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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**

*Registration*

**The register of concerns in which people are employed**

**47.**—(1) The Commission shall keep, in such form as the Commission may determine, a register of trades, businesses and other activities (whether carried on for profit or not) in which people are employed.

(2) References in this Part to a concern are to any such trade, business or other activity and include any activity in the service of the Crown, but only to the extent provided by Article 51.

(3) The Commission shall, on an application under Article 48, enter in the register the description of the concern given in the application, the name and address of the employer so given and the date of entry in the register and serve on the applicant notice of the contents and date of the entry.

(4) The Commission shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public during normal office hours free of charge and any person shall be entitled to obtain from the Commission a copy of the information contained in all or any of the entries in the register upon payment of such reasonable fee as the Commission may fix.

**Employers to apply for registration**

**48.**—(1) Where a concern, other than a registered concern, satisfies the condition for registration at the end of any week, the employer shall apply under this Article for the concern to be registered.

(2) For the purposes of this Part a concern satisfies the condition for registration at the end of any week if in that week more than 10 employees have been employed in Northern Ireland.

(3) In paragraph (2), the reference to employees does not include a reference to an individual employed under a contract of service or apprenticeship which normally involves employment for less than 16 hours weekly.

(4) Article 5 of the Employment Rights (Northern Ireland) Order 1996 (normal working hours) shall have effect to determine the normal working hours for the purposes of paragraph (3).

(5) The Department may by order substitute for the number of hours for the time being specified in paragraph (3) such other number as is specified in the order.

(6) An application under this Article shall—

(a) describe the concern in general terms;

- (b) give the name and address of the employer; and
- (c) give the number of employees employed in Northern Ireland.

(7) If an employer fails to make an application under this Article within the period of one month after the time when the concern first satisfies the condition for registration (or in the case of a concern the entry for which has been removed from the register, first satisfies that condition since the removal), he shall be guilty of an offence.

- (8) A person guilty of an offence under paragraph (7)—
- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
  - (b) if the failure 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.

(9) It is a defence for a person charged with an offence under paragraph (7) to show that he had a reasonable excuse for failing to make an application under this Article within the period allowed and that he made such an application as soon as it was reasonably practicable for him to do so.

(10) In determining for any of the purposes of this Part whether a concern satisfies the condition for registration, references to the employees of any person (referred to in this paragraph as “the employer”) shall, if regulations made by the Department under this Article so provide or in such circumstances as may be specified in the regulations, include a reference to the employees of—

- (a) any body corporate controlled by the employer and, if the employer is a body corporate, any associated body corporate; and
- (b) any person connected with the employer,

and references to the employer's concern shall be interpreted accordingly.

(11) This Article does not apply to any person who is a public authority for the purposes of Articles 52 to 61 or to any person falling within Article 50(3)(a) or (b).

### **Rectification of the register**

**49.**—(1) Where a person becomes an employer in relation to a concern that is already a registered concern, he shall, within the period of one month beginning with his becoming such an employer, apply to the Commission for his name and address to be entered in the register and the Commission shall include in the entry in the register the name and address given in the application.

(2) If an employer who is required so to apply fails to do so within that period, he shall be guilty of an offence.

- (3) A person guilty of an offence under paragraph (2)—
- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
  - (b) if the failure 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.

(4) It is a defence for a person charged with an offence under paragraph (2) to show that he had a reasonable excuse for failing to make an application under this Article within the period allowed and that he made such an application as soon as it was reasonably practicable for him to do so.

(5) The Commission may, on an application by a registered employer, rectify the description in the register of the registered concern.

(6) The Commission shall remove from the register any entry in respect of a person who becomes a public authority for the purposes of Articles 52 to 61.

(7) The Commission—

- (a) may remove from the register, in respect of any concern, the name of any person who appears to the Commission to have ceased to be an employer; and
- (b) may remove from the register the entry for any registered concern which appears to the Commission to have ceased to exist.

(8) The power conferred by paragraph (7) is exercisable by the Commission of its own motion or on the application of any person.

