



Framework Convention for the Protection of National Minorities

Submission to the Advisory Committee on the UK's Third Monitoring Report

June 2011

Executive Summary

- Despite the Advisory Committee's recommendations in its Second Opinion on the UK, inconsistencies in Northern Ireland race equality legislation remain. The Equality Commission is of the view that urgent reform of the race equality legislation is required, particularly in light of developments in Great Britain following the implementation of the Equality Act 2010. The Equality Commission is particularly concerned that Black Minority Ethnic (BME) individuals in Northern Ireland have **less protection** against discrimination, harassment and victimisation across all racial grounds and in a wider range of areas, than BME individuals in Great Britain.
- The Equality Commission has recommended that registered employers in Northern Ireland are **required**, under the fair employment legislation, to collect monitoring information as regards nationality and ethnic origin. Whilst the primary reason for this change is to ensure the continuing usefulness of the fair employment Monitoring Regulations, the collection of this data will, for example, assist employers in assessing the impact of their employment policies and procedures on particular ethnic groups in the workplace.
- The Equality Commission is also of the view that urgent changes are required to the fair employment legislation in Northern Ireland (which prohibits discrimination on the grounds of religious belief and political opinion). Reform is needed, particularly in light of

the fact that in some areas there is greater protection against discrimination on the grounds of religious belief and greater scope to take positive action outside employment, in Great Britain than in Northern Ireland, following the implementation of the Equality Act 2010.

- The Advisory Committee may wish to seek clarification from the Northern Ireland Executive as to the steps it intends to take to strengthen and harmonise race equality and fair employment legislation in Northern Ireland; particularly in light of developments in Great Britain under the Equality Act 2010.

Introduction

1. The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and the disability duties under the Disability Discrimination Act 1995.
2. The Commission's general duties include:
 - working towards the elimination of discrimination;
 - promoting equality of opportunity and encouraging good practice;
 - promoting positive / affirmative action;
 - promoting good relations between people of different racial groups;
 - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities;
 - keeping the legislation under review;
 - promoting good relations between people of different religious belief and/or political opinion.
3. The Equality Commission welcomes the publication of the UK Government's Third Monitoring Report on the Framework

Convention on National Minorities ('the Framework Convention'). We also welcomed the opportunity to meet with the Advisory Committee earlier this year. Our comments below summarise the points raised by us at that meeting, which concentrated primarily on issues relating to Article 4 (right of equality before the law).

4. However, before commenting on Article 4, we wish to state that, in general, we are concerned at the lack of detail in the UK Government's Third Monitoring Report as regards progress in Northern Ireland. There is, for example, little information in the report on the degree to which the Northern Ireland Executive has addressed the Advisory Committee's recommendations relating to Northern Ireland, as set out in its Second Opinion on the UK in 2007.

Article 4 (right of equality before the law)

Addressing inconsistencies

5. In its Second Opinion on the UK, the Advisory Committee has recommended that 'authorities should ensure, when drafting the Single Equality Act for Great Britain and the Single Equality Bill for Northern Ireland, that existing inconsistencies in anti-discrimination legislation are removed and that vigorous protection is afforded against discrimination, not only on grounds of race and ethnic or national origins, but also on the grounds of religion and/or belief.'
6. The Committee will be aware from the UK Government's Third Monitoring Report submitted in March 2010 that the UK Government was at that stage proposing to strengthen equality legislation in Great Britain through the introduction of an Equality Bill. The Committee will also be aware that the Equality Bill (now the Equality Act 2010) received royal assent in April 2010 and the vast majority of its provisions came into force in Great Britain in October 2010.
7. Although the Office of the First and deputy First Minister (OFMdFM) in 2005 commenced a consultation on a Single

Equality Bill for Northern Ireland, no policy proposals on single equality legislation have as yet been brought forward. It is also of note that despite a commitment by the Government in the St Andrews Agreement to 'work rapidly to make the necessary preparations so that legislation on a Single Equality Bill could be taken forward by an incoming Executive at an early date', no legislation has to date been introduced in Northern Ireland.

