



# Consultation on The Executive Office Draft Equality Scheme

The Department has recently developed a new version of its Equality Scheme based on the model Equality Scheme developed by the Equality Commission for Northern Ireland. We would welcome your comments and suggestions for possible areas for improvement. To aid your consideration of the draft scheme and inform your response, the following questions might be helpful.

## Confidentiality of Information

The Executive Office processes personal data in accordance with the General Data Protection Regulation and in most circumstances, this means that personal data will not be disclosed to third parties.

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<sup>1</sup> Northern Ireland Humanists is the section of Humanists UK, working with the Humanist Association of Ireland, which furthers the humanist cause in Northern Ireland through a wide range of campaigning and community services activities. As part of Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Since 1896, our work has been helping people be happier and more fulfilled. By bringing non-religious people together we help them develop their own views and an understanding of the world around them. Together with our partners Humanist Society Scotland, we speak for 110,000 members and supporters across the UK and over 115 members of the All-Party Parliamentary Humanist Group in Westminster. Through our humanist ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

## Question 1

Does the proposed scheme make clear the Departments duties with regard to promoting equality of opportunity? If not, what more could the Department do?

No.

Case law has established that, under reading-in powers of Section 3 of the Human Rights Act, public authorities should understand 'religious belief' to mean 'religion or belief'. This is how humanist marriages came to be legally recognised in Northern Ireland. A High Court judge found that:

- humanism was a belief protected by article 9 of the European Convention on Human Rights (the right to freedom of thought, conscience and religion) ;
- humanist marriages are a manifestation of that belief;
- to deny legal recognition of humanist marriage was discriminatory (under article 14 of the Convention) when taken with article 9
- there was no justification for this discrimination.<sup>2</sup>

The ruling was upheld by the Court of Appeal.

By the same logic, TEO must read 'or belief' into references in equality law to 'religious belief'.

An effective equality scheme should promote equality and good relations between people of different religions and beliefs, not only between people of different 'religious beliefs' – which is the unfortunate phrasing of Section 75 itself.

TEO should adopt inclusive language, which is far from symbolic. It enhances communication by encompassing all those you intend to reach in the pursuit of fostering a cohesive society. Specifically, it includes the growing non-religious population<sup>3</sup> who will generally hold positive beliefs such as humanism.

A humanist is someone who:

- trusts to the scientific method when it comes to understanding how the universe works and rejects the idea of the supernatural (and is therefore an atheist or agnostic)
- makes their ethical decisions based on reason, empathy, and a concern for human beings and other sentient animals
- believes that, in the absence of an afterlife and any discernible purpose to the universe, human beings can act to give their own lives meaning by seeking happiness in this life and helping others to do the same

<sup>2</sup> All-Party Parliamentary Humanist Group, *No Lawful Impediment*, 2022:

[https://humanists.uk/wp-content/uploads/APPG-report\\_nolawfulimpediment\\_websingle.pdf](https://humanists.uk/wp-content/uploads/APPG-report_nolawfulimpediment_websingle.pdf)

<sup>3</sup> Northern Ireland Humanists, 'NI Census shows one in six are non-religious – nearly doubling in just 10 years', 22 September 2022: <https://humanists.uk/2022/09/22/northern-ireland-census-shows-big-rise-in-non-religious-to-17/>

The phrase 'religion or belief' – rather than exclusively 'religion' or 'religious belief' – encompasses both religious and non-religious worldviews. A worldview is a collective belief that attains a sufficient level of cogency, seriousness, cohesion and importance and that relates the nature of life and the world to morality, values and/or the way its believers should live. Religions are worldviews that postulate the existence of divine, supernatural, or transcendental beings or forces, or at least partly locate their source of values and meaning outside of nature. Non-religious worldviews, including humanism, involve only naturalistic beliefs and offer natural origins of meaning and value.