(9) If a registered employer applies to the Commission to remove from the register the entry for the registered concern and the concern has been registered throughout the year ending on the date of the application, the Commission shall remove the entry if it is of the opinion that the concern did not, at the end of any of the weeks in the period of 26 weeks preceding the application, satisfy the condition for registration.

(10) If the Commission exercises its powers under paragraph (7) or (9), it shall serve notice of its action on any person whose name is removed from the register.

(11) A person who knowingly makes a false statement in connection with an application under paragraph (8) or (9) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) In this Article, “registered employer”, in relation to a registered concern, means the person whose name and address is for the time being included in the entry for that concern in the register.

#### *Public authorities*

#### **Power to specify public authorities by order**

**50.**—(1) In this Part “public authority” means a person specified in an order made by the Department.

(2) The order may provide for a person to be a public authority for all or any of the purposes of this Part.

(3) The Department shall not exercise the power conferred by this Article so that a person becomes a public authority for any of the purposes of this Part unless the person is—

- (a) a Minister of the Crown or a Northern Ireland Minister;
- (b) a statutory body or the holder of a statutory office; or
- (c) a person appearing to the Department to exercise functions of a public nature.

#### **Certain public authorities to be treated as employers**

**51.**—(1) For the purposes of Articles 52 to 61, any reference to an employer includes any person who is a public authority for the purposes of those Articles.

(2) For the purposes of those Articles, in relation to any such authority—

- (a) “employee” includes any person in the service of the Crown for the purposes of the functions of the authority, but an order under Article 50 may specify the persons who are to be treated for the purposes of those Articles as the employees of that authority; and
- (b) “concern” means the activities of those who are the employees of the authority for the purposes of those Articles.

(3) Those Articles shall apply in relation to a person who becomes an employer for the purposes of those Articles by virtue of an order under Article 50 as if his concern were a registered concern

and the description of his concern had been entered in the register on the coming into operation of the order (without prejudice to the effect of any previous order).

(4) The Department shall not exercise the power conferred by Article 50 so that a person becomes an employer for the purposes of those Articles unless it appears to the Department that any of the people—

- (a) who are employed by that person or are in the service of the Crown for the purposes of the functions of that person; or
- (b) who are to be treated by virtue of the order as so employed or as in such service, are employed or serve in Northern Ireland.

### *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.

*Review of recruitment, training and promotion practices*

**Periodic reviews by employers**

**55.**—(1) In the case of each registered concern, the employer shall from time to time review the composition of those employed in and ceasing to be employed in the concern in Northern Ireland and the employment practices of the concern for the purposes of determining whether members of each community are enjoying, and are likely to continue to enjoy, fair participation in employment in the concern.

(2) In a case where it appears to the employer in the course of the review that members of a particular community are not enjoying, or are not likely to continue to enjoy, such participation, he shall as part of the review determine the affirmative action (if any) which would be reasonable and appropriate.

(3) In a case where the employer determines in the course of the review that affirmative action would be reasonable and appropriate he shall as part of the review—

- (a) consider whether, assuming the action is taken, it is practicable to determine, by reference to one or more periods, the progress towards fair participation in employment in the concern that can reasonably be expected to be made by members of a particular community; and
- (b) if he considers that it is practicable to determine such progress, determine the period or periods concerned and, in respect of each period, the progress that, in his opinion, can reasonably be expected to be made towards fair participation by members of the community concerned—
  - (i) in employment in the concern in Northern Ireland or among those whose employment in the concern there begins after the determination; or
  - (ii) among applicants to fill vacancies for employment in the concern there.

(4) A review under this Article shall be carried out not more than 3 years after the date on which the description of the concern is entered, or treated by virtue of Article 51 as entered, in the register and subsequent reviews at intervals of not more than 3 years.

(5) In carrying out a review under this Article the employer shall have regard to the code of practice maintained under Article 9(1) and the Commission shall, if requested to do so by the employer, give advice as to the manner in which a review under this Article should be carried out.

(6) In this Part—

- (a) references to a review are to a review under this Article; and
- (b) “employment practice”, in relation to a concern, means a practice affecting recruitment or training for employment in the concern or training, promotion or redundancy of employees in the concern.

