



racial
equality

POLICY POSITION: Summary

Race Law Reform

Priorities and Recommendations



Equality Commission

FOR NORTHERN IRELAND

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1. Introduction

- 1.1 The Equality Commission¹ is calling on the Northern Ireland Executive to make urgent changes to the race equality legislation in Northern Ireland.
- 1.2 These changes are aimed at strengthening, simplifying and harmonising the race equality legislation so that individuals in Northern Ireland have robust and effective protection against unlawful racial discrimination and harassment.
- 1.3 The changes 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 schools, tenants, as members of private clubs and as students in further and higher education.
- 1.4 We have, and will continue to, proactively engage with a wide range of key stakeholders. In support of securing change, we would welcome any steps you could take to raise awareness of these recommendations and their supporting evidence base. We encourage you to engage with Ministers, other elected representatives, or key government officials to call for the adoption of these proposals.

Single Equality Legislation

- 1.5 We continue to call for action to deliver harmonised single equality legislation for Northern Ireland. We consider that single equality legislation is the most effective means of strengthening and maintaining protections against discrimination in Northern Ireland, while at the same time improving consistency, understanding and efficiency, saving time and costs for individuals, employers, service providers, advisory services, and those interacting with equality legislation more generally.

¹ The Equality Commission for Northern Ireland ('the Equality Commission') is an independent public body established under the Northern Ireland Act 1998, with responsibility for implementing equality legislation across a range of grounds. It has specific powers regarding Article 2(1) of the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement; and has also been designated as an 'independent mechanism' under the UN Convention on the Rights of Persons with Disabilities.

1.6 In the absence of progress on harmonised single equality legislation for Northern Ireland, we consider that urgent changes are required to strengthen the race equality legislation in Northern Ireland.

Priorities for Action

1.7 The Commission has highlighted five priority areas for change to the race equality laws:

- Harmonise and expand the scope of racial grounds
- Increase protection for individuals against racial discrimination and harassment by public bodies when carrying out their public functions
- Introduce protections against combined discrimination
- Ensure greater protection for employees against third party racial harassment
- Expand the scope of positive action

1.8 The Commission also has a long-standing priority call² to improve workforce monitoring on racial grounds.

Wider Context

1.9 Individuals in Northern Ireland currently have protection against unlawful racial discrimination under the Race Relations (NI) Order 1997, as amended (RRO 1997).

1.10 Whilst the race equality legislation currently provides protections against racial discrimination and harassment, these protections are not comprehensive, with gaps in protection existing and increasing over time.

1.11 This 2022 paper updates and adds to our 2014 race law reform recommendations³, in the expectation that the TEO's Racial Equality Strategy 2015-2025 will lead to reform of race equality law in Northern Ireland.

² ECNI (2009) [Proposals for Legislative Reform](#), pp. 25-27.

³ ECNI (2014) [Strengthening protection against racial discrimination: Recommendations for law reform](#)

- 1.12 To assist with updating our recommendations, we commissioned an expert paper by Professor Brice Dickson⁴, which, through engagement with stakeholders, was grounded in lived experience⁵.
- 1.13 In considering our recommendations on race law reform, there is also the opportunity to advance and harmonise protection against discrimination across a number of equality grounds. We therefore recommend action to address similar legislative gaps that exist under other areas of equality law in order to ensure a consistent and best practice approach is adopted across the equality legislative framework as a whole.

Wider benefits of reform

- 1.14 For each recommendation, we have set out a specific supporting rationale in our full position paper. More broadly, there are numerous wider benefits of reforming the race law legislation, including to:
- Address key racial inequalities in Northern Ireland
 - Harmonise, simplify and clarify the race equality legislation
 - Keep pace with developments in Great Britain as a minimum
 - Further the overarching aims and objectives of the Executive's Racial Equality Strategy 2015-2025
 - Ensure race equality legislation is in line with the UK Government's international obligations

⁴ Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#)

⁵ Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p.7.

2. Forms of discrimination

Harmonise and expand the scope of racial grounds

Increase protection on grounds of colour and nationality

- 2.1 We recommend increased protection from discrimination and harassment on the grounds of colour and nationality across the scope of the race equality legislation, including consideration of the removal or modification of exceptions that apply only on grounds of colour and/ or nationality, unless there are justifiable reasons for doing so, or statutory exception to protection.

