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19/08/2024

RE: Inquiry into Gaps in Equality Legislation

Dear Chairperson Bradshaw and members of the Committee for the Executive Office,

The Commissioner for Older People for Northern Ireland (COPNI) is pleased to offer evidence to support the Inquiry's understanding of i) age discrimination legislation in Northern Ireland and other protected characteristics¹, ii) discrimination legislation in other jurisdictions, and how this compares to Northern Ireland iii) the implications of the UK's exit from the EU and the Northern Ireland Protocol, iv) the effects of differences in legislation on older people, and v) how legislation needs to change

i) Age discrimination legislation in Northern Ireland and other protected characteristics

The main legislation that protects against age discrimination in Northern Ireland is the Employment Equality (Age) Regulations (Northern Ireland) 2006. This legislation makes it unlawful in Northern Ireland to discriminate against an individual on the grounds of age with regards to employment and occupation, further and higher education, and vocational training.² Other protected characteristics (sex, disability, race, sexual orientation) are afforded additional protection outside of an employment setting, most noteworthy, in the provision of goods, facilities, and services.³

COPNI has campaigned for age discrimination legislation in the provision of goods, facilities, and services since 2014.^{4 5} Despite commitments from the Northern Ireland Executive in 2015, there has been no legislative change to date.⁶ As a result, older people continue to face age

¹ Northern Ireland Act (1998) Available at: <https://www.legislation.gov.uk/ukpga/1998/47/section/75> Section 75 of the Northern Ireland Act outlines how public authorities in Northern Ireland should have due regard when carrying out its function to the need to promote equal opportunity 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; and between persons with dependants and persons without.

² Equality Commission for Northern Ireland (2011) *Age discrimination law in Northern Ireland: A Short Guide*. Available at: <https://www.equalityni.org/ECNI/media/ECNI/Publications/Individuals/AgediscriminationlawShortguide2011.pdf>

³ Equality Commission for Northern Ireland (2011) *Goods, facilities, services, and premises a short guide to discrimination law*. Available at:

<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/GoodsFacilitiesServicesDiscriminationLawShortGuide2011.pdf>

⁴ Commissioner for Older People for Northern Ireland (2014) *Commissioner for Older People calls for Anti-Age Discrimination Law*. Available at: <https://copni.org/news/articles/commissioner-for-older-people-calls-for-anti-age-discrimination-law>

⁵ Commissioner for Older People for Northern Ireland (2014) *NI Commissioners' call for age discrimination protection for all*. Available at: <https://copni.org/news/articles/ni-commissioners-call-for-age-discrimination-protection-for-all>

⁶ The Executive Office (2015) *Age Discrimination Legislation (Age Goods, Facilities and Services)*. Available at:

<https://www.executiveoffice-ni.gov.uk/articles/age-discrimination-legislation-age-goods-facilities-and-services#:~:text=This%20consultation%20sets%20out%20policy,and%20private%20clubs%20and%20associations.>

discrimination in their engagement with private business, public services, and in other aspects of life outside of the workplace.^{7 8}

ii) *Discrimination legislation in other jurisdictions, and how this compares to Northern Ireland*

In 2024, Northern Ireland's legal framework for equality is made up of a variety of legislation enacted at different times and with varying scope.⁹ In contrast, Britain, Ireland, and the EU have all taken steps to consolidate existing equality legislation in recent years. This is via the Equality Act in Britain,^{10 11} the Equal Status Act in Ireland, and various EU-level Directives.¹²

Notably, Britain consolidated all existing equality legislation in the Equality Act in 2010.¹³ The Equality Act offers alignment across all nine protected characteristics and "harmonises much of the equality legislation and brings terminology and protection levels up to EU standards".¹⁴ As such, in Britain discrimination on the grounds of age, and all other protected characteristics, is illegal when a person:

- is in the workplace
- uses public services like healthcare (for example, visiting your doctor or local hospital) or education (for example, at your school or college)
- uses businesses and other organisations that provide services and goods (for example, shops, restaurants, and cinemas)
- uses transport
- joins a club or association (for example, your local tennis club)
- has contact with public bodies such as local councils or government departments.¹⁵

