

**Submission on behalf of the Equality Coalition to the
Democratic Unionist Party
Northern Ireland Freedom of Conscience Amendment Bill
Consultation**

February 2015

The Equality Coalition is co convened by the Committee on the Administration of Justice (CAJ) and UNISON. It is a network of over 80 NGOs from across the nine equality categories within section 75 of the Northern Ireland Act 1998. The Equality Coalition provides a forum for unity between all sectors when campaigning for equality, while allowing for the diversity of its members' work and views. By facilitating a strong message from diverse equality groups, mutual support between members and consideration of the multiple identity aspects of equality work.

The proposals

The Equality Coalition welcomes the chance to respond to the Democratic Unionist Party (DUP) Northern Ireland Freedom of Conscience Amendment Bill Consultation. The private members bill proposes to make two amendments to the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.¹ The regulations protect persons from discrimination on grounds of sexual orientation in relation to receiving goods, facilities and services.

The impact of one amendment would be to legalise any currently unlawfully discriminatory act, undertaken by any business, if any person running or working for the business thinks that any 'strongly held religious convictions' they hold would conflict with any 'behaviour or belief' their actions would facilitate, endorse' or promote.

The other amendment would exempt faith-based adoption agencies from the 2006 Regulations. The issues of rationality, lawfulness and discrimination in relation to excluding persons of minority sexual orientation (and unmarried heterosexual couples) from adoption in Northern Ireland have already been dealt with extensively by the courts, including the UK Supreme Court. Given this they will not be further rehearsed in this submission which therefore concentrates on the above proposal, (hereafter referred to as the 'conscience clause').²

¹ 1. (1) The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 are amended as follows.
(2) In Regulation 16 (Organisations relating to religion or belief)— (a) in paragraph (8) for "This" substitute "Subject to paragraph (9), this"; (b) after paragraph (8) insert— "(9) Paragraph 8 does not apply to a voluntary adoption agency or fostering agency that (a) is an organisation of the kind referred to in paragraph (1); or (b) acts on behalf of such an organisation."

(3) After Regulation 16 insert— "Businesses: exception based on religious belief 16A (1) This regulation applies to a person ("A") whose sole or main purpose is commercial or anyone acting on his behalf or under his auspices. (2) Nothing in these Regulations shall make it unlawful (a) to restrict the provision of goods, facilities and services; or (b) to restrict the use or disposal of premises, so as to avoid endorsing, promoting or facilitating behaviour or beliefs which conflict with the strongly held religious convictions of A or, as the case may be, those holding the controlling interest in A. (3) For the purposes of paragraph (2)(b), "disposal" shall not include disposal of an estate in premises by way of sale where the estate being disposed of is— (a) the estate in fee simple absolute in possession; or (b) the entire estate in the premises in respect of which A has power of disposal.

² In the Court of Appeal see Northern Ireland Human Rights Commission's Application [2013] NICA 37. The Supreme Court upheld this on 22 October 2013 in declining leave to appeal.

The broad scope of the proposed ‘conscience clause’

The proposed ‘conscience clause’ is drafted very broadly. It would provide private service providers with legal cover to discriminate against lesbian, gay and bisexual (LGB) persons in providing any service, where it would ‘facilitate’, ‘endorse’ or ‘promote’ any ‘behaviour’ or even ‘belief’ of the LGB person, in conflict with any ‘strongly held religious conviction’ of the service provider.

The proposed clause even disregards a qualification elsewhere in the existing Regulations, relating to matters like religious acts in churches, that the ‘strongly held religious convictions’ must be held by a ‘significant number of the religions followers’³. In the proposed ‘conscience clause’ the ‘strongly held religious beliefs’ of one person, no matter how extreme, would be sufficient to engage its protections.

The clause would also appear to allow owners, managers or even shareholders of a business to instruct employees to discriminate against LGB persons in the above manner even if the employees (including LGB employees) had no wish or desire to do so, and indeed even if it would be against the employee’s conscience to do so.

The result of the broad drafting would be that nothing in the regulations would be able to stop, for example, an owner of a chain of hotels from having a ‘no gays’ policy, in relation to gay couples renting rooms. Such a position in addition to facilitating discrimination would also risk fuelling prejudice and hostility against the LGB community in general, given the premise behind the clause is that LGB persons are doing something ‘wrong’. There are also broader issues of stereotyping. The consultation and associated discourse risks creating the impression that all Christians, or persons of faith in general, believe there is something ‘wrong’ with being of minority sexual orientation, and believe that their religion requires that service providers should be permitted to refuse services in the above manner.

