



Northern Ireland  
Assembly

## Research and Information Service Bill Paper

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2 March 2022

**Dr. Orla Drummond**

# Fair Employment (School Teachers) Bill

**NIAR 19-2022**

This Bill Paper seeks to assist the Northern Ireland Assembly, and in particular the Committee for the Executive, in scrutinising the Fair Employment (School Teachers) Bill. The Paper provides background information contextualising the Bill and an overview and analysis of its clauses. It also considers some of the broader implications arising from the Bill, including potential equality and human rights impacts.

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## Key Points

The Fair Employment and Treatment (Northern Ireland) Order 1998 makes discrimination on the grounds of religious belief and political opinion unlawful in the areas of employment, goods, facilities and services, the sale or management of land or property, and further and higher education.

At present, there are a number of exemptions granted in the Order, enshrined in Part VIII. Therefore, not all types of employment are covered by the Order. For example, any employment or occupation where the essential nature of the job requires it to be done by a person holding or not holding a particular religious belief or political opinion.

Article 71 of the Order provides an exception for the recruitment and employment of schoolteachers in Northern Ireland.

The Fair Employment (Schools Teachers) (FEST) Bill is a Private Member's Bill (PMB) introduced to the Assembly by Mr Chris Lyttle MLA on 17<sup>th</sup> January 2022.

The FEST Bill contains provisions that if enacted would:

- Omit Article 71 of the Fair Employment and Treatment (Northern Ireland) Order 1998;
- Omit Regulation 30 of the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003,

In effect, this would repeal the current exception to fair employment laws for schoolteachers.

If enacted schools would be required to monitor the community background of their teaching staff and to carry out Article 55 reviews of their teaching workforces. This would include review of the employment policies and practices that affect their teaching staff and to consider whether they are providing fair participation to members of the Protestant and Roman Catholic communities in relation to the employment of teachers.<sup>1</sup>

There is an ongoing public consultation process, which opened on 31<sup>st</sup> January 2022 and closes on 7<sup>th</sup> March.

**The Equality Commission recommends the staged 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.**

There are a number of similar legislative exceptions documented in other jurisdictions, including the European Union, Great Britain, Republic of Ireland, Malta and Australia.

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<sup>1</sup> Committee for the Executive, Fair Employment (School Teachers) Bill: Equality Commission for Northern Ireland (16 February 2022)

## Introduction

The Fair Employment (Schools Teachers) (FEST) Bill is a Private Member's Bill introduced to the Assembly by Mr. Chris Lyttle MLA on 17<sup>th</sup> January 2022. The FEST contains provisions that if enacted would:

- Omit Article 71 of the Fair Employment and Treatment (Northern Ireland) Order 1998.
- Omit Regulation 30 of the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003,

In effect, this would repeal the current exception to fair employment laws for schoolteachers.

This Bill Paper aims to support the Assembly, including the Committee for the Executive Office (the Committee), when considering the FEST Bill as introduced.

Section 1 of the Paper provides background information, including a brief overview of the current school structure and legal position.

Section 2 of the Paper documents the clauses of the FEST Bill and their premise as explained in the Explanatory and Financial Memorandum of the Bill as introduced.

Section 3 provides detail on the ongoing public consultation process for the proposed changes to the law enshrined in the proposed FEST Bill.

Section 4 provides an overview of equality and human rights considerations, highlighting the approach advocated by the NI Equality Commission.

Section 5 summarises examples of similar legislation in other jurisdictions in relation to the employment of teachers.

Finally, Section 6 contains concluding remarks.

**Key potential issues for consideration are presented in blue boxes throughout the paper, to support Members in their plenary and committee capacities.**

# 1 Background

To contextualise subsequent sections, the below provides background information on the Bill, examining:

- Background to the education system in NI;
- The current legal position on exemptions to the Fair Employment and Treatment (Northern Ireland) Order 1998; in particular, Article 71;
- An examination of the changes to the law proposed by the FEST Bill.

## 1.1 Background to the Education System in NI

The education system in Northern Ireland was established by the 1923 Education Act, amended by the 1930 Education Act. These Acts permitted the main education providers at that time – the churches – to transfer schools to the state system. While Protestant churches transferred schools to the state system, the Catholic Church opted out, fearing erosion of the Catholic ethos in the state system.<sup>2</sup> In part, this was due to the retention of influence from Protestant churches on state education committees and management boards of transferred schools.<sup>3</sup>

With the exception of a small integrated sector, the education system in Northern Ireland<sup>4</sup> is broadly separated between those catering for pupils from a Protestant community background and those catering for pupils from a Catholic community background. Similarly, teachers working in schools on Northern Ireland are themselves predominantly from Protestant or Catholic backgrounds.

A significant proportion of these have not had experience of another school sector, a circumstance that has been described as ‘cultural encapsulation’<sup>5</sup>. Cultural encapsulation is considered ‘the lack of understanding, or ignorance, of another’s cultural background and the influence this background has on one’s current view of the world.’<sup>6</sup> The consequence of this is that Controlled (state) schools are in effect Protestant schools and Catholic Maintained are in effect Catholic<sup>7</sup>.

As noted in recent research, ‘the population of Northern Ireland remains divided along ethno-sectarian lines, particularly in relation to residential housing and education.’<sup>8</sup>

<sup>2</sup> Donald Akenson (1973), *Education and Enmity: Control of Schooling in Northern Ireland, 1920-50*, Exeter: David and Charles.

<sup>3</sup> David Harkness (1983), *Northern Ireland Since 1920*, Dublin: Helicon, p.64.

<sup>4</sup> For an overview of the education system in Northern Ireland, see Research and Information Service Briefing Paper 44/16, *Education System in Northern Ireland*, 8 August 2016:

<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/education/4416.pdf>.

<sup>5</sup> Matthew Miliken (2019), *Employment Mobility of Teachers and the FETO Exception*, Transforming Education Briefing Paper No 1, Newtownabbey: Ulster University.