Define 'racial grounds' non-exhaustively, and specifically include caste and descent

- 2.2 The definitions of 'race' and 'racial ground' should be expanded and be non-exhaustive.
- 2.3 This should be clear in statute and reflect best international practice, in accordance with human rights standards.

Definitions

Define direct racial discrimination in terms of treatment occurring 'because of' racial grounds

- 2.4 Race equality legislation should be amended to define direct racial discrimination in terms of treatment occurring 'because of' racial grounds including race, colour, nationality, ethnic or national origin, descent or caste.

Remove the comparator requirement in the definition of victimisation

- 2.5 We recommend that there is no longer a requirement for the person alleging victimisation to compare his or her treatment with that of a person who has not made a complaint of discrimination or supported a complaint under the race equality legislation.

Widen the definition of 'racial harassment'

- 2.6 We recommend that the definition of racial harassment under the race equality legislation is amended to prohibit unwanted conduct 'related to' racial grounds which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.
- 2.7 We also recommend that this definition of harassment applies to all existing racial grounds; namely, race, ethnic or national origins, colour and nationality, as well as any new racial grounds, such as caste and descent.

Public functions

Increase protection for individuals against racial discrimination and harassment by public bodies when carrying out their public functions

- 2.8 We recommend that public bodies be prohibited from racial discrimination or harassment as regards all public functions, except in some narrowly defined limited areas where they can be objectively justified⁶.

⁶ The exceptions in Section 21C of the [Disability Discrimination Act 1995](#) may be useful to consider. These include some limited exceptions relating to judicial acts and the making, confirming or approving of legislation.

- 2.9 This prohibition should apply to all racial grounds. Currently protection only exists on the grounds of race, ethnic or national origins and not on the grounds of colour or nationality.

Combined discrimination

Introduce protections against combined discrimination

- 2.99 We recommend the introduction of protection against combined discrimination so that there is legal protection for individuals who experience direct or indirect discrimination, victimisation or harassment because of a combination of equality grounds, including racial grounds.

Protections in employment and analogous situations

Ensure greater protection for employees against third party racial harassment

- 2.100 We recommend that employers are liable if they fail to take reasonably practicable steps to prevent the racial harassment of an employee by a third party.
- 2.101 We recommend that employers are liable in circumstances that they ought to have been reasonably aware of the risk of third party harassment, as this should encourage employers to take steps to reduce harassment from the start of a person's employment. If this is not introduced, employers should be liable when their employee has been subjected to third party harassment on one previous occasion.
- 2.102 Employers should also be liable if, after such harassment has occurred, the employee is treated differently because they rejected or accepted the harassment.

Increase protection for agency and contract workers

- 2.103 We recommend increased protection against racial discrimination, harassment and victimisation for certain categories of agency workers who currently fall outside the scope of the race equality legislation.
- 2.104 We further recommend that the law be clarified to ensure that contract workers are protected against victimisation.

Clarify protections against victimisation for office-holders

- 2.105 The current law should be amended to clarify protections against victimisation for office-holders, by making explicit provision in the legislation that all office-holders have the right not to be victimised.
- 2.106 Office holders include offices and posts such as directors, non-executive directors, company secretaries, positions on the board of non-departmental public bodies, some judicial positions and positions held by some ministers of religion⁷.

Expand protection for law enforcement officers

- 2.107 Racial equality legislation should ensure that all law enforcement officers, not just those in the Police Service of Northern Ireland (PSNI), are treated as employees for the purposes of the legislation.
- 2.108 The law should make it clear that police officers from other forces who are in Northern Ireland to give assistance to the PSNI⁸, as well as those in other law enforcement services, such as the Belfast Harbour Police,⁹ the Belfast International

⁷ EHRC (2011) [Employment Statutory Code of Practice](#), para 11.32.

⁸ Such officers are normally considered to be equivalent to PSNI officers in terms of their powers and also with regard to their obligation to abide by the PSNI's Code of Ethics.

⁹ In existence since 1847 under the Harbours, Docks, and Piers Clauses Act of that year.

