



# Racial discrimination law in Northern Ireland - a short guide

Equality Commission

FOR NORTHERN IRELAND

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# Racial discrimination law in Northern Ireland – a short guide

This short guide provides some information about racial discrimination law in Northern Ireland. It does not attempt to describe every detail and should not be taken as an authoritative statement of the law. Further information is available from the Equality Commission's Enquiry line and on our website. Details of some of our other publications and how to contact us are given at the back of this booklet.

## The Equality Commission for Northern Ireland

The Equality Commission has responsibility for enforcing the **Race Relations (Northern Ireland) Order 1997, as amended**. It also has a duty to work to eliminate unlawful racial discrimination and harassment, to promote equality of opportunity, to promote good relations between persons of different racial groups and to keep the working of the legislation under review.

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## The law

The **Race Relations (Northern Ireland) Order 1997 (RRO)** was amended by the **Race Relations Order (Amendment) Regulations (Northern Ireland) 2003**, to implement the EU Framework Employment Directive<sup>1</sup>, and the **Race Relations Order (Amendment) Regulations (Northern Ireland) 2009**<sup>2</sup>.

The Order outlaws discrimination on racial grounds. Racial grounds include colour, race, nationality or ethnic or national origins. The Irish Traveller community is specifically identified in the RRO as a racial group which is protected against unlawful racial discrimination. The law covers racial discrimination in the following key areas:

- employment;
- education;
- the provision of goods, facilities or services;
- the disposal or management of premises.

The RRO also provides that segregation on racial grounds constitutes discrimination.

## What is racial discrimination?

In anti-discrimination law, discrimination is not simply unfairness. To be discriminated against means to be treated less favourably than others because of a personal characteristic such as race, gender, religion, etc. Racial discrimination is less favourable treatment on grounds of colour, race, nationality, ethnic or national origins<sup>3</sup>, or belonging to the Irish Traveller community.

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<sup>1</sup> The 2003 Amendment Regulations only apply to employment and training. The Framework Employment Directive covered the grounds of race, ethnic or national origins – not colour or nationality.

<sup>2</sup> The 2009 Amendment Regulations changed the definition of indirect discrimination.

<sup>3</sup> Please note that some 2003 amendments to the 1997 Order, which relate to employment, apply only to race or ethnic or national origins. The colour and nationality provisions remain unchanged at time of publication (2010) but may be changed in future. For more information contact the Equality Commission.

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The Race Relations Order, as amended, outlines different types of racial discrimination:

- **Direct discrimination** is where someone is treated less favourably than others in the same or a similar position and the treatment is based on racial grounds.

**Example** – an Asian worker is not appointed to a job because of her colour or ethnic origin.

**Example** – an Irish Traveller is refused access to a shop/pub/club because of his racial group.

- **Indirect discrimination** - the law outlines two definitions:
  - a) the first definition applies to complaints on grounds of race or ethnic or national origins but not to complaints on grounds of colour or nationality. This form of indirect discrimination occurs where a provision, criterion or practice is applied or would be applied equally to persons not of the same race or ethnic or national origins as another but:
    - which puts or would put persons of the same race or ethnic or national origin as that other at a particular disadvantage when compared with other persons;
    - which puts or would put that other at that disadvantage; and
    - which cannot be shown to be a proportionate means of achieving a legitimate aim.

**Example** – A Polish woman applies for a post as an administration officer. She has very good written and spoken English and would be capable of carrying out the duties of the post but she is not short listed because she does not have an English language qualification. This criterion, while applied equally, puts at a particular disadvantage people who were not educated in the UK and it cannot be shown to be a proportionate means of achieving a legitimate aim.

- b) the second definition of indirect discrimination applies to complaints on grounds of colour and nationality only. Indirect

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discrimination occurs when a requirement or condition is applied which only a considerably smaller proportion of one racial group can comply with, which is not justifiable and which is to the claimant's detriment because s/he cannot comply with it.

