



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

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Chair

Committee for the Executive Office
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2 March 2022

Dear Chair,

Re: Fair Employment (School Teachers) Bill

The Northern Ireland Human Rights Commission (the Commission), pursuant to section 69(4) of the Northern Ireland Act 1998, shall advise the Assembly whether a Bill is compatible with human rights—(a) as soon as reasonably practicable after receipt of a request for advice; and (b) on such other occasions as the Commission thinks appropriate. Further, the Commission, pursuant to section 78A(6), must advise the NI Assembly whether a Bill is compatible with Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement —(a) as soon as reasonably practicable after receipt of a request for advice; and (b) on such other occasions as the Commission thinks appropriate.

The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR)¹, as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and United Nations (UN).²

The Commission advises on the UK Government commitment in Protocol Article 2(1) to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU. This is given effect in UK law by

¹ UK ratification 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

² The relevant regional and international treaties in this context include: UN International Covenant on Civil and Political Rights 1966 (ICCPR); UN International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR); UN Convention on the Rights of the Child 1989 (CRC).

section 7A of the EU (Withdrawal) Act 2018. In addition, Section 6 of the Northern Ireland Act 1998 provides that the NI Assembly is prohibited from making any law which is incompatible with Article 2 of the Ireland/Northern Ireland Protocol.

In accordance with these functions, the Commission welcomes the opportunity to comment on the Fair Employment (School Teachers) Bill.

Right to Education

Article 2 of Protocol 1 of the ECHR³ outlines the State duty to “respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”.⁴ This is echoed in Article 18(4) ICCPR⁵, which requires State Parties to the Covenant to “undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”.⁶

The Commission recognises that one of the aims of the current exemption of school teachers from the Fair Employment and Treatment (Northern Ireland) Order 1998 was to guarantee the rights protected under Article 2 Protocol 1. However, in a diverse and pluralistic society, this requires a careful balance of Convention rights, and in the present context this will require consideration for the right of those who hold religious beliefs, including those from minority religions and those who do not adhere to any religion.

In its submission to the Committee for Education on the Integrated Education Bill⁷, the Commission highlighted that international human rights standards require the NI Executive to promote inclusion, tolerance and respect for diversity in and through education. For example, the UN Committee on the Rights of the Child recognises the need for a “balanced approach to education...which succeeds in reconciling diverse values through dialogue and respect for difference”. Moreover, it advises that children are “capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another”.⁸ ICESCR, at Article 13(1) also states that one important purpose of education is to enable all persons to “participate effectively in a free society, [and] promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”.⁹

The Commission also notes that Section 75(2) of the Northern Ireland Act 1998 requires all public authorities, in carrying out their functions, to “have regard to

³ UK ratification 1951.

⁴ European Convention on Human Rights, 1950, Protocol 1, Article 2.

⁵ UK ratification 1976.

⁶ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, Article 18(4).

⁷ NIHRC, ‘Submission to the Committee for Education on the Integrated Education Bill’ (2021), available [here](#).

⁸ CRC/GC/2001/1 UN Committee on the Rights of the Child, General Comment No.1: The Aims of Education (Article 29) (2001) at para 4.

⁹ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, Article 13(1).

the desirability of promoting good relations between persons of different religious belief, political opinion or racial group." The Commission advises that in international human rights law, sectarianism falls within the definition of racism.¹⁰

The ECtHR has asserted that the right to education guaranteed by Article 2 Protocol 1 ECHR "by its very nature calls for regulation by the State"¹¹ and, as such, States enjoy a certain margin of appreciation in educational provision.¹² The Commission notes the UK's reservation, which commits to adhering to the principle of educating pupils in accordance with parents' wishes "only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure".¹³

As with many issues pertaining to human rights, the protections outlined in Article 2 Protocol 1 ECHR in relation to education and teaching must be balanced with the rights of individuals employed as teachers, as outlined below.

Right to Respect for Private and Family Life and the Freedom of Thought, Conscience and Religion

The right to respect for private and family life is protected by Article 8 ECHR and 17 ICCPR. Freedom of thought, conscience and religion is considered to be one of the "foundations of democratic society"¹⁴ and protected by Article 9 ECHR and also reflected in Article 18(1) ICCPR.

