

# Equality Commission

FOR NORTHERN IRELAND

## EQUALITY COMMISSION FOR NORTHERN IRELAND

### Response to OFMDFM's consultation 'Implementing EU Equality Obligations in Northern Ireland: The Gender Goods & Services Directive'

September 2007

#### Introduction

1. The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on age, disability, fair employment, race relations, sex discrimination and equal pay and sexual orientation. 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 positive disability duties on public authorities under the Disability Discrimination Act 1995.
2. The Commission's general duties include:-
  - working towards the elimination of discrimination;
  - promoting equality of opportunity and encouraging good practice;
  - promoting positive/affirmative action;
  - promoting good relations between people of different racial groups;
  - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities; and
  - keeping the legislation under review.
3. The Commission welcomes the opportunity to respond to the Office of the First Minister and Deputy First Minister's (OFMDFM) consultation

paper entitled 'Implementing EU Equality Obligations in Northern Ireland: The Gender Goods & Services Directive'. The Commission when responding to this consultation, draws on the unique experience it has gained from its role in enforcing in Northern Ireland the Sex Discrimination (NI) Order 1976, as amended, ('SDO 1976'), and in implementing the statutory duties under Section 75 of the Northern Ireland Act 1998 across nine equality grounds including sex.

4. For ease of reference, the draft Sex Discrimination Order 1976 (Amendment) Regulations (NI) 2007 are referred to as the 'draft 2007 Regulations', and the Gender Goods & Services Directive as the 'Gender Directive'. This response also refers to the Commission's response to the Department for Communities and Local Government consultation, 'Discrimination Law Review: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain' dated September 2007, ('Commission's response to the Discrimination Law Review'), a copy of which we enclose.

### **ECNI Recommendations for Change**

5. In general, we welcome many of the proposals contained within the consultation document. However we have a number of concerns in relation to the way in which OFMDFM propose to implement the Gender Directive, and have outlined in detail in our response recommendations for change. For ease of reference, these recommendations are summarised below.

### **Areas within the scope of the Gender Directive**

#### **Failure to fully transpose the Gender Directive**

6. Firstly, we are concerned that the proposals do not fully transpose the Gender Directive into Northern Ireland sex equality law. Specifically, **we recommend**, in order to fully transpose the Gender Directive into Northern Ireland legislation that:-
  - the draft 2007 Regulations prohibit indirect discrimination on the grounds of a person's gender reassignment;
  - services and facilities provided at a place occupied or used for the purposes of an organised religion, are not deemed to be outside the scope of the Directive. In addition, any exception in this area

must meet the requirement under the Directive that it is a proportionate means of achieving a legitimate aim. The Commission further recommends that there is a consistent approach as regards any potential exemption for organised religions in the draft 2007 Regulations and the current exception for organised religions on the ground of sexual orientation, under the Equality Act (Sexual Orientation) Regulations (NI) 2006.

- similar amendment is made to Article 36 of the SDO 1976 on the grounds of sex, as that proposed on the grounds of a person's gender reassignment, so that it is clear that services and facilities which are likely to be used by two or more people at the same time, can be restricted to one sex for reasons of privacy and decency, **provided** this would be a proportionate means of achieving a legitimate aim.

### **Other amendments to the 2007 Regulations**

7. Secondly, **we recommend** the following additional changes are made to the 2007 Regulations, as regards areas which fall within the scope of the Directive:-
  - that current exceptions which allow insurers to treat people differently on grounds of sex should not be included in the SDO 1976. Although we recognise that Member States can exercise a discretion whereby they can permit proportionate differences in individuals' premiums and benefits in certain circumstances, the Commission recommends that the Department does not restrict the scope of the SDO 1976 in this manner; and
  - that the draft 2007 Regulations include additional duties and powers in respect of the Commission, in order to reflect the extension of the SDO 1976 to cover discrimination on the grounds of a person's gender reassignment in the areas of goods, facilities, services and premises.

### **Related areas outside the scope of the Gender Directive**

8. Secondly, we are disappointed that OFMDFM have taken a limited approach to implementing the Gender Directive, and have not taken the opportunity to address related deficiencies in the SDO 1976 which fall outside the scope of the Gender Directive.

