



HERE NI Response to Equality Law in Northern Ireland

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This response was prepared by:

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Introduction

HERe NI (previously LASI), established informally in 2000 and formally constituted as a Company Limited by Guarantee in 2004, is a regional organisation that works across all areas of Northern Ireland. We advocate for and support LGBTQIA+ women and their families and improve the lives of LGBTQIA+ women across the North. HERe NI is the only women focused organisation within the Northern Ireland LGBTQIA+ sector.

HERe NI welcome this inquiry into Equality Law in Northern Ireland and trust that it will contribute much-needed change in Equality Law in this region. Our response to this consultation will focus on the gaps in equality legislation in Northern Ireland for two key groups: *LGBTQIA+ people and women*. The LGBTQIA+ community in this jurisdiction have fought (and continue to fight) long and hard for their equality, rights and freedoms. For many LGBTQIA+ people their rights are constantly challenged, and in some instances are regressing. There have been a number of notable regressions in the US; certain states have legislated on a re-definition of sex, schools facilities ban, school sports ban and forced ‘outing’ in schools (American Civil Liberties Union, 2024). Northern Ireland has far from an exemplary track record on LGBTQIA+ equality; indeed, many of the hard won rights in this region have not come through Westminster during periods of Northern Ireland Executive collapse. Even in the UK (and in Northern Ireland, as of August 2024) we have seen the Government take action to block puberty blockers for trans young people.

Currently, the main legislative gaps in equality law in Northern Ireland, compared to the UK, for LGBTQIA+ people in this region are: protection for LGBTQIA+ young people in schools, and protection for trans people in clubs and associations. There are a plethora of other equality issues in this region, which I will highlight throughout the consultation, not least the political contestation over rights, which has meant that the Executive has never delivered on a Bill of Rights for Northern Ireland, and the political impasse brought on by consecutive periods of Executive collapse. The challenge for the future of Northern Ireland or any New Ireland will be to lead on substantive equality protections that improve the lives of everyone who lives in this jurisdiction.

Throughout this consultation HERe NI will present the case for **a single piece of equality legislation**, also referred to as ‘Single Act Provision’, to achieve harmonisation, intersectionality and address the gaps in protections. There are key parts of the Equality Act 2010 (Great Britain) that Northern Ireland should also seek to emulate:

- ***Intersectionality.*** The Equality Act 2010 recognises ‘combined discrimination’ in section 14. In theory this is a step forward towards recognising that people lead multiple identity ‘intersectional’ lives (eg as a gay black woman or as a black disabled child from a religious minority).
- ***Harmonisation and extension of the concepts of discrimination, harassment and victimisation across nine protected characteristics:*** race, gender, disability, age, sexual orientation, religion/belief, transgender status, pregnancy and maternity, marriage/civil partnership.
- ***Gender Pay Gap Reporting.***

However, Northern Ireland should not just be aiming to ‘copy and paste’ from other regions but strive for exemplary equality legislation that seeks to represent our diverse society in this region.

Northern Ireland has a unique post-conflict history and that should be taken into consideration when formulating any new equality legislation. Whilst we acknowledge that the Equality Act 2010 in Great Britain is a solid starting point for any future equality legislation in this region, a new single act for Northern Ireland could go further than the Equality Act 2010 in strengthening equality in the following areas:

- Adopt a fully ***intersectional approach***. Section 14 of the Equality Act 2010 caps the number of grounds that one can experience discrimination at 2; which is simply not how some people experience discrimination. There is a need for the law to reflect the way people experience the world in all their diversity.
- Include protections covering socio-economic status by adding ***socio-economic protections as a duty in equality law (and as a protected characteristic under Section 75)*** Currently socio-economic duty is only in place in Scotland and Wales.
- ***Extend pay gap reporting across all Section 75 groups.***

1. Do you consent to your submission being published on the Committee's website and included in the Committee's report?

Yes.

2. What is your name?

Sophie Nelson

3. What is your email address?

policy@hereni.org

4. What is your gender and age group?

Female (21-40)

5. Are you an individual or organisation?

Organisation.

6. What is your organisation?

HERe NI.

7. In responding to this consultation is there a particular group(s) you identify with in responding to this consultation on equality protection? (please select all that apply)

Women

LGBTQ+

8. Do you feel there is a difference in protections between the regions of the UK?

Yes.

9. If yes, what differences are there in equality protections between the regions of the UK?

No Single Act Provision in Northern Ireland

The most striking difference is that in the rest of the UK they have one single equality act (Equality Act 2010), whereas, in Northern Ireland, we have a range of primary and secondary equality and anti-discrimination legislation. The St. Andrews Agreement endorsed a Single Equality Bill (2006). However, a motion to bring forward legislation was defeated in the Northern Ireland Assembly in 2007.

