

## **THE EXPERIENCE OF A SINGLE EQUALITIES COMMISSION IN NORTHERN IRELAND**

*Elizabeth Meehan*

### **INTRODUCTION**

As Great Britain considers creating a single Equality and Human Rights Commission, it may be instructive to look at experience in Northern Ireland since 1999.<sup>1</sup> In that year, the Equality Commission Northern Ireland (ECNI) was established, incorporating the previous Equal Opportunities Commission (EOCNI, gender), Fair Employment Commission (FEC, religion and political opinion), Commission for Racial Equality (CRENI) and Disability Council. The Human Rights Commission remains separate.<sup>2</sup> The life of the new Commission coincides with a type of combined equality legislation, the

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*Elizabeth Meehan was Director of the Institute of Governance, Public Policy and Social Research at Queen's University Belfast and is currently Adjunct Professor, School of Politics and International Relations at University College Dublin. Other publications are on women and politics, citizenship, devolution and British-Irish relations. Among other public appointments, she served on the Fair Employment Commission between 1993 and 1999. Email: e.meehan@qub.ac.uk*

<sup>1</sup> *There are, however, distinctions. The NI Human Rights Commission is separate. And the governing legislation is different; see Annex 1 for NI law. Also, the ECNI has a close relationship with its counterpart in the Republic of Ireland as common standards throughout the island are expected (Hinds 2003, p. 190).*

<sup>2</sup> *But with a good relationship with ECNI, expressed in a Memorandum of Understanding, regular meetings and a close working relationship. An amalgamation has been considered but rejected as 'inappropriate [in Northern Ireland] at this time', though it should be 'kept under review' in the light of experience in Great Britain (OFMDFM 2005, pp. 21, 50-2).*

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Statutory Duty on public authorities in the Northern Ireland Act 1998 [Section 75(1)] to promote equality across nine grounds.<sup>3</sup> A Single Equality Bill, related to EU obligations,<sup>4</sup> – in the pipeline since 2000 – has been affected by the suspension of devolution and difficulty in finding agreement ‘about what precisely it will contain’ (Hinds and O’Kelly 2006, p.26). Collins (2005, p.24) notes that a single Commission does not require a single equality act but that it would be helpful to have one which harmonized provisions for monitoring and affirmative action and the groups covered by protection against discrimination in the provision of goods, facilities and services.<sup>5</sup>

In both parts of the United Kingdom, there are different views about both single equality agencies and single equality legislation (Hinds 2003, p.189, Lovenduski 2005, personal communication). A full analysis would require a major piece of comparative research but there is, to date, no systematic study that ‘demonstrates that single or combined agencies are more or less effective than are separate agencies’ (Lovenduski 2005, personal communication).

This article outlines the history of reform in Northern Ireland, picks out three key concerns of relevance throughout the UK and makes some provisional conclusions about Northern Ireland’s experience. The three questions are: the extent to which equality constituencies were involved in the reform process and are so in its implementation; whether there is any evidence that one constituency has done better than another out of the changes; and whether the presence of a combined agency and single legislation jeopardizes the possibility of measures tailored to the specific circumstances of one of the constituencies. The conclusion is that Northern Ireland’s experience has been positive.

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<sup>3</sup> S.75(2) deals with good relations between ‘persons of different religious belief, political opinion or racial group’.

<sup>4</sup> The Treaty of Amsterdam introduced nine categories of person (sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation plus nationality and a declaration on disability) to be protected by EU equality law (European Framework Directive on Equal Treatment 2004). The Constitutional Treaty, should some version of it survive, continues the approach of tackling them together, while – at the insistence of the European Women’s Lobby – not disabling existing provisions that allow for the specific measures for women (Lawson 2005).

<sup>5</sup> i.e., age and sexual orientation.

## **HISTORY OF REFORM IN NORTHERN IRELAND**

Annex 1 shows that legislation in 1989 considerably strengthened the law relating to religious belief and political opinion by introducing – uniquely in the UK – a duty on employers to monitor the composition of their workforces, to make monitoring returns to the Fair Employment Commission (FEC) and, if necessary, to devise and implement affirmative action programmes, agreed by the FEC. This change was preceded by a consultative paper, ‘Equality of Opportunity in Employment in Northern Ireland: Future Strategy Options’ (Department of Economic Development 1986). This document, published more than a decade before devolution, mooted the possibility of a single equality agency. Because of the significance of the proposed changes to fair employment legislation, it was decided that the time was not suitable ‘to introduce a further radical change’ (Equality Commission Working Group 1999, p.7).

The wider public had concerns in the 1980s that are familiar today (Donaghy 2003). One was that the dominance of violent political conflict, seemingly in parallel with different religious beliefs, might lead a merged enforcement body to give higher priority to religious belief and political opinion than gender.<sup>6</sup> Secondly, despite comparatively small resources, the EOCNI had carved out an innovative role. Its support of ‘landmark’ cases – particularly those that went to the European Court of Justice, without a remit for religion and political opinion – pushed against the limits of legislation (Collins and Meehan 1994).<sup>7</sup> It was feared that such creativity would be hampered in an organization with higher priorities than gender.