<sup>6</sup> Iresearchnet, Psychology: Cultural Encapsulation <https://psychology.iresearchnet.com/counseling-psychology/multicultural-counseling/cultural-encapsulation/>

<sup>7</sup> Ann Marie Gray, Jennifer Hamilton, Gráinne Kelly, Brendan Lynn, Martin Melaugh and Gillian Robinson (2020), Northern Ireland, *Peace Monitoring Report: Number Five*, Belfast: Community Relations Council, p.179.

<sup>8</sup> S. Roulston & U. Hansson, ‘Kicking the can down the road? Educational solutions to the challenges of divided societies: a Northern Ireland case study’ *Discourse: Studies in the Cultural Politics of Education* 42: p170-183 [https://pure.ulster.ac.uk/ws/files/75949532/Can\\_kicking\\_25Jan2019.pdf](https://pure.ulster.ac.uk/ws/files/75949532/Can_kicking_25Jan2019.pdf)

Segregation in primary and post-primary school settings means that many young people never experience cross community education until they attend university.<sup>9</sup>

Research from Queens University Belfast conducted in 2020<sup>10</sup> found that:

- 90.7% of children in NI attended a school that is either Catholic Maintained or controlled/non-denominational
- 8.1% of pupils attend integrated schools
- 1.2% attend Irish Medium schools

Key findings indicate that primary schools are more segregated than post-primary schools.<sup>11</sup>

At present, research also indicates that the post-primary pupil cohort is disaggregated according to a number of variables: selective and non-selective schools (respectively, grammar and secondary schools); co-education and single sex schools; controlled (de facto Protestant) state schools, and Catholic maintained schools; integrated schools comprising Catholic and Protestant children, those of other faiths or none; and, Irish medium schools where the curriculum is taught through the Irish language.<sup>12</sup> This division is also reflected in a range of school management structures. Controlled schools are under the management of the schools' board of governors and the employing Education Authorities. Maintained schools are under the management of the board of governors and the employing authority is the Council for Catholic Maintained Schools (CCMS). Each voluntary grammar school and integrated school is under the management of a board of governors.<sup>13</sup>

In addition, it is important to note that teacher training is (primarily, but not exclusively<sup>14</sup>) separated between Stranmillis College (catering for teachers at Controlled schools) and St Mary's College (Catholic Maintained schools). This may contribute to the persistence of 'cultural encapsulation'<sup>15</sup> as discussed above.

In addition to this, in order to teach in a Catholic maintained nursery or primary school in a permanent capacity, teachers must hold the recognised Certificate in Religious Education. This requirement was introduced by the Council for Catholic Maintained

<sup>9</sup> V. Borooah & C. Knox, (2017), *Inequality and segregation in Northern Ireland Schools* Munich Pascal PePEc Archive

<sup>10</sup> B Campbell (2020), *An Assessment of School Segregation in Northern Ireland*, Queens University Belfast [https://www.researchgate.net/publication/340528625\\_An\\_Assessment\\_of\\_School\\_Segregation\\_in\\_Northern\\_Ireland](https://www.researchgate.net/publication/340528625_An_Assessment_of_School_Segregation_in_Northern_Ireland)

<sup>11</sup> B Campbell (2020), *An Assessment of School Segregation in Northern Ireland*, Queens University Belfast [https://www.researchgate.net/publication/340528625\\_An\\_Assessment\\_of\\_School\\_Segregation\\_in\\_Northern\\_Ireland](https://www.researchgate.net/publication/340528625_An_Assessment_of_School_Segregation_in_Northern_Ireland)

<sup>12</sup> V. Borooah & C. Knox, (2015) *Segregation, inequalities and education performance in Northern Ireland: Problems and Solutions* International Journal of Educational Development 40 P 196-206

<sup>13</sup> V. Borooah & C. Knox, (2015) *Segregation, inequalities and education performance in Northern Ireland: Problems and Solutions* International Journal of Educational Development 40 P 196-206

<sup>14</sup> There are five institutions that provide initial teacher training in Northern Ireland: Stranmillis University College, St Mary's University College, Queen's University Belfast, Ulster University, and the Open University.

<sup>15</sup> Matthew Miliken (2019), *Employment Mobility of Teachers and the FETO Exception*, Transforming Education Briefing Paper No 1, Newtownabbey: Ulster University.

Schools (CCMS) to recognise that nursery and primary schools have a pivotal role in preparing children to receive each of the sacraments of the Catholic Church.<sup>16</sup>

In a Department of Education review of teacher education, published in 2014, four options were proposed to address the most appropriate way in which the teacher education system could meet the diverse needs of NI schools and society<sup>17</sup>:

- A. A collaborative partnership – Stranmillis and St Mary’s would continue to be autonomous, but in enhanced partnership
- B. A Two-Centre Model with a Belfast Institute of Education – Ulster University would have responsibility for the North-West and Queen’s University for Belfast, with Stranmillis and St Mary’s in their current locations, but with changed roles and constitutions
- C. A Northern Ireland Initial Teacher Education Federation – with autonomous bodies under a single co-ordinating body
- D. A Northern Ireland Institute of Education – a single centre delivering across multiple sites

Recent research has concluded that less than 2% of teachers working in Maintained primary schools are Protestant<sup>18</sup>. A 2013 DE review of the impact of the Religious Certificate requirement to teach in Catholic Maintained primary and nursery schools concluded<sup>19</sup>:

*Whilst statistics would indicate that those who do not hold the Certificate currently have 50% less job opportunities than those who do, there is no statistical evidence to suggest that the Certificate requirement has resulted in inequalities in employment. However, the review has identified barriers in accessing the Certificate, which may lead to inequalities for those who wish to obtain it.*

The DoE *Review of Employment Opportunities for Teaching Staff* is discussed in further detail in Section 2.2 below.

