

## Summary of Key Equality law differences between Great Britain (GB) and Northern Ireland (NI)

Thank you to the employment law team at Lewis Silkin for the main content of this table

31 March 2023

	GB legislation	NI – legislation and consequences
1.	<p><b>The Retained EU Law (Revocation and Reform) Bill (Bill):</b> Regulations that implement EU law are to be reviewed, reformed or removed under this Bill.</p> <p>Unless relevant laws (which includes certain equality laws) are restated or replaced by UK domestic legislation they will be ‘<b>sunsetting</b>’ (<b>revoked</b>) by the <b>end of 2023</b>.</p> <p>The GB Government plans to consult in this area in the coming months<sup>1</sup>.</p>	<p>The fact that the Bill would <b>sunset or possibly revoke certain NI equality regulations</b> such as the age and sexual orientation regulations means that the UK could be in <b>breach of its obligations under the EU Withdrawal Agreement</b>. Similarly, it is difficult to reconcile the <b>non-diminution principle contained in the Protocol</b> with the ending of supremacy of EU law and removal of principles of EU law<sup>2</sup>.</p> <p>The Northern Ireland Human Rights Commission and ECNI have provided advice and recommendations regarding potential amendments to the Bill<sup>3</sup>.</p>
2.	<p>Equality legislation was <b>simplified, harmonised and strengthened</b> in October 2010 under the Equality Act 2010.</p> <p>Uniform protection against discrimination applies across all grounds, where appropriate. For example, the race equality legislation has been harmonised so that individuals have the same level of protection on grounds of colour and nationality as well as race, ethnic origin and national origin.</p>	<p>Anti-discrimination legislation is comprised in <b>nine separate pieces</b> of legislation:</p> <ul style="list-style-type: none"> <li>➤ Equal Pay Act (NI) 1970</li> <li>➤ Sex Discrimination (NI) Order 1976</li> <li>➤ Race Relations (NI) Order 1997<sup>4</sup></li> <li>➤ Disability Discrimination Act 1995</li> <li>➤ Fair Employment and Treatment (NI) Order 1998</li> <li>➤ Section 75 Northern Ireland Act 1998</li> <li>➤ Employment Equality (Sexual Orientation) Regulations (NI) 2003</li> <li>➤ Equality Act (Sexual Orientation) Regulations (NI) 2006</li> <li>➤ Employment Equality (Age) Regulations (NI) 2006</li> </ul> <p><b>Harmonising and simplifying</b> this legislation would address inconsistencies, anomalies and complexities and ensure uniform protection against discrimination across all grounds, where appropriate<sup>5</sup>.</p>

<sup>1</sup> [Lewis Silkin - Retained EU law bill: our proposals for employment law reform](#)

<sup>2</sup> [Lewis Silkin - What might the Brexit Freedoms Bill mean for employment law in Northern Ireland?](#)

<sup>3</sup> [NIHRC / ECNI Briefing on the Retained EU Law \(Revocation and Reform\) Bill \(equalityni.org\)](#)

<sup>4</sup> A consultation regarding the review of the Race Relations (NI) Order 1997 is currently active (running until 18 June 2023), which has involved a review of the Equality Act 2010 and other legislation.

<sup>5</sup> The Equality Commission for Northern Ireland (ECNI) recommends the adoption of a single equality Act for NI: [ECNI - Single Equality Act \(equalityni.org\)](#)

3.	<p><b>Age discrimination outside the workplace:</b> There has been a ban on age discrimination in goods, facilities and services in GB since 2012.</p>	<p>There is <b>no prohibition</b> on discrimination on grounds of age in provision of goods, facilities &amp; services (save for some exceptions). Individuals in NI therefore have <b>less protection</b> than individuals in GB against discrimination on the ground of age by those providing goods, facilities or services.</p>
4.	<p><b>Disability legislation</b> has been strengthened:</p> <ul style="list-style-type: none"> <li>• The concept of ‘disability-related’ discrimination was replaced with protection against ‘<b>indirect discrimination</b>’ and ‘<b>discrimination arising from disability</b>’.</li> <li>• The <b>definition of disability</b> was amended to <b>make it easier</b> for disabled people to fall within the definition of disability.</li> <li>• Express protection was introduced for people, such as carers, who are subjected to direct discrimination or harassment due to their <b>association with a disabled person</b> or because they are <b>wrongly perceived</b> to be disabled.</li> <li>• <b>Pre-employment questions relating to health were prohibited</b>, save in specified circumstances.</li> </ul>	<p>These changes have <b>not been implemented</b> in NI:</p> <ul style="list-style-type: none"> <li>• The concept of <b>disability-related</b> discrimination continues to apply, meaning that disabled people have <b>less protection</b> than disabled people in GB (a House of Lords case<sup>6</sup> effectively removed any ‘teeth’ that disability-related discrimination had).</li> <li>• The requirement for an employee to identify which of a list of specified “<b>capacities</b>” is affected by their impairment still applies, which makes it harder for them to fall within the definition of disability.</li> <li>• Disability legislation <b>does not protect people</b> against associative or perceived discrimination. Employees have to rely on the ECJ case of <i>Coleman v Attridge Law</i> to seek protection in such cases.</li> <li>• <b>Pre-employment questions are not prohibited</b>, which can deter disabled people from applying for jobs.</li> </ul>
5.	<p><b>Gender pay gap reporting</b> for large employers was implemented in 2017.</p>	<p>The Employment Act (Northern Ireland) 2016 made provision for Regulations to be published to introduce gender pay gap reporting <b>by no later than June 2017</b>. This hasn’t happened. It also made provision for disability and ethnicity pay gap reporting in NI, which would have made Northern Ireland a leader in this area.</p> <p>NI lacks an important tool for monitoring and eliminating the gender pay gap in NI.</p>
6.	<p><b>Equal pay provisions were strengthened</b> to prohibit employers from preventing or restricting their employees from having discussions in order to establish if pay differences exist that are related to an equality ground (e.g. gender).</p>	<p>These changes do not apply in NI and therefore people may not know that they are <b>being discriminated against in pay awards and bonuses</b>. The Statutory Questionnaire procedure still applies in NI.</p>
7.	<p><b>Positive action</b> measures were extended and harmonised in GB to allow, but not require, employers to take a wider range of measures aimed at alleviating disadvantage experienced by under-represented groups across all equality grounds.</p>	<p>There is <b>less scope for employers in NI</b> to take positive action (voluntary measures) aimed at alleviating disadvantage experienced by under-represented groups.</p>
8.	<p><b>Confidentiality clauses or non-disclosure agreements (NDAs):</b> The government indicated in 2019 that it would introduce new legislation to regulate NDAs. There is no indication of when, how (or whether) these reforms will be progressed. However, the Equality and Human Rights</p>	<p>There are no developments regarding the use of NDAs in NI save for Universities who pledged to end their use of NDAs in summer 2022.</p>

<sup>6</sup> Malcolm v London Borough of Lewisham [2008] UKHL 43

	Commission published best practice guidance in October 2019, the Solicitors Regulation Authority has issued a “warning notice” to solicitors (last updated November 2020) and Acas published its own guidance in February 2020 <sup>7</sup> .	
--	---	--

---

<sup>7</sup> [Lewis Silkin - New guidance on NDAs](#)