Section 75

Post Good Friday Agreement (1998), Northern Ireland was praised for its approach to equality protections; the establishment of the Equality Commission Northern Ireland and the introduction of a statutory duty on public authorities to promote equality of opportunity between nine groups (religious belief, political opinion, race, age, marital status, sexual orientation, sex, disability and people with dependents) under Section 75 of the Northern Ireland Act. However, critics (Havinsky et al, 2019: 148) have argued that equality has become a ‘politically contested issue’ in Northern Ireland due to statutory duties being hamstrung by ongoing political stability in this jurisdiction. Others have found there to be procedural or ‘thin’ compliance of Section 75 (Chaney and Rees, 2004). Indeed, weak compliance has ensued a fragmented approach to Equality in Northern Ireland.

Gaps for LGBTQIA+ people in Northern Ireland legislation

Whilst much of the existing Northern Ireland primary and secondary legislation has provided ample grounds for equality protections in this region, there are a number of gaps between the Equality Act 2010 in Great Britain and legislation in Northern Ireland. Currently, LGBTQIA+ people in Northern Ireland do not have access to the same equality protections as their UK counterparts. The gaps in the law are most stark when it comes to protections for transgender members of the LGBTQIA+ community. The Sex Discrimination (NI) Order 1976 (as amended) grants protections on grounds of sexual orientation and transgender identity in employment, education and the provision of goods and services. However, the Sex Discrimination (NI) Order 1976 (as amended) does not extend to protect trans people in *clubs and associations*. This equality protection is granted to transgender people in Great Britain. Another area where there is inequality lies in the lack of protections for LGBTQIA+ young people in schools in Northern Ireland. Currently, there is no protection from harassment for young LGBTQIA+ people in schools, and equality law does not protect young transgender or gender-questioning pupils from discrimination. Again, this is covered under equality legislation in Great Britain.

Impact of Political Impasse/Contestation of Rights

There is a broader issue in this region of political contestation over rights, exemplified by the fact that Northern Ireland has never been granted a Bill of Rights (despite it being promised in the Good Friday Agreement (1998) and in New Decade New Approach (2020)). A Bill of Rights

Committee could greatly strengthen rights for women in Northern Ireland, employing a gender sensitive approach mindful of UN Resolution 1325 (2000) in implementing the Women, Peace and Security Agenda (Wright et al., 2024). Furthermore, any Bill of Rights for Northern Ireland should include various rights that supplement the European Convention on Human Rights (UCHR). The majority of these rights would be drawn from international human rights treaties to which the UK is already legally bound, including socioeconomic rights, children's rights and environmental rights, among others. HERE NI also urge the UK Government to adopt the optional protocols included in the UCHR to strengthen the UK's commitment to equality. In particular, to Protocol 12 which states that 'the enjoyment of any right set forth by law shall be secured without discrimination on any ground'. (Council of Europe, 2000).

Having additional rights-based duties must also go hand-in-hand with reform of the political institutions to ensure that no one party in the power-sharing Executive can collapse the whole Assembly over rights-based issues. Parties walking out of the Executive over rights based issues was exemplified most recently in 2022 when the Northern Ireland Assembly collapsed over the issue of the Protocol/Windsor Framework. The effect of legislative deadlock is significant, not least that it has a disproportionate impact on minoritised groups and stalls important progression of rights-based initiatives and delivery on strategies. During the past month we have seen a spike in racist and Islamophobic attacks against refugees and asylum seekers; yet the finalised Refugee Integration Strategy remains on the desk of the Executive for sign off. Two women have been murdered in Northern Ireland in this past week: Sophie Watson and Montserrat Martorell Elias; yet the finalised Violence Against Women and Girls Strategy remains on the desk of the Executive for sign off. The only emergency procedural action the Executive has taken since its restoration in February 2021 was signing off on a puberty blocker ban, without public consultation, marking a regression to LGBTQIA+ rights in the region.

The result of such political contestation over rights has meant that, in comparison to the rest of the UK, LGBTQIA+ individuals have faced particular disadvantage in this jurisdiction; Northern Ireland was the last country in the UK to legalise same-sex marriage, grant women abortion rights, lift the blood ban for gay and bi-sexual men and allow those in a civil partnership to adopt. Much of this progressive legislation introduced in Northern Ireland was passed through Westminster during periods of Assembly collapse. Such was the case for Equal Marriage and Abortion Legislation. Additionally, Northern Ireland remains the only region across these islands without an LGBTQIA+ Strategy. A lack of political leadership, and political will, to progress these issues and deliver on a strategy with provision of resource and funding to the sector has had a direct impact on the health and wellbeing of the LGBTQIA+ community over the past number of decades.

