

Response from the Committee on the Administration of Justice (CAJ) to the Draft Race Relations (Northern Ireland) Order 1996

Introduction

The Committee on the Administration of Justice (CAJ) welcomes the publication of the draft Race Relations (NI) Order 1996. We very much hope that the Government will quickly implement the legislation in order to ensure adequate protection for minority ethnic groups in Northern Ireland and compliance with its responsibilities in international human rights law.

In March 1993 the Committee made a detailed submission to the Government on the question of race relations legislation for Northern Ireland. At that time we called for separate legislation, a new enforcement agency and the specific recognition of Travellers in any new legislation. We are pleased that the Draft Order has responded positively to these concerns.

1976 Act is an inadequate model

We also urged the government to ensure that any new legislation for Northern Ireland should remedy the established failures of the Race Relations Act 1976. Generally speaking this has not been done and we would urge the government to amend the Order to take account of these problems and in particular to implement the recommendations contained in the Second Review of the Race Relations Act carried out by the Commission for Racial Equality.

We remain concerned that the Act does not repeal or supercede any existing legislation which is discriminatory in nature. Examples of this kind of legislation are the Caravan Sites Act (NI) 1969 and the Local Government (Miscellaneous Provisions) NI Order 1985.

Furthermore the legislation as drafted places an inordinately high burden of proof on those alleging discrimination and should be amended. No provisions have been made in respect of racial monitoring which could easily be implemented in some form alongside existing monitoring exercises. The Order does not apply to government bodies such as the police, prison system, the courts and the immigration service. Clearly it is inappropriate for these bodies should escape sanction for any discriminatory acts which they undertake.

The existing Tribunal system lacks specific expertise in the field of racial discrimination and it is essential that those hearing cases in this area are properly trained and include representatives from minority ethnic communities. The proposals are also inadequate in that they fail to provide for legal aid for victims alleging discrimination. In the absence of such legal aid it is essential that the Commission be adequately resourced to provide the required level of legal advice. Thus far it appears that this is not the case.

Of particular concern to us is the fact that the Order does not provide for any kind of class or group action nor does it provide a framework to fund the provision of services to minority ethnic communities in Northern Ireland such as that operated under section 11 of the Local Government Act 1966. The opportunity should also be taken to provide for affirmative action measures where they are appropriate to remedy historic disadvantage. In particular there are strong arguments for this in relation to education and accommodation.

We are disappointed that these issues have not been addressed in the Order and we would urge the Government to consider further improvements to the Order to take account of these points and more generally of the CRE's second review

The Draft Order

Article 5

Turning to the Draft Order itself we are pleased with the definition used in Article 5 in relation to Travellers. We very much hope that the legislation will result in concrete improvements in the situation of Travellers.

Article 41

We are concerned by the wording of Article 41 of the Order. The legislation in Britain contains a similar section in relation to national security but no reference is made in the British legislation to public safety or public order. We see no reason why the legislation in Northern Ireland should differ in this respect. We should welcome an explanation as to why this has been felt necessary.

Article 42

In our view it is essential that Article 42 of the Order ensures that the new Commission should be representative of the main minority ethnic groups in Northern Ireland and that it be adequately resourced. The proposed level of funding for the Commission is insufficient and should be increased. A majority of the Commission should be drawn from the minority ethnic communities and should have a history of work on behalf of the communities. Ideally the appointees from each community should have the support of the community and its representatives. Each member of the Commission should have relevant expertise and knowledge of the minority ethnic communities. We believe that the legislation should specify such criteria and that the appointments procedures should fully comply with those outlined by the Commissioner for Public Appointments for Northern Ireland. It may be more appropriate for the appointment power to rest with the Secretary of State rather than the DED. The number of Commissioners may also be inadequate

Article 67

The current wording of Article 67 of the Order fails to take account of the different responsibilities of District Councils in Northern Ireland and their counterparts in Britain. As a result there is a danger that a whole range of activities would not be covered by this aspect of the legislation. Because planning, health, education, social services and housing functions are carried out by local government in England and Wales the equivalent duty in the 1976 Act applies to a greater range of activities than would be the case in Northern Ireland. The legislation must therefore be amended to apply to the six government departments, to the Health Boards and Trusts and to the Housing Executive. In our view all public bodies and government departments should come clearly within its mandate. Given the nature of local government in

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Northern Ireland, the duty in Article 67 should also be extended to non-departmental public bodies such as the Arts Council, the Curriculum Council, the Labour Relations Agency etc. These comments are made notwithstanding the provisions of Article 71 of the Order.

August 1996