



racial
equality

POLICY POSITION: Summary

Race Law Reform

Priorities and Recommendations



Equality Commission

FOR NORTHERN IRELAND

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1 Introduction

- 1.1 The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998, with responsibility for implementing equality legislation across a range of grounds. It has specific powers regarding Article 2(1) of the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement; and has also been designated as an 'independent mechanism' under the UN Convention on the Rights of Persons with Disabilities.
- 1.2 The Commission is calling for urgent reform of the race equality legislation in Northern Ireland.
- 1.3 These changes are aimed at strengthening, simplifying and harmonising the race equality legislation so that individuals in Northern Ireland have robust and effective protection against unlawful racial discrimination and harassment.
- 1.4 The changes relate to a wide range of areas covered by the race equality legislation and therefore strengthen the rights of individuals as employees, customers, pupils in schools, tenants, as members of private clubs and as students in further and higher education.

Single Equality Legislation

- 1.5 We continue to call for action to deliver harmonised single equality legislation for Northern Ireland¹.
- 1.6 Single equality legislation is the most effective means of strengthening and maintaining protections against discrimination in Northern Ireland.
- 1.7 Such legislation would also improve consistency, understanding and efficiency - saving time and costs for individuals from across all equality categories, as well as employers, service providers, advisory services, and those interacting with equality legislation more generally.

¹ ECNI (2022) [Single Equality Act](#)

- 1.8 It is fundamentally unfair that different equality groups have different protections without justifiable reason. Such differing protections contribute to a ‘hierarchy of rights’.
- 1.9 We call on decision-makers to take steps to legislate for a single equality act in Northern Ireland.
- 1.10 This legislation should reflect international human rights standards and best practice, and build on equality law in GB. Any legislation should also consider and comply with the Protocol Article 2 commitment and keep pace with all future EU equality laws that enhance protections.
- 1.11 In the absence of progress on harmonised single equality legislation for Northern Ireland, we consider that urgent changes are required to strengthen the race equality legislation in Northern Ireland.

Priorities for Action

- 1.12 The Commission has highlighted five priority areas for change to the race equality laws:
- Harmonise and expand the scope of racial grounds
 - Increase protection for individuals against racial discrimination and harassment by public bodies when carrying out their public functions
 - Introduce protections against combined discrimination
 - Ensure greater protection for employees against third party racial harassment
 - Expand the scope of positive action

Wider Context

- 1.13 Individuals in Northern Ireland currently have protection against unlawful racial discrimination under the Race Relations (NI) Order 1997, as amended (RRO 1997). This legislation prohibits discrimination on racial grounds in employment and vocational training, and when accessing goods, facilities and services. It also gives protection against unlawful racial discrimination when accessing private clubs (such as golf clubs), buying or

renting premises, when in education (including education in schools), and when subject to the functions of public bodies, such as the police.

- 1.14 Whilst the race equality legislation currently provides protections against racial discrimination and harassment, these protections are not comprehensive, with gaps in protection existing and increasing over time.
- 1.15 Pursuant to our duty to keep this legislation under review and to make recommendations for change, over the years we have made a number of recommendations relating to racial equality law.
- 1.16 This has included proactively engaging with the Office of the First and Deputy First Minister (OFMDFM) in 2004 as regards the development of robust and comprehensive single equality legislation. However, despite a commitment in the St Andrews Agreement² in 2006 to ‘work rapidly’ towards the development of single equality legislation, this legislation has not been progressed by the Northern Ireland Executive.
- 1.17 In the absence of progress on single equality legislation, in February 2009, we submitted our Proposals for legislative reform to Junior Ministers in OFMDFM outlining a number of areas in Northern Ireland equality law which required urgent amendment; including the harmonisation and strengthening of the race equality legislation³.
- 1.18 In particular, in our Proposals for Legislative Reform, we made it clear that a priority area for reform of the race equality legislation was increased protection from discrimination and harassment on the grounds of colour and nationality across the scope of the race equality legislation.
- 1.19 In 2014, we published a series of detailed recommendations in relation to racial equality law⁴, following extensive engagement with officials and stakeholders. These recommendations included proposals in relation to increasing protection in relation

² NIO (2006) [The St Andrews Agreement](#), Annex B.

