



EQUALITY COMMISSION FOR NORTHERN IRELAND

The need for a NI Single Equality Act

Policy Position Paper

October 2022

Table of Contents

- 1 EXECUTIVE SUMMARY 1**
 - SUMMARY OF RECOMMENDATIONS 1
- 2 OVERVIEW 2**
 - BACKGROUND 2
- 3 RECOMMENDATIONS 4**
 - Strengthen equality protections through single equality legislation 4*
 - Reflect international human rights standards and best practice 6*
 - Ensure provisions build on equality law in Great Britain 8*
 - Comply with Protocol Article 2 obligations, and strengthen equality rights post Brexit 12*
- 4 CONCLUSION 16**

1 Executive Summary

- 1.1 We recommend the adoption of a single equality act for Northern Ireland.
- 1.2 Single equality legislation should reflect international human rights standards and best practice, and build on equality law in GB. Any legislation should also consider and comply with the Protocol Article 2 commitment and keep pace with all future EU equality laws that enhance protections.
- 1.3 The Equality Commission for Northern Ireland (the Commission) urges decision-makers to prioritise the development of single equality legislation, to ensure protection against discrimination and to promote equality of opportunity and good relations.

Summary of recommendations

- Strengthen equality protections through single equality legislation.
- Reflect international human rights standards and best practice.
- Ensure provisions build on equality law in Great Britain.
- Comply with, Protocol Article 2 obligations, and strengthen equality rights post Brexit.

2 Overview

- 2.1 Single equality legislation is the most effective means of strengthening and maintaining protections against discrimination in Northern Ireland.
- 2.2 Such legislation would also improve consistency, understanding and efficiency - saving time and costs for individuals from across all equality categories, as well as employers, service providers, advisory services, and those interacting with equality legislation more generally.
- 2.3 It is fundamentally unfair that different equality groups have different protections without justifiable reason. Such differing protections contribute to a 'hierarchy of rights'.
- 2.4 We call on decision-makers to take steps to legislate for a single equality act in Northern Ireland.
- 2.5 We would welcome the support of stakeholders to achieve better equality protections in Northern Ireland by engaging with colleagues, officials, and elected representatives to raise awareness of our recommendations and advocate for change.

Background

- 2.6 The Equality Commission has consistently called for reform of equality legislation in Northern Ireland. Pursuant to our duty under equality legislation to keep this legislation under review, we have made a number of recommendations over time for improvement to equality law. These include, for example, recommendations for change to the race equality legislation¹, the disability legislation², the sex discrimination legislation³, and for the introduction of age discrimination legislation relating to the provision of goods,

¹ ECNI (2022) [Race Law Reform: Priorities and Recommendations](#)

² ECNI (2012) [Strengthening Protection for Disabled People: Proposals for Reform](#)

³ ECNI (2016) [Gender Law Reform: Summary Report: Policy Priorities and Recommendations](#)

facilities and services⁴. We consider that these, and wider changes, would be given best effect by a single equality law.

- 2.7 The OFMDFM (now TEO) issued a consultation on a Single Equality Bill for Northern Ireland in 2004, to which the Commission responded in detail⁵. However, this did not progress further, and no Bill was brought forward.
- 2.8 The 2006 St Andrew's Agreement made it clear that the Government accepted the need for a Single Equality Bill and committed to working "*rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date*"⁶. Despite that commitment, there has been no further progress in relation to a Single Equality Bill by the Executive.
- 2.9 The adoption of a single equality law approach in Great Britain (GB) - the introduction of the Equality Act 2010 in October 2010 - has further exacerbated and highlighted the significant gaps and shortfalls that exist in Northern Ireland. These differences affect all grounds of discrimination, across a wide range of areas⁷.
- 2.10 In Northern Ireland, there have been amendments over time to individual pieces of equality law, for example to the race⁸ and sex discrimination legislation⁹ to give effect to EU Directives. However, any such changes have not delivered comprehensive single equality law.

