted the business benefits of gender diversity on boards.<sup>312</sup>

---

<sup>306</sup> Section 7, Work Life Balance and Miscellaneous Provisions Act 2023. This provision came into force in November 2023. See Government of Ireland, 'Press release New right to domestic violence leave comes into force', 27 November 2023.

<sup>307</sup> Section 8, Work Life Balance and Miscellaneous Provisions Act 2023.

<sup>308</sup> Section 20, Work Life Balance and Miscellaneous Provisions Act 2023.

<sup>309</sup> We note that parents in NI are currently entitled to 18 weeks' non-transferable unpaid leave for each child and adopted child, up to their 18th birthday. See: <https://www.gov.uk/parental-leave/entitlement>

<sup>310</sup> Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023), at 40-42.

<sup>311</sup> Directive 2022/2381/EU, 'EU Parliament and Council Directive on improving the gender balance among directors of listed companies and related measures', 23 November 2022.

<sup>312</sup> Equality Commission for NI, '[Gender Equality: Policy Priorities and Recommendations](#)' (ECNI, 2016), at 33-35.

## Monitor ongoing EU developments

11.35 In addition to the EU law developments mentioned above, there are a range of other EU developments which are aimed at strengthening equality and human rights protections, including EU proposals for new Directives. A number of these developments are also relevant in the context of cross-border co-operation, for example, on tackling human trafficking and child sexual abuse, strengthening the rights of victims and promoting workers' rights.

11.36 EU law developments include the following:

- The EU has recently published a **Directive for combatting human trafficking**<sup>313</sup> and proposals for a **Directive to tackle child sexual abuse**,<sup>314</sup> both of which are aimed at protecting vulnerable individuals including children at risk of abuse, and also have cross-border policing implications.
- The EU has proposed a set of targeted measures to improve victims' ability to rely on their existing rights under the **EU Victims' Rights Directive (2012)**.<sup>315</sup> This proposed update to this Directive includes the right to information, the right to support and protection based on victims' individual needs such as easily accessible, user-friendly information and communication technologies, procedural rights, and the right to receive a decision on compensation from the offender at the end of criminal proceedings. Importantly, Member States will have to ensure the availability of child-friendly and age-appropriate support and protection services.<sup>316</sup> As of

---

<sup>313</sup> Directive [\(EU\) 2024/1712](#) of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

<sup>314</sup><sup>314</sup> [Proposal for a Directive](#) of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast) (February 2024).

<sup>315</sup> Note that the UK Government has made clear in its [Explainer Document on Protocol Article 21](#) that, the Victims' Rights Directive falls within the scope of the Windsor Framework Article 2 non-diminution requirement. See:

[Explainer UK Government commitment to no diminution of rights safeguards and equality of opportunity in Northern Ireland.pdf \(publishing.service.gov.uk\)](#)

<sup>316</sup> [Proposal for a Directive](#) of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

June 2024, the European Council and the European Parliament are in the process of agreeing a final legislative text for this update to the Victims' Rights Directive.<sup>317</sup>

- The EU has introduced a **Corporate Sustainability Reporting Directive**, which Member States must implement by 6 July 2024.<sup>318</sup> The Directive has equality implications in that large companies will have to report on matters including working conditions, equal treatment and other work-related rights (both for their own workers and for workers in the value chain), as well as rights of affected communities, consumers and end-users.<sup>319</sup> The Irish Government has transposed the Directive via regulations (July 2024).<sup>320</sup> This Directive will therefore have implications for companies based in Ireland, as well as cross-border and all-island-companies, that fall within its scope.
- The EU has introduced a **Directive on Corporate Sustainability Due Diligence**, with a transposition deadline of July 2026.<sup>321</sup> The Directive aims to ensure large companies identify and address adverse human rights and environmental impacts of their actions inside and outside Europe. It has the potential to impact equality groups because it covers labour rights and better access to justice for victims as well as environmental degradation that impairs human rights. This Directive will also therefore have implications for companies based in Ireland, as well as cross-border and all-island-companies, that fall within its scope.
- The new **EU Adequate Minimum Wages Directive** must be transposed by Member States by November

---

<sup>317</sup> For more see: Council of the EU: [Victims' rights: Council finalises position on strengthened EU law - Consilium \(europa.eu\)](#)

<sup>318</sup> [Directive \(EU\) 2022/2464](#) of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance) 2022

<sup>319</sup> [Commission Delegated Regulation \(EU\) 2023/2772](#) of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards.