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<sup>16</sup> Department of Education NI, Qualified to Teach <https://www.education-ni.gov.uk/articles/qualified-teach#:~:text=In%20order%20to%20teach%20in%20a%20Catholic%20maintained,must%20hold%20the%20recognised%20Certificate%20in%20Religious%20Education>.

<sup>17</sup> International Review Panel (2014), *Aspiring to Excellence: Final Report of the International Review Panel on the Structure of Initial Teacher Education in Northern Ireland*, Belfast: Department for Employment and Learning.

<sup>18</sup> Matt Miliken (2020), *The Certificate in Religious Education*, Transforming Education Briefing Paper 04, Newtownabbey: Ulster University.

<sup>19</sup> Department of Education (2013), *Review of Employment Opportunities for Teaching Staff: An Assessment of the Impact of the Religious Certificate Requirement to Teach in Catholic Maintained Primary and Nursery Schools*, Rathgael: DE, p.4.

## 1.2 The Current Legal Position on Exemptions to the Fair Employment and Treatment (Northern Ireland) Order 1998

The following subsection outlines the Fair Employment and Treatment (Northern Ireland) Order 1998, and examines current exemptions to the Order, specifically Article 71 which the FEST Bill aims to repeal.

### 1.2.1 The Fair Employment and Treatment (Northern Ireland) Order 1998 and the Fair Employment and Treatment Order (Amendment) Regulations (NI) 2003

The Fair Employment Acts of 1976 and 1989 outlawed discrimination in employment on grounds of religious belief and political opinion. These Acts were repealed and their provisions re-enacted, brought together and added to in the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO), which came into operation on 1 March 1999. The 1998 Order was subsequently amended by the Fair Employment and Treatment Order (Amendment) Regulations (NI) 2003 to implement an EU Framework Employment Directive.<sup>20</sup>

The FETO makes discrimination on the grounds of religious belief and political opinion unlawful in the areas of employment, goods, facilities and services, the sale or management of land or property, and further and higher education.<sup>21</sup> Discrimination is defined by the Order as treating a person less favourably than others or applying conditions which discriminate on religious belief or political opinion.<sup>22</sup>

The Equality Commission has responsibility for enforcing the FETO and working for the elimination of unlawful discrimination. It also has general duties with regard to promoting equal opportunities and affirmative action, as well as a duty to keep under review the operation of the Order.

The law places six key duties on employers with 10 or more employees.<sup>23</sup> Those five key duties are:

1. Registration with the Equality Commission
2. Monitoring the religious composition of the workplace and applicants for posts, and returning this annually to the Equality Commission
3. Reviewing the composition of the workforce/unemployment practices every three years to ensure the community is enjoying fair participation in employment – known as an Article 55 Review

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<sup>20</sup> Equality Commission, Fair Employment in Northern Ireland: Code of Practice <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/FECCodeofPractice@09-07.pdf>

<sup>21</sup> Legal Island, The Fair Employment and Treatment Order 1998 <https://www.legal-island.com/articles/uk/features/basics/2018/oct/the-fair-employment-and-treatment-northern-ireland-order-1998/>

<sup>22</sup> *The Fair Employment and Treatment (Northern Ireland) Order 1998*, Art. 3

<sup>23</sup> Legal Island, The Fair Employment and Treatment Order 1998 <https://www.legal-island.com/articles/uk/features/basics/2018/oct/the-fair-employment-and-treatment-northern-ireland-order-1998/>

4. Taking affirmative action if an underrepresentation of one community is identified within the workforce and
5. Setting goals and timetables to assist in evaluating progress towards fair participation
6. GDPR requirements

### **1.2.2 Exceptions to the FETO**

There are a number of exceptions to the FETO requirements, enshrined in Part VIII of the Order. Therefore, not all types of employment are covered by the Fair Employment and Treatment legislation. For example, any employment or occupation where the essential nature of the job requires it to be done by a person holding or not holding a particular religious belief or political opinion, is permitted under the Order.

Affirmative action is another key mechanism in the Order. Affirmative action measures are designed to ensure fair participation of citizens in the workplace, regardless of their community background. This may involve the adoption of practices aimed at encouraging fair participation: for example, advertising job vacancies by including a statement welcoming applicants from the community which is underrepresented in the workplace, or by modifying practices that may discourage fair participation.<sup>24</sup>

Below is an examination of the content of Article 71 of the FETO and the exception granted for the recruitment of schoolteachers.

### **1.2.3 Article 71 and the Exception of School Teachers**

While FETO provides that discrimination on the grounds of religious belief or political opinion are unlawful, the exception noted in Article 71 states:

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<sup>24</sup> Legal Island, The Fair Employment and Treatment (Northern Ireland) Order 1998 <https://www.legal-island.com/articles/uk/features/basics/2018/oct/the-fair-employment-and-treatment-northern-ireland-order-1998/>



**School teachers**

71. (1) Subject to paragraph (2), this Order does not apply to or in relation to employment as a teacher in a school.

(2) The Commission shall keep under review the exception contained in paragraph (1) with a view to considering whether, in the opinion of the Commission, it is appropriate that any steps should be taken to further equality of opportunity in the employment of teachers in schools.

(3) For the purpose of assisting it in the discharge of its duty under paragraph (2), the Commission may conduct investigations—

(a) into the composition, by reference to religious beliefs, of the staff employed as teachers, or teachers of any class, in schools generally, schools of any class or particular schools; and

(b) into practices—

(i) affecting the recruitment or access to benefits of, or the terms of employment applicable to, such staff; or

(ii) 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.

(4) The Commission may, and shall whenever the Department so directs, report to the Department upon the exercise of its functions under this Article; and a report under this paragraph may 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 (including action by way of the exercise of the power conferred by paragraph (6) to remove or limit the exception contained in paragraph (1)).

(5) Schedule 2 shall have effect with respect to the conduct of investigations under this Article.

(6) The Department may by order provide that paragraph (1)—

(a) shall cease to have effect; or

(b) shall, on and after such day or days as may be specified in the order, have effect only in relation to particular classes of teachers or particular classes of schools or for particular purposes of this Order.