- **Victimisation** means treating someone less favourably than others because they have, for instance, complained of racial discrimination or have assisted someone else to do so.

**Example** – An employee is dismissed because she has made an allegation of racial discrimination against her employer. Provided the complaint is made in good faith and is not false, she has been victimised contrary to the Order.

**Example** – A customer from the settled community complains about a shop's refusal to serve an Irish Traveller and, as a result, he too is refused or excluded. This would be victimisation.

- **Harassment** on racial grounds occurs when unwanted conduct based on race or ethnic or national origins has the purpose or effect of:
  - violating someone's dignity; or
  - creating an environment that is intimidating, hostile, degrading, humiliating or offensive.

A slightly different definition of harassment applies to complaints on grounds of colour or nationality.

Racial harassment can include racist jokes, banter, insults, literature, isolating individuals, being condescending or deprecating about the way people dress or speak, picking on them unnecessarily, or generally creating a hostile or intimidating atmosphere because of the person's race, colour, nationality or ethnic or national origin.

Complaints of racial harassment may be made against an employer as well as the harasser. Employers are liable for any racial harassment committed by their employees in the course of their employment, even if they did not know about the harassment

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or would not have approved of it had they known. Employers may be able to defend a racial harassment case successfully if they can show that they took such steps as were reasonably practicable to prevent the harassment.

For further information on what reasonably practicable steps an employer can take, see **Harassment and Bullying in the Workplace** and the **Model Harassment Policy and Procedure**, both of which are available from the Equality Commission's website – [www.equalityni.org](http://www.equalityni.org) - or contact the Commission's Enquiry line for advice – 028 90 890 890.

## Employment provisions

The Race Relations Order outlaws discrimination by all employers and other bodies and organisations, regardless of size. Other bodies and organisations include:

- those with the statutory power to select employees for others;
- employment agencies;
- vocational training providers;
- trade unions;
- those who have power to confer qualifications;
- contract workers;
- statutory office holders in relation to discrimination on grounds of race, ethnic or national origins;
- barristers; and
- partnerships (limited to partnerships of six or more partners where a complaint is of discrimination on the grounds of colour or nationality).

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It is unlawful for an employer to discriminate:

- in **recruitment and selection**, including arrangements for deciding who should be offered employment; in the terms on which employment is offered; or by refusing or deliberately omitting to offer a person employment;
- in the **terms and conditions of employment**;
- in relation to **access to benefits**, including opportunities for promotion, transfer, training or any other benefits, or the refusal of those opportunities;
- by **dismissing** an employee or causing him/her any other detriment.

In addition, in certain circumstances, former employees have rights under the Order. For example, it is unlawful for an employer to refuse to provide a work reference for a former employee on grounds of race.

For further information on recommended good practice for employers, trade unions and employment agencies, see the Commission's **Code of Practice for Employers for the elimination of Racial Discrimination and the promotion of equality of opportunity in employment** and **A Unified Guide to Promoting Equal Opportunities in Employment**, both of which are available on our website – [www.equalityni.org](http://www.equalityni.org) – see publications section.

## Genuine occupational requirements/ qualifications

The RRO provides that racial discrimination by an employer in recruitment, promotion, transfer or training is not unlawful where a person's race or ethnic or national origin is a genuine occupational requirement (GOR). Employers will be able to recruit staff on the basis of a GOR if it can be shown that it is a genuine and determining requirement of the job to be of a particular race or of a particular ethnic

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or national origin. In addition, racial discrimination is not unlawful where a person's colour or nationality is a genuine occupational qualification (GOQ) for the job.

**Example** – To achieve authenticity in a dramatic performance or in modelling, photographic or artistic work, it may be necessary to be of a particular race.

**Example** – Where an employer provides people from a particular racial group with personal services promoting their welfare, it may be necessary to recruit someone from that group if those services can be most effectively provided by someone of the same racial group.