<sup>320</sup> Department of Enterprise, Trade and Employment, [Corporate Sustainability Reporting - DETE \(enterprise.gov.ie\)](#)

<sup>321</sup> [Directive \(EU\) 2024/1760](#) of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

2024.<sup>322</sup> It has the potential to impact equality groups given that it covers the promotion of collective bargaining, guidance on setting minimum wages to promote a decent standard of living, reduce in-work poverty, promote social cohesion and reduce the gender pay gap. It provides for improved enforcement and monitoring of the minimum wage protection established in each country.

11.37 The Commission will continue to monitor these emerging developments in EU law and consider their implications in terms of the rights of equality groups here, if transposed into NI law. It has commissioned independent research to consider these EU developments and their implications in terms of divergence of rights on the island of Ireland and will be publishing that research in the coming months. The Commission will then set out its recommendations in these areas in light of the research findings.

11.38 We would therefore **propose** that the Committee recommends that the Executive Office and other NI Departments monitor developments in EU law relating to equality and human rights, and to consider their implications, should NI law voluntarily align with this EU law, in terms of their impact of the rights of equality groups, and on a divergence of rights on the island of Ireland, including cross border implications.

## 12 Conclusion

12.1 We welcome the Committee for the Executive Office's Inquiry on Equality Law.

12.2 In our main submission and this annex, we have highlighted that there is both a pressing and longer-term need for reform. In the immediate term we wish to see the delivery of reforms recently commenced, or with imminent deadlines for implementation. This includes:

- Reform of race equality law

---

<sup>322</sup> [Directive \(EU\) 2022/2041](#) of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union

- Compliance with June 2026 deadlines for transposition into NI law of EU Directives on Equality Body Standards, and on Pay Transparency<sup>323</sup>, and
  - Delivery of comprehensive hate crime law
- 12.3 Beginning now, there is also a fundamental need to modernise equality law more generally. In this context the Commission recommends prompt action to:
- clarify, simplify, harmonise and strengthen legal protections against discrimination
  - reflect best international practice and meet the needs of Northern Ireland
  - give consideration to the benefits of single equality approach
  - ensure compliance with Article 2 of the Windsor Framework
- 12.4 We have highlighted our specific recommendations on reform of equality law, including both cross-cutting recommendations, and recommendations relevant to specific grounds.
- 12.5 We have also drawn the Committee’s attention to wider areas of law reform which have the potential to benefit particular equality groups. This includes as regards the implementation of a NI Bill of Rights, strengthened hate crime legislation, and voluntary alignment with EU Directives relating to violence against women and girls; the EU Accessibility Act; worklife balance; and gender balance on boards, where this strengthens rights and aligns with international human rights standards and best practice.
- 12.6 We look forward to further engagement on the reform of Northern Ireland’s equality law.
- 12.7 We remain available for further engagement with the Committee to inform their Inquiry and resulting recommendations.

## **Equality Commission for Northern Ireland September 2024**

---

<sup>323</sup> Under Article 2 of the Windsor Framework there is a requirement to keep pace with relevant EU Directives.

## **13 Annex B: Role and Remit of the Equality Commission for Northern Ireland**

- 13.1 The Equality Commission for Northern Ireland ('the Equality Commission') is an independent public body established under the Northern Ireland Act 1998.
- 13.2 The Equality Commission is responsible for implementing the legislation on age, fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation and disability. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998, and the disability duties under the Disability Discrimination Act 1995.
- 13.3 The Equality Commission has been designated to act as an 'independent mechanism' jointly with the Northern Ireland Human Rights Commission, to promote awareness of, and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities with regard to Government's obligations in relation to Northern Ireland
- 13.4 Further, the EU (Withdrawal Agreement) Act 2020 empowers the Commission, along with the Northern Ireland Human Rights Commission, to monitor, advise and report on, and enforce the UK Government's adherence to its commitment as set out under Article 2 of Windsor Framework (formerly the Ireland/Northern Ireland Protocol). This commitment is to ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from the UK's withdrawal from the Union, including in the area of protection against discrimination.
- 13.5 In general terms, our statutory remit provides that we are to:
- promote equality of opportunity and affirmative action
  - work towards the elimination of unlawful discrimination and harassment
  - keep relevant legislation under review
  - promote good relations between persons of different racial groups and good disability practice

- oversee the effectiveness of statutory equality duties on public authorities.

13.6 For further information see [Promoting Equality, Challenging Discrimination: A short guide to the role and services of the Equality Commission](#)