

COMMITTEE FOR THE EXECUTIVE OFFICE: CONSULTATION ON FAIR EMPLOYMENT (SCHOOL TEACHERS) BILL



Response from Northern Ireland Humanists, March
2022

ABOUT NORTHERN IRELAND HUMANISTS

Northern Ireland Humanists is part of Humanists UK. We want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by 100,000 members and supporters and over 100 members of the All-Party Parliamentary Humanist Group. We also work with many humanist MLAs in the Northern Ireland Assembly, and hope to soon launch an All-Party Humanist Group here, as well. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

We have a long history of work in education, children's rights, and equality, with expertise in the 'religion or belief' strand. We have been involved in policy development around the school and the curriculum for over 60 years. We also provide materials and advice to parents, governors, students, teachers and academics, for example through our Understanding Humanism website¹ and our school speakers programme. We have made detailed responses to all recent reviews of the school curriculum, and submit memoranda of evidence to MLAs, MPs, civil servants, and select committees on a range of education issues.

We are an active member of many organisations working in education in the UK, including the Religious Education Council for England and Wales (REC), of which we are a founding member; the Sex Education Forum; the PSHE Association; Rights of the Child UK (ROCK); and the Children's Rights Alliance for England (CRAE). In Northern Ireland, we are currently in the process of establishing a coalition of groups that support inclusive education.

RESPONSE TO QUESTIONS

6. Do you think the exemption for school teachers should be removed from the 1998 Order?

Yes

Please expand on your answer

Given our focus, we are acutely aware that non-religious teachers are particularly disadvantaged by the exemption to the Fair Employment and Treatment (NI) Order (FETO).

¹ <https://understandinghumanism.org.uk/>



The exemption means that both Catholic and Protestant teachers may lose out on jobs in schools on the other side of the community divide. But, because all the schools in Northern Ireland have some kind of Christian character, non-religious teachers and those of non-Christian religions are likely to face discrimination whatever type of school they apply to. And this problem extends beyond Catholic and controlled schools: a recent report from the UNESCO Centre at Ulster University highlighted that integrated schools 'actively seek to achieve a balance in appointments' and therefore 'may call on the exception to justify the selection of one candidate over another in order to keep within a predefined community staffing ratio'.² This ratio is generally 40% Catholic, 40% Protestant, 20% other. That means that even at integrated schools, the vast majority of jobs are likely to be for Christian teachers. More generally, those 20% of 'other' jobs make up just over 1% of all teaching jobs across all schools.

In contrast, the most recent Northern Ireland Life and Times Survey found that 27% of adults now consider themselves to have 'no religion'.³ This means the proportion of non-religious people now exceeds every other religion or belief group in Northern Ireland except Catholics (28%), with Presbyterians accounting for 18% of the population and those who identify as Church of Ireland/Anglican/Episcopal 11%. As a result, it is reasonable to suppose that non-religious teachers make up a larger proportion of those impacted by the FETO exemption than those from other backgrounds, including all of the minority religious groups put together.

However, the FETO exemption is not just discriminatory, it also exacerbates segregation. The distribution of teachers in Northern Ireland's schools follows very similar patterns of community segregation to that of pupils, meaning that children from Catholic backgrounds are generally taught by Catholic teachers, and children from Protestant backgrounds by Protestant teachers. Indeed, the same Ulster University report cited above found that only 2% of teachers working in Catholic maintained primaries had themselves been educated in controlled (mainly Protestant) primary schools, and 7% of those employed at controlled schools had attended Catholic primary schools. In the post-primary sector, 8% of those teaching at Catholic maintained schools had attended controlled primary schools and 17% of those teaching in controlled schools had been educated in primary schools with a Catholic ethos. In grammar schools those figures were 17% for teachers in Catholic schools and 23% for teachers in controlled schools. In other words, those who start out attending schools in a particular community tend to teach in that community and, because it explicitly sanctions the appointment of teachers by faith, the FETO exemption cements this separation in place.

² Matthew Milliken, *Employment Mobility of Teachers and the FETO Exception* (April 2019), p.1 <https://www.ulster.ac.uk/___data/assets/pdf_file/0003/409458/TEUU-Report-01-Feto.pdf> [accessed 3 March 2022].

³ Northern Ireland Life and Times, 'Do you regard yourself as belonging to any particular religion? If yes, which?' (2020) <<https://www.ark.ac.uk/nilt/2020/Background/RELIGION.html>> [accessed 3 March 2022].