In many areas of public life, it makes sense to involve the religious and non-religious equally. We believe we should view people first as human beings, with religion or belief just one element of personal identity. By working together with people in all their diversity, we can build bridges and break down barriers between communities. Excluding the non-religious from areas like RE, broadcasting, healthcare provision or dialogue work would be discriminatory and would not support the social cohesion aims such projects wish to see.

## Question 2

Are the proposed questions for the Departments equality screenings appropriate? If not, why, and what questions should the Department be asking?

No. There are two main problems with the screening questions. The first relates to the exclusive framing of the question. The second relates to the lack of clarity on what data should be collected in order to answer the screening questions.

The screening questions ask:

- 'To what extent is the policy likely to impact on good relations between people of a different *religious belief*, political opinion or racial group? (minor/major/none)
- Are there opportunities to better promote good relations between people of different *religious belief*, political opinion or racial group?'(emphasis added)

As stated in our response to question 1, these questions should be framed to be inclusive of non-religious beliefs. For example:

- To what extent is the policy likely to impact on good relations between people of different *religious or non-religious beliefs*, political opinion or racial group? (minor/major/none)
- Are there opportunities to better promote good relations between people of different *religious or non-religious beliefs*, political opinion or racial group?' (suggested changes italicised for clarity)

The inclusion of the non-religious during the screening process should be considered intrinsic to promoting good relations. We encourage dialogue with our religious counterparts to build common ground, and where it makes sense, engage in shared action. Many aspects of our work involve engagement with people from religious backgrounds, for example, Northern Ireland Humanists Coordinator serves as executive member of both the Northern Ireland Interfaith Forum and the Coalition for Inclusive

Education. The Equality Scheme should be providing tools that promote good relations between all groups in this way.

The second is the use of the category 'other'. For the Department to be able to answer these questions, data has to be disaggregated in a meaningful way in the first place. The persistent labeling of all groups that fall outside the two dominant communities as 'other' fails to acknowledge the existence of, much less address the interaction between, the diverse and varied communities. Those currently labeled as 'other' are not monolithic, and the interrelation between each of these communities can only happen if each group is understood as a group in its own right. We therefore recommend extending the categories and collection of information to become more meaningful and representative of the wider scope of religions and non-religious beliefs.

### Question 3

Is there a more suitable definition of 'good relations' than that proposed? If yes, what should the definition be?

Yes. The proposed definition of good relations seeks to 'embrace diversity in all its forms', yet is limited to acknowledging only the 'religious, political and racial context' of society.

As outlined in questions 1 and 2, this formulation excludes the growing non-religious population.<sup>4</sup> Nor does it define who is included in 'diversity in all its forms'. This risks leaving open to interpretation who is perceived as important when monitoring 'good relations'.

A better definition would be explicit and as comprehensive as possible in identifying both the context and the communities, and the individuals to whom it applies, inclusive of non-religious and LGBT people.

### Question 4

Other than official data sources, such as NISRA, ONS and the Commission, what data sources should the Department be using, particularly with regard to the additional screening questions?

The Department should note that the Census question on religion is phrased in such a way that assumes the respondent is religious. By asking 'What religion, religious denomination or body do you belong to?' respondents are encouraged to select a religious answer. It therefore undercounts the non-religious share of the population. A better question is asked by the annual Northern Ireland Life and Times Survey (NILTS) which

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<sup>4</sup> Northern Ireland Humanists, 'NI Census shows one in six are non-religious – nearly doubling in just 10 years', 22 September 2022

asks 'Do you regard yourself as belonging to any particular religion? If yes, which?' One of the options is 'No religion'.<sup>5</sup>

The impact of the Census' leading question is seen in the result. While 17% of respondents to the 2021 Census ticked 'no religion', a much higher percentage – 28% – ticked 'no religion' when responding to the neutrally worded NILTS question.