This Article transfers the provision in Section 37(1)(c) of the 1976 Fair Employment Act into FETO, which exempts ‘employment as a teacher in a school’ from the provisions of that Act.

Schools are also currently exempt from the requirement to monitor the community background of their teaching staff and to carry out Article 55 reviews of their teaching workforces. This includes consideration of whether they are providing fair participation to members of the Protestant and Roman Catholic communities in relation to the employment of teachers.<sup>25</sup>

The need for the exception in the 1976 legislation has been explained as follows<sup>26</sup>:

*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 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.*

A search of case law did not find challenges to Article 71<sup>27</sup>. However, in 2007 the court of appeal upheld a decision of the Fair Employment Tribunal that it did not have jurisdiction to consider the claims of unlawful discrimination on the grounds of religious belief in view of Article 71<sup>28</sup>.

Recent research has noted that European legislation limits the exemption from equality law to those posts for which religious belief is a ‘genuine occupational requirement’ (GOR). In the Scottish case of *Glasgow City Council v. McNab*<sup>29</sup>, a teacher’s claim of discrimination was upheld when the tribunal ruled that being a Catholic was not a GOR for a pastoral post in a Catholic school.

<sup>25</sup> Committee for the Executive, Fair Employment (School Teachers) Bill: Equality Commission for Northern Ireland (16 February 2022)

<sup>26</sup> Seamus Dunn and Tony Gallagher (2002), *Research Report: The Teacher Exception Provision and Equality in Employment in Northern Ireland*, Belfast: Equality Commission for Northern Ireland, p.1.

<sup>27</sup> The Fair Employment Tribunal in 2013 considered the compatibility of Article 71 with the European Convention on Human Rights (*Moore v Western Education and Library Board* (113/11 FET)) but a judgement on appeal could not be found.

<sup>28</sup> *Flynn and Debast v MJ Malcolmson, Laurelhill Community College and South Eastern Education and Library Board* [2007] NICA 56.

<sup>29</sup> *Glasgow City Council v McNab*, (2007) UK Employment Appeal Tribunal  
<https://www.casemine.com/judgement/uk/5a8ff7e660d03e7f57eb2b89>

Nelson and Stapleton's findings show that in both jurisdictions in Ireland, however, the exemption from equality legislation is applied widely to all posts in denominational schools and those schools with a general Christian ethos. They add that ultimately, this has created a culture in which non-religious teachers feel there are limits to the types of schools and roles they can apply for.<sup>30</sup>

In its 2004 review of the exception, the Equality Commission considered the following options<sup>31</sup>:

1. Removal of the Exception: While this was the Commission's original preferred option, it had the following disadvantages:
  - a. It would have serious implications for the integrated sector, which at times may have to discriminate in order to maintain a religious balance in line with the integrated ethos
  - b. Controlled schools would be unfairly disadvantaged in relation to claims of discrimination in comparison with maintained schools, which can more easily demonstrate a genuine occupational qualification due to a Catholic ethos
  - c. There would be an increase in fair employment claims
2. Narrowing the exception: The exception could be confined to one or both if the following:
  - a. Application of the exception to primary schools only would be justified in terms of a genuine occupational qualification, this being the stage of preparation for Confession, Communion and Confirmation
  - b. Application of the exception could be extended to religious education in secondary schools as a genuine occupational qualification
3. No change

The Commission ultimately proposed to narrow the exception so that 'a further restriction in the schoolteachers' exemption to teachers in mainstream primary schools should be effected.'<sup>32</sup>

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<sup>30</sup> J. Nelson & C. Stapleton (2021) Teacher Employment & Religious Discrimination <http://gppl.gub.ac.uk/teacher-employment-and-religious-discrimination/>

<sup>31</sup> Equality Commission for Northern Ireland (2004), *The Exception of Teachers From The Fair Employment & Treatment (NI) Order 1998*, Belfast: ECNI, pp.28-30.

<sup>32</sup> *Ibid.*, p.iii.

### 2013 Assembly motion

The following motion was passed in the Northern Ireland Assembly on 22 April 2013<sup>33</sup>:

*That this Assembly notes that the exception in fair employment law allowing discrimination on the grounds of religious belief when appointing teachers is now over 35 years old; further notes that the same exemption, uniquely written into European anti-discrimination employment law (directive 2000/78/EC), suggests that it is designed to further "the reconciliation of historical divisions"; the Equality Commission recommendation for its withdrawal in 2004 in respect of secondary school appointments and earlier in its entirety has not been put into effect, nor has any proposed monitoring been introduced; the Department of Education's equal opportunities policy for teachers (TNC 2009/2) now prohibits controlled schools from so discriminating; and calls on the Office of the First Minister and deputy First Minister to repeal the exception to ensure equal opportunity and that school teaching staff reflect our religious and ethnic diversity.*

The TNC 2009/2 circular referred to in the motion provides a sample equal opportunities policy for grant-aided schools<sup>34</sup>. Paragraph 2.1 of the circular states:

*Selection for employment and advancement will be on the basis of suitability, qualifications and aptitude to carry out the duties of the post. Eligibility criteria for all teaching posts will reflect the ethos of the school sector.*

The circular also notes the Article 71 exception.

### 2015 Assembly motion

The following motion was passed in the Northern Ireland Assembly on 13 April 2015<sup>35</sup>:

*That this Assembly notes the failure of the First Minister and deputy First Minister to repeal the exemption in fair employment law allowing discrimination on the grounds of religious belief in teacher appointments, as mandated by the motion Teachers: Employment Law, which was approved by the Assembly on 22 April 2013; recognises that the teacher exemption, as well as the continuing requirement for a certificate in religious education at nursery and primary level in the Catholic maintained sector, are unnecessary barriers to truly shared education; and calls on the First Minister and deputy First Minister to take action to remove these overt examples of inequality and discrimination.*

<sup>33</sup> Official Report 22 April 2013: <http://www.niassembly.gov.uk/assembly-business/official-report/reports-12-13/22-april-2013#4>.