Northern Ireland was, and potentially still is, protected by the European Employment Directive.⁴ We are unclear about whether the Directive itself remains in force after the UK's withdrawal from the European Union, as opposed to just its implementation in domestic law through FETO (and, in Britain, the Equality Act 2010). The Directive is currently listed as 'Legislation originating from the EU' on the legislation.gov.uk website, suggesting that it is an example of retained legislation.⁵

But whether or not the Directive applies, the rationale it gives for the exemption is quite telling. It states that the exemption's purpose is 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'. But the research and arguments set out above clearly demonstrate that the exemption is doing no such thing. Instead it is maintaining an antiquated status quo that is completely out of step with the modern, pluralistic society Northern Ireland is trying to become. If a balanced teacher workforce is to be attained, it seems clear that the exemption is not the way to facilitate it. Instead, other issues, such as the structure of the school system, the content of the curriculum, and the segregated nature of teacher training will all have to be addressed.

The Executive has commissioned an independent education review that is seeking to define what 'a single system of education' means, as well as the costs and benefits of such an approach.⁶ This is to be celebrated. It is these broader measures that will address historical divisions and foster reconciliation between communities, not an outdated requirement to take faith into account when allocating teaching positions. Positions should only ever be allocated on the basis of an individual's ability to carry out a job.

The teacher exemption is also deeply unpopular amongst teachers. In April 2021, the NASUWT teachers' union voted 'overwhelmingly' at their annual conference to lobby the Northern Ireland Assembly to remove the exemption.⁷ The NUT and ATL, two other unions, have also previously adopted UK-wide policy against faith-based discrimination in teacher employment. Since then the two unions have merged into the National Education Union (NEU). The NEU is also a member of the Accord Coalition, which campaigns on such matters in England and Wales.

⁴ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (2000), Chapter III, Article 15, 2. <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>> [accessed 3 March 2022].

⁵ Council Directive 2000/78/EC, Directive originating from the EU, 2000 No. 78 <<https://www.legislation.gov.uk/eudr/2000/78/contents/adopted>> [accessed 3 March 2022].

⁶ Northern Ireland Humanists, 'Northern Ireland Executive review to consider "single education system"' (17 December 2020) <<https://humanism.org.uk/2020/12/17/northern-ireland-executive-review-to-consider-single-education-system/>> [accessed 3 March 2022].

⁷ Northern Ireland Humanists, 'Teachers' union votes "overwhelmingly" to end Northern Ireland teacher discrimination' (7 April 2021) <<https://humanism.org.uk/2021/04/07/teachers-union-votes-overwhelmingly-to-end-northern-ireland-teacher-discrimination/>> [accessed 3 March 2022].



MLAs from across the political divide are also united in their opposition to the exemption, a fact best illustrated by a May 2021 unanimous vote in favour of a motion to ‘urgently’ bring forth legislation to repeal it.⁸

With all this in mind, we strongly support the Fair Employment (School Teachers) Bill.

7. The majority of religious instruction happens in primary schools. Do you think primary school teachers should still be exempt, but the exemption for post-primary schools be removed?

No

Please tell us why

We firmly believe that the exemption should be removed at both primary and post-primary level. Whatever one’s view about whether religious instruction is a suitable subject for publicly funded schools – we do not believe that it is, but are aware that others disagree – it is clearly not a genuine occupational requirement for *all* primary teachers to be able to deliver such instruction. Most of the teaching children receive at any school will be in secular subjects like English, Maths, and Science which can be taught by any appropriately qualified teacher. Where religious instruction is provided, Part VIII, 70. (3) of the FETO already provides that rules about religious discrimination ‘do not apply to or in relation to 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.’ So, while we would suggest a school with a proportionate number of staff from different religion and belief backgrounds should be more than able to provide both secular and religious teaching, if a school did require a teacher specifically to provide religious instruction, this could be done using the rules that apply to any other workplace and without a need for a special exemption to equality law.

8. If the exemption were to be removed from either level, are there transitional or permanent arrangements you think should be put in place?

Other

If so, what would you suggest?

As noted in our response to question 6, the purpose of the original exemption is 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’. For this reason, it is imperative that schools – particularly, although not exclusively, integrated schools – are able to take action to help ensure that they have a balanced proportion of staff from different religion or belief groups.

⁸ Northern Ireland Humanists, ‘Northern Ireland must scrap ‘unacceptable’ faith-based teacher discrimination law, say MLA’s’ (19 May 2021) <<https://humanism.org.uk/2021/05/19/northern-ireland-must-scrap-unacceptable-faith-based-teacher-discrimination-law-say-mlas/>> [accessed 10 June 2021].



Once the exemption is removed, the provisions of the Fair Employment and Treatment Order will apply to teachers as they do to other employees. However, Article 4 of the FETO explicitly defines 'affirmative action' solely in terms of 'action designed to secure fair participation in employment by members of the Protestant, or members of the Roman Catholic, community'.⁹ Similarly, the monitoring returns required by Article 52, the periodic reviews of employee composition required by Article 55, and the measures to encourage applications from under-represented communities set out in Article 74 are all restricted to monitoring and balancing the numbers of Protestants and Catholics, but do nothing to ensure that the non-religious or those of minority faiths are adequately represented amongst the workforce.

