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STATUTORY INSTRUMENTS

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**1998 No. 3162**

**The Fair Employment and Treatment  
(Northern Ireland) Order 1998**

**PART VII**

**DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES**

*Monitoring the workforce*

**Monitoring returns**

- 52.**—(1) For the purpose of enabling the composition of—
- (a) those employed in a registered concern in Northern Ireland; and
  - (b) those applying to fill vacancies for employment in Northern Ireland in such a concern,
- to be ascertained, the employer shall prepare for each year and serve on the Commission a return (in this Part referred to as a “monitoring return”) in a form provided by or on behalf of the Department.
- (2) A monitoring return shall contain such information about the employees of the employer and those applying for employment in the concern as may be prescribed.
- (3) For the purpose of enabling the composition of those ceasing to be employed in any concern of a person who is a public authority for the purposes of this Article to be ascertained, the employer shall include in a monitoring return such information as may be prescribed.
- (4) For the purpose of enabling the composition of those ceasing to be employed in any other registered concern in which more than 250 employees are employed to be ascertained, the employer shall include in a monitoring return such information as may be prescribed; and for the purposes of this paragraph where, at the beginning of or at any subsequent time in any prescribed period, more than 250 employees are employed in the concern, that condition is to be treated as satisfied for the whole or, as the case may be, the remainder of that period.
- (5) If no monitoring return for a year in respect of any registered concern is served on the Commission before the time for serving the return expires, the employer shall be guilty of an offence.
- (6) A person guilty of an offence under paragraph (5)—
- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
  - (b) if the failure to submit the monitoring return continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.
- (7) It is a defence for a person charged with an offence under paragraph (5) to show that he had a reasonable excuse for failing to serve on the Commission a monitoring return for that year before the time for serving the return expired and that he served such a return for that year on the Commission as soon as it was reasonably practicable to do so.

(8) For the purpose of this Article the time for serving a monitoring return expires in the case of each year at the end of the first 4 months of the year.

(9) In this Article “year”, in relation to a registered concern, means any period of 12 months beginning with—

- (a) the date on which the description of the concern is entered, or treated by virtue of Article 51 as entered, in the register; or
- (b) the anniversary of that date.

(10) In this Article and Article 53 “prescribed” means prescribed by regulations under Article 53.

(11) In this Part—

“community” means the Protestant community, or the Roman Catholic community, in Northern Ireland; and

“composition” in relation to those employed or, as the case may be, applying for employment in or ceasing to be employed in, a registered concern means the number who are to be treated for the purposes of monitoring as belonging to each community.

### **Regulations as to monitoring**

**53.**—(1) The Department shall, by regulations made after consultation with the Commission, make provision for the purposes of Article 52.

(2) The regulations may—

- (a) require information to be given separately by reference to the sex of the employee, former employee or applicant or by reference to different descriptions or classes of employment;
- (b) provide for Article 52(4) to apply either generally or in prescribed circumstances as if the reference to 250 employees were a reference to the prescribed number of employees;
- (c) provide that—
  - (i) the date or period to which any information given in a monitoring return is to relate; and
  - (ii) the period in which that information is to be obtained, is to be determined by or in accordance with the regulations;
- (d) require—
  - (i) information about a person employed or applying for employment in or ceasing to be employed 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 or ceasing to be employed in a concern is to be treated as belonging for those purposes,

to be retained by the employer for such period as may be prescribed and provide that a person who without reasonable excuse fails to comply with such a requirement shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale;

- (e) make such other provision as to the manner of preparing monitoring returns (including provision for the disclosure of information held for the purposes of monitoring to the person to whom it relates) as appears appropriate to the Department;
- (f) provide that—

- (i) an employer who without reasonable excuse serves on the Commission a monitoring return which is not prepared in accordance with the regulations or does not contain the prescribed information is guilty of an offence and liable on summary conviction to a fine not exceeding £10,000; and
  - (ii) if a person knowingly gives any false information to another who, with a view to including any information in a monitoring return to be served on the Commission, is seeking information or knowingly includes any false information in such a monitoring return, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale;
- (g) 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 or ceasing to be employed in a concern is to be treated as belonging for the purposes of monitoring,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) The regulations may authorise or require the employer to determine which community (if any) a person employed or applying for employment in or ceasing to be employed in the concern is to be treated as belonging to for the purposes of monitoring by applying the principal method prescribed or where that method does not enable him to make that determination, by applying the residuary method, or one of the residuary methods, prescribed; so that, for example—
- (a) where an applicant has stated that he belongs to a particular community the employer may be required to determine that he is to be treated as belonging to the community concerned; and
  - (b) where, in any case not within sub-paragraph (a), the employer has information about the applicant, being information which the employer is authorised by the regulations to take into account as tending to show that the person to whom it relates has a connection with a particular community, the employer may be required to determine the community to which the applicant is to be treated as belonging by reference to that information.
- (4) Where the regulations authorise an employer to take into account information which relates to the schools attended by any person, the regulations may require the Commission to maintain a list classifying each school, or each school in any class specified by the Department, as a school attended mainly by members of a particular community.
- (5) The regulations may require compliance with any direction of the Commission to a particular employer to apply the prescribed methods for determining the community to which a person is to be treated as belonging for the purposes of monitoring in a manner different from that otherwise authorised or required by the regulations.
- (6) Paragraphs (2) to (5) do not prejudice the generality of paragraph (1).

### **Monitoring applicants**

54.—(1) The Department may, by regulations made after consultation with the Commission, provide that the employer shall, for the purpose of enabling the composition of those applying to fill vacancies for employment in any registered concern in Northern Ireland to be ascertained, seek to obtain such information about them as may be prescribed.

- (2) The regulations may—

- (a) require information of a prescribed description which is obtained in pursuance of the regulations to be retained by the employer for such period as may be prescribed;
  - (b) provide that a person who—
    - (i) without reasonable excuse fails to comply with such a requirement; or
    - (ii) knowingly gives any false information to another who is seeking to obtain information in pursuance of the regulations; or
    - (iii) knowingly includes any false information in any records kept in pursuance of the regulations, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
  - (c) 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 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) In this Article “prescribed” means prescribed by regulations under this Article.