10. Do you feel there is a difference in protections between Northern Ireland and the European Union (including the Republic of Ireland)?

Yes.

11. If yes, what differences are there in equality protections between Northern Ireland and the European Union (including the Republic of Ireland)?

Divergence from EU Law and the Impact of Brexit on rights

HERE NI appreciate the steps taken following Brexit which have aimed to secure equality protections in Northern Ireland and ensure that we act in accordance with The European Charter of Fundamental Rights. Specifically, that there would be ‘*no diminution of rights, safeguards or equality of opportunity*’, as laid out in Article 2 of the Windsor Framework (Wright et al., 2024). HERE NI are in favour of these rights being brought into domestic law, so that the protections of people in Northern Ireland are not continually subject to agreements between UK government and the EU, but by the Northern Ireland Assembly and the Executive. There is also a commitment in Article 2 to keep in line with EU Directives under Annex 1 of Article 2. These Directives include: Racial Equality Directive (2000/43/EC), Employment Equality Framework Directive (2000/78/EC), Gender, Goods and Services Directive (2004/113/EC), Equal Treatment (Employment) Directive (2006/54/EC), Self Employment Equal Treatment Directive (2010/41/EU), Equal Treatment in Social Security Directive (79/7/EEC) (Wright et al., 2024).

The Equality Commission have stated that the Northern Ireland Assembly can choose to voluntarily align with EU developments, even if not required to do so under Article 2 of Protocol. Voluntarily aligning with EU developments would help to significantly strengthen rights for women in Northern Ireland and could include rights relating to gender pay transparency, work life balance and gender balance on non-executive director roles (Wright et al., 2024). There are also gaps around reporting/data collection; no longer part of EU monitoring on Gender Equality. The UK leaving the EU means it will no longer provide data to the European Institute for Gender Equality (EIGE) Gender Equality Index¹⁶⁸ nor to Eurostat (Wright et al., 2024). Data reporting is vital to ensure that there is not a roll back in gender equality in this region. HERE NI also support the monitoring of all Section 75 groups to ensure that there is not a roll back on the rights of minoritised groups, including LGBTQIA+ people.

However, there is still much of a grey area around the real impact of Brexit of women in Northern Ireland, and HERE NI support the Equality Commission Northern Ireland recommendation that the Commission should work with relevant Assembly Departments, including the Department for Communities, the Executive Office and the Department for Justice to conduct greater research into the specific impact of Brexit on particular groups of women and LGBTQIA+ people in Northern Ireland. What we can say, however, is that the political impasse over the Protocol/Windsor Framework which led to the Northern Ireland Assembly not sitting (and subsequent legislative deadlock) has had an impact on minoritised groups, including women and LGBTQIA+ people (Wright et al., 2024). One of the impacts has been sustained budgetary issues; in some cases LGBTQIA+ sector organisations have lost Department of Health core funding. Whilst HERE NI have never received core funding, tight budgets mean that the prospect of future funding for our organisation is unlikely, despite the continued need for our service provision, and growing need for mental health support provision.

12. From a scale of 1 to 5 how affected have you or your organisation been due to the differences in legislation?

5

13. If you have been affected, what are the effects of differences in legislation on you or on those you represent?

Gaps in Legislation for LGBTQIA+ people

As I have previously outlined, there are gaps for LGBTQIA+ people in equality protections in schools, extra-curricular activities and clubs/associations. Cara-Friend is the LGBTQIA+ sector organisation devoted to working with LGBTQIA+ young people. *Through Our Minds* (O'Hara, 2013) found that 88.6% of LGBTQIA+ people had heard homophobic or transphobic language in schools, 66.3% had heard LGBT people receive verbal threats in their schools, and 88.7% of respondents reported that teachers never or rarely talked about LGBT issues sensitively. *The LGBTIreland Report* (Higgins *et al*, 2016) found LGBTQIA+ young people who were bullied in school because of their minoritised sexual orientation or gender identity were 19% more likely to have attempted suicide than those who were not bullied (Higgins *et al*, 2016). Having greater equality protections for transgender and gender-questioning LGBTQIA+ young people in schools, clubs and associations could help prevent harassment and increase mental health outcomes for LGBTQIA+ people in Northern Ireland. Again, the Sex Discrimination (NI) Order 1976 (as amended) does not extend to protect trans people in *clubs and associations*. This would mean that trans young people can be excluded from spaces or face discrimination within clubs and association, and the perpetrator may face no legal sanctions.

