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STATUTORY INSTRUMENTS

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**1991 No. 1713 (N.I. 18)**

**NORTHERN IRELAND**

**The Fair Employment (Amendment)  
(Northern Ireland) Order 1991**

*Made - - - - 24th July 1991*

*Coming into operation 25th August 1991*

At the Court at Buckingham Palace, the 24th day of July 1991

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Title and commencement**

1.—(1) This Order may be cited as the Fair Employment (Amendment) (Northern Ireland) Order 1991.

(2) This Order shall come into operation on the expiration of one month from the day on which it is made.

**Interpretation**

2. The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

**Confidentiality of monitoring information**

3.—(1) Section 30 of the Fair Employment (Northern Ireland) Act 1989 (confidentiality of monitoring information) is hereby repealed.

(2) In section 28(2) of that Act (regulations as to monitoring)—

(a) in paragraph (d) for the words “require information to which section 30(1)(a) or (b) of this Act applies to be retained” there shall be substituted the words

“require—

- (i) information about a person employed or applying for employment in a concern which might be used if any of the prescribed methods for determining the community to which a person is to be treated as belonging for the purposes of monitoring were applied; and
- (ii) a record of the determination by an employer of the community to which a person employed or applying for employment in a concern is to be treated as belonging for those purposes,

to be retained”,

(b) after paragraph (f) there shall be inserted the following paragraph—

“(ff) provide that, subject to such exceptions as may be prescribed, a person who discloses—

- (i) any information of a prescribed description which is obtained or used in pursuance of the regulations for the purposes of preparing any monitoring return, or
- (ii) the determination by an employer of the community to which a person employed or applying for employment in a concern is to be treated as belonging for the purposes of monitoring,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

(3) In section 29(2) of that Act (monitoring applicants)—

(a) in paragraph (a) for the words “information to which section 30(1)(a) of this Act applies” there shall be substituted the words “information of a prescribed description which is obtained in pursuance of the regulations”;

(b) the word “and” at the end of paragraph (b) is hereby repealed;

(c) after paragraph (b) there shall be inserted the following paragraph—

“(bb) provide that, subject to such exceptions as may be prescribed, a person who discloses any information of a prescribed description which is obtained in pursuance of the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale, and”.

(4) In section 32(1) of that Act (enquiries by the Commission) for the words “held by the employer, being information to which section 30(1)(a) or (b) of this Act applies” there shall be substituted the words “retained by the employer in compliance with regulations under section 28(2)(d) or 29(2)(a) above”.

(5) A person shall not be convicted of an offence under section 30 of the Fair Employment (Northern Ireland) Act 1989 in respect of a disclosure made before the coming into operation of this Order unless, if the disclosure were made on the day after the coming into operation of this Order, he would be guilty of an offence against regulations under section 28(2)(ff) or 29(2)(bb) of that Act.

(6) Where—

(a) before the coming into operation of this Order, information was disclosed in contravention of section 30 of the Fair Employment (Northern Ireland) Act 1989; and

(b) if that information were disclosed on the day after the coming into operation of this Order, the disclosure would not contravene regulations under section 28(2)(ff) or 29(2)(bb) of that Act,

then the fact that the information was disclosed in contravention of the said section 30 shall not affect the admissibility of that information as evidence in any proceedings before the Fair Employment Tribunal for Northern Ireland, an industrial tribunal or a court.

#### **Confidentiality of information in possession of the Commission**

4.—(1) Section 19 of the Fair Employment (Northern Ireland) Act 1989 (confidentiality of information in possession of the Commission) shall be amended as follows.

(2) For subsection (1) there shall be substituted the following subsections—

“(1) No information in the Commission’s possession which discloses, or from which there can be deduced, the religious belief of any identifiable individual shall, without that individual’s written consent, be disclosed by a member, officer or servant of the Commission to a person who is not associated with the Commission, except so far as such disclosure—

- (a) is necessary or expedient for the proper discharge of the functions of the Commission or is necessary to comply with any obligation imposed by or under an enactment (including this Act); or
- (b) is made for the purpose of, or in connection with—
  - (i) any actual or prospective proceedings before the Tribunal or an industrial tribunal; or
  - (ii) any actual or prospective civil or criminal proceedings before a court.

(1A) For the purposes of subsection (1) above a person is associated with the Commission if—

- (a) he is a member of, or in the employment of, the Commission; or
- (b) his services have been made available to the Commission for the purpose of the exercise of any of its functions.”.

(3) In subsection (3)(b) for the word “necessary” there shall be substituted the word “made”.

(4) In subsections (4) and (5) the words “Subject to subsection (1) above,” shall cease to have effect.

(5) After subsection (6) there shall be added the following subsections—

“(7) It is a defence for a person charged with contravening subsection (1) or (3) above to show that before the disclosure in question was made he had also obtained the information otherwise than in his capacity as a member, officer or servant of the Commission.

(8) In subsections (1), (3), (4) and (7) above “a member, officer or servant of the Commission” includes a former member, officer or servant of the Commission.”.

#### **Period within which complaint of unlawful discrimination to be brought**

5. Section 24 of the Fair Employment (Northern Ireland) Act 1976, as substituted by section 50(1) of the Fair Employment (Northern Ireland) Act 1989, shall have effect, and be deemed always to have had effect, with the insertion after subsection (2) (period within which complaint of unlawful discrimination to be brought) of the following subsection—

“(2A) For the purposes of subsection (2)—

- (a) where the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract, and
- (b) any act extending over a period shall be treated as done at the end of that period, and

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- (c) a deliberate omission shall be treated as done when the person in question does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it were to be done.”.

*G.I. de Geney*  
Clerk of the Privy Council

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends provisions of the Fair Employment (Northern Ireland) Act 1989 relating to the confidentiality of monitoring information and of information in the possession of the Fair Employment Commission. It also amends the Fair Employment (Northern Ireland) Act 1976 in relation to the period within which a complaint of unlawful discrimination must be presented.