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<sup>6</sup> *Not without reason; when asked why the US Department of Justice seemed keener on prosecuting race than gender cases (for the Equal Employment Opportunities Commission), the answer was that ‘they were in the business of social turmoil’ and that, unlike Blacks, ‘women were not out on the streets demanding their rights’ (Freeman 1975, p.79; Meehan 1983, p.104).*

<sup>7</sup> *For example, a case against the Royal Ulster Constabulary (RUC) taken by Marguerite Johnston and others and supported by the EOCNI clarified the limits of exemption on grounds of national security by setting standards for evidence of it as a ground and requiring that, if proved valid, differential treatment must be proportionate. The case also resulted in one of the biggest ever (biggest at the time) financial awards for the women.*

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Renewed interest in reviewing fair employment legislation grew in the 1990s. Reasons included: the continuation of a differential between Catholics and Protestants among the unemployed, despite improvements in employment; continuing pressure from the Irish lobby in the USA; and domestic interest in a statutory footing for an improved version of the existing voluntary guidelines to departments<sup>8</sup> about examining the impact of all policies and activities on the promotion of equality in relation to religion and political opinion; gender; ethnicity; marital status; dependent status; sexuality and age.

The Review of Employment Equality was carried out by the Standing Advisory Commission on Human Rights (SACHR). In response, the government published Partnership for Equality (Department of Economic Development 1998), which, as well as accepting the recommendation for a statutory equality duty, introduced the idea of merging the equality bodies as a means of ensuring effective implementation of the duty (*ibid.*, paras 4.12-4.14). This White Paper was published in March 1998, at a point when there had been negotiations for some two years on Northern Ireland's constitutional future and in the month before agreement was reached in Belfast on Good Friday, 10 April 1998 (Agreement 1998)

Negotiations had revealed a 'significant level of interest ... by individual politicians and political parties' (Collins 2005, p.22) in achieving greater equality in a form that was broader than 'parity of esteem' in respect of the 'two communities' (Hinds 2003, pp.186-9). Thus, equality and human rights formed a key focus between 1996 and 1998. The Agreement announced that, subject to public consultation already underway, there would be a new Equality Commission to replace the FEC, EOCNI, CRENI and Disability Council. In the transition phase, the British government would make rapid progress in various areas, including, also subject to consultation, the statutory duty.

In fact, consultation revealed opposition to a single commission. Though supported by the FEC, the three other bodies opposed it for reasons similar to those of 1986-89 (which had to be faced by the new commission; Collins 2005, p.22). Among the constituencies, there was a range of 'differing views', but general concerns 'about the possible impact of a single equality body on the individual equality strands' (*ibid.*). Collins suggests, however, that while a

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<sup>8</sup> *Policy Appraisal for Fair Treatment, judged to have had 'minimal' impact (Hinds 2003, p.185).*

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majority of them opposed a single agency, there was 'enthusiasm' for a statutory equality duty; 'for some, the prize of such a duty was worth the price of merger of existing equality bodies' (Collins 2004).<sup>9</sup>

The decisions, outlined in potential in the Agreement, were enacted in November in the Northern Ireland Act 1998. In the same month, a Working Group was set up to examine how existing agencies might be merged to best effect. It comprised Chairs and Chief Executives of the existing agencies, an official from the recognized public service trade union, and led by an independent Chair – Dr Joan Stringer, Principal of Queen Margaret University College Edinburgh and member of the Equal Opportunities Commission of Great Britain. In its enquiries, it took into account forthcoming changes (2000) in disability law and the statutory equality duty now enacted as two duties<sup>10</sup> in the Northern Ireland Act 1998. It reported in March 1999, by which time Commissioners, to be appointed by the Northern Ireland Office, were being sought. They were appointed in August 1999 and the transfer from four bodies to one Equality Commission and of all staff from the former to the latter took effect on 1 October 1999.

The article now turns to three of the questions that need to be asked to judge whether concerns in Northern Ireland and in Great Britain about a single equality agency were or are justified.

### **KEY QUESTIONS**

In what follows, the involvement of equality constituencies is explored at significant stages in the foregoing history. Independent reviews of implementation referred to in respect of all three questions were based on consultation, as well as desk-top research, and guided by advisory groups drawn from community and voluntary groups and public agencies.

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<sup>9</sup> *The NI Women's Coalition, which supported the Equality Coalition campaign to get the best possible statutory duty, is one body which, therefore, backed the idea of a single commission, even while some of its members opposed to it.*

<sup>10</sup> *See footnote 3.*

**(I) TO WHAT EXTENT WERE EQUALITY CONSTITUENCIES INVOLVED IN THE REFORM PROCESS AND ARE SO IN THE IMPLEMENTATION?**

***SACHR's review of the fair employment legislation***

SACHR, while set up in 1976 as an advisory body to government, was independent of it and its Commissioners were specialists or advocates in civil rights and equality, with close links to the community. The government had originally proposed a public agency, the Central Community Relations Council, as the review body. But justice and equality groups lobbied for an independent reviewer, arguing that such a task fell within SACHR's remit. The government changed its mind. SACHR commissioned Queen's University Professor of Social Policy, Eithne McLaughlin, as Research Director and it was regularly advised by Oxford Professor Christopher McCrudden, a leading academic lawyer and specialist on discrimination and rights in Northern Ireland. These two had close links with the equality communities.

