

# Gaps in Equality Legislation Inquiry

## Response from the Human Rights Consortium

September 2024



# Table of contents

Human Rights Consortium .....	3
Acknowledgements .....	4
1. Introduction .....	5
2. Guiding principles.....	6
2.1 Be Ambitious.....	6
2.2 Non-regression .....	7
2.3 Leadership to Promote Equality and Combat Discrimination .....	8
2.4 Adopt a Human Rights-based Approach.....	9
3. Recommendations .....	10
3.1 Improve Human Rights Protection .....	10
3.2 Adopt Single Equality Legislation.....	12
3.3 Positive Action .....	14
3.4 Age discrimination in goods, facilities and services .....	15
3.5 Socio-economic disadvantage .....	16
3.6 Pay Transparency and Gap Reporting.....	18
3.7 Combined / Multiple / Intersectional Discrimination .....	19
4. Conclusion.....	20

# Human Rights Consortium

The Consortium is a broad alliance of civil society organisations from across all communities, sectors and areas of Northern Ireland who work together to help develop a human rights based society.

The Consortium provides a coherent, unified, non-party political coalition for civic society groups to develop the recognition, respect, protection and implementation of human rights standards in Northern Ireland.

We do this is by providing a platform for civil society groups to work together to achieve this aim through collaboration across different sectors and issues.

We also work to advance awareness, understanding and support for human rights generally in Northern Ireland.

A core element of this work to date has been our ongoing campaign for a strong Bill of Rights for Northern Ireland.

Supplemented in recent years with an emerging focus on human rights frameworks, positively influencing perspectives on human rights and supporting civil society to become engaged in human rights advocacy.

The Consortium is made up of 160 member groups who are organisations in their own right. Each member is non-party political, non - governmental and supportive of the Consortium principles. Our membership organisations are drawn from a range of sectors and geographic areas and include community groups, trade unions, NGO's and charities.<sup>1</sup>

---

<sup>1</sup> For full details see the Human Rights Consortium website [About Us](#).

# Acknowledgements

This response was informed by a workshop hosted by the Human Rights Consortium and Ulster University's Transitional Justice Institute (TJI) at Ulster University on 6 August 2024. The event was supported by the AHRC Impact Accelerator Account at Ulster.

Representatives from Consortium members and academia participated in the workshop and this response draws on their collective input. We are grateful for their experience and knowledge.

The workshop benefitted from presentations by Dr Sarah Craig (Ulster University), Elaine Crory (Women's Resource and Development Agency), Prof Brice Dickson (Queen's University Belfast), Prof Rory O'Connell (Ulster University) and Nuala Toman (Disability Action), and we are grateful for their insights. At the workshop we discussed the questions in the Committee consultation under three broad headings:

1. What are the differences in equality protections between Northern Ireland and (i) other parts of the UK and (ii) the EU including Ireland?
2. What are the effects that these differences have on you or the people you represent?
3. What legislation needs to change to make the equality protections in Northern Ireland the same as in other jurisdictions?

The Consortium thanks Prof Rory O'Connell for assistance in drafting this response. Prof O'Connell has drawn on some research for a research project with Dr Sarah Craig and Dr Claire Lougarre commissioned by the Equality Commission for Northern Ireland to be published later in 2024; this Consortium response should not be taken to represent the views of the ECNI.

# 1. Introduction

This is a response to the Committee for the Executive Office inquiry on Gaps in Equality Legislation by the Human Rights Consortium. We commend the Committee for identifying this issue in its work programme and look forward to contributing to the process.

The substance of our response is structured around guiding principles and then key recommendations.

We have four guiding principles:

- Be Ambitious
- Non-regression
- Leadership to Promote Equality and Combat Discrimination
- Adopt a Human Rights-based Approach

When discussing each recommendations we examine the background, and offer our views as to recommendations. We make recommendations in relation to:

- Improving human rights protection
- Single Equality Legislation
- Positive Action
- Age Discrimination in Goods, Facilities and Services
- Socio-economic disadvantage
- Pay Transparency and Gap Reporting
- Combined/Multiple/Intersectional Discrimination

These recommendations are by no means exhaustive; given the state of Northern Ireland equality legislation there is much more that could be said. As this process moves forward we will want to consider other proposals and suggestions from our members, as well as reflect on developments elsewhere. We see these proposals as broadly complementary and coherent with many of the other proposals from civil society and the public sector, including the Equality Coalition and Equality Commission, and we look forward to further engagement.

## 2. Guiding principles

In our response we are guided by the following principles which we believe should inform the approach of the Committee, Assembly and Executive.

