RESPONSE TO CONSULTATION PAPER ON IMPROVING COMMUNITY RELATIONS – “A SHARED FUTURE”

Background
1. The initial working paper on the future of community relations policy and the Community Relations Council was published in August 2001. The Northern Ireland Human Rights Commission made an oral presentation to the review team in the autumn of 2001. The resulting Harbison Report was delivered to OFMDFM during 2002 but was not published. A renewed Consultation Paper – “A Shared Future” – was published in January 2003 asking for responses by the end of July 2003, but this deadline was subsequently extended. The holding of Assembly elections in November 2003 further postponed official deliberations in the area. The Commission regrets the delay in submitting its own final response to the Consultation Paper but it hopes that its views can still be taken into account by the OFMDFM when relevant policies are being formulated.

Increasing segregation
2. The Consultation Paper draws attention to evidence of increasing sectarianism and communal separation in a number of areas, notably housing (70% of housing estates are more than 90% segregated), education (less than 5% in integrated schools), racial prejudice (a higher level of prejudice and attacks than in Great Britain), and increasing violence at some interfaces (most recently in North and East Belfast). It concludes that “Northern Ireland remains a deeply segregated society with little indication of progress towards becoming more tolerant or inclusive.”
3. There is no reference, however, to evidence of increasingly successful integration in the workplace as a result of governmental action under the Fair Employment Acts or to the fact that integrated education, likewise under relatively recent legislation though of a permissive rather than proactive nature, is a growing rather than a diminishing sector. These examples suggest that a measure of increasing integration can be achieved if there is appropriate legislation and governmental action.

**The Government’s suggested objectives**

4. The Consultation Paper suggests that the objectives of policy should be:

   • a shared society in which people are encouraged to make choices in their lives that are not bound by historical divisions and are free to do so, and

   • a pluralist society, with respect and tolerance for cultural diversity, where people are free to assert their own identity.

The document then outlines a number of policy approaches for regional and local action, including the preparation of strategic plans, the inclusion of good community relations in the school curriculum, increased integration in education, more research and possibly the replacement of the independent Community Relations Council with a dedicated government unit within OFMDFM. But no specific legislative change is proposed.

**Good relations between separated communities or integration of their members**

5. This formulation of objectives may include, though it does not clarify, an important distinction that must be faced in dealing with communally divided societies between, on the one hand, promoting tolerance and good relations between separated communities and, on the other, encouraging integration of their members in a shared environment on the basis of full equality. This distinction has given rise to some different approaches in community relations policies.
Some of those working in the area favour what may be called a “community development” approach, which considers that the primary objective is to build confidence and capacity in social and economic development in each distinctive community before seeking better relationships between them. Others favour a policy that may be referred to as “recognition and integration”, under which the primary objective is to promote integration of members of all communities in the workplace, in education and in other aspects of ordinary living with full recognition of their distinctive cultures and identities. The two approaches are not of course mutually exclusive and neither can claim that there is any conclusive evidence that one is better than the other. But it may be necessary to establish which is to be given priority in the allocation of resources.

6. Both these approaches have from time to time been pursued in Northern Ireland. The Community Relations Commission in the 1970s was committed to a community development strategy. The policy of the Fair Employment Agency and the Equality Commission on the other hand has been closer to that of recognition and integration in that the primary policy objective has been to secure fair and integrated participation in the workplace of members of both main communities. The integrated education movement and the legislation which facilitates it has a similar objective in that integrated schools are effectively defined as those that promote a balanced enrolment and a curriculum that gives equal recognition to the identities and cultures of both main communities.

Relevant international standards

7. In assessing the Government’s proposals and possible alternatives from a human rights perspective the Commission has considered the relevant international standards in this area. They may be summarized under three headings:

(a) A duty to promote tolerance

8. This is included as a general principle in many international instruments. The Universal Declaration of Human Rights and the International Covenant on Civil and
(b) An obligation to encourage integration

9. There is less specific reference in international instruments to any obligation on states to encourage integration on a communal or non-communal basis for those who wish to build a shared rather than a segregated society. There is a brief reference in the Convention Against All forms of Racial Discrimination (CERD) to an obligation to encourage integrationist multi-racial organisations and movements and other means of eliminating barriers between races. The United Nations Working Group on Minorities is currently considering the development of guidelines on integrative as well as autonomist approaches to problems in divided societies.

