

Policing Division
Northern Ireland Office
Castle Buildings
Stormont Estate
Belfast BT4 3SG

1 December 2006

Dear Sir/Madam

Police (NI) Act 2000: Review of Temporary Provisions

1. I regret that, due to the illness of the relevant staff member, the Commission was not in a position to respond before the closing date of 27 November to the consultation on the temporary provisions due to expire on 28 March 2007. I trust that this late submission will be taken into account.
2. The Human Rights Commission has consistently taken the view that the 50:50 recruitment arrangements are compatible with international human rights law, under which measures to promote full and effective equality are not considered to constitute discrimination, provided that there is an objective and reasonable justification for those measures, such as that they meet a pressing social need, that they respect the principle of proportionality, and that they are discontinued as soon as they are no longer needed.
3. Several international (United Nations and Council of Europe) human rights standards affirm that, when those conditions are met, such measures do not contravene the principle of non-discrimination. These include:
 - International Convention on the Elimination of All Forms of Racial Discrimination (Article 1, paragraph 4)
 - Convention on the Elimination of All Forms of Discrimination against Women (Article 4, paragraph 1)
 - Framework Convention for the Protection of National Minorities (Article 4, paragraph 3)
 - 12th Protocol to the European Convention on Human Rights (third recital of the Preamble).

4. Additionally, there are several human rights instruments that positively encourage, and in some circumstances require, states to adopt measures of this nature, including:
 - International Convention on the Elimination of All Forms of Racial Discrimination (Article 2, paragraph 2)
 - Framework Convention for the Protection of National Minorities (Article 4, paragraph 2)
 - Council of Europe Committee of Ministers Recommendation R(85)2.

5. Other relevant provisions in treaty law and other standards establishing firstly, the scope for differential treatment when (and just for so long as) that is justified in terms of redressing historic under-representation, and secondly, in terms of securing the participation of, in particular, minorities in public services, include:
 - International Labour Organisation Convention C111 (Convention concerning Discrimination in Respect of Employment and Occupation)
 - ILO Convention C122 (Employment Policy Convention)
 - Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights
 - UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
 - Vienna Declaration and Programme of Action
 - European Charter for Regional or Minority Languages.

6. The European Court of Human Rights has also addressed the scope for positive measures, involving differential treatment that in the absence of justification could contravene Article 14 of the European Convention on Human Rights. As the Court stated in *Abdulaziz, Cabales and Balkandali v. UK* (1985): "a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realised'". Subsequent caselaw has been consistent with that ruling.

7. The Northern Ireland Human Rights Commission is satisfied that the objective of securing equitable representation of the two main communities in Northern Ireland in employment with the PSNI is such a legitimate aim, and that the measures recommended by Patten and enacted in the 2000 Act are proportionate. That judgment is reinforced by the evidence of the effectiveness of the 50:50 recruitment process to date in

increasing the proportion of Catholic applicants to a level approaching their participation in the overall workforce, and also in increasing the proportion of Catholics actually employed in the Police Service and in support staff to approximately 20 per cent.

8. The Commission is aware that, according to a recent Ministerial statement, the vast majority of those who undergo the quite arduous PSNI selection procedure are not appointed for reasons other than the operation of the 50:50 rule. We are nevertheless sensitive to the disappointment of those qualified candidates, approximately 1 per cent of the total, who have been denied employment solely as a result of their community background. The appointments that have been made are beginning to produce a police service that is more representative of the population it serves, and that is an important and welcome development.
9. It is important that the procedures be kept under periodic review and that the special measures be discontinued as soon as they have served their purpose. The Commission is not at this stage taking any view on whether that purpose will have been served if 30 per cent Catholic representation is secured by 2010 or 2011, but renewal for a three-year period should allow significant further progress.

Yours sincerely

Monica McWilliams
Chief Commissioner