<sup>34</sup> TNC 2009/02 - Equal Opportunities Policy for Teachers in Schools: <https://www.education-ni.gov.uk/publications/tnc-200902-equal-opportunities-policy-teachers-schools>.

<sup>35</sup> Official Report: Monday 13 April 2015: <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/04/13&docID=229888>.

On 22 October 2020, the Minister of Education stated<sup>36</sup>:

*The Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) is the legislative responsibility of The Executive Office. Any amendment to that legislation would be a matter for them to address.*

*I am committed to delivering equality for all school sectors; this includes consideration of an end to the Article 71 Exception of FETO.*

*My officials are currently working with TEO to consider the matter further.*

The First Minister and deputy First Minister responded on 23 October 2020 to a question on the removal of the Article 71 exception as follows<sup>37</sup>:

*Although the power to repeal or amend the teachers' exception in Article 71 of the Fair Employment and Treatment (Northern Ireland) Order 1998 is conferred on the Executive Office, any change to the exception would clearly have implications for the Department of Education.*

*The exemption of teachers from The Fair Employment and Treatment (Northern Ireland) Order 1998 will receive further consideration in due course.*

### **2021 Assembly motion**

On the 17 May 2021, Ulster Unionist MLAs brought a motion on ending religious discrimination in teaching appointments, stating,<sup>38</sup>

*That this Assembly notes the exemption in fair employment law allowing discrimination on the grounds of religious belief when appointing teachers; acknowledges that it is unacceptable that teachers should be excluded from protection from discrimination in employment on the grounds of religious belief; and calls on the First Minister and deputy First Minister to repeal urgently this exemption to ensure equal opportunities in employment are afforded to all without exception.*

In summary, the provision of exemption from FETO has received considerable attention over the past few years, without agreement on if or how it should be amended.

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<sup>36</sup> AQO 1050/17-22, answered 22 October 2020.

<sup>37</sup> AQO 749/17-22, answered 23 October 2020.

<sup>38</sup> NI Assembly(2021), Motion: Ending Religious Discrimination In Teaching  
<http://aims.niassembly.gov.uk/plenary/details.aspx?sp=0&pid=2&doc=335163>

## 2 Overview of the Key Provisions of the FEST Bill

This section provides an overview of the clauses of the FEST Bill and their premise, as explained in the Explanatory and Financial Memorandum. This section also explores the potential impact to the requirement for a recognised Certificate in Religious Education for those employed in a permanent capacity in a Catholic Maintained nursery or primary school.

### 2.1 Clauses of the FEST Bill

There are 4 Clauses to the FEST Bill.

- Clause 1 revokes Article 71 of the 1998 Order.
- Clause 2 and the Schedule make consequential amendments to the 1998 Order and the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003.
- Clause 3 provides for the Bill to be brought into force by the Executive Office.
- Clause 4 gives the Bill its short title.

### 2.2 Explanatory Guidance

As noted in the Bill's Explanatory and Financial Memorandum, the policy objective is to remove the exception of teachers from the Fair Employment and Treatment (NI) Order 1998 to ensure that schools are not permitted to use religious belief as grounds on which to discriminate between candidates for teaching posts.

Schools would further be required to monitor the community background of their teaching staff, to carry out Article 55 reviews of their teaching workforces and reviews of the employment policies and practices that affect their teaching staff and to consider whether they are providing fair participation to members of the Protestant and Roman Catholic communities in relation to the employment of teachers.<sup>39</sup>

The Committee may wish to consider if it would be prudent to continue to require those teaching in permanent capacity in a Catholic maintained nursery or primary school to hold the recognised Certificate in Religious Education, should the Bill be enacted and exception to FETO be revoked. This requirement was introduced by the Council for Catholic Maintained Schools (CCMS) to recognise that nursery and primary schools have a pivotal role in preparing children to receive each of the sacraments.<sup>40</sup> The legality of such a requirement may be questioned, should the FEST Bill be enacted.

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<sup>39</sup> Committee for the Executive, Fair Employment (School Teachers) Bill: Equality Commission for Northern Ireland (16 February 2022)

<sup>40</sup> Department of Education NI, Qualified to Teach <https://www.education-ni.gov.uk/articles/qualified-teach#:~:text=In%20order%20to%20teach%20in%20a%20Catholic%20maintained,must%20hold%20the%20recognised%20Certificate%20in%20Religious%20Education.>

Previously, in 2013, the Department of Education had undertaken a *Review of Employment Opportunities for Teaching Staff* to examine the impact of the Religious Certificate requirement to teach in Catholic Maintained Primary and Nursery schools.<sup>41</sup> The Review was conducted following concerns expressed by members of the Assembly's Education Committee that this requirement could lead to inequality in the employment of and opportunities for teachers. This included concerns that giving those who hold the Certificate an unfair advantage to avail of a wider range of employment opportunities.

At that time the DE noted that the review had not identified any inequality in employment opportunities as a result of the requirement, however; it identified barriers in accessing the Certificate, which may lead to inequalities for those who wish to obtain it.<sup>42</sup>

However, evidence from the Equality Commission to the Committee on 16<sup>th</sup> February 2022 stated the need to take account of recent developments and research. They noted that access to obtaining the certificate in religious education has widened substantially. It can now be undertaken alongside initial teacher training education at Ulster University and Stranmillis University College in addition to the long-standing provision that is available at St Mary's University College.<sup>43</sup>

#### Potential scrutiny point:

1. The Committee may wish to consider the impact of the FEST Bill on the requirement to hold a recognised Certificate in Religious Education for those teaching in a permanent capacity in Catholic Maintained Primary and Nursery schools.
2. The Committee may wish to review the original Review of Employment Opportunities for Teaching Staff in detail.