⁴ECNI (2012) [Strengthening Protection for all Ages: Ending Age Discrimination in the Provision of Goods and Services: Proposals for Reform](#)

⁵ ECNI (2004) [Response to OFMDFM Consultation Paper: 'A Single Equality Bill For Northern Ireland](#).

⁶ [St Andrews Agreement](#), (2006) Annex B (Human Rights, Equality, Victims and Other Issues)

⁷ For example, there is no protection under the sex equality legislation in Northern Ireland against discrimination by public bodies when exercising their public functions. This gap in protection was rectified in Great Britain prior to the Equality Act 2010.

⁸ [Race Relations Order \(Amendment\) Regulations \(Northern Ireland\) 2003](#).

⁹ [The Sex Discrimination Order 1976 \(Amendment\) Regulations \(Northern Ireland\) 2016](#)

3 Recommendations

Strengthen equality protections through single equality legislation

- 3.1 Equality law in Northern Ireland should be harmonised, simplified and updated so as to address significant inconsistencies and complexities and to ensure uniform protection against discrimination across the full range of equality grounds.
- 3.2 Equality law should be harmonised upwards, so as to strengthen equality rights and protections.

Supporting rationale

- 3.3 It is important to recognise the significant contribution that updated and strengthened equality legislation would have in enhancing equality rights in Northern Ireland.
- 3.4 The lack of progress as regards steps to harmonise, simplify and strengthen Northern Ireland equality law has had a number of important implications.
- 3.5 In some areas, Northern Ireland equality law has failed to keep pace with new and emerging forms of discrimination¹⁰ and in these areas, individuals have no or limited protection against discrimination. Further, the level of protection against discrimination by public authorities when they are performing public functions varies substantially across the grounds: there is no protection against age and sex discrimination, some protection against racial and sexual orientation discrimination, and stronger protection against disability or religion based discrimination.

¹⁰ For instance, case law (*Malcolm* 2008) has significantly restricted the scope of disabled people to claim disability-related discrimination, which has been rectified in GB. See ECNI (2012) [Strengthening Protection for Disabled People Proposals for Reform: Full report](#), pp. 7-8.

- 3.6 Northern Ireland equality law also contains a number of unjustifiable exceptions¹¹ which limit the scope of the equality legislation, as well as unnecessary barriers¹² that limit individuals' ability to exercise their rights under the legislation.
- 3.7 We consider that a single equality law in Northern Ireland would best harmonise and simplify the protections available for everyone in society, both now and in the future.
- 3.8 Such harmonisation and simplification would provide a number of benefits to a range of users. For example:
- individuals could more readily understand rights and protections if these were more consistent across the various protected aspects of their identity;
 - employers and service providers could more easily understand and more effectively implement more harmonised obligations and responsibilities, with associated time and cost savings;
 - those providing advice or support services would also benefit from the efficiencies of a simplified and harmonised set of protections in a single equality law;
 - those tasked with keeping the legislation under review or updating the legislative framework would also benefit from the efficiencies of simplified and harmonised legislation.

¹¹ For example, the exception on foreign nationals in the public service. See ECNI (2022) [Race Law Reform: Priorities and Recommendations](#), paras 3.28-3.32.

¹² For example, barriers to pupils in schools making complaints, which are not found in other areas covered by the race equality legislation in Northern Ireland, and have been addressed by changes that have been introduced in other parts of the United Kingdom under the Equality Act 2010. See ECNI (2022) [Race Law Reform: Priorities and Recommendations](#), paras 4.34-4.43.

Reflect international human rights standards and best practice

- 3.9 When considering what should be included in a single equality law for Northern Ireland, decision-makers should seek to align with international human rights standards and best practice in other jurisdictions.