ECNI proposals for legislative reform

8. One of the Commission's key tasks is to keep the race equality legislation in Northern Ireland (namely the Race Relations (NI) Order 1997), and other equality legislation, under review and to make recommendations for change.
9. Pursuant to that, it carried out an extensive review of the Race Relations (NI) Order 1997 in 2000 and published a series of recommendations for change across a range of areas, including exceptions, positive action and tribunal powers.¹
10. In addition, in recognition of the need to streamline and modernise Northern Ireland equality law and to keep pace with developments in Great Britain (GB), the Equality Commission in 2009 raised with Junior Ministers in OFMdFM a number of **proposals for legislative reform**.
11. The Equality Commission's proposals for legislative reform included changes to the **race equality** legislation and the **fair employment** legislation (which covers discrimination on the grounds of religious belief and political opinion). In particular, we recommended:-
 - harmonisation and strengthening of the **race equality legislation** so that individuals have the same level of

¹ *Recommendations for Changes to the Race Relations (NI) Order 1997, 2000, ECNI.* These changes include; an extension of the duties on public authorities not to discriminate when carrying out their public functions; an expansion of positive action measures; harmonisation of time limits for bringing complaints; strengthened tribunal remedies; narrower exceptions; and additional powers of enforcement for the Equality Commission.

protection against discrimination and harassment on the grounds of colour and nationality, as on the grounds of race, ethnic origin and nationality, when in employment or accessing goods and services or when subject to public functions.

- the extension of the workplace **monitoring requirements** placed on registered employers² under the **fair employment legislation** to cover the grounds of **nationality and ethnic origin**.

12. In addition, as set out in more detail in paragraph 51 below, we also recommended changes to the **teachers' exception** in the fair employment legislation. Further information on these proposals for legislative reform is available on the Equality Commission's website³.
13. The Equality Commission has met with Junior Ministers in OFMdFM on two occasions, most recently in July 2010, in relation to its proposals for legislative reform.
14. In response, the Junior Ministers have indicated that they recognise the need to take steps to strengthen anti - discrimination law so as to ensure that Northern Ireland citizens enjoy the same legal protection as citizens elsewhere. They have also confirmed that they are considering how best this might be achieved.

Reasons why reform is needed

² Registered employers are employers with 11 or more employees.

³ *ECNI proposals for legislative reform*, 2009, available at http://www.equalityni.org/sections/default.asp?secid=5&cms=The+Law+Legislative+Reform&cmsid=4_285&id=285

15. The Equality Commission has recommended urgent reform of the **race equality** legislation for a number of key reasons.
16. Firstly, the changes will help address the deep-rooted, hard to tackle inequalities facing black and minority ethnic (BME) communities (including migrant workers and Travellers) in Northern Ireland across a range of areas, including education, employment, health and social care, and housing; as highlighted in the Commission's *Statement on Key Inequalities in Northern Ireland* published in 2007.⁴
17. Through its work in helping individuals who believe that they have been discriminated against on the grounds of race, the Equality Commission is aware of the unacceptable levels of discrimination and harassment against racial groups in Northern Ireland. In addition, a survey commissioned by the Equality Commission in 2008 has shown increasing levels of racial intolerance, particularly towards Travellers and migrant workers.⁵
18. The Equality Commission is also of the view that the changes are in keeping with the overarching aims and objectives of the *Racial Equality Strategy for Northern Ireland 2005-10*⁶; which sets out the strategic aims of Government in eradicating racism and tackling racial inequalities in Northern Ireland.
19. In addition, such changes will ensure **parity of protection** for different racial groups in Northern Ireland in line with changes which have already taken place in Great Britain under the Equality Act 2010.
20. In addition, securing greater **harmonisation and simplification** across the scope of race equality legislation will provide greater clarity both for BME individuals and for service providers,

⁴ Commission's *Statement on Key Inequalities in Northern Ireland*, ECNI, 2007, [http://www.equalityni.org/archive/pdf/Keyinequalities\(F\)1107.pdf](http://www.equalityni.org/archive/pdf/Keyinequalities(F)1107.pdf)

⁵ *Equality Awareness Survey 2008*, commissioned by ECNI, June 2009, <http://www.equalityni.org/archive/pdf/ECSurvey2008.pdf>

⁶ OFMdFM 2005, www.ofmdfmi.gov.uk

employers, etc., as regards their respective rights and responsibilities under the legislation.