9. We note the Department's commitment in paragraph 1.3 of the consultation document to 'make the amendments necessary to fulfill our obligations under the Gender Directive while ensuring that the proposals, wherever possible, reduce existing inconsistencies and avoid creating further complexity, in line with better regulation principles'. The Department's approach has, in the Commission's view, increased existing inconsistencies and created further complexity within the SDO 1976. Although the Single Equality Act is an opportunity for addressing such inconsistencies, there is no definite date, as to when such legislation will be implemented.
10. OFMDFM will be aware of the anomalies and difficulties which arose in the race equality legislation as a result of the implementation of the Race Directive (2000/43/EC), which only applied to the grounds of race, ethnic and national origin. The Commission is particularly concerned that the Department did not take this opportunity to amend the SDO 1976 to reflect changes which have already been implemented in Great Britain ('GB'); namely to prohibit sex discrimination (both indirect and direct) and harassment in the exercise of public functions (implemented by virtue of Part 4 of the Equality Act 2006).
11. Specifically **we recommend** that OFMDFM take this opportunity to:
  - rectify the further inconsistency within the SDO 1976 as between the definition of indirect discrimination in education (which falls outside the scope of the Gender Directive), and the definition of indirect discrimination in the areas of employment and vocational training;
  - prohibit harassment on grounds of sex in other areas covered by the SDO 1976, but outside the scope of the Gender Directive;
  - extend an equivalent burden of proof provision for complaints in areas outside the scope of the Directive, (for example, in the area of education in schools), to that which already exists as regards employment and vocational training;
  - remove the exception under Article 31(3), which permits owner-occupiers to discriminate against a buyer on grounds of sex, if they sell their property without advertising the sale or using an estate agent;

- prohibit sex discrimination and discrimination on the grounds of a person's gender reassignment (both indirect and direct), and harassment, in the exercise of public functions;
  - prohibit discrimination by private clubs on the grounds of sex and a person's gender reassignment; and
  - prohibit less favourable treatment on grounds of pregnancy and maternity in other areas covered by the SDO 1976 (for example, education), which are outside the scope of the Gender Directive.
12. The Department will further note that in the context of single equality legislation, **we recommend**:-
- an extension of liability for third party harassment so that persons who provide goods, services and facilities to the public, or provide accommodation, or are responsible for an education institution, are liable for the harassment of employees by customers/clients on a prohibited ground, unless they took reasonably practicable steps to prevent the harassment occurring;
  - an extended definition of gender to include 'gender identity';
  - subject to narrowly construed and justifiable exceptions, that the scope of protection from gender discrimination is extended in its entirety to those who are transsexual; and
  - that discrimination on the grounds of perception and association should be unlawful on the grounds of sex, and a person's gender reassignment.
13. We have welcomed the opportunity to meet with OFMDFM in order to discuss our concerns and recommendations for change in more detail.

## **Response to OFMDFM Proposals for Change**

14. We outline below in detail, our views and recommendations on OFMDFM's proposals for change, as set out in Chapter 2 of the consultation document.

### **Indirect Discrimination**

15. We welcome the proposal to amend the SDO 1976 so that the definition of indirect discrimination, which currently applies in relation to employment and vocational training, is extended to the areas of goods, facilities and services, and premises. Such a change will rectify the current inconsistencies which exist between the definition of indirect discrimination in the areas of employment and vocational training, and the definition in the areas of goods, facilities and services and premises. We note that this amendment to the SDO 1976 will only apply to those areas which fall within the scope of the Gender Directive. The Commission recommends that OFMDFM take this opportunity to rectify further inconsistencies within the SDO 1976, as between the definition of indirect discrimination in areas which fall outside the scope of the Gender Directive (for example, in education) and the definition of indirect discrimination in the areas of employment and vocational training.
16. OFMDFM will note from the Commission's response to the Discrimination Law Review, that in the context of single equality legislation, we recommend the adoption of the EU Directive definition of indirect discrimination, but with the substitution of a 'necessary aim' test for the 'legitimate aim' test.

### **Sexual Harassment**

17. The Commission welcomes the proposal to amend the SDO 1976 to make it explicit that harassment and sexual harassment are prohibited in the fields of goods, facilities and services and premises. We recommend that OFMDFM take this opportunity to prohibit harassment on grounds of sex in other areas outside the scope of the Gender Directive, (for example, schools), in the interests of consistency with other provisions in the SDO 1976.
18. The Commission also welcomes the proposal to amend the existing provisions of the SDO 1976 to clarify that harassment is not limited to

conduct caused by the sex of the claimant. Such an amendment will give effect to the judgement of the High Court in the judicial review *Equal Opportunities Commission –v- Secretary of State for Trade and Industry*<sup>1</sup>, which held that the legislation should be amended so that harassment ‘related to sex’ is made unlawful.