Supporting rationale

- 3.10 The European Commission on Racism and Intolerance (ECRI) (2019)¹³ has recommended the introduction of single equality legislation in Northern Ireland, taking account of the Commission's recommendations.
- 3.11 While a consideration of current protections in neighbouring jurisdictions will be of interest, it should be noted that there are known shortfalls in current approaches - for example, in Great Britain, the Equality Act that was granted Royal Assent in 2010 included measures to provide protection against dual discrimination, third-party harassment; and provided powers for tribunals to make recommendations that benefit the whole workforce. However, these provisions were never enacted, or were subsequently repealed
- 3.12 The need for combined discrimination provisions to be included in equality legislation has been highlighted by international human rights monitoring bodies. In its latest Concluding Observations on the UK's (2016) and Ireland's (2020) compliance with the UN Convention on the Elimination of All Forms of Racial Discrimination, CERD¹⁴ recommended that both states should explicitly provide for the prohibition of multiple discrimination.

¹³ ECRI (2019) [Conclusions on the implementation of the recommendations in respect of the UK subject to interim follow up](#). ECRI has called on Government to 'consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the Equality Commission for Northern Ireland'

¹⁴ [CERD/C/GBR/CO/21-23](#) (3 October 2016), para 8(b) for the UK; [CERD/C/IRL/CO/5-9](#) (23 January 2020), para 12(b) for Ireland.

- 3.13 Furthermore, CEDAW, in 2019, called upon the UK Government to bring into force section 14 of the Equality Act 2010¹⁵, which allowed for protection against dual discrimination.
- 3.14 The extension of protection against multiple discrimination on more than two grounds has already been embraced by other jurisdictions; including nine EU Member States¹⁶, Canada¹⁷ and South Africa¹⁸.
- 3.15 The Equality Act 2010 originally contained a dual discrimination provision, designed to enable people to bring claims where they have experienced less favourable treatment because of a combination of two protected characteristics.
- 3.16 While broadly welcomed, these provisions on dual discrimination have never come into force, despite the recommendations of international bodies, and best international standards.
- 3.17 As the issue of combined discrimination illustrates, best international practice should lead equality law development in Northern Ireland, rather than simply copying the Equality Act 2010 or legislation from any other jurisdiction.

¹⁵ [CEDAW/C/GBR/CO/8](#) (14 March 2019), para 16(d).

¹⁶ Fundamental Rights Agency (2017) [Fundamental Rights Report](#), p. 69; Austria, Bulgaria, Croatia, Germany, Greece, Italy, Romania, Slovenia and Sweden.

¹⁷Section 3(1) of the [Canadian Human Rights Act 1985](#).

¹⁸ Section 9 (3) of the [Constitution of the Republic of South Africa, 1996, Chapter 2: Bill of Rights](#).

Ensure provisions build on equality law in Great Britain

- 3.18 There are significant gaps between equality law in GB and Northern Ireland, which have been widened by the passing of the Equality Act 2010.
- 3.19 These differences mean that in a number of key areas, individuals in Northern Ireland have less protection against discrimination and harassment than people in other parts of the United Kingdom.
- 3.20 As a minimum, such shortfalls should be addressed via a single equality law for Northern Ireland.
- 3.21 The development of single equality law in Northern Ireland should consider improvements delivered by the 2010 Equality Act in Great Britain, taking account also of lessons over the past decade of its implementation. Proposals for Northern Ireland should not be limited by GB provisions but rather should reflect our own circumstances, taking account of international best practice and lessons from other jurisdictions.

Supporting rationale

- 3.22 The Equality Act 2010, which came into effect in GB in October 2010, was introduced in order to simplify, harmonise and strengthen GB equality law and to tackle new forms of discrimination and address deep-rooted existing inequalities¹⁹.
- 3.23 However, its enactment has resulted in significant differences between GB and Northern Ireland equality law. These differences affect all grounds of discrimination across a wide range of areas,

¹⁹ The provisions of the Equality Act 2010, apart from a few minor exceptions, only applied to Great Britain and did not change equality law in Northern Ireland. The majority of the Equality Act 2010 provisions came into force in October 2010. Some provisions, for example, those relating to outlawing age discrimination outside the workforce and provisions relating to the public sector equality duty, came into effect at a later date. Some provisions were never enacted, such as dual discrimination, and others repealed, such as third-party harassment.

such as employment, education, the provision of goods and services and housing, etc.