***Proposal to merge the commissions***

The Equality Commission Working Group identified 'a high degree of commonality of work in key areas across the organizations', from which it was able to highlight 'six major strategic areas' (Equality Commission Working Group 1999, pp.16-25):

- Employment and Employability;
- Goods, Facilities, Services and Housing/Premises;
- Combating Discrimination;
- Mainstreaming Equality in Legislative, Economic and Social Policy;
- Public Sector Statutory Duty;
- Building an Effective and Efficient Commission.

The Group and its Chair noted with concern that a tight timetable made it difficult to consult as widely as they would have wished (ibid., Chair's

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Foreword, ch. 10 and throughout). However, respondents to the Group<sup>11</sup> supported the strategic priorities identified by it. Specific points about reviewing and harmonizing legislation and operationalizing the broad objectives were incorporated into the Report. Moreover, while there was some dissent, the Group's recommendations for the internal structure of the Commission were 'endorsed by the vast majority of respondents, both at the public seminar and in the written submissions to [the] consultative paper' (Equality Commission Working Group 1999, p.12).

***Bringing about the Statutory Duty (equality)***

Long before the review of employment legislation, SACHR had drawn on Section 71 of the Race Relations Act 1976, which placed a statutory duty on local authorities in Great Britain to eliminate discrimination and promote equality. They used this to call for something comparable in Northern Ireland, a call repeated in the 1998 review (Hinds and O'Kelly 2006, pp.19-20). An NGO, the Committee on the Administration of Justice,<sup>12</sup> led support for SACHR's recommendation for a statutory duty – joined by members of the equality agencies. This call, like the proposal for a single commission, became embedded in the negotiations in and around the drafting of the Agreement and Northern Ireland Act.

While the goal of the most powerful parties was to end political conflict, for others – often, like the Women's Coalition, with roots in community activism – the absence of violence over the constitution was not the same as peace and an inclusive political culture. The aim, noted above, for a broader conception of equality (in participation and policy) is reflected in the requirement that all legislation passed in the Assembly be 'equality proofed' and compliant with international human rights standards (Agreement 1998, pp.5-6, 8) – as well as

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<sup>11</sup> 74 organizations and individuals submitted written comments on its consultative paper. In addition to umbrella groups, public agencies and parties, other respondents were groups with a direct interest in strengthened protections; they included some 9 minority ethnic or faith groups, 12 health or disability groups, 11 women's groups, 1 men's group and 1 sexual orientation group. In addition to these, all key social partners – churches, employers, trades unions – responded. A consultation conference was held, involving over 126 people from diverse backgrounds and interests (Equality Commission Working Group Report 1999, pp. iii, 62-4, 72-5).

<sup>12</sup> Northern Ireland's equivalent of Liberty – formerly National Council for Civil Liberties.

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in the Statutory Duties. The advocates of a broader conception of equality supported the work of an Equality Coalition, led by the CAJ and the trade union, UNISON, which 'had [already] undertaken a number of initiatives to see PAFT<sup>13</sup> better implemented' (Donaghy 2003, p.5). The Equality Coalition intervened throughout the twin processes of developing a firmer approach to mainstreaming and of enacting a form of devolution with equality and human rights at its core. Donaghy cites McCrudden's (1999, p.1725) description of this as the 'parallel peace process'. She notes that, 'in construct[ing] the equality agenda', the Equality Coalition and the equality agencies were seen by the British and Irish governments as the main actors with which 'they had to deal because of their influence on this issue'.

#### ***Implementing the Statutory Duty (equality)***

The very process of mainstreaming is meant to encourage participation in policy-making. Among other advantages (more rational and evidence-based policy-making), it should enhance openness and transparency because it requires consultation among affected interests at an early stage in the policy cycle. Properly implemented,<sup>14</sup> the Statutory Duty(ies) build(s) a 'crucial link between government and civil society' through greater participation and should lead to greater governmental accountability (Equality Commission Working Party Report 1999, p.82).

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the approach as ‘participative-democratic’ (in contrast to the ‘Executive-bureaucratic’ approach).<sup>15</sup>

However, she also notes that there are resource and capacity impediments for ill-funded groups in the consultation process. At first, the Equality Commission was able to provide a Section 75 Consultation Development Grant but that is no longer available and this difficulty recurs in subsequent reviews.

#### ***Reviewing the Statutory Duty***

A review of the processes and quality of consultation over the implementation of Section 75 was carried out for the Office of First Minister and Deputy First Minister (OFMDFM) by Dr John Kremer (OFMDFM 2003).<sup>16</sup> Among many things, Kremer (OFMDFM 2003, pp.28-9) notes that to ignore how an organization – probably ill-resourced and possibly doubtful about its likely impact – perceives the costs and benefits of responding would be ‘disastrous, not only for the groups in question but for the process as a whole ...’. He recommended that ‘procedures for ensuring the long term viability of these groups should continue to be explored’. Following the Kremer report and another on the community and voluntary sector (Department of Social Development 2004), additional funding was provided by the OFMDFM for purposes of consultation.

This issue recurred in an operational review of Section 75 for the Northern Ireland Office (NIO) carried out by Professor McLaughlin and Mr Faris (Northern Ireland Office 2004). Their consultation group included some sixty representatives of voluntary and community groups, many from the equality groups affected by the legislation. Over one hundred people attended a consultative conference while more than one hundred written submissions were received. Both categories included people or submissions from public agencies but the majority represented the views of social partners and equality

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<sup>15</sup> Nott (2000), cited by Donaghy, coined the terms *participative-democratic* and *expert-bureaucratic* to describe competing approaches to mainstreaming. The first focuses primarily upon consultation and the second focuses primarily upon in-house expertise and technical instruments. In reality, most approaches combine elements of both.