19. Although it is not the subject of this consultation, the Commission seeks clarification from OFMDFM as regards its proposals to amend the equivalent definitions of harassment in other equality legislation, which, in light of the High Court judgement, do not comply with the Framework Directive or the Race Directive.

### **Third party harassment**

20. The Commission notes that it is not proposed that the 2007 Regulations will make service providers liable for the conduct of one customer towards another. As made clear in its response to the Discrimination Law Review, the Commission has recommended, in line with the approach taken in the Equal Status Acts in Ireland, that a person who is responsible for the operation of any place that is an educational institution or where goods, facilities or services are offered to the public, or a person who provides accommodation, must ensure that any person who has a right to be there is not harassed. ‘The responsible person’ is liable for the harassment unless he or she took reasonably practicable steps to prevent it. This would make an education institution or a provider of services liable for the harassment of employees by customers/clients on a prohibited ground, unless it took reasonably practicable steps to prevent the harassment occurring.
21. The Commission notes that the draft Sex Discrimination Act (Harassment and Pregnancy and Maternity Leave) (Amendment) Regulations 2007 will introduce in GB an explicit liability upon employers for harassment by a third party. However liability for an employer will only arise where the employer knows that the third party has subjected the complainant to harassment in the course of her employment on at least two other occasions. The Commission is of the view that the 2002 Directive (Directive 2002/73/EC) which amended the Equal Treatment Council Directive (Directive 76/2007/EEC), did not impose a requirement that the harassment be repeatedly done by the same person, third party or otherwise, for

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<sup>1</sup> 2007 EWHC 483 (Admin)

liability to arise. The Commission is of the view that the recent High Court judgement in *Equal Opportunities Commission –v- Secretary of State for Trade and Industry* did not require that the same third party had subjected the woman to harassment in the course of her employment on at least two other occasions.

## **Burden of Proof**

22. The Commission welcomes the proposal to insert into the SDO 1976 an equivalent burden of proof provision for complaints in the area of goods, facilities, services and premises, to that which already exists as regards employment complaints to an industrial tribunal, and complaints in the area of vocational training brought to the County Court. Again, the Commission recommends that the Department takes this opportunity to extend a similar provision in relation to complaints outside the scope of the Directive, (for example, in the area of education in schools).

## **Exceptions**

23. Annex 1 to the consultation paper lists all current exceptions in the SDO 1976 which apply in the context of the Gender Directive, and indicates where changes are proposed. As made clear in our response to the Discrimination Law Review, we are of the view that any exception to the SDO 1976 should be narrowly construed and justifiable. We also recommend in the context of the Single Equality Act, that there be a streamlined approach to exceptions for goods, facilities and services, and recommend the adoption of a General Service Requirement (GSR) across the scope of a Single Equality Act, outside employment and training.
24. As outlined below, we have a number of concerns in relation to particular exceptions that OFMDFM propose to retain.

## **Owner-Occupier Discrimination**

25. We note that OFMDFM do not propose to amend Article 31(3), which permits owner-occupiers to discriminate against a buyer on grounds of sex, if they sell their property without advertising the sale or using an estate agent. This approach is inconsistent with the Department of Communities and Local Government's proposal in the Discrimination Law Review consultation document that this provision should be removed.



26. We note that OFMDFM have indicated that this exception is outside the scope of the Gender Directive, which excludes goods and services in the area of private and family life. OFMDFM will be aware that a similar provision in the Race Relations Order 1997 was repealed in respect of discrimination connected to race, ethnic or national origin, following the implementation of the Race Directive. The Commission recommends that OFMDFM takes this opportunity to make a similar amendment to the SDO 1976.

