

Equality Commission for Northern Ireland

Investigation of the Teachers Exception under the Fair Employment and Treatment (NI) Order 1998

The Equality Commission for Northern Ireland has decided to conduct investigations of the Teachers Exception under Article 71(3) of the Fair Employment and Treatment (NI) Order 1998.

1 Background

1.1 Legislative History

Under Article 71 of the [Fair Employment and Treatment \(NI\) Order 1998](#) (“FETO”), school teachers in Northern Ireland, namely those employed in primary, secondary and grammar schools, are exempt from the provisions of the Order. In relation to employment as a teacher, this means that those persons who believe they may have been the subject of religious discrimination cannot bring a complaint under the legislation. It also means there is no requirement on employers of teachers to monitor the community composition of applicants, appointees, employees or promotees. Similarly, education providers are not required to implement affirmative action procedures which would encourage applications from the under-represented community. The “teacher exception”, as it commonly known, has been in place since the original Fair Employment Act of 1976.

In research undertaken on behalf of the Equality Commission, [Seamus Dunn & Tony Gallagher 2002](#)¹ outline the rationale for the exception.

“The concerns expressed by various interest groups at the time of the drafting of the original legislation in 1976 were as follows:

Roman Catholic educational interests were concerned that, without an exception for teachers, the 1976 Act could eventually lead to a system of non-denominational education, with a resulting loss of Catholic ethos. On the other hand, Protestant educational interests had a very different concern. They were

¹ “The Exception of Teachers from the Fair Employment & Treatment (Northern Ireland) Order 1998”
Seamus Dunn & Tony Gallagher 2002

concerned that, without an exception, Protestant teachers would be placed in an unduly unfavourable position. They believed that the state education system would come within the scope of the legislation, while the maintained schools, which are in the main Catholic, would not come within the scope of the legislation, as they could conceivably claim that religion was a bona fide occupational qualification. In other words, Roman Catholics would have a right to equality of opportunity in state schools but Protestants would not have the right to equality of opportunity in Catholic schools.

The Government at the time decided to exempt teachers in schools from the provisions of the fair employment legislation, and also gave responsibility for keeping the exception under review to the Fair Employment Agency”.

This duty (to keep the exception under review) has continued right up to the present under the Fair Employment and Treatment (NI) Order 1998 and is set out in Article 71(2). In order to assist it to fulfill its responsibility for keeping the exception under review, the power to obtain information was given to the Commission under Article 71(5) of the Fair Employment and Treatment (NI) Order 1998 which states:

“Schedule 2 shall have effect with respect to the conduct of investigations under this Article”.

Schedule 2 Paragraph 7 of the Order states:

“For the purposes of the investigation the Commission may require any person who in its opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such documentation”.

1.2 Recent Legislative Developments

On 27 November 2000 the Council of the European Union adopted a Framework Directive for Equal Treatment in Employment and Occupations (2000/78/EC) arising from the Treaty of Amsterdam. Article 15(2) of the Directive specifically exempts from the religion and belief provisions of this Directive the employment of teachers in schools in Northern Ireland. The text of Article 15(2) is as follows:

“In order to maintain a balance of opportunity in employment for teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities there, the provisions on religion or belief in this Directive shall not apply to the recruitment of teachers in schools in Northern Ireland in so far as this is expressly authorised by national legislation.”

It should be noted that the exception in FETO applies to **employment** as a teacher in a school. This contrasts with the Framework Directive which only exempts from non-discrimination provisions the **recruitment** of teachers in schools in Northern Ireland. The initial consultation in 2001 by the Office of the First Minister and Deputy First Minister on a Single Equality Bill for Northern Ireland notes that the exception will need to be amended to reflect the Framework Directive. The narrowing of the present exception to recruitment would bring such areas as promotion within the scope of the fair employment legislation.

1.3 Keeping the Exception of Teachers Under Review

In fulfilment of its duty to keep under review the school teachers exception in FETO, and in preparation for the Single Equality legislation, the Equality Commission decided to begin enquiries into the present structure of education, the arrangements for the employment of teachers, and the options for the narrowing of the exception.

As part of these enquiries, Professor Seamus Dunn and Professor Tony Gallagher were commissioned to examine the views of those within the education sector on:

- the abolition of the teacher exception
- the retention of the teacher exception for some, but not all, educational levels
- the retention of the teacher exception for specific types of teaching posts.

The Report of the research by Dunn and Gallagher (2002) is available on the Commission’s website. The key themes which emerged from the study are as follows:

- A wide acceptance by those within the educational sector of the exception of teachers from the religious discrimination provisions
- The exception seen as an inevitable consequence of an educational system that permits separate denominational schools
- Widespread acceptance of a “chill factor” for teachers, ie, that very few Protestant teachers apply for jobs or actually work in maintained schools and very few Catholic teachers apply for jobs or actually work in controlled schools.

1.4 The Equality Commission’s Recommendations

The Commission gave detailed consideration to the results of the research. It is particularly aware that its review duty has the express purpose of furthering equality of opportunity in the employment of teachers. The Commission does not consider that the continuation of the exception will so further equality of opportunity. The Commission is prepared in light of further evidence to reconsider its recommendations in respect of the Teachers Exception.

The implementation of the EU Framework Directive will require at least some modification to the Teacher Exception. The Commission has formally recommended to the Office of the First Minister and Deputy First Minister that teachers in schools should come within the ambit of the religious discrimination provisions of the Single Equality Act in its [response to public consultation](#).

A number of factors have contributed to progress on the Single Equality Act being delayed, thereby opening up an opportunity for the Commission to give further detailed consideration to its recommendations generally. In order to consider further this issue of exception for teachers and to ensure that its recommendations are based on evidence of the current situation, the Commission has decided to undertake an Investigation of the exception as set out in Article 71(3) and (5) and Schedule 2 of the Fair Employment and Treatment (NI) Order 1998.

2 The Investigation

The Equality Commission for Northern Ireland, in fulfilment of its duty to keep under review the exception of teachers, has decided to conduct investigations under Article 71(3) of the Fair Employment and Treatment (NI) Order 1998. Schedule 2 of the order prescribes the conduct of investigations.

Given that there are in excess of 1,600 pre-school, primary and secondary schools in Northern Ireland, the Commission has decided to collect information from a sample of 91 schools representing the key categories in the educational system. The sample, randomly drawn from schools with 75 or more pupils, includes denominational, controlled, integrated and other non-denominational schools.

It is anticipated that the investigation will be completed by spring 2004. Every effort will be made to limit disruption to the running of the schools involved.

Purpose of the Investigation

This investigation shall assist the Equality Commission to make recommendations as to any action which the Commission considers ought to be taken to further equality of opportunity in the employment of teachers, or teachers of any class, in schools, or in schools of any class. The Office of the First Minister and Deputy First Minister, which has a particular interest in this area, has asked that the investigation focus specifically on recruitment practices.

Scope of the Investigation

The investigation shall cover:

- The composition, by reference to community background of the staff employed as teachers, or teachers of any class, in the sample schools.
- The practices affecting the recruitment or access to benefits of, or the terms of employment applicable to, such staff or involving any detriment to such staff including practices discontinued before the time of the investigation so far as relevant for explaining the composition of the staff at that time.

The Commission is happy to receive any comments on the investigation and we would also welcome the views of teachers and others within education on what recommendations the Commission might make on the Article 71 exception. These should be addressed to:

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Comments and views should reach us before 17 January 2004.

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