## Scope

The Race Relations Order covers discrimination on grounds of colour or nationality in employment in Northern Ireland if the employee does his/her work wholly or partly in Northern Ireland.

The Race Relations Order covers discrimination on grounds of race, ethnic or national origins, or harassment in employment in Northern Ireland, if the employee does his/her work wholly or partly in Northern Ireland, or does his/her work wholly outside Northern Ireland and:

- i. the employer has a place of business at an establishment in Northern Ireland;
- ii. the work is for the purposes of the business carried out at that establishment; and
- iii. the employee is ordinarily resident in Northern Ireland at the time when s/he applies for or is offered employment, or at any time during the course of the employment.



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## Other unlawful acts

The Race Relations Order makes it unlawful to apply discriminatory practices, publish discriminatory advertisements, instruct or put pressure on a person to do anything contrary to the Order by discriminating in employment or other fields, or to knowingly aid another person to carry out such acts.

Employers are also liable for acts of discrimination committed by their employees in the course of their employment whether or not the acts were done with the employer's knowledge or approval, unless the employer can show that it took such steps as were reasonably practicable to prevent the discrimination occurring.

## Education

The Race Relations Order prohibits discrimination in education at all levels and, in addition, places a general duty on educational bodies to ensure that their facilities are provided without racial discrimination.

Schools, colleges and other educational establishments cannot discriminate on racial grounds. It is unlawful for the body responsible for an educational establishment to discriminate:

- in the terms on which it offers to admit a person to the establishment as a pupil;
- by refusing or deliberately omitting to accept an application for admission by a pupil;
- in the way it affords a pupil access to any benefits, facilities or services, or by refusing or deliberately omitting to afford such access; or
- by excluding a pupil from the establishment or treating a pupil unfavourably in any other way.

It is unlawful for the body responsible for an educational establishment to subject to harassment:

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- a person who applies for admission to the establishment as a pupil; or
  - a pupil at the establishment.

The RRO places a general duty on the responsible bodies for educational establishments in the public sector to ensure that facilities are provided without racial discrimination.

However, the Order permits any act done to allow persons from a particular racial group access to facilities and services to meet their special needs with regard to education, training or welfare, or any ancillary benefits.

For further guidance, refer to **Racial Equality in Education – Good Practice Guide** published by the Equality Commission, available on our website - [www.equalityni.org](http://www.equalityni.org).

## Goods, facilities or services

The Race Relations Order outlaws discrimination on grounds of race in the provision of goods, facilities or services which are available to the public. This includes refusal of a service or the provision of a lower standard of service. Discrimination of this kind is unlawful whether the service is paid for or not. Examples of facilities and services include:

- access to and use of any place which members of the public are permitted to enter;
- accommodation in a hotel, boarding house or other similar establishment;
- facilities by way of banking or insurance or for grants, loans, credit or finance;
- facilities for education;
- facilities for entertainment, recreation or refreshment;

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- facilities for transport or travel; and
  - the services of any profession or trade, or any local or other public authority.

It is also unlawful, on grounds of race or ethnic or national origins, for a service provider to harass a person to whom it provides goods, facilities or services, or to harass someone who seeks to obtain or use any goods, facilities or services.

Discrimination by associations and clubs is also prohibited where there are 25 or more members.

## Public authorities

It is unlawful for public authorities to discriminate on grounds of race or ethnic or national origins or to subject persons to harassment in the course of carrying out any of its functions relating to:

- any form of social security;
- health care;
- any form of special protection;
- any form of social advantage.

'Public authority' includes any person whose functions are of a public nature, but does not include:

- either House of Parliament;
- a person exercising functions in connection with proceedings in Parliament;
- the Assembly;

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- a person exercising functions in connection with proceedings in the Assembly;
  - the Security Service;
  - the Secret Intelligence Service;
  - the Government Communications Headquarters; and
  - any part of the naval, military or air forces.

Certain judicial and legislative acts, certain immigration acts and decisions not to institute criminal proceedings are also not included in the general prohibition against discrimination on grounds of race or ethnic or national origins.