COPNI therefore recommends that, at a minimum, age discrimination legislation in Northern Ireland is brought into line with other UK regions. COPNI recommends that additional steps

⁷ BBC News (2022) *Equality campaigners call for change in NI age discrimination laws*. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-62533461>

⁸ Commissioner for Older People for Northern Ireland (2024) *Are you ageist?* Available at: <https://copni.org/assets/general/resources/are-you-ageist-copni-report-on-ageism-in-northern-ireland.pdf> Recent survey work from COPNI suggests that 49% of older people living in Northern Ireland have experienced age discrimination, and 87% of older people believe that more government engagement is needed to tackle ageism and ageist attitudes (n=333).

⁹ Collins and Crowley (2023) *Equality Frameworks on the Island of Ireland*. Available at: <https://muse.jhu.edu/pub/423/article/912707> This The UK and EU also played pivotal roles in legislation development in Northern Ireland. For example, the Disability Discrimination Act (1995) was implemented in each of the four UK regions at the same time, and was part of centralised decision-making, whereas protection against sexual orientation and age discrimination in the workplace was made illegal due to requirements within the EU Equal Treatment Framework Directive 2000/78/EC, and enacted via Westminster.

¹⁰ Equality Act (2010) Available at: <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/2/6> The Equality Act was not implemented in Northern Ireland as equal opportunities and discrimination are "transferred matters" under the Northern Ireland Act 1998.

¹¹ Northern Ireland Assembly (2011) *Equality and Human Rights Legislation in Northern Ireland: A Review*. Available at: <https://www.niassembly.gov.uk/globalassets/documents/raise/publications/2011/ofmdfm/7511.pdf> As equal opportunities and discrimination is a transferred matter, Northern Ireland has been named in examinations of the UK and UN committees in the non-compliance with treaty standards in a wide range of areas, including, prison reform, the representation of women, reproductive rights, poverty, deprivation and health issues, community segregation, judicial and policing matters, academic selection, treatment of non-nationals, treatment of Irish Travellers and the status of the Irish language.

¹² Northern Ireland Assembly (2011) *Equality and Human Rights Legislation in Northern Ireland: A Review*. Available at: <https://www.niassembly.gov.uk/globalassets/documents/raise/publications/2011/ofmdfm/7511.pdf>

¹³ Equality and Human Rights Commission (2020) *Your rights under the Equality Act 2010*. Available at: <https://www.equalityhumanrights.com/equality/equality-act-2010/your-rights-under-equality-act-2010>

¹⁴ Northern Ireland Assembly (2011) *Equality and Human Rights Legislation in Northern Ireland: A Review*. Available at: <https://www.niassembly.gov.uk/globalassets/documents/raise/publications/2011/ofmdfm/7511.pdf>

¹⁵ Government Equalities Office and Equality and Human Rights Commission (2013) *Equality Act 2010: guidance*: <https://www.gov.uk/guidance/equality-act-2010-guidance#:~:text=Print%20this%20page-Overview,strengthening%20protection%20in%20some%20situations> Further detail on exceptions to age discrimination law is provided, with Government guidance noting exceptions for age-based concessions, age-related holidays, age verification, clubs and associations concessions, financial services, immigration, residential park homes, and sport.

are taken to learn from the implementation of legislation in Britain to strengthen the position of older people in Northern Ireland.¹⁶

Furthermore, any decision addressing gaps in equality legislation should not only consider the legislative landscape of Britain, but also the European Union. Indeed, consideration should be given to the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. The proposal was first made in 2008 to address inequality in legislative protection based on different protected characteristics¹⁷ but progress in this area is still ongoing.¹⁸ ¹⁹ COPNI recommends that developments on the EU proposal, and wider equality legislation, are monitored, and relevant insight used to inform the development of Northern Ireland's equality legislation.

