

FAIR EMPLOYMENT (SCHOOL TEACHERS) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by Chris Lyttle MLA (“the Member”), in order to assist the reader of the Bill and to help inform the debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill, and where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Fair Employment (NI) Act (FEA) was introduced in 1976. This outlawed discrimination on the grounds of religious belief or political opinion in respect of employment. Section 37 of this Act contained a number of employments to be excepted from the main provisions of the legislation including employment as a clergyman or minister of religion, employment for the purposes of a private household and employment as a teacher in a school. It also contained provision for exceptions, other than those mentioned above, for employment where "the essential nature of the job requires it be done by a person holding, or not holding, a particular religious belief". This Act was amended and supplemented by the Fair Employment (NI) Act 1989 which introduced provisions relating to indirect discrimination and employment monitoring and review requirements on employers but the teachers’ exception remained in place.
4. The Fair Employment and Treatment (NI) Order (FETO) 1998 consolidated the earlier Acts, continuing their prohibition of discrimination in the field of employment and also extending it by applying it to the provision of goods, facilities and services and to the selling and leasing of premises. It was brought into being following the Belfast/Good Friday Agreement and the White Paper, Partnership for Equality. Part 8: Article 71: Paragraph (1) states “this Order does not apply to or in relation to employment as a teacher in a school”. In 2003, this provision was narrowed so it only applies to recruitment and promotion as a teacher to meet the requirements of Article 15(2) of the EU Directive 2000/78/EC on equal treatment in employment and occupation. Other aspects of teachers’ employment, for example, terms and conditions and access to training, are therefore covered by the fair employment legislation.
5. The Northern Ireland Assembly passed a motion on May 17 2021 “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”.

6. The policy objective of the Bill 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.

CONSULTATION

7. The Member conducted a consultation exercise over an eight-week period in Spring 2021. The consultation took the form of an online survey and online meetings. The Member also shared his legislative proposal with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland. The Member also wrote to the Minister of Education and the First and deputy First Ministers to ensure similar legislation was not being brought forward by their Departments.
8. Results from the consultation survey indicated significant public support for the proposal notwithstanding concern expressed by some organisations, including; CCMS and the Transferors Representative Council.

OPTIONS CONSIDERED

9. Option 1: Do nothing
10. Option 2: Proceed with a Private Member’s Bill to remove the exception of teachers from the Fair Employment and Treatment (NI) Order 1998.
11. Following consultation and deliberation, the Member considers that primary legislation is the best mechanism by which to achieve the policy objectives. This will ensure a comprehensive approach is taken to the necessary reforms the Member is seeking to achieve.

OVERVIEW

12. The Bill amends the Fair Employment and Treatment (Northern Ireland) Order 1998 (“the 1998 Order”) to revoke Article 71 (exception in relation to school teachers). Article 71 disapplies Part VII of the Order to employment of teachers in schools, and disapplies the other provisions of the Order to recruitment of teachers. The primary effects of the disapplication are that employers of teachers do not have obligations to monitor the community composition of persons applying for jobs, persons appointed to jobs and persons promoted to jobs and that teachers are not able to bring complaints of religious

discrimination relating to their recruitment. Revocation of Article 71 will put school teachers in the same position as other employees. The Bill has 4 clauses and 1 schedule. A commentary on each of the clauses follows below.

COMMENTARY ON CLAUSES

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.

FINANCIAL EFFECTS OF THE BILL

13. It is not anticipated that the Bill will give rise to significant additional expenditure, however, there may be costs for the establishment and maintenance of employment monitoring procedures. The Member believes that there are benefits to be gained by removing the exemption for teachers from Fair Employment and Treatment (NI) Order (FETO) 1998.

HUMAN RIGHTS ISSUES

14. The Member is satisfied that the bill is human rights compliant.

EQUALITY IMPACT ASSESSMENT

15. It was not deemed necessary for an Equality Impact Assessment to be undertaken, however, for policy implementation, the Executive Office should consider Equality Impact Assessments as appropriate.

LEGISLATIVE COMPETENCE

16. At introduction, the sponsor of the Bill, Mr Chris Lyttle MLA had made the following statement under Standing Order 30 of the Northern Ireland Assembly:

“In my view the Fair Employment (School Teachers) Bill would be within the legislative competence of the Northern Ireland Assembly.”

SECRETARY OF STATE CONSENT

17. It is considered that the Secretary of State's consent under section 8 of the Northern Ireland Act 1998 is not required for this Bill.



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