## Disposal or management of premises

It is unlawful for anyone selling or managing premises to discriminate on racial grounds.

**Example** – It would be unlawful for a landlord to refuse to rent to or to evict someone on the basis of their race.

It is also unlawful for a landlord to harass a tenant or prospective tenant.

However, there are exceptions for discrimination on grounds of colour and nationality in relation to private households and small dwellings where the landlord occupies the premises. For more information, please contact the Commission.

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## General exceptions

There are exceptions to the general principle of race discrimination and the Order exempts:

- access to facilities or services which meet the special needs of racial groups with regard to their education, training or welfare;
- selection of unemployed persons to fill job vacancies;
- discrimination, on grounds of colour and nationality only, in relation to the provision of education or training for persons not ordinarily resident in Northern Ireland;
- discrimination on grounds of nationality, place of birth or length of time resident when selecting someone to represent a country, place or area in any sport or game or in relation to rules on eligibility to compete in any sport or game;
- acts done to safeguard national security, or to protect public safety or public order;
- acts done under statutory authority where the discrimination is on grounds of colour or nationality;
- certain restrictions based on nationality or residence or length of residence in the UK with regard to employment by the Crown;
- discriminatory acts on grounds of colour and nationality only in relation to the provision of accommodation, the disposal of premises or in the granting of licence/consent in relation to small dwellings;
- acts done by a person as a participant in arrangements under which s/he takes into her/his home, and treats as if they were members of her/his family, children, elderly persons or persons requiring a special degree of care and attention;
- certain acts done by charities;
- employment where being part of a particular race or ethnic or national origin is a genuine and determining requirement for the employment in question;
- certain acts in relation to the pay of seamen recruited abroad;
- small private clubs with fewer than 25 members;
- certain judicial and legislative acts;
- certain acts in immigration cases; and
- certain decisions not to prosecute in criminal cases.

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## Positive action

The Race Relations Order permits **positive action** in favour of members of particular racial groups to enable their special education, training and welfare needs to be met.

It is lawful to provide training or encouragement for members of a particular racial group to enable them to compete for particular work where members of that group are either absent or significantly under-represented in that area of work. It is also lawful for an employer, in relation to particular work in his/her establishment, to allow employees of a particular racial group access to facilities for training or to encourage them to take advantage of opportunities for doing that work where there are no members of that racial group doing that work at the establishment, or they are significantly under-represented.

Similar provisions apply to encouraging members of particular racial groups to join and, once a member, to apply for posts within trade unions, employers' associations or any professional or trade organisations.

The Equality Commission can provide further advice on taking lawful positive action – contact our Enquiry line.

## Complaining about racial discrimination

### Employment-related complaints under the RRO

Anyone who believes they have been discriminated against on grounds of race can lodge a complaint with an industrial tribunal. There are **time limits** for lodging a claim. The **time limit** can be as short as **three months** less one day from the date of the act complained about. In exceptional cases, a tribunal has the discretion to extend a time limit but simply not knowing that there were deadlines is an insufficient reason for granting an extension. It is therefore important to seek advice as soon as possible about any matter that could be the subject of an industrial tribunal claim.

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All employers should have procedures to deal with workplace grievance and disciplinary matters. In most cases, if a person fails to use or complete their employer's grievance procedure in relation to a complaint of discrimination, the tribunal can reduce any award of compensation by up to 50%.

For more information relating to grievance procedures, please contact the Labour Relations Agency – tel: 028 90 321 442. The Equality Commission can provide further advice about pursuing discrimination complaints. Our advice is free and confidential.

### Non-employment complaints under the RRO

Complaints relating to racial discrimination in respect of education, premises, the provision of goods, facilities or services, or where an employment relationship has come to an end must be made to the county court within **six months** of the date the discrimination took place.

Where a complaint relates to certain public sector educational establishments and is on grounds of colour and nationality only, there is a requirement to give two months' notice to the Department of Education and, in these circumstances, the time limit is extended from six to eight months.