The Census also asks a second question: 'What religion, religious denomination or body were you brought up in?' Many commentators and politicians use this to try to argue that people affiliate to one of the two historic communities in Northern Ireland: Catholic or Protestant. This is a problem because it may fail to consider how people choose to identify today. It should therefore in many contexts be discounted.

## Question 5

Are there any aspects of the proposed scheme you regard as requiring amendment – what is good or bad about it?

We particularly welcome Chapter 5 of the draft Equality Scheme that commits to staff training and awareness raising in order to effectively implement Section 75 duties. To strengthen this commitment, we recommend an additional bullet point under the 'Training objectives' enumerated in paragraph 5.3, for staff training to highlight the importance of diversity and inclusion in decision-making processes, with particular emphasis on specific minority groups, including humanist and LGBT perspectives.

We also support the premise of chapter 5.8 which provides for staff training and development programmes to be developed in association with appropriate Section 75 groups. In particular, we strongly recommend the development of a training programme on 'religion or belief', and that such a programme would include a range of minority religious and non-religious belief groups, including humanists, that are frequently banded together as 'other' (something we challenge in our response to question 2). We would welcome the opportunity to assist the Department in the development of such a course. Similarly, we also highlight the need to include LGBT representative groups in the development of an inclusivity training programme.

Broadly speaking, we believe that the scheme would be strengthened by directly identifying the need to include groups from a variety of backgrounds, namely humanists and LGBT representatives. These are the sections we have identified that could be strengthened by such identification:

- Under the heading 'How we propose to fulfil the Section 75 duties in relation to the relevant functions of TEO', in addition to paragraphs 1.3 and 1.4, specify that TEO will strive to include humanists and LGBT individuals in leadership roles and committees, to incorporate these perspectives in decision-making regarding the organisation's operational and strategic direction.

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<sup>5</sup> Northern Ireland Life and Times Survey, 'Year: 2022, Module: Background, Variable: RELIGION': <https://www.ark.ac.uk/nilt/2022/Background/RELIGION.html>

- Under 'Responsibilities and reporting', in addition to paragraphs 2.2 to 2.8, TEO could commit to including humanists and LGBT individuals, or their representative organisations, throughout the process of developing and assessing policies.
- Paragraph 4.3 on screening and equality impact assessment could include an additional bullet point to include monitoring humanist and LGBT representation on the organisation's committees and in leadership roles in order to assess meaningful inclusion.

## Question 6

Within the framework of the Section 75 legislation, are there any additions or changes that would benefit the scheme?

TEO could create a faith and belief team, sitting under the Deputy Secretary for Good Relations and Inclusion. Such a team exists in both the UK and Welsh Governments. The faith and belief team would be responsible for building good relations between all communities, and making sure religious and non-religious minorities are included meaningfully in community empowerment projects, interfaith and belief fora, and related activities. The faith and belief team would oversee a proper understanding of freedom of religion or belief, and non-discrimination on the grounds of religion or belief, as outlined in question 1, by developing and implementing fully inclusive staff training programmes, as outlined in question 5.

As stated in question 1, the wording of Section 75 paragraph 1 is narrow. Paragraph 1(a) would be more inclusive if it provided for persons of different 'religion or belief'. Case law has established that, under reading-in powers of Section 3 of the Human Rights Act, public authorities should understand 'religious belief' to mean 'religion or belief'.

Case law has also established that religious and non-religious beliefs should be awarded 'equal respect' and 'equal treatment' before the law. For example, *R (Fox) v Secretary of State for Education* concerned the state's duties in respect of religious education but the principles apply more broadly. In that case the judge found 'the state must accord equal respect to different religious convictions, and to non-religious beliefs; it is not entitled to discriminate between religions and beliefs on a qualitative basis; its duties must be performed from a standpoint of neutrality and impartiality as regards the quality and validity of parents' convictions.'<sup>6</sup> This position was further reinforced this year in *Bowen v Kent County Council* which found that it was 'clearly discriminatory' to refuse a humanist membership of his local religious education committee 'solely by reference to the fact that their belief... is a non-religious belief, rather than a religious belief'.<sup>7</sup> Therefore, even without inclusive wording, humanists should not be treated separately from religious people, unless there are clear and compelling reasons to do so.