Airport Constabulary¹⁰ and the National Crime Agency,¹¹ are all protected by the race equality laws while serving in Northern Ireland.

- 2.109 Police cadets should be covered too, similar to the status of police trainees.

Ensure protection for Councillors against racial discrimination and harassment by local councils

- 2.110 Local Councillors should be protected against racial discrimination and harassment by their local councils when they are carrying out their Councillor functions.

Enhance protection regarding providers of employment services

- 2.111 Race equality law in Northern Ireland should widen the definition of 'providers of employment services' and extend the type of discrimination by such providers which is made unlawful, to include discrimination in arrangements made for selecting who to provide an employment service; discrimination in the service terms; and discriminating a service user to 'any other detriment'.

Provide legal protection for volunteers

- 2.112 Persons who work as volunteers should be legally protected against racial discrimination, harassment and victimisation by the person or organisation that engages them to the same extent as employees are protected from their employer. Stakeholder engagement should inform how occasional, very short-term volunteers can best be protected.
- 2.113 The inclusion of protections for volunteers will need to be accompanied by appropriate resourcing and guidance to

¹⁰ Article 19 of the [Airports \(NI\) Order 1994](#).

¹¹ Under the National Crime Agency (Limitation of Extension to Northern Ireland) Order 2013 (for excepted and reserved matters) and the Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (NI) Order 2015 (for other matters).

ensure organisations, of all sizes, that use volunteers have support to adhere to their obligations.

Protections in schools and training

Increase protection against victimisation for pupils in schools

- 2.114 Race equality legislation should ensure that children in schools are protected from being victimised, including after an allegation of discrimination has been raised by the child's parent or sibling.
- 2.115 In line with provisions in Great Britain, we recommend that where a parent or sibling maliciously makes or supports an untrue complaint, the child is still protected from victimisation, as long as the child has acted in good faith. However, we recommend that where a child has acted in bad faith, he or she is not protected, even where a parent or sibling makes or supports an untrue complaint in good faith.

Ensure greater protection in relation to admission to educational establishments

- 2.116 Race equality legislation should clearly prohibit racial discrimination in the arrangements made for deciding who is to be offered admission to educational establishments, such as admissions criteria.
- 2.117 The current protections in Northern Ireland against discrimination by a school, college or university are in the terms on which they offer to admit that person to the establishment or by refusing to accept an application for admission from that person should be expanded to also offer protection against discrimination in the arrangements for admissions.
- 2.118 This could help ensure admissions criteria are not racially discriminatory.

Clarify protection in provision of education

- 2.119 The law should explicitly state that racial discrimination in the way an educational establishment provides, or does not provide, education for a student is prohibited.

Extend protection from qualification bodies

- 2.120 Racial equality law should extend protection against discrimination by qualification bodies in the arrangements they make for deciding upon whom to confer a relevant qualification and when they subject a person who has been conferred with the qualification 'to any other detriment'.

Positive Action

Expand the scope of positive action to better address disadvantage and disproportionately low participation, and meet differential needs

- 2.121 We recommend that the race equality legislation is amended to expand the scope of voluntary positive action that employer, service providers and public bodies can lawfully take in order to promote racial equality, and remove unnecessary barriers relating to collecting statistical information before taking such action.
- 2.122 Positive action should be permitted where an employer, service provider or public body reasonably thinks that a racial group suffer a related disadvantage, or have different needs, or have a disproportionately low rate of participation in an activity. Any action should be a proportionate means of achieving the aim of enabling other persons who share the racial characteristic to

minimise the disadvantage, meet their needs or participate in the activity¹².

Allow political parties to take positive action measures when selecting candidates

- 2.123 Political parties should be permitted, to take positive action measures when selecting candidates for elections to the UK Parliament, the Northern Ireland Assembly and local Councils, provided that the purpose of the arrangements is to reduce racial inequality in the party's representation in the elected body.
- 2.124 There should be consideration of time-limiting any such measures.