### 2.1 Be Ambitious

There was a time when Northern Ireland was arguably at the forefront of equality law. That time is long past. Developments in Great Britain, Ireland and the European Union (and elsewhere) have the effect that in many respects equality law in Northern Ireland is now outdated and lagging behind. We recognise that it may not be feasible to prioritise all reform proposals in the short term, but we think it essential that whatever is prioritised should look to best practice comparatively and internationally. Where comparisons with Great Britain, Ireland or the European Union identify best practice that can improve human rights here we urge the responsible bodies to learn from such best practice and adapt it to our particular circumstances. Such an approach is in line with the expectations in the Belfast (Good Friday) Agreement<sup>2</sup> and in the UK Government's approach to the Windsor Framework.<sup>3</sup>

Equality law is an ever-evolving and sometimes rapidly-evolving area of the law. In particular there is a major review of the Irish equality legislation currently in progress. The most recent Programme for Government in Ireland committed to reviewing the equality legislation. As part of that review there has been a public consultation and the results of that public consultation have been published. The Irish Human Rights and Equality Commission submitted two responses to the consultation and also commissioned independent experts to advise it on its response. The Irish Government has not yet announced its decision on the legislation, much less published any draft legislation.

---

<sup>2</sup> The [Belfast \(Good Friday\) Agreement](#) adopted an ambitious human right and equality programme in its day, and specifically refers in the context of a Bill of Rights to 'drawing as appropriate on international instruments and experience'.

<sup>3</sup> UK Government, [Explainer: UK Government Commitment to No Diminution of Rights, Safeguards and Equality of Opportunity in Northern Ireland](#) (2020) para 7.

The European Union has adopted significant recent legislation in areas like gender balance on boards,<sup>4</sup> pay transparency,<sup>5</sup> work-life balance,<sup>6</sup> domestic violence,<sup>7</sup> accessibility<sup>8</sup> and standards for equality bodies.<sup>9</sup> In being ambitious we look to these recent changes and discussions and changes.

We stress the need to be ambitious and to promote best practice. Some parts of the Irish equality legislation (for instance) differs from the standards adopted in Northern Ireland and appears to fall short of what is required by good practice and arguably European Union law. Several of these deficiencies relate to religion and to proceedings for licensed premises. The current consultation on Irish equality law reform (see below) has highlighted these deficient areas and they are areas where Ireland should improve its legislation to more clearly meet the standards in Northern Ireland and European Union law.

## 2.2 Non-regression

There should be no regression in equality law protections. Any amendments to equality law should build on and improve the existing framework.

Non-regression is built into existing legal protections; the Assembly for instance cannot legislate incompatibly with Convention rights and these include significant equality safeguards.

Importantly, article 2 of the Windsor Framework contains guarantees around non-regression.<sup>10</sup> The guarantees include a dynamic alignment (or keeping pace) requirement and a non-diminution requirement. The UK is obliged to ensure that

---

<sup>4</sup> [Directive \(EU\) 2022/2381](#) of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (Gender Balance on Boards Directive).

<sup>5</sup> [Directive \(EU\) 2023/970](#) of the European Parliament and of the Council of 10 May 2023 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 (Text with EEA relevance) (Pay Transparency Directive).

<sup>6</sup> [Directive 2019/1158/EU](#) of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (Work Life Balance Directive).

<sup>7</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 (Violence against Women and Domestic Violence Directive).

<sup>8</sup> [Directive \(EU\) 2019/882](#) of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (Text with EEA relevance) (European Accessibility Act).

<sup>9</sup> [Directive \(EU\) 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/EC and 2010/41/EU; [Directive \(EU\) 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 the field 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 access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC.

<sup>10</sup> See article 2 of the Windsor Framework (formerly called the [Protocol on Ireland/Northern Ireland](#)).

Northern Ireland law complies with standards in six equality directives listed in Annex 1 to the Windsor Framework and to update Northern Ireland law where the European Union amends or replaces those directives. In addition, there must not be diminution in other areas where European Union law provided an underpinning for rights in the Rights, Safeguards and Equality of Opportunity section of the Belfast (Good Friday) Agreement.<sup>11</sup> The Assembly cannot legislate incompatibly with article 2(1)<sup>12</sup> and an Act of Parliament must be disapplied if inconsistent with article 2.<sup>13</sup>

We stress that non-regression should be respected beyond those legal requirements. There are some areas where Northern Ireland law provides stronger protections for equality than EU law does currently. This includes (for instance) the monitoring and affirmative action regime in the fair employment legislation<sup>14</sup> and the prohibition on sexual orientation discrimination in goods, facilities and services.<sup>15</sup> There should be no regression in these areas or other areas where Northern Ireland law is more advanced. The Committee might want to consider whether the monitoring and affirmative action regime could be extended to other grounds.

## 2.3 Leadership to Promote Equality and Combat Discrimination

Equality and non-discrimination are closely related; we highlight that the promotion of equality is broader than non-discrimination.<sup>16</sup> Combatting discrimination is essential to achieving equality but equality requires more than just not discriminating.

The Committee has not specified what is covered by equality legislation in the inquiry, though we assume the focus is on the anti-discrimination laws covering discrimination in employment and in goods, facilities and services. Equality protections in Northern Ireland, the UK, ROI, EU are wider than those anti-

---

<sup>11</sup> UK Government, [Explainer: UK Government Commitment to No Diminution of Rights, Safeguards and Equality of Opportunity in Northern Ireland](#) (2020); 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](#) (2022); Equality Commission for Northern Ireland, Irish Human Rights and Equality Commission and Northern Ireland Human Rights 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, IHREC and NIHRC, 2023). See also forthcoming research paper by Sarah Craig, Claire Lougarre and Rory O'Connell to be published by ECNI in 2024.