<sup>6</sup> *R (Fox) v Secretary of State for Education* [2015] EWHC 3404 (Admin) at paragraph 39: <https://www.judiciary.gov.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf>

<sup>7</sup> *R (Bowen) v Kent County Council* EWHC 1261 (Admin) at paragraph 70: <https://humanists.uk/wp-content/uploads/2023-05-26-R-Bowen-v-Kent-CC-Judgment.pdf>

As outlined in question 2, for equality monitoring to be effective, data has to be disaggregated in a meaningful way in the first place. We are therefore concerned about the Equality Commission for Northern Ireland 'strongly recommend[ing]' the use of the residuary method in fair employment monitoring, which is used to infer an employee's community background.<sup>8</sup> The data used to infer community background includes surnames and other names, address, schools attended, 'sporting or other leisure pursuits or interests', 'any course of work undertaken for any recognised award, examination or qualifications, club or society memberships', or the 'occupation as a clergyman of a particular denomination or as a teacher in a particular school of any referee given by the individual when s/he applied for employment'.<sup>9</sup> Such inferences call into question the accuracy of the data provided and the validity of any analysis that stems from it on two counts. First, if it is unknown what proportion of the dataset has been inferred through an inaccurate data collection method, a margin of error cannot even be calculated. Secondly, and more to the point, if the only possible inferences are 'Protestant', 'Roman Catholic' or 'neither Protestant nor Roman Catholic', can such a narrow analysis of data collection lead to a more equal and inclusive workplace? We portend that it does not. Such narrow categorisations only address equality between and inclusion of the two dominant communities. Equality must always mean equality for all, yet to isolate those who fall outside the two dominant communities as 'neither' or 'other' at best fails to acknowledge the existence of, much less address the inequalities experienced by, diverse and varied communities. At its worst, it perpetuates their exclusion.

## **CONSULTATION RESPONSE**

This consultation has been issued by the Executive Office and is also available online here [www.executiveoffice-ni.gov.uk/consultations/consultation-executive-office-draft-equality-scheme](http://www.executiveoffice-ni.gov.uk/consultations/consultation-executive-office-draft-equality-scheme)

The Department looks forward to receiving your comments and views concerning the proposed scheme.

Completed copies of survey questionnaires and general written responses can be sent to us by:

Email – [EqualityandHumanRights@executiveoffice-ni.gov.uk](mailto:EqualityandHumanRights@executiveoffice-ni.gov.uk)

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<sup>8</sup> Equality Commission for Northern Ireland, *Fair Employment Code in Northern Ireland Code of Practice*, paragraph 6.2.26: <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/FECCodeofPractice@09-07.pdf>. See also Equality Commission for Northern Ireland, *A Step By Step Guide to Monitoring*, revised 2011 at page 15: <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Monitoring%20and%20review/StepbyStepguide2011updated26-2-14.pdf>

<sup>9</sup> Equality Commission for Northern Ireland, *A Step By Step Guide to Monitoring*

Or

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You can also use the above details to contact us if you have any enquiries or require the consultation document in an alternative format.

We ask you to exercise care and refrain from the inclusion of any potentially defamatory material as we may publish responses on the Departments website. Should we do so, we will not publish the names or contact details of respondents but will include the names of organisations responding.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond. The Department will consider all the responses to this consultation received on or before the closing date 11<sup>th</sup> August 2023. Submissions made after this date cannot be considered.

### **NEXT STEPS IN THE CONSULTATION PROCESS**

We will consider the responses received to this consultation and if appropriate, revise the scheme prior to issuing it to the Equality Commission for consideration and publishing it on the Department's website.