### *Enquiries, undertakings and directions*

#### **Enquiries by the Commission**

**56.**—(1) The Commission may from time to time require the employer to give the Commission such information retained by the employer in compliance with regulations under Article 53(2)(d) or 54(2)(a), as the Commission may specify; but an employer who has been required on any date to give any information under this paragraph shall not be required to do so again before the expiry of the period of 6 months beginning with that date.

(2) Where a monitoring return in respect of any registered concern has been served on the Commission, the Commission may require the employer to give the Commission such information as to the manner in which the return was prepared as it may specify.

(3) The Commission may, in the case of any registered concern, require the employer to give the Commission such information as it may specify as to the steps the employer has taken or proposes to take to carry out a review and as to the manner in which the review has been or is to be carried out.

(4) The Commission may, where a review has been carried out in the case of any registered concern, require the employer to give to the Commission such information as it may specify—

- (a) as to the matters disclosed by the review;
- (b) as to any determination under Article 55(2); and
- (c) in a case falling within Article 55(3), as to his consideration of the matters referred to in sub-paragraph (a) of that paragraph and any determination under sub-paragraph (b) of that paragraph.

(5) The Commission shall, where a review discloses that members of a particular community are not enjoying, or are not likely to continue to enjoy, fair participation in employment in the concern, make such recommendations as it thinks fit as to the affirmative action to be taken and, assuming the action is taken, as to the progress towards fair participation in employment in the concern, by reference to any period or periods, that can reasonably be expected to be made by members of the community.

(6) Where the employer discloses to the Commission a determination to take any affirmative action, the Commission may from time to time require him to give the Commission such information as it may specify as to the affirmative action that he has taken or proposes to take, but the Commission may not require an employer to give any information under this paragraph before the expiry of the period of 6 months beginning with—

- (a) the date of the disclosure; or
- (b) if he has previously been required to give any information under this paragraph, the date on which he was last required to do so.

(7) Where the employer discloses to the Commission a determination as to the progress towards fair participation in employment in the concern, by reference to any period, that can reasonably be expected to be made by members of a particular community, the Commission may from time to time require him to give the Commission such information as it may specify for the purpose of determining the extent to which the progress has been made on the date of the requirement, but the Commission may not require an employer to give any information under this paragraph before the expiry of the period of 6 months beginning with—

- (a) the date of the disclosure; or
- (b) if he has previously been required to give any information under this paragraph, the date on which he was last required to do so.

(8) A requirement under this Article to give any information in respect of a registered concern—

- (a) shall be made by notice served on the employer; and



(b) shall specify the time by which the information is to be given, and the reference in paragraphs (1), (6) and (7) to the date of the requirement is to the date on which the notice was served.

(9) A notice under this Article served on the person whose name and address is for the time being included in the entry for any concern in the register is to be treated as served on the employer.

(10) A person required to give any information under this Article who fails to comply with the requirement by the specified time shall be guilty of an offence.

(11) A person guilty of an offence under paragraph (10)—

- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure 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.

(12) It is a defence for a person charged with an offence under paragraph (10) to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—

- (a) he complied with it as soon as was reasonably practicable; or
- (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,

and for the purposes of this paragraph the making of a complaint is to be treated as the commencement of the proceedings.

(13) A person required to give any information under this Article who knowingly gives false or misleading information is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Undertakings in connection with monitoring and reviews**

**57.**—(1) The following provisions of this Article apply where the Commission is of the opinion, in the light of information received in respect of any registered concern in pursuance of a requirement under Article 56—

- (a) that the manner in which the employer prepares his monitoring returns is in any respect unsatisfactory or that the information sought by him for the purposes of monitoring is in any respect inadequate; or
- (b) that the employer has no proposals for carrying out a review or that the manner in which he proposes to carry out the review, or the timing of the review, is in any respect unsatisfactory or that the information sought by him for the purposes of the review is in any respect inadequate.