Differences between UK and NI race equality law

21. As set out in the UK Government's Third Monitoring Report, the Equality Act 2010 harmonised and strengthened race equality legislation in Great Britain across a range of areas. In particular, it:-
- harmonised the provisions under the race equality legislation so that there is the same level of protection for discrimination and harassment on the grounds of colour and nationality, as on the grounds of race, ethnic origin and nationality. To date these **inconsistencies remain** in Northern Ireland race equality legislation.
 - employers, services providers and public bodies carrying out public functions in Great Britain are allowed (but not required) to take a wider range of special measures or **positive action** measures aimed at alleviating disadvantage experienced by under-represented groups. There is currently **more limited scope** for employers, service providers and public authorities in Northern Ireland, than those in Great Britain, to take positive action in the area of race equality.
 - strengthened the powers of **employment tribunals** as regards race discrimination complaints (and on other equality grounds). This enables an employment tribunal to make a recommendation which benefits the whole workforce and need not be limited to benefiting the complainant. This extended power **only exists** in Northern Ireland under the fair employment legislation (which covers religious belief and political opinion).
 - extended protection for **Councillors** against discrimination on the grounds of race (as well as other equality grounds). Such protection for Councillors in local councils, does not exist in Northern Ireland on the grounds of race.

- strengthened protection for BME **pupils in schools** from victimisation. In particular, there is protection for BME children in schools from being victimised as a result of a protected act (such as making or supporting a complaint of discrimination) done by their parent or sibling. There is no **protection** in relation to this form of victimisation for BME pupils in schools in Northern Ireland.

In summary, following the enactment of the Equality Act 2010, there is now **less protection** against discrimination, harassment and victimisation across all racial grounds and in a wider range of areas in Northern Ireland than in Great Britain.

Public functions

22. In its Second Opinion on the UK, the Advisory Committee urged authorities ‘to introduce a more extensive prohibition of discrimination in Northern Ireland’s race equality legislation in relation to public functions.’
23. To date, this gap in protection **remains unaddressed**. In particular, Black Minority Ethnic (BME) communities in Northern Ireland have **less protection** against discrimination by public authorities when exercising their public functions, than BME communities in Great Britain.
24. The Advisory Committee will be aware of the wide range of actions covered by the provisions relating to public functions, including law enforcement, the setting of budgets, the collection of taxes, planning control or licensing or determining frameworks for the entitlement to benefits or services.
25. Currently, under the Race Relations Order (NI) 1997, protection against discrimination by public authorities when exercising public functions is **limited to four areas**; namely, social security, health care, social protection or social advantage. This limitation does not exist in the race equality legislation as it applies in Great Britain. The Commission is of the view that a range of important public functions, such as policing, planning control and

licensing are outside the scope of the racial equality legislation in Northern Ireland.

26. The lack of protection under the Race Relations Order (NI) 1997 against discrimination in planning control and licensing is of particular concern in light of the difficulties experienced by Irish Travellers in relation to the building of Traveller sites.
27. Currently, decisions on planning applications are made by the Department of the Environment following statutory consultation with local councils. In addition, there is a requirement on the Northern Ireland Housing Executive to obtain a site licence from local councils for Traveller sites. Commission research into Traveller accommodation in Northern Ireland in 2009⁷ highlights that there was 'an overwhelming view among officials and individuals working with Travellers that decisions at Council level regarding planning permission remained a key stumbling block to site development'. It is also of note that under recent Government proposals, it is proposed that planning functions will transfer to local councils in Northern Ireland.
28. In addition, protection against discrimination or harassment by public authorities when exercising their public functions only exists on the grounds of race, ethnic or national origins and **not colour or nationality**.
29. The Advisory Committee will note that following the enactment of the Equality Act 2010 in Great Britain, public authorities in Great Britain are prohibited from discriminating when carrying out public functions across **all** racial grounds and as regards **all** functions.
30. As outlined above, in its proposals for legislative reform, the Equality Commission has called for the harmonisation of the race equality legislation so that all racial grounds are covered by the provisions of public functions.