(c) A right not to be treated as a member of a minority

10. A further relevant principle is the right not to be treated as a member of a communal group against your will. This is included in all recent international standards relating to minorities. The Copenhagen Document of the Organisation for Security and Co-operation in Europe provides that “to belong or not to belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice” (para.32). The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states
that no disadvantage shall result for any person belonging to a minority as a consequence of the exercise or non-exercise of minority rights (Art.3.2). The European Framework Convention on the Protection of National Minorities provides that “every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice” (Art.3.1).

11. This right is clearly relevant to one of the objectives in the Government’s consultation paper – “a shared society in which people are encouraged to make choices in their lives that are not bound by historical divisions and are free to do so.” Freedom of choice for individuals to abandon their communal background and seek to develop a shared or integrated society must not be ignored as a significant component in reducing tensions, providing some neutral ground and contributing to the compromises that are essential in a divided society.

**Legislative reform**

12. The Commission considers that some legislative reforms will be needed to promote these general international standards and the government’s suggested objectives. These should include clarification of the relationship between the equality and good relations duties, exemption from discrimination of measures to promote integration and improvements in the enforcement provisions. We recognize, of course, that there is a limit to what legislation can achieve in this area, but it can at least facilitate progress.

13. There is a general lack of clarity and precision on the relationship between the equality and community relations agenda. This is reflected in the widely held view that under section 75 of the Northern Ireland Act the duty “to have due regard to the need to promote equality of opportunity” between the specified groups must always take precedence over the duty to “have regard to the desirability of promoting good relations” between the specified groups. In the Commission’s view this is a
14. There are also some drawbacks to the enforcement mechanism in respect of the duties under section 75. The process of drawing up equality schemes has proved to be highly cost intensive and the burden imposed on voluntary bodies in responding effectively to drafts of so many schemes is such that in many cases no effective consultation is practical. In addition the apparent intention under section 75(4) to restrict any enforcement action to the failure to adhere to an approved equality scheme may result in unnecessarily prolonged proceedings, involving both the Equality Commission and the Secretary of State. For example an equality scheme which postponed for several years an impact assessment in respect of a particular issue might make it impossible for that issue to be raised in any proceedings until that assessment had been carried out. The strategy of imposing a free-standing and immediately enforceable duty, quite independent of the terms of any equality scheme, which has been adopted under the Race Relations (Amendment) Act 2000 in England, Wales and Scotland (including UK bodies operating in Northern Ireland), is much to be preferred. The substituted version of section 71 of the Race Relations Act 1976 now imposes general and equivalent duties on specified authorities:
(a) to eliminate unlawful racial discrimination, and

(b) to promote equality of opportunity and good relations between persons of different racial groups.

This permits relevant issues to be raised at any time and those affected may compile their own supporting evidence in any court or tribunal proceedings. It may be noted in this context that under the British legislation the equality and good relations duties are given equal weight.

15. It would therefore be helpful if the current legislation in Northern Ireland in this area were amended to deal with these various uncertainties and defects by:

(a) stating clearly that the community relations and equality duties are free-standing and immediately enforceable and independent of the procedures for drawing up and enforcing equality schemes;

(b) providing a statutory definition of good community relations along the following lines:

“the promotion of good community relations shall include reasonable and proportionate measures to foster mutual tolerance and respect between different communities, to encourage communal co-operation and to promote the integration of members of different communities in education, employment, housing and other spheres”;

(c) stating clearly that reasonable and proportionate measures adopted with a view to promoting integration in education, employment, housing and other areas shall not be regarded as discriminatory under section 76 of the Northern Ireland Act 1998.
These measures might appropriately be included in any amendment of the Northern Ireland Act and should in the view of the Commission also be taken into account in the proposed Bill of Rights for Northern Ireland.

Administrative measures

16. A detailed consideration of the administration of community relation policies is beyond the scope of this submission. A few brief comments, however, may be made. As has already been pointed out, the administration of community relations policies is widely dispersed among different government departments and the role of the Community Relations Council in monitoring their performance is unclear. In addition the natural focus of the Equality Commission on equality issues may result in a continuing lack of attention to monitoring the effectiveness of community relation policies. This is likely to be exacerbated by the formal imbalance in the reference to the equality and good relations duties in paragraphs 4(2)(b)-(d) of Schedule 9 to the Northern Ireland Act 1998, in that consultation and impact assessments in respect of the good relations duty are not required. It is not clear why this was thought to be desirable. The effective implementation of the suggestions set out above may therefore require the creation of a unit within the Equality Commission or elsewhere with the specific task of carrying out this function. There also needs to be a partnership approach adopted among the various statutory and voluntary agencies working on community relations and “joined-up” policy-making.