³ ECNI (2009) [Proposals for Legislative Reform](#)

⁴ ECNI (2014) [Strengthening protection against racial discrimination: Recommendations for law reform](#)

to colour and nationality, improved protection against racial harassment, and removing or modifying certain exceptions.

- 1.20 Northern Ireland race equality law, since its introduction in 1997, has in a number of key respects, consistently failed to keep pace with legislation in Great Britain and Ireland, which has strengthened and improved protection against racial discrimination for different racial groups. A significant number of our recommended changes have already been implemented in neighbouring jurisdictions.
- 1.21 In particular, the introduction of the Equality Act 2010 in Great Britain in October 2010 has addressed a number of our recommendations, and, as a result, there is now significantly less protection for individuals against discrimination, harassment and victimisation across all racial grounds and in a wider range of areas in Northern Ireland than in other parts of the United Kingdom.
- 1.22 Calls for the reform of race equality law have received widespread support, including from international mechanisms such as those associated with the UN Convention on the Elimination of All Forms of Racial Discrimination; the European Commission against Racism and Intolerance; and the Framework Convention on the Protection of National Minorities.
- 1.23 To assist with updating our recommendations, we commissioned an expert paper by Professor Brice Dickson⁵, which, through engagement with stakeholders, was grounded in lived experience⁶.
- 1.24 Whilst a number of our recommendations call for specific changes to the race equality legislation, some of our recommendations apply equally to other equality grounds, for example: protection against combined discrimination; increased protection against discrimination by public bodies when carrying out their public functions; an increase in tribunal powers; and the strengthening of our enforcement powers.

⁵ Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#).

⁶ Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p.7.

1.25 In considering our recommendations on race law reform, there is also the opportunity to advance and harmonise protection against discrimination across a number of equality grounds. We therefore recommend action to address similar legislative gaps that exist under other areas of equality law in order to ensure a consistent and best practice approach is adopted across the equality legislative framework as a whole.

Wider benefits of reform

1.26 In relation to each recommendation, we have also set out a specific supporting rationale in our full position paper. More broadly, there are numerous wider benefits of reforming the race law legislation, including to:

- Address key racial inequalities in Northern Ireland
- Further the overarching aims and objectives of the Executive's Racial Equality Strategy 2015-2025
- Harmonise, simplify and clarify the race equality legislation
- Keep pace with international standards and best practice, taking account of lessons from other jurisdictions
- Ensure race equality legislation is in line with the UK Government's international obligations

2 Overarching

Ensure equality law reform reflects best international standards, advances equality of opportunity, prevents discrimination, and clarifies the law

- 2.1 Equality law in Northern Ireland should reflect best international standards, taking account of best practice and lessons from Great Britain, Ireland and wider jurisdictions.
- 2.2 Equality law reform should further advance equality of opportunity and prevent discrimination. Protections should be applied widely, and law reform should occur to close inconsistencies or loop-holes which mean some categories of people unjustifiably do not benefit from protection.
- 2.3 Furthermore, law reform should serve to make equality law as clear and easily understandable as possible.

Ensure race law reform is in compliance with Article 2 of the Windsor Framework

- 2.4 The Commission recommends that the Northern Ireland Executive, Assembly and Departments ensure that any legislative developments on race law reform in Northern Ireland are in compliance with Article 2 obligations under the Windsor Framework. Any future new draft legislation should also make clear in its Explanatory Memorandum what consideration has been given to Article 2 of the Windsor Framework
- 2.5 The Northern Ireland Executive, Assembly and departments should ensure that any legislative developments on race do not reduce the equality and human rights protected within the scope of Article 2, including those rights within the Race Equality Directive, contrary to the UK Government commitment under Article 2.

- 2.6 In addition, the Northern Ireland Executive, Assembly and departments should ensure Northern Ireland race law keeps pace with any changes by the EU to the Race Equality Directive in Annex 1 Windsor Framework, including ensuring conformity with current and future Court of Justice of the European Union (CJEU) decisions relating to the Directive, that enhance equality protections⁷.
- 2.7 Regardless of whether or not required to under the ‘keeping pace’ requirement associated with Windsor Framework Article 2, the Commission would encourage steps are taken *voluntarily* to ensure that NI law aligns with changes to EU laws or Directives, where they have the potential to strengthen equality and human rights protections, standards or frameworks.