<sup>16</sup> 60 questionnaires were returned, 15% percent of which were from consultee groups and the rest public authorities. Focus groups and interviews were also held.

groups. McLaughlin and Faris do not believe that the government's response to the resource problem 'will significantly alter the policy development and partnership capacity of the sector' (2004, p.32, see also p.45). Thus, current levels of support appear to be at odds with what the Equality Commission Working Group had indicated in 1999 would be necessary for the implementation, through consultation, of the Statutory Duty(ies).<sup>17</sup>

**(II) IS THERE ANY EVIDENCE THAT ONE CONSTITUENCY HAS DONE BETTER THAN ANOTHER OUT OF THE CHANGES?**<sup>18</sup>

This is about institutional structure and policy outcomes. In the beginning, there was a twofold concern. On the one hand, moving immediately to a unified structure risked the loss of continuities of expertise and, hence, capacity to respond to issues arising in one or other equality constituency. On the other, a lengthy existence of separate directorates for each group would undermine the potential policy impact arising from a single ethos (Equality Commission Working Group Report 1999, p.27).

***Institutional considerations***

The 5-Year Review of the Equality Commission for Northern Ireland (OFMDFM 2005, p.27) reports a perception amongst voluntary and community groups that religion and gender have a higher profile than disability and race and that respondents did attribute this to the merger of the previous Commissions and Disability Council. Such critics would prefer ECNI's structure to be 'grounds-based' rather than determined by functions.<sup>19</sup>

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<sup>17</sup> Both the Working Group (1999, 59) and its respondents agreed that full implementation would incur considerable resources and that government should provide the new commission with them.

<sup>18</sup> Much commentary on the equality agenda emerging from the Agreement is not about the different grounds but about whether it has helped to facilitate consensus between the communities in conflict. It has been argued that measures to bring about 'parity of esteem' have not worked because the 'ideal of equality was presented differently by party elites' (Hayward and Mitchell 2003, p.293) – reducing a 'win-win' upshot to a 'zero-sum game'. See also Wilson (2000).

<sup>19</sup> These now are: Information, education and promotion; Investigation and enforcement; Advising and assisting complainants; Advising and assisting business; Research; Reviewing the equality legislation.

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However, the Review's desk-top analysis 'confirmed that the Commission is vigilant about such concerns and acts to ensure that all statutory duties as required by the legislation relating to each ground are fully met' (ibid., p.32). This can be attributed to the care with which the merger was designed and operationalized.

The Equality Commission Working Group focused on the 'practical implications of bringing functions together while still ensuring that advances made in particular areas are protected and that no aspect of equality predominates over others' (ibid.). Consequently, both transitional and longer-term proposals were made. In the former period, units corresponding to the equality strands<sup>20</sup> would, and did, continue temporarily (Collins 2005, p.23). The Working Group was convinced, however, that, from the beginning, the new Commissioners should be generalists so that the Commission would 'be able to operate as a single, powerful and collective voice on all equality matters' and would 'demonstrate a continuing commitment to the promotion of equality across' all current and new 'equality of opportunity obligations'. The idea of Commissioners as 'specialists' (possibly, 'advocates') in any particular equality strand was rejected precisely to minimize the risk of incorporating a hierarchy of equalities or of power amongst Commissioners (Equality Commission Working Group 1999, pp.11, 14). Additionally, some members of the original agencies thought that a 'grounds-based' structure would incorporate into the heart of the Commission itself a debilitating resource competition – which would not be to the advantage of each group (personal information).

In devising the first corporate plan for 2000-03, the Equality Commission developed four corporate priorities (ECNI 2000):

- mainstreaming equality of opportunity and promoting inclusion;
- combating discrimination and promoting equality of opportunity;
- developing partnerships for change;
- building organizational effectiveness.

These priorities and related objectives demonstrated that the Equality Commission was intending to achieve tasks that were 'spread over all the

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<sup>20</sup> *In addition, there were cross-cutting divisions on Policy and Public Affairs; Legal and Operations; and Corporate Services.*

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equality areas' enabling 'people interested in particular strands [to] see their issue being brought forward' (Collins 2005, p.23). At the same time, Collins thinks the first plan may have been too broad, a fault that was corrected in the second corporate plan for 2003-06 (ECNI 2003) – without losing its clarity about the range of its remit.

Even so, both well designed structures and good corporate plans exist in a context of demanding external expectations – covering a wide spectrum of opinion and groups. On the one hand, the NGO sector is strong and vibrant, with high expectations of equality and rights standards. On the other, 'the range of [party] political interest can mean that developing the equality agenda is much contested' (Collins 2005, p.23). The Equality Commission has to maintain its political independence by working hard 'to ensure that [it] brings objective analysis to the arena, and works on priorities according to identified need' (ibid.). In the long run, it is the maintenance of this integrity that will guard against one equality constituency prevailing over another.