(2) The Commission shall use its best endeavours for the following purposes (as the case may be)—

- (a) to ensure that the manner in which the employer prepares his monitoring returns is satisfactory;
- (b) to ensure that the information sought by the employer for the purposes of monitoring is adequate;
- (c) to ensure that the information sought by the employer for the purposes of a review is adequate; or
- (d) to ensure that a review is carried out at a time and in a manner that is satisfactory,

and shall where appropriate use its best endeavours to secure a satisfactory written undertaking by the employer for the purpose in question.

(3) Where the Commission asks the employer for an undertaking, on such terms as appear satisfactory to the Commission, for the purpose in question, then—

- (a) if the undertaking is not given, the Commission shall serve on the employer a notice containing directions such as are mentioned in Article 58; and
- (b) if the undertaking, although given, is not complied with, the Commission shall either—
  - (i) serve on him a notice containing such directions (which shall supersede the undertaking); or
  - (ii) make an application to the Tribunal under Article 16 for enforcement of the undertaking.

(4) Paragraph (3) does not apply in any case where the Commission decides that no further action by it is appropriate.

### **Directions**

**58.**—(1) The directions contained in a notice served under Article 57(3) shall be those which the Commission considers to be, in all the circumstances, reasonable and appropriate for the purpose in question.

(2) The directions may in particular include such directions as the Commission considers necessary to ensure that other directions are duly carried out.

(3) The terms of the directions contained in a notice served under Article 57(3)(b)(i) which supersede an undertaking shall be such as, in the opinion of the Commission, are not substantially more onerous than the terms of the undertaking.

(4) A notice served under Article 57(3)(a) or (b)(i) shall inform the employer of the right of appeal against the directions which is conferred by Article 15.

(5) The Commission, on the written application of the employer, may—

- (a) revoke all of the directions; or
- (b) modify the directions in accordance with the application—
  - (i) by revoking any of them; or
  - (ii) by substituting new directions for all or any of them,

and, in substitution for any directions which are revoked under sub-paragraph (a), may accept from the employer an undertaking such as is mentioned in Article 57(2).

(6) The Commission shall serve notice of the revocation or modification on the employer.

(7) The directions—

- (a) are binding on the employer (except to the extent that they are quashed, or other directions are substituted for them, by the Tribunal under Article 15); and
- (b) are enforceable only in accordance with Article 16.

### **Application of Articles 15 to 17**

**59.** Articles 15 to 17 shall have effect for the purposes of Articles 57 and 58 as they have effect for the purposes of Articles 12 and 14, but as if—

- (a) references to Article 12(2) or (3) were references to Article 57(2), or as the case may be, (3);
- (b) references to Article 14(4) were references to Article 58(5); and

- (c) for sub-paragraphs (b) and (c) of Article 15(2) there were substituted—
  - “(b) that in all the circumstances the directions are not appropriate for the purpose in question; or
  - (c) that the appellant is already taking appropriate steps for the purpose in question and the directions are, therefore, unnecessary.” .

### *Goals and timetables*

#### **Notices about goals and timetables**

**60.**—(1) The Commission may serve a notice under paragraph (2) on the person who is the employer in relation to a registered concern where—

- (a) he gives an undertaking under Part II to take any action;
- (b) he has been directed under that Part to take any action; or
- (c) the Tribunal makes an order under Article 16(3)(a) in relation to an undertaking given by, or directions given to, him to take any action,

being action appearing to the Commission to be affirmative action, and the Commission is of the opinion that, assuming the action is taken, it is practicable to determine, by reference to one or more periods, the progress towards fair participation in employment in the concern that can reasonably be expected to be made by members of a particular community.

(2) The notice ( “a notice about goals and timetables”) shall specify the period or periods concerned and, in respect of any specified period, the progress that, in the opinion of the Commission, can reasonably be expected to be made towards fair participation by members of the community concerned—

- (a) in employment, or any class of employment, in the concern in Northern Ireland; or
- (b) among applicants to fill vacancies for such employment or any class of such employment.