The present proposals only apply to anti-discrimination legislation covering sexual orientation. The premise behind them however could in time be extended to engage other equality categories, for example where persons have ‘strongly held religious convictions’ in relation to the role of women, sexual relations out of wedlock, divorce or even relationships between persons of different ethnic groups.

For all of these reasons the Equality Coalition opposes the proposals. Whilst the Coalition notes the consultation is premised on a rights based approach, including examining the issue of balancing competing rights, we have a number of observations on how such standards have been interpreted which are set out in the remainder of this submission.

³ Regulation 16(5)(b).

Minority rights and the proposals

In the proposals the DUP articulates welcome commitments to minority rights, including stating that “crudely majoritarian forms of democracy were problematic because of the way they ran roughshod over the rights of minorities.” It is also welcome that the paper appears implicitly to recognise the existence of LGB persons and that they constitute a minority in relation to rights protection. There are then a number of references to balancing this to the rights of religious minorities. A United Nations definition of ethnic, religious and linguistic minorities in a state is found in Article 1 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. This stipulates that to qualify as such a minority the group must be “numerically inferior to the rest of the population” and also be in a “non-dominant position”, as well as possessing ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

Applying such a definition to the entity of Northern Ireland raises a number of issues. Whilst noting that the consultation document itself avoids the term ‘Christian’ much of the associated discourse has related to the rights of Christians. The document does make related reference to ‘religious believers’, ‘persons of religious belief’ and all persons of faith, the vast majority of whom would be Christians. It is inconceivable however that any such group could be considered a ‘minority’. Statistics for religious belief in Northern Ireland, at the last census of 2011, show that the vast majority of the population identify as Christian. It is therefore untenable to argue that Christians or persons of religious belief are in the minority here.

Elsewhere in the document the categories of ‘orthodox Catholic’ and ‘Evangelical’ are referenced. Whilst the former is more difficult to delineate as a self-defined category, it is the case that Catholics in general and separately Evangelical persons do represent a numerical minority. However, minority status is designed to protect groups that are relatively marginalised in terms of access to matters such as political power. To meet the UN definition of a religious minority a group must be in a ‘non-dominant’ position. It is unlikely that Evangelicals here meet this stipulation given, whilst being a numerical minority, such beliefs are very well represented in positions of power. This is most notably within elected representatives, including government ministers, within the DUP, the largest political party in the jurisdiction.

It may be easier to establish that Catholics are a religious minority. However, the consultation document does not reference any specific cases that indicate that a significant number of followers of that faith have strongly held religious convictions that they routinely wish to manifest in a manner that would require the proposed broadly drafted change to the 2006 sexual orientation Regulations. The only actual set of legal proceedings under the current Regulations the consultation document references is that of Equality Commission case against Ashers Bakery, which would fall into consultation documents ‘Evangelical’ category.

Manifesting religious beliefs and the “rights of others”

Regardless of whether a particular group is in a minority all persons have rights to religious conscious and qualified rights to manifest their religion. Article 9 of the European Convention on Human Rights (ECHR) reads (emphasis added):

- 1. Everyone has the right to freedom of thought, conscience and religion;** this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, **to manifest his religion or belief, in worship, teaching, practice and observance.**
- 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society** in the interests of public safety, for the protection of public order, health or morals, or **for the protection of the rights and freedoms of others.**

The law therefore provides for freedom of thought, conscience and religion. In relation to *manifesting* religious beliefs there are rights to do this in worship, teaching, practice and observance, but these can be subject to lawful and proportionate restriction on a number of grounds including “for the protection of the rights and freedoms of others”. This is sometimes colloquially referred to as the ‘responsibilities’ that come with the exercise of rights.

The ‘rights of others’ referred to are those under the ECHR itself and other recognised human rights, one of set of which are rights not to be discriminated against on grounds of sexual orientation. Under certain circumstances states are not just permitted within their legal frameworks to restrict expression (religious or otherwise) which may interfere with the rights of others but may be obliged to do so. It is arguable that the proposed conscience clause may therefore be incompatible with the ECHR and hence outside the legislative competence of the Assembly.

Instances are mentioned in the consultation document whereby there have been amendments to legislation in the health and safety sphere. The examples relate to for reasonable accommodation for Sikhs who are unable to wear helmets due to religious observance requiring a turban. These issues are in an entirely different category to the proposed conscience clause. Such provisions do not interfere in the rights and freedoms of others.

Conclusion:

In summary the Equality Coalition opposes the proposed ‘conscience clause’ which would interfere in the rights and freedoms of LGB persons not to face discrimination in their everyday lives.

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