#### ***Policy outcomes – or one means of bringing them about***

The Statutory Duties:

are designed to make equality central to the whole range of public policy decision-making ... Questions of equality may easily become sidelined in organizations. Mainstreaming attempts to address this problem, by requiring all public authorities to engage directly with equality issues at an early stage in policy development. This is complementary to making more effective those measures adopted specifically to tackle discrimination, such as anti-discrimination law.

(Equality Commission Working Group 1999, p.81)

Section 75(1)<sup>21</sup> of the Northern Ireland Act places a duty on public authorities 'to have due regard to the need to promote equality of opportunity' as:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without,

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<sup>21</sup> See footnote 3 for S.75(2).

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- between persons with dependants and persons without.

One review suggests ‘there has been some levelling up of awareness and targeting across previously less visible dimensions of inequality’ (Northern Ireland Office 2004, p.30). The challenge was and is great. As Hinds (2003, p.194) points out, in developing its guidance for public authorities, the ECNI could not draw on experience elsewhere; practice in other jurisdictions is generally confined to singular foci (environment, gender), whereas, in Northern Ireland, guidance has to be about applying the duty across ‘a broad and inclusive range of categories’.<sup>22</sup> Moreover, there was an equally ‘broad and inclusive’ range of groups to be consulted. In meeting these challenges, ‘considerable effort and resources were put into the consultation process’ which, ‘facilitated the development of an advanced exchange of expertise between non-government groups and the policy administration’ (Donaghy (2003, pp.8-9). Donaghy also suggests there was potential, arising from the rigour of the Equality Commission, for the new duty to have a transformative effect. Against that, however, the Transitional Justice Institute (2005, p.37) argues that women may be disadvantaged by being a specified category; that is, being perceived by departments as just ‘one of the nine categories’, when their life experiences may place them in any or all of the other eight – a risk likely to recur under an eventual single Equality Act.

However, in noting that many groups were well organized (women, people with disabilities, religious denominations), Donaghy also points out that in some categories there were – at the time – no or few groups to consult (transgendered persons, gay men and lesbians). However, there now is a Coalition on Sexual Orientation which ‘prepared a well received guide for public bodies on how to involve and consult the lesbian, gay, bisexual and trans gender community’ (Hinds 2003, p.196). In outlining the strengths and weaknesses of implementation of S.75(1), McLaughlin and Faris (Northern Ireland Office 2004) did not adduce any systematic evidence that one equality strand had benefited more than another.<sup>23</sup> However, they did suggest that public authorities ‘found it difficult to address religious belief and political

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<sup>22</sup> Though T. Rees and P. Chaney (also reviewing S.75) suggest that practices in Sweden and Canada might be instructive (Northern Ireland Office 2004, pp.51, 55).

<sup>23</sup> Though there is an ongoing tension about the relatively priority between S.75(1) and (2), a tension that is compounded by on-going difficulties between the ‘two communities’ seeking to promote particular political viewpoints and discourses (Goldie 2005, pp.3-5; Hinds 2003, p.191).

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opinion beyond the established “community background” criteria’ and that ‘sexual orientation ... present[ed] difficulties because of the sensitivities and privacy issues involved’ (ibid., p.33).

It might be possible to infer from their report that some claims of lack of attention could be overstated. Seemingly, some public officials feel they had been unfairly targeted when they had been acting in good faith. McLaughlin and Faris (Northern Ireland Office 2004, pp.35-6, 59-9) draw attention to the risk of Section 75 being ‘treated as a weapon with which to attack those within government and the public sector’ for ‘not going far enough’. This might lead to ‘a retreat to defensiveness and an overly bureaucratic approach’. The ‘promotion of section 75’ requires that ‘the process of mainstreaming should be a safe place for all who are committed to the principles of section 75’.

While it is understandable that constituencies, previously having their ‘own’ institutions and legislation, might worry about being precarious in a single agency implementing multi-stranded laws, handling different forms of inequality together may have benefits. One example is how women in the US were able to use the coat-tails of the race equality movement to transform the 1964 Civil Rights Act Title VII into a ‘magna carta’ for working women (Robinson 1974; Meehan 1983, p.128). A second example lies in Northern Ireland’s uniquely demanding requirement to monitor the composition of workforces on the basis of religious opinion and political belief – which provided a ‘coat-tail’ for comparable gender monitoring.

Moreover, there is growing acknowledgement that promoting equality is not a bi-polar competition between crudely defined groups. Collins (2005, p.24) observes that there are ‘considerable benefits from developing the multi-strand approach to equality’. First, people do not fit neatly into one or other of the categories of person protected by equality law. As indicated (see above) by the Transitional Justice Institute (2005), when asked about themselves, ‘people offer explanations that encompass multiple identities’; for example, ‘women have multiple experiences in terms of age, sexuality, disability, religious and cultural differences’ (Zappone, ed. 2003, pp.27, 132). Aspects of how people see themselves may be ‘fluid’, ‘context dependent’, or embodying ‘contradiction’ (ibid, ch. 8).<sup>24</sup> That these forms of identity are

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<sup>24</sup> *It is worth noting that this publication was commissioned by the Joint Equality and Human Rights Forum, a body that brings together the Equality Authority (Ireland),*

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associated with ‘interlocking structures of exclusion’ vindicates Collins’ (2005, p.24) view that ‘looking at the whole picture of social inclusion and equality’ will facilitate holistic solutions. Secondly, as indicated by gender monitoring in Northern Ireland (see above), ‘lessons from one area of work’ can be learned ‘to the advantage of the other equality strands’ (ibid.). And, thirdly, a single agency may be harder to ignore than a multiplicity of smaller ones and, simultaneously, be a more visible ‘one stop for ‘customers and stakeholders’ (ibid.).