⁷ *Outlining Minimum Standards for Traveller Accommodation*, ECNI 2009, <http://www.equalityni.org/archive/pdf/travguideSDSHWeb100409.pdf>

Collection of data on minority ethnic communities

31. In its Second Opinion on the UK, the Advisory Committee notes that ‘Northern Ireland’s race equality legislation does not require employers to monitor their workforces and employment practices in respect of ethnicity’. It also highlights that ‘the Government acknowledges there is still very little data on the situation of persons belonging to minority ethnic communities in Northern Ireland, not only as regards employment, but also in respect of the delivery of public services, especially in certain sectors such as health and welfare’.
32. The Advisory Committee recommended that ‘the authorities in Northern Ireland, Scotland and Wales in particular, pursued further their efforts to collect data on the situation of minority ethnic communities in all relevant sectors’.
33. The Advisory Committee will note that one of the Equality Commission’s proposals for legislative reform includes a recommendation that the workplace monitoring requirements placed on registered employers under the fair employment legislation are **extended** to cover the **grounds of nationality and ethnic origin**.
34. This would mean that registered employers, in addition to monitoring the community background and sex of their employees and applicants, would be **required** to collect monitoring information as regards nationality and ethnic origin.
35. The Advisory Committee will note that the **primary reason** for the proposed changes is to ensure the continuing usefulness of the fair employment Monitoring Regulations. In particular, it will help employers identify which employees and applicants are migrant workers and new residents, and enable employers to make a more accurate and meaningful assessment of fair participation in employment in their organisation.
36. However, the collection of this additional monitoring data will also assist employers in assessing the impact of their employment policies and procedures on particular ethnic groups in the

workplace, and in identifying discriminatory employment practices, which impact directly or indirectly on these groups.

37. Further, it will provide a valuable and extensive source of data of the racial composition of employees and applicants which will be of benefit to a range of organisations and inform high level indicators for monitoring priority outcomes of Government strategies (including the Racial Equality Strategy and the proposed Strategy on Cohesion, Sharing and Integration).
38. In addition, the collection of such data is a key recommendation in the Equality Commission's Racial **Code of Practice** for employers and, as made clear in the Race Directive, the monitoring of workplace practices is an important way of promoting social dialogue and fostering equal treatment on the grounds of racial or ethnic origin.
39. The Advisory Committee will be aware that registered employers already have systems and procedures in place, as a result of the requirements under the fair employment legislation, to collect monitoring data as regards community background and sex, from their employees and applicants.

Changes in Great Britain

40. The Advisory Committee will note that in Great Britain under changes to the public sector duty brought in by the Equality Act 2010, there are **new duties** on specified public authorities in terms of the collection and publication of equality data across a range of equality grounds, including race.
41. In particular, specified public authorities must publish by 31 July 2011 (and by 31 December 2011 for schools), and at least annually after that, a wide range of equality information. The information published must include, for example, information on the effect their policies and practices have had on employees,

service users and others from protected groups (including racial groups).⁸

42. For example, in relation to **employment**, the Guide to the new public sector equality duty has made it clear that for public authorities with 150 employees or more, information published should include the **race, disability, gender, and age** breakdown and distribution of its **workforce**⁹.
43. There are different monitoring requirements on public authorities in Northern Ireland under Section 75 of Northern Ireland Act 1998. As highlighted in the Equality Commission's Section 75 monitoring guidance¹⁰, there is a clear onus on public authorities to put in place systems to collect relevant information across the Section 75 equality grounds and to make use of that information for assessing and monitoring the impact of their policies on the promotion of equality of opportunity.
44. In addition, the Commission has developed new and revised Guidance on the implementation of the statutory duties placed on public authorities¹¹.
45. The Guidance recommends that public authorities undertake an **audit of inequalities** across all their functions and develop an **action plan** to target inequalities amongst groups identified through this process. We are currently liaising with public authorities in relation to conducting an audit of inequalities and the development of a action plan designed to tackle key inequalities across the groups covered by Section 75 of the Northern Ireland Act 1998 (including racial groups).

⁸ Public authorities with fewer than 150 employees are not required to publish information on the effect of their policies and practices on their workforce.