- 3.24 The range of gaps in equality law between the two jurisdictions have the effect that vulnerable and marginalised individuals in Northern Ireland, who experience discrimination, have less protection against unlawful discrimination, harassment and victimisation across a number of equality grounds than their counterparts in GB.
- 3.25 Further, employers and service providers who operate both in Northern Ireland and GB have to grapple with the increased inconsistencies and differences in equality law between the two jurisdictions. They also have to keep track of their responsibilities under differing legislative frameworks, as well as case-law emerging from separate legislative provisions.
- 3.26 Both the UN Committee on the Elimination of Racial Discrimination (CERD)²⁰ and the Committee on the Elimination of Discrimination against Women (CEDAW)²¹, have expressed concern that Northern Ireland does not have the same level of equality protections as compared to their counterparts in other parts of the UK.
- 3.27 At a minimum, these gaps should be addressed in a single equality law for Northern Ireland. However, we also recommend a number of changes to legislation in Northern Ireland which go beyond the level of protection currently set out in equality legislation in GB²².

²⁰ CERD Committee (2016) [Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland](#), paras 7-8.

²¹ CEDAW Committee (2019) [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), paras 15-16.

²² For example, we recommend Northern Ireland race equality law goes beyond the level of protection which currently exists in Great Britain in a number of areas; for example, by providing protection against combined discrimination; strengthening protection for employees against third party racial harassment; increasing the powers of tribunals to make wider recommendations. See ECNI (2022) [Race Law Reform: Priorities and Recommendations](#)

3.28 Some key differences between NI and GB anti-discrimination law are summarised below:²³

Legislation harmonised and simplified

3.29 The Equality Act 2010 addressed inconsistencies within the discrimination law framework in GB so as to ensure uniform protection against discrimination across all grounds, where appropriate. For example, it harmonised the race equality legislation so that individuals have the same level of protection on the grounds of colour and nationality, as on the grounds of race, ethnic origin and nationality. It also harmonised protection from discrimination, harassment or victimisation in the exercise of public functions in relation to all equality grounds. In addition, it extended protection against discrimination in the exercise of public functions to the grounds of age, pregnancy and maternity and gender reassignment.

Age discrimination outside the workplace

3.30 The age discrimination legislation was extended in GB to prohibit unjustifiable age discrimination against adults when accessing goods, facilities and services, or private clubs, and in the exercise of public functions. The Commission continues to express concern about the lack of legislation in Northern Ireland to provide protection from age discrimination in the fields of goods, facilities, and services, despite the issue being included in the 'New Decade, New Approach' Agreement of 2020²⁴.

Disability legislation strengthened

3.31 The disability equality legislation was streamlined and strengthened in Great Britain, with key shortfalls addressed. Changes included:

- the replacement of the concept of 'disability-related discrimination' with protection against 'indirect disability

²³ The differences relate to the anti-discrimination legislation and do not include differences relating to the public sector duties on public authorities.

²⁴ NIO (2020) [New Decade, New Approach](#), para xxii, states 'An Age, Goods and Facilities and Services Bill should also be brought forward by the Executive as basis for ensuring that no one is discriminated against because of their age'.

discrimination’ and ‘discrimination arising from disability’;²⁵

- the amendment of the definition of disability to make it easier for disabled people to fall within the definition of disability;
- increased protection for disabled people against harassment when accessing goods and services;
- express protection for people, such as carers, friends or family members, who are subjected to direct discrimination or harassment due to their association with a disabled person or for individuals because they are wrongly perceived to be disabled;²⁶
- prohibition of questions by employers related to disability, prior to making a job offer, except in specified circumstances;
- a new duty was placed on schools to make reasonable adjustments to auxiliary aids and services in respect of disabled pupils.

Equal pay provisions strengthened

- 3.32 The equal pay legislation was strengthened in Great Britain to prohibit employers from preventing or restricting their employees from having discussions in order to establish if pay differences exist that are related to an equality ground (e.g. gender).