**(III) DOES THE PRESENCE OF A COMBINED AGENCY AND SINGLE LEGISLATION JEOPARDIZE SPECIFIC MEASURES TAILORED TO THE SPECIFIC CIRCUMSTANCES OF ONE OF THE CONSTITUENCIES?**

Concern was expressed in the House of Commons about whether the new legislation could undermine provision for affirmative or positive action. This was emphatically rebutted by the Secretary of State, Mr Paul Murphy, MP (House of Commons, Official Report, p.18 November 1998, cols 1069-1070). Since then, others have interpreted the equality duty as ruling out affirmative action, either on the ground that it ‘prohibits discrimination’ or ‘entails absolutely equal treatment’ (Hinds and O’Kelly 2006, p.23). This gave rise to some ‘misunderstanding’ on the part of some public authorities which was ‘harmful to the availability of resources for some types of provision; for example, “women only” and language provision’ (Northern Ireland Office 2004, pp.31-2). Such observations reinforce the importance of keeping legislation under review so that mistakes can be corrected.

Hinds and O’Kelly (2006, pp.2-3) dispute the assumption behind the parliamentary question and subsequent interpretations that mainstreaming across a broad spectrum and affirmative action for one particular strand are antithetical. Instead, they ‘lie in a continuous relation to each other, differing in emphasis and degree rather than being categorically distinctive’. Rather like Mr Murphy’s reply, they argue that affirmative action may be intended to rectify past injustices against particular groups and mainstreaming may be

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*Human Rights Commission (Ireland), Equality Commission for Northern Ireland, Northern Ireland Human Rights Commission, Disability Rights Commission (Great Britain), Commission for Racial Equality (Great Britain) and Equal Opportunities Commission (Great Britain).*

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about making society in general more fundamentally fair. On the other hand, mainstreaming may have more of an impact on groups that have been more unjustly treated in the past than others. And, also on the other hand, some forms of affirmative action are societal in intent – as in the case of new procedures in police recruitment in Northern Ireland.<sup>25</sup>

Hinds and O’Kelly (ibid., pp.21-2, 24) point out that, in carrying out Equality Impact Assessments, public authorities must, among other things, ‘determine whether there is evidence that different groups have different needs, experiences, issues and priorities’. And they note that affirmative action is accommodated in the view of the ECNI that ‘the promotion of equality of opportunity entails more than the elimination of discrimination [and] it requires proactive measures ...’. Indeed, in its corporate planning process, the Commission seeks to use its resources effectively to address both ‘enduring inequalities’ and ‘emerging’ ones (Collins 2005, p.23), both of which include problems which have features requiring specific responses; for example, harassment, pregnancy, the conditions of migrant workers, racially motivated attacks and access and accommodation for people with disabilities.

Moreover, the ECNI argues that the still-to-be-agreed Single Equality Bill ‘should build on the good practice of affirmative action in fair employment’ (ECNI’s draft response to OFMDFM consultation paper, cited by Hinds and O’Kelly 2006, p.27). This would include extending key elements of it to other equality groups; setting goals and timetables, monitoring, reviewing policies, practices and procedures and reporting to an oversight body’. At the same time, this should be ‘married with the consultative approach that brings those affected by inequality into the debate, as developed under Section 75’. This, the Commission argues, ‘recognizes that each ground of inequality brings with it its own practical issues’ and would enable ‘some degree of variation on grounds of diversity’. In making such proposals, according to Hinds and O’Kelly (ibid.), ‘the Commission is pressing the OFMDFM to shift its thinking on affirmative action from a “narrow exception to non-discrimination principles” towards a “major vehicle for promoting equality of opportunity”’.

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<sup>25</sup> *Originally to attract more Catholics (via 50:50 recruitment) and women (without a quota) (Hinds and O’Kelly 2005, pp.14-5; not part of the Northern Ireland Act 1998 but separate legislation in 2000) The ECNI and others lobbied to secure the application of Section 75 in its entirety to the Police Service of Northern Ireland and special measures for gender and minority ethnic people.*

## CONCLUSION

In addition to the aforementioned S.75 problems of resources and capacity, there are others about compliance – the risk of ‘tick box’ responses and what should happen if public authorities fail to comply even nominally. The latter would require legislative change. The former can be resolved through practice and familiarization, informed by the expertise available through ever-deeper partnership amongst experts, groups and agencies. As McLaughlin and Faris (Northern Ireland Office 2004, p.30) put it: ‘There are signs of the development of a skilled and professional equality community beginning to emerge within both the public and non-governmental sectors’. The Statutory Duty ‘is proving effective in moving authorities towards compliance and mainstreaming of equality within the public sector’. The “single equality” approach ... has proved helpful, exemplified in the role of the Equality Commission as the provider of a single central point for equality advice’.

