

Equality Commission

FOR NORTHERN IRELAND

Strengthening protection against racial discrimination

Recommendations for law reform

SUMMARY VERSION

August 2014



Introduction

- 1.1 The Equality Commission for Northern Ireland ('the Equality Commission') is an independent public body established under the Northern Ireland Act 1998. It is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
- 1.2 We believe that urgent changes are required to **strengthen** the **race equality legislation** in Northern Ireland. This legislation protects individuals in Northern Ireland from being subjected to unlawful discrimination because of their race. The changes are aimed at **strengthening, simplifying and harmonising** the race equality legislation.
- 1.3 Our recommendations relate to a **wide range of areas** covered by the race equality legislation and therefore strengthen the rights of individuals as employees, customers, pupils in school, tenants, as members of private clubs and as students in further and higher education.
- 1.4 We also recommend changes to the **fair employment legislation**. This legislation protects individuals from being subjected to unlawful discrimination because of their religious belief or political opinion. In particular, our recommendations are aimed at improving **workforce monitoring on racial grounds** by registered employers.
- 1.5 The **need for reform** of the race equality legislation in Northern Ireland **has been recognised at a number of levels; both locally and internationally**. Most recently, both the *Advisory Committee on the Framework Convention for the Protection of National Minorities*¹ and the *UN Committee on the Convention for the Elimination of all forms of Racial Discrimination* (CERD) has urged the NI Executive to take proactive steps to address legislative shortcomings within the race equality legislation.²

¹ See [Third Opinion on the United Kingdom](#) of the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2011

² [Concluding Observations of the Committee on the Elimination of Racial Discrimination on UK \(2011\)](#) and [Concluding observations of the Committee on the Elimination of Racial Discrimination: United Kingdom, \(2003\)](#).

Research by the Joseph Rowntree Foundation in 2013³, also concluded that “*there is a case for embedding equality principles in society by strengthening equality legislation to make it more difficult for employers and organisations to act with impunity.*”

Our recommendations

Race equality legislation

1.6 In summary, we **recommend** that the **race equality legislation** is strengthened to:-

Forms of discrimination

- provide increased protection against discrimination and harassment on the grounds of **colour** and **nationality**. We are clear that this is a **priority area** for reform⁴.
- ensure broader protection against racial discrimination and harassment by **public bodies when carrying out their public functions**. Currently, protection against discrimination by public authorities when exercising public functions is **limited to four areas**; namely, social security, health care, social protection and social advantage.
- give stronger protection against **racial harassment**, including greater protection for employees against racial harassment by customers or clients.
- increase protection for certain categories of **agency workers** against racial discrimination and harassment;
- introduce new protection for **Councillors** against racial discrimination and harassment by local councils;
- increase protection against **victimisation**; including, changes designed to make it easier for individuals who have

³ Poverty and Ethnicity in Northern Ireland, Joseph Rowntree (2013)
<http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf>

⁴See [ECNI Proposals for Legislative Reform](#), 2009

been subjected to unfair treatment because, for example, they have made a complaint of racial discrimination, to bring a victimisation complaint.

- introduce new protection against **multiple discrimination**; so that individuals have protection if they experience discrimination or harassment because of a combination of equality grounds; for example, due to a combination of being both black and female.
- expand the scope of voluntary **positive action**; so as to enable employers and service providers to lawfully take a wider range of steps to promote racial equality;

Exceptions

- remove the **exception** which permits discrimination on the grounds of ethnic or national origins in relation to **immigration**;
- narrow the **exception** that restricts the employment of foreign nationals in the civil, diplomatic, armed or security and intelligence services and by certain public bodies;

Enforcement and remedies

- increase the **powers of the Equality Commission** to issue additional Race Codes of Practice and to effectively carry out formal investigations;
- strengthen **tribunal powers** to ensure effective remedies for individuals bringing race discrimination complaints;
- harmonise and simplify the **enforcement mechanism for education complaints**; so as to remove unnecessary procedural barriers to pupils in schools making complaints relating to racial discrimination in education.

Fair employment legislation

1.7 In summary, we **recommend** that the **fair employment legislation** is strengthened to:-

- amend the fair employment legislation so as **require** registered employers in Northern Ireland, in addition to monitoring the community background and sex of their employees and job applicants, to collect **monitoring information** as regards **nationality** and **ethnic origin**.

The primary reason for this change is to ensure the continuing usefulness of the fair employment Monitoring Regulations, and in particular, to enable employers to make a more accurate and meaningful assessment of fair participation in employment in their organisation. We are clear that this is also a **priority area** for reform⁵.

Wider benefits of reform

Race equality legislation

1.8 We consider that there are **cogent** and **robust** reasons why the **race equality legislation** should be amended. In particular, we believe the recommended changes will:

- help **address key racial inequalities** in Northern Ireland. They will, for example, provide greater protection for individuals against racial discrimination and harassment who currently have no or limited protection under the race equality law. They will also result in the removal of unjustifiable exceptions which limit the scope of the race equality legislation.
- **harmonise, simplify and clarify** the race equality legislation. The changes will remove unjustifiable inconsistencies within the race equality legislation, as well as removing unnecessary barriers experienced by individuals who wish to complain of unfair treatment under the race legislation. Further, they will ensure greater **legal certainty** and **clarity** in areas where the

⁵See [ECNI Proposals for Legislative Reform](#), 2009

scope of legislation is unclear. The changes will make it easier for individuals to understand what their rights are and for employers, service providers and others to understand what their responsibilities are under the legislation. They will **help improve consistency** between the race equality legislation and other equality legislation in Northern Ireland.

- help ensure that Northern Ireland race equality legislation **keeps pace with legislative developments in Great Britain**. In particular, many of the changes we advocate have already been implemented in other parts of the United Kingdom. It is, however, important to stress that, as regards certain areas of reform, we recommend that the Northern Ireland Executive introduce changes that **go beyond** the level of protection against racial discrimination currently set out in equality legislation in Great Britain.
- further the **overarching aims and objectives of the Executive’s current Racial Equality Strategy**⁶. One of the aims of the current Racial Equality Strategy is to eliminate racism, racial inequality and unlawful racial discrimination and promote equality of opportunity in all aspects of life.
- ensure that the race equality legislation is in line with the **UK Government’s international obligations** relating to the promotion of human rights for racial minorities and with the recommendations of international human rights monitoring bodies.

Conclusions and next steps

- 1.9 It is clear that there is a **robust case** for addressing significant gaps and weaknesses within the race equality legislation in Northern Ireland.
- 1.10 We welcome the Executive’s commitment to bring forward a revised *Racial Equality Strategy*. We **recommend**, in light of the clear need for reform, that there is a **commitment** in the revised

⁶ A *Racial Equality Strategy for Northern Ireland 2005-2010*, OFMDFM, www.ofmdfmi.gov.uk This strategy is currently being revised.

Racial Equality Strategy, to address legislative gaps in the **race equality legislation** so that individuals in Northern Ireland have effective protection against racial discrimination and harassment.

- 1.11 We further **recommend** steps are taken to amend the **fair employment legislation** in order to require registered employers in Northern Ireland to collect **monitoring information** as regards **nationality** and **ethnic origin**.
- 1.12 We will continue to proactively engage with a wide range of key stakeholders, including MLAs, Assembly Committees, and representatives from the race sector, in order to inform the case for change.

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