<sup>12</sup> The Assembly cannot legislate incompatibly with article 2(1) of the Windsor Framework: Northern Ireland Act 1998, [section 6\(2\)\(ca\)](#).

<sup>13</sup> The Withdrawal Agreement (of which the Windsor Framework is a part) has a status in UK law mirroring EU law's status prior to the UK's exit from the European Union: European Union (Withdrawal) Act 2018, [section 7A](#).

<sup>14</sup> Fair Employment and Treatment Order 1998, [Part VII Duties of Employers in Respect of their Workforces](#).

<sup>15</sup> [Equality Act \(Sexual Orientation\) Regulations \(Northern Ireland\) 2006](#): Statutory Rule 2006 No. 439 2006.

<sup>16</sup> Anne Smith and Eithne McLaughlin, 'Delivering Equality: Equality Mainstreaming and Constitutionalisation of Socio-economic Rights' (2010) 61 Northern Ireland Legal Quarterly 93.



discrimination laws. In Northern Ireland they include provisions such as article 14 of the European Convention on Human Rights (Human Rights Act),<sup>17</sup> section 75 of the Northern Ireland Act, section 76 of the Northern Ireland Act, provisions on hate crime; provisions on hate speech, domestic violence, pay gap reporting etc.

We stress that the achievement of equality for all requires wider strategies and actions across the full spectrum of civil, cultural, economic, political and social life. Equality legislation can play a role in protecting people from discrimination and promoting equality but such legislation must be accompanied by wider strategies that look at caring responsibilities, cultural respect, education, economic development, adequate and accessible health provision, adequate and accessible housing, impartial and effective policing and political representation.

Such strategies and actions also presuppose useful data across the different equality grounds that enable us to identify problems and monitor progress.

We stress the need for leadership to promote equality: our political leaders need to be active in areas like the Racial Equality Strategy, Refugee Integration Strategy, promoting the participation of minorities in public life.

Section 75 of the Northern Ireland Act should provide a structure for promoting equality of opportunity. In practice there have been repeated concerns that it is not delivering as effectively as it should in this regard.<sup>18</sup>

## 2.4 Adopt a Human Rights-based Approach

We adopt a human rights-based approach in our work. One comment summary of such an approach stresses the PANEL principles of Participation, Accountability, Non-discrimination and equality, Empowerment, Legality.<sup>19</sup>

While all these principles are relevant to the Committee and Assembly's work, we especially encourage the need to consider the principle of participation. We urge the Committee to ensure that where it has to consider issues of reform that it listens to the experiences of people directly affected by discrimination and inequality, to ensure that any reforms provide real and effective redress.

---

<sup>17</sup> On the UK case law on Article 14 see Rory O'Connell, 'A Dialogue on Discrimination and Equality: The UK Supreme Court and Article 14 ECHR' in Brice Dickson and Conor McCormick (ed.) *The Judicial Mind: A Festschrift for Lord Kerr of Tonaghmore* (Hart Publishing 2022).

<sup>18</sup> See the Equality Coalition, *Equality Duty Enforcement Project (EDEP) – A narrative report 2018 to 2021* (Equality Coalition, 2022) and Equality Coalition, *Written Evidence to the Committee for the Executive Office, Inquiry into Gaps in Equality Legislation from the Equality Coalition Co-Conveners* (Equality Coalition, Sept 2024).

<sup>19</sup> See for instance the Scottish Human Rights Commission webpage on a [Human Rights Based Approach](#).

## 3. Recommendations

### 3.1 Improve Human Rights Protection

**Background:** In the absence of a Bill of Rights for Northern Ireland or other reforms, Northern Ireland has fallen behind the systems in Scotland, Wales and Ireland for the protection of human rights.

It is possible for the devolved regions to adopt measures to protect internationally recognised human rights.<sup>20</sup> Wales and Scotland have passed legislation to give effect to the Convention on the Rights of the Child in domestic law:

- The Rights of Children and Young Persons (Wales) Measure 2011<sup>21</sup>
- The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.<sup>22</sup>

The models of incorporation are somewhat different though.

The Scottish Government has also proposed legislation to create a Disability Rights Commissioner.<sup>23</sup>

The Scottish Government is also proposing to incorporate other human rights treaties,<sup>24</sup> as is the Welsh Government.<sup>25</sup>

Ireland has relatively recently adopted a public sector human rights and equality duty. The Irish Human Rights and Equality Commission Act 2014 imposes a duty on public bodies to 'have regard to the need' to eliminate discrimination, promote equality of opportunity and 'protect the human rights of its members, staff and the persons to whom it provides services'.<sup>26</sup>

The definition of 'human rights' in the Act is very broad. It includes all rights, liberties and freedoms conferred or guaranteed by the 1937 Constitution; the rights, liberties and freedoms in any agreement, treaty or convention the state is party to; any rights, liberties or freedoms that 'may reasonably be inferred as being – (i) inherent in persons as human beings, and (ii) necessary to enable each person to live with dignity and participate in the economic social or cultural life in the State'.<sup>27</sup>

---

<sup>20</sup> Kasey McCall-Smith, 'The Devil is in the Details: Entrenching Human Rights Protections in the UK's Devolved Nations' (2023) 74 (1) Northern Ireland Legal Quarterly 95-122; Katie Boyle and Nicole Busby, 'Subnational Incorporation of Economic, Social and Cultural Rights – Can Devolution Become a Vehicle for Progressive Human Rights Reform?' (2023) 74 (1) Northern Ireland Legal Quarterly 63-94.