In conducting the OFMDFM (2005) 5-Year Review of the Equality Commission for Northern Ireland, interviews were held with public officials, members of the voluntary and community sectors, representatives of the private sector and political parties. There were some criticisms, though these sometimes seemed based on perceptions rather than hard evidence. For example (ibid., pp.17-8, emphasis added): ‘the Commission may be *perceived* as an extension of Government, thereby limiting its role in contributing to setting the equality agenda’; ‘the Commission *appeared* to be more concerned about processes than outcomes’; ‘*concerns* about the tension in the Commission’s dual role in respect of providing information and advice while also being required to pursue enforcement action’; ‘a *perceived* lower public profile when compared to former Commissions’. It was also felt that the Commission or a re-devolved Assembly should play more ‘influential role[s] in setting the agenda for the delivery of OFMDFM’s equality objectives’ and, indeed, it is likely that there will be more systematic meetings between the Commission, OFMDFM officials and Ministers (ibid., p.25).

None of these observations really indicates dissatisfaction with the move to a single agency. And it was noted in the section on Institutional Considerations (above) that the Review had rebutted the criticism that the ECNI accorded a higher profile to gender and religion and political opinion. The just-noted observation made to the Review team that the public profile of the Commission was lower than that of its predecessors is assumed, rather than demonstrated, to be a consequence of the mergers. Indeed, ‘a majority of

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respondents from all sectors were generally supportive' and 'voluntary and community respondents praised the Commission's role in relation to changing public attitudes on equality issues' (ibid, pp.17-8). Moreover, it is reported that there is a positive view of the Commission in terms of 'its engagement with the [equality] groups' (ibid., p.23) and its consultation on the Single Equality Bill was 'widely recognised and ... favourably commented upon by respondents from all sectors' (ibid., p.30). A fully independent review (Transitional Justice Institute 2005) of the whole impact of the Agreement's provisions for women concludes that the ECNI has a 'clear understanding of the structural and systemic reasons for discrimination' but doubts that the OFMDFM shares this understanding and doubts whether the government is minded to adopt a range of Commission proposals (ibid., p.45).

The fact that the first five years has been reviewed positively is a tribute to the care with which the Equality Commission Working Party and the Commission itself approached the task of ensuring, through design and corporate planning, that the transition took place in a way that would neither marginalize some groups nor introduce a hierarchy of equality concerns. So, experience in Northern Ireland shows that the reform now contemplated in Great Britain can work but that the price of success is eternal vigilance.

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*The Experience of a Single Equalities Commission in Northern Ireland*

**ANNEX 1**

Equality legislation applying to Northern Ireland before and after devolution

Year	Title	Summary of Coverage
1970	Equal Pay Act (NI) (as amended)	Women and men. Same work amended to work of equal value.
1976	(a) Sex Discrimination (NI) Order (as amended)	Employment, Goods, Facilities and Services (GFS) New enforcement Commission (EOCNI).
1976	Fair Employment	Religious belief and political opinion. Employment only. New enforcement Agency (FEA).
1989	Fair Employment (NI) Act	Religious belief and political opinion. Employment only. Duties on employers; monitoring, affirmative action. Agency becomes Commission (FEC).
1995	Disability Act (as amended) (UK-wide)	Employment; GFS; premises. New advisory council (NIDC) but without enforcement powers.
1997	(a) Race Relations (NI) Order	Colour, race, nationality, ethnic or national origin; Irish Traveller Community. Employment, education, property/land disposal, GFS. Defines segregation as discrimination. New enforcement Commission (CRENI)
1998	(a) Fair Employment and Treatment (NI) Order (as amended – re EU)	Religious belief and political opinion. Facilitates recruitment from the unemployed (higher amongst Catholics). Covers part-time workers Adds GFS to employment.
1998	Northern Ireland Act; Sections 73, p.74, Schedule 8	Establishes new Equality Commission (ECNI) to take over functions of all those above. Specifies structure, organizational parameters and main functions. Appointment of Commissioners to remain with S of S for NI in UK government.
1998	Northern Ireland Act; Section 75 and Schedule 9	Religious belief, political opinion, racial group, age, marital status, sexual orientation, gender, disability, persons with/without dependants. Duties on public authorities in carrying out their general functions to promote equality amongst all ('mainstream') and to promote good relations between person of different religious belief, political opinion or racial group. Enforcement placed on ECNI.

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2000	Police (Northern Ireland) Act	Mainly about restructuring policing but also including new rules about recruitment.
2000	(a) Equality (Disability etc) (NI) Order	Expanded enforcement duties and powers; more promotion, voluntary and preparation of statutory codes, advice and formal assistance in legal cases.
2003	(b) Employment Equality (Sexual Orientation) Regulations (NI)	Employment, vocational training, further and higher education; some positive action. Not GFS.
2004	European Framework Directive on Equal Treatment	Sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation (plus nationality and a declaration on disability)
	Single Equality Act (still at Bill stage)	To be agreed.

Sources: ECNI (undated), Collins (2004), OFMDFM (2005).

#### Notes

(a) Direct Rule was introduced in 1972, after which legislation for Northern Ireland was usually made through Orders-in-Council, a process which extended to Northern Ireland, sometimes in modified form but without the opportunity to amend on the floor of the House, legislation made for Great Britain. Where Orders appear after 1998, the year of devolution, this is because of suspensions of the Executive and Assembly.

(b) Arising from EU obligations and implemented through Regulations under the European Communities Act 1972, a method also criticized for limiting the opportunities for debate and amendment that would have been possible under primary legislation (ECNI/Cross 2003)

#### **REFERENCES**

Agreement, The, (1998). **The Agreement reached in the multi-party negotiations** (on 10.04.98) Belfast.

