

**The Committee on the Administration of Justice (CAJ)  
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***CAJ's response to the Consultative Draft on the Equal  
Opportunities Commission for Northern Ireland  
(EOC NI) recommendations for change to the  
Sex Discrimination legislation***

***October 1996***

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**BY HAND**

8 October 1996

Equal Opportunities Commission  
Chamber of Commerce House  
Great Victoria Street

Dear friends,

Christine Bell asked me to forward to you the attached comments on your Consultative Draft regarding recommended changes to the Sex Discrimination legislation. I believe that CAJ is late in making its submission, and we apologise most sincerely for this. I hope, nevertheless, that our comments will be of some use to you in the debate around the legislation.

Yours sincerely,

Maggie Beirne  
Research & Policy Officer

## **Response to the Consultative Draft on the EOCNI (Equal Opportunities Commission for Northern Ireland) recommendations for change to the Sex Discrimination legislation**

The Committee on the Administration of Justice (CAJ) welcomes the opportunity to respond to the recommendations for change to the Sex Discrimination legislation.

We give a broad welcome to the recommendations. We particularly welcome the obvious desire on the part of the Equal Opportunities Commission to bring Northern Ireland's sex equality legislation into conformity with European law and to create a strong and consistent framework among the different equality regimes here. The following proposals seem to us especially valuable:

- the express prohibition of less favourable treatment on grounds of pregnancy and maternity (2.6)
- recommended definition of sexual harassment (2.10)
- explicit protection for transsexuals and from discrimination on grounds of sexual orientation (2.11)
- recommended changes to discrimination on grounds of marital status (2.9 and 2.12)
- changes to exceptions, in particular the blanket exceptions for the police (3.11) and for ministers of religion (3.15) which we feel have a particularly wide societal impact.

As regards many of the other recommendations, we feel that they correspond in large measure to the arguments made by the CAJ in its submission to the Employment Equality Review (copy attached for your convenience). Interestingly, many of our recommendations and findings were borne out by the detailed research the Standing Advisory Commission on Human Rights commissioned. The EOC may, indeed, want to draw on the three volumes of research recently issued by SACHR to add further weight to many of their arguments. Specifically:

1. CAJ recommended that the government approach equality issues in a holistic way. This is not only more satisfactory for individuals who will all have several different aspects of identity, but also for employers seeking to abide by the law. Therefore, while we agree that, as a matter of principle, the EOCNI should have the same scope as the FEC regarding monitoring, investigations etc., we think that this is also pragmatically desirable.
2. We recommended more robust contract compliance measures with regard to fair employment legislation and would also support this in sex discrimination legislation.
3. We also have made recommendations as regards remedies which accord with EOCNI recommendations and accordingly support these recommendations.
4. We particularly support the recommendation for legal aid in these cases. We are persuaded that EOCNI and FEC by nature should target strategic enforcement through cases. However, in order to provide an effective remedy for sex

discrimination, financial assistance should be available (see Vivianne Jones' article in volume I of the SACHR research papers, and material relating to complainants experiences - chapter five, volume III).

5. Finally we would suggest that the EOCNI give further consideration to complex litigation strategies for 'complex justice cases': for example, provision for "standing" for EOCNI and other interested bodies to take a case on an issue or follow through a case where a client has settled. In this regard, we welcome the proposed amendments to the EOCNI's powers to carry out formal investigations. Secondly, we recognise that you are seeking to allow for legally binding recommendations to be made either by the EOC or the Tribunal and we would endorse any move to give the Tribunal more authority to make pro-active orders of a more collective nature.

As you can tell from this, CAJ found the proposals very much in line with its own recent research into issues around fair employment. Our conclusion was that there would be a value in examining current anti-discrimination legislation and programmes to see if they could be strengthened by any harmonisation of institutional, legislative and programmatic measures. We would clearly not want any such review to water down current protections, but harmonisation that allows for a strengthening of anti-discrimination measures across the board would be very valuable. We think a number of the recommendations in your paper go precisely in this vein, and we wholeheartedly support you in that regard.