<sup>21</sup> [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

<sup>22</sup> [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#).

<sup>23</sup> [Disability Commissioner \(Scotland\) Bill 2024](#).

<sup>24</sup> Scottish Government, [A Human Rights Bill for Scotland: Consultation](#) (2023).

<sup>25</sup> Welsh Government, [Welsh Government response to the 'Strengthening and Advancing Equality and Human Rights in Wales' research report](#). (2022).

<sup>26</sup> Irish Human Rights and Equality Commission Act 2014, [section 42](#).

<sup>27</sup> Irish Human Rights and Equality Commission Act 2014, [section 2](#).

The role of the IHREC in this duty is somewhat different from the ECNI's role in relation to section 75; IHREC can publish guidance (as can ECNI) but has much less of a role in enforcement.<sup>28</sup> There does not appear to be a complaints procedure for this duty and the Act says that section 42 does not of itself confer any cause of action.<sup>29</sup>

This is still a novel duty and 'implementation ... appears to be limited and uneven across the public sector, and its potential remains to be realised'.<sup>30</sup>

**Our view:** The promotion and protection of equality complements, strengthens and is supported by the promotion and protection of human rights. We are committed to the delivery of a Bill of Rights for Northern Ireland which could enhance the protection of human rights standards across a range of grounds and in turn have a significant impact on tackling existing inequalities. We were disappointed therefore that the scope of the Committee's inquiry did not extend further to explore the clear gaps in human rights protections that exist in Northern Ireland.

The existing advice from the Northern Ireland Human Rights Commission on the structure of a Bill of Rights clearly identified how enhanced equality protections could be included in such legislation.<sup>31</sup> The advice provided for a free standing equality provision which explicitly recognised that 'everyone is equal before and under the law and has the right to equal protection and equal benefit of the law' and provided an enhanced non-exhaustive set of grounds under which unfair discrimination by public authorities could be made illegal. The advice also proposed proactive duties on public authorities to target and remove disadvantages faced by impacted individuals or groups and specifically highlighted the need to take 'appropriate measures to promote the rights of older persons and those who are disabled to lead a life of independence.'

We believe that the development of such measures, and indeed the incorporation of additional rights protections via a Bill of Rights, would help move the consideration of how equality is protected in Northern Ireland beyond the limited scope of anti-discrimination legislation, and towards a broader set of protections that would enable elected representatives to tackle the root causes and social determinants of inequalities in our society.

Pending the achievement of our preferred model of a Bill of Rights, we recognise that there may be parallel opportunities to protect human rights. Scotland, Wales and

---

<sup>28</sup> The IHREC can ask a public body to carry out a review or to prepare and implement an action plan either about discrimination and human rights generally or about some specific discrimination or human rights aspect: Irish Human Rights and Equality Commission Act 2014, [section 42\(5\), \(6\)](#); Evelyn Collins and Niall Crowley, '[Equality Frameworks on the Island of Ireland](#)' (2023) 34 (2) Irish Studies in International Affairs 395-425, 417.

<sup>29</sup> Irish Human Rights and Equality Commission Act 2014, [section 42\(11\)](#).

<sup>30</sup> Evelyn Collins and Niall Crowley, '[Equality Frameworks on the Island of Ireland](#)' (2023) 34 (2) Irish Studies in International Affairs 395-425, 417.

<sup>31</sup> [A Bill of Rights for Northern Ireland Advice to the Secretary of State for Northern Ireland](#) (2008) 13-14

Ireland have all now adopted measures which promote respect for the Convention on the Rights of the Child (in the case of Scotland and Wales) and for all international treaties (Ireland). The Convention on the Rights of the Child and many of the other international UN treaties are focused on achieving equality. We especially note the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of Persons with Disabilities. The Committee, Executive and Assembly could consider how these models for better protecting our internationally recognised human rights could be given legal effect in Northern Ireland.

As we explain below, we believe single equality legislation should be adopted but there are other ways to protect equality using human rights law. At a workshop we organised in August 2024 Workshop Prof Brice Dickson (QUB) noted that other routes are possible, as well as single equality legislation. These might include a free-standing equality protection - Protocol 12 to the European Convention on Human Rights and Article 26 of the International Covenant on Civil and Political Rights provide free-standing equality protection. Another option would be a free-standing equality right modelled on for example Section 15 of the Canadian Charter of Rights and Freedoms or Section 9 of the South African Constitution.<sup>32</sup>

### 3.2 Adopt Single Equality Legislation

**Background:** The most significant difference between equality law in Northern Ireland on the one hand and Great Britain and the Republic of Ireland on the other, is that both Great Britain and the Republic of Ireland have harmonised their equality legislation for the most part into either a single equality statute – the Equality Act 2010 in Great Britain- or into two equality statutes – the Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015.

