

Equality Commission for Northern Ireland

BRIEFING: FETO Teachers' Exception

The Commission recommends the removal of the exception in the employment provisions of Fair Employment and Treatment (NI) Order 1998 ('FETO 1998') as regards the recruitment of teachers in secondary level schools, and early consideration as to whether the exception should also be removed as regards primary level schools.

Summary

- 1.1 The 'teachers' exception' allows schools to lawfully discriminate on the grounds of religious belief, in the appointment and promotion of teachers; and also means that schools are not required to monitor the community composition of teachers, nor consider whether they are providing fair participation in the employment of teachers.
- 1.2 The Commission has long standing recommendations on the removal of the teachers' exception from the Fair Employment and Treatment (NI) Order 1998.
- 1.3 The Commission considers that all teachers should be able to enjoy the same legislative protections as other workers. The Commission's long-standing view, following consideration in 2004 and 2009, has been that the exception should be abolished at secondary level, with early consideration given to whether the exception should also be removed as regards primary schools. Teachers should also be included in monitoring and review requirements, as are all other occupations.
- 1.4 Since then, we have continued to call for action – including for example in our 2009 'Proposals for legislative reform'; our 2015 recommendations on 'Sharing in education'; and our recommendations for the Programme for Government (PfG), as well as in a number of other consultation responses and engagements in the intervening years.
- 1.5 Given the passage of time since the Commission's original recommendations, any consideration should take account of developments and research since that time.

Context

- 1.6 Since 1976 when fair employment legislation first outlawed religious discrimination, teachers in schools have been exempt. In 2003, the implementation of EU Directive 2000/78/EC on equal treatment in employment and occupation¹ had the effect of narrowing the exception to recruitment only. The exception no longer applies to other aspects of employment such as terms and conditions or access to training for example. The Equality Commission welcomed this more restricted exception.
- 1.7 As such, there is currently an exception under FETO 1998 which allows schools to lawfully discriminate on the grounds of religious belief, in the appointment of teachers in schools. This exception applies both to the initial recruitment of teachers and to promotion.
- 1.8 One other important aspect of the exception is that, unlike other employers with more than 10 employees, schools are not required to monitor the community background of their teaching staff.
- 1.9 In addition, employers are not required to carry out reviews of their teaching workforces, or of the employment policies and practices affecting teaching staff, or consider whether they are providing fair participation to members of the Protestant and Roman Catholic communities, in relation to the employment of teachers.

Investigation

- 1.10 In 2004, the Commission carried out an investigation into the exception of teachers from FETO 1998. The investigation highlighted the following concerns which led to original inclusion of the exception.

“Roman Catholic educational interests were concerned that, without an exception for teachers, the 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 were concerned, that Protestant teachers would be placed in an unduly unfavourable position. They believed that the state education

¹ 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.”

system would come within the scope of the legislation, while the maintained schools, which are in the main Catholic, would not 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.”

Recommendation

- 1.11 Following the 2004 investigation, the Commission recommended that the teachers' exception be narrowed to restrict the exception to teachers in mainstream primary schools.
- 1.12 It formed this opinion in light of its consideration that the genuine occupational exception permitted under FETO 1998 would exempt many more posts in the maintained sector than the controlled sector and accordingly reduce the relative opportunity for Protestant teachers.
- 1.13 The genuine occupational exception allows employers to discriminate when recruiting on the grounds of religious belief, where the essential nature of the job requires it to be done by a person holding, or not holding a particular religious belief.
- 1.14 In the investigation report, the Commission made it clear that it considered that within integrated schools, where it is necessary to ensure a workforce which includes Protestants, Roman Catholics and those of other and no religion, it is likely that the need for a staff member of a particular religion will meet the test of genuine occupational requirement. Similarly, within Roman Catholic maintained schools, certain posts, especially within the primary sector, may meet the genuine occupational requirement test.
- 1.15 However, it was also of the view that it was no longer acceptable to exclude the entire teaching workforce from the fair employment legislative provisions covering all other occupations in Northern Ireland. It recommended that teachers should be included in monitoring and review requirements, as are all other occupations, as this would ensure that the benefits of annual data collection and the rigour of regular review are brought to the teaching workforce as all other employment groups.
- 1.16 However, the Commission concluded in 2004 that it would not improve the equality of opportunity for Protestant teachers, to

remove the exception entirely, given the situation at that time, where the majority of schools divide into distinctly Catholic schools and other non-denominational schools, and that the exception should continue for teachers in mainstream primary schools at that time.

- 1.17 In 2004 the Commission set out its view that ‘the long-term objective should be to include teachers in the religious discrimination provisions’. The Commission noted that if the exception was to be ‘retained in relation to recruitment of teachers in primary schools, this should be a staging post towards its eventual removal’.
- 1.18 In 2009, the Commission further recommended that early consideration be given to removing the exception at primary level also.

Summary

- 1.19 In summary, the Commission is of the view that all teachers should be able to enjoy the same legislative protection as other workers, and our long-standing recommendation is that the exemption should be abolished at secondary level, with early consideration given to the question of urging the removal of the exemption at primary level also. Teachers should also be included in monitoring and review requirements, as are all other occupations.
- 1.20 Given the passage of time since the Commission’s original recommendations, any consideration should take account of developments and research since that time.
- 1.21 You can read more at www.equalityni.org/TeachersException

**Equality Commission for Northern Ireland
May 2021.**