(3) Where, by virtue of any undertaking given by, or directions given to, the person who is the employer in relation to a registered concern, such a notice is served on him, the notice shall cease to have effect—

- (a) if the Tribunal makes an order for the purpose of giving effect to the undertaking or directions or, in the case of directions, the Tribunal or the Commission substitutes for them or any of them other directions; or
- (b) in the case of directions, if they, or such of them as the notice relates to, are quashed or otherwise cease to have effect; or
- (c) in the case of an undertaking, if it, or such part of it as the notice relates to, ceases to have effect,

but without prejudice, in a case within sub-paragraph (a), to any power to give a new notice.

(4) Where a notice about goals and timetables has effect, the Commission may from time to time require the employer to give the Commission such information as the Commission may specify for the purpose of determining the extent to which the progress specified in the notice in respect of any period has been made on the date of the requirement.

(5) The Commission may not require an employer to give any information under this Article before the expiry of the period of 6 months beginning with—

- (a) the date of the notice about goals and timetables; or
- (b) if he has previously been required to give any information under this Article, the date on which he was last required to do so.

(6) A requirement under this Article to give any information—

- (a) shall be made by notice served on the employer; and
- (b) shall specify the time by which the information is to be given,

and the reference in paragraphs (4) and (5) to the date of the requirement is to the date on which the notice was served.

(7) A person required to give any information under this Article who fails to comply with the requirement by the specified time shall be guilty of an offence.

(8) A person guilty of an offence under paragraph (7)—

- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure 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.

(9) It is a defence for a person charged with an offence under paragraph (7) to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—

- (a) he complied with it as soon as was reasonably practicable; or
- (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,

and for the purposes of this paragraph the making of a complaint is to be treated as the commencement of the proceedings.

(10) A person required to give any information under this Article who knowingly gives any false or misleading information shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Power to secure further undertakings or issue further directions**

**61.**—(1) Paragraph (2) applies where, by reason of any undertaking or directions under Article 12, any directions substituted for such directions by the Tribunal or any order made by the Tribunal for the purpose of giving effect to any such undertaking or directions, a notice has been served on any person under Article 60(2).

(2) If, while the notice has effect, the Commission forms the opinion—

- (a) that the progress specified in the notice in respect of any period has not been made; and
- (b) that the person concerned ought to take action for promoting equality of opportunity in addition to the action required to be taken under the existing undertaking or directions,

Article 12 shall again apply in relation to the person concerned as if the Commission had conducted a fresh investigation under Article 11.

(3) Where, by virtue of this Article, the Commission secures a written undertaking from the person concerned or serves a notice on him containing directions—

- (a) the undertaking or directions shall have effect in place of the existing undertaking or directions; and
- (b) any notice previously served on him under Article 60(2) shall cease to have effect, but without prejudice to any power to give a new notice under that paragraph.

*Employers in default and connected persons: restrictions  
on dealing with them or giving them financial assistance*

**Employers in default: notice stating they are not qualified**

**62.—(1)** For the purposes of this Article, an employer is in default in any of the following circumstances—

- (a) in the case of any concern that is not a registered concern but has satisfied the condition for registration at the end of any week, the employer stands convicted of an offence under Article 48(7);
- (b) in the case of a registered concern—
  - (i) the employer's name is not entered in the register; and
  - (ii) he stands convicted of an offence under Article 49(2);
- (c) the employer—
  - (i) has failed within the time allowed under Article 52 to serve on the Commission a monitoring return for any period or has failed to serve a return for that period that complies with the requirements of that Article or regulations under Article 53; and
  - (ii) stands convicted of an offence under Article 52(5) or regulations made by virtue of Article 53(2)(f)(i), in respect of that failure; and
- (d) the employer has failed to comply with an order of the Tribunal and a penalty has been imposed under Article 17(3)(b), or the High Court has exercised its jurisdiction by virtue of Article 17(4), in respect of that failure.

(2) Where an employer is in default, the Commission may serve notice on him stating that he is not qualified for the purposes of Articles 64 to 66; and references in those Articles to an unqualified person are to a person on whom a notice has been served under this paragraph or Article 63(1) which has not been cancelled.