Ireland's equality legislation contains elements which overlap with the legislation in Northern Ireland, especially where this is a result of European Union requirements.<sup>33</sup> Nevertheless there are important differences. Most notably, Ireland adopts a single equality legislative model, though it is split depending on the scope of the legislation. Discrimination on grounds of employment is covered by the Employment Equality Acts 2000-2018 while discrimination on grounds of goods facilities and services is covered by the Equal Status Acts 1998-2015.

In Northern Ireland the law remains fragmented and splintered across dozens of pieces of legislation, some primary legislation and some secondary legislation. The Equality Commission for Northern Ireland lists dozens of pieces of legislation on equality law in Northern Ireland, across the grounds of age, disability, gender, race, religious and political, sexual orientation, as well as related equality law provisions from EU law, legislation on tribunals and different examples of general legislation.<sup>34</sup>

---

<sup>32</sup> Rory O'Connell and Anne Smith, [Submission to the Ad Hoc Bill of Rights Committee on the Right to Equality and Non-discrimination](#) (5 February 2021)

<sup>33</sup> A recent comparison is Evelyn Collins and Niall Crowley, '[Equality Frameworks on the Island of Ireland](#)' (2023) 34 (2) Irish Studies in International Affairs 395-425.

<sup>34</sup> [Legislation](#) ECNI webpage.

The Equality Commission and many others have highlighted the numerous problems that stem from this fragmented approach, and have called for legislation to simplify and harmonise equality law in a single equality act.<sup>35</sup> This is not a new concern and the calls for single equality legislation date back to the early part of the post-1998 settlement.<sup>36</sup>

**Effects:** The case for introducing single equality legislation – whether in one statute as in Great Britain or two as in the Republic of Ireland – is overwhelming.

The fragmentary nature of equality legislation in Northern Ireland means that the law is very complicated. Anyone wishing to vindicate their rights, or to understand their obligations, or to give advice, needs to be prepared to struggle through myriad different pieces of legislation, including amending pieces of legislation.<sup>37</sup>

Our workshop participants confirmed that the law is extremely difficult to understand and to give advice on, even for persons whose professional role required them to do so.

It is not just a matter that the law is complicated and that this makes the law inaccessible. The fragmented approach means that there are unjustifiable differences, gaps and implicitly hierarchies between the different equality grounds. There may well be good reasons to treat some of the grounds differently but the fragmentary ad hoc nature of the legislation means that legislative principles differ simply because they happened to be legislated for at different times responding to different prompts of change. There is no principled coherent rationale as to why age discrimination does not extend to goods, facilities and services. And there is no principled coherent rationale as to why colour and nationality are treated differently in race equality legislation compared to other racial grounds.

A single equality act approach would also make it more feasible to address concerns about dual, multiple or intersectional discrimination.

A single equality legislation approach does not necessarily mean that every single ground should be treated in the same way. There may well be principled reasons which justify treating some grounds differently from others. Both the Equality Act 2010 and the Irish equality statutes include provisions which distinguish between the different grounds. The benefit of having a single equality act is that it would make these choices more transparent and hopefully rational. Policymakers might decide that some problems of discrimination call for different responses or more intervention than others. An obvious example here is the monitoring requirements in Northern Ireland's fair employment legislation.

**Our view:** We support the need for single equality legislation. This should learn from the experience of the Equality Act in Great Britain, and the two Irish equality statutes but should not be a mere copy of these. We should aim for a single equality act that

---

<sup>35</sup> Equality Commission for Northern Ireland, [The Need for a NI Single Equality Act: Policy Position Paper](#) (ECNI, Belfast 2022).

<sup>36</sup> Equality Commission for Northern Ireland, *Update on the Single Equality Bill* (ECNI, Belfast 2002); Equality Commission for Northern Ireland, *Single Equality Bill - Further Considerations: February 2002* (ECNI, Belfast 2002).

<sup>37</sup> Equality Commission for Northern Ireland, [The Need for a NI Single Equality Act: Policy Position Paper](#) (ECNI, Belfast 2022) para 3.8.

builds on existing protections and learns from experience elsewhere so as to better protect equality.

### 3.3 Positive Action

**Background:** The Equality Act 2010 adopts a different approach to positive action compared to that found in Northern Ireland.

The scope of positive action or affirmative action differs across the different pieces of legislation in Northern Ireland. The fair employment legislation contains a particularly well developed model of affirmative action in the monitoring system. Research has highlighted the effectiveness of this particular model.<sup>38</sup> Other Northern Ireland legislative provisions have relatively strict requirements for different types of positive action, eg the training exception in the Sex Discrimination (Northern Ireland) Order<sup>39</sup> and the Race Relations (Northern Ireland) Order.<sup>40</sup>

The Equality Act 2010 takes a more encouraging approach to positive action. Section 158 reads:<sup>41</sup>

*158 Positive action: general*

*(1) This section applies if a person (P) reasonably thinks that—*

*(a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,*

*(b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or*

*(c) participation in an activity by persons who share a protected characteristic is disproportionately low.*

*(2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of—*

*(a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,*

*(b) meeting those needs, or*

*(c) enabling or encouraging persons who share the protected characteristic to participate in that activity.*

---

<sup>38</sup> Christopher McCrudden, Raya Muttarak and Anthony Heath, '[Affirmative Action without Quotas in Northern Ireland](#)' (2010) Equal Rights Review 7-14; Raya Muttarak, Heather Hamill, Anthony Heath and Christopher McCrudden, '[Does Affirmative Action Work? Evidence from the Operation of Fair Employment Legislation in Northern Ireland](#)' (2013) 47 (3) Sociology 560-579.