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<sup>41</sup> Department of Education NI (2013), Review of Employment Opportunities for Teaching Staff <https://www.education-ni.gov.uk/publications/review-employment-opportunities-teaching-staff-key-findings>

<sup>42</sup> Department of Education NI, Review of Employment Opportunities for Teaching Staff <https://www.education-ni.gov.uk/articles/review-employment-opportunities-teaching-staff>

<sup>43</sup> Committee for the Executive, Fair Employment (School Teachers) Bill: Equality Commission for Northern Ireland (16 February 2022)

### 3. FEST Bill Consultation Process

At the time of writing, public consultation on the FEST Bill is ongoing. A 'Call for Views' opened on 31<sup>st</sup> January 2022 in the form of an online survey.<sup>44</sup> This enables participants to give their opinions on the substantive changes to the law, in particular the omission of Article 71 of the FETO and the omission of Regulation 30 of the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003.

Survey questions cover several aspects of the Bill and its effects:

- Respondents have been asked if they think the exemption for schoolteachers should be removed from the FETO 1998.
- The survey states that the majority of religious instruction happens in primary schools. Therefore, respondents have been asked if they think primary school teachers should still be exempt, but the exemption for post-primary schools be removed.
- Respondents are also asked if, the exemption were to be removed from either level, are there transitional or permanent arrangements you think should be put in place.
- The survey also asks participants for any other suggestions in relation to the Bill.

The consultation closes on 7<sup>th</sup> March 2022.

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<sup>44</sup> NI Assembly, Fair Employment (School Teachers) Bill - Call for Views <https://consult.nia-yourassembly.org.uk/committee-for-the-executive-office/fair-employment-school-teachers-bill/>



## 4. Equality and Human Rights Considerations

**This section contains a consideration of equality and human rights perspectives. It firstly considers the role of the NI Equality Commission and their position on revoking the exemption granted in Article 71 of the FETO. This is followed by a consideration of rights protected by the European Convention on Human Rights.**

**There are a number of anti-discrimination laws in Northern Ireland, which aim to address endemic inequalities. The FETO is one such piece of legislation, as is, for example, Section 75 of the Northern Ireland Act 1998.**

Section 75 of the Northern Ireland Act 1998 places public authorities in Northern Ireland, including education providers, under a duty to have due regard to the need to promote equality of opportunity between: persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability, and persons with dependants and persons without. Public authorities are also required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

**As with all anti-discrimination law, the Equality Commission is the public body tasked with monitoring how NI's equality laws work and make recommendations to government on ways in which they can be improved.<sup>45</sup> This would include examining the role of exemptions and the working relationship between differing anti-discrimination legislation.**

**Section 71 (2) of the FETO states clearly that:**

*The Commission shall keep under review the exception contained in paragraph (1) with a view to considering whether, in the opinion of the Commission, it is appropriate that any steps should be taken to further equality of opportunity in the employment of teachers in schools.*

**In relation to the removal of the exception in the employment provisions of FETO, the Equality Commission stated that they** are strongly of the view that teachers should be able to enjoy the same legislative protection as other workers. Teachers should be included in the monitoring and review arrangements that apply to all other occupations. They note that their long-standing recommendation is that the exception should be abolished.<sup>46</sup>

**However, the Commission recommends a staged approach; advising that the exception be removed for the recruitment of teachers in *secondary* level schools and advises that early consideration should be given as to whether the exception should also be removed for primary level schools.**

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<sup>45</sup> The Equality Commission for Northern Ireland (2019), *Promoting Equality Challenging Discrimination*

<sup>46</sup> Committee for the Executive, Fair Employment (School Teachers) Bill: Equality Commission for Northern Ireland (16 February 2022)

The Equality Commission welcomed the Assembly motion of 17<sup>th</sup> May 2021 (see Section 1.2.3 above) to end religious discrimination in teaching appointments in Northern Ireland and the Chief Commissioner stated,

*Our view is that all teachers should be able to enjoy the same legislative protections as other workers, that it is no longer acceptable to exclude the entire teaching workforce from the provisions of the fair employment legislation. We recommend 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. This has been our position following research and a subsequent investigation conducted in 2004.*

From a human rights perspective, there are a number of protections that secure the right to religion and the right of parents to ensure that their child's education and teaching is in conformity with their own religious and philosophical convictions.

Article 9 of the European Convention of Human Rights protects freedom of thought, conscience and religion.<sup>47</sup> It states:

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, **teaching**, practice and observance.*

Article 9(2) notes that freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

In the case of the FETO, tension exists between balancing the right to religion with the protection of the rights and freedom of others not to be discriminated against.

Protocol 1, Article 2 of the European Convention states that:

*No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.*

Similarly, Article 14 of the EU Charter of Fundamental Rights also covers the right to education. Article 14(3) protects:

*the freedom to found educational establishments with due respect for democratic principles and the rights of parents to ensure the education and teaching of their child in conformity with their religious, philosophical and*

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<sup>47</sup> European Convention on Human Rights [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

*pedagogical convictions shall be respected, in accordance with national laws governing the exercise of such freedom and right.*

While these rights are protected, they do not assert that teaching staff must necessarily be from a certain religious group – simply that parents can ensure such education is in conformity with their own religious and philosophical convictions.

**Potential scrutiny point:**

3. The Committee may wish to carefully consider the Equality Commission's recommendation regarding the removal of the exception for the recruitment of teachers in post primary schools, and consideration as to whether the exception should be removed for primary level schools

## 5 Equality exceptions in education in other jurisdictions

As noted in the 2020 RaISe research paper ‘*Exemptions to the Fair Employment and Treatment Order 1998: School Teachers*’, there are a number of examples of similar legislation in other jurisdictions in relation to the employment of teachers. This section details exceptions noted in that paper.