(3) The Commission shall take all such steps as it considers reasonable to bring the fact that a person is an unqualified person, or has ceased to be an unqualified person, to the attention of public authorities and other interested persons.

(4) Where notice has been served on a person under paragraph (2) by virtue of paragraph (1) (a) or (b) and he has ceased to be in default, the Commission shall serve notice on him cancelling the notice under paragraph (2).

(5) Where notice has been served on a person under paragraph (2), the Commission shall, if it is at any time satisfied, whether on an application under paragraph (6) or otherwise—

- (a) in the case of a notice served by virtue of paragraph (1)(c), that he has served on it a monitoring return for the period concerned that complies, so far as is reasonably practicable, with the requirements of Article 52 and regulations under Article 53; or
- (b) in the case of a notice served by virtue of paragraph (1)(d), that he is complying, or has fully complied, with the order concerned,

serve notice on him cancelling the notice under paragraph (2).

(6) An application under this paragraph may be made by the person on whom the notice under paragraph (2) was served but may not be made before the expiry of the period of 6 months beginning with—

- (a) the date of the notice under paragraph (2); or
- (b) if he has previously applied under this paragraph, the latest date on which he so applied.

(7) Where the Commission refuses to grant an application under paragraph (6), it shall serve notice of that fact on the applicant and the applicant may, within 21 days from the date of the notice, appeal to the Tribunal against the refusal.

(8) If, on the appeal, the Tribunal is satisfied—

- (a) in the case of a notice served by virtue of paragraph (1)(c), that the appellant has served on the Commission a monitoring return for the period concerned that complies, so far as is reasonably practicable, with the requirements of Article 52 and regulations under Article 53, or
- (b) in the case of a notice served by virtue of paragraph (1)(d), that the appellant is complying, or has fully complied, with the order concerned,

the Commission shall serve on him a notice cancelling the notice under paragraph (2).

(9) No action shall lie in respect of any loss or damage that may be suffered in consequence of a notice or purported notice under this Article or Article 63 or any failure to give such a notice.

#### **Notice stating that connected and other persons are not qualified**

**63.**—(1) Where notice has been served on any employer under Article 62(2) and has not been cancelled, the Commission may serve notice on any of the following persons—

- (a) any body corporate controlled by him and, if he is a body corporate, any associated body corporate; and
- (b) any person connected with him,

stating that the person on whom the notice is served is not qualified for the purposes of Articles 64 to 66.

(2) No notice shall be served on any person under paragraph (1) if it appears to the Commission—

- (a) that it is unlikely that he will execute any work or supply any goods or services for the purposes of any contract—
  - (i) made by a public authority accepting any offer made in response to an invitation by the public authority to submit offers; or
  - (ii) falling within a class or description for the time being specified for the purposes of Article 64(3) to which a public authority is a party; or
- (b) that, if he executes any work or supplies any goods or services for the purposes of any such contract, it is unlikely that the employer on whom the notice was served under Article 62(2) will benefit, directly or indirectly.

(3) Where notice has been served on any person under paragraph (1), the Commission shall serve notice on him cancelling the notice—

- (a) if the notice served on the employer under Article 62(2) is cancelled; or
- (b) if it appears to the Commission, whether on an application under paragraph (4) or otherwise, that (apart from Article 64(1)) paragraph (2)(a) or (b) is satisfied in his case.

(4) An application under this paragraph may be made by the person on whom the notice under paragraph (1) was served, but if he has previously made an application under this paragraph may not be made before the expiry of the period of 6 months beginning with the latest date on which he so applied.

(5) Where the Commission refuses to grant an application under paragraph (4), it shall serve notice of that fact on the applicant and the applicant may, within 21 days from the date of the notice, appeal to the Tribunal against the refusal.

(6) If, on the appeal, it appears to the Tribunal that (apart from Article 64(1)) paragraph (2)(a) or (b) is satisfied in the appellant's case, the Commission shall serve notice on him cancelling the notice under paragraph (1).