<sup>39</sup> Sex Discrimination (Northern Ireland) Order 1976, [article 48](#).

<sup>40</sup> Race Relations (Northern Ireland) Order, [article 37](#).

<sup>41</sup> Equality Act 2010, [section 158](#).

Section 158(2) adopts a more general *proportionality approach to permitting positive action*.

Section 158 does not apply to recruitment and promotion. Section 159 has a distinctive approach to recruitment and promotion, permitting the use of protected characteristics to make a decision in tiebreaker situations ie where two candidates are equally qualified.<sup>42</sup> Both these sections were new in the 2010 Act and expressly adopted to permit the most assertive form of affirmative action that EU law was understood to permit.<sup>43</sup> They remedied the situation whereby the different equality laws in GB had somewhat different provisions on positive action and were prescriptive as to the type of positive action permitted. Both those defects feature in Northern Ireland law.

The European Union has adopted the Gender Balance on Boards Directive.<sup>44</sup> EU member states have until 28 December 2024 to transpose this Directive. This Directive requires member states to ensure that listed companies are subject to one of two obligations by 30 June 2026; either that members of the underrepresented sex hold at least 40% of non-executive director positions, or that members of the underrepresented sex hold at least 33% of all director positions.<sup>45</sup>

**Our view:** The Fair Employment legislation already includes an effective affirmative action programme based on monitoring. This should be retained for fair employment and the Committee might consider extending this model to other grounds.

The approach in section 158 and 159 of the Equality Act 2010 to affirmative is much clearer than that otherwise existing in Northern Ireland and should be adopted in single equality legislation, (without replacing or regressing from the fair employment provisions).

We also believe it is necessary to address issues of inequality on boards and the Executive should be encouraged to bring forward legislation to adopt the standards in the Gender Balance on Boards Directive.

### 3.4 Age discrimination in goods, facilities and services

**Background:** One of the most striking discrepancies between equality law in Northern Ireland and equality law in Great Britain (and for that matter the Republic of Ireland) is that age discrimination law in Northern Ireland does not apply to goods facilities and services. There is no principled reason for this. When age discrimination laws were introduced, this was in response to the EU General Framework Directive which covered employment, not goods, facilities and services. Subsequently Parliament decided in the Equality Act 2010 to go beyond the requirements of EU law to prohibit age discrimination in goods facilities and services, but Northern Ireland has never followed up.

---

<sup>42</sup> Equality Act 2010, [section 159](#).

<sup>43</sup> See the Explanatory Notes to the Equality Act 2010 for [section 158](#) and [section 159](#).

<sup>44</sup> [Directive \(EU\) 2022/2381](#) of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (Gender Balance on Boards Directive) 2022.

<sup>45</sup> [Directive \(EU\) 2022/2381](#), Article 5.

As noted above Northern Ireland is out of step with Great Britain in not prohibiting age discrimination in goods, facilities and services. It is also out of step with the law in the Republic of Ireland where the Equal Status Act prohibits age discrimination in goods, facilities and services. This is one of the most glaring instances of divergence, a 'major shortfall in equivalence of protection', in equality law North and South.<sup>46</sup>

The European Union has not yet adopted legislation on age, sexual orientation, disability, religion or belief discrimination in goods, facilities and services. The European Commission has made a proposal to amend this gap in 2008 but this has not yet been approved in the Union.<sup>47</sup>

**Our view:** The pandemic has highlighted serious problems with age discrimination; much of the rhetoric around the pandemic has ageist overtones while the COVID19 pandemic has already highlighted discrimination and disadvantage facing older people, as well as people with disabilities, racial minorities, women and other groups.

This gap in relation to age discrimination and goods, facilities and services needs to be addressed.

### 3.5 Socio-economic disadvantage

**Background:** The Equality Act 2010 includes a provision on socio-economic disadvantages in its first section:

*An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.*<sup>48</sup>

The Scottish and Welsh Governments have brought this section into force in their jurisdictions and provided guidance on its implementation.<sup>49</sup> The UK Government has not yet done so but a pledge to bring it into force is included in the 2024 Labour Manifesto.<sup>50</sup>

This provision is a mainstreaming provisions rather than an anti-discrimination right or compliance requirement. It is a requirement to have 'due regard to the desirability'. The language used is somewhat weaker than that used for the mainstreaming obligation to 'have due regard to the need to promote equality of opportunity' in

---

<sup>46</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](#) (2022) 120.

<sup>47</sup> *Commission Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation* [COM\(2008\) 426 final](#) (European Commission, Brussels 2008).

<sup>48</sup> Equality Act 2010, [section 1\(1\)](#).

<sup>49</sup> Welsh Government, [A More Equal Wales: The Socio-economic Duty Equality Act 2010 Statutory Guidance](#) (2021); Scottish Government, [Fairer Scotland Duty: Guidance for Public Bodies](#) (2022).

