



gender
equality

gender law reform

Key Point Briefing:
Policy Priorities and
Recommendations

November 2016.

In Summary:

Reform sex equality and equal pay law to address gaps and to harmonise, simplify and clarify the law.

Action is required to address the significant gaps in protection against sex discrimination and harassment; harmonise, simplify and clarify the law; and strengthen the Commission's enforcement powers, as well as the available remedies.

The Commission has identified a number of significant gaps and weaknesses in sex equality law that urgently need addressed. In Northern Ireland, men and women have less protection against sex discrimination/harassment than in other parts of the UK.

Gaps in protection include the need to introduce protection against sex discrimination by private clubs / associations, by public bodies when carrying out their public functions; by schools as regards their treatment of trans pupils; prohibiting 'pay secrecy clauses'; measures to require large private / voluntary sector employers to publish gender pay information; provisions to strengthen the Commission's enforcement powers, and improve the remedies available under this legislation.

These changes will, for example, ensure that sex equality legislation in Northern Ireland keeps pace with legislative protection in other parts of the UK; help address key gender inequalities; harmonise, simplify and clarify the sex equality legislation; and ensure unjustifiable inconsistencies are removed.

Our Recommendations:

- 1.1 In Northern Ireland men and women have less protection against sex discrimination and harassment than in other parts of the UK. In particular, the introduction of the Equality Act 2010 in Great Britain in October 2010 strengthened protection against sex discrimination across a range of areas, including areas highlighted in a number of our recommendations.
- 1.2 More recently, the gap in legal protections between Great Britain and Northern Ireland has been criticised by the CEDAW Committee, which expressed concern that women in Northern Ireland did not have the same remit of equality protections as compared to their counterparts in other parts of the UK¹.
- 1.3 Pursuant to its duty under the sex equality legislation to keep the sex equality legislation under review and to make recommendations for change, the Commission has identified a number of significant gaps and weaknesses in sex equality law that urgently need addressed.
- 1.4 Some key recommended changes include, for example, prohibiting unlawful sex discrimination or harassment:
 - by private clubs/ associations, including golf clubs and political parties;
 - by public bodies when carrying out their public functions;
 - by schools as regards their treatment of trans pupils.

¹ CEDAW (2013) [Concluding Observations on UK, CEDAW Committee](#) . The Committee also expressed concern that certain provisions of the Equality Act 2010 had not come into force. The CEDAW Committee was particularly concerned that the legislative framework in Northern Ireland did not provide for protection from multiple discrimination and that there was no prohibition against pay secrecy clauses.

Wider benefits of reform

- 1.5 We consider that there is a robust case for strengthening the sex equality legislation. In particular, the recommended changes:
- will strengthen protection for men and women against sex discrimination and harassment and ensure that sex equality legislation keeps pace with legislative developments that improved protection in other parts of the UK;
 - help address key gender inequalities, including those experienced by men and women;
 - harmonise, simplify and clarify the sex equality legislation and thereby make it easier to understand;
 - ensure unjustifiable inconsistencies are removed; ensure greater consistency with existing levels of protection on other equality grounds;
 - provide legal certainty in areas where the scope of the legislation is unclear;
 - are in keeping with the current overarching aims and objectives of the Executive's Gender Equality Strategy 2006-2016; where there is a commitment to *"improving protection against discrimination by improving legislative measures and keeping their effectiveness under review"*²;
 - ensure that the sex equality legislation is in line with the UK Government's international obligations under CEDAW and the recommendations of the CEDAW Committee.

Our Recommendations

- 1.6 We recommend that there is a timetabled commitment to reform the sex equality and/or equal pay legislation aligned to our proposals summarised below. For ease of reference, proposals which have been already implemented in Great Britain (or will be implemented in the near future) are marked with an asterisk.

² See OFMDFM 2006 [Gender Equality Strategy 2006-2016](#) page 15.