### **Membership/Benefits of Voluntary Bodies**

27. As made clear under Article 4(5) of the Gender Directive, all exceptions must be justified by a legitimate aim and the means of achieving that aim must be appropriate and necessary. We note that under Article 35 of the SDO 1976, voluntary bodies can restrict membership or benefits to people of one sex. We further note that it is proposed that the draft 2007 Regulations will make it clear that different treatment for transsexual people will be lawful only where this would be a proportionate means of achieving a legitimate aim. Although it was not made clear in the consultation document that it was proposed to make a similar amendment to Article 35 on the grounds of sex, we welcome that the Department has taken this opportunity to make a similar amendment, so that it is clear that voluntary bodies can only restrict membership or benefits to people of one sex where this would be a proportionate means of achieving a legitimate aim.

### **Services provided by hospitals and other similar establishments**

28. Under Article 36 of the SDO 1976, services and facilities can be restricted to one sex only in hospitals or other establishments for people requiring special care, supervision or attention. We welcome the Department's proposal that the draft 2007 Regulations will make it clear that it is lawful to restrict such services to one sex only, or to transsexual people, where this would be a proportionate means of achieving a legitimate aim. We note that the Department has clarified this exception as regards **both** transsexuals and on the grounds of sex. As outlined in paragraph 34, we recommend that a similar approach is taken to the exception under Article 36(1)(c) (privacy and decency).

## **Services/facilities in a place occupied or used by an organised religion**

29. We note that OFMDFM is not proposing to make any changes to the exception under Article 36(1)(b) of the SDO 1976, which permits the restriction of services and facilities to one sex in a place occupied or used by an organised religion, and the restriction is made in order to comply with the doctrines of the religion, or to avoid offending the religious susceptibilities of a significant number of followers.
30. We further note that the Department considers that such facilities and services fall outside the scope of the Gender Directive. Article 3(1) of the Gender Directive makes it clear that the Directive does not cover the provision of goods and services carried out in the area of private and family life. In addition, Recital 3 of the Gender Directive states that when prohibiting discrimination, 'it is important to respect other fundamental rights and freedom, including the protection of private and family life and transactions carried out in that context and the freedom of religion.' We also note that although private and family life transactions are specifically excluded from the scope of the Directive, there is no similar blanket exclusion as regards the rights and freedoms of organised religions.
31. In the Commission's view, although the Gender Directive clearly anticipates an exception associated with freedom of religion, it does not explicitly state that goods and services provided at a place occupied or used by organised religions, are outside the scope of the Directive. In accordance with Article 16 of the Gender Directive, the Commission is of the view that any exception for organised religions is only permissible where it is justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.
32. The Commission has made it clear in its response to the Discrimination Law Review, that although transsexuals do not have explicit protection under the Equality Act (Sexual Orientation) Regulations (NI) 2006, they may have rights under these Regulations because of their actual or perceived sexual orientation. The Commission recommends that there is consistent approach, as regards any potential exemption for organised religions on the ground of a person's gender reassignment, and that of sexual orientation. It has stated in particular, that if such exemption on the grounds of a

person's gender reassignment is included, it is essential that it makes provision for the following:-

- religious organisations, that are contracted by a public authority to deliver a service on its behalf, are not allowed to discriminate;
  - a religious organisation, in order to rely on the proposed exception, must show the following: that the restriction on accessing certain activities is required in order to comply with the doctrines of the religion or so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and
  - protection against discrimination will extend to activities that are provided by a religious organisation, where the sole or main purpose of the organisation offering the service is commercial.
33. The current exception for organised religions on the grounds of **sex** under Article 36, already makes it clear that, in order to restrict services to a particular sex, the restriction must be made in order to comply with the doctrines of the religion, or to avoid offending the religious susceptibilities of a significant number of followers. In the Commission's view, any potential exemption for organised religions on the ground of sex, should **also** make provision for the following:-
- religious organisations, that are contracted by a public authority to deliver a service on its behalf, are not allowed to discriminate on grounds of sex; and
  - protection against discrimination on grounds of sex, will extend to activities that are provided by a religious organisation, where the sole or main purpose of the organisation offering the service is commercial.

### **Exception for reasons of privacy and decency**

34. Under Article 36(1)(c) of the SDO 1976, services and facilities which are likely to be used by two or more people at the same time, can be restricted to one sex for reasons of privacy and decency. We welcome the proposal that the draft 2007 Regulations will make it clear that different treatment for transsexual people will also be lawful in these circumstances **provided** it is a proportionate means of

achieving a legitimate aim. In order to ensure consistency across the SDO 1976, we recommend such a caveat is similarly applied on the grounds of sex, and not simply on the grounds of a person's gender reassignment.