⁹ For further information on the requirements on public authorities in Great Britain, see in particular, *Equality information and the equality duty. A guide for public authorities*, EHRC, 2011
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/information_guidance.pdf

¹⁰ *Section 75 of the N.I. Act 1998, Monitoring Guidance for use by Public Authorities*, ECNI, 2007
<http://www.equalityni.org/archive/pdf/S75MonitoringGuidance0707.pdf>

¹¹ *Section 75 of the N.I. Act 1998. A Guide for Public Authorities*, ECNI, 2010.
<http://www.equalityni.org/archive/pdf/DFPDraftSchemeResponse.pdf>

46. The Equality Commission has recommended that as part of their audit of inequalities, public authorities assess whether or not they need to take steps to address gaps in information across the Section 75 grounds, as well as gaps in information relating to individuals with **multiple identities**, for example, black minority ethnic women. The Commission has also highlighted with public authorities the need, when considering the key inequalities that it needs to address, whether inequalities exist in relation to individuals with multiple identities.

Addressing deficiencies in equality legislation on the grounds of religion and/or belief.

47. In its Second Opinion on the UK, the Advisory Committee recommended that single equality legislation for Great Britain and Northern Ireland should ensure that existing inconsistencies in anti-discrimination legislation are removed and that greater protection is afforded against discrimination, not only on the grounds of race and ethnic or national origins, **but also on the grounds of religion and/or belief** (our emphasis).
48. The Advisory Committee will be aware that under the fair employment legislation in Northern Ireland (namely the Fair Employment and Treatment (Northern Ireland) Order 1998), it is unlawful for employers, service providers and others to discriminate against someone on the grounds of their **religious belief or political opinion**.
49. Following the enactment of the Equality Act 2010, there is now, in some areas, **greater protection** against discrimination on the grounds of religious belief in Great Britain than in Northern Ireland. It will be noted that the Equality Act 2010 prohibits discrimination on the grounds of religion or belief (as opposed to religious belief or political opinion, as in Northern Ireland). For example, unlike in Great Britain, there is no legislation in Northern Ireland prohibiting **private clubs** from discriminating on the grounds of religious belief.

50. In addition, as highlighted above, there are no provisions under the fair employment legislation in Northern Ireland prohibiting affirmative or **positive action outside employment**. In contrast, under the Equality Act 2010, employers, service providers, public authorities and others are permitted to take a range of positive action measures outside employment on the grounds of religion or belief.
51. Finally, as made clear in its **proposals for legislative reform**, the Equality Commission has recommended, the removal of the **teachers exception** in the fair employment legislation, which allows secondary level schools to discriminate on the grounds of religious belief when recruiting teachers; with early consideration as to whether the exception should also be removed as regards primary level schools. The recommendation follows an investigation carried out by the Commission in to the exception of teachers in 2004.¹² This exception is specific to Northern Ireland equality legislation.

Migrant workers

52. The Advisory Committee in its Second Opinion on the UK also highlighted the issues relating to migrants in the UK, working under temporary contracts or in some cases under no contracts, leaving them vulnerable to numerous forms of exploitation.
53. We enclose for your information the findings of the Equality Commission's *Formal investigation into the role of the recruitment sector in the employment of migrant workers*.¹³ The investigation found that almost one third of agency worker participants (31%) felt that they had experienced discrimination as a result of working through the recruitment sector. They thought that they were discriminated against because of their nationality and also because they were agency workers.

¹² *The Exception of Teachers from the Fair Employment & Treatment (NI) Order 1998*, Seamus Dunn and Tony Gallagher (2004) <http://www.equalityni.org/archive/word/201202teacherexceptionresearch.doc>

¹³ *The Role of the Recruitment Sector in the Employment of Migrant Workers, formal investigation*, Summary ECNI, May 2010, <http://www.equalityni.org/archive/pdf/ECmigrantreport.pdf>

54. In addition, the investigation found that many participants (72%) felt that language was a major barrier when registering with and working through a recruitment agency. It also found that the main terms and conditions of service of the agency worker participants, including pay, were generally inferior to those employed by direct employees. The Commission has set out a number of key recommendations for recruitment agencies and the Department for Employment and Learning.

Suggested question

55. The Advisory Committee may wish to seek clarification from the Northern Ireland Executive as to the steps it intends to take to strengthen and harmonise race equality and fair employment legislation in Northern Ireland; particularly in light of developments in Great Britain under the Equality Act 2010.

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