### European Union

In broad terms, the European Union Equal Treatment Directive provides for the exemption in Member State law from certain recruitment and employment provisions where there is an occupational requirement. Article 4(1) of the Directive provides for exceptions in discrimination law where<sup>48</sup>:

*by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.*

This ‘occupational requirement’ can be transposed differently into law in Member States. The application of Article 4(1) has been described thus<sup>49</sup>:

*Most of the controversy around the implementation of the provisions of the Employment Equality Directive on religion or belief centres on the extent of any exceptions provided for organised religions (e.g. churches) and organisations with an ethos based on religion or belief (e.g. religious schools). Under Article 4(2) of the Employment Equality Directive, Member States can maintain national legislation or practices that allow churches and other public or private organisations whose ethos is based on religion or belief to treat people differently on the basis of their religion or belief. Such different treatment does not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos.*

### Great Britain

Chapter 1 of Part 5 of the Equality Act 2010<sup>50</sup> provides that discrimination in employment is unlawful. Schedule 9 provides for exceptions to these provisions in the following circumstances:

<sup>48</sup> COUNCIL DIRECTIVE 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

<sup>49</sup> Isabelle Chopin and Catharina Germaine (2017), *A comparative analysis of non-discrimination law in Europe 2017*, Brussels: European Commission, p.17.

<sup>50</sup> Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

1(1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to work a requirement to have a particular protected characteristic, if A shows that, having regard to the nature or context of the work—

- (a) it is an occupational requirement,
- (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

A 'genuine occupational requirement' has been defined as<sup>51</sup>:

*An exception to the general rule prohibiting discrimination in employment arises where holding a particular protected characteristic is an 'occupational requirement', having regard to the nature or context of the work, and where applying the requirement is a proportionate means of achieving a legitimate aim.*

Guidance on the application of these provisions in schools varies according to the type of school<sup>52</sup>:

*Voluntary-controlled and foundation schools with a religious character*

### **Republic of Ireland**

Primary schools in the Republic of Ireland are predominantly of Catholic ethos<sup>53</sup>. The Equality in Employment Acts 1998-2015<sup>54</sup> provide that discrimination in employment is unlawful in the Republic of Ireland. There are two exceptions to this in relation to the employment of school teachers<sup>55</sup>:

1. The Acts allow employers to require that teachers in primary and post-primary schools have a proficiency in the Irish language (Section 36(3))
2. Certain religious, educational, and medical institutions, whose objectives include the provision of services in an environment which promotes religious

<sup>51</sup> Daniel Greenberg (ed.)(2015), *Jowitt's Dictionary of English Law*, London: Sweet and Maxwell, p.1075.

<sup>52</sup> Department of Education (2014), *The Equality Act 2010 and schools - Departmental advice for school leaders, school staff, governing bodies and local authorities*, London: Department of Education, pp.43-4:  
<https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>.

<sup>53</sup> 2758 of the 3105 primary schools have a Catholic ethos, Department of Education statistics, accessed 26 November 2020:  
<https://www.education.ie/en/Publications/Statistics/Data-on-Individual-Schools/>.

<sup>54</sup> Employment Equality Act 1998, as amended: <https://revisedacts.lawreform.ie/eli/1998/act/21/front/revised/en/html>.

<sup>55</sup> 'Exemptions to the Employment Equality Acts', Irish Human Rights and Equality Commission website, accessed 20 November 2020: <https://www.ihrec.ie/guides-and-tools/human-rights-and-equality-for-employers/what-does-the-law-say/exemptions-to-the-employment-equality-acts/>.

values, are not regarded as engaging in discrimination for the purposes of the Acts if they (Section 37(1)):

- a. give more favourable treatment, on the religion ground, to an employee where it is reasonable to do so in order to maintain the religious ethos of the institution, or
- b. take action which is reasonably necessary to prevent an employee from undermining the religious ethos of that institution

The Irish Equality Authority carried out a review of Section 37 and published recommendations in 2015<sup>56</sup>. This considered four options for change:

- A. Maintenance of status quo and retention of section 37 in its current form: The Authority considered that Section 37(1) is in breach of Article 4(2) of the Framework Directive.
- B. Delete section 37 and rely on other provisions within the Employment Equality Acts: The Authority considered this to infringe the rights of employers to religious freedom, there being insufficient protection elsewhere in the legislation.
- C. Deletion of section 37 and expressly provide for freedom of religion within the Employment Equality Acts: The Authority was concerned that this might create a hierarchy of rights within the Acts
- D. Amendment of section 37(1)(a) and 37(1)(b): The Authority preferred this option, amending the wording of Section 37(1) to correspond with that of Article 4(2) of the Framework Directive, i.e.

*in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos*

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<sup>56</sup> Equality Authority (2015), Recommendation Paper re section 37 of the Employment Equality Acts 1998-2011 amendment: <https://www.ihrec.ie/documents/recommendation-paper-re-section-37-amendment/>.

*Reserved teachers*

8.12 VC and foundation schools must include reserved teachers where the number of teaching staff is more than two. Reserved teachers are selected according to their competence to teach RE according to the tenets of the school's faith and are specifically appointed to do so. This may include the headteacher.

8.13 The number of reserved teachers must not exceed one-fifth of the teaching staff (including the headteacher). For these purposes, where the total number of teaching staff is not a multiple of five, it will be deemed to be the next higher multiple of five. For example, if there were eight teachers at a school, for this purpose the total number would be deemed to be ten and the maximum number of reserved teachers would be two.

8.14 These teachers must not be appointed unless the foundation governors are satisfied that they are suitable and competent to give religious education. The foundation governors can insist on dismissing a reserved teacher who fails to give suitable and efficient religious education.

*Other teachers and non-teaching staff*

8.15 Non-teaching staff and teachers other than those appointed as reserved teachers must not be treated unfavourably in any way because of their religion. This means they cannot be dismissed because of their religious opinions or attendance at religious worship, they cannot be required to deliver RE and cannot be subjected to a detriment for not giving RE or attending worship.

*Voluntary-aided schools, independent schools, academies and free schools with a religious character*

## Teaching staff (including headteachers)

8.17 Voluntary-aided schools may apply religious criteria when recruiting or dismissing any member of their teaching staff. In recruitment, remuneration and promotion they may give preference to persons:

whose religious opinions are in accordance with the tenets of the religion of the school; who attend religious worship in accordance with those tenets; or who give, or are willing to give, religious education in accordance with those tenets.