3 Forms of discrimination

Harmonise and expand the scope of racial grounds

Increase protection on grounds of colour and nationality

- 3.1 We recommend increased protection from discrimination and harassment on the grounds of colour and nationality across the scope of the race equality legislation, including consideration of the removal or modification of exceptions that apply only on grounds of colour and/ or nationality, unless there are justifiable reasons for doing so, or statutory exception to protection.
- 3.1 Protections should be harmonised upwards to the highest standards. Any regressions in relation to race or ethnic or national origins may be a potential breach under Article 2 of the Windsor Framework⁸.

⁷ The Northern Ireland Office has, in its [2020 Explainer Document](#), stated that when a UK Court is considering the interpretation of any of the directives listed in Annex 1, this will be done in conformity with any relevant case law of the CJEU

⁸ In February 2023, the UK and European Commission published a joint Political Declaration announcing a political agreement on the Protocol. The parties agreed that the amended Protocol should be renamed the Windsor Framework. See [Political Declaration](#) by the European Commission and the Government of the United Kingdom of 27 February 2023

Define 'racial grounds' non-exhaustively, and specifically include caste and descent

- 3.2 The definitions of 'race' and 'racial ground' should be expanded to specifically include caste and descent, and be non-exhaustive.
- 3.3 This should be clear in statute and reflect best international practice, in accordance with human rights standards.

Definitions

Define direct racial discrimination in terms of treatment occurring 'because of' racial grounds

- 3.4 Race equality legislation should be amended to define direct racial discrimination in terms of treatment occurring 'because of' racial grounds including race, colour, nationality, ethnic or national origin, descent or caste.

Remove the comparator requirement in the definition of victimisation and maintain scope of protections

- 3.5 We recommend that there is no longer a requirement for those alleging victimisation to compare his or her treatment with that of a person who has not made a complaint of discrimination or supported a complaint under the race equality legislation.
- 3.6 Non-individuals, such as limited companies, should continue to be protected from victimisation, in line with their protections against discrimination.

Widen the definition of 'racial harassment'

- 3.7 We recommend that the definition of racial harassment under the race equality legislation is amended to prohibit unwanted conduct 'related to' racial grounds which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.
- 3.8 We also recommend that this definition of harassment applies to all existing racial grounds; namely, race, ethnic or national origins, colour and nationality, as well as any new racial grounds, such as caste and descent.

Public functions

Increase protection for individuals against racial discrimination and harassment by public bodies when carrying out their public functions

- 3.9 We recommend that public bodies be prohibited from racial discrimination or harassment as regards all public functions, except in some narrowly defined limited areas where they can be objectively justified⁹.
- 3.10 This prohibition should apply to all racial grounds. Currently protection only exists on the grounds of race, ethnic or national origins and not on the grounds of colour or nationality.

⁹ The exceptions in Section 21C of the [Disability Discrimination Act 1995](#) may be useful to consider. These include some limited exceptions relating to judicial acts and the making, confirming or approving of legislation.

Combined discrimination

Introduce protections against combined discrimination

- 3.99 We recommend the introduction of protection against combined discrimination so that there is legal protection for individuals who experience direct or indirect discrimination, victimisation or harassment because of a combination of equality grounds, including racial grounds.
- 3.100 Courts and tribunals should be able to take into account the effect of the combination of racial discrimination with discrimination on other grounds.

Protections in employment and analogous situations

Ensure greater protection for employees against third party racial harassment

- 3.101 We recommend that employers are liable if they fail to take reasonably practicable steps to prevent the racial harassment of an employee by a third party.
- 3.102 We recommend that employers are liable in circumstances that they ought to have been reasonably aware of the risk of third party harassment, as this should encourage employers to take steps to reduce harassment from the start of a person's employment. If this is not introduced, employers should be liable when their employee has been subjected to third party harassment on one previous occasion.
- 3.103 Employers should also be liable if, after such harassment has occurred, the employee is treated differently because they rejected or accepted the harassment.

Increase protection for agency and contract workers

- 3.104 We recommend increased protection against racial discrimination, harassment and victimisation for certain categories of agency workers who currently fall outside the scope of the race equality legislation.
- 3.105 We further recommend that the law be clarified to ensure that contract workers are protected against victimisation.

Clarify protections against victimisation for office-holders

- 3.106 The current law should be amended to clarify protections against victimisation for office-holders, by making explicit provision in the legislation that all office-holders have the right not to be victimised.
- 3.107 Office holders include offices and posts such as directors, non-executive directors, company secretaries, positions on the board of non-departmental public bodies, some judicial positions and positions held by some ministers of religion¹⁰.