<sup>50</sup> Labour Party, *Labour Party Manifesto 2024*, [Break Down Barriers to Opportunity](#).



section 75 of the Northern Ireland Act<sup>51</sup> and to the language of ‘have due regard to the need’ in the Equality Act 2010’s public sector equality duty.<sup>52</sup>

Both Scotland and Wales have brought this duty into force relatively recently. The Equality and Human Rights Commission has published research evaluating the duty in Scotland and Wales.<sup>53</sup>

Significantly if the Labour Government keeps its manifesto pledge to bring section 1 of the Equality Act into force, the Northern Ireland will be the only part of the UK without such a statutory duty.

In Ireland, the Equality Act (Miscellaneous Provisions) Act 2015 introduces a new ground of discrimination limited in scope to the provision of accommodation. The 2015 Act amends the Equal Status Act to prohibit discrimination in the provision of accommodation on the grounds of receiving rent supplement, housing assistance or a payment under the Social Welfare Acts.<sup>54</sup>

One of the most prominent issues discussed in the Irish reform process has been the desirability of prohibiting discrimination on socioeconomic disadvantage.<sup>55</sup> Research by Equinet has also identified strong arguments for anti-discrimination laws to prohibit discrimination based on socioeconomic disadvantage.<sup>56</sup>

It is worth highlighting in this discussion Labour reforming Irish law as it parallels the GB discussion about the socioeconomic duty, but offers a different model for addressing socioeconomic disadvantage. While the GB model is a mainstreaming one, the discussion in Ireland has focused on an anti-discrimination approach. While these approaches differ, they are not incompatible. It would be possible for the Northern Ireland Assembly to adopt both approaches; indeed for most of the equality grounds this is the position in legislation.

In Northern Ireland there have been discussions about comparable initiatives. Most notably the Northern Ireland Act requires the Executive to adopt a strategy to tackle poverty, social exclusion and patterns of deprivation based on objective need.<sup>57</sup> This obligation was introduced by the Northern Ireland (St Andrews Agreement) Act 2006. The Executive has not yet adopted such a strategy despite judicial review finding the failure to do so was unlawful.<sup>58</sup> In 2024 the Northern Ireland Audit Office has reported that an ‘integrated, cross-departmental anti-poverty strategy is urgently

---

<sup>51</sup> Northern Ireland Act 1998, [section 75\(1\)](#).

<sup>52</sup> Equality Act 2010, [section 149](#).

<sup>53</sup> Elaine Wilson Smith, Diego Garcia Rodriguez and June Brawner, [Evaluating the Socio-economic Duty in Scotland and Wales](#) (Equality and Human Rights Commission (June 2021)).

<sup>54</sup> Equality (Miscellaneous Provisions) Act 2015, [section 13](#).

<sup>55</sup> Irish Human Rights and Equality Commission, [Policy Statement on SocioEconomic Status as a Ground of Discrimination under the Equality Acts](#) (IHREC, 2024) (April 2024).

<sup>56</sup> Sarah Ganty and Juan Carlos Benito Sánchez, [Expanding the List of Grounds in Non-Discrimination Law](#) (Equinet, 2021).

<sup>57</sup> Northern Ireland Act 1998, [section 28E](#).

<sup>58</sup> [Committee on the Administration of Justice \(CAJ\) and Brian Gormally’s application for judicial review](#) [2015] NIQB 59, (30 June 2015).

needed'.<sup>59</sup> Meanwhile concern has been expressed about the inadequacy of the social security system in terms of meeting international human rights standards and protecting dignity.<sup>60</sup>

**Our view:** Scotland and Wales already have the socioeconomic duty in force, while the Labour Party Manifesto indicates it will follow soon; Ireland has some protections for persons in receipt of housing assistance while there have been ongoing discussions about a broader ground of socioeconomic disadvantage. Alongside existing anti-poverty work, we recommend the Committee look into including provisions mirroring the socioeconomic duty in the 2010 Act and consider the desirability of prohibiting discrimination on grounds of socioeconomic disadvantage as part of single equality legislation.

### 3.6 Pay Transparency and Gap Reporting

**Background:** Great Britain has legislation on gender pay gap reporting and the King's Speech includes proposals to adopt pay gap reporting for race and disability.<sup>61</sup>

The Draft Equality (Race and Disability) Bill will mirror gender equality provisions on equal pay and pay monitoring.<sup>62</sup>

The European Union has adopted the Pay Transparency Directive.<sup>63</sup> This directive strengthens the law on equal work and work of equal value; provides for pay transparency rules for instance prohibiting employers from asking about pay history of applicants, right to information about pay and sex in their workplace, pay gap reporting, joint pay assessment.

The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission are of the view that this amends directives in Annex 1 of the Windsor Framework. This means the UK is required to amend Northern Ireland law to give effect to any relevant elements of the Pay Transparency Directive. The Pay Transparency Directive has provisions on gender pay gap reporting which Ireland will have to implement: EU member states have to transpose this directive by 26 June 2026.

---

<sup>59</sup> Northern Ireland Audit Office, [Child Poverty in Northern Ireland: Report by the Comptroller and Auditor General](#) (12 March 2024) para 20.