### **Exemption for charitable bodies**

35. We welcome OFMDFM's proposal to make it clear that a charity can restrict services to one sex or treat transsexual people differently **only** where this would be a proportionate means of achieving a legitimate aim.

### **Insurance Exception**

36. Under Article 46 of the SDO 1976, insurance can be offered at different premium and benefit rates for men and women, as long as that difference is based on relevant and accurate actuarial data showing different risk levels as between men and women, and the treatment is reasonable. As made clear in our response to the Discrimination Law Review, the Commission considers that current exceptions which allow insurers to treat people differently on grounds of sex should not be included in the SDO 1976.
37. We note that the Gender Directive states that the use of sex as an actuarial factor should not result in differences in individuals' premiums and benefits. However, it allows Member States to exercise a discretion whereby they can permit proportionate differences in individuals' premiums and benefits, where the use of sex is a determining factor in the assessment of risk, based on relevant and accurate actuarial statistical data. The Commission recommends that the Department does not restrict the scope of the SDO 1976 in this manner. It is vital, as required under the Gender Directive, that the Department reviews its decision in five years, and forwards the results of this review to the European Commission.
38. The Gender Directive makes it clear that if Member States decide to permit proportionate differences in individuals' premiums and benefits, then, as regards any new contracts concluded after 21 December 2007, certain conditions must be satisfied. The Commission welcomes the proposed changes, as regards contracts entered into after 21 December 2007, specifying that the following conditions must be satisfied:-

1. the use of sex as a factor in the assessment of risk must be based on relevant and accurate actuarial and statistical data;
  2. data must be compiled, published and regularly updated;
  3. difference in treatment must be proportionate; and
  4. differences do not result from costs relating to pregnancy or maternity.
39. The Commission welcomes the Department's proposal to introduce these measures at this time, and not to defer the implementation of these measures until 21 December 2009; a deferral which is permitted under the Gender Directive.

### **Exercise of public functions**

40. The Commission is disappointed that OFMDFM did not take this opportunity to prohibit sex discrimination, (both indirect and direct), and harassment in the exercise of public functions. The Department will be aware that similar provisions came into force in April 2007 in Great Britain, by virtue of Part 4 of the Equality Act 2006. We seek clarification from OFMDFM, as to the timescale for implementing a similar provision in Northern Ireland sex equality law.

### **Gender Reassignment**

41. The Commission welcomes the Department's proposal to make direct discrimination and harassment on the grounds of a person's gender reassignment unlawful in the fields of goods, facilities, services and premises. We recommend the Department takes this opportunity to prohibit discrimination on the grounds of a person's gender reassignment in the exercise of public functions.

### **Definition of Gender Reassignment**

42. We note that it is proposed to use the same definition of gender reassignment as that which applies to employment and vocational training. Although we welcome the consistent approach as regard the definition across the scope of the SDO 1976, we are concerned that complainants must show that they intend to undergo, are undergoing or have undergone gender reassignment. A combination of case law in the European Court of Justice and the European Convention of Human Rights<sup>2</sup> indicates that many aspects of gender reassignment

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<sup>2</sup> Case C – 13/94, P v S and Cornwall County Council [1996] IRLR 347.

could be considered under an extended definition of gender. The Commission recommends an extension of the definition of gender to include 'gender identity'.<sup>3</sup>

43. In general, as outlined in our response to the Discrimination Law Review, we have recommended that protection from gender discrimination is extended, in its entirety to include those who are transsexual; any exception should be narrowly construed and justifiable.
44. In addition, the Commission recommends that discrimination on grounds of perception and association should be unlawful on grounds of sex and gender reassignment. The Department will be aware that Article 2 (a) of the Gender Directive defines direct discrimination as less favourable treatment 'on grounds of sex'. We note that the SDO 1976 adopts a narrower definition and defines direct sex discrimination as less favourable treatment on the grounds of **a person's** sex. We further note that the 2007 Regulations adopt a similar approach and define direct discrimination, as less favourable treatment on the grounds of **a person's** gender reassignment. As a result, discrimination on the grounds of perception and association are not currently covered on the grounds of sex under the SDO 1976, and we note the Department is not proposing to cover discrimination on the grounds of perception and association as regards gender reassignment, in the draft 2007 Regulations. We consider such an approach to be inconsistent with the wording of the Gender Directive.
45. The Department will also be aware that the Equality Act (Sexual Orientation) Regulations (NI) 2006 prohibit discrimination on the grounds of perceived sexual orientation, and by reason of association with a person of a particular sexual orientation, in the areas of goods, facilities and services, etc. In light of the need to take a consistent approach with the Equality Act (Sexual Orientation) Regulations (NI) 2006, as explained in paragraph 32 above, the Commission recommends that discrimination on grounds of perception and association should be unlawful on grounds gender reassignment. We also have consistently proposed a definition of direct discrimination based on the principle of 'disadvantage on the grounds of' a prohibited factor, as opposed to the 'less favourable treatment'; the latter approach being proposed in the draft 2007 Regulations.