8.18 In considering dismissals, the governing body may have regard to any conduct that is incompatible with the precepts, or with the upholding of the tenets, of the religion of the school. A teacher appointed to teach RE may be dismissed by the governing body without the consent of the local authority if he fails to give such education efficiently and suitably. Non-teaching staff

8.19 Religious criteria may not be applied to any other posts in a VA school unless there is a genuine occupational requirement. This would need to be justified but might, for example, apply to a member of staff required to give pastoral care to pupils.

## Malta

The Maltese education system has some similarities with that of Northern Ireland, as schools are divided in ownership between the state, the Catholic Church and independent providers<sup>57</sup>.

An Equality Bill was introduced to the Maltese Parliament in July 2019<sup>58</sup>. The Bill is intended to draw together existing equality and anti-discrimination legislation and introduce new protections.

Clause 6(j) of the Bill provides for exceptions to certain anti-discrimination provisions:

**6.** Notwithstanding any provision of this Act, the following Exceptions shall not be deemed to constitute discrimination:

...

(j) the enforcement of policies for teachers within educational establishments, the ethos of which is based on a belief, creed or religion, and the requirement for teachers to act in good faith and in line with the said policies:

Provided that such requirement shall not interfere with the private life of teachers outside that establishment:

Provided further that such policies constitute a genuine and determining occupational requirement, and the application of that requirement must be a proportionate means of achieving a legitimate aim:

Provided further that the burden of proving that such policies are in line with, and adequately reflect, that belief, creed or religion shall lie on whosoever alleges it;

<sup>57</sup> In 2018 57.6% of pupils were educated in state schools, 29.2% in Catholic schools and 13.2% in independent schools, National Statistics Office, Malta, accessed 26 November 2020: <https://nso.gov.mt/en/nso/Media/Salient-Points-of-Publications/Pages/Statistics-on-Pre-Primary,-Primary-and-Secondary-Formal-Education-2012-2013%20%E2%80%93202016-2017.aspx>.

<sup>58</sup> Bill No.96 Equality Bill: <https://parlament.mt/en/13th-leg/bills/bill-no-096-equality/?page=10&numItems=10&text=&number=&totalItems=179>.



## Australia

In the course of its review of the Section 37 provisions (discussed above) the Equality Authority made reference to the wording of the Sex Discrimination Act 1984<sup>59</sup> in relation to exceptions. Section 38(1) states:

Nothing in paragraph 14(1)(a) or (b) or 14(2)(c) renders it unlawful for a person to discriminate against another person on the ground of the other person's sex, sexual orientation, gender identity, marital or relationship status or pregnancy in connection with employment as a member of the staff of an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

There is no equivalent provision in the Racial Discrimination Act 1975<sup>60</sup>.

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<sup>59</sup> Sex Discrimination Act 1984: <https://www.legislation.gov.au/Details/C2018C00499>.

<sup>60</sup> The sole exception (Section 8(1)) relates to positive action measures. Racial Discrimination Act 1975: <https://www.legislation.gov.au/Details/C2016C00089/Download>.

## 6 Concluding Remarks

The FETO makes discrimination on the grounds of religious belief and political opinion unlawful in the areas of employment, goods, facilities and services, the sale or management of land or property, and further and higher education.

At present, there are a number of exemptions granted in the Order enshrined in Part VIII of the Order. Article 71 of the Order provides an exception for the recruitment and employment of schoolteachers in Northern Ireland.

There has been considerable discussion and debate on the use of exceptions to the FETO for schoolteachers, with concerns expressed that this leads to inequality in the employment of and opportunities for teachers. The existence of Article 71 has received widespread attention over the past few years, without agreed resolution on if and how it should be amended.

The FET Bill, introduced to the Assembly on 17 January 2022, aims to omit Article 71 of the Fair Employment and Treatment (Northern Ireland) Order 1998, thereby revoking the exemption of the employment of schoolteachers. At the time of writing, public consultation on the Bill is ongoing and is due to close on 7<sup>th</sup> March 2022

If enacted schools would be required to monitor the community background of their teaching staff and to carry out Article 55 reviews of their teaching workforces. This would include review of the employment policies and practices that affect their teaching staff and to consider whether they are providing fair participation to members of the Protestant and Roman Catholic communities in relation to the employment of teachers.<sup>61</sup>

**The NI Equality Commission is the public body tasked with monitoring how NI's equality laws work and make recommendations to government on ways in which they can be improved.<sup>62</sup> This includes examining the role of exemptions and the working relationship between differing anti-discrimination legislation. The Equality Commission recommends the staged removal of the exception in the employment provisions FETO 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.**

There are a number of similar legislative exceptions documented in other jurisdictions, including the European Union, Great Britain, Republic of Ireland, Malta and Australia,

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<sup>61</sup> Committee for the Executive, Fair Employment (School Teachers) Bill: Equality Commission for Northern Ireland (16 February 2022)

<sup>62</sup> The Equality Commission for Northern Ireland (2019), *Promoting Equality Challenging Discrimination*

which accommodate limiting anti-discrimination law where it can be demonstrated there is a genuine occupation requirement.

At present, there is a requirement for those teaching in permanent capacity in a Catholic maintained nursery or primary school to hold the recognised Certificate in Religious Education. In 2013, the DE completed a *Review of Employment Opportunities for Teaching Staff* to examine the impact of the Religious Certificate requirement to teach in Catholic Maintained Primary and Nursery schools. DE noted that the review had not identified any inequality in employment opportunities as a result of the requirement, however it identified barriers in accessing the Certificate, which may lead to inequalities for those who wish to obtain it. The Equality Commission have stated the need to take account of recent developments and research. They noted that access to obtaining the certificate in religious education has widened substantially. The legality of such a requirement may be questioned, should the FEST Bill be enacted.