Political Contestation over Rights/Political Impasse

There remain problems with rights-based issues becoming politically contested in this region. We saw the Assembly collapse in 2017 over 'cash for ash' and Irish language rights and again over the Protocol/Windsor Framework in 2020. The impact of Assembly collapse should not be understated; when the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, visited Northern Ireland in 2023, he stated that 'the Northern Ireland Civil Service observed that no new policy development could occur without a functioning devolved government, amidst considerable budgetary pressures that had recently resulted in numerous cuts that could imperil social services for marginalised groups' (Madrigal-Borloz, 2023). Indeed, much of the progressive legislation passed for Northern Ireland, on same-sex marriage, abortion rights, or Irish language has been passed through Westminster during periods of Stormont collapse.

Of course, for the LGBTQIA+ sector, currently not being able to achieve substantive change through domestic politics remains a legitimate concern. HERE NI's lobbying efforts to achieve change in areas such as hate crime reform, access to safe and affordable fertility treatment, ending Conversion Practices, and improving LGBTQIA+ education in schools, have become hampered by Government Ministers who do not view LGBTQIA+ issues as a priority. All the while, under-funding and under-resourcing has squeezed the sector to capacity.

Since the Executive has returned in February 2024, some Ministers have not responded to engagement with the LGBTQIA+ community or have refused to meet with us altogether. LGBTQIA+ Sector organisations HERE NI, The Rainbow Project and Cara-Friend have written to the Department of Communities to request a meeting with the Minister Gordon Lyons to discuss progressing the LGBTQIA+ Strategy, yet the department stated that the Minister would not meet with us (that was in February 2024). The Sexual Orientation Strategy that was promised over twenty years ago by the Executive continues to remain undeveloped by the Department of Communities. It can be argued, therefore, that whatever Parties take certain ministerial seats can have a significant impact on the progression of rights-based issues throughout Northern Ireland.

Indeed, harmonising equality legislation and addressing intersectionality could go a long way in prioritising a rights-based approach to parliamentary practice and provide urgency around implementation of the social inclusion strategies.

Shortfalls of not having an intersectional approach

LGBTQIA+ women who face ‘dual discrimination’ (on grounds of their sexual orientation and gender identity) currently risk having to pick and choose on which separate grounds on which they feel they have experienced discrimination. This ignores that people lead multiple identity ‘intersectional’ lives (eg. as a gay black woman). However, while the rest of the UK does acknowledge intersectionality in the Equality Act 2010, Section 14 of the Act caps the number of grounds at 2, which is simply not how some people experience discrimination. There is a need for the law to reflect the way people experience the world in all their diversity. LGBTQIA+ women are more likely to experience ‘dual discrimination’; as such, HERE NI reinforce that any new equality legislation introduced in Northern Ireland should not cap the number of grounds on which anyone can experience discrimination.

Brexit

There is much uncertainty about the full way in which LGBTQIA+ women will be affected by Brexit in this region. What we can say is that voluntarily aligning with EU developments would help to significantly strengthen rights for women in Northern Ireland and could include rights relating to gender pay transparency, work life balance and gender balance on non-executive director roles (Wright et al., 2024). Moreover, strengthening data collection in this region is needed to ensure that we do not roll back on rights, as the UK leaving the EU means it will no longer provide data to the European Institute for Gender Equality (EIGE) Gender Equality Index¹⁶⁸ nor to Eurostat (Wright et al., 2024).

14. Do you feel that legislative change is required to make the equality protections in Northern Ireland the same as in other jurisdictions?

Yes.

15. If yes, what legislation needs to change in order to make the equality protections in Northern Ireland the same as in other jurisdictions?

At the very least for LGBTQIA+ women the legislation needs to change in the following areas to ensure the same equality protections as in other jurisdictions:

- ***Address intersectionality.*** The Equality Act 2010 recognises ‘combined discrimination’ in section 14. In theory this is a step forward towards recognising that people lead multiple identity ‘intersectional’ lives.
- ***Extend Sex Discrimination (NI) Order 1976 beyond employment, education and the provisions of goods/services*** to include clubs and associations. This is currently the law in Great Britain.
- ***Ensure that all LGBTQIA+ young people in schools are protected from discrimination.*** This is currently the law in Great Britain.

However, we should not just be aiming for the very least and should strive for the best equality legislation that seeks to represent our diverse society in this region. Therefore, we would reinforce the case for **a single piece of equality legislation**, to achieve harmonisation, intersectionality and go further than the Equality Act 2010 in the following areas:

- Adopt a fully ***intersectional approach***. Bringing Section 14 across into law in Northern Ireland would not be fit for purpose.
- Include protections covering socio-economic status by adding ***socio-economic protections as a duty in equality law (and as a protected characteristic under Section 75.)*** Currently socio-economic duty is only in place in Scotland and Wales.
- ***Extend pay gap reporting across all Section 75 groups.***

Ends.

Bibliography

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