It is vitally important that schools are able to employ a balanced proportion of Protestant and Catholic staff. But it is clearly necessary that they are also able to recruit appropriate numbers of teachers from other backgrounds. For this reason, we suggest that the provisions of the Order noted above are amended to ensure this happens. Ideally, this change should apply to all employees and employers covered by the Order. However, in the event that this is considered to be outside of the scope of the Bill, the requisite articles should be amended so that affirmative action and monitoring procedures for school teachers explicitly include those of all religion and belief backgrounds.

9. Do you have any other suggestions in relation to this Bill?

Catholic Certificate in Religious Education

Currently, all teachers with responsibility for delivering religious education in Catholic schools are required to hold a Certificate in Religious Education that meets criteria laid down by the Irish Bishops' Conference. This means that, in addition to secondary RE teachers, all primary school teachers – who often teach the whole curriculum – are expected to hold the Certificate to secure a permanent job in the Catholic sector. When combined with the teacher exemption, this makes finding employment in Catholic schools particularly difficult for non-Catholics. This is, in part, because it has historically been more difficult for individuals enrolled in teacher training courses that predominantly serve those from non-Catholic backgrounds to access the required lessons. For example, up until 2019, Stranmillis University only offered the Certificate through distance learning, with students expected to pay up-front. They were only reimbursed by the Department of Education in the event they successfully completed the course.¹⁰

⁹ Fair Employment and Treatment (Northern Ireland) Order 1998
<<https://www.legislation.gov.uk/nisi/1998/3162/made>>

¹⁰ Matt Milliken, *Transforming Education: The Certificate in Religious Education* (March 2020)
<https://www.ulster.ac.uk/_data/assets/pdf_file/0009/536553/Briefing-Paper-The-Certificate-in-Religious-Education.pdf> [3 March 2022]. p.4.



There is also reason to believe that, because nearly half of Northern Ireland's primary schools are Catholic, and women comprise 84% of the workforce in primary schools, their employment prospects are disproportionately affected by the requirement for the Certificate.¹¹ And this is to say nothing of teachers trained outside of Northern Ireland, who are very unlikely to have completed it.

Perhaps the requirement to complete the Certificate might be justifiable were it the case that an ability to teach RE in line with the tenets of the Catholic faith was, to use the term set out in the European Employment Directive, 'a genuine, legitimate, and justified occupational requirement' (GOR) for the role. However, even if one presupposes that it is reasonable to permit single faith schools – something which, particularly given the history of division in Northern Ireland, we would argue it is not – it is clear that not every teacher in a Catholic school needs to teach RE. We favour abolishing any such employment discrimination in state schools. But if such discrimination is to exist at all, then for the preceding reasons, the requirement should be reserved to the smallest possible number of posts where it can be explicitly shown to be essential to the role. Otherwise it cannot be said to be a genuine requirement.

Even in the absence of the FETO exemption, the requirement for the Certificate may act as a de facto way to discriminate against non-Catholics in the appointment of teachers. For this reason, we strongly advise that this Bill makes it clear that a blanket expectation that teachers seeking permanent employment in the Catholic sector will have the Certificate will not be permitted.

Governance

Finally, the tendency for teachers to be employed in schools that educate children from the same background as their own is further compounded by the composition of governing bodies.

In controlled schools, places on Boards of Governors are legally reserved for representatives of three Protestant denominations (the so-called 'Transferors' – the Church of Ireland, the Presbyterian Church, and the Methodist Church). In Catholic maintained schools, the Catholic Church also has a guaranteed proportion of governors. These governors will often sit on interview panels which, in many cases, will be entirely composed of those from one denomination.

A recent report, also by the UNESCO Centre at Ulster University, argues that the 'denominationally specific' composition of Boards further embeds community division in schools. This is not only because 'vested denominational interests' work against the drive for a system of common schooling, but because, 'consciously or unconsciously,' the interview panels these boards generate are likely to favour candidates from the same denomination. This replicates existing demographics and means that the children attending these schools are denied contact with teachers from a diverse range of backgrounds.¹² For this reason, we believe that, as for teachers, the law relating to

¹¹ *Ibid.* p.7

¹² Matt Milliken, *Transforming Education: The Governance of Schools* (September 2020) <<https://humanism.org.uk/wp-content/uploads/TEUU-Report-05-Governance-of-Schools-1.pdf>> [accessed 3 March 2022].



governors must change, making it a requirement that governors are only ever appointed according to their ability rather than their religious affiliation.

For more details, information, and evidence, contact Humanists UK:

Boyd Sleator
Northern Ireland Coordinator
07918 975795
boyd@humanists.uk
humanists.uk