## Advice and assistance

### Help for individuals

The Equality Commission can provide **free and confidential** advice and assistance to people who believe that they have been discriminated against on grounds of race in the areas covered by the Race Relations Order. Contact our Enquiry line or see the Your rights section of our website – contact details at the back of this booklet.

Assistance by the Equality Commission may range from giving information or advice to arranging for legal representation in some cases. The Equality Commission does not decide whether

discrimination has occurred; this is for an independent industrial tribunal or court to decide.

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## Help for employers and service providers

The Equality Commission can provide general information and advice to employers, vocational training providers, service providers, educational establishments and others on recommended good practice under the Race Relations Order – see contact details on back cover. We can also provide training. Our advisory and training services are free.

### Advisory publications

The following relevant publications are available on our website - [www.equalityni.org](http://www.equalityni.org) - and some are available in hard copy:

- Code of Practice for employers for the elimination of racial discrimination and the promotion of equality of opportunity in employment, 1999
- Model Equal Opportunities Policy, updated 2007
- Model Harassment Policy and Procedure, updated 2007
- Racial Harassment at Work – What Employers Can Do About It, 2000
- Employing migrant workers – a good practice guide for employers
- Recruitment advertising – a good practice guide for employers
- Unified guide to promoting equal opportunities in employment
- Racial Equality in Education – Good Practice Guide, 2001
- Racism is illegal – You Have Rights – An Information Handbook for Northern Ireland, 2006, available in English, Lithuanian, Russian, Chinese, Portuguese and Polish
- Promoting Equality in Intercultural Workplaces, 2006.



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The Equality Commission also provides a range of publications about other equality areas: religious belief and political opinion; sexual orientation; sex; equal pay; disability; age; s75 equality and good relations duties; and disability duties on public authorities.

Publications can be provided in alternative formats and languages on request according to our Access for all policy.

**All our publications and further information for individuals, service providers and employers are available on our website - [www.equalityni.org](http://www.equalityni.org) – see Publications section.**

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# Other relevant legislation

## Section 75 duties on public authorities

Under Section 75 of the Northern Ireland Act 1998, **public authorities** are required, in carrying out their functions in Northern Ireland, to have due regard to the need to promote equality of opportunity between various groups, including persons of different racial groups<sup>5</sup>. They are also required to have regard to the desirability of promoting good relations between persons of different racial groups. These duties are in addition to obligations under the Race Relations Order.

The Section 75 equality and good relations duties apply to a wide range of public bodies, including government departments, health authorities, education authorities, further education colleges, universities, local councils, etc.

Section 75 equality and good relations duties are designed to ensure that the promotion of equality and good relations is central to public authorities' policy development.

For more information on Section 75, contact the Equality Commission on 028 90 890 890 or visit our website at [www.equalityni.org](http://www.equalityni.org).

## Race hate crime

Race hate crime is any criminal offence committed against a person or property that is motivated by an offender's hatred of someone because of their racial group. A wide range of offences involving hostility based on race is covered by the Criminal Justice (No 2) (Northern Ireland) Order 2004. Complaints about race hate crime should be reported to the police. For more information on hate crime, visit [www.psni.police.uk](http://www.psni.police.uk) and [www.opsi.gov.uk](http://www.opsi.gov.uk)

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<sup>5</sup> Other groups include those of a different religious belief, political opinion, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without.



# Contacting the Equality Commission

If you need help or advice about race discrimination or any other aspect of equality law, please contact us. We provide free and confidential information and advice to individuals, employers and service providers. We can also provide training for employers and service providers.

Enquiry line: 028 90 890 890 (for all information or advice enquiries)  
Reception: 028 90 500 600  
Textphone: 028 90 500 589  
Fax: 028 90 248 687  
Email: [information@equalityni.org](mailto:information@equalityni.org)  
Website: [www.equalityni.org](http://www.equalityni.org)

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