Positive action measures extended

- 3.33 Positive action measures were extended and harmonised in Great Britain so as to allow, but not require, employers and service providers to take a wider range of measures aimed at alleviating disadvantage experienced by under-represented groups across all equality grounds.

²⁵ These provisions are primarily designed to address the effects of the House of Lords’ decision in *Mayor and Burgesses of the London Borough of Lewisham v Malcolm* [2008] UKHL 43, which severely restricted the scope for disabled people to claim disability-related discrimination.

²⁶ Protection against discrimination due to association and perception was also extended to the grounds of sex and gender reassignment.

Protection against discrimination by private clubs extended

- 3.34 Protection against discrimination by private clubs in Great Britain was extended to cover additional equality grounds, including age and gender, religion or belief, pregnancy and maternity and gender reassignment.
- 3.35 Such issues should be addressed in single equality legislation in Northern Ireland. However, legislation in Northern Ireland should also reflect best international practice, including from other jurisdictions, and human rights obligations.

Comply with Protocol Article 2 obligations, and strengthen equality rights post Brexit

- 3.36 In line with the ‘keeping pace’ obligations under Protocol Article 2, the Northern Ireland Executive, Assembly and relevant departments should ensure that Northern Ireland’s equality legislation keeps pace with any changes to the Protocol Annex 1 Equality Directives, including relevant CJEU case law, which enhance protections. We recommend that any such changes be reflected in a single equality law.
- 3.37 The UK Government, the Northern Ireland Executive, Assembly and relevant departments should ensure North-South equivalence of rights, by ensuring that Northern Ireland’s equality legislation keeps pace with changes to equality law, arising as a result of EU laws introduced on or after 1 January 2021, that enhance protections. This should include rights introduced as a result of EU laws even where they do not amend or replace the Protocol Annex 1 Directives. Any such changes should be reflected in a single equality law.
- 3.38 In the development of a single equality law for NI, the Northern Ireland Executive, Assembly and relevant departments should ensure there is early consideration of, and compliance with, Protocol Article 2. Protocol Article 2 should also be considered

and complied with throughout the implementation of single equality legislation and the development of regulations and guidance.

- 3.39 The Northern Ireland Executive, Assembly and relevant departments should set out, in detail, what consideration has been given to compliance with Protocol Article 2 in any development of a single equality law. Further, the Explanatory Memoranda on a single equality law should make clear what consideration has been given to ensuring conformity with Article 2.

Supporting rationale

- 3.40 The need for additional measures to better protect equality and human rights is particularly important in the context of the impact of Brexit on equality and human rights protections in Northern Ireland.
- 3.41 As recognised by the UK Government, EU laws, particularly on anti-discrimination, have formed an important part of the framework for delivering the guarantees on equality and rights in Northern Ireland²⁷. EU laws have provided a minimum level of rights and protection below which domestic legislation in Member States, including the UK, must not fall below. These EU laws have covered areas such as equality rights, as well other areas such as employment rights of part-time workers, pregnant workers, and victims.
- 3.42 The UK Government has committed under Protocol Article 2(1) to ensure there is no diminution of the rights, safeguards and equality of opportunity provisions set out in the chapter of the same name in the Belfast/ Good Friday Agreement as a result of Brexit, including the rights set out in the EU equality Directives in Annex 1 to the Protocol.
- 3.43 The UK Government has also committed in the Protocol²⁸ to ensure that any amendment to, or replacement of, an Annex 1

²⁷ UK Government, [Explainer Document](#): UK Government commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland, 7 August 2020

²⁸ Article 13, Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement

Directive by the EU on or after 1 January 2021 which enhances rights and protections, is reflected in Northern Ireland law.