Forms of discrimination

- *prohibit unlawful discrimination and harassment by public bodies on the grounds of sex in the exercise of their public functions. We have made it clear that this is a priority area for reform;³
- permit hypothetical comparators⁴ in equal pay cases and introduce mandatory equal pay audits;⁵
- introduce new protection against intersectional multiple discrimination⁶;
- provide greater protection for employees against harassment on grounds of sex by a third party such as a customer or client⁷;
- introduce changes designed to clarify and strengthen *direct* discrimination; including:
 - clarification that direct discrimination on grounds of pregnancy is also direct discrimination on grounds of sex⁸; and
 - * strengthen protection against direct sex discrimination by allowing sex discrimination claims to be brought based on a hypothetical comparator, where there is evidence of direct sex discrimination in relation to contractual pay;
- * strengthen protection against discrimination or harassment by private clubs/ associations on the grounds of sex , including pregnancy and maternity and gender reassignment;
- * new protection for employees against pay secrecy clauses, 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;

³ See ECNI (2009) [ECNI Proposals for Legislative Reform](#)

⁴ Please refer to the Commission's guidance for [an explanation of hypothetical comparators](#).

⁵ See ECNI (2013) [ECNI CEDAW Shadow Report 2013](#) and ECNI (2009) [ECNI response to Discrimination Law Review](#)

⁶ See ECNI (2014) [ECNI Race law reform proposals](#) (full report)

⁷ See ECNI (2014) [ECNI Race law reform proposals](#). In particular, our recommendation is that employers are liable if they know that the employee has been subjected to third party harassment on one previous occasion, or in circumstances that they ought to have been reasonably aware of the risk of third party harassment.

⁸ See ECNI response to the OFMDFM consultation on a NI Single Equality Bill (2004) [Response to OFMDFM Consultation paper 'A Single Equality Bill for Northern Ireland](#)

- amend the definition of 'gender reassignment' so as to remove the requirement that a person undergoing gender reassignment must be under medical supervision*; and give consideration to prohibiting discrimination on the wider ground of 'gender identity', rather than the narrower ground of 'gender reassignment';
- * new protection for trans people in the field of education in schools and by qualifications bodies;
- * new protection for trans people against indirect discrimination across all areas⁹;

Enforcement and remedies

- * require tribunals to order a respondent who has been found by the tribunal to have committed an equal pay breach to carry out an equal pay audit;
- grant a power to tribunals to make wide recommendations that benefit the whole workforce¹⁰;
- strengthen Commission enforcement powers across the sex equality legislation;
- * introduce Regulations requiring large private and voluntary sector employers to publish information about the differences of pay between their male and female employees¹¹.

⁹ 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.

¹⁰ See ECNI (2014) [ECNI Race law reform proposals](#) (full report). In our recommendations for race law reform the Commission has highlighted that whilst a number of our recommendations call for specific changes to the race equality legislation, some of our recommendations **apply equally to other equality grounds** including on grounds of sex.

¹¹ It will be noted that the [Employment Act \(NI\) 2016](#) sets out a framework that requires employers to publish information showing whether gender pay disparities exist between employees and, where they do, to publish an action plan to eliminate them. Regulations due to come into force in Northern Ireland in 2017 will determine which employers are to be subject to these requirements to collect and publish gender pay information. Also, OFMDFM was required to publish, by October 2017, a strategy including an action plan, on eliminating differences in the pay of male and female employees. Responsibility for these have now passed to the Department for Communities. Regulations requiring large private and voluntary employers to publish gender pay information are due to come into force in Great Britain in early 2017.

Conclusion

- 1.7 To advance gender equality, we recommend that the Executive, Departments and other key stakeholders act to address the above priorities, including via the Programme for Government and Budget, and the Gender Equality Strategy.

Further Information

- 1.8 For further information on our wider policy priorities and recommendations to advance gender equality in Northern Ireland, visit www.equalityni.org/gender

November 2016.