While freedom of thought, conscience and religion is primarily safeguarded under Article 9 ECHR, the ECtHR has established that disclosure of information about personal religious and philosophical convictions may also engage Article 8 as these convictions can concern some of the most intimate aspects of a person's private life.¹⁵ The ECtHR has also found that religious observance and privacy can be closely interrelated.¹⁶

The ECtHR has upheld that Article 9 ECHR also concerns the right not to practice a religion.¹⁷ This means that individuals cannot be required to disclose their

¹⁰ ECRI General Policy Recommendation 7: on national legislation to combat racism and racial discrimination, (2002), para 1(a). See also, 'Racism, Discrimination and Xenophobia', a publication prepared by: International Labour Office (ILO), International Organization for Migration (IOM), OHCHR, in consultation with Office of the United Nations High Commissioner for Refugees (UNHCR), (2001), p 2.

¹¹ *Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (merits)* Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, 23 July 1968, at para 5 of "The Law".

¹² *Leyla Şahin v. Turkey*, Application no. 44774/98, 10 November 2005, at para 154; see also *Konrad v. Germany*, Application no. 35504/03, 11 September 2006; *Appel-Irrgang and Others v. Germany* Application no. 45216/07, 6 October 2009.

¹³ Human Rights Act, 1998 Schedule 3, Part II.

¹⁴ *Kokkinakis v. Greece*, Application no. 14307/88, 25 May 1993, at para 31.

¹⁵ *Folgerø and Others v. Norway*, Application no. 15472/02, 27 June 2007 at para 98.

¹⁶ *Polat v. Austria*, Application no. 12886/16, 20 July 2021, at para 91.

¹⁷ *Alexandridis v. Greece*, Application no. 19516/06, 21 February 2008 at para 32.

religious beliefs nor to adopt behaviours that suggest they do, or do not, hold a particular religious belief.¹⁸

The current exemption in the Fair Employment and Treatment (Northern Ireland) Order 1998 fails to provide teachers with the protection of their Articles 8 and 9 ECHR rights that are enjoyed by the vast majority of other professions. Whilst Article 8 and 9 ECHR are both qualified rights, meaning they may be interfered with in order to protect the rights of another or the wider public interest, the Commission does not view the current exemption as necessary in the pursuit of these objectives.

Prohibition of Discrimination

Article 14 ECHR guarantees that ECHR rights shall be enjoyed without discrimination. The ECtHR has found Article 14 applicable to many areas, including employment.¹⁹ In relation to discrimination on the grounds of religion, the ECtHR has held that differential treatment based essentially on religion alone was not acceptable.²⁰

It should be noted that difference in treatment may be justified, or even necessary, if this is in pursuit of a legitimate aim. The Commission recalls that the right not to be discriminated against in the enjoyment of the rights guaranteed under the ECHR is also engaged where the State, without an objective and reasonable justification, fails to treat differently persons whose situations are significantly different.²¹ The Commission supports the continued application of this principle and recognises that there may, at times, be a clear need to allow positive discrimination in the recruitment of a teacher of a particular religion. However, it is the Commission's view that as NI society diversifies and moves beyond historic division, the continued blanket exemption of teachers from fair employment legislation cannot be adequately justified. The Commission considers that the proposed Bill will enhance the human rights protections of teachers under Articles 8, 9 and 14 ECHR.

Article 2 of the Ireland/Northern Ireland Protocol

Article 2(1) of the Ireland/Northern Ireland Protocol states that:

“The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against

¹⁸ *Dimitras and Others v. Greece*, no. 42837/06, 3 June 2010 at para 78; *Stavropoulos and Others v. Greece*, no. 52484/18, 25 June 2020 at para 44.

¹⁹ *Sidabras and Džiautas v. Lithuania*, Applications nos. 55480/00 and 59330/00, 27 October 2004; *Bigaeva v. Greece*, Application no. 26713/05, 28 August 2009.

²⁰ *Hoffmann v. Austria*, Application no. 12875/87, 23 June 1993, at para 36.

²¹ *Thlimmenos v. Greece*, Application no. 34369/97, 6 April 2000.

discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.”

This means that the UK Government must ensure there is no diminution of rights, safeguards and equality of opportunity, as set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998, resulting from the UK’s withdrawal from the EU.