Expand protection for law enforcement officers

- 3.108 Racial equality legislation should ensure that all law enforcement officers, not just those in the Police Service of Northern Ireland (PSNI), are treated as employees for the purposes of the legislation.
- 3.109 The law should make it clear that police officers from other forces who are in Northern Ireland to give assistance to the PSNI¹¹, as well as those in other law enforcement services,

¹⁰ EHRG (2011) [Employment Statutory Code of Practice](#), para 11.32.

¹¹ Such officers are normally considered to be equivalent to PSNI officers in terms of their powers and also with regard to their obligation to abide by the PSNI's Code of Ethics.

such as the Belfast Harbour Police,¹² the Belfast International Airport Constabulary¹³ and the National Crime Agency,¹⁴ are all protected by the race equality laws while serving in Northern Ireland.

- 3.110 Police cadets should be covered too, similar to the status of police trainees.

Ensure protection for Councillors against racial discrimination, harassment and victimisation by local councils

- 3.111 Local Councillors should be protected against racial discrimination, harassment and victimisation by their local councils when they are carrying out their Councillor functions.

Enhance protection regarding providers of employment services

- 3.112 Race equality law in Northern Ireland should widen the definition of 'providers of employment services' and extend the type of discrimination by such providers which is made unlawful, to include discrimination in arrangements made for selecting who to provide an employment service; discrimination in the service terms; and discriminating a service user to 'any other detriment'.

Provide legal protection for volunteers

- 3.113 Persons who work as volunteers should be legally protected against racial discrimination, harassment and victimisation by the person or organisation that engages them to the same

¹² In existence since 1847 under the Harbours, Docks, and Piers Clauses Act of that year.

¹³ Article 19 of the [Airports \(NI\) Order 1994](#).

¹⁴ Under the National Crime Agency (Limitation of Extension to Northern Ireland) Order 2013 (for excepted and reserved matters) and the Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (NI) Order 2015 (for other matters).

extent as employees are protected from their employer. Stakeholder engagement should inform how occasional, very short-term volunteers can best be protected.

- 3.114 The inclusion of protections for volunteers will need to be accompanied by appropriate resourcing and guidance to ensure organisations, of all sizes, that use volunteers have support to adhere to any resultant obligations.
- 3.115 A phased approach may be appropriate, where more formal voluntary roles are initially recognised in legislation, with further consideration, informed by significant stakeholder involvement, given to more informal arrangements.

Protections in schools and training

Increase protection against victimisation for pupils in schools

- 3.116 Race equality legislation should ensure that children in schools are protected from being victimised, including after an allegation of discrimination has been raised by the child's parent or sibling.
- 3.117 In line with provisions in Great Britain, we recommend that where a parent or sibling maliciously makes or supports an untrue complaint, the child is still protected from victimisation, as long as the child has acted in good faith. However, we recommend that where a child has acted in bad faith, he or she is not protected, even where a parent or sibling makes or supports an untrue complaint in good faith.

Ensure greater protection in relation to admission to educational establishments

- 3.118 Race equality legislation should clearly prohibit racial discrimination in the arrangements made for deciding who is to

be offered admission to educational establishments, such as admissions criteria.

- 3.119 The current protections in Northern Ireland against discrimination by a school, college or university are in the terms on which they offer to admit that person to the establishment or by refusing to accept an application for admission from that person should be expanded to also offer protection against discrimination in the arrangements for admissions.
- 3.120 This could help ensure admissions criteria are not racially discriminatory.

Clarify protection in provision of education

- 3.121 The law should explicitly state that racial discrimination in the way an educational establishment provides, or does not provide, education for a student is prohibited.

Extend protection from qualification bodies

- 3.122 Racial equality law should extend protection against discrimination by qualification bodies in the arrangements they make for deciding upon whom to confer a relevant qualification and when they subject a person who has been conferred with the qualification 'to any other detriment'.

Positive Action

Expand the scope of positive action to better address disadvantage and disproportionately low participation, and meet differential needs

- 3.123 We recommend that the race equality legislation is amended to expand the scope of voluntary positive action that employers, service providers and public bodies can lawfully take in order to

promote racial equality, and remove unnecessary barriers relating to collecting statistical information before taking such action.