Influencing others and previous relationships

Introduce additional preventions against influencing others to discriminate

- 2.125 Racial equality law should widen the circumstances in which it prohibits a person from influencing another to discriminate against a third person, to ensure that 'causing or attempting to cause' discrimination is prohibited, and clarify that indirect influence is expressly prohibited.
- 2.126 Protections should apply where the person giving the instruction is in a relationship with the recipient of the instruction in which discrimination, harassment or victimisation is prohibited. Further, a wider array of fields should be covered when prohibiting influencing discrimination, including relationships that have ended and the aiding of contraventions / unlawful acts.

¹² Dickson, B. (2021) Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland, p. 55.

Extend protection after relationships
(members of clubs / associations) have
come to an end

- 2.127 Equality law should ensure that former members of associations are able to bring claims for discrimination or harassment because of race.

3. Exceptions

Further limit exemptions to race equality law (public order, national security and public safety)

- 3.1 The current exemption in race equality law based on public order should be removed and exemptions based on national security and public safety should be limited.
- 3.2 These limits should require the use of an exemption to be justified in terms of the legitimacy of the aim it is pursuing; the necessity for the exemption in a democratic society at the time; the unavailability of alternative effective measures that could be taken without having resort to the exemption; and the proportionality of the exemption to the alleged risks that need to be confronted.

Remove the immigration exception which permits discrimination on the grounds of ethnic or national origins in carrying out immigration functions

- 3.3 The current exception allowing discrimination on the grounds of ethnic or national origins in the carrying out of immigration functions should be removed.

Narrow the employment exception on foreign nationals in public service

- 3.4 We recommend that the restriction on persons of a particular birth, nationality, descent or residence being employed in the service of the Crown or certain public bodies should be modified or removed.

Clarify, and extend the persons covered by, proportionate and legitimate exceptions from occupational requirements

- 3.5 Action is required to address potential inconsistencies in this area of race law, and Article 8, which we consider is now redundant, should be removed.
- 3.6 Any occupational requirement exception should be extended to persons analogous to employees, such as contract workers, partners, office-holders and volunteers.
- 3.7 It should be explicit that the exception must be applied proportionately and be a means of achieving a legitimate aim.

Clarify law regarding competitive activities

- 3.8 Current legislation relating to exceptions to race equality law in the context of “any sport or game” should be extended to include “activity of a competitive nature”. This would include activities like e-sports, music and talent competitions.

4. Enforcement and Remedies

Commission Powers

Increase powers to issue Race Codes of Practice in a wider range of areas

- 4.1 In particular, we recommend that our powers to issue Race Codes of Practice are extended to cover all areas, including goods, facilities and services, the exercise of public functions and education (at all levels).

Strengthen formal investigation powers

- 4.2 We recommend that our powers under the race legislation are strengthened in line with the powers of investigation which currently exist under the fair employment legislation¹³.
- 4.3 In particular, we recommend, in line with provisions under the fair employment legislation, that our power to conduct a formal ‘named person’ investigation under the race legislation, does not require a “belief” that an act of discrimination has occurred, These powers should apply across employment and goods, facilities and services issues.

Strengthen and harmonise the Commission’s grant-making powers

- 4.4 The Commission’s grant making powers in relation to race should be retained, and the provision of assistance should not require the prior approval of the TEO.

¹³ ECNI (2004) [Response to OFMdFM Consultation paper ‘A Single Equality Equality Bill for Northern Ireland](#), paras 9.3.5-9.3.8.

Empower the Commission and other representative bodies to bring a claim on behalf of named individuals and in its own name

- 4.5 The Commission recommends that it and other representative bodies, such as trade unions and other suitably qualified interest groups, should be empowered to bring a claim on behalf of named individuals.
- 4.6 The Commission should also have a general standing to bring cases of strategic importance without, in appropriate circumstances, having to name complainants.

Procedural and remedies

Harmonise and simplify the enforcement mechanism for education complaints against schools

- 4.7 We recommend that racial complaints in relation to education in schools should be subject to the same time limits as those which apply in the case of complaints of race discrimination as regards the provision of goods and services; namely six months from the date of the alleged act of discrimination.
- 4.8 We further recommend that the requirement to give notice to the Department of Education prior to lodgement of complaints is removed. In addition, the requirement either to wait up to two months or to receive confirmation from the Department of Education that it does not require further time to consider the matter, should also be abolished.