- 3.44 In addition, UK courts when considering the interpretation of any of the equality directives listed in Annex 1 must do so in conformity with any relevant case law of the Court of Justice of the EU (CJEU)²⁹. This commitment should be reflected in the rights and protections covered by single equality legislation.
- 3.45 However, there are important limitations to these commitments in terms of the continued application of EU equality and human rights standards in Northern Ireland. For example, it does not cover future EU equality related Directives that may be introduced, except to the extent that they might result in changes to the Annex 1 Directives. This could mean, for example, that whilst equality laws in other EU countries, including in Ireland, are strengthened to comply with those future EU equality laws, Northern Ireland equality laws may not similarly be strengthened³⁰.
- 3.46 The text of the Belfast/ Good Friday Agreement requires “*at least an equivalent level of protection of human rights*” in Ireland as in Northern Ireland.³¹ The Commission considers that long-term North-South equivalence is important to ensure there is no diminution of rights in NI and to ensure that human rights and equality protections are subject to continual improvement. Whilst the Protocol requires that NI equality law keeps pace with any EU changes to the Annex 1 equality directives which enhance protections, there is the potential for equality and human rights on the island of Ireland to diverge after the end of the Brexit transition period
- 3.47 It will also be noted that the Annex 1 Directives do not cover all equality areas, including some areas which are already currently covered by Northern Ireland equality law, but not EU law. For

²⁹ UK Government, [Explainer Document](#): UK Government commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland, 7 August 2020

³⁰ Except to the extent that they might result in changes to the Annex 1 Directives

³¹ Belfast/ Good Friday Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights; the Agreement states, “the Irish Government will also take steps to further strengthen the protection of rights in its jurisdiction ... The measures brought forward would ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland”

example, the Annex 1 Directives do not cover equality protections in areas outside employment and vocational training on the grounds of sexual orientation, disability or religion or belief.

- 3.48 Whilst we welcome the UK Government's commitment contained in Protocol Article 2, as set out above, the Article 2 commitment has its limitations. Therefore, we continue to call on the UK Government, and the Northern Ireland Executive, Assembly and relevant departments, as regards areas within its devolved competence, to ensure the North-South equivalence of rights by ensuring that Northern Ireland equality legislation keep pace with all future EU equality laws that enhance equality protections. This includes equality rights introduced as a result of EU laws that do not amend or replace the Protocol Annex 1 Directives. These changes should be reflected within any future single equality legislation.
- 3.49 It is also important that, at the early stage of legislative development with respect to a single equality law framework, the Northern Ireland Executive, Assembly and relevant departments should ensure there is consideration of, and compliance with, Protocol Article 2 obligations. This should also extend to policy implementation, and the development of regulations and guidance.
- 3.50 Further, Explanatory Memoranda on any draft NI legislation should set out in detail what consideration has been given to ensuring conformity with Protocol Article 2, including in the development of single equality law. This is particularly important as it is outside the legislative competence of the Northern Ireland Assembly to pass legislation that is incompatible with Protocol Article 2.³² Further, the inclusion of this information in the Explanatory Memoranda and the sharing of this information by the Committee with the ECNI and NIHRC, and with civil society organisations in a timely manner, will enable their full engagement in the legislative scrutiny process.

³² The European Union (Withdrawal Agreement) Act 2020 inserted a new paragraph in subsection 6(2) of the Northern Ireland Act 1998 which adds a criterion for a bill falling outside the legislative competence of the Assembly if "... it is incompatible with Article 2(1) of the Protocol on Ireland/ Northern Ireland in the EU withdrawal agreement (rights of individuals)".

4 Conclusion

- 4.1 The Equality Commission recommends the adoption of single equality legislation for Northern Ireland. This legislation should reflect international human rights standards and best practice, and build on equality law in GB. Any legislation should also consider and comply with the Protocol Article 2 commitment and keep pace with all future EU equality laws that enhance protections.
- 4.2 We call on decision-makers to take prompt action to legislate for a single equality law which delivers harmonised and enhanced protections in Northern Ireland. Such legislation will also improve consistency, understanding and efficiency - saving time and costs for individuals, employers, service providers, advisory services, and those interacting with equality legislation more generally.
- 4.3 This document and wider information on single equality legislation can be found at www.equalityni.org/SingleEqualityAct