

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

COM(2022) 688

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON STANDARDS FOR EQUALITY BODIES IN THE FIELD OF EQUAL TREATMENT AND EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN MATTERS OF EMPLOYMENT AND OCCUPATION, AND DELETING ARTICLE 20 OF DIRECTIVE 2006/54/EC AND ARTICLE 11 OF DIRECTIVE 2010/41/EU, and;

COM(2022) 689

PROPOSAL FOR A COUNCIL DIRECTIVE ON STANDARDS FOR EQUALITY BODIES IN THE FIELD OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF THEIR RACIAL OR ETHNIC ORIGIN, EQUAL TREATMENT IN THE FIELD OF EMPLOYMENT AND OCCUPATION BETWEEN PERSONS IRRESPECTIVE OF THEIR RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION, EQUAL TREATMENT BETWEEN WOMEN AND MEN IN MATTERS OF SOCIAL SECURITY AND IN THE ACCESS TO AND SUPPLY OF GOODS AND SERVICES, AND DELETING ARTICLE 13 OF DIRECTIVE 2000/43/EC AND ARTICLE 12 OF DIRECTIVE 2004/113/EC

SWD(2022)386: Analytical Document accompanying both proposals

SWD(2022)387: Subsidiarity Grid accompanying both proposals

Submitted by the Northern Ireland Office on 7 February 2023

SUBJECT MATTER

1. The aim of the two proposals is to strengthen the role and independence of equality bodies under all the Directives already established in the field of equal treatment and to add a requirement for equality bodies to cover the remit of Directives 2000/78/EC and 79/7/EEC. The Directives affected are: Directives 79/7/EEC, 2000/43/EC, 2000/78/EC, 2004/113/EC, 2006/54/EC and 2010/41/EU. The goal of these Directives is to set out standards on equality bodies, addressing their mandate, tasks, independence, structure, powers, accessibility and resources.
2. These proposals aim to create a strengthened framework for equality bodies in the European Union (EU) to promote equal treatment and equal opportunities and combat discrimination on all grounds. The existing EU Equality Directives do not include provisions on the structure and functioning of equality bodies, and only require that they have certain minimum competences, and act independently within the exercise of their remit. Due to the wide level of discretion left to Member States in implementing these provisions, there are significant differences between equality bodies across Member States, in particular as regards their mandate, powers, leadership, independence, resources, accessibility and effectiveness. Under the

existing Directives, equality bodies' remit are only required in relation to the characteristics of sex and racial/ethnic origin, but these proposals would expand their remit to include other characteristics – religion and belief, disability, age and sexual orientation as well as enhancing standards etc across all Directives noted above.

3. The European Commission announced in its work programme for 2022 that it would bring forward proposals on rules to strengthen the role and independence of equality bodies. This is part of the Commission's work towards a Union of equality for all, as set out in the political guidelines of the Commission for 2019-2024.
4. Proposal COM(2022) 689 builds on the substance of the existing provisions for equality bodies contained in Directives 2000/43/EC and 2004/113/EC with a strengthened and more detailed set of rules. The new rules incorporate all the minimum obligations that were provided for by those two Directives. They also extend the mandate of equality bodies to cover the grounds and fields of Directives 2000/78/EC and 79/7/EEC.
5. Proposal COM(2022) 688 does the same for existing provisions on equality bodies contained in Directives 2006/54/EC and 2010/41/EU.

SCRUTINY HISTORY

6. No recent scrutiny of direct relevance to these proposals.

MINISTERIAL RESPONSIBILITY

7. The Secretary of State for Northern Ireland is the Minister responsible.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. Equalities legislation is devolved to Northern Ireland. Officials in the relevant Northern Ireland departments have an interest and were consulted in the drafting of this EM. Officials are considering the possible impacts in conjunction with Whitehall counterparts. NIE officials were content with the content of this EM.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base:

Proposal COM(2022) 688 - Article 157(3) TFEU
Proposal COM(2022) 689 - Article 19(1) TFEU

ii. Voting Procedure

Proposal COM(2022) 688 - Qualified majority voting.
Proposal COM(2022) 689 - Unanimity.

iii. Timetable for adoption and implementation:

Both Directives will enter into force on the twentieth day following their publication in the Official Journal of the European Union.

POLICY IMPLICATIONS

9. These proposals seek to revoke and replace parts of the Directives listed in Annex 1 of the Northern Ireland Protocol. Article 13 (3) of the Protocol states that:
'Notwithstanding Article 6(1) of the Withdrawal Agreement, and unless otherwise provided, where this Protocol makes reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced.'
10. The UK Government is still considering whether these proposals fall within the scope of Article 2 of the Northern Ireland Protocol, and will do so in continued consultation with the Northern Ireland Executive. These proposals do not alter substantive discrimination protections in the Annex 1 Directives but concern the procedural functioning of equality bodies. As this analysis is developed we will keep the EU Select Committees informed.
11. The relevant equality body in Northern Ireland would be the Equality Commission for Northern Ireland (ECNI). Should these proposals fall within the scope of Article 2 of the Protocol, the UK Government will consider the extent to which the content of these proposals would require changes to the functioning of the ECNI.
12. The statutory framework for the establishment and structure of the ECNI is set out in the Northern Ireland Act 1998. Equalities law more generally is a transferred matter for the Assembly. The Government's initial assessment is that any changes required under these proposals, as they currently stand, would likely be minimal.
13. The UK Government has not yet been informed of these proposals by the Commission through the Joint Consultative Working Group. We are investigating this in conjunction with the work to consider whether these proposals fall within the scope of Article 2 of the Northern Ireland Protocol.
14. We have asked the ECNI and the Northern Ireland Human Rights Commission (NIHRC) for their views on these proposals. Their overall position is that, whilst they are still reviewing the proposals in detail, "the Commissions' initial view is that the proposed Directives do amend provisions of a number of the Annex 1 equality directives and it is therefore important that NI equality law is amended to keep pace with any changes to these equality directives, if the proposals are introduced."
15. We will continue to discuss these proposals with the NIHRC and ECNI as they progress, as well as other Article 2 related matters.

CONSULTATION

16. No external consultation has taken place at this stage.

FINANCIAL IMPLICATIONS

17. Not applicable.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in black ink, appearing to read 'Chris', written in a cursive style.

The Rt Hon Chris Heaton-Harris MP
Secretary of State for Northern Ireland
Northern Ireland Office