- 3.124 Positive action should be permitted where an employer, service provider or public body reasonably thinks that a racial group suffer a related disadvantage, or have different needs, or have a disproportionately low rate of participation in an activity. Any action should be a proportionate means of achieving the aim of enabling other persons who share the racial characteristic to minimise the disadvantage, meet their needs or participate in the activity¹⁵.

Allow political parties to take positive action measures when selecting candidates

- 3.125 Political parties should be permitted, to take positive action measures when selecting candidates for elections to the UK Parliament, the Northern Ireland Assembly and local Councils, provided that the purpose of the arrangements is to reduce racial inequality in the party's representation in the elected body.
- 3.126 There should be consideration of time-limiting any such measures.
- 3.127 Elections are an excepted matter under the devolution settlement¹⁶. We encourage action to secure progress via Westminster.

¹⁵ Dickson, B. (2021) [Race Equality Law Reform: Strengthening Protection: Report to the Equality Commission for Northern Ireland](#), p. 55.

¹⁶ Cabinet Office/ NIO (2019) [Devolution settlement: Northern Ireland](#) [accessed 18/05/23]

Influencing others and previous relationships

Introduce additional preventions against influencing others to discriminate

- 3.128 Racial equality law should widen the circumstances in which it prohibits a person from influencing another to discriminate against a third person, to ensure that ‘causing or attempting to cause’ discrimination is prohibited, and clarify that indirect influence is expressly prohibited.
- 3.129 Protections should apply where the person giving the instruction is in a relationship with the recipient of the instruction in which discrimination, harassment or victimisation is prohibited. Further, a wider array of fields should be covered when prohibiting influencing discrimination, including relationships that have ended and the aiding of contraventions / unlawful acts.

Extend protection after relationships (members of clubs / associations) have come to an end

- 3.130 Equality law should ensure that former members of associations are able to bring claims for discrimination or harassment because of race.

4 Exceptions

Further limit exemptions to race equality law (public order, national security and public safety)

- 4.1 The current exemption in race equality law based on public order should be removed and exemptions based on national security and public safety should be limited.
- 4.2 These limits should require the use of an exemption to be proportionate, with a proportionality test considering issues such as whether actions are justified in terms of the legitimacy of the aim it is pursuing; the necessity for the exemption in a democratic society at the time; and the unavailability of alternative effective measures that could be taken without having resort to the exemption.

Remove the immigration exception which permits discrimination on the grounds of ethnic or national origins in carrying out immigration functions

- 4.3 The current exception allowing discrimination on the grounds of ethnic or national origins in the carrying out of immigration functions should be removed.
- 4.4 We encourage action to secure progress via Westminster.

Narrow the employment exception on foreign nationals in public service

- 4.5 We recommend that the restriction on persons of a particular birth, nationality, descent or residence being employed in the

service of the Crown or certain public bodies should be modified or removed.

Clarify, and extend the persons covered by, proportionate and legitimate exceptions from occupational requirements

- 4.6 Action is required to address potential inconsistencies in this area of race law, and Article 8, which we consider is now redundant, should be removed.
- 4.7 Any occupational requirement exception should be extended to persons analogous to employees, such as contract workers, partners, office-holders and volunteers.
- 4.8 It should be explicit that the exception must be applied proportionately and be a means of achieving a legitimate aim.

Clarify law regarding competitive activities.

- 4.9 Current legislation relating to exceptions to race equality law in the context of “any sport or game” should be extended to include “activity of a competitive nature”. This would include activities like e-sports, music and talent competitions.

5 Enforcement and Remedies

Commission Powers

- 5.1 Any consideration regarding amendments to Commission powers should involve direct engagement with the Commission, and take account of lessons / evidence-base from our experience of implementation.
- 5.2 Aligned to our general approach, any change should deliver upward harmonisation to reflect best international standards, taking account of powers currently available across the full

range of equality legislation in Northern Ireland, as well as lessons from Great Britain, Ireland and wider jurisdictions.

Increase powers to issue Race Codes of Practice in a wider range of areas

- 5.3 In particular, we recommend that our powers to issue Race Codes of Practice are extended to cover all areas, including goods, facilities and services, the exercise of public functions and education (at all levels).