Increase powers for tribunals

- 4.9 We recommend that the race equality legislation is strengthened by providing increased powers for tribunals to make recommendations that benefit the whole workforce and not simply the person bringing the discrimination complaint ('the complainant').

Increase rights of individuals to take cases when they suffer detriment

- 4.10 Individuals should be able to take cases if they have suffered detriment relating to discriminatory advertising or through someone instructing or pressurising another to racially discriminate. The Commission's current powers to take cases should also be retained.
- 4.11 Related articles on persistent discrimination, enforcement, and preliminary action in employment cases could be amalgamated to simplify use, but ensuring that Commission powers are retained.

Maintain the questionnaire procedure

- 4.12 The rights of individuals under to obtain information through the questionnaire procedure should be retained.
- 4.13 This recommendation would mean individuals in Northern Ireland would have access to information from potential respondents exceeding those available to individuals in Great Britain where the questionnaire procedure has been removed.

5. Article 2 of the Ireland / Northern Ireland Protocol

Ensure race law reform is in compliance with Article 2 of the Ireland / Northern Ireland Protocol

- 5.1 The Commission recommends that the Northern Ireland Executive, Assembly and departments ensure that any legislative developments on race law reform in Northern Ireland are in compliance with Article 2 obligations under the Ireland/Northern Ireland Protocol. Any future new draft legislation should also make clear in its Explanatory Memorandum what consideration has been given to Article 2 of the Protocol.
- 5.2 The Northern Ireland Executive, Assembly and departments should ensure that any legislative developments on race do not reduce the equality and human rights protected within the scope of Article 2, including those rights within the Race Equality Directive, contrary to the UK Government commitment under Article 2.
- 5.3 In addition, the Northern Ireland Executive, Assembly and departments should ensure Northern Ireland race law keeps pace with any changes by the EU to the Race Equality Directive in the Protocol, including ensuring conformity with current and future Court of Justice of the European Union (CJEU) decisions relating to the Directive, that enhance equality protections¹⁴.
- 5.4 We recommend that the NI Executive monitors EU developments on rights in this area and takes steps to avoid divergence of equality rights across the island of Ireland.
- 5.5 Further, the Commission recommends that the NI Executive ensures that equality and human rights law in Northern Ireland keeps pace with any changes to equality and human rights law in Ireland that promote equality for minority ethnic and migrant

¹⁴ The Northern Ireland Office has, in its [2020 Explainer Document](#), stated that when a UK Court is considering the interpretation of any of the directives listed in Annex 1, this will be done in conformity with any relevant case law of the CJEU

people, including rights introduced in the Ireland as a result of EU laws introduced on or after 1 January 2021, that enhance protections. This should include rights introduced as a result of EU laws that do not amend or replace the Protocol Annex 1 Directives.

6. Conclusions and Next Steps

- 6.1 In conclusion, it is clear that there is a robust case for addressing significant gaps and weaknesses within the race equality legislation in Northern Ireland. We believe that our recommended changes to the race equality and fair employment legislation in Northern Ireland will strengthen the rights of individuals against racial discrimination and harassment and ensure a more comprehensive, harmonised and consistent legislative framework.
- 6.2 We welcome the commitment in the 2015-2025 Racial Equality Strategy to reform race equality law, and look forward to the enactment of reformed legislation, taking full account of our recommendations, being achieved within the lifespan of the Strategy.
- 6.3 As many of the gaps and inconsistencies that exist in the race equality legislation also exist under other areas of equality law, we further recommend action to address similar legislative gaps in other areas of equality law in order to ensure a consistent and best practice approach is adopted across the equality legislative framework. This should be taken forward through single equality legislation.
- 6.4 In addition, we have, and will continue to, proactively engage with a wide range of key stakeholders, including MLAs, Assembly Committees, and representatives from the race sector. Government should ensure the full involvement of stakeholders in their work to develop and implement improved equality legislation.
- 6.5 In support of securing change, we would welcome any steps you could take to raise awareness of these recommendations and their supporting evidence base. We encourage you to write to, or engage directly with, Ministers, elected representatives, or key government officials to call for the adoption of these proposals.
- 6.6 Please visit www.equalityni.org/RaceLawReform for further information. There you can download full, summary and key point briefing versions of our recommendations and supporting arguments, along with wider materials.

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