- iii) The implications of the UK's exit from the European Union and the Northern Ireland Protocol

The impact of the UK's exit from the EU is another consideration with regards to addressing gaps in age-discrimination legislation in Northern Ireland. The UK Government has committed, under Article 2(1) of the Northern Ireland Protocol, to ensure "that the protections currently in place in Northern Ireland regarding the rights, safeguards, and equality of opportunity provisions, set out in the chapter of the same name in the Belfast (Good Friday) Agreement, are not reduced as a result of Brexit".²⁰ Yet, the commitment set out in the Belfast (Good Friday) Agreement lists "the right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity". As such, age does not have parity with other protected characteristics in either the Belfast (Good Friday) Agreement, or the Northern Ireland Protocol. The exclusion of age from the list of protected characteristics within existing commitments should therefore be considered as part of the current review of gaps in equality legislation.

Moreover, while the UK Government also committed to ensuring that certain equality laws in Northern Ireland will keep pace with future changes in EU equality laws, these equality laws also only cover gender, race, and ethnic origin.²¹ As such, there is no commitment to keep pace with EU equality legislation related to other protected characteristics, which include age.

¹⁶ UK Parliament (n.d.) *Written evidence submitted by Centre for Ageing Better*. Available at: <https://committees.parliament.uk/writtenevidence/22776/html/> Evidence in Britain suggests that further engagement is needed to ensure age discrimination legislation is implemented proportionately. That is, people in the UK are reported to experience age discrimination more often than any other form of discrimination. Despite this, between 2017 and 2020 there were only 2,407 decisions made in court that involved age discrimination. Many claims were withdrawn, or the age discrimination element had not been proven, with the case being judged in terms of unfair dismissal or on other characteristics such as racial or gender discrimination.

¹⁷ Northern Ireland Assembly (2011) *The EU 'Horizontal Directive'* Available at: <https://www.niassembly.gov.uk/globalassets/documents/raise/publications/2011/ofmdfm/12111.pdf>

¹⁸ EU Monitor (2018) *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation - Progress Report*. Available at: <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vktj9botz0zd>

¹⁹ EU Monitor (2022) *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation – Progress Report*. Available at: <https://www.eumonitor.nl/9353000/1/j9vvik7m1c3gyxp/vly47qlaclzx>

²⁰ Equality Commission for Northern Ireland and Northern Ireland Human Rights Commission (2021) *A Short Guide: Equality and Human Rights after Brexit: The UK Government's commitment under the Ireland/Northern Ireland Protocol*. Available at: <https://niopa.qub.ac.uk/bitstream/NIOPA/14351/1/Brexit%20Your%20Rights%20Short%20Guidedigital%20%281%29.pdf>

²¹ Protocol on Ireland / Northern Ireland (2020) Available at: <https://www.legislation.gov.uk/eut/withdrawal-agreement/adopted> Annex 1 of the Protocol on Ireland / Northern Ireland outlines the provision of EU law referred to in Article 2(1). These include: Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of

COPNI therefore recommends that the commitments in place²² in both the Belfast (Good Friday) Agreement and Northern Ireland Protocol are updated to include age. COPNI also recommends that the commitment to keep pace with future EU law is extended to include equality legislation that references age. Both are important considerations in light of the emerging human rights issues that will only become more apparent as Northern Ireland's population ages.

- iv) the effects of differences in legislation on older people

In the coming decades the proportion of older people in our society will increase year-on-year, and by as early as 2040 one in every four people over the age of 16 will be of pension age. Previous research undertaken by COPNI highlights the additional vulnerabilities that some older people experience, and the implications that an ageing population will have on public service access and design.²³

In the current budget climate, COPNI is concerned that the additional needs of older people are not being viewed as integral to public service design. COPNI released a joint statement in December 2023 with the Equality Commission and Commissioner for Children and Young People highlighting the need for objective needs-based budgeting and departmental collaboration when setting priorities and allocating funding.²⁴ Despite the concerns voiced by Northern Ireland's equality organisations, funding for the most recent year is not sufficient to meet the needs of older people.