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<sup>3</sup> Goodwin –v- UK [2002] IRLR 664 (ECHR).

## **Indirect Discrimination on grounds of a person's gender reassignment**

46. We are concerned that OFMDFM only propose to make direct discrimination and harassment on grounds of a person's gender reassignment unlawful in the fields of goods, facilities, services and premises, and do not intend to prohibit indirect discrimination on the grounds of a person's gender reassignment. We are of the view that the scope of the Gender Directive prohibits direct and indirect discrimination on the grounds of a person's gender reassignment and recommend that the draft 2007 Regulations are amended to reflect this. In the Commission's view, the proposals do not transpose the full scope of the Gender Directive into Northern Ireland law.

## **Discrimination on the grounds of pregnancy and maternity**

47. The Commission welcomes the proposal to make it clear in the SDO 1976 that less favourable treatment on grounds of pregnancy and maternity in the provision of goods, facilities, services and premises is direct sex discrimination. We recommend that the Department takes this opportunity to similarly amend other areas covered by the SDO 1976, (for example, education), which are outside the scope of the Gender Directive.

## **Private Clubs**

48. We note that the draft 2007 Regulations contain no proposals as regards prohibiting discrimination by a private club, (such as golf clubs which provide services and facilities for both sexes), which operates a policy of membership selection, has 25 or more members, is an incorporated or unincorporated association, and which regulates admission to membership by a constitution. We further note that the Department for Communities and Local Government in the Discrimination Law Review consultation paper indicates that 'as private clubs by their nature restrict admission to membership, they are not considered to cater to the public or a section of the public, and so are not caught by general goods, facilities or services provisions when providing benefits, facilities or services to their members'. The Department for Communities and Local Government however, in order to ensure consistency with GB race, disability and sexual orientation legislation, intend within the context of the Single Equality Act, to prohibit private clubs from discriminating against members, associates and applicants for membership on grounds of sex.

49. We note that Recital 16 of the Gender Directive clearly envisaged that an exception for single sex **private** clubs fall within the scope of the Directive. In particular, it states that differences in treatment may be accepted only if they are justified by a legitimate aim and that a legitimate aim may, 'for example, be the freedom of association (in cases of membership of single sex private clubs)'. Any exception in relation to private clubs must be justified by a legitimate aim, and the means achieving that aim must be appropriate and necessary (Article 4(5)).
50. We are disappointed that OFMDFM have adopted a narrow interpretation of the Gender Directive and recommend that it take this opportunity to prohibit discrimination by private clubs on the grounds of sex, and a person's gender reassignment.

### **Duties and powers of the Equality Commission**

51. The Commission recommends that the draft 2007 Regulations include additional duties and powers in respect of the Commission in order to reflect the extension of the SDO 1976 to cover gender reassignment in the areas of goods, facilities, services and premises. The Department will note that Article 54(1) (bb) of the SDO 1976, specifies that the Commission has a duty 'to promote equality of opportunity, in the fields of employment and vocational training, for persons who intend to undergo, are undergoing or have undergone, gender reassignment...'. The Commission recommends that this duty to promote equality of opportunity is extended to cover the fields of goods, facilities, services and premises.
52. The Commission seeks a similar amendment as regards its power to issue Codes of Practice. It will be noted that under Article 56A(1) (c), the Commission has the power to issue a Code of Practice in the area of 'the promotion of equality of opportunity in the field of employment for persons who intend to undergo, are undergoing or have undergone gender reassignment'. The Commission seeks a similar power in relation to the fields of goods, facilities, services and premises.

21 September 2007