<sup>60</sup> Ciara Fitzpatrick, Grainne McKeever, Jed Meers and Mark Simpson, [Written Submission to the APPG on the \(In\)Adequacy of Social Security](#) (January 2023)

<sup>61</sup> The King's Speech 2024 includes further commitments on equality law. The Draft Conversion Practices Bill will ban abusive practices aiming at changing a person's sexual orientation or gender identity. UK Government, [King's Speech: Background Briefing Notes](#) (17 July 2024) 79. Research has been published in Northern Ireland calling for a ban on conversion therapy: Fidelma Ashe and Danielle Mackle, [A Study of Conversion Practices in Northern Ireland](#) (2024).

<sup>62</sup> UK Government, [King's Speech: Background Briefing Notes](#) (17 July 2024) 77.

<sup>63</sup> [Directive \(EU\) 2023/970](#) of the European Parliament and of the Council of 10 May 2023 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 (Text with EEA relevance) (Pay Transparency Directive).

Northern Ireland does have legislation on gender pay gap reporting but this has not yet been brought into force.<sup>64</sup> Not just is Northern Ireland therefore out of step with Great Britain on gender pay gap reporting, but new discrepancies on disability and race pay gap reporting are likely to appear.

**Our view:** It is necessary to bring the Northern Ireland provisions on gender pay gap reporting into force and to give effect to the standards in the Pay Transparency Directive. As the UK Government introduces legislation to extend reporting to other grounds such as race and disability, Northern Ireland should follow suit.

### 3.7 Combined / Multiple / Intersectional Discrimination

**Background:** Scholars, activists and practitioners have drawn attention to the issues of combined, multiple or intersectional discrimination.<sup>65</sup> This refers to situations where people suffer discrimination because of multiple intersecting personal characteristics, eg being a female Traveller with a disability, or a religious minority ethnic woman.

Sandra Fredman has categorised different types of multiple discrimination issues as 'sequential multiple discrimination' (where a person experiences discrimination on different grounds at different times), 'additive multiple discrimination' (where the person experiences two types of discrimination at the same time) and 'intersectional discrimination' where the combination of grounds gives rise to a qualitatively different experience.<sup>66</sup>

The Equality Act 2010 includes a provision, section 14, allowing persons to complain of combined discrimination based on two relevant protected characteristics.<sup>67</sup> This provision has not however been brought into force.

In the recent TEO consultation on the race discrimination legislation, the department did not suggest recognising combined or multiple or intersectional discrimination. The Equality Commission has expressed its disappointment at this failure to address multiple or intersectional discrimination, including in evidence to a UN Committee.<sup>68</sup>

---

<sup>64</sup> Employment Act (Northern Ireland) 2016, [section 19](#).

<sup>65</sup> Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991) 43 (6) *Stanford Law Review* 1241; Shreya Atrey and Peter Dunne, *Intersectionality and Human Rights Law* (Bloomsbury Publishing 2020).

<sup>66</sup> Sandra Fredman, *Intersectional Discrimination in EU Gender Equality and Non-discrimination Law* (European Commission, 2016) 27-28.

<sup>67</sup> Equality Act 2010, [section 14](#).

<sup>68</sup> Equality Commission for Northern Ireland and Northern Ireland Human Rights Commission, *Policy Position: Race Law Reform: Priorities and Recommendations* (2022); Equality Commission for Northern Ireland, *Shadow Report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD)* (July 2024).

Irish equality legislation does not provide for multiple or intersectional discrimination. In the recent consultation on reforming the equality laws, this was one of the most significant issues that was raised by respondents.<sup>69</sup>

**Our view:** Intersectional discrimination (or combined or multiple) has been discussed for many decades and has featured in recommendations from the Equality Commission for Northern Ireland. Our view is that it is important to recognise that discrimination cannot be treated in silos and that the law needs to recognise the more complex reality of peoples' lives and the injustices they experience.

## Conclusion

The Human Rights Consortium welcomes the inquiry initiated by the Executive Office Committee and encourages the committee to be ambitious in its aims. We believe that there is ample evidence highlighting the need to expand the scope of the inquiry to also cover gaps in human rights laws in Northern Ireland.

Within the current remit we have highlighted just some of the many gaps and failings in current equality provision in Northern Ireland when compared with other parts of the United Kingdom and the Republic of Ireland/ European Union. A commitment to non-regression from existing standards locally, while also embracing the best practice examples from those other jurisdictions within new single equality legislation could make a significant impact in creating a more comprehensive, accessible and impactful equality landscape in Northern Ireland.

We stand ready to assist in providing any additional evidence or experience from our broad membership that the Committee may require during ongoing work in this inquiry and we wish you well in these deliberations.

[info@humanrightsconsortium.org](mailto:info@humanrightsconsortium.org)

[www.humanrightsconsortium.org](http://www.humanrightsconsortium.org)

@billofrightsni

---

<sup>69</sup> Government of Ireland, *The Equality Acts Review: Summary of the Submissions Received to the 2021 Public Consultation on the Review of the Equality Acts* (Department of Children, Equality, Disability, Integration and Youth, Dublin 2023) 65.