COPNI has highlighted just some of the ways in which budgets for 2024/25 will disproportionately impact older people in its response to the Department of Health²⁵ and Department for Infrastructure²⁶ Equality Impact Assessment consultations. While COPNI acknowledges the difficulty of the current year's budget, the absence of appropriate goods, facilities, and services legislation means older people have no basis on which to challenge potential age discrimination within public services.

A comprehensive review of age equality legislation is appropriate considering Northern Ireland's rapidly ageing population. Indeed, the implementation of legislation that addresses age discrimination in the provision of goods, facilities, and services is a vital next step to strengthen the position of older people in our society. There are abundant examples of older people facing additional barriers to service access in Northern Ireland, such as COPNI's

employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC; and Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

²² That the right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity are not reduced as a result of Brexit

²³ Commissioner for Older People for Northern Ireland (2024) *At the centre of government planning: The Programme for Government and preparing for an ageing population*. Available at: <https://copni.org/assets/general/resources/At-the-Centre-of-Government-Planning-The-Programme-for-Government-and-preparing-for-an-ageing-population.pdf>

²⁴ Commissioner for Older People for Northern Ireland (2023) *Joint Statement: The impact of budget cuts on equality in Northern Ireland*. Available at: <https://copni.org/news/articles/joint-statement-the-impact-of-budget-cuts-on-equality-in-northern-ireland>

²⁵ Commissioner for Older People for Northern Ireland (2024) *RE: Equality Impact Assessment of the 2024/25 Budget Outcome*. Available at: <https://copni.org/assets/general/resources/July-2024-COPNI-response-to-DoH-2024-2025-Budget-Equality-Impact-Assessment.pdf>

²⁶ Commissioner for Older People for Northern Ireland (2024) *RE: Budget 2024/25 Equality Impact Assessment*. Available at: <https://copni.org/assets/general/resources/July-2024-COPNI-response-to-Department-for-Infrastructure-Budget-2024-25-Equality-Impact-Assessment-Public-Consultation.pdf>

investigation of Dunmurry Manor Care Home,²⁷ and the Department of Health's Continuing Healthcare policy.²⁸ COPNI has also published evidence suggesting older people face barriers when interacting with the justice system,²⁹ and has highlighted inadequacies in the protections offered to older citizens within the Department of Health's Regional Care Home Contract.³⁰ The COVID-19 pandemic also highlighted the risks faced by older people in our society.³¹

v) how legislation needs to change

Overall, COPNI would request that steps are taken to align age legislation in Northern Ireland with existing legislation in Britain, and that key lessons from the implementation of the Equality Act to date are taken into consideration in the development of future legislation for Northern Ireland. COPNI would also request that the measures that were put in place around other protected characteristics in both the Belfast (Good Friday) Agreement and Northern Ireland Protocol are extended to ensure age legislation is aligned with future EU Directives in this area.

Yours sincerely



Evelyn Hoy

Chief Executive

Commissioner for Older People for Northern Ireland

²⁷ Commissioner for Older People for Northern Ireland (2017) *Commissioner's investigation into Dunmurry Manor Care Home*. Available at: <https://copni.org/case-studies/commissioners-investigation-into-dunmurry-manor-care-home>

²⁸ Commissioner for Older People for Northern Ireland (2023) *Commissioner for Older People's Judicial Review Triumph as High Court Quashes Healthcare Policy*. Available at: <https://copni.org/news/articles/commissioner-for-older-peoples-judicial-review-triumph-as-high-court-quashes-healthcare-policy>

²⁹ Commissioner for Older People for Northern Ireland (2023) *A Different Crime: Offending Against Older People*. Available at: <https://copni.org/assets/general/resources/a-different-crime-2023-crime-report.pdf>

³⁰ Commissioner for Older People for Northern Ireland (2024) *Respecting residents' rights in care homes: A review of the Regional Care Home Contract by the Commissioner for Older People for Northern Ireland*. Available at:

<https://copni.org/assets/general/resources/respecting-residents-rights-in-care-homes-review-of-regional-care-home-contract.pdf>
³¹ BBC (2024) *Covid Inquiry: What have we learned after three weeks in Belfast?* Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-69023690>