#### **Restriction on execution of works, etc. by unqualified persons**

**64.**—(1) A public authority shall not enter into any contract to which paragraph (2) or (3) applies.

(2) This paragraph applies to a contract made by the public authority accepting an offer to execute any work or supply any goods or services where the offer is made—

- (a) by an unqualified person; and
- (b) in response to an invitation by the public authority to submit offers.

(3) This paragraph applies to a contract falling within a class or description for the time being specified in an order made by the Department, where work is to be executed or goods or services supplied by any unqualified person.

(4) Where a public authority enters into a contract—

- (a) made by the public authority accepting an offer made by any person, being an offer made in response to an invitation by the public authority to submit offers; or
- (b) falling within a class or description for the time being specified for the purposes of paragraph (3),

the public authority shall take all such steps as are reasonable to secure that no work is executed or goods or services supplied for the purposes of the contract by any unqualified person.

(5) An order under paragraph (3) may frame any class or description of contract by reference to—

- (a) any work to be executed or goods or services to be supplied under the contract;
- (b) any amounts to be paid under or in connection with the contract;
- (c) any terms of the contract; and
- (d) any surrounding circumstances,

and by reference to such other factors as the Department thinks fit.

(6) Nothing in this Article affects the validity of any contract.

(7) This Article does not apply to the execution of any work, or the provision of any goods or services, by any person which is certified in writing by the Secretary of State to be necessary or desirable for the purpose of safeguarding national security or protecting public safety or public order.

#### **Enforcement at instance of Commission and actions for breach of duty**

**65.**—(1) If it appears to the Commission—

- (a) that any public authority has taken any action in contravention of Article 64 or has, in neglecting to take any action, failed to comply with that Article and that, unless an injunction is granted, the authority is likely again to contravene or fail to comply with that Article; or
- (b) that any public authority proposes to take any action in contravention of that Article,

the Commission may apply to the High Court for an injunction restraining him from contravening that Article and, where sub-paragraph (a) applies, requiring him to comply with that Article.

(2) Any contravention of that Article is actionable by any person who, in consequence, suffers loss or damage, but the amount recoverable in any such action shall not exceed any expenditure reasonably incurred by him before the date of the contravention in question.

### **Denial of financial assistance to unqualified persons**

66.—(1) A Northern Ireland department may refuse to give to any unqualified person any financial assistance to which this Article applies or, where it has given or agreed to give such assistance to any unqualified person, refuse or cease to make any payments to him in pursuance of the assistance.

(2) This Article applies to any financial assistance by way of grant or otherwise which may be given at the discretion of a Northern Ireland department, if the moneys required for giving the assistance are payable out of the Consolidated Fund or may be appropriated by Act of the Northern Ireland Assembly.

### *General*

### **Additional powers of Commission to obtain information**

67.—(1) In connection with its functions under this Part, the Commission may require any person to give the Commission such information as it may specify for the purpose of determining—

- (a) whether a person is an employer or whether a concern has satisfied the condition for registration at the end of any week;
- (b) whether a body corporate is controlled by an employer or associated with him or whether any person is connected with him; and
- (c) whether a contract of either of the following kinds has been made or is likely to be made—
  - (i) a contract made by a public authority accepting an offer to execute any work or supply any goods or services where the offer is made by any person in response to an invitation by the public authority to submit offers; or
  - (ii) a contract falling within a class or description for the time being specified for the purposes of Article 64(3) to which a public authority is a party,
 or whether any person has executed any work or supplied any goods or services for the purposes of any such contract, or is likely to do so.

(2) A requirement under this Article to give any information—

- (a) shall be made by notice served on the person concerned; and
- (b) shall specify the time by which the information is to be given.

(3) A person required to give any information under this Article who fails to comply with the requirement by the specified time shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (3)—

- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure 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.

(5) It is a defence for a person charged with an offence under paragraph (3) to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—

- (a) he complied with it as soon as was reasonably practicable; or
- (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,



and for the purposes of this paragraph the making of a complaint is to be treated as the commencement of the proceedings.

(6) A person required to give any information under this Article who knowingly gives any false or misleading information shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A notice under this Article may not require any person to give any information which he could not be compelled to give in evidence in civil proceedings before the High Court.