Collins, E. (2004). **Challenges and Choices – establishing a Single Equality Commission in Northern Ireland**. Speech delivered on 17.06.04 at meeting of Experts from Equality Bodies in the EU, hosted by the Equality Commission for Northern Ireland.

*The Experience of a Single Equalities Commission in Northern Ireland*

- Collins, E. (2005). Challenges and Choices – establishing a Single Equality Commission in Northern Ireland. **IDS Diversity at Work**, no 12. Updated version of 2004 speech.
- Collins, E. and Meehan, E. (1994). Women's Rights in Employment and Related Areas, **Individual Rights and the Law in Britain**, eds C. McCrudden and G. Chambers, p.363-407, Oxford: Clarendon Press and The Law Society.
- Department of Economic Development (1986). **Equality of Opportunity in Employment in Northern Ireland: Future Strategy Options**. Belfast: DED.
- Department of Economic Development (1998). **Partnership for Equality**. White Paper, CM 3890. Belfast: DED.
- Department of Social Development (2004). **Investing Together. Report of Task Force on the Community and Voluntary Sector**. Belfast: DSD.
- Donaghy, T. (2003). **Mainstreaming: Northern Ireland's Participative-Democratic Approach Belfast**. Belfast: QUB School of Politics and International Studies Centre for the Advancement of Women in Politics, Occasional Paper 2.
- ECNI (Equality Commission for Northern Ireland), (undated), **Equality Law**. [http://www.equalityni.org/yourrights/equality\\_law.htm](http://www.equalityni.org/yourrights/equality_law.htm)
- ECNI (2000). **Corporate Plan 2000-2003**. Belfast: ECNI.
- ECNI (2003). **Corporate Plan 2003-2006**. Belfast: ECNI.
- Equality Commission Working Party (1999). **Report**. Belfast: ECWP/Secretary of State for Northern Ireland.
- Freeman, J. (1975). **The Politics of Women's Liberation**. New York: David McKay & Co.
- Goldie, R. (2005). **Strategic Policy Response to Contested Discourses of Equality and Good Relations**. Paper presented at seminar in School of Politics and International Studies, March 2005.
- Hayward, K. and Mitchell, C. (2003). Discourse of equality in post-Agreement Northern Ireland. **Contemporary Politics**, p.9(3), p.293-312.
- Hinds, B. (2003). Mainstreaming Equality in Northern Ireland. **Women Making Constitutions: New Politics and Comparative Perspective**, eds A. Dobrowolsky and V. Hart. Basingstoke: Palgrave Macmillan.
- Hinds, B. and O'Kelly, C (2006, forthcoming). Affirmative Action in Northern Ireland, in Elaine Dubourdieu (ed.), **Race and Inequality: World Perspectives on Affirmative Action**. Aldershot: Ashgate.

*Scottish Affairs*

- Lawson, A. (2005). **Background and Aims of the Project Women's Europe: Civil Dialogue in the New Europe. Paper presented at a conference**, Gender in the New Europe – Your Voice Organized by the National Association of Women's Organizations and the Northern Ireland Women's European Platform. Belfast: Waterfront Hall 20 June 2005.
- McCrudden, C (1999). Mainstreaming Equality. **Fordham International Law Journal**, p.22: 1696-1775.
- Meehan, E. (1983). **Women's Rights at Work: Campaigns and Policy in Britain and the United States**. Basingstoke: Macmillan.
- Mehlman, S. (2005). **Equality Policies in the Context of Devolution and British-Irish Relations. Essay submitted as part of requirements for Doctorate in Governance** Belfast: QUB, Institute of Governance.
- Northern Ireland Act 1998**. London: The Stationery Office Ltd.
- Northern Ireland Office (2004). **The Section 75 Equality Duty – An Operational Review November 2004**. A Report by E. McLaughlin and N. Faris. London: Northern Ireland Office.
- Northern Ireland Office (2005). **Consultation on Review of the Operation of the Equality Duty**. Statement issued by Equality Minister, Mr John Spellar, MP, p.1 April 2005.
- O'Connell, C. (2002). **A Single Equality Body: Lessons from Abroad**. Manchester: EOC.
- OFMDFM (Office of First Minister and Deputy First Minister) (2003). **Review of Section 75 Consultation Process**. Final Report by J. Kremer. Belfast: OFMDFM.
- OFMDFM (Office of First Minister and Deputy First Minister) (2005). **5-Year Review of the Equality Commission for Northern Ireland**. Belfast: OFMDFM, April 2005.
- Robinson, D. (1974). Two Movements in Pursuit of Equal Employment Opportunity. **Signs**, p.4(3)
- SACHR (Standing Advisory Commission on Human Rights) (1997). **Employment Equality: Building for the Future**. Cm 3684. London: The Stationery Office.
- Transitional Justice Institute (2005). **Women and the Implementation of the Good Friday/Belfast Agreement**. Working Report by Barbara O'Shea, May 2005.
- Wilson, R. (2000). **The Equality Debate**. Belfast: Democratic Dialogue.
- Zappone, K. (ed.) (2003). **Re-Thinking Identity: The Challenge of Diversity**. Belfast, Dublin, London, Manchester: Joint Equality and Human Rights Forum

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