Strengthen formal investigation powers

- 5.4 We recommend that our powers to conduct investigations under the race legislation are strengthened. In particular, we recommend, in line with provisions under the fair employment legislation, that our power to conduct a formal ‘named person’ investigation under the race legislation, does not have to require a “belief” that an unlawful act may have occurred. These powers should apply across employment; and goods, facilities and services issues.
- 5.5 However, unlike FETO, if, in the course of an investigation which was not initiated by a belief that an unlawful act may have occurred, the Commission does form such a belief, the Commission should be empowered to give notice to the appropriate person(s) of the holding of an investigation on this issue, and to make findings of unlawful discrimination.

Ensure provisions in relation to the disclosure of information are appropriate and compliant with data protection

- 5.6 Racial equality legislation should allow appropriate and legally compliant means of disclosure of information where necessary.

- 5.7 We will continue to liaise with TEO on the most efficient means of doing so. Provisions should reflect best international standards, taking account of what is currently available across the full range of equality legislation in Northern Ireland, as well as lessons from Great Britain, Ireland and wider jurisdictions.

Strengthen and harmonise the Commission's grant-making powers

- 5.8 The Commission's grant making powers in relation to race should be retained.
- 5.9 Race equality legislation should not require that the provision of assistance requires the prior approval of TEO. It is sufficient to follow the normal financial control protocols applying between non-departmental public bodies and their sponsor department.

Maintain powers to undertake research and educational activities

- 5.10 We strongly recommend that the Commission's powers to undertake or to assist the undertaking by other persons of any research or educational activities should be maintained.
- 5.11 These are important powers underpinning our ability to fulfil our duties to tackle discrimination, to promote equality of opportunity and good relations between persons of different racial groups, and to review the legislation.

Maintain Commission powers to tackle discrimination

- 5.12 Commission powers to tackle discrimination should be maintained.
- 5.13 In particular our powers to address persistent discrimination, to take action on breaches of articles 29-31, to take preliminary

action in employment cases, and to seek undertakings should be retained.

- 5.14 Aligned to our overarching view, any change to the Commission's powers in relation to tackling racial discrimination should deliver upward harmonisation to reflect best international standards, taking account of powers currently available across the full range of equality legislation in Northern Ireland, as well as lessons from Great Britain, Ireland and wider jurisdictions.

Empower the Commission and other representative bodies to bring a claim on behalf of named individuals and in its own name

- 5.15 The Commission recommends that it and other representative bodies, such as trade unions and other suitably qualified interest groups, should be empowered to bring a claim on behalf of named individuals.
- 5.16 The Commission should also have a general standing to bring cases of strategic importance without, in appropriate circumstances, having to name complainants.

Amend NI race equality law, as appropriate, aligned to EU Directive on standards for equality bodies, if introduced

- 5.17 Government must ensure that, to the extent that the EU directive (COM (2022) 689) on standards for equality bodies, if introduced, amends or replaces the Race Equality Directive, race equality law in NI is amended, further to the 'keeping pace' obligations associated with Windsor Framework Article 2
- 5.18 The Executive Office should track and monitor the passage of the draft EU Directives on minimum standards for equality

bodies, and particularly in the context of race law reform, Directive COM (2022) 689, so as to ensure that, if introduced, that equality law in NI is amended to take account of those changes that amend or replace the Race Equality Directive and other Windsor Framework Annex 1 Directives.

- 5.19 Beyond what is required to under the ‘keeping pace’ requirement, government should *voluntarily* ensure that NI race equality law deliver changes that strengthen the Commission further to this EU directive on standards for equality bodies, if introduced.

Procedural and remedies

Simplify the enforcement mechanism for education complaints against schools

- 5.20 We recommend that the requirement to give notice to the Department of Education prior to lodgement of complaints is removed.
- 5.21 In addition, the requirement either to wait up to two months or to receive confirmation from the Department of Education that it does not require further time to consider the matter, should also be abolished.

Ensure time limits for assistance by Commission and bringing proceedings are fit for purpose

- 5.22 The requirement that a written complaint made to the Commission be considered and decided on within two months should be removed, in relation to cases being brought to an Industrial Tribunal.

- 5.23 In relation to County Court cases, including those relating to education and goods, facilities and services, we recommend that the time limit for the issue of all proceedings is one year.
- 5.24 Alternatively, if there is not an overall increase in time limits for bringing proceedings, the time limit up to three months should be retained in relation to non-Tribunal cases, including education and goods, facilities and services cases, as this extends the time limit to issue proceedings in the County Court.