### **Procedure in case of default by Crown bodies**

**68.**—(1) This Article applies where—

- (a) the Commission asks a public authority acting on behalf of the Crown for an undertaking under Article 57 and the undertaking is not given;
- (b) an undertaking is given under that Article by such a public authority, but is not complied with; or
- (c) such a public authority is, or is in the opinion of the Commission, in breach of any duty under Article 52, 55, 56, 60, 64 or 67 or under regulations under Article 53 or 54,

and, accordingly, Articles 57(3), 58 and 65 do not apply in relation to such a public authority.

(2) The Commission shall send a report of the circumstances of the failure to comply with the Commission's request or with the undertaking or other breach of duty—

- (a) where a Minister of the Crown is the public authority or is generally responsible for matters falling within the scope of the functions of the public authority, to the Minister; and
- (b) in any other case, to the Northern Ireland Minister generally responsible for matters falling within the scope of the functions of the public authority.

(3) Where a report is sent to a Minister of the Crown he shall lay it before Parliament, and where a report is sent to a Northern Ireland Minister he shall lay it before the Assembly.

### **Interpretation of this Part**

**69.**—(1) In this Part—

“employee” means—

- (a) an individual employed under a contract of service or of apprenticeship; or
- (b) an individual employed under a contract personally to execute any work or labour;

and includes a person in the service of the Crown, but only to the extent provided by Article 51; and “employment” and “employed” shall be interpreted accordingly;

“employer”, in relation to a concern, means the person entitled to the benefit of the contracts of those employed in the concern and includes a public authority, but only to the extent provided by Article 51;

“register” means the register kept under Article 47;

“registered concern” means a concern a description of which is for the time being included in the register; but where, by reason of a disposal of a part of a registered concern, there has been a change of employer in relation to that part, that part is not to be treated as a registered concern unless registered since the disposal; and

“week” means a week ending on a Saturday.

(2) For the purposes of this Part—

- (a) where people are employed by a body corporate, references to the name of the employer are to the name of the body and of its secretary and references to the address of the employer are to the address of the body's registered or principal office, or its principal office in Northern Ireland;
  - (b) where people are employed by the members of a partnership, references to the employer are to the firm and references to the employer's address are to the principal office of the partnership, or its principal office in Northern Ireland, but each member of the partnership may exercise any function, under this Part, of the employer;
  - (c) where people are employed by any other body, references to the employer are to the secretary or other executive officer charged with the conduct of the general affairs of the body.
- (3) For the purposes of this Part—
- (a) bodies corporate are associated if they are members of the same group, and for this purpose any two bodies corporate are to be treated as members of the same group if one of them is a body corporate of which the other is a subsidiary (within the meaning of<sup>F1</sup> section 1159 of the Companies Act 2006) or if both of them are subsidiaries (within the meaning of<sup>F2</sup> that section) of one and the same body corporate;
  - (b) a body corporate (call it “A”) is controlled by a person (call him “B”) if B has the power to secure, by means of the holding of shares or the possession of voting power in or in relation to A or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating A or any other body corporate, that the affairs of A are conducted in accordance with the wishes of B;
  - (c) a person is connected with an individual if that person is the individual's wife or husband<sup>F3</sup> or civil partner], or is a relative, or the wife or husband<sup>F3</sup> or civil partner] of a relative, of the individual or of the individual's wife or husband<sup>F3</sup> or civil partner], and for this purpose “relative” means brother, sister, ancestor or lineal descendant; and
  - (d) a person is connected with a body corporate if he is a director or officer of that body.
- (4) References in this Part to a person in the service of the Crown do not include the holder of any office in Schedule 2 to the House of Commons Disqualification Act 1975.

**F1** Words in art. 69(3)(a) substituted (1.10.2009) by *Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941)*, art. 2(1), **Sch. 1 para. 175(a)** (with art. 10)

**F2** Words in art. 69(3)(a) substituted (1.10.2009) by *Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941)*, art. 2(1), **Sch. 1 para. 175(b)** (with art. 10)

**F3** 2004 c.33

**Changes to legislation:**

There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998, PART VII.