The parties to the Belfast (Good Friday) Agreement affirmed their commitment to “the mutual respect, the civil rights and the religious liberties of everyone in the community”, set out in a non-exhaustive list of rights, safeguards and equality of opportunity. The rights which are “affirmed in particular” include the “right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity”. The commitment to ensure ‘no diminution’ is measured by the relevant EU underpinning obligations on 31 December 2020.

In addition to the non-diminution obligations, Article 2 of the Ireland/Northern Ireland Protocol also requires that after 1 January 2021, NI equality law must “keep pace” or dynamically align with any substantive enhancements made to the six Equality Directives listed in Annex 1 of the Protocol.²² These include the Equality Framework Directive, which establishes a general framework for equal treatment in employment and occupation.²³ The UK Government confirmed this commitment to dynamically align the Annex 1 Equality Directives to “ensure NI will not fall behind minimum European standards in anti-discrimination law”.²⁴

EU Equality Framework Directive

The Equality Framework Directive aims to combat direct or indirect discrimination based on religion or belief, disability, age or sexual orientation, in the workplace.²⁵ It contains specific provisions in relation to NI, which reflect the current exemptions for school teachers in the Fair Employment and Treatment (Northern Ireland) Order 1998. In particular, Article 15(2) of the Directive states that:

²² Directive 2000/43/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000; Directive 2000/78/EC, ‘EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000; Directive 2004/113/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services’, 13 December 2004; Directive 2006/54/EC, ‘EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006; Directive 2010/41/EU, ‘EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010.; Directive 79/7/EEC, ‘EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978.

²³ EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000.

²⁴ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 12.

²⁵ Article 1, Council Directive 2000/78/EC of 27 December 2000.

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 shall not apply to the recruitment of teachers in schools in Northern Ireland, provided that the provisions are expressly authorised by national legislation.

As noted above, the “keep pace” obligation of Article 2 of the Ireland/Northern Ireland Protocol requires that NI law reflect any improvements to rights in the Annex 1 Equality Directives. Article 15 of the Framework Equality Directive does not require that this exemption is maintained, and NI law can be changed to ensure that school teachers are brought within the scope of the Framework Directive. Article 8(1) of the Directive further permits Member States to introduce provisions that are more favourable to the protection of equal treatment than laid down in the Directive. The Commission also notes general provision in Article 4(1) of the Directive which states that:

A difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, 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.

Article 4(1) of the Directive may therefore continue to allow employers to consider if there is a genuine occupational requirement to appoint a candidate of a particular religion, so long as the objective is a legitimate one and the requirement proportionate. This is also consistent with Article 70(2) of the Fair Employment and Treatment (Northern Ireland) Order 1998.

The Commission welcomes the proposed Bill as a positive step forward in the development NI equality law. It is the Commission’s view that the removal of the current blanket exemption of teachers from anti-discrimination legislation will provide a more robust framework for the protection of rights under the ECHR and Article 2 of the Ireland/Northern Ireland Protocol of those working in the teaching profession.

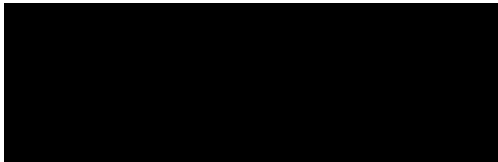
Human Rights Impact Assessment

The Commission understands that the Bill has not been accompanied by a Human Rights Impact Assessment. In line with the Assembly’s obligations under the Human Rights Act 1998, Article 2 of the Ireland/Northern Ireland Protocol and Northern Ireland Act 1998, a Human Rights Impact Assessment is recommended in the development of new law and policy. The purpose of such an assessment is to assist policy makers to identify the potential rights engaged and those which may negatively interfere with or restrict rights. While the

Commission finds the proposed Bill to be a positive step in the enhancement of human rights protections, an impact assessment can provide support in ensuring that a balance of rights is achieved, with consideration for the rights of all those who could be impacted by the change in law. The Commission can provide further advice on the production of a human rights impact assessment.

I hope these comments are helpful. Should any further human rights issues arise within the context of the Committee's consideration of the Bill, the Commission would be happy to advise. We remain at the disposal of the Committee for further advice or engagement as necessary.

Yours sincerely,



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Chief Commissioner