Clarify rights of individuals to take cases relating to instructions to discriminate

- 5.25 Individuals' ability to take cases if they have suffered detriment from someone instructing or pressurising another to racially discriminate should be clear in statute.
- 5.26 This approach has already been codified in the NI age regulations¹⁷, and racial equality legislation should also be harmonised upwards to ensure clarity in protections and remedies.

Ensure the appropriate parties can be held liable for unlawful acts

- 5.27 We recommend that both employers and employees, and principles and agents, face appropriate liability for discriminatory acts.
- 5.28 Likewise, third-parties who have knowingly aided unlawful acts should continue to be able to held liable.

Increase powers for tribunals

- 5.29 We recommend that the race equality legislation is strengthened by providing increased powers for tribunals to

¹⁷ Regulation 5 of the [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006](#)

make recommendations that benefit the whole workforce and not simply the person bringing the discrimination complaint ('the complainant').

- 5.30 There should be effective, proportionate and dissuasive sanctions in the case of non-compliance with a tribunal recommendation. FETO may offer a potential model.

Maintain the questionnaire procedure, and allow for tailoring of questions

- 5.31 The rights of individuals to obtain information through the questionnaire procedure should be retained. The procedure should allow for tailoring of questions to align with the specific areas of concern in a case.
- 5.32 We would encourage the use of templates as models of questions, and a promotion of their use pre-proceedings, but there should not be a prescribed questionnaire.
- 5.33 This recommendation would mean individuals in Northern Ireland would have access to information from potential respondents exceeding those available to individuals in Great Britain where the questionnaire procedure has been removed.

6 Ethnic equality monitoring

Ensure provision for effective ethnic equality monitoring to improve the delivery of public services

- 6.1 We recommend that any revised racial equality legislation includes provision for effective ethnic equality monitoring to ensure the effective design and delivery of law, policy and public services.
- 6.2 The Commission continues to call for all the key measures of government to not only be measured in aggregate, but also

disaggregated across all equality grounds, including racial equality grounds.

- 6.3 The Commission recommends that the government and Department's ensure appropriate equality monitoring and related evaluation are in place across all areas of public policy and service provision.
- 6.4 The development of any specific proposals for equality monitoring (on race or any other grounds) will need to consider the areas to be covered; how any proposals interact with and support requirements on Public Authorities under Section 75 of the Northern Ireland Act; and consider issues such proportionality and effectiveness.
- 6.5 Such considerations should be informed by detailed consultation with key stakeholders, including ethnic minority communities, and learning from the public sector. Any consideration should involve direct engagement with the Commission, giving due regard to lessons / evidence from our experience of implementation to date.
- 6.6 We further recommend that the Executive should adopt a systemic approach to produce disaggregated equality data which not only meets the specific needs of Northern Ireland but where possible is comparable with common international frameworks.

7 Conclusion

- 7.1 In conclusion, it is clear that there is a robust case for addressing significant gaps and weaknesses within the race equality legislation in Northern Ireland. We believe that our recommended changes to the race equality legislation in Northern Ireland will strengthen the rights of individuals against racial discrimination and harassment and ensure a more comprehensive, harmonised and consistent legislative framework.
- 7.2 We welcomed the commitment in the 2015-2025 Racial Equality Strategy to reform race equality law, and look forward to the enactment of reformed legislation, taking full account of our recommendations, being achieved within its lifespan.

- 7.3 As many of the gaps and inconsistencies that exist in the race equality legislation also exist under other areas of equality law, we further recommend action to address similar legislative gaps in other areas of equality law in order to ensure a consistent and best practice approach is adopted across the equality legislative framework. This should be taken forward through single equality legislation.
- 7.4 In addition, we have, and will continue to, proactively engage with a wide range of key stakeholders, including MLAs, Assembly Committees, and representatives from the race sector. Government should ensure the full involvement of stakeholders in their work to develop and implement improved equality legislation.
- 7.5 In support of securing change, we would welcome any steps you could take to raise awareness of these recommendations and their supporting evidence base. We encourage you to write to, or engage directly with, Ministers, elected representatives, or key government officials to call for the adoption of these proposals.
- 7.6 Please visit www.equalityni.org/RaceLawReform for further information. There you can download full, summary and key point briefing versions of our recommendations and supporting arguments, along with wider materials.

May 2023.