

A public consultation on a Private Member's Bill to remove the exception of teachers from the Fair Employment and Treatment Order (NI) 1998

Chris Lyttle MLA

The Fair Employment (NI) Act (FEA) was introduced in 1976. This outlawed discrimination on the grounds of religious belief or political opinion in respect of employment. Section 37 of this Act contained a number of employments to be exempted from the main provisions of the legislation including employment as a clergyman or minister of religion, employment for the purposes of a private household and employment as a teacher in a school. It also contained provision for exceptions, other than those mentioned above, for employment where "the essential nature of the job requires it be done by a person holding, or not holding, a particular religious belief". This Act was amended and supplemented by the Fair Employment (NI) Act 1989 which introduced provisions relating to indirect discrimination and employment monitoring and review requirements on employers but the teachers' exception remained in place.

The Fair Employment and Treatment (NI) Order (FETO) 1998 consolidated the earlier Acts, continuing their prohibition of discrimination in the field of employment and also extending it by applying it to the provision of goods, facilities and services and to the selling and leasing of premises. It was brought into being following the Belfast/Good Friday Agreement and the White Paper, Partnership for Equality. Part 8: Article 71: Paragraph (1) states "this Order does not apply to or in relation to employment as a teacher in a school". In 2003, this provision was narrowed so it only applies to recruitment and promotion as a teacher to meet the requirements of EU Directive 2000/78/EC on equal treatment in employment and occupation. Other aspects of employment, for example, terms and conditions and access to training are now covered by the fair employment legislation.

The case for change

The consequence of the teacher exception from FETO is that schools can use religious belief as grounds on which to discriminate between candidates for teaching posts. Almost all workers can rely on legislation to protect them from discrimination on grounds of their faith. That protection is denied to teachers. In addition, while employers in Northern Ireland, whether in the public or private sector, must register with the Equality Commission and monitor the composition of their workforce if they employ 11 or more employees, this does not apply to the teaching workforce.

Recent research carried out by the UNESCO Education Centre at Ulster University suggested that only 2% of teachers in Catholic primary schools were from a Protestant background and in primary schools with mainly Protestant pupils, only 7% of teachers were from a Catholic background.

The Equality Commission has recommended the removal of this exception at secondary level and early consideration to be given to removing it at primary level as it considers that it is no longer acceptable to exclude the entire teaching workforce from the Fair Employment legislative provisions covering all other occupations in Northern Ireland. It also recommended that teachers should be included in

monitoring and review requirements, as are all other occupations. This would ensure that the benefits of annual data collection and the rigour of regular review are brought to the teaching workforce as it is for all other employment groups. It also noted that if the exception is removed, schools may still be able to rely on the exception where the essential nature of the job requires it to be done by a person holding a particular religious belief.

Chris Lyttle MLA is seeking views on the proposal to remove the exception of teachers from the Fair Employment and Treatment (NI) Order 1998 by way of a Private Member's Bill at the Northern Ireland Assembly. The closing date for this survey is 10th June 2021.

Thank you for your response.

1. Name and/or organisation:

Equality Commission for Northern Ireland

2. Do you wish your response to be anonymous?

No

3. Are you a teacher?

No

4. Do you support the exception of teachers from the Fair Employment and Treatment (NI) Order 1998?

No

5. Do you support removing the exception of teachers from the Fair Employment and Treatment (NI) Order 1998 for secondary teachers?

Yes

7. Should there be a statutory duty to allow for the monitoring and reporting on the religious/community background of all teachers employed in schools throughout Northern Ireland?

Yes – see response at question 9 for clarification of this response.

8. Have you been affected by teachers being exempt from the Fair Employment and Treatment (NI) Order 1998?

No

9. What other fair employment measures would you support in relation to the recruitment of teachers?

The Equality Commission's longstanding position on the exception has been to abolish its application to post primary schools, and to give early consideration to its removal in primary schools.

Our response to question 7 should not be taken to infer anything more than this longstanding position.

Given the passage of time since the Commission's original recommendations (2004 and 2009), any consideration to reform the legislation should take account of developments and research since that time.

With the removal of Teachers Exception from FETO, the following would apply:

- Schools would no longer be able to lawfully discriminate on the grounds of religious belief or political opinion in the appointment of teachers in schools – either in initial recruitment or in promotion.
- Like other employers with more than 10 employees, schools would be required, amongst other things, to:
 - monitor the community background of their teaching staff;
 - carry out reviews of their teaching workforces, and of the employment policies and practices affecting teaching staff, and consider whether they are providing fair participation to members of the Protestant and Roman

Further information on our position can be found at:

<https://www.equalityni.org/teachersexception>

10. If you wish to be updated or contacted further on this matter, please provide your contact information.

Name: Deborah Howe

Company: Equality Commission for NI

Address: 7-9 Shaftesbury Square, Belfast BT2 7DP

Email: dhowe@equalityni.org

Phone: 02890 500599